

subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2004-23 and should be submitted on or before October 11, 2004.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>31</sup> that the proposed rule change (SR-Amex-2004-23) and Amendment No. 1 thereto, are hereby approved, and Amendment Nos. 2 and 3 thereto are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>32</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4-2245 Filed 9-17-04; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50357; File No. SR-NYSE-2004-45]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Rescind Advice Previously Provided Regarding the Calculation of Transaction Fees

September 13, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 16, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE hereby proposes to amend Exchange Rule 440H to include an interpretation that would rescind advice the Exchange had previously provided to members and member organizations regarding the calculation of transaction fees.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

###### Summary

On June 28, 2004, the Commission adopted new Rule 31 under the Act,<sup>3</sup>

regarding the calculation, payment, and collection of fees prescribed by Section 31 of the Act.<sup>4</sup> New Rule 31, and the SEC's commentary in the Rule 31 Adopting Release, have rendered the instructions in the "Calculation of Fees—Rounding Up" section of NYSE Information Memo No. 01-51, dated December 28, 2001, inapplicable, because Exchange members and member organizations will no longer be making such calculations for purposes of determining the amounts that they owe the Exchange pursuant to NYSE Rule 440H. The Exchange is proposing to add Interpretation /01 to NYSE Rule 440H that would instruct Exchange members and member organizations to disregard the "Calculation of Fees—Rounding Up" section of NYSE Information Memo No. 01-51.

###### Background

Exchange Rule 440H requires each Exchange member or member organization engaged in clearing or settling transactions effected upon the Exchange to pay to the Exchange as a "Transaction Fee" a sum equal to the dollar amount as prescribed in Section 31 of the Act based on the total aggregate dollar sales volume the member or member organization has reported monthly on its Form 120-A. Historically, the funds collected by the Exchange from members and member organizations pursuant to Rule 440H were remitted in their entirety to the Commission. NYSE Information Memo No. 01-51 instructs each member or member organization to use a specific "rounding up" formula to calculate the fee relative to each transaction.<sup>5</sup>

In the Rule 31 Adopting Release, the Commission established new procedures governing the calculation, payment, and collection of fees and assessments on securities transactions owed by national securities exchanges and national securities associations (collectively, "self-regulatory organizations" or "SROs") to the Commission pursuant to Section 31 of the Act.<sup>6</sup> New Rule 31, Form R31, and

<sup>4</sup> 15 U.S.C. 78ee. See Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41059 (July 7, 2004) (File No. S7-05-04) ("Rule 31 Adopting Release").

<sup>5</sup> NYSE Information Memo No. 01-51 states that "[i]n calculating the new fee for a transaction, one should multiply the sale or principal amount of the transaction by the fee rate, which will be truncated at the seventh place after the decimal point. The resulting figure should then be truncated at the fifth place after the decimal point and rounded up to the next cent (if there is any remainder you should round up)."

<sup>6</sup> Section 31 of the Act provides that the Exchange and other national securities exchanges' fees will be based on the aggregate dollar amount of sales of securities transacted on the exchange (Section

<sup>31</sup> 15 U.S.C. 78o-3(b)(6) and 78s(b)(2).

<sup>32</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.31.

temporary Rule 31T establish procedures for the calculation and collection of Section 31 fees and assessments. Under the new procedures, each SRO must provide the Commission with data on its securities transactions. The Commission will then calculate the amount of fees and assessments due based on the volume of these transactions, and bill the SROs that amount.

In the Rule 31 Adopting Release, the Commission noted that, in practice, SROs obtain the funds to pay Section 31 fees and assessments by assessing charges on their members, and the members in turn pass these charges to their customers.<sup>7</sup> The Commission stressed that Section 31 “does not address the manner or extent to which covered SROs may seek to recover the costs of their Section 31 obligations from their members. Nor does Section 31 address the manner or extent to which members of covered SROs may seek to pass any such charges on to their customers.”<sup>8</sup>

#### *Need for Proposed Interpretation*

The Exchange believes that the new Section 31 procedures have rendered the instructions in the “Calculation of Fees—Rounding Up” section of NYSE Information Memo No. 01–51 inapplicable. NYSE Rule 440H does not dictate whether or how members or member organizations should charge customers to recover amounts paid to the Exchange. Therefore, members and member organizations should be relieved of any obligation to follow the rounding up and other calculation procedures described in the “Calculation of Fees—Rounding Up” section of NYSE Information Memo No. 01–51. Proposed Interpretation /01 to NYSE Rule 440H achieves this purpose.

#### 2. Statutory Basis

The Exchange believes that the statutory basis for this proposed rule change is Section 6(b)(4) of the Act<sup>9</sup> which permits the rules of an Exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, and issuers and other persons using its facilities.

31(b)), that national securities associations’ fees will be based on the aggregate dollar amount of sales of securities transacted by or through any member of the association otherwise than on a national securities exchange (Section 31(c)), and that national securities exchanges are assessed for each “round turn transaction” in a security future (Section 31(d)). See 15 U.S.C. 78ee(b)–(d).

<sup>7</sup> See Rule 31 Adopting Release, Section IV.

<sup>8</sup> *Id.*

<sup>9</sup> 15 U.S.C. 78f(b)(4).

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange asserts that the foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b–4(f)(6) thereunder<sup>11</sup> because it does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.

The NYSE has requested that the Commission waive the five business-day pre-filing notice requirement and the 30-day pre-operative period, which would make the rule change operative immediately. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period in this case.<sup>12</sup> Allowing the rule change to become operative immediately should provide Exchange members and member organizations with appropriate instructions regarding the calculation of transaction fees. The Commission also has determined to waive the five business-day pre-filing notice requirement in this case.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b–4(f)(6).

<sup>12</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission’s Internet comment form <http://www.sec.gov/rules/sro.shtml>; or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–NYSE–2004–45 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site <http://www.sec.gov/rules/sro.shtml>. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission’s Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–45 and should be submitted on or before October 12, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4-2235 Filed 9-17-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50356; File No. SR-PCX-2004-29]

### Self-Regulatory Organizations; The Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Amend the PCXE Minor Rule Plan and Recommended Fine Schedule To Add a Provision for Failure To Maintain Continuous, Two-Sided Q Orders in Those Securities in Which a PCXE Market Maker Is Registered To Trade

September 13, 2004.

On April 14, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary, PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend PCXE Rule 10.12 to add new provisions (g)(3) and (i)(3). These provisions amend the PCXE Minor Rule Plan ("MRP") and Recommended Fine Schedule ("RFS") to add to the MRP and RFS the failure to maintain continuous, two-sided Q orders in those securities in which a PCXE market maker is registered to trade.

On July 2, 2004, the PCX amended the proposed rule change.<sup>3</sup> The Exchange again amended the proposed rule change on July 26, 2004.<sup>4</sup> The proposed rule change, as modified by Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on

August 9, 2004.<sup>5</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>7</sup> in that it is designed to promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with section 6(b)(6) of the Act,<sup>8</sup> which requires that members and persons associated with members be appropriately disciplined for violations of Exchange rules. Finally, the Commission finds the proposal is consistent with Rule 19d-1(c)(2) under the Act,<sup>9</sup> which governs minor rule violation plans.

In approving this proposal, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the MRP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the MRP provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the Exchange will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the MRP on a case by case basis, or if a violation requires formal disciplinary action.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-PCX-2004-

29) be, and it hereby is, approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E4-2246 Filed 9-17-04; 8:45 am]

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## SELECTIVE SERVICE SYSTEM

### Form Submitted to the Office of Management and Budget for Extension of Clearance

**AGENCY:** Selective Service System.

**ACTION:** Notice.

The following form has been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

#### SSS FORM—404

*Title:* Potential Board Member Information.

*Need and/or Use:* Is used to identify individuals willing to serve as members of local, appeal or review boards in the Selective Service System.

*Respondents:* Potential board members.

*Burden:* A burden of 15 minutes or less on the individual respondent.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209-2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of publication of this notice to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209-2425.

A copy of the comments should be sent to Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: September 9, 2004.

**Jack Martin,**

*Acting Director.*

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<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Tania J.C. Blanford, Staff Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 1, 2004 ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original filing.

<sup>4</sup> See letter from Tania J.C. Blanford, Staff Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated July 23, 2004 ("Amendment No. 2"). Amendment No. 2 replaced footnote 2 (on page 3 of Amendment No. 1) and footnote 4 (on page 8 of Amendment No. 1).

<sup>5</sup> Securities Exchange Act Release No. 50131 (July 30, 2004), 69 FR 48266.

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78f(b)(6).

<sup>9</sup> 17 CFR 240.19d-1(c)(2).

<sup>10</sup> 15 U.S.C. 78s(b)(2).