

respect to the meaning, administration, or enforcement of an existing rule of NASD under Section 19(b)(3)(A)(i) of the Act<sup>8</sup> and Rule 19b-4(f)(1) thereunder,<sup>9</sup> which renders the proposal effective upon receipt of this filing by the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the 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-NASD-2004-136 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-NASD-2004-136. 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 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 NASD. 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-NASD-2004-136 and should be submitted on or before October 7, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50337; File No. SR-NYSE-2004-06]

### Self-Regulatory Organizations; Order Granting Approval To Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to Amendments to Exchange Rule 104 and Rule 123

September 9, 2004.

On February 6, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend NYSE Rule 104.10 (Dealings by Specialists) to provide that customers may limit the ability of specialists to trade along with their orders or to invoke precedence based on size when the specialist is liquidating a position in its specialty security for its dealer account, and to make a corresponding change to NYSE Rule 123 (Records of Orders) concerning record keeping. On April 5, 2004, the Exchange amended the proposed rule change.<sup>3</sup> On July 14, 2004, the Exchange again amended the

proposed rule change.<sup>4</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on August 2, 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 Section 6 of the Act,<sup>6</sup> applicable to a national securities exchange.<sup>7</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things that an exchange have rules that are designed to promote just and equitable principles of trade, to 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.

Currently, when a specialist liquidates a position in his or her specialty security, the specialist is permitted to trade on parity with the crowd or may invoke precedence based on size.<sup>9</sup> The Exchange believes that there may be circumstances in which a customer will wish to preclude a specialist from trading on parity or invoking precedence based on size. Accordingly, the Exchange has proposed to amend NYSE Rule 104.10(6)(i) to include new paragraph (C) to provide that transactions by a specialist for his or her dealer account in liquidating or decreasing a position in a specialty security must yield to a customer's order in the crowd upon the request of the member representing such order, where such request has been documented as a term of the order, to the extent of the volume of such order

<sup>4</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated July 13, 2004 and accompanying Form 19b-4 ("Amendment No. 2"). In Amendment No. 2, NYSE amended the proposed rule text and added additional explanatory material to clarify the proposal. Amendment No. 2 replaced the Exchange's original filing and Amendment No. 1 thereto in their entirety.

<sup>5</sup> See Securities Exchange Act Release No. 50090 (July 27, 2004), 69 FR 46197.

<sup>6</sup> See 15 U.S.C. 78f.

<sup>7</sup> In approving this proposed rule change, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> Specialist dealer transactions when liquidating a position are subject to specific affirmative market-making standards and review. NYSE Rule 104 requires that specialists' proprietary dealings be reasonably necessary to permit the specialist to maintain a fair and orderly market. In addition, specialists are required to obtain Floor Official approval for any liquidating sale transactions on a direct minus tick or purchase transactions on a direct plus tick.

<sup>10</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 Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 2, 2004 and accompanying Form 19b-4 ("Amendment No. 1"). In Amendment No. 1, the NYSE clarified that, under the proposed rule change, customers may limit specialists from trading along with their orders and from invoking precedence based on size.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>9</sup> 17 CFR 240.19b-4(f)(1).

included in the quote prior to the transaction. The customer's order will then participate in the transaction to the extent that priority, parity and precedence rules permit. In addition, the Exchange has proposed to amend NYSE Rule 123 to add new paragraph (g) to provide that a request to a specialist to yield to a customer order is a condition of that order and must be documented in accordance with applicable books and records requirements.<sup>10</sup>

By giving the crowd broker the ability to require that the specialist yield to his or her customer's order, the Commission believes that the proposed amendment will create more similarity in the way orders on the book and in the crowd are handled. The Commission further believes that the proposal may enhance the execution of customer orders on the Exchange.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change, as amended, (SR-NYSE-2004-06) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50346; File No. SR-PCX-2004-84]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Definition of Firm Customer Quote Size and Firm Principal Quote Size Pursuant to the Intermarket Options Linkage Plan

September 10, 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 September 1, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items

have been prepared by the PCX. 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 Pacific Exchange, Inc. ("PCX" or "Exchange") is proposing to amend the definitions of Firm Customer Quote Size ("FCQS") and Firm Principal Quote Size ("FPQS") pursuant to the intermarket options linkage ("Linkage").

The text of the proposed fee schedule is below. Proposed additions are *italicized*.

\* \* \* \* \*

Rules of the Pacific Exchange, Inc.

\* \* \* \* \*

#### Definitions

Rule 6.92(a)(1)-(8)—(No Change).

(9) "Firm Customer Quote Size" with respect to a P/A Order means the lesser of (a) the number of option contracts that the Participant Exchange sending a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Customer orders entered directly for execution in that market; or (b) the number of option contracts that the Participant Exchange receiving a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of Eligible Option Class for Customer orders entered directly for execution in that market. This number will be at least 10 *unless the receiving Participant Exchange is disseminating a quotation of less than 10 contracts, in which case this number may equal such quotation size.*

(10) "Firm Principal Quote Size" means the number of option contracts that a Participant Exchange guarantees it will execute at its disseminated quotation for incoming Principal Orders in an Eligible Option Class. This number will be at least 10 *however if the Participant Exchange is disseminating a quotation size of less than 10 contracts, this number may equal such quotation size.*

(11)-(21)—(No Change).

\* \* \* \* \*

#### 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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX 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

The purpose of this rule change is to implement proposed Joint Amendment No. 13 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan") into the PCX Rules.<sup>3</sup> Joint Amendment No. 13, together with this proposed rule change, would change the definitions of both FCQS and FPQS. While Joint Amendment No. 13 and this proposed rule change would maintain a general requirement that the FCQS and FPQS be at least 10 contracts, such a minimum would not apply if the Exchange were disseminating a quotation of fewer than 10 contracts. In that case, the Exchange may establish a FCQS or FPQS equal to its disseminated size.<sup>4</sup>

As with Principal and Principal Acting as Agent ("P/A") Orders today, if a Principal or P/A Order is of a size eligible for automatic execution ("auto-ex"),<sup>5</sup> the receiving Participant must provide for the auto-ex of the order. If this is not the case (for example, the receiving Participant's auto-ex system is not engaged), the receiving Participant may allow the order to drop to manual handling. However, the receiving Participant must nonetheless provide manual execution of the order for at least the FCQS or FPQS, as appropriate (in this case, the size of its disseminated quotation of less than 10 contracts). The proposed rule change would allow the Exchange to accommodate natural size of quotations for Linkage Orders.

<sup>3</sup> The participants in the Linkage Plan ("Participants") have filed an amendment to the Linkage Plan to change the definitions of FCQS and FPQS ("Joint Amendment No. 13"). See Securities Exchange Act Release No. 50211 (August 18, 2004), 69 FR 52050 (August 26, 2004) (File No. 4-429).

<sup>4</sup> The PCX would only disseminate a quotation of fewer than 10 contracts when the Exchange's rule, as approved by the Commission, permitted such dissemination.

<sup>5</sup> At the request of the Exchange, Commission staff removed an extraneous reference provided in the original filing regarding the automatic execution size at exchanges sending and receiving Principal Orders. Telephone conversation between Steven B. Matlin, Senior Counsel, Regulatory Policy, PCX and Tim Fox, Attorney, Division of Market Regulation, Commission, on September 10, 2004.

<sup>10</sup> Relevant rules include NYSE Rules 123 and 410 and Rules 17a-3 and a-4 under the Act, 17 CFR 240.17a-3 and 240.17a-4.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</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.