

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49714, File No. SR-NYSE-2004-07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc., Relating to the Listed Company Manual's Requirement that Companies Make Certain Paper Filings

May 17, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 10, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 10, 2004, NYSE submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The proposed rule change reflects amendments to the NYSE's Listed Company Manual, which requires companies to make certain paper filings. Proposed new language is italicized; deletions are bracketed.

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Listed Company Manual

204.00 Notices by the Company to the Exchange

(A) *Prompt Written Notice to the Exchange*

No change.

(B) *Filings With the Exchange*

The Exchange, *as well as the SEC*, requires *that* listed companies [to] file certain SEC reports and other materials (such as proxies[,] *and* prospectuses[, and earnings reports]) with the Exchange. [In addition, the SEC requires listed companies to file certain materials with the Exchange.] *Since all domestic and non-U.S. listed companies are*

required to [For those listed companies that] file *their periodic and current reports, as well as other materials*, through the SEC's Electronic Data Gathering Analysis and Retrieval (EDGAR) system, the Exchange will access certain SEC documents through that system and, *except as provided below*, will not require a listed company to file [multiple] hard copies of *SEC filings* [such material] with the Exchange. Specifically, the Exchange *only requires companies to file hard copies of* [will accept an EDGAR filing of all material filed with the SEC, except:] materials necessary to support a listing application (see Paras. 703.00 & 903.00), proxy materials (see Para. 402.00) [and SEC Form 8-K filings] *and any filings made on Form 6-K that are not required to be filed through EDGAR.*

The paragraphs which follow in this section are intended only as a convenient reference and should not be regarded as interpreting fully the listing agreement or the requirements of the Exchange in respect to the matters itemized.

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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 III 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

Section 204.00(B) of the Exchange's Listed Company Manual currently requires listed companies to file certain SEC reports and other material (such as proxies, prospectuses, and earnings reports) with the Exchange. In addition, many of the forms promulgated by the Commission under the Securities Act of 1933 and the Act require listed companies to file certain material with the Exchange. However, since all domestic issuers and foreign private issuers are now required to file periodic and current reports through the Commission's Electronic Data Gathering Analysis and Retrieval ("EDGAR")

system, the Exchange no longer deems it necessary for companies to file multiple hard copies of many required filings with the Exchange.

The current requirement of section 204.00(B) of the NYSE's Listed Company Manual states that the Exchange will accept an EDGAR filing of all material filed with the Commission except material necessary to support a listing application, proxy materials, and SEC Form 8-K filings.⁴ According to the Exchange, while domestic issuers have been subject to the EDGAR electronic filing requirements for several years, the Exchange has only recently implemented a system that provides to the NYSE staff member responsible for that specific company immediate electronic notification that a company has filed a Form 8-K. In addition, the Exchange represents that the system automatically flags and routes any Form 8-K related to NYSE compliance topics to the appropriate NYSE representative for their review and potential action. In light of the Exchange's capacity for immediate electronic access, the Exchange proposes to amend this requirement to clarify that it will no longer require hard copy filings of Commission Form 8-K filings.

According to the Exchange, NYSE representatives are also notified electronically when Form 6-Ks are filed on EDGAR for a specific company in the same manner described above. However, to the extent that foreign private issuers file paper versions of Form 6-K with the SEC, the Exchange proposes to clarify that hard copies of those filings will be required to be submitted to the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change satisfies the requirement under section 6(b)(5)⁵ of the Act that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

⁴ See Securities Exchange Act Release No. 40220 (July 16, 1998), 63 FR 39620 (July 23, 1998); see also Letter to NYSE from Anne M. Krauskopf, Special Counsel, Division of Corporation Finance, and Howard L. Kramer, Senior Associate Director, Division, Commission, dated July 22, 1998 (providing no-action relief from certain requirements to file paper copies).

⁵ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 7, 2004 ("Amendment No. 1"). Amendment No. 1 replaced and superseded the original filing in its entirety.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE does not believe that the proposed rule change will 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

NYSE did not solicit or receive written comments on the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

- (A) By order approve such proposed rule change; or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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. Please include File Number SR-NYSE-2004-07 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-2004-07. 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 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-2004-07 and should be submitted on or before June 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49713; File No. SR-PCX-2004-12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the Pacific Exchange, Inc. Creating an Additional Processing Capability for PNP Orders Called "PNP Plus"

May 17, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 23, 2004 the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with 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 PCX. On April 23, 2004, the PCX submitted Amendment No. 1 to the proposed rule change.³ On April 28,

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Steven B. Matlin, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 22, 2004 ("Amendment No. 1"). Amendment No. 1 was superseded and replaced the original rule filing in

2004, the PCX submitted Amendment No. 2 to the proposed rule change.⁴ On May 11, 2004, the PCX submitted Amendment No. 3 to the proposed rule change.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The PCX, through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE, by adding additional processing capability for PNP Orders.

The text of the proposed rule change appears below. Proposed new language is in *italics*.

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PCX Equities, Inc.

Rule 7

Equities Trading

Orders and Modifiers

Rule 7.31. Orders and Modifiers

(w) PNP Order (Post No Preference). A limit order to buy or sell that is to be executed in whole or in part on the Corporation, and the portion not so executed is to be ranked in the Arca Book, without routing any portion of the order to another market center; provided, however, the Corporation shall cancel a PNP Order that would lock or cross the NBBO. PNP Orders for Trade-Through Exempt Securities (as defined in Rule 7.37) will not be canceled at the time of order entry if such orders would lock or cross the NBBO. PNP Orders in ITS Trade-Through Exempt Securities may be executed at a price no more than three cents (\$0.03) away from the NBBO displayed in the Consolidated Quote. The NBBO price protection provision set forth in Rule 7.37 will not apply to PNP Orders in Nasdaq securities.

its entirety. In Amendment No. 1, the PCX changed the proposal to make Post No Preference ("PNP") Plus Order election an order-by-order designation, made conforming and clarifying changes in the rule text and provided an example of how a PNP Plus Order would be processed.

⁴ See letter from Steven B. Matlin, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated April 27, 2004 ("Amendment No. 2"). In Amendment No. 2, the PCX corrected typographical errors and made clarifying changes in the rule text.

⁵ See letter from Steven B. Matlin, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 10, 2004 ("Amendment No. 3"). In Amendment No. 3, the PCX made a clarifying edit to the rule text.