

for other self-regulatory organizations,<sup>14</sup> and raises no new issues.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CHX-2003-19 and should be submitted by December 29, 2003.

#### V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the portions of the proposed rule change (File No. SR-CHX-2003-19) set forth above relating to compliance with Rule 10A-3 under the Act, maintenance standards, and audit committee responsibilities and authority, be, and hereby are, approved, and that Amendment No. 1 be granted accelerated approval.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48857; File No. SR-NYSE-2002-40]

#### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc. ("NYSE") To Establish Two New Crossing Sessions in the Exchange's Off-Hours Trading Facility

December 1, 2003.

On August 29, 2002, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("SEC" or "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 introduce into its rules "Crossing Session III" for the execution of guaranteed price coupled orders by member organizations to fill the balance of customer orders at a price that was guaranteed to a customer prior to the close of the Exchange's 9:30 a.m. to 4 p.m. trading session. On August 14, 2003, the NYSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On October 8, 2003, the NYSE filed Amendment No. 2 to the proposed rule change.<sup>4</sup> Amendment No. 1 would adopt a new Rule 907 to add a "Crossing Session IV" whereby an unfilled balance of an order may be filled at a price such that the entire order is filled at no worse price than the Volume Weighted Average Price ("VWAP") for the subject security. Proposed Crossing Session III and Crossing Session IV would operate as a one-year pilot. The proposed rule change and Amendment Nos. 1 and 2 thereto were published for notice and comment in the **Federal Register** on October 28, 2003.<sup>5</sup> The Commission received no comments on the proposed rule change.

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

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

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

<sup>3</sup> See letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC, dated August 13, 2003, and enclosure ("Amendment No. 1"). Amendment No. 1 proposes to add "Crossing Session IV."

<sup>4</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC, dated October 7, 2003, and enclosure ("Amendment No. 2"). Amendment No. 2 deletes the reference to a volume-weighted average price ("VWAP") order from paragraph (c) of proposed Rule 907.

<sup>5</sup> Securities Exchange Act Release No. 48659 (October 20, 2003), 68 FR 61532.

exchange<sup>6</sup> and, in particular, the requirements of Section 6(b)(5) of the Act<sup>7</sup> and the rules and regulations thereunder requiring 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. The Commission believes that the proposed new crossing sessions may improve the transparency of these types of transactions which are currently often effected in non-U.S. markets without reporting. In approving Crossing Session I and Crossing Session II, the Commission granted exemptive relief from Rule 10a-1 under the Act<sup>8</sup> (short sale rule) for transactions effected therein; this exemptive relief is not being extended to transactions effected in Crossing Session III and Crossing Session IV.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NYSE-2002-40), be, and hereby is, approved.

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. 34-48861; File No. SR-PCX-2003-35]

#### Self-Regulatory Organizations; Order Granting Partial Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto by the Pacific Exchange, Inc., To Amend Its Corporate Governance and Disclosure Policies

December 1, 2003.

#### I. Introduction

On July 14, 2003, 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

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

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

<sup>8</sup> 17 CFR 240.10a-1.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> See NYSE/NASD Corporate Governance Release, *supra* n. 7.

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

<sup>16</sup> 17 CFR 200.30-3(a)(12).