

the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 10, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the NASD' proposal is consistent with the Act and the rules and regulations thereunder applicable to a registered national securities association. Specifically, the provisions of Section 15A(b)(2) of the Act which requires that an association enforce compliance with Securities Exchange Act Rules in addition to the rules of the association. The Commission believes that the proposal will enforce and facilitate compliance by NASD members with the requirements of Regulation M, SEC Rules 100 through 105.

In addition, the Commission finds that the NASD's proposal is consistent with the provisions of Section 15A(b)(6) of the Act which requires, in part, that an association have rules that are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principals of trade, and in general, to protect investors. The Commission believes that the NASD's proposal is consistent with Section 15A(b)(6) of the Act in that the amendments to Nasdaq and OTCBB Rules, in addition to the establishment of a requirement to provide pricing information with respect to offerings of exchange-listed and "actively-traded" securities under SEC Rule 101, provide a regulatory framework that will assist members in complying with the obligations under Regulation M. The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of filing thereof in the Federal Register.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³ that the proposed rule change be and hereby is approved. The proposed rule change is effective March 14, 1997, with the exception of the provisions of Rule 4623 and Rule 5460 that implement the notification requirements adopted under Regulation M Rule 104 with respect to penalty bids and syndicate covering transactions that will become effective on the date that the notification requirements under SEC Rule 104 become effective.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Jonathan G. Katz,

Secretary.

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[Release No. 34-38372; File No. SR-NYSE-97-04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to the Exchange's Allocation Policy and Procedures

March 7, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 21, 1997, as amended on March 3, 1997, the New York Stock Exchange, Inc. ("NYSE" 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 the self-regulatory organization.² 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 Exchange, pursuant to Rule 19b-4 of the Act, submits a proposed rule change amending the NYSE's Allocation Policy and Procedures. The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed].

Allocation Policy and Procedures

* * * * *

Listing company input

[Listing on the New York Stock Exchange is a significant development for a company, and the assignment of a specialist to make a market in the company's shares via the allocation process is an important step. The listing

company may wish to communicate its views for consideration by the Allocation Committee in selecting the best possible specialist for the company's stock.

The Allocation Committee will consider a letter from the listing company requesting specific units and/or specifying particular expertise in one or more aspects of the specialist's role. While specialist performance continues to be the most significant criterion, the committee will use its professional judgment in giving appropriate weight to all relevant factors, including company letters, to determine the selection of a specialist unit.

From time to time a listing company may choose to interview specialist units. The Exchange takes a neutral position on this practice and as such will neither arrange interviews nor recommend units to be interviewed.]

Listing on the New York Stock Exchange is a significant development for a company, and the assignment of a specialist through the allocation process is an important step. The Exchange's Allocation Policy is intended to provide listing companies with a choice of alternatives as to how their specialist unit may be selected. The listing company may choose to have its specialist unit selected by the Allocation Committee, in accordance with the criteria specified in the Allocation Policy, and the exercise of the Committee's expert professional judgment. Alternatively, the listing company may choose to become more directly involved in the selection process. In that case, the company may request that the Allocation Committee select specialist units that would be appropriate to trade the company's stock, with the company then making the final selection from among the group of units as chosen by the Allocation Committee. Such a group shall consist of three, four, or five units, selected by the Committee as demonstrably deemed to be the most qualified to receive such allocation from among the units that apply, based upon the criteria set forth in this policy. These procedures shall apply to the allocation of a newly-listing company, as well as the reallocation of an already listed company.

Specialist Unit Selected by Allocation Committee. If the listing company so chooses, the Allocation Committee shall select the specialist unit to be allocated the company's stock based on the Committee's expert assessment of the type of specialist unit that would be most appropriate for the company, and the Committee's professional evaluation of performance data and other relevant

⁴ 17 CFR 200.30-3(a)(12) (1996).

¹ 15 U.S.C. 78s(b)(1);

² On March 3, 1997, the NYSE filed Amendment No. 1 to its proposal. See letter from James E. Buck, Senior vice President and Secretary, NYSE, to Ivette López Assistant director, Division of Market Regulation, SEC, dated February 28, 1997. In Amendment No. 1, the NYSE withdrew certain proposed amendments to the following sections of the NYSE's Allocation Policy and Procedures: I. Purpose; III. Allocation Panel, composition; IV. Allocation Criteria; and V. Policy Notes. *Id.* The Exchange has filed a separate proposal under Section 19(b)(2) of the Act to amend the above-referenced items. See File No. SR-NYSE-97-06.

³ 17 U.S.C. 78s(b)(2) (1988).

information as specified in the Allocation Policy. The listing company may submit a letter to the Allocation Committee describing the characteristics (e.g., trading philosophy, policies on maintaining communications with its listed companies, etc.) it believes would be appropriate for the unit that would be selected to trade its stock. The listing company may not, however, identify any particular specialist unit in its letter, or specify characteristics so unique as to be applicable only to a readily identifiable specialist unit.

Specialist Unit Selected by Listing Company. If the listing company so chooses, it may request that the Allocation Committee select specialist units that would be appropriate to trade the company's stock, with the company then making the final selection. If the listing company chooses this alternative, the company may either make no communication to the Allocation Committee, or it may submit a letter (as noted in the preceding paragraph) to the Committee describing the characteristics the company believes would be appropriate for the units to be selected by the Committee. The listing company may not, however, identify any particular specialist unit in its letter, or specify characteristics so unique as to be applicable only to a readily identifiable specialist unit.

Meetings Between Listing Company and Specialist Units. Within two business days after the selection of a group of specialist units as described above (unless the exchange has determined to permit a longer time period in a particular case), the listing company shall meet, either in person or by teleconference, with representatives of each of the specialist units. Meetings to be held in person shall normally be held at the Exchange, unless the Exchange has agreed that they may be held elsewhere. At least one representative of the listing company must be a senior official of the rank of Corporate Secretary or above of that company. No more than three representatives of each specialist unit may participate in the meeting, each of whom must be employees of the specialist unit, and one of whom must be the individual who is proposed to trade the company's stock.

Listing Company's Selection of Specialist Unit. Within one business day following its meeting with representatives of the specialist units (or such longer time period as the Exchange may permit in a particular case), the listing company shall select its specialist unit in writing, signed by a senior official of the rank of Corporate Secretary or higher duly authorized to

so act on behalf of the company. The Allocation Committee shall then confirm the allocation of the stock to that unit, at which time the stock shall be deemed to have been so allocated.

Allocation Applications. In their applications for the allocation of a listing company's stock, specialist units must describe all pertinent factors as to why they believe they should be allocated the stock. At a minimum, such factors should include a description of the unit's capital base; identity and experience of the individual proposed to trade the stock, with a description of other securities traded by that individual; and a discussion of why that individual is appropriate to trade the listing company's stock. If the listing company has submitted a letter to the Allocation Committee as permitted herein, a copy of such letter shall be made available to all specialist units. In their applications to be allocated the stock of such company, specialist units shall be expected to indicate how they meet the characteristics described in the company's letter. If, within six months of the date a newly-listed company begins trading on the Exchange (or a company which has been reallocated begins trading with its new unit), the specialist unit determines that the individual specialist who trades the company's stock should be an individual other than the one named in the allocation application, the specialist unit shall so inform the Allocation Committee, in writing, and disclose its reasons therefor. These letters shall be maintained in the permanent records of the Committee.

In addition, specialist units must describe in their applications to be allocated the stock of a listing company any contracts they, or any individual acting on their behalf, have had with any employee of that company, or any individual acting on behalf of that company with regard to its prospective listing on the Exchange, within six months prior to the date that allocation applications are solicited with respect to that company.

* * * *

Blanket applications

[A]All specialist units [may also] shall be deemed to have filed with the Exchange a blanket application pursuant to which the applicant agrees to accept the allocation of any security. Any security allocated to a specialist unit on the basis of its blanket application shall not be reflected in the records of the Exchange as a "security gained" not shall it prejudice that unit's eligibility for future allocations.

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 self-regulatory organization 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 self-regulatory organization 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 intent of the Exchange's Allocation Policy and Procedures is: (1) to ensure that securities are allocated in an equitable and fair manner and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) to provide an incentive for ongoing enhancement of performance by specialist units; (3) to provide the best possible match between a specialist unit and a security; and (4) to contribute to the strength of the specialist system.

In September 1987, the Quality of Markets Committee ("QOMC") appointed the first Allocation Review Committee ("ARC") to undertake a comprehensive review of the Exchange's then-existing allocation procedures which had been in effect since 1976. ARC's recommendations were filed with the SEC in 1988 and approved in 1990.³ In April 1991, the QOMC determined that the Allocation Policy and Procedures should be re-examined and appointed a new committee, ARC II, to do so. The Committee's recommendations were subsequently filed with the Commission, and approved in 1993 as a one-year pilot.⁴ In August 1994, the Exchange filed for and subsequently received permanent approval of that pilot.⁵ In accordance with the Exchange's commitment to preserve the integrity of the existing allocation system while refining the allocation policy as necessary, ARC III

³ Securities Exchange Act Release No. 27803 (Mar. 14, 1990), 55 FR 10740 (Mar. 22, 1990) (order approving File No. SR-NYSE-88-32).

⁴ Securities Exchange Act Release No. 33121 (Oct. 29, 1993), 58 FR 59085 (Nov. 5, 1993) (order approving File No. SR-NYSE-92-15).

⁵ Securities Exchange Act Release No. 34906 (Oct. 27, 1994), 59 FR 55142 (Nov. 3, 1994) (order approving File No. SR-NYSE-94-30).

convened in November 1993. The Committee's recommendations were filed with the Commission, and approved in September 1994.⁶ In December 1995, the QOMC appointed ARC IV to continue to review the allocation process. The Committee's recommendations are embodied in this proposed rule change.

The principle changes to the Exchange's Allocation Policy and Procedures are described below.

Listing Company Input

Currently, listed companies do not have the option of selecting their specialist units. Instead, the Exchange's Allocation Committee selects the specialist unit to be assigned to a listed company.

Under the proposal, listing companies will have two options, either: (1) to have their specialist unit selected by the Allocation Committee according to existing allocation criteria, with company input permitted in the form of a "generic letter" which may describe desired general characteristics of a specialist unit, but may not mention particular units or describe characteristics that would be applicable to a readily identifiable specialist unit; or (2) to make the final selection of a specialist unit from among three to five units selected by the Allocation Committee, based partly on the generic letter from the company describing desired specialist unit characteristics. In the case of both options, if a generic letter is submitted, the letter would be distributed to all specialist units along with allocation data sheets ("green sheets").

The Exchange is not proposing any change to the criteria by which the Allocation Committee makes its allocation decisions. Such decisions would continue to be made pursuant to the criteria specified in the policy, which include review and consideration of the results of the Specialist Performance Evaluation Questionnaire, objective measures of specialist performance, and the professional judgment of the members of the Allocation Committee. If a listing company selects the second option discussed above, the Allocation Committee would be required to select only those units demonstrably deemed to be the most qualified to receive such allocation from among the units that apply, based upon the criteria set forth in the policy.

Meetings With Specialist Units

Currently, the Allocation Committee selects a specialist unit, with a letter from the listing company to be assessed in accordance with the Committee's professional judgment; the letter may name specific units. A listing company may choose to interview specialist units; the Exchange takes a neutral position on this practice and will neither arrange interviews nor recommend units to be interviewed.

Under the proposal, companies selecting option two would meet with units chosen by the Allocation Committee (in person at the Exchange or by teleconference) within two business days (or such longer time period as permitted by the Exchange in a particular case) of the Allocation Committee meeting, and would select one unit within one business day thereafter. The number of company representatives attending would not be limited, but at least one must be a senior official for the company of the rank of Corporate Secretary or higher. Specialist units are limited to three attendees, all of whom must be employees of the unit and at least one of whom must be the specialist designated to trade the stock.

Specialist Unit Applications/Company Contracts

Currently, company letters are not distributed to specialist units. If a unit is requested in a company letter, the unit must submit a statement describing any meetings or discussions held with the company, including any representations or commitments made. There is no requirement that units advise the Committee of a change of specialists.

Under the proposal, if a generic letter is distributed, specialist units must indicate how they meet the characteristics described. Specialist units must disclose all contacts by them or any individual acting on their behalf pertaining to a listing on the Exchange with any employee of the listing company, or any individual acting on the company's behalf, within six months prior to distribution of the "green sheets." If a specialist unit wishes to change specialists within six months of the date a company begins trading, the unit must inform the Allocation Committee in writing and disclose its reasons therefor. These letters shall be maintained in the permanent records of the Committee.

"Blanket" Applications

Currently, specialist units may choose to file blanket applications (and all have done so), at their discretion. There will

be no change to the policy that any security allocated to a unit on the basis of its blanket application shall not prejudice that unit's eligibility for future allocations.

Under the proposal, all specialist units shall be deemed to have filed with the Exchange a blanket application pursuant to which the applicant agrees to accept the allocation of any security.

Pilot Basis

The Exchange intends to implement the amendments to the Allocation Policy discussed herein as a pilot to run for seven months from the date of effectiveness. The Exchange shall submit to the Commission a report discussing its experiences with the pilot program prior to the seven-month expiration date, in conjunction with any request for modification, or permanent approval, of the policy.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(5) 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 proposed amendments are consistent with these objectives in that they enable the Exchange to further enhance the process by which stocks are allocated to ensure fairness and equal opportunity in the process.

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

The proposed rule change does not 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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from March 3, 1997, the date on which

⁶ Securities Exchange Act Release No. 34626 (Sept. 1, 1994), 59 FR 46457 (Sept. 8, 1994) (order approving File No. SR-NYSE-94-18).

it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest;⁷ and (4) the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(e)(6) thereunder.⁸

The Commission finds good cause for accelerating the operative date of the proposed rule change from the thirtieth day following the date of the amended filing on March 3, 1997 consistent with investor protection and the public interest.⁹ By accelerating the operative date of the proposed rule change to March 7, 1997, the NYSE will be able to provide issuers, whose stock will be listed on the Exchange, with the ability to make the final selection of a specialist unit from among three to five units selected by the Allocation Committee. This will prevent newly listed companies from delaying their listing on the Exchange until such time as they may avail themselves of the alternative approaches described herein. Moreover, the Commission notes that the proposal is only being implemented on a pilot basis for a period of seven months ending on October 7, 1997. Based on the above, the Commission believes that accelerating the operative date for implementation of the proposal to March 7, 1997 is consistent with the protection of investors and the public interest.

In furtherance of the public interest and investor protection, the Commission expects the NYSE to provide the Commission with a report describing its experience with the pilot program. This report should include, for the period in which the pilot is in operation, the following information: the total number of allocations; the total number of allocations in which the issuer chose its own specialist unit from a list of three to five; the total number of allocations in which the Allocation Committee chose the specialist unit; the number of units provided to the issuer by the Allocation Committee in those cases where the issuer selects for each such allocation; and, for each allocation, the number of specialist units applying for the allocations in both issuer-

selected and Allocation Committee-selected allocations. The Exchange also should include in the report information that would permit the Commission to evaluate whether the number of units applying for allocations increased or decreased when compared to the period prior to the adoption of the pilot. The Exchange also should include in the report any other information that may be useful to the Commission in evaluating the program. The report should be submitted to the Commission at least two months prior to the expiration of the pilot (by August 7, 1997) along with any request to modify, extend, or permanently approve the pilot.

At any time within 60 days of the filing of the amended proposed rule change,¹⁰ 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 at 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 New York Stock Exchange. All submissions should refer to File No. SR-NYSE-97-04 and should be submitted by May 12, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

¹⁰ The 60 day abrogation period commences from March 3, 1997, the date of the submission of Amendment No. 1.

¹¹ 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,
Deputy Secretary.
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[Release No. 34-38403; File No. SR-PSE-97-08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange Relating to Changing the Corporate Name From Pacific Exchange to Pacific Exchange, Inc.

March 14, 1997.

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 March 10, 1997, the Pacific Exchange ("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. 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 Exchange is proposing to amend its Article I, Section 1 of the Constitution and the first Section of the Certificate of Incorporation to reflect a change in the corporate name from Pacific Exchange to Pacific Exchange, Inc.

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

The purpose of the proposed rule change is to effect a change in the corporate name of the Exchange from

⁷ The Commission notes that any substantive amendment to a proposed rule change filed under Rule 19b-4(e)(6) causes the 30 day delayed implementation period to be restarted from the date of the filing of the amendment. See Securities Exchange Act Release No. 35123 (Dec. 20, 1994), 59 FR 66692 (Dec. 28, 1994).

⁸ 17 CFR 240.19b-4(e)(6).

⁹ See *supra* note 7.

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1991).