

adverse effect on investor protection. The Exchange also notes that it has in place surveillance procedures with respect to ELNs and the securities linked to ELNs for the purposes of identifying and deterring manipulative trading activity.

The proposed amendment will allow CBOE to conform its listing requirements applicable to ELNs to the criteria established by the rules of the other exchanges. In this respect, CBOE notes that the Commission has approved identical rule changes of the New York, American, and Chicago Stock Exchanges.<sup>6</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>8</sup> in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

CBOE does not believe that the proposed rule change will impose any burden on competition 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

No written comments were solicited or received with respect to the proposed rule change.

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

The proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and subparagraph (f)(6) or Rule 19b-4 thereunder.<sup>10</sup> Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on

competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6).<sup>12</sup> The Exchange also provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change. 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. 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR-CBOE-01-06 and should be submitted by April 26, 2001.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-8353 Filed 4-4-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44133; File No. SR-NYSE-00-21]

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Electronic Delivery of Proxy Materials and Proxies

March 29, 2001.

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 May 3, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On February 23, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. The Commission has also decided to grant accelerated approval to the amended proposed rule change.

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

The proposed rule change consists of amendments to Section 402.04 of the *Listed Company Manual* ("Manual"). This section of the Manual sets forth the proxy solicitation requirements for listed companies. The text of proposed rule change follows. Additions are in *italics*; deletions are [bracketed].

## NYSE Listed Company Manual

\* \* \* \* \*

## Section 4 Shareholders' Meetings and Proxies

\* \* \* \* \*

## 402.04 Proxy Solicitation Required

(A) Actively operating companies are required.

\* \* \* \* \*

<sup>6</sup> See Securities Exchange Act Release No. 41992 (October 7, 1999), 64 FR 56007 (October 15, 1999) (order approving SR-NYSE 99-22); Securities Exchange Act Release No. 42110 (November 5, 1999), 64 FR 61677 (November 12, 1999) (order approving SR-Amex 99-33); and Securities Exchange Act Release No. 42313 (January 4, 2000), 65 FR 2205 (January 13, 2000) (order approving SR-CHX-99-19).

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

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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<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> Letter from James E. Buck, Senior Vice President and Secretary, NYSE to Sharon M. Lawson, Division of Market Regulation, SEC, dated February 22, 2001 ("Amendment No. 1"). In Amendment No. 1, the Exchange proposed changes to the text of the rule that clarifies that electronic delivery of proxy materials and proxies must be effected in compliance with applicable federal and state laws, including for the purposes of this rule, interpretations of the Commission.

(B) *Electronic Delivery of Proxy Materials.* As permitted by applicable state and federal law (including any interpretations thereof by the SEC), a company may arrange for the delivery of its proxy material by electronic means (including by posting on a company's web site, with an electronic mail notice to the beneficial owner of its availability on the web site) to beneficial owners who have given their prior written consent to such delivery. Such consent may be in the form of electronic mail. Such arrangements should be made in coordination with any intermediaries that are record holders of the securities. Proxies may also be delivered by electronic means by beneficial owners as permitted by applicable state and federal law (including any interpretations thereof by the SEC) and if appropriate arrangements have been made with any intermediaries that are record holders of the securities. (See, for example, the following interpretations by the SEC: Release No. 34-36345, File No. S7-31-95; Release No. 34-37182, File No. S7-13-96; and Release Nos. 33-7856, 34-42728, File No. S7-11-00).

## 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

The Exchange proposes to make it possible for companies to arrange for the delivery of proxy material to beneficial owners by electronic means, as permitted by and in compliance with applicable state and federal law, which for the purposes of this rule will include any interpretations thereof by the Commission.<sup>4</sup> The term "electronic

means" will include (but will not be limited to) posting such materials on the company's web site, with an electronic mail notice to the beneficial owner of the availability of such posting. The amended rule provides that the described electronic delivery may be utilized only if beneficial holders have given prior written consent to such delivery (consents by electronic mail will be acceptable).

Pursuant to the proposed rule change, beneficial owners will also be allowed to deliver their proxies by electronic means, subject to applicable state and federal laws, as described above, which also includes Commission interpretations.<sup>5</sup> Finally, the proposed rule change provides that any arrangements for electronic delivery of proxies and proxy materials should be coordinated with any intermediaries<sup>6</sup> who are record holders of the affected securities.<sup>7</sup>

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5)<sup>8</sup> of the Act, which requires, among other things, that exchange rules be designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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

The Exchange 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

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

## III. 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. 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 filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR-NYSE-00-21 and should be submitted by April 26, 2001.

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

The Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>9</sup> and in particular, the requirements of Section 6(b)(5) of the Act.<sup>10</sup> The Commission finds that the Exchange's proposal to permit listed companies to deliver proxy materials by electronic means to foster cooperation and coordination with persons engaged in processing information with respect to securities because it would allow issuers and investors to utilize new technology to deliver documents required under the Act in a more efficient manner.<sup>11</sup>

<sup>4</sup> To date, applicable interpretations of the Commission include Release No. 34-36345 (October 6, 1995), 60 FR 53458 (October 12, 1995) (File No. S7-31-95); Release No. 34-37182 (May 9, 1996), 61 FR 24644 (May 15, 1996) (File No. S7-31-96); Release Nos. 33-7856, 34-42728 (April 28, 2000), 65 FR 25843 (May 4, 2000) (File No. S7-11-00).

<sup>5</sup> *Id.*

<sup>6</sup> Section 402.07 of the Listed Company Manual sets forth procedures that the Exchange has established for guidance of member organizations acting as intermediaries under NYSE Rules 450 to 455. These rules, among other things, establish the requirements of member organizations that transmit proxy materials to beneficial owners. According to the Exchange, it has interpreted Section 402.07 of the Listed Company Manual, which sets forth the methods to be used in transmitting proxy materials, to allow members to transmit proxy materials to beneficial owners in a manner consistent with Section 402.04 of the Listed Company Manual. Therefore, member organizations that act as nominees for beneficial owners may use electronic delivery methods to deliver proxy materials to beneficial owners so long as they comply with the provisions of Section 402.04, as amended. Telephone call between Elena Daly, Assistant General Counsel, NYSE, and Kelly Riley, Special Counsel, SEC, on March 22, 2001.

<sup>7</sup> The Exchange stated that it will send written notification to its listed companies and member organizations of the new electronic delivery provisions and refer them to applicable federal and state law as well as the Commission's interpretations. Telephone call between Elena Daly, Assistant General Counsel, NYSE, and Kelly Riley, Special Counsel, SEC, on March 15, 2001.

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

<sup>9</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> The Commission notes that the Section 402.04 of the Listed Company Manual applies to NYSE-

Specifically, issuers should be able to deliver proxy materials to investors in a more timely and cost effective fashion. Issuers that send their proxy materials to their investors electronically should realize savings on postage and printing costs. Furthermore, because electronic delivery methods permit near instantaneous delivery of documents, investors could receive their proxy materials sooner than permitted by the current delivery methods. In addition, the Commission finds that the proposed rule change is not designed to permit unfair discrimination between issuers because all NYSE-listed companies will be able to make use of electronic delivery methods under the rule.

Under the proposed rule, issuers and member organizations will only be permitted to use electronic means to deliver proxy materials as permitted by applicable federal and state law, including interpretations issued by the Commission. To date the Commission has issued three interpretations on this issue.<sup>12</sup> Accordingly, all electronic deliveries effected under the NYSE rule would have to comply with the requirements in these interpretations and any future interpretations that the Commission may issue on this matter. Further, issuers and member organizations will only be permitted to use electronic means to deliver proxy materials if they have received written consent for such delivery means from each individual investor. The Commission believes that these restrictions should ensure that all investors continue to receive proxy materials regardless of the delivery method used.

The proposal would permit beneficial owners to use electronic means to deliver proxies. Like issuers, beneficial owners would only be permitted to utilize electronic means to deliver proxies as permitted by applicable state and federal law, including applicable Commission interpretations. The Commission believes these requirements will allow beneficial owners to use and gain the benefits of new technological advances.

Finally, as noted above, the Commission to date has issued three interpretations regarding electronic delivery requirements under federal

securities laws.<sup>13</sup> Issuers and member organizations using electronic delivery means for proxy materials and proxies are required under the proposed rule to ensure that they comply with current Commission interpretations, as well as any future interpretations that the Commission may issue on these issues. The Commission expects that the Exchange will monitor developments regarding electronic delivery requirements and notify their members and listed companies in the event the Commission issues future releases on these issues.

The Commission finds good cause to approve the proposal prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register**. By accelerating effectiveness of the Exchange's rule proposal, NYSE issuers and members would be able to utilize electronic delivery methods for the current proxy season. The Commission believes that the Exchange has complied with the regulatory requirements for the use of electronic delivery methods by requiring compliance with applicable federal and state law as well as requiring that investors consent to electronic delivery in writing. The Commission believes that these requirements should ensure that investors continue to receive their proxy materials in accordance with federal and state law. Further, the proposed rule change does not change delivery requirements. It merely provides an alternative method by which delivery can be accomplished. Accordingly, the Commission believes that good cause exists, consistent with Sections 6(b)(5)<sup>14</sup> and 19(b)(2)<sup>15</sup> of the Act, to approve the proposed rule change on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the amended proposed rule change (SR-NYSE-00-21) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-8351 Filed 4-4-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44131; File No. SR-PCX-01-11]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Prohibition of Harassment

March 29, 2001.

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 February 12, 2001, 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 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 PCX is proposing to file with the Commission its statements on Fiduciary Responsibility of the Members of the Board of Governors, Fiduciary Responsibilities of Committee Members and Floor Officials and Employee Handbook.

The text of the proposed rule change is available at the PCX and at the Commission.

#### 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 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 Exchange has and will continue to insist that Members of its Board of Governors, its Committee Members, employees, officers, directors and other

listed companies. According to NYSE, it has interpreted the requirements of Section 402.04 of the Listed Company Manual to apply to NYSE members who act as nominees and hold securities for beneficial owners, pursuant to Section 402.07 of the Listed Company Manual. The Commission suggests that the NYSE consider adding a cross reference to this effect to help clarify their rules.

<sup>12</sup> See note 4 *supra*.

<sup>13</sup> See note 4 *supra*.

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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

<sup>16</sup> 15 U.S.C. 78s(b)(2).

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

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

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