

intermediary's due diligence with respect to its customers. The Notice also identifies certain factors to consider including whether the intermediary, is located in a FATF member jurisdiction, the FCM's historical experience with the foreign intermediary and the intermediary's reputation in the investment business.

The first section of the Notice also describes procedures for detecting and reporting suspicious activity, hiring qualified staff in areas susceptible to money laundering, and record keeping requirements. The second section of the Notice discusses the requirement that the firm designate an individual or individuals to oversee the surveillance program. This section also highlights the main responsibilities of this individual. The third section discusses the components of an employee training program. Finally, the last section discusses the independent audit review function and the ways a firm can satisfy this requirement.

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Exchange Act.⁶

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

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act and the CEA. Any burdens imposed are necessary and appropriate in order to protect customers.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

NFA worked with industry representatives in developing the rule changes. NFA did not, however, publish the rule changes to the membership for comment. NFA did not receive comment letters concerning the rule changes.

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

By law, financial institutions must be in compliance with the requirements of Section 352 of Title III on or before April 24, 2002.

The proposed rule change became effective on April 23, 2002. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule

change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.⁷

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Comments also may be submitted electronically to the following e-mail address: rule-comments@sec.gov. 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 these filings also will be available for inspection and copying at the principal office of NFA. Electronically submitted comments will be posted on the Commission's website (<http://www.sec.gov>). All submissions should refer to File No. SR-NFA-2002-03 and should be submitted by June 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45884; File No. SR-NYSE-2002-17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. to Extend Pilot Relating to Its Allocation Policy for Trading of Exchange-Traded Funds Traded on an Unlisted Trading Privileges Basis

May 6, 2002.

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 May 6, 2002, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The proposed rule change has been filed by the NYSE as a "non-controversial" rule change under Rule 19b-4(f)(6) of the Act.³ 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 proposed rule change seeks to extend the pilot relating to the Exchange's policy for allocating Exchange-Traded Funds ("ETFs") admitted to trading on the Exchange on an Unlisted Trading Privileges Basis ("UTP") for an additional year. The pilot is set to expire on May 7, 2002. For purposes of the Allocation Policy, ETFs include both Investment Company Units (as defined in paragraph 703.16 of the NYSE Listed Company Manual) and Trust Issued Receipts (as defined in NYSE Rule 1200), which trade UTP.

Since the inception of the Allocation Policy, 30 different ETFs have been successfully allocated. This includes 17 Merrill Lynch Holding Company Depositary Receipts (HOLDERS), a type of Trust Issued Receipt, 9 different types of Select Sector SPDRs, 1 MidCap SPDR, the Nasdaq-100 Index Tracking Stock (symbol QQQ), the Standard & Poor's Depositary Receipts (symbol SPY), and The Dow Industrials DIAMONDS (symbol DIA).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁷ 15 U.S.C. 78s(b)(1).

⁸ 17 CFR 200.30-3(a)(75).

⁶ 15 U.S.C. 78o-3(k).

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 NYSE 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 NYSE 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 Allocation Policy was originally filed as a one-year pilot, which was approved by the Commission on May 7, 2001.⁴ Certain aspects of the pilot program were subsequently amended.⁵ The pilot program is due to expire on May 7, 2002. Therefore, the NYSE is seeking to extend the pilot relating to the Allocation Policy for an additional year.

Under the Allocation Policy, the ETFs traded on a UTP basis are allocated by a special committee, consisting of the Chairman of the Allocation Committee, the three most senior Floor broker members of the Allocation Committee, and four members of the Exchange's senior management as designated by the Chairman of the Exchange. This permits Exchange management, acting with key members of the Allocation Committee, to oversee directly the introduction of the UTP concept to the NYSE. For purposes of the Allocation Policy, ETFs collectively include Investment Company Units (as defined in paragraph 703.16 of the NYSE Listed Company Manual) and Trust Issued Receipts (as defined in NYSE Exchange Rule 1200).

Under the Allocation Policy, allocation applications are solicited by the Exchange, and the special committee reviews the same performance and disciplinary material reviewed by the Allocation Committee for allocating listed stocks on the Exchange.⁶ In addition, specialist unit applicants are required to demonstrate:

- (a) An understanding of the trading characteristics of ETFs;
- (b) Expertise in the trading of derivatively-priced instruments;
- (c) Ability and willingness to engage in hedging activity as appropriate;
- (d) Knowledge of other markets in which the ETF to be allocated trades;
- (e) Willingness to provide financial and other support to relevant Exchange publicity and educational initiatives.

The special committee reviews specialist unit applications and reaches its allocation decision by majority vote. Any tie vote is decided by the Chairman of the Exchange. The Exchange has determined that, due to the unique aspects of certain ETF products, it may be helpful for the special committee to meet with and interview specialist units before making an allocation decision.

A specialist organization cannot be both the specialist in the ETF and the specialist in any security that is a component of the ETF. This restriction is necessary to avoid the possibility of "wash sales" in a situation where the specialist in the ETF needs to hedge by buying or selling component stocks of the ETF, and could inadvertently be trading with a proprietary bid or offer made by a specialist in the same member organization who is making a market in the component security.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act⁸ in particular, because it is designed to promote just and equitable principles of trade, 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.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary 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 either solicited or received.

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

If 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; and
- (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change may become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ The Exchange has requested that the Commission waive the five-day pre-filing requirement and designate that the proposed rule change become operative immediately to permit the Exchange to continue the pilot program on an uninterrupted basis.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the five-day pre-filing requirement and designate the proposal immediately operative.¹¹ Accelerating the operative date and waiving the pre-filing requirement will permit the Exchange to continue the pilot program without undue delay. In addition, the Commission did not receive any comments on the original pilot program. Thus, the pilot program is extended through May 8, 2003. At any time within 60 days of the filing of the 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

⁴ See Securities Exchange Act Release No. 44272 (May 7, 2001), 66 FR 26898 (May 15, 2001) (SR-NYSE-2001-07).

⁵ See Securities Exchange Act Release Nos. 44306 (May 15, 2001), 66 FR 28008 (May 21, 2001) (SR-NYSE-2001-10); and 45729 (April 10, 2002), 67 FR 18970 (April 17, 2002) (SR-NYSE-2002-07).

⁶ See Section IV of the Allocation Policy and Procedures approved in Securities Exchange Act

No. 42746 (May 2, 2000), 65 FR 30171 (May 10, 2000) (SR-NYSE-99-34) for details of the performance and disciplinary material available to the Allocation Committee.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 File No. SR-NYSE-2002-17 and should be submitted by June 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45872; File No. SR-PCX-2002-21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Reduction of a Surcharge Fee for the Automatic Execution of Broker-Dealer Orders

May 3, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on April 11, 2002, the Pacific Exchange, Inc. ("Exchange" or "PCX") filed with the Securities and Exchange Commission ("SEC" or "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 PCX is proposing to modify its Schedule of Fees and Charges by reducing the surcharge fee for the automatic execution of broker-dealer orders from \$0.45 to \$0.20.

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

I. Purpose

The Exchange is proposing to reduce the per contract surcharge fee for all broker-dealer orders³ executed via the Exchange's automatic execution system ("Auto-Ex"). The current \$0.45 per contract surcharge fee for the automatic execution of broker-dealer orders was filed for immediate effectiveness on February 4, 2002.⁴ After review of the surcharge, the Exchange believes that a reduction of the fee would encourage participation in the program and that the reduction is reasonable and appropriate.

On November 6, 2001, the Commission approved a PCX rule change proposal to amend PCX Rule 6.87(b) to permit broker-dealer orders to be executed on Auto-Ex.⁵ The amendments to PCX Rule 6.87(b) were implemented on an issue-by-issue basis, subject to the approval of the Options Floor Trading Committee.⁶

The Exchange proposes to reduce the per contract surcharge on all trades executed pursuant to the proposed rule change from a \$0.45 to \$0.20. The Exchange represents that, under the proposal, *all* trades executed via Auto-Ex on behalf of broker-dealers will be uniformly assessed the fee. The Exchange also represents that the surcharge for automatic execution of broker-dealer orders will only be charged to member firms. The Exchange asserts that these firms will be assessed

the fee monthly. The Exchange represents that bills will be issued to these firms approximately five days after the end of each trade month. The Exchange asserts that the surcharge will not apply to non-members.

The Exchange represents that amended PCX Rule 6.87(b) extends the benefits of automatic execution to broker-dealers.⁷ The Exchange asserts that such change provides instant execution without the need for a floor broker. The Exchange represents that the fast turnaround time minimizes the possibility that the market will move away from the prevailing quote. The Exchange asserts that broker-dealers who want to access the PCX's markets, but who do not want to pay the surcharge, can send their orders to the PCX for manual execution by Floor Brokers. The Exchange believes, however, that the benefits of automatic execution outweigh the burden of paying the surcharge.

The Exchange represents that broker-dealer orders that are automatically executed on Auto-Ex are not subject to brokerage fees that would otherwise be imposed by PCX members. The Exchange believes that the floor brokerage fees on broker-dealer order executions are generally comparable to the proposed surcharge amount. The Exchange represents that broker-dealer orders routed to Floor Broker Hand Held Terminals are not subject to the surcharge. The Exchange asserts that the surcharge is in addition to existing fees.

The Exchange represents that the fee will recoup costs associated with developing the new feature allowing automatic execution of broker-dealer orders in designated option issues. The Exchange asserts that the costs required to allow its Pacific Options Exchange Trading System ("POETS") to accept and execute these orders included an extensive system design change, programming and testing, and that billing programming was also required. The Exchange believes the fee is reasonable. The Exchange proposes that the reduction in the surcharge become effective on April 15, 2002.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,⁸ in general, and with Section 6(b)(4) of the Act,⁹ in particular, in that it provides for the equitable allocation

³ A broker-dealer order is an order for the account of a registered broker-dealer.

⁴ See Securities Exchange Act Release No. 45662 (March 27, 2002), 67 FR 16786 (April 8, 2002) (SR-PCX-2002-10).

⁵ See Securities Exchange Act Release No. 45032 (November 6, 2001), 66 FR 57145 (November 14, 2001) (SR-PCX-2000-05) (approving portion of proposal that allowed for orders for the account of broker-dealers to be executed on Auto-Ex on an issue-by-issue basis).

⁶ *Id.*

⁷ The Exchange represents that, previously, these benefits were only available to public customers.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.