

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 Association. All submissions should refer to file number SR-NASD-2002-82 and should be submitted by July 23, 2002.

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. 34-46103; File No. SR-NYSE-2002-21]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Allow the Use of Revised Forms U-4 and U-5

June 21, 2002.

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 June 5, 2002, 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 Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 hereby submits revised Uniform Application for Securities Industry Registration or Transfer ("Form U-4") and the revised Uniform Termination Notice for Securities Industry Registration ("U-5") for Commission review.

#### 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 its proposal and discussed any comments it received regarding the proposal. 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

###### 1. Purpose

The purpose of this proposed rule change is to allow the NYSE to use revised Uniform Application for Securities Industry Registration or Transfer ("Form U-4") and Uniform Termination Notice for Securities Industry Registration ("Form U-5") (together, the "Forms"). The NYSE uses these Forms as part of its registration and oversight of persons associated with members and member organizations. In addition, these Forms are used in connection with the National Association of Securities Dealers, Inc.'s ("NASD") Central Registration Depository ("CRD") system, in which the Exchange participates. The CRD is an industry-wide automated system, which allows for the efficient review and tracking of registered persons in the securities industry, as well as changes in their work and disciplinary histories.

The Forms were filed by NASD Regulation, Inc. ("NASDR") with the Commission, and approved by the Commission on March 11, 2002.<sup>5</sup> The NYSE included in its filing copies of the Forms (marked as Exhibits A and B). SR-NASD-2002-05 was based on NASDR's efforts to enhance the CRD and the registration and termination process of individuals in the securities

industry. The Forms were amended to provide additional enhancements and information for more meaningful and detailed disclosure. The Forms are to be submitted electronically through the Internet.

The technical changes to the Forms will (1) update the Form U-4 to add examination and registration categories that were not previously included; (2) make certain formatting and technical changes to the Forms that would complete the transition from a paper-based filing model to an electronic-filing model; (3) clarify certain items that have been a source of confusion for Web CRD users; (4) provide separate paper filing instructions for those filers that do not use the CRD or Investment Adviser Registration Depository ("IARD") systems; (5) accommodate the electronic submission of investment adviser filings in the IARD system; and (6) establish procedures that will enable broker/dealer firms and investment adviser firms employing dually registered persons to concur with information contained in the Forms.

Specific revisions that affect NYSE members and member organizations include the addition of new registration categories. The revised Forms add new registration categories for the NYSE Trading Assistant ("TA") and Specialist Clerk ("SC") positions.<sup>6</sup>

The revised Forms also add: (1) a Series 7A examination that corresponds with the Floor Member Conducting Public Business ("PM") and Floor Clerk Conducting Business ("PC") registration category;<sup>7</sup> (2) a NYSE Branch Manager Series 12 examination that corresponds with the Securities Manager ("SM") registration category;<sup>8</sup> (3) a Series 21 examination that corresponds with the

<sup>6</sup> See Securities Exchange Act Release Nos. 40943 (January 13, 1999), 64 FR 3330 (January 21, 1999) (SR-NYSE-98-36) and 41701 (August 3, 1999), 64 FR 43804 (August 11, 1999) (SR-NYSE-99-20) in which the Commission approved the TA and SC positions, respectively.

<sup>7</sup> See Securities Exchange Act Release No. 32698 (July 29, 1993), 58 FR 41539 (August 4, 1993) (SR-NYSE-93-10) in which the Commission approved the NYSE proposed rule change to adopt the Series 7A examination as a module of the Series 7 examination for floor members who only accept orders from professional customers, and to establish a new registration category. See also Securities Exchange Act Release No. 42092 (November 2, 1999), 64 FR 61375 (November 10, 1999) (SR-NYSE-99-36) in which the Commission approved the NYSE proposal to eliminate the Series 7B examination and adopt a new interpretation of Rule 345 to establish the Series 7A examination as the qualifying examination for floor clerks who only accept orders from professional customers.

<sup>8</sup> See Securities Exchange Act Release No. 39712 (March 3, 1998), 63 FR 11939 (March 11, 1998) (SR-NYSE-97-33), in which the Commission approved a Continuing Education Program for supervisors that included Series 12 examination-qualified securities managers.

<sup>10</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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6). The NYSE provided the Commission with written notice of its intention to file this proposed rule change on May 28, 2002. The Exchange has asked the Commission to waive the 30-day operative delay.

<sup>5</sup> See Securities Exchange Act Release No. 45531 (March 11, 2002), 67 FR 11735 (March 15, 2002) (SR-NASD-2002-05).

NYSE SC registration category; and (4) a Series 25 examination that corresponds with the NYSE TA registration category.

Another change affecting NYSE members and member organizations is the Signature and Acknowledgment sections on Form U-4. To accommodate electronic filing, revised Section 15, the "Signatures" section, defines a "signature" as either "a manual signature or an electronically transmitted equivalent." This section permits individuals and appropriate signatories to go directly to designated signature fields to execute the electronic signatures required by the Form U-4. Revised Sections 15A and 15B address the individual/applicant's acknowledgment and consent and the firm/appropriate signatory's representations, both of which must be completed on all initial or temporary registration Form U-4 filings. Section 15C addresses the Temporary Registration Acknowledgment, which must be completed for all initial or temporary registrations. Section 15D has been added to address an individual/applicant's acknowledgment and consent to amendments to the disclosure questions or the Disclosure Reporting Pages ("DRPs"). Firms and appropriate signatories must complete Section 15E for all amended Form U-4 filings. In addition, the signature section includes the Firm/Appropriate Signatory Concurrence (15F), which is a new signature section that enables one firm to concur with a filing made by another firm with which an individual is also registered (*i.e.*, the individual is registered with more than one broker/dealer and/or investment adviser firm).

The changes to Form U-5 combine the signatures into Section 8, which includes the firm acknowledgment in Section 8A and the individual acknowledgment and consent in Section 8B. Only appropriate signatories of firms are required to sign the Form U-5; however, if the terminating firm reports on the Form U-5 that an individual is under internal review, that individual may file a Part II to the Internal Review DRP to provide a response.

In addition, unregistered individuals are obligated to report to CRD any address changes for two years following the termination of registration. The individual acknowledgment and consent is included in the proposed changes to the Form U-5 to require individuals submitting an address change or an Internal Review DRP-Part II to attest that the information is accurate and complete. With the exception of Part II of the Form U-5

Internal Review DRP, there is currently no mechanism for a former associated person or member to submit information to amend or update a disclosure record through the use of the Forms. Part II of the Form U-5 Internal Review DRP provides a current or former registered representative an opportunity to provide a summary of the circumstances relating to an internal review reported on a Form U-5 by a former employer.

The revised technical and formatting amendments do not alter the reporting or disclosure requirements applicable to broker/dealers or their registered persons. Therefore, members and member organizations are not required to "re-file" disclosure or administrative information for their associated persons.

The amendments will enhance the utility of Forms U-4 and U-5 as part of the Exchange's registration and oversight function by providing more detailed reporting concerning persons associated with members and member organizations as well as enhancements to electronic filing through the Internet.

## 2. Statutory Basis

The NYSE believes the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> in that use of the Forms should foster cooperation and coordination with persons engaged in regulating transactions in securities. Additionally, the NYSE believes the information reported on the Forms assists the Exchange in its responsibilities under Section 6(c) of the Act<sup>10</sup> in denying membership to those subject to a statutory disqualification or who cannot meet such standards of training, experience and competence as are prescribed by the rules of the Exchange or those who have engaged in acts or practices inconsistent with just and equitable principles of trade.

### *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.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and subparagraph (f)(6) of Rule 19b-4<sup>12</sup> thereunder. 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.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow immediate use of the Forms. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>13</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 file number SR-NYSE-2002-21 and should be submitted by July 23, 2002.

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

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

<sup>13</sup> 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).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46115; File No. SR-PCX-2002-34]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to a Six-Month Extension of the Automatic Execution System Incentive Pilot Program

June 25, 2002.

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 June 7, 2002, 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. On June 21, 2002, the PCX submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change has been filed by the Phlx as a "non-controversial" rule change under Rule 19b-4(f)(6) of the Act.<sup>4</sup> 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 extend the Automatic Execution System ("Auto-Ex") Incentive Pilot Program for six months. The text of the proposed rule

change is available at the Office of the Secretary, 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

On September 25, 2001, the Commission approved, on a nine-month pilot basis, the Exchange's proposal to amend PCX Rule 6.87, which governs the operation of Auto-Ex<sup>5</sup> to provide an Auto-Ex Incentive Program for apportioning Auto-Ex trades among Market Makers.<sup>6</sup> The pilot program is currently set to expire on June 25, 2002.<sup>7</sup>

The Auto-Ex Incentive Program allows the Exchange to assign Auto-Ex orders to logged-on Market Makers according to their percentage of their in-person agency<sup>8</sup> contracts traded in an issue (excluding Auto-Ex contracts traded) compared to all of the Market Maker in-person agency contracts traded (excluding Auto-Ex contracts) during the review period. The review period is determined by the Options Floor

Trading Committee ("OFTC") and may be for any period of time not in excess of two weeks.<sup>9</sup> The percentage distribution determined for a review period will be effective for the succeeding review period.

The Exchange is requesting an additional extension of the pilot program for six months from June 25, 2002 to December 24, 2002. The Exchange is in the process of collecting data to determine the effect of the Auto-Ex Incentive Program on the apportionment of Auto-Ex trades among Market Makers. The added time permits the Exchange an opportunity to continue reviewing and evaluating the program. Therefore, the Exchange believes that a six-month extension of the program is warranted.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>11</sup> in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, enhance competition and 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, as amended, 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

Written comments were neither solicited nor received.

#### 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>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> Because the foregoing proposed rule change, as amended: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and

<sup>9</sup> The OFTC has set a two-week review period for all options classes and the OFTC will not vary the term of the review period except for exigent circumstances.

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See letter from Michael Pierson, Vice President, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 20, 2002. In Amendment No. 1, the PCX explained that it had inadvertently made two virtually identical submissions to the Commission, which were received on June 7, 2002 and June 14, 2002, respectively, and were both titled SR-PCX-2002-34. The only difference between the two submissions was that the latter contained a pilot expiration date of December 24, 2002 (rather than December 25, 2002 as in the original document). Amendment No. 1 stated that the PCX wished to treat the second submission as amending the first by replacing it in full. Consequently, the operative pilot expiration date is December 24, 2002.

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

<sup>5</sup> Auto-Ex is the Exchange's Automated Execution system feature of the Pacific Options Exchange Trading System ("POETS") for market or marketable limit orders. POETS is the Exchange's automated trading system comprised of an options order routing system, Auto-Ex, an on-line order book system, and an automatic market quote update system. Option orders may be sent to POETS via the Exchange's Member Firm Interface ("MFI"). Market and marketable limit orders sent through the MFI will be executed by Auto-Ex if they meet order type and size requirements to the Exchange.

<sup>6</sup> See Securities Exchange Act Release No. 44847 (September 25, 2001), 66 FR 50237 (October 2, 2001).

<sup>7</sup> The proposed rule changes were, in part, based on CBOE Rule 6.8 *Interpretations and Policies* .06(c) "100 Spoke RAES Wheel". The 100 Spoke RAES Wheel pilot program has received three extensions, the latest being a six month extension issued on January 3, 2002. See Securities Exchange Act Release No. 45230 (January 3, 2002), 67 FR 1380 (January 10, 2002).

<sup>8</sup> Agency contracts are those contracts that are represented by an agent and do not include contracts traded between Market Makers in person in the trading crowd.