

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.<sup>9</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46816; File No. SR-NYSE-2002-56]

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

November 12, 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 October 30, 2002, the New York Stock Exchange, Inc. ("NYSE" or "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.<sup>3</sup> On November 8, 2002, the NYSE filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons described below, the Commission is granting accelerated approval to the proposed rule change.

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

The Exchange hereby proposes to amend Rule 600 relating to arbitrations for a six-month pilot period. During this six-month pilot period, the amendment to Rule 600 will require industry parties in arbitration to waive application of the California arbitrator disclosure standards upon the request of customers that have waived the application. The amendment will also require industry parties in arbitration to waive application of the California arbitrator

disclosure standards upon the request of associated persons. Below is the text of the proposed rule change, as well as the text of two forms relating to the waiver procedures that the Exchange proposes to distribute pursuant to the terms of the proposed rule change. Proposed new language is *italicized*.

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#### New York Stock Exchange, Inc.

##### Constitution and Rules

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##### Arbitration

\* \* \* \* \*

##### Rule 600

*(g) This paragraph applies to the Ethics Standards for Neutral Arbitrators in Contractual Arbitrations promulgated by the Judicial Council of California (the "California Standards"), which, were they to have effect in connection with arbitrations conducted pursuant to this Code, would conflict with this Code.*

*In light of this conflict, the affected customer(s) or an associated person of a member or member organization who asserts a claim against the member or member organization with which she or he is associated may:*

- *Request the Director to appoint arbitrators and schedule a hearing outside California, or*
- *Waive the California Standards and request the Director to appoint arbitrators and schedule a hearing in California. A written waiver by a customer or associated person who asserts a claim against the member or member organization with which he or she is associated on a form provided by the Director of Arbitration under this Code shall also constitute and operate as a waiver for all other parties to the arbitration who are members, allied members, member organizations, and/or associated persons of a member or member organization.*

\* \* \* \* \*

#### 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.<sup>5</sup> 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,

<sup>5</sup> The discussion in this section represents the NYSE's views on the situation in California and does not in any way represent a Commission position on this issue.

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 proposed rule change is intended to provide options to customers and associated persons in California whose claims in arbitration cannot proceed because of the state's adoption of a law, and the Ethics Standards for Neutral Arbitrators in Contractual Arbitration ("the California Standards") promulgated thereunder, that purport to apply to arbitrations conducted pursuant to Exchange rules. The California Standards, were they to have effect, would conflict with the Exchange's arbitration rules.

The proposed amendment to Rule 600 responds to the purported imposition of California state law on arbitrations conducted under the auspices of the Exchange and pursuant to a set of nationally-applied rules approved by the Commission. On July 1, 2002, as a result of the purported application to Exchange arbitrations and arbitrators of the California Standards, the Exchange suspended the appointment of arbitrators for cases pending in California. The Exchange, along with NASD Dispute Resolution, Inc. (the "NASD"), is seeking a judgment in the United States District Court for the Northern District of California declaring that the California Standards are preempted by the Act and the Federal Arbitration Act. The SEC has sought leave to appear as a friend of the court ("amicus curiae") in the litigation and has submitted a brief that argues that the California Standards are preempted by the Act and by the Federal Arbitration Act.<sup>6</sup>

Shortly after filing the declaratory judgment action, the Exchange began to offer customers the option to have their cases heard outside of California. This proposed amendment enables the Exchange to offer customers in California the additional option of having their cases heard in California if they choose to waive application of the California Standards.

In disputes between a customer and a member, allied member, member organization, and/or associated person

<sup>6</sup> See Brief of the Securities and Exchange Commission, Amicus Curiae, in Support of Plaintiffs' Motion for Declaratory Judgment, *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc. v. Judicial Council of California*, No. C 02 3486 SBA (N.D. Cal.). The brief is available on the SEC Web site at: <http://www.sec.gov/litigation/briefs/nasddispute.pdf>.

<sup>9</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> The Commission corrected a typographical error, and added a reference to define the duration of the proposed pilot period, to the description of the proposed rule change, with the consent of the Exchange. Telephone conversation between Robert S. Clemente, Director of Arbitration, NYSE, and Andrew Shipe, Special Counsel, Division of Market Regulation, Commission, (November 7, 2002).

<sup>4</sup> Amendment No. 1 made technical edits to the proposed rule text.

of a member or member organization, customers affected by the conflicting California Standards may elect to either have the arbitration hearing in another state, or waive the California Standards and have the hearing in California. The customer's waiver operates to waive the California Standards for any other party who is a member, allied member, member organization, and/or associated person of a member or member organization. Under the proposed amendment, the Exchange would also offer the waiver option to an associated person of a member or member organization who asserts a claim against the member or member organization with which she or he is associated. The Exchange is proposing that Rule 600(g) be adopted as a six-month pilot amendment, from November 12, 2002 to May 12, 2003,<sup>7</sup> during which period the Exchange's Director of Arbitration will monitor the progress of the above-described litigation and determine whether there is a continuing need for the waiver option.

Customers or associated persons who requested, between July 1, 2002 and the effective date of this proposed rule, that a hearing be held outside of California, but have not had arbitrators appointed, may choose to sign the waiver, which will void their previous request for a hearing outside of California. Customers or associated persons who elect, after the effective date of this proposed rule, to have a hearing held outside of California may not subsequently rescind that choice.

The Exchange will notify parties (and their representatives, if any) who currently are awaiting the appointment of arbitrators in California of the terms of this new rule upon its approval by the Commission, and will provide them with the waiver forms.

## 2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of section 6(b)(5) of the Act,<sup>8</sup> in that they promote just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

<sup>7</sup> The Commission adjusted the proposed pilot period based on the date that the Commission approved the proposed rule change. Telephone conversation between Robert S. Clemente, Director of Arbitration, NYSE, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, (November 8, 2002).

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

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

The NYSE 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

No written comments were solicited or received with respect to 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 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 NYSE. All submissions should refer to File No. NYSE-2002-56 and should be submitted by December 10, 2002.

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

After careful review, 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 exchange, and, in particular, the requirements of section 6 of the Act.<sup>9</sup> Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to

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

protect investors and the public interest.<sup>10</sup> The Commission further finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. Accelerated approval is necessary to protect investors in that the rules are designed to help address the backlog of cases created by the confusion over the new California Standards, are designed to provide them with a mechanism to help resolve their disputes with broker-dealers in a more expedited manner, and are designed to help ensure the certainty and finality of arbitration awards. Additionally, the proposed rule change will become effective as a pilot program for six months, from November 12, 2002 to May 12, 2003, during which time the Commission and NYSE will monitor the status of the previously discussed litigation.

## V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-NYSE-2002-56) is hereby approved on an accelerated basis through May 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46805; File No. SR-PCX-2002-62]

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc., to Amend the PCX's Market Data Revenue Sharing Program for Tape A Securities Traded on the Archipelago Exchange

November 8, 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 October 4, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary, PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and

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

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</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.