

while providing requirements designed to establish a more orderly market opening.

For example, under the revised Trade-or-Move Message sequence procedures, ECNs will send a Trade-or-Move Message prior to entering a locking or crossing quote, while market makers will send a Trade-or-Move Message after entering a locking or crossing quote. The revised procedures respond to market makers' concerns that requiring market makers to send a Trade-or-Move Message prior to entering a locking or crossing quote would necessitate substantial programming changes or require manual processing.⁴¹ At the same time, the Trade-or-Move Message sequence applicable to ECNs, combined with the requirement to respond to a Trade-or-Move Message within 10 seconds, should help ECNs avoid dual liability. Specifically, the revised rule will allow an ECN to send a Trade-or-Move Message for the actual size of an agency order, wait 10 seconds for a response, and, assuming it receives no response, cancel the Trade-or-Move Message and enter the agency order as a locking or crossing quote.⁴² The Commission also believes that the requirement to respond to a Trade-or-Move Message within 10 seconds should help to facilitate the prompt resolution of locked or crossed markets that occur.

The amended proposal will require a market participant handling a proprietary order to send a Trade-or-Move Message for a minimum of 10,000 shares in the case of Nasdaq 100 and S&P 400 issues and 5,000 shares for all other issues. The Commission believes that the 10,000-share Trade-or-Move Message size requirement may help to deter market participants entering from locking or crossing quotes in Nasdaq 100 and S&P 400 issues.

As discussed above, Nasdaq's amended proposal prohibits market participants from locking or crossing the market between 9:29:30 a.m. and 9:29:59 a.m. Market participants will, however, be permitted to send Trade-or-Move Messages for the required number of shares to any party or parties they wish to lock or cross. The recipients of such messages must respond to the message by trading in full or moving their quotes within the 10-second response time. The Commission believes that the prohibition on locking and crossing the market between 9:29:30 a.m. and 9:29:59 a.m. could help to provide for a more orderly market open,

and thereby benefit all market participants.

Finally, the three comment letters received following the publication of Amendment Nos. 2 and 3 reflect the continuing disagreement among market participants concerning the implementation of the Trade-or-Move requirements and the most effective means for providing an orderly opening on Nasdaq. In its response to the commenters, Nasdaq noted that it is developing proposals designed to address some of the concerns raised by the commenters.⁴³ The Commission expects Nasdaq to continue working to refine its procedures as necessary to achieve a more orderly market opening.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁴⁴ that the proposed rule change (SR-NASD-00-76), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁵

Margaret H. McFarland

Deputy Secretary

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45987; File No. SR-NYSE-2001-30]

Self-Regulatory Organizations; The New York Stock Exchange, Inc.; Order Granting Approval of a Proposed Rule Change to Amend Rule 227 Regarding Depository Eligibility

May 28, 2002.

On August 21, 2001, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-NYSE-2001-30) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposed rule change was published in the **Federal Register** on April 25, 2002.² No comment letters were received. For the reasons discussed below, the

Commission is granting approval of the proposed rule change.

I. Description

The NYSE adopted Rule 227 on June 1, 1995, for the purpose of facilitating implementation of Rule 15c6-1 of the Act that established a three-day settlement period for most securities transactions.³ Rule 227, which required that domestic issuers' securities be depository eligible before they would be listed, set forth specific requirements for depository eligibility for issuers in order to facilitate the book-entry settlement of initial public offerings and to reducing the risks inherent in settling securities transactions.

On May 13, 1996, approximately one year after Rule 227 was approved, the Commission approved a rule change filed by The Depository Trust Company ("DTC")⁴ allowing DTC to implement its Initial Public Offering ("IPO") Tracking System.⁵ The IPO Tracking System enables lead managers and syndicate members of equity underwritings to monitor repurchases of distributed shares in an automated book-entry environment.

Currently before an issue of securities can be listed, Rule 227(a) requires each domestic issuer to represent to the NYSE that a CUSIP number identifying the security has been included in the file of eligible issuers maintained by a securities depository registered with the Commission as a clearing agency. The proposed amendments would delete the references to "domestic" and "foreign" issuers in paragraph (a). Exclusion of foreign issuers is no longer necessary because they have the capacity to comply with Rule 227 and have been doing so voluntarily for several years.

Rule 227(b) states that a security depository's inclusion of a CUSIP number in its file of eligible issues does not render a security "depository eligible" unless (1) the securities depository has an electronic system for monitoring repurchases of distributed shares at the time such shares commence trading on the Exchange or (2) when a managing underwriter elects not to deposit the securities on distribution date, it notifies the

³ Securities Exchange Act Release No. 35798 (June 1, 1995), 60 FR 30909 (June 12, 1995) [File No. SR-NYSE-95-19] (order approving the adoption of NYSE Rule 227 setting forth requirements on issuers seeking to have their shares listed on the Exchange).

⁴ DTC is a securities depository registered with the Commission under Sections 17A and 19 of the Act as a clearing agency.

⁵ Securities Exchange Act Release No. 37208 (May 13, 1996), 61 FR 25253 (May 20, 1996) [File No. SR-DTC-95-27] (order approving implementation of DTC's IPO Tracking System).

⁴¹ See, e.g., NDB Letter and Schwab Letter, *supra* note 5.

⁴² See Amendment No. 2, *supra* note 6.

⁴³ See April 15 Letter, *supra* note 11.

⁴⁴ 15 U.S.C. 78s(b)(2).

⁴⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 45789 (April 19, 2002), 67 FR 20568.

securities depository no later than three months after the commencement of trading on the NYSE. Rule 227(b) will be deleted as it is no longer relevant since DTC has implemented its IPO Tracking System, which is monitoring repurchases of distributed shares.

II. Discussion

Section 6(b)(5)⁶ of the Act requires that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. Deleting differences relating to "domestic" and "foreign" issuers with respect to depository eligibility of listed issues eliminates an unnecessary difference in the treatment of U.S. issuers and foreign issuers and thereby helps to perfect the mechanism of a free and open market and a national market system. Therefore, the Commission finds that the rule change is consistent with the NYSE's obligations under Section 6(b)(5).

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 6 of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NYSE-2001-30) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45986; File No. SR-PCX-2001-36]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Technical Changes to the PCX's Firm Quote Rule

May 28, 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 September 27, 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 PCX. PCX submitted Amendment No. 1 to the proposed rule change on May 21, 2002.³ The Commission is granting accelerated approval to, and publishing this notice to solicit comments on, the proposed rule change, as amended.

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

The Exchange proposes to revise PCX Rule 6.86 regarding firm quotes. The text of the proposed rule change is below. Proposed new language is italicized.

¶ 5221 Firm Quotes

Rule 6.86(a) *Applicability and Definitions*

(1)-(2) No change.

(3) *For purposes of this Rule, the term "broker-dealer order" and the term "order," when used with respect to an order for the account of a broker-dealer, will include orders for "foreign broker-dealers" as defined in Rule 6.1(b)(31).*

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 III 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

In November 2000, the Commission amended Rule 11Ac1-1 under the Act

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange proposes to delete the portion of the proposed rule change regarding displaying bids and offers and requests accelerated approval of the amended proposal. See letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 20, 2002 ("Amendment No. 1").

("Quote Rule")⁴ to apply the Quote Rule to the options markets.⁵ In response, the Exchange amended its rules to adopt implementing provisions consistent with the Commission's approval of the Quote Rule.⁶ Now, the Exchange proposes to include foreign broker-dealers within its definition of broker-dealer for purposes of its members' firm quote obligation. The Exchange believes this proposed revision codifies the Commission's grant of exemptive relief already provided to options exchanges in allowing them to apply firm quote rules to foreign broker-dealers to the same extent as they do to U.S. broker-dealers.⁷ Accordingly, the Exchange believes that the proposed amendment is consistent with and supports the Commission's release regarding the Quote Rule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5),⁹ in particular, because it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and 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.

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

Written comments on the proposed rule change were neither solicited nor received.

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

⁴ 17 CFR 240.11Ac1-1.

⁵ See Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000).

⁶ See Securities Exchange Act Release No. 44383 (June 1, 2001), 66 FR 30959 (June 8, 2001) (order approving SR-PCX-2001-18).

⁷ See letter from Annette L. Nazareth, Director, Division of Market Regulation, Commission, to Timothy H. Thompson, Assistant General Counsel, Chicago Board Options Exchange (April 2, 2001) ("Exemption Letter").

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 17 CFR 200.30-3(a)(12).