

Number SR-NASD-2005-064 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2005-064. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR-NASD-2005-064 and should be submitted on or before July 5, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51790; File No. SR-NYSE-2004-42]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 To Eliminate the Requirement That a Floor Official Approve Certain Transactions on the Exchange's Automated Bond System

June 6, 2005.

I. Introduction

On August 10, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to eliminate the requirement that an Exchange Floor Official approve transactions in certain bonds on the NYSE's Automated Bond System ("ABS") that are made two points or more away from the last sale, or more than 30 days after the last sale. The NYSE filed Amendment No. 1 to the proposed rule change on March 30, 2005.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on May 2, 2005.⁴ The Commission received one comment from the public supporting the proposed rule change.⁵ This Order approves the proposed rule, as amended.

II. Description

The Exchange proposed to eliminate the requirement in NYSE Rule 86(g) that a Floor Official approve any transaction in ABS in non-convertible bonds that would occur at a price two or more

points away from the most recent transaction in that bond or more than 30 days after the most recent transaction. The proposal also would eliminate the ability of a Floor Official to "bid up" or "offer down"⁶ an order submitted to ABS two or more points away from the last sale in a particular bond or more than 30 days following a sale of that bond before approving a transaction for such order.

The Exchange also proposed to codify in NYSE Rule 86(g) two features the NYSE represents have been programmed into ABS since its inception: (1) The acceptance of priced orders only; and (2) price confirmation, by the entering firm, of orders entered at a price two or more points away from the last sale price.

III. Comment Received

As stated above, the commenter supported the NYSE's proposal.⁷ In sum, the commenter stated that he believed that NYSE Rule 86(g) has frustrated trading in ABS, and that he believed that the elimination of Floor Official approval would facilitate an increase in the volume and consistency in the execution of non-convertible bonds on ABS.

IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposal, as amended, is consistent with the provisions of Section 6(b)(5) of the Act,⁹ which requires, among other

⁶ If, for example, an order is entered into ABS to buy 10 XYZ bonds at 93 when the last sale for XYZ occurred at 90, the Floor Official could determine that XYZ bond should be "bid up" at a decided price increment away from the limit order for a decided period of time, typically one "point" for one minute. The NYSE bond supervisor would then enter the bidding-up starting price, price increment, time increment, and final price into ABS, upon which a message appears on all ABS screens alerting subscribing firms that bidding up in XYZ has commenced. An ABS user could execute against that "bid" by entering an order to sell at 91 into the system. If, after one minute, the "bid" at 91 generated no interest among ABS users, the order would be bid at 92 for one minute. If that "bid" generated no interest, then the order would, after one minute, be bid at 93 or be matched (traded) at 93, depending on whether there was a contra-side order to sell at 93 in the ABS at that point in time. Telephone conversation between Fred Siesel, Consultant, NYSE, and Tim Fox, Attorney, Commission on April 18, 2005.

⁷ See Investec E-mail *supra* note 5.

⁸ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, which replaced and superseded the original filing in its entirety, the NYSE supplemented its rationale for the proposal by, among other things, describing the process that a Floor Official follows when considering whether to approve a transaction that would occur at a price that is at least two points away or more than 30 days from the last transaction; recounting some of the history of bond trading on the NYSE; explaining that the Exchange has not found it necessary to re-instate the two-point / 30-day provision for convertible bonds since it eliminated its applicability to convertible bonds in 1998; and noting that Exchange Rule 86(g) requires all orders to be entered into ABS at a limit price, and that ABS automatically asks a user to reconfirm the price of an order that is entered at a price two or more points away from the last sale.

⁴ See Securities Exchange Act Release No. 51613 (April 25, 2005), 70 FR 22736.

⁵ See e-mail from Joseph P. Riveiro, Investec (US), Inc. to the Commission, dated May 8, 2005 ("Investec e-mail").

⁵ 17 CFR 200.30-3(a)(12)

things, that a national securities exchange's rules be designed, to prevent fraud and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and to perfect the mechanism of a free and open market and a national market system and; in general, to protect investors and the public interest. The Commission believes that the NYSE proposal, as amended, is designed to accomplish these ends by facilitating the efficient and timely execution of orders in non-convertible bonds submitted to ABS. The Commission believes that the proposed codification in NYSE Rule 86 of the existing practice that a subscriber firm confirm an order that is submitted to ABS at a price two or more points away from the last sale should minimize the risk that ABS will execute an order at a price that the user did not intend. The Commission further believes that the proposal to require that orders submitted to ABS be priced is appropriate because it reflects the existing practice on ABS, which the Commission believes promotes the price discovery process.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NYSE-2004-42), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. E5-3057 Filed 6-10-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51788; File No. SR-PCX-2005-70]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Correct a Typographical Error in Its Schedule of Fees and Charges

June 6, 2005.

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 19,

2005, 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. The Exchange has filed this proposal pursuant to Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. On May 31, 2005, the Exchange filed an amendment to the proposed rule change.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The PCX proposes to correct a typographical error in the Trade-Related Charges portion of its Schedule of Fees and Charges ("Schedule"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.pacificex.com>), at the PCX's Office of the Secretary, and at the Commission's Public Reference Room.

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 purpose of this proposed rule change is to correct a typographical error in the Trade-Related Charges portion of the Schedule. On April 27, 2005, the Exchange submitted a rule proposal to eliminate the Market Maker incentive program and to reinstate the \$0.21 per contract transaction fee for

Market Makers.⁶ The Exchange inadvertently deleted the footnote that relates to the transaction fee. The footnote states that the PCX will rebate the fee for PCX executions that result from principal acting as agent orders sent and executed at away market centers. The rebate will be based on the aggregate Market Maker transaction charge and the aggregate Market Maker comparison charge calculated at month-end. The footnote would apply to Market Maker transactions in general and, according to the PCX, was deleted in error with the elimination of the Market Maker incentive program.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

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.

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

The foregoing proposed rule change has become immediately effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹⁰ in that it establishes or changes a due, fee or other charge imposed by the Exchange. 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,

⁶ See Securities Exchange Act Release No. 51672 (May 9, 2005), 70 FR 28347 (May 17, 2005) (SR-PCX-2005-62).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See Partial Amendment dated May 31, 2005 ("Amendment No. 1"). Amendment No. 1 made minor, technical corrections to the discussion section and the rule text.