

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41608; File No. SR-NYSE-99-22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Equity-Linked Debt Securities

July 8, 1999.

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 28, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 is proposing to amend paragraph 703.21 of its Listed Company Manual ("Manual") regarding the listing of equity-linked debt securities ("ELDS"). The amendment deals with the minimum required term of such securities, and substitutes a one-year minimum for all ELDS (domestic and non-U.S.) for the current requirement that the securities have a term of two to seven years (three year maximum for non-U.S. securities). The text of the proposed rule change is as follows. New text is italicized and deleted text is bracketed.

NYSE Listed Company Manual

703.21 Equity-Linked Debt Securities

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(B) Equity-Linked Debt Security Listing Standards

The issue must have:

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- *Minimum life of one year* [A term of two to seven years; provided that if the issuer is a non-U.S. company, the issue may not have a term of more than three years].

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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 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 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

ELDS are non-convertible debt of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock. Because ELDS are a derivative product related to the underlying stock, the Exchange trades ELDS on the equity trading Floor together with the underlying stock (if such stock is listed).

Paragraph 703.21 of the Manual details the Exchange's listing standards for ELDS. Among other things, these standards require that the ELDS have a term of two to seven years, but not more than three years for ELDS based on the price of a non-U.S. issuer. The Exchange initially proposed these limits as a conservative measure to help ensure that the trading of ELDS does not have an adverse effect on the liquidity of the underlying stock, and is not used in a manipulative manner. The limits on the terms for ELDS contrast with the Exchange's general requirements of derivative instruments. Specifically, for warrants (Paragraph 703.12 of the Manual), foreign currency and currency index warrants (Paragraph 703.15 of the Manual), contingent value rights (Paragraph 703.18 of the Manual) and "other securities" (Paragraph 703.19 of the Manual), the Exchange requires only that the security have a minimum life of one year.

In the nearly six years that the Exchange has traded ELDS, it has not discovered any adverse effects of this instrument. Indeed, ELDS appear to be an instrument that complements the trading of the underlying stock, and the continued popularity of the instrument demonstrates its appeal in the market. Accordingly, the Exchange sees no reason to retain more stringent requirements on these instruments

compared to other derivative products. Thus, the purpose of this filing is to apply to ELDS the one-year minimum term requirement generally applicable to other derivative products regardless of whether based on a domestic or non-U.S. security.

The Exchange believes that this rule change will provide issuers with more flexibility in developing ELDS and thus provide greater investment choices in the market. Specifically, the Exchange notes that many corporate debt instruments have terms well in excess of seven years, and that this rule change will allow the structuring of ELDS with terms to maturity comparable to such debt instruments. Furthermore, extending the term of ELDS will provide issuers with the ability to offer variations on ELDS, such as principal protection and call features that may not be as desirable on debt instruments with a shorter term. The Exchange believes that this added flexibility will encourage innovation without having an adverse effect on investor protection.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act³ requiring that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to 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 believes the proposed rule change does not 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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78f(b)(5).

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) By order approve such proposed rule change, or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

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 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 in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-99-22 and should be submitted by August 4, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-17933 Filed 7-13-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41595; File No. SR-PCX-98-02]

Self-Regulatory Organizations; The Pacific Exchange, Inc.; Order Approving Proposed Rule Change To Allow Staffing of the Public Limit Order Book by Employees of the LMM

July 2, 1999.

I. Introduction

On January 23, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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 expand its Lead Market Maker ("LMM") Book Program ("Program") to allow qualified LMMs to manage their own employees in operating the options public limit order book ("Book"). The proposed rule change was published for comments³ in the **Federal Register** on April 22, 1998.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.⁵

II. Description of the Proposal

On October 11, 1996, the Commission approved an Exchange proposal to adopt a one-year pilot program under which a limited number of LMMs would be able to assume operational responsibility for the options public limit order book in certain option issues.⁶ Initially, the Program's participation was limited to three LMMs

and 40 option symbols.⁷ On April 1, 1997, the Commission approved an Exchange proposal to expand the Program limits to nine LMMs and 150 option symbols.⁸ On September 22, 1997, the Commission approved an Exchange proposal to extend the pilot program for an additional year.⁹ Subsequently, the Commission approved an Exchange proposal to make the Program permanent.¹⁰

Under the Program,¹¹ approved LMMs may manage the Book function with the assistance of Exchange personnel, take responsibility for trading disputes and errors, set rates for Book execution, and pay the Exchange a fee for systems and services.¹² Presently, an LMM must be certified as qualified by the Exchange's Options Floor Trading Committee ("OFTC") before an employee of that LMM may assist with Book operation. Certification of an LMM is based on some or all of the following factors: experience with trading an options issue as a market maker or LMM and willingness to assume LMM responsibilities; trading volume of the options issue(s); adequacy of capital; willingness to promote the Exchange as a marketplace; history of adherence to Exchange rules and securities laws; trading crowd/LMM evaluations conducted pursuant to Options Floor Procedure Advice B-13; and ability to manage the Book operation.¹³

The Exchange now proposes to expand the Program to allow qualified LMMs to manage their own employees in operating the Book. Currently, the Exchange required participating LMMs to use Exchange personnel to assist the LMM in performing the Order Book Official ("OBO") function, for which the Exchange charges the LMM a staffing charge.¹⁴ LMMs who opt to manage their own employees in the Book operation would continue to set their own rates for Book executions, and would only be required to use Exchange staff, and pay a staffing charge, under

⁷ *Id.*

⁸ See Exchange Act Release No. 38462 (April 1, 1997), 62 FR 16886 (April 8, 1997).

⁹ See Exchange Act Release No. 39106 (September 22, 1997), 62 FR 51172 (September 30, 1997).

¹⁰ See Exchange Act Release No. 40548 (October 14, 1998), 63 FR 56283 (October 21, 1998).

¹¹ Only multiple-listed option issues are currently eligible to be traded under the Program. See Exchange Act Release No. 38273 (February 12, 1997), 62 FR 7489 (February 19, 1997).

¹² See Exchange Act Release No. 37874 (October 28, 1996), 61 FR 56597 (November 1, 1996) (approving SR-PSE-96-38, establishing a staffing charge for LMMs who participate in the pilot program).

¹³ See Exchange Act Release No. 37810, note 6, *supra*.

¹⁴ *Id.* Also see PCX Rule 6.82(h)(1)(a).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On April 13, 1998, the PCX submitted a letter, in response to Commission staff questions, providing a brief explanation of its proposed method for admitting employees to participate in the LMM Program and concerning its proposed surveillance of the LMM Program employees and operations. The substance of this letter is incorporated into this order. See Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Marie D'Aguianno Ito, Special Counsel, Division of Market Regulation ("Division"), Commission, dated April 13, 1998 ("PCX Letter No. 1").

⁴ Securities Exchange Act Release No. 39875 (April 15, 1998), 63 FR 19994.

⁵ On March 15, 1999, the PCX submitted a letter further explaining the supervision and training of LMM-employed Order Book Officials. The letter also clarifies that for purposes of the proposed rule change LMMs operating the Book will assume the duties and liabilities of the Exchange. The substance of this letter is incorporated into this order. See letter from Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, to Richard Strasser, Assistant Director, Division, Commission, dated February 10, 1999 ("PCX Letter No. 2").

⁶ See Exchange Act Release No. 37810 (October 11, 1996), 61 FR 54481 (October 18, 1996) (approving File No. SR-PSE-96-09).

⁴ 17 CFR 200.30-3(a)(12).