

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

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-443847; File No. SR-NYSE-00-59]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc.; Amending the Late Filing Fee Required Under NYSE Rule 416, Questionnaires and Reports

January 16, 2001.

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 December 21, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as 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 proposed rule change amends Exchange Rule 416, Questionnaire and Reports, with respect to increasing the fee charged to members and member organizations for the failure to submit certain prescribed information required by the Exchange on a timely basis. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

#### Questionnaires and Reports

Rule 416. (a) Each member and member organization shall submit to the Exchange at such times as may be designated in such form and within such time period as may be prescribed such information as the Exchange deems essential for the protection of investors and the public interest.

(b) Unless a specific temporary extension of time has been granted,

there shall be imposed upon each member or member organization required to file reports pursuant to this Rule, a fee of [\$100] \$500 for each day that such report is not filed in the prescribed time. Requests for such extension of time must be submitted to the Exchange at least three business days prior to the due date.

(c) Any report filed pursuant to this Rule containing material inaccuracies shall, for purposes of this [r]Rule, be deemed not to have been filed until a corrected copy of the report has been resubmitted.

#### 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

NYSE Rule 416 requires members and member organizations to submit prescribed information deemed by the Exchange to be essential for the protection of investors and the public interest. Pursuant to NYSE Rule 416, the Exchange requires the periodic submittal of specific predefined financial, operational, and other information necessary for an effective evaluation of a member's or member organization's compliance with applicable rules and regulations. NYSE Rule 416 has also been used to prepare the membership for specific initiatives such as participation in Year 2000 Testing and the conversion to Decimalization.

Since it is critical for the Exchange to ensure submission of such data, pursuant to NYSE Rule 416(b), the Exchange charges a member or member organization a fee for the failure to file reports on a timely basis. The current fee, which has been in effect since September 7, 1972, is \$100 for each day that such report is not filed within the prescribed time. The Exchange proposes that this daily fee be updated and increased to \$500 in order to provide

members and member organizations greater incentive to submit filings in a timely manner.

##### 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(4) of the Act,<sup>3</sup> which permits the rules of an exchange to provide for the equitable allocation of reasonable dues, fees and other charges among the members, issuers and other persons using its services.

##### 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>5</sup> because the proposal is establishing or changing a due, fee or other charge. 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, or otherwise in furtherance of the purposes of the Act.

#### 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, N.W., Washington, D.C. 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

<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> 15 U.S.C. 78f(b)(4).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 51 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 Exchange. All submissions should refer to File No. SR-NYSE-00-59 and should be submitted by February 13, 2001.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43846; File No. SR-PCX-00-37]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc., To Increase Fines for Members, Floor Brokers and Market Makers for Violating Exchange Rules Under the Minor Rule Plan

January 16, 2001.

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 December 11, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange amended the proposal on January 8, 2001.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>6</sup> 17 CFR 200.30-2(a)(12).

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

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

<sup>3</sup> See January 5, 2001 letter from Cindy L. Sink, Senior Attorney, Regulatory Policy, PCX to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), SEC and attachments ("Amendment No. 1"). In response to a request from the Division, the PCX converted the proposal from effective upon filing pursuant to Section 19(b)(3)(A) of the Act, to being considered pursuant to Section 19(b)(2) in Amendment No. 1. 15 U.S.C. 78s(b)(3)(A). 15 U.S.C. 78s(b)(2). The PCX requested accelerated approval of the proposed rule change.

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

The PCX proposes to adopt an increase in the fines to be imposed on members, floor brokers and market makers (including Lead Market Makers) for violating Exchange Rules under the Minor Rule Plan. The text of the proposed rule change is available at the 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 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

The Exchange proposes to amend PCX Rule 10.13(k) governing Minor Rule Plan violations to increase most of the fines. The PCX believes the current average Minor Rule Plan fine of \$250 is too low to deter violations of PCX rules. The Exchange believes that an increase in the current fines will more adequately sanction violations of the PCX's order-handling and investigating rules, many of which are processed under the Minor Rule Plan.

Most Minor Rule Plan violations currently specify a fine of \$250 for a first violation, \$500 for a second, and \$750 for a third. Multiple violations are calculated on a two-year basis. Under the proposed increases, most fines will be \$1,000 for a first violation, \$2,500 for a second and \$3,500 for a third, calculated on the same two-year basis. Less serious violations such as disruptive conduct or abusive language on the options floor will be \$500 for a first violation, \$2,000 for a second, and \$3,500 for a third.

More serious violations, such as a member's failure to cooperate with a PCX examination of its financial responsibility or operational condition will be fined \$2,000 for a first violation, \$4,000 for a second and \$5,000 for a third. A member that impedes or fails to cooperate in an Exchange investigation

will be fined \$3,500 for a first violation, \$4,000 for a second and \$5,000 for a third. Less serious violations, such as fines for improper dress under the PCX dress code, remain unchanged at \$100 for the first violation, \$200 for the second, and \$500 for the third.

Under the proposal, the Enforcement Department would continue to exercise its discretion under PCX Rule 10.13(f) and take cases out of the Minor Rule Plan to pursue them as formal disciplinary matters if the facts or circumstances warrant such action.

The Exchange believes that adoption of the proposed rule change will serve to significantly strengthen the ability of the Exchange to carry out its oversight responsibilities as a self-regulatory organization. The PCX also believes the proposal should aid the Exchange in carrying out its compliance and surveillance functions.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) <sup>4</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>5</sup> in particular, in that it is designed to facilitate transactions in securities, to prevent fraudulent and manipulative acts and practices, and to promote 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

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

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 PCX consents, the Commission will:

A. By order approve such proposed rule change, or

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(4).