

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>28</sup> that the proposed rule change (SR-NYSE-97-09), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>29</sup>

**Margaret H. McFarland,**

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40720; File No. SR-NYSE-98-36]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. to Amend Rule 35 ("Floor Employees To Be Registered") and Adopt a New Interpretation to Rule 35

November 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> ("Act") and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 22, 1998, 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 NYSE. 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 consists of an amendment to Exchange Rule 35 ("Floor Employees to be Registered") and a new interpretation with respect to the administration of proposed amended Rule 35. The text of the proposed rule is as follows. Additions are *italicized*; deletions are [bracketed].

#### Proposed Amendments to Rule 35

##### Floor Employees To Be Registered

Rule 35. No employee of a member or member organization shall be admitted to the Floor unless he is registered with, *qualified by* and approved by the Exchange, and upon compliance of both the employer and employee with such requirements as the Exchange may determine.

#### • • • Supplementary Material

.10-.50 No Change

.60 *Qualifications for Registration—Unless otherwise determined by the Exchange, each candidate for registration shall qualify by meeting the training requirements and by passing applicable qualification examination(s) as prescribed by the Exchange.*

[.60] .70 No Change in Text

#### Proposed New Interpretation to Rule 35

Rule 35—*Floor Employees to be Registered*

.01 *Unless otherwise determined by the Exchange, all Floor employees of members or member organizations (i.e., Trading Assistants) shall pass the Trading Assistant Qualification Examination ("Series 25").*

*New Trading Assistant candidates must complete three months of training, including on-the-job and classroom training, as prescribed by the Exchange, prior to taking the Series 25 Examination. During the three month training period, the Trading Assistant candidate may perform the functions and duties of a Trading Assistant provided that the candidate is properly supervised. However, a new Trading Assistant candidate must complete required training and pass the Series 25 Examination before functioning as an "unsupervised" Trading Assistant (i.e., functioning without the specialized supervision required during the training period).*

#### 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 and is set forth in sections A, B, and C below.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the rule change is to revise Rule 35 to require Floor employees of members and member organizations to satisfy prescribed training and qualification examination requirements before being admitted to the Exchange Trading Floor. The proposed rule change will also adopt a new interpretation to Rule 35 to implement the qualification examination requirements for Floor Employees.

Exchange Rule 35 dictates the terms under which an employee of a member or member organization may be admitted to the Exchange Trading Floor. Currently, the registration process for

such Floor employees *i.e.*, Post Clerks and Booth Clerks, also known as Trading Assistants, consists of submission to the Exchange of a completed Form U-4 ("Uniform Application for Securities Industry Registration or Transfer") and the candidate's fingerprints. Under the proposed amendments to Rule 35, these Trading Assistants, will have to be qualified by taking and passing appropriate qualification examination(s) and by meeting prescribed training requirements.

In order to qualify Trading Assistants, the Exchange, in conjunction with a committee of Exchange Members and Trading Assistants, developed a new qualification examination, the Trading Assistant Qualification Examination ("Series 25 Examination"). The Series 25 Examination will ensue that Trading Assistants have the basic knowledge, skills and abilities necessary to perform the functions and carry out the responsibilities of a Trading Assistant. The Series 25 Examination itself is the subject of a separate filing.<sup>3</sup>

The requirement to take and pass the Series 25 examination in order to qualify as a Trading Assistant will apply to all current and prospective Trading Assistants. The proposed new interpretation to Rule 35 will establish that new Trading Assistants will be required to undergo three months of training (including on-the-job and prescribed classroom instruction provided by the Exchange) prior to taking the examination. New Trading Assistants will not be permitted to perform their functions without appropriate supervision until passing the examination. Current Trading Assistants would have one year from implementation of the qualification requirement to pass the examination and do not have to complete classroom training. If a current Trading Assistant fails the Series 25 examination twice, however, he or she must complete classroom training before retaking the examination. The NYSE intends to publish the new interpretation as an Interpretation Memorandum for inclusion in the Exchange's *Interpretation Handbook*.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(c)(3)(B) of the Act.<sup>4</sup> Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and

<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</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> Securities Exchange Act Release No. 40721 (November 30, 1998).

<sup>4</sup> 15 U.S.C. 78f(c)(3)(B).

competence for persons associated with Exchange members and member organizations.

In addition, under Section 6(c)(3)(B) of the Act,<sup>5</sup> the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange has developed an examination that will be administered to establish that Trading Assistants have attained specified levels of competence and knowledge.

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

The Exchange believes that the proposal 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*

Comments 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 self-regulatory organization consents, the Commission will:

(A) By order approve the 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 N.W., Washington, D.C. 20549. 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 the filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR-NYSE-98-36 and should be submitted by December 30, 1998.

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

**Margater H. McFarland,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-40739; File No. SR-PCX-98-56]

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to ASAP Members' Access to OptiMark**

December 2, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),<sup>1</sup> notice is hereby given that on November 6, 1998, 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 PCX.<sup>2</sup> 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**

PCX is proposing to change PCX Rule 1.14(a) to reflect that Members with Automated System Access Privileges ("ASAP") shall be entitled to access OptiMark.<sup>3</sup> Below is the text of the

proposed rule change. Proposed new language is in *italics*.

\* \* \* \* \*

#### **Electronic Access Membership**

##### **¶ 3085 "Automated System Access Privileges (ASAP)"**

Rule 1.14(a). No Change.

(1)-(2) No Change.

(3) The ASAP Member shall be entitled to access to P/COAST, POETS, *OptiMark*, and any other systems approved by the Board of Governors;

(4)-(7) No Change.

\* \* \* \* \*

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, 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. 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**

PCX proposes to amend PCX Rule 1.14(a)(3) to add OptiMark to the list of systems approved for ASAP Members' access. The Exchange proposes to make this change to Rule 1.14(a)(3) to codify that ASAP Members are entitled to access OptiMark.

#### **2. Statutory Basis**

PCX 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, because it is designed to promote just and equitable principles of trade, and to protect investors and the public interest.

order formulation, matching, and execution capabilities in the equity securities listed or traded on the Exchange. The OptiMark System is intended to be used in addition to the Exchange's traditional floor facilities to buy and sell securities on the PCX by allowing PCX members and their customers to submit ranges of trading interest anonymously from their computer terminals. The OptiMark System would then identify specific orders capable of execution and all orders matched by the system would be automatically executed on the Exchange. See Exchange Act Release No. 39086 (September 17, 1997), 62 FR 50036 (September 24, 1997).

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

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

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Amendment No. 1 was received on November 27, 1998, the substance of which is incorporated into this notice. Letter from Robert Pacileo, Senior Attorney, Regulatory Policy, PCX, to Michael Walinskas, Deputy Director, Division of Market Regulation, Commission, dated November 25, 1998.

<sup>3</sup> The OptiMark System is a computerized screen-based trading service intended for use by PCX members and their customers to provide automatic

<sup>5</sup> Id.