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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange 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.

III. 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 coping in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and coping at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–00–25 and should be submitted by [insert date 21 days from the date of this publication].

IV. Commissions's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the NYSE's proposal to interpret the Manual to accommodate the listing and trading of Celanese shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] Specifically, the Commission finds that the proposed

rule change is consistent with Section 6(b)(5) of the Act in that it will remove impediments to and perfect the mechanism of a free and open market, and will protect investors and the public interest, by enabling the NYSE to serve as a market for shares of Celanese (rather than American depositary receipts) while maintaining trading standards that are substantially equivalent to the NYSE's existing standards.

The Commission believes that it is reasonable for the NYSE to interpret the Manual to accept the Celanese proxy procedures. By mailing stockholder meeting materials approximately 45 days prior to its annual meeting, Celanese will give shareholders the same type of advance notification provided for in the Manual. Moreover, the Celanese proxy procedures will cancel proxies for shares sold prior to the meeting, and will facilitate voting by persons who purchase shares during the month leading up to the meeting. In that way, the Exchange's proxy procedures regarding Celanese appear to be substantially equivalent to the NYSE's existing standards, by permitting the votes cast at the annual meeting to accurately reflect the company's shareholders at the time of the meeting. Indeed, the Commission, approved a similar interpretation in 1998 to permit the NYSE to trade ordinary shares of DaimlerChrysler,[8] and the Commission approved a similar interpretation earlier this year to permit the NYSE to trade ordinary shares of UBS.[9]

The Commission notes that the Exchange states that it anticipates developing and filing generally applicable rules related to the trading of ordinary shares of non-U.S. companies, making this type of company-specific rule filing unnecessary. The Commission supports that goal, and concurs that general rules are preferable to a series of company-specific exemptions.

The Exchange has requested that the Commission approve the proposed rule change prior to the thirtieth day after its publication in the **Federal Register**. The Exchange notes that these interpretations are the same as those made in connection with the trading of ordinary shares of DaimlerChrysler, and the Exchange states that DaimlerChrysler shares have traded without difficulty on the Exchange since their first listing. The Exchange adds that in light of the significant trading interest in Celanese, these

interpretations will help eliminate uncertainty on the part of market participants.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. These interpretations are substantially similar to the interpretations that permitted the trading of DaimlerChrysler, and the Commission finds that granting accelerated approval to these changes will eliminate uncertainty about the status of Celanese shares.[10]

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act [11] that the proposed rule change (SR–NYSE–00–25) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–18741 Filed 7–24–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43049; File No. SR–PCX–00–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Its Automatic Execution System

July 18, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2000, 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 Exchange. On June 27, 2000, PCX submitted Amendment No. 1 to the proposed rule change.[3] The

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

[8] *See* note 3, *supra.*

[9] *See* Securities Exchange Act Release No. 42785 (May 15, 2000), 65 FR 33396 (May 23, 2000).

[10] The Commission notes, however, that the Exchange has been trading ordinary shares of Celanese since October 1999, but did not file this proposed rule change until June 2000. The Commission's approval of this proposed rule change is not retroactive.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Pierson, Vice President, Regulatory Policy, PCX, to Gordon Fuller, Special Counsel, Division of Market Regulation, Commission, dated June 26, 2000 ("Amendment No. 1"). In Amendment No. 1, PCX revised some of the text of the proposed rule and submitted this revised text.

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 allow broker-dealer orders to be eligible for automatic execution through the Exchange's Automatic Execution System ("Auto-Ex") on an issue-by-issue basis. The Exchange also proposes to adopt new rules and procedures to establish means of assuring better compliance with rules pertaining to the use of Auto-Ex. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

¶ 5231   Automatic Execution System

Rule 6.87

(a). *Definitions. For purposes of Rule 6.87:*

(1) The term "Auto-Ex" means the automated execution system feature of POETS that is owned and operated by the Exchange and that provides automated order execution and reporting services for options.

(2) The term "User" means any person or firm that obtains electronic access to Auto-Ex through an Order Entry Firm.

(3) The term "Order Entry Firm" means a member organization of the Exchange that is registered as an Order Entry Firm for purposes of sending orders to the Exchange for execution by Auto-Ex.

(b) Eligible Orders.

(1) [(a)] [Only] *Except as provided in Subsection (A) below, only* non-broker/dealer customer orders are eligible for execution on the Exchange's *Auto-Ex system* [Automatic Execution System ("Auto-Ex")].

(A) The Options Floor Trading Committee ("OFTC") may determine, on an issue-by-issue basis, to allow orders for the accounts of broker-dealers to be executed on Auto-Ex, except for orders for Market Makers or Specialists on an exchange who are exempt from the provisions of Regulation T of the Federal Reserve Board pursuant to Section 7(c)(2) of the Securities Exchange Act of 1934. For purposes of this Rule, the term "broker/dealer" includes foreign broker/dealers.

(2) [(b)] The Options Floor Trading Committee shall determine the size of orders that are eligible to be executed on Auto-Ex. Although the order size parameter may be changed on an issue-by-issue basis by the Options Floor Trading Committee, the maximum order size for execution through Auto-Ex is fifty contracts.

(3) [(c)] The Options Floor Trading Committee may increase the size of Auto-Ex eligible orders in one or more classes of multiply traded equity options to the extent that other exchanges permit such larger-size orders in multiply traded equity options of the same class or classes to be entered into their own automated execution systems. If the Options Floor Trading Committee intends to increase the Auto-Ex order size eligibility pursuant to this Rule, the Exchange will notify the Securities and Exchange Commission pursuant to Section 19(b)(3)(A) of the Exchange Act.

(c) Order Entry Firm Registration. Participation in Auto-Ex as an Order Entry Firm requires registration with the Exchange. Continued registration depends upon the Order Entry Firm's initial and continuing compliance with the following requirements:

(1) execution of an Auto-Ex Order Entry Firm Application Agreement with the Exchange;

(2) compliance with all applicable PCX options trading rules and procedures;

(3) written notice must be provided to all Users regarding the proper use of Auto-Ex; and

(4) maintenance of adequate procedures and controls that will permit the Order Entry Firm to effectively monitor and supervise the entry of electronic orders by all Users. Order Entry Firms must monitor and supervise the entry of orders by Users to prevent the prohibited practices set forth in subsection (d).

(d) Prohibited Practices. Prohibited practices include, but are not limited to, the following:

(1) Entering an order for an account that is ineligible for execution on Auto-Ex pursuant to subsection (b), above:

(2) Dividing an order involving a single investment decision into multiple smaller lots for the purpose of meeting the order size requirements for Auto-Ex eligibility. Multiple orders to trade the same series, multiple orders in the same call class, or multiple orders in the same put class entered within any 15-second period for the account of the same beneficial owner will be presumed to be based on a single investment decision. If multiple orders involving a single investment decision have been entered for automatic execution, only the first of such orders that equals or add up to less than the firm Auto-Ex size requirement will be entitled to an execution.

(3) Entering orders via Auto-Ex to perform a market making function. No member or person associated with a member may use Auto-Ex on a regular and continuous basis to simultaneously execute orders to buy and sell series for the account of the same beneficial holder. In making the determination of whether a member or person associated with a member is using the Auto-Ex system to perform a market making function, the Exchange will consider the following factors: the simultaneous or near-simultaneous entry of limit orders to buy and sell the same option; and the entry of multiple limit orders at different prices in the same option series.

(4) Effecting transactions that constitute manipulation as provided in PCX Rule 4.6(a) and SEC Rule 10b–5.

⟦(d) Firms entering orders for execution on Auto Ex may not divide them up in order to make their parts eligible for entry into Auto-Ex.⟧

(e)–(k)—⟦(d)–(j)⟧—No change.

*   *   *   *   *

¶ 5151   Contract Made on Acceptance of Bid or Offer

Rule 6.77

All bids or offers made and accepted in accordance with the Rules shall constitute binding contracts, subject to applicable requirements of the Constitution and Rules of the Exchange and the Rules of the Options Clearing Corporation.

Commentary:

.01 Two Options Floor Officials may nullify a transaction or adjust its terms if they determine the transaction to have been in violation of any of the following:

(a) Rule 6.73 (Manner of Bidding and Offering);

(b) Rule 6.75 (Priority of Bids and Offers);

(c) Rule 6.56 (Transactions Outside Order Book Official's Last Quoted Range);

(d) Rule 6.76 (Priority on Split Price Transactions);

(e) Rule 6.86 (Trading Crowd Firm Disseminated Market Quotes);

(f) Rule 6.66(c) (Order Identification: Broker-Dealer Orders: Failure to identify a broker-dealer order, provided that the transaction may be nullified or its terms may be adjusted only if the transaction is for 20 contracts or less);

(g) Rule 6.87 (Automatic Execution System).

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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 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 Commission approved the Exchange's Pacific Options Exchange Trading System ("POETS") on a pilot program basis in 1990 and on a permanent basis in 1993.[4] POETS is comprised of an options order routing system ("ORS"), an automatic and semi-automatic execution system ("Auto-Ex"), an on-line book system ("Auto-Book"), and an automatic market quote update system ("Auto-Quote"). Currently, PCX Rule 6.87 allows only non-broker-dealer customer orders to be executed through the Exchange Auto-Ex system. The Exchange now proposes to permit broker-dealer orders to be eligible for automatic execution through Auto-Ex on an issue-by-issue basis and to establish means of assuring better compliance with rules pertaining to the use of Auto-Ex.

a. *Definitions.* The Exchange proposes several definitional changes to PCX Rule 6.87 pertaining to Auto-Ex. Specifically, the Exchange proposes to add new rule 6.87(a) to codify the terms "Auto-Ex," "User," and "Order Entry Firm." First, the Exchange proposes to define the term "Auto-Ex" to mean the automated execution system feature of POETS that is owned and operated by the Exchange and that provides automated order execution and reporting services for options. Second, the Exchange proposes to define the term "User" to mean any person or firm that obtains electronic access to Auto-Ex through an Order Entry Firm. Third, the Exchange

proposes to define the term "Order Entry Firm" to mean a member organization of the Exchange that is registered as an Order Entry Firm for purposes of sending orders to the Exchange for execution by Auto-Ex. The Exchange proposes to codify these terms in order to provide users of Auto-Ex with clear and precise definitions for terms used in Rule 6.87.

b. *Eligible Orders.* The Exchange proposes to change its rules to allow broker-dealer orders to be executed, on an issue-by-issue basis, on the Exchange's Auto-Ex system, subject to the approval of the Options Floor Trading Committee. The Exchange also proposes to allow market and marketable limit orders for the accounts of certain broker-dealers to be executed via Auto-Ex, except for those orders for Marker Makers or Specialists on an exchange that are exempt from the provisions of Regulation T[5] pursuant to Section 7(c)(2) of the Act.[6] The Exchange proposes this rule change to remain competitive, and to improve the efficiency by which orders for broker-dealers are currently executed. Further, the Exchange proposes this change to reduce the burden on Floor Brokers for executing small market and marketable limit orders. In addition, the Exchange proposes to renumber Rule 6.87(a) as Rule 6.87(b)(1) and Rules 6.87(b) and (c) as rules 6.87(b)(2) and (3).

c. *Order Entry Firm Registration.* The Exchange proposes to add new Rule 6.87(c) to require Order Entry Firms, as defined in proposed Rule 6.87(a), to register with the Exchange as a condition of having access to Auto-Ex. Such registration will require that an Order Entry Firm execute an Order Entry Firm Application Agreement with the Exchange; comply with all applicable PCX options trading rules and procedures; provide written notice to all Users regarding proper use of Auto-Ex; and maintain adequate procedures and controls that will permit the Order Entry Firm to effectively monitor and supervise the entry of electronic orders by all Users. The Exchange proposes these rule changes to safeguard the use of Auto-Ex and to obligate Order Entry Firms to inform and supervise Users to ensure compliance with PCX Rules and procedures. The Exchange also proposes these changes to protect investors and the public from changes in options prices or markets caused by uses of Auto-Ex that the Exchange believes are prohibited.

d. *Prohibited Practices.* In addition, the Exchange proposes to add new Rule 6.87(d) to codify practices it believes are prohibited on Auto-Ex. Specifically, the Exchange proposes to codify the most common prohibited practices and abuses of Auto-Ex.[7] Proposed Rule 6.87(d) lists four prohibited uses of Auto-Ex: entering an order for an account that is ineligible for execution on Auto-Ex; dividing an order involving a single investment decision into multiple smaller lots for the purposes of meeting the order size requirements for Auto-Ex eligibility, which includes entering multiple orders in the same call class or put class for the account of the same beneficial owner within the same 15-second period; entering orders via Auto-Ex to perform a market making function; and effecting transactions that constitute manipulation as provided in PCX Rule 4.6(a)[8] and Rule 10b–5[9] under the Act. A detailed explanation of each prohibited practice follows.

First, with regard to the type of orders eligible for execution on Auto-Ex, the Exchange proposes that all orders not eligible under subsection (b) or proposed Rule 6.87 be deemed ineligible orders. The Exchange proposes this rule change to clarify what orders are eligible for execution on Auto-Ex.

Second, the Exchange proposes to replace PCX Rule 6.87(d) with proposed Rule 6.87(d)(2). Specifically, the Exchange proposes to delete language that currently states that "firms entering orders for execution on Auto-Ex may not divide them up in order to make their parts eligible for entry into Auto-Ex." The Exchange proposes to replace Rule 6.87(d) with new Rule 6.87(d)(2), which prohibits dividing an order involving a single investment decision into multiple smaller lots for the purposes of meeting the order size requirements of Auto-Ex eligibility. The Exchange also proposes that multiple orders to trade the same series entered within any fifteen-second period for the account of the same beneficial owner will be presumed to be based on a single investment decision. The Exchange proposes this change to clarify its rules on unbundling.

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[4] *See* Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 (January 24, 1990) (approving POETS on a pilot basis); Securities Exchange Act Release No. 32703 (July 30, 1993), 58 FR 42117 (August 6, 1993) (approving POETS on a permanent basis). The Auto-Ex system permits eligible market or marketable limit orders sent from member firms to be executed automatically at the displayed bid or offering price. Participating market makers are designated as the contra side to each Auto-Ex order. Participating market makers are assigned by Auto-Ex on a rotating basis, with the first market maker selected at random from the list of signed-on market makers. Automatic executions through Auto-Ex are currently available for public customer orders of twenty contracts or less (or in certain issues, for fifty contracts or less) in all series of options traded on the Options Floor of the Exchange.

[5] 12 CFR 200 *et seq.*

[6] 15 U.S.C. 78g(c)(2).

[7] The codification of these prohibited practices is not meant to be all-inclusive.

[8] PCX Rule 4.6 states that "[n]o member, member firm or any participant therein shall effect or induce the purchase or sale or otherwise effect transactions in any security for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security, or for the purpose of unduly or improperly influencing the market price of such security, or for the purpose of making a price which does not reflect the true state of the market in such security."

[9] 17 CFR 240.10b–5.

Third, with regard to entering multiple orders in the same call class or put class for the account of the same beneficial owner within the same 15-second period, the Exchange proposes that only the first of such orders that equals or adds up to less than the firm Auto-Ex size requirement will be entitled to execution. The Exchange proposes this change in order to specifically prohibit conduct that is in conflict with the purpose of Auto-Ex and would otherwise circumvent the prohibitions against unbundling.

Fourth, the Exchange proposes to codify language to prohibit Users from using Auto-Ex to perform Market Maker functions. PCX Rule 6.32 defines a Market Maker as an individual who is registered with the Exchange for the purpose of making transactions as dealer-specialist on the Floor of the Exchange. With regard to entering orders via Auto-Ex to perform a market making function, the Exchange proposes that no member or associated person of a member may use Auto-Ex on a regular and continuous basis to simultaneously execute orders to buy and sell series for the account of the same beneficial holder. In making the determination of whether a member or person is using the Auto-Ex system to perform a market making function, the Exchange will consider the following factors: the simultaneous or near-simultaneous entry of limit orders to buy and sell the same option; and the entry of multiple limit orders at different prices in the same option series. The Exchange proposes this change to prohibit Users from acting as Market Makers through the use of Auto-Ex.[10]

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[10] *See* PCX Rules 6.88 (b) and 6.89(d)(3). PCX Rule 6.88(b) states that ''[n]o Floor Broker may knowingly use a Floor Broker Hand-Held Terminal, on a regular and continuous basis, to simultaneously represent orders to buy and sell option contracts in the same series for the account of the same beneficial holder. If the Exchange determines that a person or entity has been sending, on a regular and continuous basis, orders to simultaneously buy and sell option contracts in the same series for the account of the same beneficial holder, the Exchange may prohibit orders for the account of such person or entity from being sent through the Exchange's member Firm Interface for such period of time as the Exchange deems appropriate.''

PCX Rule 6.89(d)(3) states that ''[t]erminals may be used to receive brokerage orders only. Terminals may not be used to perform a market making function. No Member may knowingly use a Terminal on a regular and continuous basis to simultaneously represent orders to buy and sell option contracts in the same series for the account of the same beneficial holder. If the Exchange determines that a person or entity has been sending, on a regular and continuous basis, orders to simultaneously buy and sell option contracts in the same series for the account of the same beneficial holder, the Exchange may prohibit orders for the account of such person or entity from being sent

Fifth, the Exchange proposes to codify, as a prohibited practice, effecting transactions that constitute manipulation as provided in Rule 4.6(a) and Rule 10b-5 under the Act. The Exchange proposes this change to prevent members or Users from using Auto-Ex to violate PCX and SEC rules and to protect investors and the public. Finally, the Exchange proposes to renumber rules 6.87(d) through (j) as Rules 6.87(e) through (k).

e. *Nullification of Orders.* The Exchange proposes to add subsection (g) to Rule 6.77, Commentary .01. Currently, Rule 6.77, Commentary .01 allows two Options Floor Officials to nullify a transaction or adjust its terms if they determine the transaction to have been in violation of certain PCX rules.[11] The Exchange proposes that if a transaction is in violation of Rule 6.87 regarding Automatic Execution, then two Floor Officials may nullify or adjust such transaction. The Exchange proposes this change to remain consistent in its applicaiton of PCX Rules and procedures.

2. *Statutory Basis*

The Exchange believes that the proposed rule change is consistent with Section 6(b) [12] of the Act, in general, and furthers the objectives of Section 6(b)(5),[13] in that it is designed to promote just and equitable principles of trade, to enhance competition and to 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

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through the Exchange's Member Firm Interface for such period of time as the Exchange deems appropriate. Any system used by a Member to operate a Terminal must be separate and distinct from any system that may be used by a Member or any person associated with a Member in connection with market making functions.''

[11] PCX Rule 6.77, Commentary .01 states that ''[t]wo Options Floor Officials may nullify a transaction or adjust its terms if they determine the transaction to have been in violation of any of the following: (a) Rule 6.73 (Manner of Bidding and Offering); (b) Rule 6.75 (Priority of Bids and Offers); (c) Rule 6.56 (Transactions Outside Order Book Official's Last Quoted Range); (d) Rule 6.76 (Priority on Split Price Transactions); (e) Rule 6.86 (Trading Crowd Firm Disseminated Market Quotes); (f) Rule 6.66(c) (Order Identification: Broker-Dealer Orders: Failure to identify a broker-dealer order, provided that the transaction may be nullified or its terms may be adjusted only if the transaction is for 20 contracts or less).''

[12] 15 U.S.C. 78f.
[13] 15 U.S.C. 78f(b)(5).

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 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 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. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–05 and should be submitted by August 15, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–18742 Filed 7–24–00; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12).