

Section 6(b)(5),⁶ in particular, in that it is 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Amex 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

The Amex 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

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to within 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 Exchange 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 proposal 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. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-AMEX-98-45 and should be submitted by January 14, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40795; File No. SR-AMEX-98-43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Exercise Price Intervals and Exercise Prices for FLEX Equity Call Options

December 15, 1998.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 2, 1998, the American Stock Exchange, Inc. ("Amex" 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. 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 Amex proposes to remove paragraph (c)(3) from Exchange Rule 903G which limits exercise price intervals and exercise prices for FLEX Equity call options to those that apply to Non-FLEX Equity call options.²

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 Amex 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 Amex 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

On June 19, 1996, the Exchange received approval to list and trade flexible options on individual stocks known as FLEX Equity options.³ Although the exercise prices and price intervals of FLEX Equity call options were among the terms that could be specified, the Exchange enacted paragraph (c)(3) of Exchange Rule 903G to limit the exercise price intervals and exercise prices for FLEX Equity call options to those that apply to Non-FLEX Equity call options due to a concern that the flexible exercise price feature could result in an available call option that would not be eligible to be a qualified covered call ("QCC") under section 1092(c)(4) of the Internal Revenue Code ("IRC") and thus would jeopardize a modest tax benefit enjoyed by writers of standardized Non-FLEX Equity call options.⁴ The Exchange notes that currently, under section 1092(c)(4)(B) of the IRC, certain covered short positions in call options—or QCCs—qualify for advantageous tax treatment if the options are not "deep in the money." Under certain conditions, a "deep in the money" call option is defined to mean an option having an exercise price lower than the highest available exercise price that is less than the applicable stock price.⁵

The Internal Revenue Service ("IRS") has reviewed this issue and has proposed rulemaking that would not require that strike prices established by equity options with flexible terms be taken into account in determining

³ Securities Exchange Act Release No. 37336 (June 19, 1996), 61 FR 33558 (June 27, 1996).

⁴ It was unclear, for example, whether the existence of a series of FLEX Equity call options with a strike price of 58, when the price of the underlying stock is 59, would jeopardize a Non-FLEX Equity call option's (with a strike price of 55) characterization as a QCC.

⁵ For instance, using standardized options and a \$5 price interval, if stock XYZ closed yesterday at \$54 and opened at that price today, the standardized exercise price of \$50 for a call option would not be "deep in the money" because \$50 would be the highest available exercise price that is less than the applicable stock price. A standardized exercise price of \$45 would be "deep in the money" and would not be a QCC.

⁶ 15 U.S.C. 78f(b)(5).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Paragraph (c)(3) of Rule 903G was approved by the Commission in 1996. Securities Exchange Act Release No. 37726 (September 25, 1996), 61 FR 51474 (October 2, 1996).

whether standard term equity options are too "deep in the money" to receive QCC treatment.⁶ The public comment period for the proposed rulemaking ended on September 23, 1998, and the Exchange expects the IRS to adopt final regulations on this topic some time after that date. In light of the rule proposal by the IRS, the Exchange now proposes to delete paragraph (c)(3) from Exchange Rule 903G. The Exchange intends for the deletion of paragraph (c)(3) to coincide with the effective date of final regulations by the IRS. The effect of the IRS proposed rulemaking and the Exchange's proposed withdrawal of the limitation on the exercise price of FLEX Equity call options would be that certain taxpayers, particularly institutional and other large investors, could engage in transactions in FLEX Equity call options with a wider range of exercise prices (as was originally intended) without affecting the applicability of Section 1092 of the IRC for QCC options involving equity options with standard terms.

2. Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of section 6(b)(5),⁸ in particular, in that it is 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system by eliminating a restriction on FLEX Equity call options that has hampered their usefulness as a risk managing mechanism.

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

No written comments were solicited or received with respect to the proposed rule change.

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 Amex 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. 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 Amex. All submissions should refer to File No. SR-AMEX-98-43 and should be submitted by January 14, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40805; File No. SR-PCX-98-53]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Options Floor Trading Halts and Suspensions

December 17, 1998.

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 October 6, 1998,³ the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting 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 is proposing to amend its Rule 6.65 on Options Floor Trading Halts and Suspensions to include guidelines to assist Floor Officials in their decisions regarding trading halts in equity options. The text of the proposed rule change is set forth below. Proposed new language is in *italics*.

¶ 5079 Trading Halts and Suspensions

Rule 6.65(a)-(b)—No Change.

(c) *Options Floor Trading Halt Guidelines. Trading halts are, by definition, unusual market conditions. Accordingly, all of the precise circumstances at the time a trading halt cannot be anticipated. An evaluation of all circumstances at the time a trading halt is under consideration is critical. Except as provided below, to ensure consistent application of the Exchange's trading halt guidelines, the concurrence of two Floor Officials and a senior Exchange Official is required. Bearing in mind the need to exercise discretion in*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On December 4, 1998, the PCX submitted Amendment No. 1 to the proposed rule change. Amendment No. 1 clarifies certain defined terms in the rule language and makes additional non-substantive textual changes. See letter from Robert Pacileo, Jr., Staff Attorney, PCX, to Mignon McLemore, Attorney, Division of Market Regulation, Commission, dated December 3, 1998.

⁶ Department of the Treasury, Internal Revenue Service REG-104641-97, 63 FR 34616 (June 25, 1998).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 17 CFR 200.30-3(a)(12).