

complete NYSE systems enhancements to support XPress orders by the third quarter of 2000.

## 2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5)<sup>4</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, 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. The NYSE believes the proposed rule change would perfect the mechanism of a free and open market by permitting orders that meet the rule's requirements to interact with exposed XPress bids and offers to the fullest extent possible, thus providing more options for market participants. The Exchange believes that the proposed rule change is designed to protect investors and the public interest by requiring that bids and offers be of a minimum size and be displayed for a minimum period of time before becoming XPress, and thus should give brokers and non-XPress orders the opportunity to interact with the quote before coming XPress eligible. In addition, brokers may interact with an XPress order by providing price improvement. The Exchange believes that the proposed rule change should protect bids and offers on the book or in the Crowd that have priority at an improved transaction price and all orders are executed in time and price priority.

### *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*

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

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 reason 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, 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 NYSE. All submissions should refer File No. SR-NYSE-99-24 and should be submitted by September 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41701; File No. SR-NYSE-99-20]

### **Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Examination Specifications and Content Outline for the Front Line Specialist Clerk Qualification Examination (Series 21)**

August 3, 1999.

## I. Introduction

On May 14, 1999, the New York Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change relating to examination specifications and content outline for the Front Line Specialist Clerk Qualification Examination (Series 21). The proposed rule change was published for comment in the **Federal Register** on June 18, 1999.<sup>3</sup> The Commission did not receive any comments on the proposal. This order approves the proposed rule change.

## II. Description of the Proposal

Exchange Rule 35 requires that employees of members and member organizations be registered with and approved by the Exchange prior to admittance to the Trading Floor. Currently, the registration process for Floor employees functioning as Front Line Specialist Clerks ("FLS Clerks") primarily consists of submission of a completed Form U-4 ("Uniform Application for Securities Industry Registration or Transfer") and fingerprints. Under a proposed interpretation of Rule 35, which has been approved separately by the Commission (SR-NYSE-99-19), these FLS Clerks also will have to be qualified by taking and passing an appropriate qualification examination and by meeting appropriate training requirements.

The Front Line Specialist Clerk Qualification Examination ("Series 21") and Content Outline, which the Exchange is asking the Commission to approve in this filing, were developed by the Exchange, in conjunction with a committee of Floor representatives (members, Specialists, and FLS Clerks)

<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. 41515 (June 10, 1999), 64 FR 32911.

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

<sup>5</sup> 17 CFR 200.30-3(a)(12).

to qualify FLS Clerks pursuant to the new interpretation of Rule 35. The Series 21 examination will help ensure that FLS Clerks have the basic knowledge, skills, and abilities necessary to perform their duties, which include assisting Floor Specialists.

The Series 21 examination is a 90-minute test consisting of 65 questions. The examination covers such topics as preparing for the market opening, operating the display book, preparing for the market close, and generating trade reports. The requirement to take and pass the Series 21 examination to qualify as an FLS Clerk will apply to both current and prospective FLS Clerks. All candidates must pass the Series 21 examination before functioning as an unsupervised FLS Clerk, *i.e.*, functioning without the specialized supervision required during the training period.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules regulation thereunder applicable to a national securities exchange.<sup>4</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(c)(3)(B) of the Act,<sup>5</sup> which provides that 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. The Commission finds that the subject matter included in the Series 21 Examination and the content outline by the Exchange is consistent with Section 6(c)(3)(B) because it provides the Exchange with an appropriate means for measuring an FLS Clerk's ability and qualifications. The Series 21 Examination and content outline covers such topics as preparing for the market opening, operating the display book, preparing for the market close, and generating trade reports. Requiring all current and future FLS to pass the Series 21 Examination will help ensure that they are adequately trained and qualified to perform their duties competently.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> that the

proposed rule change (SR-NYSE-99-20) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41699; File No. SR-PCX-99-15]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Market Maker Surcharges

August 3, 1999.

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 June 1, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by PCX. On June 25, 1999, and July 16, 1999, the PCX filed with the Commission Amendment Nos. 1 and 2, respectively, to the proposed rule change.<sup>2</sup> The 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 is proposing to amend its rules to adopt a one-year pilot program under which the Exchange will impose a fee on Market Makers for contracts traded by Market Makers in particular option issues. The fee will be used to reduce order book execution charges on the PCX. Below is the text of the proposed rule change. Proposed new language is in *italic*.

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<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> In Amendment No. 1, the Exchange removed a provision that permitted the Options Floor Trading Committee ("OFTC") to delegate responsibility and corrected a typographical error. See letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Michael A. Walinskas, Associate Director, Division of Market Regulation ("Division"), Commission, dated June 24, 1999 ("Amendment No. 1"). In Amendment No. 2, the Exchange corrected a typographical error. See letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Michael A. Walinskas, Associate Director, Division, Commission dated July 15, 1999 ("Amendment No. 2").

### RULE 16.1

#### RATES AND CHARGES

##### Market Maker Surcharge for Customer Rate Reduction

##### Rule 16.1(a) Definitions

(1) *Resident Market Maker.* A Resident Market Maker in a particular issue of options is a Market Maker who transacted at least 80% of his or her market maker contracts in option issues traded in the trading crowd where the particular option issue is traded in the prior calendar month.

(2) *Standard OBO Rate.* The Standard OBO Rate is any rate for Order Book Official ("OBO") floor brokerage established by the Exchange for the particular equity option issue traded on the Exchange Floor, other than pursuant to this Rule.

(3) *Standard Market Maker Fees.* Standard Market Maker Fees are the total market maker fees established by the Exchange for the particular option issue other than any fees implemented pursuant to this Rule.

(4) *Market Maker Surcharge.* The Market Maker Surcharge is the amount of the fee, not to exceed 25 cents per contract, that the Exchange may impose on Market Makers for a particular issue of option pursuant to this Rule that is in addition to the Standard Market Maker Fees for the option issue.

##### (b) Generally.

(1) The Options Floor Trading Committee ("OFTC") may impose a Market Maker Surcharge for transactions in a particular issue of options, which Surcharge will be imposed on a per contract basis for every contract traded by every Market Maker, whether in-person or by order, in that option issue during the period for which the Market Maker Surcharge is in effect.

(2) In imposing the fee, the OFTC will consider the vote of the Resident Market Makers for a particular option issue, as described in paragraph (d) of this Rule. In addition, the OFTC will consider the views of any Market Maker in favor of or opposed to the recommended Surcharge or in favor of some other Surcharge amount. The OFTC will provide notice of its meeting schedule for the consideration of the Market Maker Surcharge and the deadline for the submission of other materials for its consideration. The OFTC will determine the manner in which it will review the submitted materials and whether it will allow personal appearances before the OFTC. A decision of the OFTC may be appealed to the Exchange's Board of Appeals Committee pursuant to Rule 11; however, the Surcharge will be

<sup>4</sup> In approving the proposed rule change, the Commission also has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f(c)(3)(B).

<sup>6</sup> 15 U.S.C. 78s(b)(2).