

Rule 123B(a), members and member organizations may utilize the SuperDot System to transmit orders of such size as the Exchange may specify from time to time.

The purpose of this filing is to amend the maximum share size parameter for single market and limit orders entered into the SuperDot System. Currently, single market orders up to 30,099 shares and single limit orders up to 99,999 shares may be entered into the SuperDot System. The Exchange proposes to increase the maximum order size for both market and limit orders to 1,000,000 shares.<sup>7</sup> The increase in maximum order size would become effective in two stages, with an initial increase to 500,000 shares, followed in six months by an increase to 1,000,000 shares.

The Exchange believes that the proposed increase will provide many benefits to users of the SuperDot System. Specifically, the NYSE believes that the proposal will facilitate openings and closings by increasing the number of shares that can be accommodated, especially in initial public offerings. In addition, the NYSE notes that the proposal will eliminate the need for firms and institutions to break up large orders to make them SuperDot eligible; streamline the cancel and replace process; and eliminate some of the paper from the floor, which will support the goal of having a "paperless" floor. According to the NYSE, the proposed increase will also be compatible with the maximum share size capabilities of the NYSE's Broker Booth Support System. In addition, the NYSE states that the proposal would help to facilitate the electronic capture of orders as required by Exchange Rule 123.<sup>8</sup>

## 2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) of the Act<sup>9</sup> that an exchange has 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.

### *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, not necessary or appropriate in furthering of the purposes of the Act.

### **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 and subparagraph (f)(5) of Rule 19b-4 thereunder because it institutes a change in an existing order-entry or trading system that (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not have the effect of limiting access to or availability of the system. Any 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, 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 to the File No. SR-NYSE-00-63 and should be submitted by February 23, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43886; File No. SR-NYSE-00-60]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending NYSE Rule 416, Questionnaires and Reports**

January 25, 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 existing NYSE Rule 416 ("Questionnaires and Reports"). The amendment will give the Exchange general authority to require members and member organizations to submit, on an ongoing basis, certain data in a prescribed manner and form. 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

<sup>7</sup> See Amendment No. 1, *supra* note 3.

<sup>8</sup> See Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) (order approving File No. SR-NYSE-98-25).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>12</sup> 17 CFR 240.19b-4.

member or member organization required to file reports pursuant to this Rule, a fee of \$500<sup>3</sup> 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 Rule, be deemed not to have been filed until a corrected copy of the report has been resubmitted.

#### Supplementary Material:

.10 Member organizations may be required to provide financial and operational reports as required by paragraph (a) of this Rule for affiliated organizations, including but not limited to, persons referred to in Rules 321 and 322.

.20 *Each member and member organization shall, on an ongoing basis and in such format as the Exchange may require, submit to the Exchange, or its designated agent, prescribed data of the member or member organization, and of any broker-dealer that is a party to a carrying agreement with a member or member organization pursuant to NYSE Rule 382.*

(See also Rule 382.)

#### Carrying Agreements

##### Rule 382.

- (a) No change.
- (b) No change.
- (c) No change.
- (d) No change.
- (e) No change.
- (f) No change.

(See also Rules 342, [and] 401, and 416)

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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 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 authorizes the Exchange to require members and member organizations to submit prescribed information that the Exchange believes to be essential for the protection of investors and the public interest. NYSE rule 416 has been used to require 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.

Under proposed rule 416.20, the Exchange may require members and member organizations to submit data, on an ongoing basis (e.g., daily, monthly, quarterly) and in such format as the Exchange may require.<sup>4</sup> Further, the proposed rule change provides that members and member organizations that clear and settle transactions may be required to provide data regarding both their own business as well as the business of firms that introduce to them pursuant to NYSE Rule 382 ("Carrying Agreements"). NYSE rules 382 and 416 would be cross-referenced to highlight their interaction in this regard.

The Exchange believes that the authority provided under proposed rule 416.20, while broad in nature, is necessary to facilitate the participation of members and member organizations in an industry-wide regulatory initiative with respect to clearing firms. This initiative will be coordinated by a committee that includes the Exchange, the Commission, National Association of Securities Dealers Regulation, Inc., Securities Industry Association, several member organizations, and other securities industry representatives. The committee has developed a broker-dealer reporting system intended to help identify potential sales practice violations, particularly those associated with low-priced microcap issues. Under the clearing firm initiative, data will be submitted to a processing center that will organize it according to exception

<sup>4</sup> On January 22, 2001, in a telephone conversation between Donald van Weezel, Managing Director, Regulatory Affairs, Exchange, and Heidi Pilpel, Special Counsel, Commission, the Exchange represented that it anticipates requesting members and member organizations to submit raw data electronically.

parameters established by the Exchange and other self-regulatory organizations ("SROs").

The required data will initially include, at minimum, various raw statistical data pertaining to cancelled trades. It is intended that additional data will be required at future dates. Once the reporting system is fully operational, it is expected that the trade information collected pursuant to this initiative will serve as an early warning system to "red flag" unusual trading patterns.

#### 2. Statutory Basis

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of sections 6(b)(5) of the Act,<sup>5</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, 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 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 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.

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

<sup>3</sup> See Securities Exchange Act Release No. 43847 (January 16, 2001) (SR-NYSE-00-59). (increasing from \$100 to \$500 the late filing fee charged to members and member organizations for the failure to submit information on a timely basis).

#### 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 Exchange. All submissions should refer to File No. SR-NYSE-00-60 and should be submitted by February 23, 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. 34-43887; File Nos. SR-PCX-00-18 and SR-Amex-00-57]

#### Self-Regulatory Organizations; Pacific Exchange, Inc. and American Stock Exchange LLC; Order Approving Proposed Rule Changes Relating to Increasing to One Hundred Contracts the Maximum Size for Option Orders That May Be Executed Automatically

January 25, 2001.

#### I. Introduction

On June 30, 2000, the Pacific Exchange, Inc. ("PCX") 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 proposal to increase the maximum size of equity and index option contracts that may be designated

for automatic execution to one hundred contracts. On November 15, 2000, the PCX rule proposal was published for public comment in the **Federal Register**.<sup>3</sup> On November 28, 2000, the American Stock Exchange LLC ("Amex") also filed a similar proposed rule change to increase to one hundred the maximum permissible number of equity and index option contracts in an order executable through its automatic execution system. On December 13, 2000, the Amex rule proposal was published for comment in the **Federal Register**.<sup>4</sup> The Commission received no comments on either the PCX or the Amex proposal. This order approves the PCX and the Amex proposed rule changes.

#### II. Description of the Proposed Rule Changes

##### A. PCX Proposal

The PCX's Automatic Execution System ("Auto-Ex") automatically executes public customer market and marketable limit orders within certain size parameters. PCX Rule 6.87(b) currently provides that the Options Floor Trading Committee ("OFTC") shall determine the size of orders that are eligible to be executed through Auto-Ex. The rule further provides that although the OFTC may change the order size parameters on an issue-by-issue basis, the maximum order size for execution through Auto-Ex is seventy-five contracts for both equity and index options.<sup>5</sup> The PCX is now proposing to increase the maximum size of option orders that are eligible for automatic execution, subject to designation by the OFTC on an issue-by-issue basis, to one hundred contracts.<sup>6</sup>

The PCX believes that these changes will help it meet the changing needs of customers in the marketplace and give the PCX better means of competing with other options exchanges for order flow, particularly in multiply traded issues. The PCX also believes that increasing to one hundred the number of option

contracts executable through Auto-Ex will enable the PCX to more effectively and efficiently manage increased order flow in actively traded options issues consistent with its obligations under the Act. In addition, the PCX indicates that this increase should bring the speed and deficiency of automated execution to a greater number of retail orders. The PCX further believes that it should have flexibility to compete for order flow with other exchanges without being limited to responding to increases in automatic execution eligibility levels initiated by those other exchanges.<sup>7</sup>

The PCX represents that it believes that the increase will not expose Auto-Ex to risk of failure or operational breakdown. The PCX further represents that it believes that its systems capacity is sufficient to accommodate the increased number of automatic executions anticipated to result from implementation of this proposal.

##### B. Amex Proposal

The Amex's Automatic Execution System ("AUTO-EX") automatically executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entered into the Amex Order File ("AOF"). Generally, public customer market and marketable limit orders for up to seventy-five options contracts may be automatically executed through the Amex's AUTO-EX system.<sup>8</sup> Recently, AOF, which handles limit orders routed to the specialist's book as well as those orders routed to AUTO-EX, was increased to allow for the entry of orders of up to 250 options contracts.<sup>9</sup> Because AUTO-EX is only allowed to execute equity option orders and index orders of up to seventy-five contracts, any market and marketable limit orders for between seventy-five and 250 option contracts are generally

<sup>7</sup> See PCX Rule 6.87(c) (permitting the PCX to match the maximum size of orders eligible for automatic execution that are permitted on another options exchange in multiply traded issues).

<sup>8</sup> See Securities Exchange Act Release No. 43516 (November 3, 2000), 65 FR 69079 (November 15, 2000). The Amex codified its rules under Amex Rule 933, Commentary .02, regarding the maximum option order size eligibility for its AUTO-EX system. While the maximum permissible number of contracts in an index option order executable through AUTO-EX is generally seventy-five contracts, there are three exceptions: the Institutional, Japan and S&P MidCap 400 Indices allow ninety-nine contract orders. The Exchange proposes to increase the applicable parameter from ninety-nine to one hundred contracts for the Institutional, Japan and S&P MidCap 400 Indices to eliminate any potential for confusion over the permissible parameters applicable to AUTO-EX eligible orders for both equity and index options.

<sup>9</sup> See Securities Exchange Act Release No. 42128 (November 10, 1999), 64 FR 63836 (November 22, 1999).

<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 Securities Exchange Act Release No. 43519 (November 3, 2000), 65 FR 69112.

<sup>4</sup> See Securities Exchange Act Release No. 43660 (December 4, 2000), 65 FR 77942.

<sup>5</sup> See Securities Exchange Act Release No. 43518 (November 3, 2000), 65 FR 69111 (November 15, 2000) (approving PCX proposal to increase the maximum size of index and equity option orders that may be automatically executed from fifty to seventy-five contracts).

<sup>6</sup> The PCX notes that, pursuant to PCX Rule 6.86(g), if the OFTC determines, pursuant to PCX Rule 6.87(b), that the size of orders in an issue that are eligible to be executed on Auto-Ex will be greater than twenty contracts, then the trading crowd will be required to provide a market depth for manual (non-electronic) orders in that greater amount, as provided in PCX Rule 6.86(a).