

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50412; File No. SR-NYSE-2004-46]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Exchange Rule 104 Regarding Specialists' Ability to Establish a Proprietary Quote Interface to the Display Book

September 20, 2004.

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 August 16, 2004, the New York Stock Exchange, Inc. ("NYSE" 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 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 NYSE is proposing to amend Exchange Rule 104 (Dealings by Specialists) to provide specialists with the ability to establish a special proprietary connection to the Display Book for the purpose of updating quotations systemically in Investment Company Units and Trust Issued Receipts. The text of the proposed rule change is set forth below. Additions are in italics.

#### Dealings by Specialists

##### Rule 104

(a) No specialist shall effect on the Exchange purchases or sales of any security in which such specialist is registered, for any account in which he, his member organization or any other member, allied member, or approved person, (unless an exemption with respect to such approved person is in effect pursuant to Rule 98) in such organization or officer or employee thereof is directly or indirectly interested, unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market, or to act as an odd-lot dealer in such security.

(b) *Specialists shall have the ability to establish an external quote application*

*interface ("Quote API") which utilizes proprietary algorithms that allow the specialist, on behalf of the dealer account, to systematically update the Exchange published bid or offer within the Display Book system in Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual), or Trust Issued Receipts (as defined in Rule 1200). Nothing in this rule shall be interpreted as modifying or relieving the specialist from his or her obligations and required compliance with all Exchange rules, policies and procedures.*

\* \* \* \* \*

#### 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 NYSE 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

Trading in decimals began in selected stocks on the Exchange on August 28, 2000. Since that time, the number of quotations published by the Exchange has increased exponentially. One impact of this increase in quotation traffic is an increased workload on specialists and their trading assistants who input quotes into the Exchange's trading systems.

Currently, the Exchange's trading systems require the specialist to instruct his trading assistant to manually enter an updated or new quotation into the Display Book in instances when the specialist wishes to insert proprietary interest into a quote. Specialists regularly utilize external applications, such as proprietary spreadsheet algorithms, to generate quote values for the specialist's account.

The Exchange proposes to provide specialists maintaining markets in Investment Company Units ("ICUs") and Trust Issued Receipts ("TIRs"), with the ability to electronically interface with the Display Book via a proprietary connection (an "Application Program Interface" ("API")) to allow quotes to be submitted from an external application

to update both NYSE best quotes and NYSE LiquidityQuote.<sup>3</sup> These external quotes would flow through the Display Book to market data systems, as today. The API would enable specialists in ICUs and TIRs to price the security more readily by eliminating the need to convey instructions to the trading assistant to update the quotation. The API, based on a specialist's proprietary pricing mode, would automate this process. All rules pertaining to the publication of quotations would continue to apply in the new environment. The use of API would change the current mechanical function of updating quotations to an automatic quotation update based upon the same pricing model or algorithms currently employed by the specialist.

The Exchange proposes to amend Rule 104 to provide for the ability of a specialist to utilize these quote interfaces. The proposed amendment states that a specialist would not be relieved of any duty or responsibility with respect to quotes if such a link is established.

###### 2. Statutory Basis

The Exchange believes that the basis for this proposed rule change is the requirement under section 6(b)(5)<sup>4</sup> of the Act that an exchange have rules that are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>3</sup> LiquidityQuote, or NYLQ, is a firm, two-sided, real-time quote that is intended to reflect where "size" exists in a stock outside the best bid or offer. It provides a single price quote representing the cumulative number of shares bid or offered on the limit order book, in the trading "crowd" and by specialists as principal. Along with the NYSE best bid or offer, or "inside quote," the specialist maintains this second quote and continuously disseminates it in real-time throughout the day. See Securities Exchange Act Release No. 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) (SR-NYSE-2002-55).

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

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

<sup>2</sup> 17 CFR 240.19b-4.

*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**

The proposed rule change is effective upon filing pursuant to paragraph (A) of section 19(b)(3)<sup>5</sup> and Rule 19b-4(f)(5).<sup>6</sup> This proposed rule change effects a change in an existing order-entry or trading system of a self-regulatory organization that does not (1) significantly affect the protection of investors or the public interest, (2) impose any significant burden on competition, or (3) have the effect of limiting the access to or availability of the system.

At any time within 60 days of the filing of the 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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2004-46 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-46. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal offices of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2004-46 and should be submitted on or before October 18, 2004.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50410; File No. SR-PCX-2004-60]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc., Relating to Listing Standards for Income Deposit Securities ("IDS")**

September 17, 2004.

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 July 20, 2004, 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. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule

19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing.<sup>5</sup> On September 17, 2004, the Exchange amended the filing.<sup>6</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 Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its current listing requirements to specifically provide for the listing of units comprised of common stock and a debt security, sometimes referred to as income deposit securities ("IDS"). Under the proposed rule change, IDS units can be listed on the Exchange if each component of the IDS unit satisfies the initial listing standards applicable to that component. The text of the proposed rule change is below. Proposed new language is *italicized*.

\* \* \* \* \*

**PCX Equities, Inc.**

**Rule 5—Listings**

\* \* \* \* \*

**General**

Rule 5.2(b)—No change.

*Commentary:*

.01 *The Exchange will generally authorize the listing of a unit if each of the component parts meet the applicable requirements for listing as set forth in PCXE Rules 5.2(c) and 5.2(e)(1)–(2).*

\* \* \* \* \*

**Immediate Public Disclosure of Material Information**

Rule 5.3(i)(2)—No change.

(i)–(vii) No Change.

(viii) *Changes to the terms and conditions of a unit, such as changes to the terms and conditions of any of the components (including changes with respect to any original issue discount or other significant tax attributes of any component), or to the ratio of components within the unit. Such public notification should be as soon as practicable in relation to the effective date of the change, and should, at a*

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

<sup>5</sup> The Exchange asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. See 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> See letter from Tania Blanford, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 16, 2004 ("Amendment No. 1"). Amendment No. 1 clarified the proposed rule text.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(5).

<sup>7</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> 15 U.S.C. 78s(b)(1).