

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

**Jonathan G. Katz,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38930; File No. SR-NYSE-97-23]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to the Regulation of Market Data Used on the Exchange Floor

August 12, 1997.

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 1, 1997, 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 self-regulatory organization. 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 Exchange proposes to introduce new Rule 39 (Market Data Restrictions and Liability Limitations) into its rules in order to regulate the receipt and use of the market data that the Exchange, with the assistance of various other parties, makes available on the Floor of the Exchange.

#### 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 self-regulatory organization 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 self-regulatory organization 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

The Exchange uses its facilities to make various categories of market information—including last sale prices, bids and offers, related sizes and the like—available on the Exchange Floor for use by Exchange members in the course of performing their membership functions. Typically, the Exchange enters into arrangements with traditional vendors of market data services in order to have the vendors assist the Exchange in making market information available on the Floor. The Exchange proposes to add a new Rule 39 (Market Data Restrictions and Liability Limitations) to regulate the provision of market data to the Floor of the Exchange through Exchange facilities. The proposed rule seeks to accomplish three purposes:

1. It would exculpate the Exchange, market data vendors, market data sources and others that assist in the process of making market information available on the Floor through the facilities of the Exchange from members' claims of liability as the result of the dissemination of inaccurate or delayed information or the omission of information. The exculpation applies in respect of any such party's negligence or any cause beyond its reasonable control. It would not exculpate any party for gross negligence or willful misconduct.

2. It would clarify that each of the derivative sources of market data retains proprietary rights to the market data that it makes available.

3. It would prohibit members from redistributing the market data that the Exchange makes available on the Floor to any other person, except for the occasional furnishing of limited amounts of information in the regular course of a member's securities business on the Floor.

The Exchange considers its members' easy and complete access to market information on the Floor of the Exchange to constitute a singularly important aspect of the Exchange's trading environment. The Exchange believes such access is essential to the process of making markets and to the capital-raising process. By providing basic protections from liability to market data vendors, sources of market data and those that assist in the process of making market data available, the proposed rule change will allow each of those entities to perform their respective roles. As a result, the Exchange believes the proposed rule change would greatly facilitate the Exchange's ability to enter

into working relationships with those entities and improve the Exchange's ability to place market information in the hands of its members.

The Exchange believes the proposed legal protections would act as surrogates for direct contractual relationships between the Exchange and/or vendors on the one hand and Exchange members that receive access to market data on the Floor on the other. That is, the Exchange traditionally requires professional end users of the market data that is made available under the CTA Plan and the CQ Plan to execute contracts. Similarly, vendors traditionally require each of their market data service subscribers to execute contracts. Each such contract typically contains counterpart provisions to the ones that the Exchange is proposing for its new rule.<sup>3</sup> By placing those provisions into an Exchange rule, the Exchange intends to obviate the need for those contracts.

In addition, the adoption of rules designed to protect a securities market's agents and contractors and to induce those agents and contractors to assist the securities markets in providing its traditional services is nothing new. For instance, Exchange rules presently contain similar exculpatory provisions for the calculation of index values<sup>4</sup> and for basket information.<sup>5</sup> Other equity markets have similar protections in their rules.<sup>6</sup>

The Exchange believes that Article II, Section 6 (Use of Exchange Facilities) of the Exchange Constitution already exculpates the Exchange from liability for damages that grow out of the use or enjoyment of the Exchange's facilities. The Exchange has always deemed that Constitutional provision to implicitly protect the Exchange's agents and contractors in the same manner as it protects the Exchange and the proposed rule change is intended to supplement, not limit, the applicability of that provision. The Exchange believes the proposed rule change would merely codify and expound upon that reading of the provision and clarify the Exchange's interpretation.

<sup>3</sup> For instance, the proposed provisions mimic clauses found in the standard form of agreement that the Exchange and the other CTA Plan Participants enter into with vendors and subscribers. The Commission has approved contracts containing those provisions on several occasions. See, for example, the form of vendor contract contained in *Exhibit C* to the Second Restatement of the CTA Plan, which the Commission approved last year. (Release No. 34-37191; File No. SR-CTA/CQ-96-1; May 9, 1996.)

<sup>4</sup> See Paragraph (b) of Exchange Rule 702 (Rights and Obligations of Holders and Writers).

<sup>5</sup> See Exchange Rule 813 (Limitation of Liability).

<sup>6</sup> See, for instance, American Stock Exchange Rules 902C and 1003 and Chicago Board Options Exchange Rules 6.7, 7.11 and 23.14.

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

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

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act<sup>7</sup> that an exchange have rules that are designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

#### 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 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 the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

#### 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

Interest persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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

Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. An submissions should refer to File No. SR-NYSE-97-23 and should be submitted by September 10, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38933; File No. SR-PCX-97-25]

#### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Reduction in Minimum Size for Closing Transactions in FLEX Equity Options

August 13, 1997.

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 21, 1997, 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 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 and to grant accelerated approval to the proposed rule change.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reduce from 100 contracts to 25 contracts the minimum value size of closing transactions in and exercises of FLEX Equity Options, and to make a comparable reduction in the minimum value size of FLEX Equity Quotes in response to a Request for Quotes. The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

<sup>8</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 (1991).

#### 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 III below. The self-regulatory organization 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

The purpose of the proposed rule change is to reduce from 100 contracts to 25 contracts the minimum value size of closing transactions in and exercises of FLEX Equity Options, and to make a comparable reduction in the minimum value size of FLEX Equity Quotes in response to a Request for Quotes.

Currently, Rule 8.102(d)(3) imposes a 100 contract minimum on all transactions in FLEX Equity Options unless the transaction is for the entire remaining position in the account. The Exchange believes that the current minimum value size of closing and exercise transactions in FLEX Equity Options is too large to accommodate the needs of certain members firms and their customers.<sup>3</sup> These firms may purchase 100 or more FLEX Equity Options in an opening transaction for a single firm account in which more than one of the firm's clients have an interest. If one of these clients wants to redeem its investment in the account, the firm likely will want to engage in a closing or exercise transaction in order to reduce the account's position in those FLEX Equity Options by the number being redeemed. Thus, if the redeeming client's interest is less than 100 FLEX Equity Options and does not represent the total remaining position in the account, Rule 8.102(d)(3), as it stands presently, prevents the firm from closing or exercising positions of this size.

The Exchange believes that the proposed rule change would remedy the situation described above, by permitting an order to close or exercise as few as

<sup>3</sup> The Exchange notes that the existing customer base for FLEX Equity Options includes both institutional investors, in particular mutual funds, money managers and insurance companies, and high net worth individuals who meet the "sophisticated investor" criteria applied to various clients by Exchange member firms.

<sup>7</sup> 15 U.S.C. 78f(b)(5).