

limited, the use of such orders could help reduce volatility at the close. Accordingly, the Commission believes that it is reasonable and consistent with the Act for the Exchange to seek permanent approval of the LOC procedures.

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Accelerated approval of the proposal will allow the NYSE to continue to use its procedures for entering LOC orders to continue on an uninterrupted basis. The Commission notes that this proposal does not make any substantive changes to the Exchange's existing LOC program. In its proposal, the Exchange simply requests permanent approval of its existing LOC program. Further, the Commission notes that the last substantive change to the LOC program was published for the full notice and comment period and the Commission received no comments on that proposal.¹⁹ Accordingly, the Commission does not believe that the current filing raises any new regulatory issues. Therefore, the Commission believes it is consistent with Section 6(b)(5) and Section 19(b)(2) of the Act to grant accelerated approval to the proposed rule change.²⁰

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-NYSE-98-15) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40266; File No. SR-NYSE-98-16]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of a Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Margin Requirements for Exempted Borrowers and Good Faith Accounts

July 27, 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 June 30, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities Exchange Commission ("SEC" or "Commission") a proposed rule change to amend NYSE Rule 431, "Margin Requirements," to accommodate certain recent changes to the federal margin requirements. The proposal, which is described in Items I, II, and III below, which Items have been prepared by the NYSE, originally was approved by the Commission on a temporary basis until July 27, 1998.³ On July 24, 1998, the NYSE amended its proposal to request that the Commission approve the NYSE's proposal for six months on an accelerated basis.⁴ The Commission is publishing this notice and order to solicit comments from interested persons on the proposed rule change and to grant accelerated approval to the portion of the proposal that requests an extension of the proposal for six months, until January 27, 1999, or until the Commission approves the proposal permanently, whichever occurs first.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 39813 (March 27, 1998), 63 FR 16849 (April 6, 1998) (order approving File No. SR-NYSE-98-08) ("March Approval Order").

⁴ See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard C. Strasser, Assistant Director, Division of Market Regulation, Commission, dated July 23, 1998 ("Amendment No. 1"). In addition, Amendment No. 1 modifies the proposal to: (1) clarify that the proposal amends the definition of "customer" in NYSE Rule 431(a)(2) to codify the Exchange's position that exempted borrowers will remain exempt from the provisions of NYSE Rule 431; and (2) correct a reference in NYSE Rule 431(a)(2) to the Board of Governors of the Federal Reserve System ("FRB").

⁵ The NYSE confirmed that the Exchange is seeking to extend the changes to NYSE Rule 431 that were approved in the March Approval Order for six months or until the Commission approves the changes on a permanent basis, whichever occurs first. Telephone conversation between Mary Anne Furlong, Attorney, NYSE, and Yvonne

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

On March 27, 1998, the Commission approved until July 27, 1998, an NYSE proposal to apply the maintenance margin requirements of NYSE Rule 431 to good faith accounts and to provide that the proprietary accounts of introducing broker-dealers that are "exempted borrowers" as that term is defined in Regulation T⁶ will continue to be subject to NYSE Rule 431(e)(6) as applicable.⁷ The NYSE requests permanent approval of the changes to NYSE Rule 431 that were approved on a temporary basis in the March Approval Order. In addition, the NYSE requests that the Commission extend the changes to NYSE Rule 431 that were approved in the March Approval Order for six months, until January 27, 1999, or until the Commission approves the changes to NYSE Rule 431 on a permanent basis, whichever occurs first.⁸

Copies of the proposed rule change are available at the NYSE and at the Commission

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 proposal. The text of these statements may be examined at the places specified in Item V below. The NYSE has prepared summaries, set forth in Section 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

In January 1998 the FRB amended Regulation T, which governs initial extensions of credit to customers and broker-dealers.⁹ Among other things, these amendments established a "good faith" account, which can be used for transactions in non-equity securities.¹⁰

Fratlicelli, Attorney, Division of Market Regulation, Commission, on July 27, 1998 ("July 27 Conversation").

⁶ 12 CFR 220. Regulation T, "Credit by Brokers and Dealers," is administered by the FRB pursuant to section 7 of the Act.

⁷ See March Approval Order, *supra* note 3.

⁸ See Amendment No. 1, *supra* note 4, and July 27 Conversation, *supra* note 5.

⁹ See Docket Nos. R-905, R-0923, and R-0944, 63 FR 2806 (January 16, 1998).

¹⁰ 12 CFR 220.6.

¹⁹ See Securities Exchange Act Release No. 40094 (June 15, 1998), 63 FR 33975 (June 22, 1998) (order approving SR-NYSE-97-36).

²⁰ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).

Unlike transactions in a cash or margin account, transactions in the good faith account are *not* subject to the requirements of Regulation T with respect to initial margin and payment and liquidation time frames.

The NYSE believes that transactions in a good faith account raise the same safety and soundness concerns from a maintenance margin perspective as cash and margin account transactions. Accordingly, the NYSE proposes to amend NYSE Rule-431 so that transactions in all accounts of customers (except for cash accounts, as discussed below), including the new good faith account, will be subject to the current applicable maintenance margin requirements of NYSE Rule 431(c).¹¹ As is currently the case, cash accounts subject to Regulation T will not be subject to the overall NYSE Rule 431 requirements, but in certain cases will be covered by specific rule provisions. In this regard, the NYSE notes that NYSE Rule 431 requirements currently apply to cash account transactions in exempted securities (NYSE Rule 431(e)(2)(F)); for certain options (NYSE Rule 431(f)(2)(M)); and for "when issued" and "when distributed" securities (NYSE Rule 431(f)(3)(B)).

In the Regulation T amendments adopted in January 1998, the FRB also established a class of borrowers that is exempt from Regulation T. An "exempted borrower," as defined in Regulation T, is a broker-dealer "a substantial portion of whose business consists of transactions with persons other than brokers or dealers."¹² The NYSE historically has not applied the requirements of NYSE Rule 431 to member organization accounts, except for transactions in the proprietary accounts of registered broker-dealers that are carried by a member organization. In this regard, NYSE Rule 431(e)(6) provides that a member organization may carry the proprietary account of another registered broker-dealer upon a margin basis that is satisfactory to both parties, provided the requirements of Regulation T are adhered to and the account is not carried in a deficit equity condition. In addition, NYSE Rule 431(e)(6) requires that the amount of any deficiency between the equity in the proprietary account and the margin required under NYSE Rule 431 be deducted in

computing the net capital of the member carrying the proprietary account.

The NYSE believes that exempted borrowers would remain exempt from the requirements of NYSE Rule 431, and the Exchange proposes to amend the definition of "customer" in NYSE Rule 431(a)(2) to codify the Exchange's position that such borrowers are exempt from NYSE Rule 431.¹³ Specially, the NYSE proposes to amend NYSE Rule 431(a)(2) to exclude from the definition of "customer" and "exempted borrower" as defined by Regulation T of the FRB, except for the proprietary accounts of a broker-dealer carried by a member pursuant to NYSE Rule 431(e)(6).¹⁴

Under the new Regulation T definition of exempted borrower, the proprietary transactions of an introducing organization that qualifies as an exempted borrower (*i.e.*, an organization that conducts a substantial public business) will not be subject to Regulation T. Accordingly, the requirement in NYSE Rule 431(e)(6) that member adhere to the requirements of Regulation T will not apply to the proprietary accounts of exempted borrowers. However, for safety and soundness purposes, the proprietary account of a broker-dealer that are carried or cleared by another broker-dealer member organization will remain subject to the NYSE Rule 431(e)(6) equity requirements, which prohibit a member from carrying a proprietary account in a deficit equity condition and require that the amount of any deficiency between the equity maintained in the proprietary account and the margin required by NYSE Rule 431 be deducted in computing the net capital of the member carrying the proprietary account.

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to protect the investing public. The NYSE believes that the proposed rule change also is consistent with the rules and regulations of the FRB in that it is designed to prevent the excessive use of credit for the purchase or carrying of

securities, pursuant to Section 7(a) of the Act.

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

The NYSE believes that the purpose rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action.

The NYSE has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the portion of the proposal that requests a six-month extension of the changes to NYSE Rule 431 that were approved in the March Approval Order prior to the 30th day after publication of the proposed rule change in the **Federal Register**.¹⁵ Accelerated approval, until January 27, 1999, will ensure the uninterrupted effectiveness of the changes to NYSE Rule 431 that were approved in the March Approval Order, so that transactions in good faith accounts and in the proprietary accounts of non-carrying/clearing member organizations will continue to be subject to NYSE Rule 431(e)(6).

With regard to the portion of the proposal requesting permanent approval of the changes to NYSE Rule 431 that were approved in the March Approval Order, 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 by order approve such proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Commission's Findings and Order Granting Partial Accelerated Approval of the Proposed Rule Change

After careful review of the NYSE's proposal and for the reasons discussed below, the Commission finds that the portion of the current proposal that extends through January 27, 1999, the effectiveness of the changes to NYSE

¹¹ NYSE Rule 431(c), as amended, will specify the margin that must be maintained in all customer accounts, except for cash accounts subject to Regulation T, unless a transaction in a cash account is subject to other provisions of NYSE Rule 431.

¹² 12 CFR 220.2.

¹³ See Amendment No. 1, *supra* note 3.

¹⁴ Specifically, NYSE Rule 431(a)(2), as amended, excluded from the definition of "customer" (a) a broker or dealer from whom a security has been purchased or to whom a security has been sold for the account of the member organization or its customers, or (b) an "exempted borrower" as defined by Regulation T, except for the proprietary account of a broker-dealer carried by a member organization pursuant to NYSE Rule 431(e)(6).

¹⁵ See Amendment No. 1, *supra* note 4.

Rule 431 that originally were approved in the March Approval Order is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, this portion of the proposal is consistent with Section 6(b)(5) of the Act,¹⁶ in that it is designed 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.¹⁷

Specifically, the Commission finds, as it has concluded previously,¹⁸ that it is appropriate for the NYSE to apply the existing maintenance margin requirements of NYSE Rule 431(c) to transactions in the new "good faith" account adopted under Regulation T. Although non-equity transactions permitted in the good faith account will not be subject to the initial margin requirements and payment and liquidation time frames of Regulation T, as the NYSE notes, transactions in the good faith account may raise the same safety and soundness concerns with regard to maintenance margin as do transactions in cash and margin accounts. Accordingly, the Commission believes that it is appropriate for the NYSE to apply the existing maintenance margin requirements specified in NYSE Rule 431(c) to transactions in the good faith account. The Commission believes that applying the maintenance margin requirements of NYSE rule 431(c) to transactions in the good faith account will protect investors and the public interest and help to maintain fair and orderly markets by ensuring that good faith accounts contain adequate margin reserves.

In addition, the Commission believes that it is appropriate for the NYSE to revise the definition of "customer" in NYSE Rule 431(a)(2) to codify the Exchange's position that exempt borrowers will remain exempt from the requirements of NYSE Rule 431, except for the proprietary account of a broker-dealer carried by a member pursuant to NYSE Rule 431(e)(6). The Commission believes that it is appropriate for the NYSE to continue to apply the equity requirements of NYSE Rule 431(e)(6) to the proprietary accounts of introducing broker-dealers that qualify as "exempted borrowers" under Regulation T if these accounts are carried by another Exchange member. By continuing to apply the equity requirements of NYSE

Rule 431(e)(6) to these proprietary accounts, the Commission believes that the proposal will help to ensure that these accounts contain adequate margin, thereby protecting investors and the public interest.¹⁹

The Commission finds good cause for approving the portion of the proposed rule change requesting approval for six months, until January 27, 1999, of the changes to NYSE Rule 431 that were approved in the March Approval Order prior to the thirtieth day after the date of publication of notice in the **Federal Register** to ensure that the changes to NYSE Rule 431 that were approved in the March Approval Order remain in effect without interruption. The Commission continues to believe that the changes to NYSE rule 431 that were approved in the March Approval Order should help to ensure appropriate margin requirements for good faith accounts and for the proprietary accounts of introducing broker-dealers that qualify as exempted borrowers which accounts are carried by Exchange members. Accordingly, the Commission finds that it is consistent with Sections 6(b) and 19(b)(2) of the Act to grant accelerated approval to the portion of the NYSE's proposal that extends for six months, until January 27, 1999, or until the Commission approves the proposal permanently, whichever occurs first, the changes to NYSE Rule 431 that were approved in the March Approval Order.

The Commission also finds good cause for approving Amendment No. 1 to the proposal on an accelerated basis. In Amendment No. 1, the NYSE clarified several provisions in its proposal and requested accelerated approval of a six-month extension, through January 27, 1999, of the changes to NYSE Rule 431 that were approved in the March Approval Order. The Commission believes that it is appropriate to approve Amendment No. 1 on an accelerated basis to permit the changes to NYSE Rule 431 that were approved in the March Approval Order to continue to apply without interruption. Therefore, the Commission believes that Amendment No. 1 is consistent with Sections 6(b) and 19(b)(2) of the Act.

V. 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.

¹⁹ As noted above, because exempted borrowers are exempt from Regulation T, the provision in NYSE Rule 431(e)(6) requiring adherence to Regulation T will not apply to the proprietary accounts of exempted borrowers.

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 request 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 File No. SR-NYSE-98-16 and should be submitted by August 24, 1998.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁰ that the portion of the NYSE's proposal (SR-NYSE-98-16), as amended, to extend the changes approved by the Commission in the March Approval Order on an accelerated basis until January 27, 1999, or until the Commission approves the proposal permanently, whichever occurs first, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40263; File No. SR-PCX-98-27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Automatic Execution of Option Orders

July 24, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 12, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities Exchange Commission ("Commission") the proposed rule

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).

¹ U.S.C. 78s(b)(1).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ In approving this portion of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁸ See March Approval Order, *supra* note 3.