

submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-ISE-2003-31. 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, comments should be sent in hardcopy or by e-mail but not by both methods.

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 ISE. All submissions should refer to File No. ISE-2003-31 and should be submitted by January 20, 2004.

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. 34-48958; File No. SR-NYSE-2003-29]

### Self-Regulatory Organizations; New York Stock Exchange Inc.; Notice of Filing of Proposed Rule Change to Amend Rule 412 and its Interpretation Relating to Partial Customer Account Transfers

December 18, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 1, 2003, the New York Stock Exchange Inc. ("NYSE") 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 primarily by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

NYSE proposes to amend Rule 412 and the Interpretation of Rule 412 in order to apply the same procedural standards regarding use of the Automated Customer Account Transfer System ("ACATS") to both standard and partial customer account transfers.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Rule 412 of the NYSE's Rules ("Customer Account Transfer Contracts") prescribes procedures for member organizations to transfer customer accounts. It requires use of the Automated Customer Account Transfer Service ("ACATS"), an electronic system administered by the National Securities Clearing Corporation ("NSCC") to facilitate the transfer of customer assets between broker-dealers. Since its inception in 1985, numerous enhancements to ACATS and to Rule 412 allowed for faster and more efficient transfers of customer accounts. For example, the most recent amendments to the Interpretation of Rule 412 have provided for the expedited transfer of accounts containing third party or proprietary products (e.g., mutual funds).<sup>3</sup>

Currently, the requirements of Rule 412 and its Interpretation apply only to "standard" transfers (i.e., instances where account assets in their entirety are transferred from one member organization to another) processed through ACATS. While ACATS is also utilized to process "partial" or "non-standard" transfers (i.e., the transfer of

specifically designated assets from an account held at one member organization to an account held at another member organization), Rule 412 currently does not require that partial transfers be accomplished in accordance with Rule 412 timeframes and does not require use of automated processing capabilities of ACATS.

There is strong industry support to generally apply the same procedural standards, where applicable, to both standard and partial transfers of customer account assets. NYSE has worked closely with industry representatives in the development of amendments to that purpose. The proposed amendments are expected to significantly expedite partial transfers and to increase accountability through use of ACATS. This, in turn, will improve customers' services and will reduce customers' problems related to transfers.

##### 1. Partial Transfers

The requirements of Rule 412 and its Interpretation, as currently applied to standard transactions, include specified response times between a delivering and a receiving firm within which to verify assets, resolve discrepancies, and complete the transfer. Standard transfers processed through ACATS are also subject to the automated processing of transfer-related fails (e.g., monies posted by a delivering firm where the security to be transferred is not transferred), reclaims (e.g., claims by delivering firm for the return of securities transferred), and of residual credits (e.g., transfer of dividends, etc., received after an account has been transferred).

The NYSE proposes to amend Rule 412 and its Interpretation that would generally apply the same procedural standards to both standard and partial transfers processed through ACATS. The proposed amendments would mandate use of ACATS for partial transfers unless otherwise specifically requested by a customer.<sup>4</sup> For example, customers would not be precluded from using alternate authorized instructions to effect partial transfers.

However, certain aspects of Rule 412 and its Interpretation, as proposed to be amended, would be applicable to standard transfers but not partial transfers. The amendments would

<sup>4</sup> As proposed, Rule 412(e)(1) would provide for an exception to the members' obligation to accomplish transfers in accordance with NSCC's rules when the customer authorizes alternative instructions to transfer "specifically designated assets." The phrase "specifically designated assets" refers to partial transfers only. Telephone conversation between the NYSE, NSCC, and Commission staff (November 20, 2003).

<sup>2</sup> The Commission has modified the text of the summaries prepared by the NYSE.

<sup>3</sup> Securities Exchange Act Release No. 44596 (July 26, 2001), 66 FR 40306 (August 2, 2001) (SR-NYSE-00-61). See also NYSE Information Memorandum No. 01-23 (August 16, 2001).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

distinguished between the transfer of security account assets “in whole” (*i.e.*, standard transfers) and security account assets “in specifically designated part” (*i.e.*, partial transfers). This distinction is necessary given differing customer and broker-dealer obligations that result from transferring an entire account from a delivering firm as opposed to obligations related to the transfer of specified assets from an account that will remain active at the delivering firm.

For example, should a customer request the transfer of an entire account, she must authorize the liquidation of any nontransferable proprietary money market fund assets in the account and the transfer of any resulting credit balance to the receiving organization.<sup>5</sup> In addition, any residual credit balance resulting from dividend payments subsequent to the transfer must be forwarded to the receiving organization.<sup>6</sup> Clearly, these are obligations that would attach only in instances of account asset transfers in whole, and not in instances of specifically designated asset transfers.

Another procedural distinction between the transfer of an entire account and the transfer of specifically designated asset transfers can be found in the treatment of “non-transferable assets” which are defined as either a proprietary product of a delivering organization or an asset that is the product of a third party (*e.g.*, a mutual fund). When transferring account assets in whole, the Interpretation of Rule 412 requires that a customer be provided a letter with disposition options consistent with closing out an account regarding any non-transferable assets.<sup>7</sup> This requirement would not be applicable to partial transfers since a request to transfer specifically designated assets would not result in closing the customer’s account at the delivering firm.

## 2. Customer Authorization

Rule 412 and its Interpretation currently make reference to “written” customer authorization requirements. For example, Rule 412(a) requires customers to give “written notice” of their intention to transfer an account from one member organization to another. Rule 412(b)(1) further indicates that such notice be in the form of a “signed” broker-to-broker transfer instruction. Likewise, the Interpretation of Rule 412(a) refers to the requirement of an authorized “letter” from customers who intend to transfer a portion of an

account outside ACATS, and the Interpretation of Rule 412(b)(1) refers to the “transfer instruction form the customer is required to complete and sign.”

Proposed amendments to Rule 412(a) would clarify the scope of such customer authorization to include electronic signatures “in a format recognized as valid under federal law to conduct interstate commerce.” This modification and others in the filing contemplate legal alternatives to “pen and paper” methods of customer authorization on the condition that such methods otherwise comply with Rule 412 and its Interpretation.

## 3. Prescribed Forms

The Interpretation of Supplementary Material .30 to Rule 412 currently requires that member organizations use “the transfer instructions and provide the reports prescribe by the Exchange when accomplishing account transfers pursuant to Rule 412 \* \* \*” and that such instructions and reports must be the same as or “substantially similar” to those required by NSCC. Since NSCC no longer requires specific formats with respect to transfer instructions or reports, the NYSE is proposing that the Interpretation to Supplementary Material .30 be deleted.

In order to allow member organizations sufficient time to develop and implement necessary system changes to comply with amended Rule 412, the NYSE proposes to set an effective date six months from Commission approval of the proposed amendments.

Section 6(b)(5) of the Act that requires rules of an exchange are designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.<sup>8</sup> The NYSE believes that the proposed rule is consistent with its obligations under section 6(b)(5) of the Act because these interests are served when the procedures governing the transfer of customer accounts are made more efficient.

## (B) Self-Regulatory Organization’s Statement on Burden on Competition

NYSE does not believe that the proposed rule change will have an impact on or impose a burden on competition.

## (C) Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NYSE will notify the Commission of any written comments it receives.

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

Within thirty-five 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 ninety 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

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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-2003-29 and should be submitted by January 20, 2004.

<sup>5</sup> Rule 412 Interpretation (b)(1)/01.

<sup>6</sup> NYSE Rule 412(e)(3) and (e)(4).

<sup>7</sup> Rule 412 Interpretation (b)(1)/06.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48928; File No. SR-PCX-2003-59]

### Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. To Amend Its Rules Governing Market-Maker Obligations on the Archipelago Exchange

December 16, 2003.

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 October 21, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), 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 substantially prepared by the PCX. On December 2, 2003, the PCX filed Amendment No. 1 to the proposed rule change.<sup>3</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 proposes to amend its rules governing Market Maker obligations on the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. Specifically, the Exchange proposes to modify PCXE Rule 7.25(b) to eliminate the stipulation that Market Makers must become Odd Lot Dealers in the securities in which they are registered. Furthermore, the Exchange proposes to modify PCXE Rule 7.34(b) to eliminate the requirement that Market Makers must maintain one Cleanup Order for all of the securities in which they are registered. The text of the proposed rule change is set forth below. Proposed new

language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

#### Rule 7

##### Equities Trading

Registration of Odd Lot Dealers

Rule 7.25(a)—No change.

(b) Market Makers Registered in a Security. For each security in which a Market Maker is registered, the Market Maker [must] *may* become an Odd Lot Dealer in that security.

(c)–(e)—No change.

##### Trading Sessions

Rule 7.34(a)—No change.

(b) *Market Maker Obligations.*

(1)—No change.

(2) Market Makers [must] *may, at their discretion,* maintain one Cleanup Order for [all] *any* securities in which they are registered for each Market Order Auction.

(c)–(f)—No change.

\* \* \* \* \*

#### 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 IV below. The Exchange 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

As part of its continuing efforts to enhance participation on the ArcaEx, the PCX is proposing to eliminate the stipulation that Market Makers<sup>4</sup> must become Odd Lot Dealers<sup>5</sup> in the securities for which they are registered. In addition, the Exchange is seeking to eliminate the requirement for Market Makers to maintain Cleanup Orders.<sup>6</sup> The Exchange believes these restrictions currently impose a competitive barrier vis-à-vis other market centers in

attracting Market Maker participation on ArcaEx because competing market centers do not impose such requirements.<sup>7</sup> Hence, the Exchange believes that removal of these restrictions will place the ArcaEx at competitive parity with other market centers.

Currently, PCXE Rule 7.25(b) requires Market Makers to become Odd Lot Dealers in each security in which they are registered. Once registered, an Odd Lot Dealer is obligated to maintain an Odd Lot Tracking Order<sup>8</sup> during each day in which the PCXE is open for business for each security in which the Odd Lot Dealer is registered. The Exchange proposes to modify the requirement for all Market Makers to become Odd Lot Dealers making it optional rather than a requirement. The Exchange represents that the overall system impact from elimination of this requirement would be minimal due to the fact that current Market Maker activity on the ArcaEx affects a small number of securities.<sup>9</sup>

Furthermore, pursuant to PCXE Rule 7.34(b), Market Makers are required to maintain one Cleanup Order<sup>10</sup> in all

<sup>7</sup> See e.g., NASD Rules 4611 and 4612.

<sup>8</sup> If an unfilled order or portion of an order that enters the Tracking Order Process is an odd lot, ArcaEx would match the order against any Odd Lot Tracking Orders ("OLTO"), using the same rotation process as the Tracking Order Process. An OLTO, which could only be submitted to ArcaEx by a registered Odd Lot Dealer, is a Tracking Order in which: (1) The maximum aggregate size is unlimited; (2) the maximum tradeable size is 99 shares; (3) the price is set at the NBBO; (4) the security is one in which the Odd Lot Dealer is registered as such; and, (5) the instruction would have to be in effect for the duration of Core Trading Hours. See PCXE Rule 7.31(f)(3), 7.31(g), and 7.37(c).

<sup>9</sup> Currently, odd lots are able to receive execution by matching to other odd lot or round lot orders. Under the proposed rule change, odd lots would be handled in the same manner. Hence, elimination of the requirement for Market Makers to become an Odd Lot Dealer would have minimal impact on how odd lots are treated in the marketplace as odd lots interact with round lot orders on a pure price, time priority basis.

<sup>10</sup> Cleanup Up Orders are only applicable to Market Order Auctions. Cleanup Orders (1) could be submitted only by Market Makers; (2) would have to be submitted to ArcaEx before 6:15 a.m. (Pacific time) and remain in effect until the conclusion of the Market Order Auction; (3) would have to be 2500 shares in size; (4) would have to be entered as both buy or sell orders, provided, however, the Cleanup Order could be executed only on the side of the market opposite the Imbalance; (5) would be executed at the Indicative Match Price as of the time of the Market Order Auction; and (6) would be executed only if: (i) there was an Imbalance of eligible orders at the conclusion of the Market Order Auction, as provided in proposed PCXE Rule 7.35; and (ii) the Imbalance is less than or equal to aggregate size of all Cleanup Orders in the relevant security. If there is an Imbalance and Cleanup Orders would be executed, the market orders which make up the Imbalance would be divided equally among, and allocated to, all Market

<sup>9</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> Amendment No. 1 replaces the originally filed Form 19b-4 in its entirety.

<sup>4</sup> See PCXE Rule 1.1(u) (definition of "Market Maker"). See also PCXE Rules 7.20-7.23 relating to the registration and obligations of Market Makers.

<sup>5</sup> See PCXE Rule 1.1(gg) (definition of "Odd Lot Dealer"). See also PCXE Rule 7.25 relating to the registration of Odd Lot Dealers.

<sup>6</sup> See PCXE Rule 7.31(u) (definition of "Cleanup Order").