Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 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 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File No. SR–CBOE–98–28 and should be submitted by August 19, 1998.

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

The Commission finds that the Exchange's proposal to provide the option of obtaining the Exchange Bulletin via e-mail to non-members at a cost of $50.00 per copy is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act [9] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members, issuers and other persons using its facilities.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register.** The Commission believes that accelerated approval of the proposal is appropriate because the Exchange is merely adding an alternative method for non-members to receive the Exchange Bulletin that will facilitate access to the Bulletin by both members and non-members at a cost less than the current fee for a hard copy of the Exchange Bulletin.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [10] that the proposed rule change relating to non-members, is hereby partially approved on an accelerated basis.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–20190 Filed 7–28–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40253; File No. SR–NYSE–98–12]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc., Relating to Changes in Bond Listing Procedures and Practices

July 23, 1998.

I. Introduction

On April 15, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its bond listing procedure and practices. On April 30, 1998, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on May 13, 1998.[4] No comments were received regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The NYSE proposes to amend its Listed Company Manual (''Manual'') to alter certain provisions regarding listing requirements for debt securities and other debt security practices. Those provisions in the Manual include:

(i) *Interest Payments.* Currently, Paragraph 204.18 requires that an issuer or its paying agent notify the Exchange whenever the issuer makes an interest payment, and the Exchange also requires an issuer to notify the press and the Exchange whenever the issuer does not meet its interest obligations. The proposal would delete the obligation to inform the Exchange of interest payments made, whether by confirmation cards or otherwise. And, the proposal also adds to the end of Paragraph 204.18 a cross-reference to 202.00, which reminds issuers that they are required to disclose material information (including the inability to meet payment obligations).

(ii) *Multiple Facsimile Signatures.* Paragraph 501.06 presently requires bonds to be executed, either manually or by facsimile machine, by two of the issuer's officers. Whether the issuer uses one facsimile signature (and one manual signature) or two facsimile signatures, the Exchange currently requires the issuer to submit an opinion of counsel that states that the use of each facsimile signature (a) is specifically authorized by (or at least is not inconsistent with) the issuer's charter or by-laws and the issue's indenture, and (b) is valid and effective under the laws of the state of the issuer's incorporation. When a single facsimile signature is used, the opinion of counsel also must state that the actual facsimile signature to be used has been duly adopted. Where two facsimile signatures are used, the issuer must submit to the Exchange the board resolution adopting the actual signatures to be used.

Although the Exchange would continue to require issuers to authorize the use of facsimile signatures, to adopt the specific facsimile signatures to be used, to comply with charter, by-law and indenture provisions, and to comply with state laws, it proposes to discontinue the practice of requiring issuers to submit opinions of counsel and board resolutions in respect of those requirements.

(iii) *Discharge of Obligation upon Default of Funds.* Paragraph 602.01 and Subparagraph (D) of Paragraph 703.06 currently each require, in part, that a debt security's indenture may not discharge the issuer's payment obligation if the funds representing payment are deposited with the trustee, depository or paying agent more than ten days before the date on which the funds become available to bond holders. The Exchange would remove this requirement from the Manual.

(iv) *Clearance of Terms.* Subparagraph (B) of Paragraph 703.06 presently asks an issuer to submit the indenture and registration terms to the Exchange prior to applying to list a bond and to receive the Exchange's clearance of the terms of those documents before the company is permitted to use a ''listing intention

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made technical corrections to the proposed rule change and clarified the purpose of the proposal. *See* Letter from James E. Buck, Senior Vice President and Secretary, Exchange, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, dated April 29, 1998. (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 39973 (May 7, 1998), 63 FR 26660.

statement'' in the offering prospectus. The proposal would eliminate these requirements and would amend Subparagraph (B) to clarify the remaining portions of that Subparagraph. The remaining portions provide guidance on the contents of a description of the issue. The Exchange has clarified that the description of the issue is part of the listing application for the security and is reviewed prior to the date the security is listed.[5]

(v) *Delivery of Prospectus, Mortgage and/or Indenture.* Subparagraph (F) of Paragraph 703.06 currently requires the issuer to provide with its listing application four copies of a security's prospectus if the debt security has been issued for 12 months or less and to provide one copy of the prospectus if the debt security has been issued for more than 12 months. The Exchange also requires the issuer to provide one final copy of the issuer's mortgage or indenture.

The Exchange proposes to change those document delivery requirements if the issuer makes the document publicly available by means of a disclosure service (such as Disclosure, Inc.) that the Exchange finds satisfactory. If a document is available in that manner, the Exchange would no longer require the issuer to submit the final copy (in the case of a mortgage or indenture) and would require the issuer to submit only one copy of the prospectus, even if the debt security has been issued for 12 months or less.

(vi) *Opinion of Counsel.* Subparagraph (G) of Paragraph 703.06 now requires an issuer to provide the Exchange with an opinion of counsel that verifies such things as the validity of the debt securities and the authorization for the issuance. Pursuant to the proposal, for issues that a registered broker-dealer purchases from the issuer with a view toward resale, whether through an underwritten public offering or otherwise, the Exchange would accept as sufficient an issuer's affirmation of the existence of the opinion of counsel. The Exchange would continue to require the submission of the opinion of counsel for Rule 144A offerings.

In addition, the Exchange would eliminate certain of the items that currently must appear in the opinion of counsel. Specifically, the Exchange would no longer require the opinion: (a) To set forth the date, nature, and status of orders or proceedings of regulatory authorities relating to the issuance of securities that are the subject of a listing application; (b) to state that the Board has authorized the issuing and listing of the securities; and (c) to disclose an affiliation of the counsel to the issuer.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act. In particular, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act.[6] Section 6(b)(5) requires, among other things, that the rules of the Exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission agrees with the Exchange that the proposed changes to the Manual should facilitate the listing process for debt securities and should update rules and policies to better conform with current practices. By eliminating certain requirements in the Manual, it should become less burdensome for companies to follow relevant procedures. This in turn should improve the transparency of the debt securities market for all market participants, including investors. With less burdensome rules and procedures, additional companies might list their debt securities on the NYSE, thus increasing the number of these securities accessible through and subject to the Exchange's trading and disclosure systems.

Moreover, the Commission feels that such benefits should outweigh any minimal protection afforded by eliminated provisions. Having carefully reviewed each of the proposed changes to the Manual, the Commission agrees with the Exchange's representation that each of the eliminated provisions and document submission requirements are no longer necessary.

More specifically, the Commission agrees that an issuer's obligation to report to the press and to the Exchange failures to meet payment obligations and unusual conditions and circumstances related to and issuer's ability to meet interest payments sufficiently protects investors without also continuing to require that issuers notify the Exchange each time an interest payment is made.

Second, as to facsimile signatures, recognizing the continued requirements that issuers authorized the use of such signatures, adopt the specific facsimile signature to be used, and comply with relevant state laws and charter, by-law, and indenture provisions, it is appropriate to eliminate additional submissions of opinions of counsel and board resolutions related to such requirements. The Commission notes the increased acceptance of facsimile signatures and agrees with the Exchange that the remaining requirements related to such signatures should adequately protect the public.

Third, the Commission concurs with the elimination of the prohibition against a debt security's indenture discharging the issuer's payment obligation if the funds representing payment are deposited with the trustee, depository or paying agent more than ten days before the date on which the funds become available to bond holders. As the Exchange represented, the prohibition addressed the practice of depositing securities with the trustee in advance of a payment obligation as a way of satisfying a restrictive covenant where the indenture does not provide for prepayment. The Exchange adopted those provisions to protect bondholders prior to the enactment of the Trust Indenture Act and the widespread use of early call provisions. However, the Exchange notes that the practice of advance security deposits is no longer in use. The Commission agrees that this along with protections now afforded bondholders by the Trust Indenture Act and the fact that an issuer's defeasance does not normally discharge that issuer's payment obligation to the bondholder as set forth in the debt instrument weigh in favor of removing the ban.

Fourth, the Commission also finds that elimination of early submission and prior clearance requirements are permissible. The Commission notes that when evaluating a bond for listing, the Exchange currently examines whether the issuer's equity security is listed on the Exchange or, if the issuer does not list an equity security on the Exchange, whether a nationally recognized security rating organization has rated the debt issue no lower than a Standard & Poors' ''B'' rating or its equivalent. This evaluation should give the Exchange sufficient indication of whether the issuer should be permitted to move forward with the listing process prior to a debt security's listing. Furthermore, the Exchange explains that nothing in its filing on

[5] *See* Letter From Fred Siesel, Director, Fixed Income Markets, Exchange, to Kenneth M. Rosen, Attorney, Division of Market Regulation, Commission, dated July 10, 1998 (''July 10 Letter'').

[6] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

bond listing procedures in any way changes the Exchange's substantive debt listing standards nor the Exchange's enforcement of those standards, such as the requirement that to be listed the issue must have a par value of at least $5,000,000.[7]

As for early review of indenture terms, what continued to necessitate such review was the prohibition against defeasance discussed above. However, by eliminating that requirement, the Exchange eliminates the last justification of its need to pre-clear indenture and registration terms. Despite these changes, the Commission notes that the Exchange has represented that issuers may still contact the Exchange to discuss the issue's eligibility prior to engaging in the process of completing a listing application when it is uncertain as to whether it will qualify for listing.

Fifth, the Commission finds that it is appropriate for the Exchange to ease certain document submission requirements when those documents are readily available to the Exchange through electronic services. The Exchange has clarified that for such a service to qualify as satisfactory, it must be one to which the Exchange subscribes, and the NYSE also has noted its access to other SEC public document services through the Internet.[8] Consequently, in carrying out its review of debt securities, the Exchange should continue to have ready access to documents which no longer need to be physically submitted by an issuer.

Sixth, substituting the affirmation of the existence of an opinion of counsel for a copy of the opinion should also facilitate the listing process. The Commission accepts the Exchange's representation that its physical possession of the opinion of counsel is no longer necessary because in connection with an underwritten offering the Exchange rarely has need to refer to that opinion, and the Exchange can direct the issuer to provide an opinion should the need arise.[9] Moreover, eliminating content from such opinion should not have a substantial impact. Because the Exchange represents that it has rarely used or relied upon the opinion's description of regulatory proceedings, deletion appears to sacrifice little, while serving to simplify the opinion. In addition, the Commission accepts the use of a listing-application signature of an authorized officer of the issuer as assurance of the board's authorization of the issue and of listing the issue on the Exchange. Moreover, should the Exchange ultimately need to review an opinion, it then could inquire as to any affiliation of the opinion's writer with the issuer.[10]

Finally, the Commission wishes to emphasize again that the proposal does not affect the NYSE's substantive quantitative debt listing standards.[11] And, having reviewed the proposal in light of the requirements and protections that remain in the Manual, the Commission believes that adequate information will remain publicly available to inform investors about the quality of issuers and their debt securities.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSE–98–12), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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[7] *See* July 10 Letter.

[8] *See* July 10 Letter.

[9] *See* July 10 Letter.

[10] *See* Amendment No. 1.

[11] *See* July 10 Letter.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40249; File No. SR–PCX–98–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Listing and Maintenance Fees for Nasdaq Listings

July 22, 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 July 14, 1998, 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 the Exchange.[3] 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 modify its listing and maintenance fees so that certain issues listed on both the PCX and the Nasdaq Stock Market, Inc. (''Nasdaq'') will be deemed to be ''dually listed'' for purposes of the Exchange's Listing Fee Schedule. The text of the proposed rule change is set out below. Additions are italicized. Deletions are bracketed.

LISTING FEE SCHEDULE

Original Listing Fees—Original Listing fees are fixed fees in that they are not charged by the number of shares being listed:	
Common Stock, dually listed on NYSE [or] AMEX, *or Nasdaq National Market*	$10,000.00
Common Stock, not listed on NYSE [or] AMEX, *or Nasdaq National Market*	20,000.00
Annual Maintenance Listing Fee (Billed and payable January of each year following initial listing):	
For one issue, dually listed on NYSE [or] AMEX, *or Nasdaq National Market*	$1,000.00
For one issue, not listed on NYSE [or] AMEX, *or Nasdaq National Market*	2,000.00

[1] 15 U.S.C. 78s(b)(1) (1994).

[2] 17 CFR 240.19b–4 (1997).

[3] The proposed rule change was originally filed on June 19, 1998 pursuant to Section 19(b)(3)(A)(ii) of the Act. The amendment converted the proposed rule change to a filing pursuant to Section 19(b)(2) of the Act because the proposed rule change modifies fees that apply to issuers. Letter from Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX to Kelly McCormick, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated July 10, 1998.