abrogate such rule change if it appears to the Commission that such action in 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 forgoing, 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, 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASDAQ. All submissions should refer to File No. SR–NASD–98–05 and should be submitted by March 11, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3998 Filed 2–17–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39634; File No. SR–NYSE–94–34]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 4 to Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Exchange Rule 92, ''Limitations on Members' Trading Because of Customers' Orders''

February 9, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 15, 1997, 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 Exchange. 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

In its original form, the proposed rule change extended the applicability of Exchange Rule 92 to trades by a member or member organization on any market center and provided a limited exemption to permit member organizations to trade along with their customers when liquidating a block facilitation position or engaging in bona fide or risk arbitrage. Amendment No. 4 provides an additional limited exemption for hedging a facilitation position, as well as explanations of the manner in which the amended rule will operate.

The following is the text of the proposed rule change marked to reflect all of the proposed changes.[2] Additions to the current text of Exchange Rule 92 appear in italics while deletions appear in brackets.

Rule 92: Limitations on Members' Trading Because of Customers' Orders

[(a) No member shall (1) personally buy or initiate the purchase of any security on the Exchange for his own account or for any account in which he, his member organization or any other member, allied member or approved person, in such organization or officer thereof, is directly or indirectly interested, while such member personally holds or has knowledge that his member organization holds an unexecuted market order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account, while he personally holds or has knowledge that his member organization holds an unexecuted market order to sell such security in the unit of trading for a customer.

(b) No member shall (1) personally buy or initiate the purchase of any security on the Exchange for any such account, at or below the price at which he personally holds or has knowledge that his member organization holds an unexecuted limited price order to buy such security in the unit of trading for a customer, or (2) personally sell or initiate the sale of any security on the Exchange for any such account at or above the price at which he personally holds or has knowledge that his member organization holds an unexecuted limited price order to sell such security in the unit of trading for a customer.]

(a) Except as provided in this Rule, no member or member organization shall cause the entry of an order to buy (sell) any Exchange-listed security on the Exchange or any other market center for any account in which such member or member organization or any approved person thereof is directly or indirectly interested (a ''proprietary order''), if the person responsible for the entry of such order has knowledge of any particular unexecuted customer's order to buy (sell) such security which could be executed at the same price.

(b) A member or member organization may enter an proprietary order while representing a customer order which could be executed at the same price, provided the customer's order is not for the account of an individual investor, and the customer has given express permission, including and understanding of the relative price and sized of allocated execution reports, under the following conditions:

(1) the member or member organization is liquidating a position held in a proprietary facilitation account, and the customer's order is for 10,000 shares or more; or

(2) the member or member organization is creating a bona fide hedge and (i) the risk to be hedged is the result of a previously-established position, recorded as acquired in the course of facilitating a customer's order; (ii) the size of the offsetting hedging order is commensurate with such risk; and (iii) the customer's order is for 10,000 shares or more; or

(3) the member or member organization is engaging in bona fide arbitrage or risk arbitrage transactions, and recording such transactions in an account used solely to record arbitrage transactions (an ''arbitrage account'').

(c) The provisions of this Rule shall not apply *to*:

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[7] 17 CFR 200.30–3(a)(12).

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

[2] The text of the proposed rule change incorporates all of the proposed changes made to the original rule proposal by Amendment Nos. 1, 2, 3, and 4. *See* Securities Exchange Act Release Nos. 35139 (Dec. 22, 1994), 60 FR 156 (Jan. 3, 1995) (notice of filing of proposed rule change, including Amendment No. 1); 36015 (July 21, 1995), 60 FR 38875 (July 28, 1995) (notice of filing of Amendment No. 2); 37428 (July 11, 1996), 61 FR 37523 (July 18, 1996) (notice of filing of Amendment No. 3). On January 20, 1998, the Exchange submitted a technical correction to Amendment No. 4 to better identify the cumulative proposed changes to Exchange Rule 92. *See* Letter from Betsy Lampert Minkin, Regulatory Development Project Manager, Exchange, to Michael Loftus, Attorney, Division of Market Regulation, Commission, dated January 12, 1998.

(1) [to] any purchase or sale of any security in an amount of less than the unit of trading made by an odd-lot dealer to offset odd-lot orders for customers; [or]

(2) [to] any purchase or sale of any security upon terms for delivery other than those specified in such unexecuted market or limited price order[.]*;*

(*3*) *transactions by a member or member organization acting in the capacity of a market maker pursuant to Securities and Exchange Commission Rule 19c–3 in a security listed on the Exchange; and*

(*4*) *transactions by a member or member organization acting in the capacity of a specialist or market maker on another national securities exchange.*

Supplementary Material

.10 A member or employee of a member or member organization responsible for entering proprietary orders shall be presumed to have knowledge of a particular customer order unless the member organization has implemented a reasonable system of internal policies and procedures to prevent the misuse of information about customer orders by those responsible for entering such proprietary orders.

.20 If both the propriety and customer orders which are the subject of the transaction under review were executed in another market center, the Exchange would refer the trading to that market's regulatory staff, unless that market center does not have a substantially similar rule relating to ''trading along'' activity executed in that market center. If the market does not have a substantially similar rule, Exchange Rules would govern the analysis.

If either the proprietary or customer order was executed on the Exchange and the other market center has a rule which is not substantially similar, the Exchange would pursue the matter under its Rules. However, if the rules are substantially similar, the rule of the market center where the proprietary trading occurred would govern the analysis of that trading. In any case, all investigations would be coordinated through existing Intermarket Surveillance Group procedures.

To be substantially similar, the difference in application of the rules to the transaction must be minor and technical in nature, and not materially different such as would be the case if the other rule contained an additional broad exemptive clause under which the proprietary trading is exempted.

.30 This Rule shall also apply to a member organization's member on the Floor, who may not execute a proprietary order at the same price, or at a better price, as an unexecuted customer order that he or she is representing, except to the extent the member organization itself could do so under this Rule.

.40 For purpose of paragraph (b) above, the term ''account of an individual investor'' shall have the same meaning as the meaning ascribed to that term in Exchange Rule 80A. For purposes of paragraph (b)(1) above, the term ''proprietary facilitation account'' shall mean an account in which a member organization has a direct interest and which is used to record transactions whereby the member organization acquires positions in the course of facilitating customer orders. Only those positions which are recorded in a proprietary facilitation account may be liquidated as provided in paragraph (b)(1). For purposes of paragraph (b)(3) above, the terms ''bona fide arbitrage'' and ''risk arbitrage'' shall have the meaning ascribed to such terms in Securities Exchange Act Release 15533, January 26, 1979. All transactions effected pursuant to paragraph (b)(3) above must be recorded in an arbitrage account.

[.10].*50* A member who issues a commitment or obligation to trade from the Exchange through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or a sale of a security on the Exchange as referred to in this Rule.

[.20].*60* See paragraph (c)(i) of Rule 900 (Basket Trading: Applicability and Definitions) and Rule 900 (Off-Hours Trading: Applicability and Definitions) in respect of the ability to initiate basket transactions and transactions through the ''Off-Hours Trading Facility'' (as Rule 900 defines that term), respectively, notwithstanding the limitations of this Rule.

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 Exchange 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

As previously amended, the proposed rule change would extend the applicability of Exchange rule 92 to trades by a member or member organization in NYSE-listed securities on any market center and provide limited exemptions to permit member organizations to trade along with their customers when liquidating a block facilitation position or engaging in bona fide arbitrage or risk arbitrage. The Exchange seeks to further revise the application of Exchange Rule 92 as set forth below.

(a) *Hedge Exemption.* The Exchange proposes to add to Exchange Rule 92 and exemption to permit member organizations to trade along with their customers when creating a bona fide hedge. The member or member organization would be allowed to trade along with a customer order of 10,000 shares or more where the customer is not an individual investor and has given express permission to allow the member organization to trade along, provided the hedging activity meets certain conditions. The member or member organization must be trading to hedge the risk of a previously-established position, recorded as acquired in the course of facilitating a customer order, and the size of the offsetting hedging order must be commensurate with such risk. this means that a member organization's proprietary hedging order that meets the above criteria could be represented along with a working order of a customer who had granted consent to do so.

The determination of what constitutes an offset or reduction of risk may be made by using any responsible method of calculating the size of the risk and type of securities which would appropriately hedge that risk.

(b) *Application to Other Market Centers.* The previously proposed amendments to Exchange Rule 92 contain prohibitions against a member or member organization entering an order for its own or a related account if the person entering the order has knowledge of a customer order capable of execution at the same price. This prohibition is proposed to apply whether the trade for the customer or the member or member organization in a NYSE-listed security occurs on the Exchange or on ''any other market center.'' The Exchange now proposes to incorporate into paragraph .20 of the proposed rule's Supplementary Material

the manner in which this provision concerning ''any other market center'' would be applied, as described below.

If both the proprietary and agency trading which are under review were executed in another market center, the Exchange would refer the matter to that market's regulatory staff, unless that market center does not have a substantially similar rule relating to ''trading along'' activity executed in that market center. If the market does not have a substantially similar rule, Exchange rules would govern the analysis.

If either the proprietary or agency trading were executed on the Exchange and the other market center has a rule which is not substantially similar, the Exchange would pursue the matter under Exchange rules. However, if the rules are substantially similar, the rule of the market center where the proprietary trading occurred would govern the analysis of that trading. All investigations would be coordinated through existing Intermarket Surveillance Groups procedures.

To be ''substantially similar,'' the difference in application of the rules to the transaction must be minor and technical in nature, and not materially different such as would be the case if the other rule contained an additional broad exemptive clause under which the proprietary trading is exempted.

2. Statutory Basis

The statutory basis for the proposed rule change is the requirement under Section 6(b)(5) of the Act [3] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change will enable member organizations to add depth and liquidity to the Exchange's market, while continuing to provide customer protection through the requirement of customer approval for trading along situations.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

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 Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Inerested 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, N.W., Washington, D.C. 20549. Copies of the submissions, 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 persons, 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 Exchange. All submissions should refer to File No. SR–NYSE–94–34 and should be submitted by March 11, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

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[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39635; File No. SR–PCX–97–21]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Suspension of Its Automatic Execution System (''Auto-Ex'') During Unusual Market Conditions

On June 4, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] The filing was thereafter amended on August 8, 1997.[3] In this filing, as amended, the Exchange proposed amendments permitting suspension of its Automatic Execution System (''Auto-Ex'') during unusual market conditions, and related actions. Notice of this proposed rule filing was published in the **Federal Register** On August 19, 1997 (''Notice'').[4] The Commission did not receive comment letters on the filing.

I. Description of Proposal

The Exchange is proposing to modify its Rule 6.28 (''Unusual Market Conditions'') to address situations involving system failures, ranging from ''frozen screens'' in an issue (where quote changes are entered into the system, but such changes are not reflected in the market being disseminated) to a floor-wide system malfunction of the POETS system (where all screen displays on the floor fail).[5] Rule 6.28 currently provides that whenever on Options Floor Official determines that ''an unusual condition or circumstance'' exists, because of an influx of orders or other unusual conditions or circumstances, and the interests of maintaining a fair and orderly market so require, such official may declare a ''fast market'' in one or more classes of option contracts.[6] The

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

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Michael D. Pierson, Office of Regulatory Policy, Exchange to Mandy S. Cohen, Division of Market Regulation, Commission dated August 7, 1997. A further technical amendment was filed on February 9, 1998. *See* Letter from Michael D. Pierson, Office of Regulatory Policy, Exchange to Mandy S. Cohen, Division of Market Regulation, Commission dated February 9, 1998.

[4] *See* Securities Exchange Act Release No. 38927 (August 12, 1997), 62 FR 44159 (August 19, 1997) (File No. SR–PCX–97–21).

[5] ''POETS'' is an acronym for the Pacific Options Exchange Trading System.

[6] *See also* PCX Options Floor Procedure Advice G–9 (''Fast Market Procedures'').