

Nasdaq has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act²⁵ for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The Commission finds good cause for granting accelerated approval for the proposed rule change because the Nasdaq pilot will benefit investors by improving the transparency of the current after-hours market and assisting broker-dealers in fulfilling their duty of best execution for their customer orders.

The Commission further believes that good cause exists for approving 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**. The first item covered in Amendment No. 1 merely changes the date for implementation of the after-hours trading session as a pilot program from October 11, 1999 to October 25, 1999. The Commission believes that delaying the implementation date will provide Nasdaq and its member firms with additional time to make any necessary systems changes. The second and third items of Amendment No. 1 address how the Manning Rule will apply during the extended hours of the pilot from 4 p.m. to 6:30 p.m. Eastern Time. In the second item, Nasdaq confirmed that, on October 6, 1999, the Board of Directors of Nasdaq approved the expansion of the applicability of the Manning Rule to 6:30 p.m. Eastern Time. In the third item, Nasdaq clarified the application of the Manning Rule after 4 p.m. Eastern Time by adding a footnote to IM-2110-2(a) discussing the handling of customer limit orders if the customer does not formally opt-in to processing limit orders during the extended-hours period. The Commission believes that the Manning Rule's customer limit order protections should be provided to customers who opt-in to having their orders processed in the extended-hours period, and that, therefore, there is good cause for accelerating the approval of these items in Amendment No. 1. The Commission notes that the remaining items discussed in Amendment No. 1 clarify how Nasdaq will continue to make certain trade information available to the mutual fund industry. These clarifications further ensure that the pilot program will provide protection to investors who participate in the market through mutual funds. Accordingly, the Commission believes that there is good cause for accelerating the approval of all of the items in Amendment No. 1.

While extended operation of some key Nasdaq trade reporting and quotation dissemination systems will significantly improve the current trading environment after the major markets close, the Commission recognizes that Nasdaq's pilot program does not yet include some features that would be essential for a full after-hours trading session. Specifically, Nasdaq's pilot does not require registered market makers in Nasdaq securities to participate in after-hours trading from 4 p.m. to 6:30 p.m. Eastern time and does not envision the use of the Small Order Execution System ("SOES") during this period. In Nasdaq's view, its market will not be open during the hours of the pilot. The Commission believes that, before Nasdaq opens its market for extended trading, it would need to incorporate additional market integrity and investor protection features.²⁶

In addition, the Commission has expedited approval of this proposal with the understanding that the systems limitations that currently prevent the calculation of the best bid and offer for Nasdaq stocks after 4 p.m. Eastern Time will be addressed expeditiously. Such calculations will be necessary for the Nasdaq's Short Sale Rule to apply to trading during the 4:30 p.m. to 6:30 p.m. Eastern Time period. The Commission expects that Nasdaq will make every reasonable effort to work with the vendors and the mutual fund community to implement the systems enhancements needed for calculating the inside quote as soon as possible.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁷ that the proposed rule change (SR-NASD-99-57), including Amendment No. 1, is approved as a pilot program through March 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁸

Margaret H. McFarland,
Deputy Secretary.

[FR Doc 99-27308 Filed 10-19-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41996; File No. SR-NYSE-98-47]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to Proposed Rule Change To Adopt Rule 440 I Requiring Records of Compensation Arrangements Concerning Floor Brokerage

October 8, 1999.

I. Introduction

On December 23, 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 adopt Rule 440 I, requiring records of compensation arrangements concerning floor brokerage. On May 14, 1999, the Exchange filed Amendment No. 1 to the proposed rule change.³

The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on June 2, 1999.⁴ The Commission received no comments on the proposal. On June 23, 1999, the NYSE submitted Amendment No. 2 to the proposed rule change.⁵ This notice and order approves the proposed rule change as amended and seeks comment from interested persons concerning Amendment No. 2.

II. Description of the Proposal

Proposed Rule 440 I would require that every member not associated with a member organization, and each member organization primarily engaged as an agent in executing transactions on the Floor of the Exchange, maintain a

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated May 12, 1999. In Amendment No. 1, the Exchange explained why the proposed rule change would apply only to floor members and member organizations but not to "upstairs" members and member organizations.

⁴ Securities Exchange Act Release No. 41441 (May 24, 1999), 64 FR 29723.

⁵ See Letter to Richard Strasser, Assistant Director, Division, SEC, from Daniel Parker Odell, Assistant Secretary, NYSE, dated June 22, 1999. In Amendment No. 2, the Exchange revised the proposed rule test in Supplementary Material .10(a) to exclude compensation arrangements involving gross compensation of less than \$5,000, rather than the originally proposed level of \$10,000.

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ See, e.g., n. 18, *supra*.

²⁷ 15 U.S.C. 78s(b)(2).

²⁸ 17 CFR 200.30-3(a)(12).

written record of each type of compensation arrangement that they enter into with other members, member organizations, non-member organizations, or customers relating to transactions on the Floor. The written record would include a description of each type of arrangement and identify, by name, the parties to each type of arrangement in effect.

In addition, proposed Rule 440 I, Supplementary Material .10 would exclude the following compensation arrangements from the requirement to maintain a written record:

(1) Arrangements involving gross compensation of less than \$5,000 per year;⁶ and

(2) Arrangements involving orders transmitted solely through the Exchange's electronic order routing system.⁷

Proposed Rule 440 I, Supplementary Material .20 would provide that a member or member organization is deemed to be primarily engaged as an agent in executing transactions on the Floor of the Exchange if at least 75% of its revenue is derived from floor brokerage.

The proposed would apply to members and member organizations primarily engaged as agents in executing transactions on the Floor of the Exchange. It would specify a type of record, records of compensation arrangements, in addition to the records required to be maintained under Exchange Act Rules 17a-3⁸ and 17a-4,⁹ that the Exchange believes is critical to providing the Exchange the ability to monitor floor broker activities. The proposed would not apply to "upstairs" (i.e., off the Floor) members and member organizations. The proposal explains that independent brokers do not generally have independent supervisory structures nor are they subject to the same formalized internal supervisory oversight as "upstairs" organizations because many independent brokers act as sole proprietors with a limited customer and product base.

III. Discussion

The Commission finds that the proposed rule change is consistent with

the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).¹⁰ Specifically, the Commission believes that by strengthening the Exchange's ability to examine and surveil activities on the Exchange Floor, the proposal is consistent with the Section 6(b)(5)¹¹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.¹²

The proposed rule change is intended to fulfill some of the requirements of the undertakings contained in the order issued by the Commission relating to the settlement of an enforcement action against the NYSE for failure to enforce compliance with Section 11(a) and Rule 11a-1 of the Exchange Act and NYSE Rules 90, 95 and 111.³ The SEC Order found that the NYSE's floor broker regulatory program suffered from two major deficiencies: (1) The NYSE failed to take appropriate action to police for profit-sharing or other performance-based compensation of independent floor brokers; and (2) the NYSE suspended its routine independent floor broker surveillance for extensive periods of time.¹⁴ Pursuant to the SEC Order, among other things, the NYSE agreed and was ordered to enhance and improve by June 28, 2000 its regulation of independent floor brokers, member firm floor brokers, specialists, registered competitive market makers and competitive traders (collectively "Floor Members") by: (a) examining the floor trading activities of all floor members every two years; (b) ongoing, continuous surveillance of all floor members; (c) thoroughly investigating indications of possible violations by floor members; (d) ensuring that members of its regulatory staff are present on the NYSE trading floor during trading hours to surveil for potential trading violations; (e) ensuring adequate coordination among all staff responsible for floor

members surveillance, investigations, and disciplinary matters; and (f) increasing staff with adequate expertise in the regulations of floor members within the Department of Member Trading Analysis. The Commission believes that, by strengthening the Exchange's ability to examine and surveil independent floor brokers' activities on the Exchange Floor, the proposed rule change is consistent with and is an important step toward satisfying certain of the undertakings relating to floor broker oversight.

The proposal requires members and member organizations primarily engaged as agents in executing transactions on the Floor of the Exchange (i.e., firms where 75% of revenue is derived from floor brokerage) to maintain a detailed written record of their compensation agreements, unless the arrangement involves gross compensation of less than \$5,000 per year or involves orders transmitted solely through the Exchange's electronic order routing system. The Commission finds that requiring members and member organizations to maintain records of these compensation arrangements will facilitate the Exchange's review of such arrangements on an ongoing basis is part of the routine examination process, as well as on a for cause basis, for compliance with Section 11(a) of the Act¹⁵ in terms of whether any such arrangement constitutes a member or member organization having an interest in an account. The Commission also finds that enhancing the recordkeeping requirement of this limited group of Exchange members with respect to compensation arrangements is consistent with the Exchange's responsibility, under Section 6(b)(5) of the Act, to prevent fraudulent and manipulative acts and practices.

The Exchange clarifies that the scope of the proposal encompasses "\$2 brokers" or "independent brokers" but excludes "upstairs" members and member organizations. The proposal explains that independent brokers do not generally have independent supervisory structures nor are they subject to the same formalized internal supervisory oversight as "upstairs" organizations because many independent brokers act as sole proprietors with a limited customer and product base. Requiring independent floor brokers to maintain records of

⁶ *Id.*

⁷ The NYSE is proposing to exclude orders transmitted solely through the Exchange's electronic order routing system because the Exchange believes the automatic feature of this system prevents manipulation by independent floor brokers. Telephone conversation between Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, and Heather Traeger, Attorney, Division, SEC, on July 16, 1999.

⁸ 17 CFR 240.18a-3.

⁹ 17 CFR 240.18a-4.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 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).

¹³ See In the Matter of New York Stock Exchange, Inc., SEC Release No. 34-41574, June 29, 1999; Administrative Proceeding File No. 3-9925 ("SEC Order").

¹⁴ *Id.*

¹⁵ Subject to certain exemptions, Section 11(a) prohibits a member or member organization from executing on the Exchange an order for that member's or member organization's "own account" or any account in which the member or member organization has an interest. 15 U.S.C. 78k(a).

compensation arrangements will facilitate the Exchange's ability to monitor independent floor broker activities, which may lack the internal safeguards in place at upstairs firms.

The Commission finds good cause for approving Amendment No. 2 to proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 revises the proposed rule text in Supplementary Material .10(a) to exclude compensation arrangements involving gross compensation of less than \$5,000, rather than the originally proposed level of \$10,000. The Commission believes that the change in the compensation threshold is consistent with proposed Rule 440 I's intent to help the Exchange surveil for potentially abusive compensation arrangements without adding an undue burden of those firms required to keep records under the proposed rule. Accordingly, the Commission finds that good cause exists, consistent with Section 6(b)(5) ¹⁶ and Section 19b(b)(2) of the Act,¹⁷ to grant accelerated approval of Amendment No. 2.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-NYSE-98-47 and should be submitted by November 10, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the

proposed change (SR-NYSE-98-47), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-27369 Filed 10-19-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41994; File No. SR-PCX-99-34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Market Maker Charges and Book Charges

October 8, 1999.

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 August 27, 1999, 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. On September 28, 1999, the PCX submitted to the Commission Amendment No. 1 to the proposed rule change.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 PCX proposes to change its Schedule of Fees and Charges for Exchanges services by increasing Market Maker transaction charges and eliminating Book Execution, Book Staff Entry and Lead Market Maker ("LMM") Book Program Staffing charges. The text of the proposed rule change is attached as *Exhibit A* and is available at the Exchange and at the Commission.

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Robert Pacileo, Staff Attorney, Regulatory Affairs, PCX to Michael Walinskas, Associated Director, Division of Market Regulation, Commission, dated September 27, 1999 ("Amendment No. 1"). Amendment No. 1 clarifies the operation of the market maker and book charges affected by the proposed rule change. Because Amendment No. 1 is substantive the Commission deems the date of the filing to be September 28, 1999, the date the amendment was filed with 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 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

The PCX proposes to make the following changes to its Schedule of Fees and Charges for PCX services:

a. *Market Maker Transaction Fee.* The PCX currently charges Market Makers a transaction fee of \$0.15 per contract side for equity and index options. The PCX proposes to increase this fee to \$0.185 per contract side to offset the loss in revenues anticipated to result from the proposed elimination of the fees set forth in "b," "c," and "d" below.

b. *Book Execution Fee.* The PCX charges executing brokers a Book Execution Fee of \$0.20 per contract side and an Accommodation/Liquidation Transaction Fee of \$0.10 per contract side.⁴ The Book Execution Fee is assessed each time an order in the Book is executed; the Accommodation/Liquidation Fee is charged for so-called "cabinet" trades in which the premium is less than $\frac{1}{16}$.⁵ The PCX proposes to eliminate its Book Execution and Accommodation/Liquidation Transaction Fees.

c. *Book Staff Entry Fee.* The PCX charges its executing brokers a Book Staff Entry Fee, applied to orders manually entered onto the Book by PCX staff, of \$0.50 per entry.⁶ The PCX now proposes to eliminate this Fee.

⁴ The executing broker may pass the fee on to its customer, or may absorb the fee itself, depending on the broker's contractual relationship with its customers. Telephone conversation between Robert Pacileo, Staff Attorney, Regulatory Affairs, PCX, and Gordon Fuller, Special Counsel, and Marla Chidsey, Law Clerk, Division of Market Regulation, Commission (October 7, 1999).

⁵ Telephone conversation between Robert Pacileo, Staff Attorney, Regulatory Affairs, PCX, and Gordon Fuller, Special Counsel, and Marla Chidsey, Law Clerk, Division of Market Regulation, Commission (September 9, 1999).

⁶ As with the Book Execution and Accommodation/Liquidation Fees discussed above, the executing broker may pass on the Book Staff Entry Fee to its customers. *Supra* note 4.

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78f(b)(1).

¹⁸ 15 U.S.C. 78s(b)(2).