

Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2005-054. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of the Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2005-054 and should be submitted on or before May 25, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51628; File No. SR-NYSE-2005-28]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Its Original Financial Listing Standards Pilot Program

April 28, 2005.

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 April 25,

2005, 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 and II below, which items have been prepared by the Exchange. The proposed rule change has been filed by the NYSE as a "non-controversial" rule change pursuant to Rule 19b-4(f)(6) under the Act.<sup>3</sup> 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 seeks to extend its original financial listing standards pilot program (the "Pilot Program")<sup>4</sup> until the earlier of July 31, 2005, or such date as the Commission may approve File Number SR-NYSE-2004-20,<sup>5</sup> which seeks permanent approval of the Pilot Program. The Pilot Program established revised financial standards applicable to the listing of equity securities on the Exchange. The Pilot Program is currently in effect on an extended basis until the earlier of April 30, 2005, or such date as the Commission may approve File Number SR-NYSE-2004-20.<sup>6</sup>

#### 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 parts of such statements.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> See Securities Exchange Act Release Nos. 51104 (January 28, 2005), 70 FR 6482 (February 7, 2005) (File No. SR-NYSE-2005-08); 50615 (October 29, 2004), 69 FR 64799 (November 8, 2004) (File No. SR-2004-58); 50123 (July 29, 2004), 69 FR 57474 (August 5, 2004) (File No. SR-NYSE-2004-40); and 49154 (January 29, 2004), 69 FR 5633 (February 5, 2004) (approving File No. SR-NYSE-2003-43).

<sup>5</sup> See Securities Exchange Act Release No. 51332 (March 8, 2005), 70 FR 15392 (March 25, 2005).

<sup>6</sup> See Securities Exchange Act Release No. 51104, supra note 4.

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

##### 1. Purpose

On January 29, 2004, the Commission granted accelerated approval to the Pilot Program on a six-month pilot basis through July 30, 2004.<sup>7</sup> Two comments were received in response to File Number SR-NYSE-2003-43.<sup>8</sup> The NYSE thereafter filed File Number SR-NYSE-2004-15 on March 16, 2004 for immediate effectiveness,<sup>9</sup> which suspended portions of the original Pilot Program regarding minimum numerical continued listing set forth in section 802.01B of the NYSE's Listed Company Manual. In File Number SR-NYSE-2004-15, the Exchange noted its intention to publish the requirements of the original Pilot Program regarding minimum numerical continued listing standards set forth Section 802.01B for public comment on a non-accelerated timeframe. File Number SR-NYSE-2004-15 did not, however, affect the Pilot Program with respect to original listing standards set forth in sections 102.01C and 103.01B of the NYSE's Listed Company Manual or the Pilot Program's non-substantive change to the language of section 802.01C.

On April 4, 2004, the Exchange filed File Number SR-NYSE-2004-20, which seeks permanent approval for the Pilot Program currently in effect with respect to the Exchange's original minimum listing standards and approval of the continued minimum listing standards as originally proposed in File Number SR-NYSE-2003-43. File Number SR-NYSE-2004-20 was published in the **Federal Register** on July 2, 2004.<sup>10</sup> Three comment letters were received in response to File Number SR-NYSE-2004-20.<sup>11</sup> Following consideration of these comment letters, the Exchange filed Amendment No. 2 to File Number SR-NYSE-2004-20 on August 31,

<sup>7</sup> See Securities Exchange Act Release No. 49154, supra note 4.

<sup>8</sup> See letters to Jonathan G. Katz, Secretary, Commission, from W. Randy Eaddy, Kilpatrick Stockton LLP, dated March 11, 2004, and Kenneth A. Hoogstra, von Briesen & Roper, s.c., dated February 25, 2004.

<sup>9</sup> See Securities Exchange Act Release No. 49443 (March 18, 2004), 69 FR 13929 (March 24, 2004) (File No. SR-NYSE-2004-15).

<sup>10</sup> See supra note 5.

<sup>11</sup> See letters to Jonathan G. Katz, Secretary, Commission, from Richard F. Latour, President & CEO, MicroFinancial Incorporated, July 15, 2004, Kenneth A. Hoogstra, von Briesen & Roper, s.c., dated July 20, 2004, and John L. Patenaude, Vice President Finance and Chief Financial Officer, Nashua Corporation, dated July 22, 2004.

<sup>5</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.

2004.<sup>12</sup> On October 12, 2004, the Exchange filed File Number SR-NYSE-2004-58 to extend the Pilot Program until January 31, 2005.<sup>13</sup> On January 13, 2005, the Exchange filed File Number SR-NYSE 2005-08 to extend the Pilot Program until April 30, 2005.<sup>14</sup> Thereafter, the Exchange filed amendments to File Number SR-NYSE-2004-20 on November 29, 2004,<sup>15</sup> December 17, 2004,<sup>16</sup> January 25, 2005,<sup>17</sup> February 17, 2005,<sup>18</sup> and March 4, 2005.<sup>19</sup> File Number SR-NYSE-2004-20, as amended, was re-published for comment in the **Federal Register** on March 25, 2005.<sup>20</sup> Therefore, the Exchange believes it is appropriate to extend the amended Pilot Program until the earlier of July 31, 2005, or such date as the Commission may approve File Number SR-NYSE-2004-20.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>21</sup> because it is 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.

### 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.

<sup>12</sup> See letter to Nancy J. Sanow, Assistant Director, Division, Commission, from Darla C. Stuckey, Corporate Secretary, NYSE, dated August 31, 2004 ("Amendment No. 2").

<sup>13</sup> See Securities Exchange Act Release No. 50615, supra note 4.

<sup>14</sup> See Securities Exchange Act Release No. 51104, supra note 4.

<sup>15</sup> See Amendment No. 3, dated November 29, 2004, submitted by Mary Yeager, Assistant Corporate Secretary, NYSE.

<sup>16</sup> See Amendment No. 4, dated December 17, 2004, submitted by Mary Yeager, Assistant Corporate Secretary, NYSE.

<sup>17</sup> See Amendment No. 5, dated January 25, 2005, submitted by Mary Yeager, Assistant Corporate Secretary, NYSE.

<sup>18</sup> See Amendment No. 6, dated February 17, 2005, submitted by Mary Yeager, Assistant Corporate Secretary, NYSE.

<sup>19</sup> See Amendment No. 7, dated March 4, 2005, submitted by Mary Yeager, Assistant Corporate Secretary, NYSE.

<sup>20</sup> See Securities Exchange Act Release No. 51332, supra note 5.

<sup>21</sup> 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

Written comments were neither solicited nor received with respect to the proposed rule change.

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

Because the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>22</sup> and Rule 19b-4(f)(6) thereunder.<sup>23</sup> At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Although Rule 19b-4(f)(6) under the Act<sup>24</sup> requires that an Exchange submit a notice of its intent to file at least five business days prior to the filing date, the Commission is waiving this requirement at the Exchange's request in view of the fact that the proposed rule change seeks to continue the existing Pilot Program. The NYSE has also requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the operative date will allow the Exchange's Pilot Program to continue without any interruption in service to issuers and investors. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>25</sup>

<sup>22</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>23</sup> 17 CFR 240.19b-4(f)(6).

<sup>24</sup> *Id.*

<sup>25</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on

### 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. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2005-28 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2005-28. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 on NYSE's Web site (<http://www.nyse.com/regulation/construles/1098741855384.html>) and for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2005-28 and should be submitted on or before May 25, 2005.

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>26</sup>

J. Lynn Taylor,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51627; File No. SR-PCX-2005-27]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Calculation of the National Best Bid or Offer When Another Exchange is Disconnected From the Intermarket Option Linkage

April 28, 2005.

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 March 31, 2005, the Pacific Exchange, Inc. (“PCX” 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. On April 19, 2005, the Exchange 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 Exchange is proposing to add Exchange Rule 6.94(e) to add provisions for declaring an away market unreliable when an away market is disconnected from the Intermarket Option Linkage (“Linkage”)<sup>4</sup> and to relocate the current rule on declaring an away market unreliable to Exchange Rule 6.94(e). The text of the proposed rule change, as amended, is available on the Exchange’s Web site (<http://www.pacificex.com>), at the principal office of the Exchange, and

at the Commission Public Reference Room.

#### 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 purpose of the proposed rule change is to codify the Exchange’s current policy on declaring an away market unreliable when an away market is disconnected from Linkage. Currently, the Exchange relies on Exchange Rule 6.87(h)(4) to determine whether an away market is unreliable.

In order to clarify the Exchange’s practices for declaring an away market unreliable, the Exchange is proposing to add Exchange Rule 6.94(e). Proposed Exchange Rule 6.94(e) is substantially similar to current Exchange Rule 6.87(h)(4), except that proposed Exchange Rule 6.94(e) adds provisions relating to declaring an away market unreliable when such away market is disconnected from Linkage. Proposed Exchange Rule 6.94(e)(A)(iii) would codify the Exchange’s policy to declare an away market unreliable if such away market is disconnected from Linkage. The Exchange believes that declaring an away market that has been disconnected from Linkage unreliable is necessary to eliminate quotes from the National Best Bid or Offer (“NBBO”) calculation that are not readily available to PCX OTP Holders<sup>5</sup> and OTP Firms.<sup>6</sup> When the Exchange receives notice that an away market has been disconnected from Linkage, the senior person in charge of the Exchange Control Room will direct that the away market that has been disconnected from Linkage be declared unreliable and removed from the Exchange’s NBBO calculation until the sooner of the end of the trading day or the time that the quotes are confirmed by the Exchange to be reliable again.

The Exchange believes that the described procedure for removing an away market from, or including an away market in, the Exchange’s NBBO calculation is appropriate and efficient because the Exchange receives electronic confirmation that an away market has been disconnected from or reconnected to Linkage.<sup>7</sup> Receipt of this real time information, in conjunction with the proposed rule change, will allow the Exchange to disseminate the most accurate NBBO calculation to the PCX OTP Holders and OTP Firms.

The Exchange is also proposing to move the provisions for declaring an away market unreliable in Exchange Rule 6.87(h)(4) to proposed Exchange Rule 6.94 (Order Protection), because the Exchange believes Exchange Rule 6.94 is a more appropriate rule to address declaring an away market unreliable.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, because the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

##### 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.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

<sup>7</sup> At the request of the Exchange, the Commission staff made a change to this sentence to clarify that the Exchange believes that the described procedures are appropriate and efficient for both removing an away market, as well as for including an away market, in the Exchange’s NBBO calculation. Telephone conversation between Steven Matlin, Senior Counsel, Exchange, and Kim Allen, Attorney, Division of Market Regulation, on April 22, 2005.

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>26</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> See Form 19b-4 dated April 19, 2005 (“Amendment No. 1”). Amendment No. 1 replaced and superseded the original filing in its entirety.

<sup>4</sup> “Linkage” means the systems and data communications network that link electronically the Participants to one another for the purpose of sending and receiving Linkage Orders, related confirmations, order statuses and Administrative Messages. See Section 2(14) of the Plan for the Purpose of Creating and Operating and Intermarket Option Linkage.

<sup>5</sup> See Exchange Rule 1.1(q).

<sup>6</sup> See Exchange Rule 1.1(r).