This program would only be available to broker-dealers registered under the Act, and would cover all TotalView usage fees with respect to both internal usage and re-distribution to customers with whom the firm has a brokerage relationship.[6] Non-broker-dealer vendors and application service providers would not be eligible for the enterprise license, as such firms, according to Nasdaq, typically pass through the cost of market data user fees to their customers. This would enable firms to incorporate TotalView data into the software applications they make available to their institutional and retail customers, without providing them the opportunity to re-distribute TotalView data in competition with pure vendors.

The enterprise license would cover fees for TotalView data received directly from Nasdaq as well as data received from third-party vendors (*e.g.*, Bloomberg, Reuters). Upon signing up for the program, the relevant firm would be entitled to inform any third-party market data vendor it utilizes (through a Nasdaq-provided form) that, going forward, any TotalView data usage by the broker-dealer may be reported to Nasdaq on a non-billable basis.

III. Summary of Comments

The Commission received one comment letter on the proposed rule change. The commenter expressed its support for enterprise license fees and also for the fact that the product, TotalView, ''does not come with data integration strings attached.'' However, the commenter stated its concerns that NQDS data would be linked with the TotalView data and that the cost of Brut data integrated in the TotalView entitlement is too high.[7] In response, Nasdaq stated that the link between NQDS data and TotalView data was added to ensure compliance with the fee schedule established by the Operating Committee of the UTP Plan, which plan has been approved by the Commission. Nasdaq further noted that the cost of Brut data integrated in the TotalView entitlement has already been approved by the Commission.[8]

IV. Discussion

The Commission has carefully reviewed the proposed rule change, the SIA Letter and the Nasdaq Response Letter and 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 association,[9] the requirements of Section 15A of the Act,[10] in general, and Section 15A(b)(5) of the Act,[11] in particular, which requires that the NASD's rules provide for an equitable allocation of reasonable charges among members for the use of any facility or system which the NASD operates or controls.

The Commission believes that the program whereby a broker-dealer distributor could obtain an enterprise license for the distribution of the TotalView market data entitlement for a fixed cost of either $25,000 per month for non-professional subscribers or of $100,000 per month for broker-dealer distributors that serve both non-professional and professional subscribers satisfies the statutory standards outlined above and will provide increased flexibility to market data vendors, which may result in increased access to market data.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NASD–2005–051), as amended, be, and it hereby is, approved.

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

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4927 Filed 9–8–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52362; File No. SR–NYSE–2005–57]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Automating the Execution of Elected Stop Orders and CAP–DI Orders and Converted CAP–DI Orders

August 30, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on August 10, 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, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the Exchange as effecting a change in an existing order-entry or trading system pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(5)[4] thereunder, which renders the proposal effective upon filing with the Commission. 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 systematize certain functions that are currently performed manually regarding the execution of elected stop orders and CAP–DI (convert and parity-destabilizing, immediate or cancel) orders and converted CAP–DI orders. The Exchange represents that the rules regarding the election and execution of CAP–DI and stop orders and conversion and execution of CAP–DI orders remain the same.

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 Exchange is filing this proposed amendment to systematize certain functions that are currently performed manually regarding the execution of elected stop orders and CAP–DI orders and converted CAP–DI orders.

The rules regarding the election and execution of CAP–DI and stop orders and the conversion and execution of CAP–DI orders remain the same.

---

[6] Distributors who utilize the enterprise license would still be liable for the applicable distributor fees.

[7] *See* SIA Letter.

[8] *See* Nasdaq Response Letter.

[9] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78o–3.

[11] 15 U.S.C. 78o–3(b)(5).

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

[13] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(5).

The Display Book® (''Display Book'' or ''Book'') is the Exchange system that will handle the functions described below. The Display Book is an order management and execution facility that receives and displays orders to the specialist and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. In addition, the Display Book is connected to a variety of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems (*i.e.,* the Intermarket Trading System, Consolidated Tape Association, Consolidated Quotation System, *etc.*).

Background

Exchange Rules 13 and 123A.30 describe percentage orders, including CAP–DI orders, and the manner in which they are elected or converted and executed.

A percentage order [5] is a limited price order placed on the Display Book to buy or sell fifty percent of the volume of specified stock within a specified limit price after the order's entry. A percentage order becomes a ''live'' order capable of execution in one of two ways: (i) All or part of the percentage order is ''elected'' as a limit order when an Exchange trade occurs in the specified security at the percentage order's limit price or better; or (ii) all or part of a CAP order is ''converted'' into a limit order by the specialist, to make a bid or offer or to participate directly in a trade.

A ''D'' notation on a CAP order instructs the specialist that the order may be converted to participate in destabilizing transactions or to bid/offer in a destabilizing manner. The specialist may also convert the order to participate in stabilizing transactions or to bid/offer in a stabilizing manner.

An ''I'' notation on a CAP order stands for ''immediate execution or cancel'' and instructs the specialist to cancel an elected portion of the percentage order that is not executed immediately at the price of the electing transaction or better. Any elected portion that is not immediately executed reverts to its status as a percentage order, subject to subsequent election or conversion.

The CAP–DI order guides the specialist to represent the order to

ensure that the elected or converted portion goes along with the market, by not initiating a significant price change or lagging behind the market. CAP–DI orders are subject to a number of restrictions intended to minimize the specialist's discretion in handling such orders.[6] Elected and converted CAP–DI orders that are not executed revert to CAP–DI status.

Exchange Rule 13 defines two types of stop orders: stop limit orders and stop orders. A stop limit order to buy becomes a limit order executable at the limit price, or at a better price if obtainable, when a transaction in the security occurs at or above the stop price after the order is represented in the Trading Crowd. A stop limit order to sell becomes a limit order executable at the limit price or at a better price, if obtainable, when a transaction in the security occurs at or below the stop price after the order is represented in the Trading Crowd. Once elected, stop limit orders remain as limit orders on the Book if not executed immediately.

A stop order to buy becomes a market order when a transaction in the security occurs at or above the stop price after the order is represented in the market. A stop order to sell becomes a market order when a transaction in the security occurs at or below the stop price after the order is represented in the market. Once elected, stop market orders are executed.

Executions of elected or converted CAP–DI orders do not result in further elections of CAP–DI orders on the same side of the market. Executions of elected stop orders can elect CAP–DI orders at the same or better price. Executions of elected stop orders can also elect stop orders at other prices.

Automatic executions and auction market transactions systemically elect CAP–DI and stop orders. The size of the electing trade elects the same amount from each CAP–DI and stop order electable by that trade. For example, if 500 shares trade and two marketable CAP–DI orders and one marketable stop limit order are electable, 500 shares of each order are elected. However, today, once systemically elected, CAP–DI and stop orders must be manually executed and reported by the specialist. Similarly, specialists must manually execute and report converted CAP–DI orders. The specialist determines the number of shares converted on a CAP–DI order to quote or trade based on instructions from the entering broker.

Moreover, Exchange Rule 123A.30 provides that the specialist can trade on parity with elected or converted CAP–DI orders as long as the specialist does not trade for its own account in an amount in excess of that which each CAP–DI order would receive. Based on the example above, the specialist would have been able to trade 500 shares for his or her own account.

Exchange Rule 123A.40 provides, in part, that a specialist may be a party to the election of a stop order only: (i) when his or her bid or offer has the effect of bettering the market, when he guarantees that the stop order will be executed at the same price as the electing sale, and with Floor Official approval if the transaction is more than 0.10 point away from the prior transaction; or (ii) when the specialist purchases or sells stock for his or her own account solely for the purpose of facilitating completion of a member's order at a single-price, where the depth of the current bid or offer is not sufficient to do so. When the specialist is acting in this manner, he or she shall not be required to guarantee that the stop order will be executed at the same price as the electing sale.

The changes proposed below, which will systematize the execution and reporting of elected CAP–DI and stop orders and converted CAP–DI orders, will result in enhanced audit trail information, and reduce specialists' data entry workload and the associated chances for error. Existing Exchange rules governing the election and execution of CAP–DI and stop orders and the conversion and execution of converted CAP–DI orders remain unchanged, and the rules regarding execution of these orders will be incorporated into the Display Book to ensure appropriate executions.

Systemic Execution of Elected CAP–DI and Stop Orders

Currently, when a trade occurs, the system notifies the specialist what, if any, CAP–DI and stop orders have been elected by such trade. The specialist must then determine if there is any liquidity against which the elected orders (or portions thereof) can trade. If so, the specialist will manually execute and report a trade involving the elected CAP–DI and/or stop volume. The Exchange proposes to systematize this process, by having the Book automatically execute elected CAP–DI and stop volume to the extent possible. The Book will also automatically report such execution, including the relevant information regarding participants to the execution. Elected CAP–DI volume unable to trade will automatically revert

[5] For background on percentage orders and amendments to Rule 123A.30, *See* Securities Exchange Act Release Nos. 40722 (Nov. 30, 1998), 63 FR 67966 (SR–NYSE–97–09) (Dec. 9, 1998); 39009 (Sept. 3, 1997), 62 FR 47715 (September 10, 1997) (SR–NYSE–96–16); 24505 (May 22, 1987), 52 FR 20484 (June 1, 1987) (SR–NYSE–85–1); and 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) (SR–NYSE–2002–55).

[6] Securities Exchange Act Release No. 24505 (May 22, 1987), 52 FR 20484 (June 1, 1987) (SR–NYSE–85–1) (approving amendment to NYSE Rule 123A.30 permitting conversion of percentage orders on destabilizing ticks under certain restrictions).

to CAP–DI status and elected stop limit volume unable to trade will become a limit order on the Book. Elected stop market volume will be executed in the same manner as any market order. Additionally, where the specialist was a party to the election of stop orders, the elected stop orders will be systemically executed at the election price against the specialist.

Examples—CAP order is systemically elected based on the size of the last sale and then systemically executed up to the available contra size, at the last sale price:

1. The quote is 20.05 bid, offered at 20.07, 9,000 × 9,000. A CAP–DI order arrives to buy 10,000 shares at 20.15. A limit order arrives to buy 2,500 shares at 20.07 and is executed at the offer price, 20.07. As a result of the 2,500-share execution of the limit order, 2,500 shares of the CAP–DI order are elected and systemically executed at the last sale price, 20.07. 7,500 shares remain on the CAP–DI order and the market is autoquoted 20.05 bid, offered at 20.07, 9,000 × 4,000.

2. The quote is 20.05 bid, offered at 20.07, 1,000 × 1,000. A CAP–DI order arrives to buy 10,000 shares at 20.15. A limit order arrives to sell 1,500 shares at 20.05 and is executed at the bid price, 20.05. As a result of the 1,000-share execution, 1,000 shares of the CAP–DI order are elected. However, only 500 shares of the 1,000 shares elected are able to trade, as only 500 shares of contra-side interest (the stock offered) remains. The CAP–DI order systemically buys the 500 shares and the remaining 500 shares elected revert to unelected status. 9,500 shares remain on the CAP–DI order and the market is autoquoted 20.04 bid (the next best bid on the Book), offered at 20.07, 2,000 (the size associated with the bid) × 1,000.

3. The quote is 20.05 bid, offered at 20.07, 1,000 × 1,000. A stop order arrives to buy 1,000 shares at 20.05. A limit order arrives to sell 1,500 shares at 20.05 and is executed at the bid price, 20.05. As a result of the 1,000-share execution, 1,000 shares of the stop order are elected. However, only 500 shares of the 1,000 shares elected are able to trade, as only 500 shares of contra-side interest (the stock offered) remains. The stop order systemically buys the 500 shares and the remaining 500 shares elected revert to a market order and will trade at the next best price, 20.07. The market is autoquoted 20.04 bid (the next best bid on the Book), offered at 20.07, 2,000 (the size associated with the bid) × 500 (after 500 shares of the stop order are executed as a market order at 20.07).

Systemic Handling of CAP–DI Order Converted to a Bid or Offer

Exchange Rule 123A.30 permits specialists to, among other things, convert a CAP–DI order on a stabilizing or destabilizing tick to make a bid or offer in accordance with the parameters set forth in the rule. After conversion to a bid or offer, the CAP–DI order is able to participate in automatic executions in accordance with and to the extent provided by Exchange Rules 1000—1005.

Today, Exchange Rule 1001(a)(iii) provides, with respect to each automatic execution that includes specialist or Crowd orders, that the specialist is responsible for assigning the appropriate number of shares to each contra-side participant in accordance with Exchange Rule 72. This is because the Display Book does not have the contra-side information for these participants until it is manually entered by the specialist. This also applies to converted CAP–DI orders. The conversion is currently done manually by the specialist and the system does not incorporate any of the order information until it is entered by the specialist upon an execution.

The Exchange proposes to systemically capture converted CAP–DI order information to enable the systemic reporting of automatic executions involving converted CAP–DI volume. The system will do this by creating a limit order on the Book ("a child order") which will be systemically linked for identification purposes to the original CAP–DI order ("the parent order"). The child order will be systemically decremented as executions occur with it.[7] As noted above, none of the rules governing the specialist's ability to convert CAP–DI orders or the way in which they trade are proposed to be amended.

Automation of Parity Between Specialist and Elected CAP–DI Orders

As noted above, Exchange Rule 123A.30[8] provides that a Floor broker may permit a specialist to trade on parity with CAP–DI orders. The rule

currently provides that if a specialist is on parity with one or more CAP–DI orders, at no time may the specialist participate for its own account in an amount in excess of what each CAP–DI order would receive, except that the specialist may participate for its own account to an extent greater than any particular CAP–DI order where the size specified on such order has been satisfied. A specialist on parity with a CAP–DI order remains subject to the limitations in Exchange Rule 104.10 as to transactions for his or her own account effected on destabilizing ticks.

For example, assume the market in XYZ stock is 20.10 bid, offered at 20.13, 50,000 × 40,000, with the offer consisting of three CAP–DI sell orders of 10,000 shares each that the specialist had converted to trade at 20.13 and added 10,000 shares of interest for his or her own account. If a buyer for 36,000 shares enters the Crowd to trade with the offer, the specialist must split executions equally among them (9,000 for each of the three CAP–DI orders and the specialist receives 9,000 shares since he or she is on parity).

Now, assume the market in XYZ stock is 20.10 bid, offered at 20.13, 50,000 × 42,000,[9] with the offer consisting of three CAP–DI sell orders of 10,000 shares each that the specialist had converted to trade at 20.13 and added 12,000 shares of interest for his or her own account. If a buyer for 42,000 shares enters the Crowd to trade with the offer, the specialist must split executions equally among them (10,000 for each of the three CAP–DI orders in order to fully satisfy them), and the specialist receives 12,000 shares since he or she is on parity and there are 2,000 additional shares left over after satisfying the three CAP orders (10,000 shares each) and the specialist account for 10,000 shares.

The Exchange proposes to automate the specialist's participation in these situations, so that the system assigns the proper number of shares to the specialist when trading along with elected CAP–DI orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation

---

[7] Telephone call between Kelly Riley, Assistant Director, Division of Market Regulation, SEC and Jeffrey Rosenstrock, Principal Rule Counsel, NYSE on August 29, 2005.

[8] Rule 123A.30 is proposed to be amended in the hybrid market filing to provide that when a specialist algorithmically price improves an order, any CAP–DI orders that have been entered and that are capable of trading at that price will be automatically converted and will trade along with the specialist in accordance with Exchange rules governing executions of converted CAP–DI orders. *See* Securities Exchange Act Release No. 51906 (June 22, 2005), 70 FR 37463 (June 29, 2005) (Amendment No. 5 to SR–NYSE–2004–05).

[9] Telephone call between Kelly Riley, Assistant Director, Division of Market Regulation, SEC and Jeffrey Rosenstrock, Principal Rule Counsel, NYSE on August 30, 2005.

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

[11] 15 U.S.C. 78f(b)(5).

and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, 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. The Exchange asserts that the proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act [12] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market, and provide an opportunity for investors' orders to be executed without the participation of a dealer.

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.

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

Because the foregoing proposed rule change effects a change in an existing order entry or trading system that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting access to or availability of the system, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act,[13] and Rule 19b–4(f)(5) [14] thereunder.

At any time within 60 days of the filing of the 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.[15]

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.* Please include File Number SR–NYSE–2005–57 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–57. 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. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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–2005–57 and should be submitted on or before September 30, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–4920 Filed 9–8–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52361; File No. SR–PCX–2005–58]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendments Nos. 1 and 2 Thereto Relating to Market Order Auction

August 30, 2005.

On April 22, 2005, the Pacific Exchange, Inc. ("PCX"), through its wholly owned subsidiary PCX Equities, Inc. ("PCXE") filed with the Securities and Exchange Commission ("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 rules governing the Market Order Auction of the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. On June 27, 2005, the Exchange amended the proposed rule change and on July 8, 2005, the Exchange further amended the proposed rule change. The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on July 29, 2005.[3] The Commission received no comment letters on the proposal.

The proposed rule change would clarify the Indicative Match Price definition as defined in PCXE Rule 1.1(r) which determines the price at which orders eligible for execution in the ArcaEx auctions are executed. The proposed rule change would also modify the Market Order Auction rules as described in PCXE Rule 7.35 and implement price collars based on a similar standard currently in place for ArcaEx's Closing Auction.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the

---

[12] 15 U.S.C. 78k–1(a)(1).

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(5).

[15] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[16] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52103 (July 21, 2005), 70 FR 43924.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's