

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 rule change is intended to ensure that the Exchange's members who are specialists or who carry accounts of specialists meet the financial responsibility requirements imposed by qualified clearing agencies⁴ as well as the Commission. The Exchange's current rules, and the rules of the MCC, permit floor members of the Exchange to establish "sponsored accounts" pursuant to which the MCC provides sponsored participants with access to clearance, settlement and delivery via a qualified clearing agency such as the National Securities Clearing Corporation ("NSCC"). The Exchange in turn provides a guaranty to the NSCC (and through the NSCC to the Depository Trust Company ("DTC")) from time to time to guarantee the obligations of the MCC with respect to liabilities that could be generated in sponsored accounts.⁵ In order to minimize the Exchange's exposure through sponsored accounts and in keeping with capital requirements imposed by the Act, the Exchange's rules governing members' financial responsibility and reporting requirements contain provisions establishing minimum net capital requirements for specialists and those who carry accounts of specialists.⁶

The Exchange and the MCC have determined to discontinue the sponsored account program, effective June 30, 2000, after which time the MCC will be dissolved and the Exchange will no longer guarantee the MCC's obligations to qualified clearing agencies. Accordingly, it will be

necessary for all current sponsored participants to become direct participants in qualified clearing agencies such as NSCC and DTC. The Exchange thus proposes to amend Article XI, Rule 3 to incorporate the minimum net capital and excess net capital requirements currently required for direct participation in NSCC, subject to the amended phase-in periods set forth in Interpretation and Policy .01 to the amended rule. It is anticipated that the proposed phase-in periods will ameliorate any financial burden that might otherwise be placed on members who are specialists or who carry accounts of specialists.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5)⁷ of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to 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.

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

No written comments were solicited or received.

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 self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is

consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 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 CHX. All submissions should refer to File No. SR-CHX-99-20 and should be submitted by January 12, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42238; File No. SR-NASD-99-63]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. to Allow NASD Members to Give Proxies in the Absence of Written Instructions from Beneficial Owners

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 22, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASDR" or "NASD Regulation"), 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 NASD Regulation. On November 15, 1999, NASDR filed Amendment No. 1 to the proposal with the Commission.³ The

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, NASDR withdrew its request that the proposal be reviewed and approved

⁴ See Midwest Clearing Corporation ("MCC") Rules, Art. XI, Rule 1.

⁵ See CHX Rules, Art. XXI, Rule 14.

⁶ See CHX Rule, Art. XI, Rule 3.

⁷ 15 U.S.C. 78f(b)(5).

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

NASDR seeks to amend Rule 2260 of the Conduct Rules of the Association to permit NASD members to give proxies in the absence of written instructions from beneficial owners, provided that certain requirements are satisfied.

The text of NASD Rule 2260, as modified by the proposal, appears below. Proposed additions are *italicized* and proposed deletions are [bracketed].

Rule of the Association Conduct Rules

2260. Forwarding of Proxy and Other Materials

(a)–(b) No change.

(c)(1) Whenever an issuer or stockholder of such issuer soliciting proxies shall timely furnish to a member:

(A) sufficient copies of all soliciting material which such person is sending to registered holders, and

(B) satisfactory assurance that he will reimburse such member for all out-of-pocket expenses, including reasonable clerical expenses, incurred by such member in connection with such solicitation.

such member shall transmit promptly to each beneficial owner of stock of such issuer (or the beneficial owner's designated investment adviser) which is in its possession or control and registered in a name other than the name of the beneficial owner, *the material furnished.*

(2) Such member shall transmit with such material either:

(A) a request for voting instructions and, as to matters which may be voted without instructions under paragraph(d)(4), a statement to the effect that, if such instructions are not received by the tenth day before the meeting, the proxy may be given at discretion by the owner of record of the stock; provided, however, that such statement may be made only when the proxy soliciting material is transmitted to the beneficial owner of the stock or to the beneficial owner's designated investment adviser, at least fifteen days before the meeting. When the proxy soliciting material is transmitted to the beneficial owner of the stock or to the beneficial owner's designated investment adviser twenty-five days or more before the meeting, the statement accompanying such material shall be to the effect that the proxy may be given fifteen days before the meeting at the discretion of the owner of record of the stock; or

(B) a signed proxy indicating the number of shares held for such beneficial owner and

bearing a symbol identifying the proxy with proxy records of such member, and a letter informing the beneficial owner (or the beneficial owner's designated investment adviser) of the time limit and necessity for completing the proxy form and forwarding it to the person soliciting proxies prior to the expiration of the time limit in order for the shares to be represented at the meeting. A member shall furnish a copy of the symbols of the person soliciting the proxies and shall also retain a copy thereof pursuant to the provisions of SEC Rule 17a–4 under the Act.

(2)(3) Notwithstanding the provisions of subparagraph (1), a member may give a proxy to vote any stock pursuant to the rules of any national securities exchange to which the member is also responsible provided that the records of the member clearly indicate which procedure it is following.

(3)(4) This paragraph shall not apply to beneficial owners residing outside of the United States of America, although members may voluntarily comply with the provisions hereof in respect to such persons if they so desire.

(d)(1)–(3) No Change.

(4) A member which has transmitted proxy soliciting material to the beneficial owner of stock or the beneficial owner's designated investment adviser and solicited voting instructions in accordance with subparagraph (c) of this Rule, and which has not received instructions from the beneficial owner or from the beneficial owner's designated investment adviser by the date specified in the statement accompanying such material, may give or authorize the giving of a proxy to vote such stock, provided that:

(A) the person in the member firm giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting; and

(B) such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation or any other matter which may affect substantially the rights or privileges of such stock.

(e)–(g) No Change.

* * * * *

IM–2260–2 Giving a Proxy To Vote Stock

(a) A member may give a proxy to vote stock provided that:

(1) It has transmitted proxy soliciting material to the beneficial owner of stock or from the beneficial owner's designated investment adviser, in accordance with Rule 2260(c), and

(2) it has not received voting instructions from the beneficial owner or from the beneficial owner's designated investment adviser, by the date specified in the statement accompanying such material, and

(3) the person in the member organization giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation of any matter which may affect substantially the rights or privileges of such stock.

(b) Generally speaking, a member may not give a proxy to vote without instructions from

beneficial owners when the matter to be voted upon:

(1) is not submitted to stockholders by means of a proxy statement comparable to that specified in Schedule 14–A of the Securities Exchange Act;

(2) is the subject of a counter-solicitation, or is part of a proposal made by a stockholder which is being opposed by management (e.g., a contest);

(3) relates to a merger or consolidation (except when the company's proposal is to merge with its wholly owned subsidiary, provided its shareholders dissenting thereto do not have rights of appraisal;

(4) involves right of appraisal;

(5) authorizes mortgaging of property;

(6) authorizes or creates indebtedness or increases the authorized amount of indebtedness;

(7) authorizes or creates a preferred stock or increases the authorized amount of an existing preferred stock;

(8) alters the terms or conditions of existing stock or indebtedness;

(9) involves waiver or modification of preemptive rights (except when the company's proposal is to waive such rights with respect to shares being offered pursuant to stock option or purchase plans involving the additional issuance of not more than 5% of the company's outstanding common shares (see Item 12));

(10) changes existing quorum requirements with respect to stockholder meetings;

(11) alters voting provisions or the proportionate voting power of a stock, or the number of its votes per share (except where cumulative voting provisions govern the number of votes per share for election of directors and the company's proposal involves a change in the number of its directors by not more than 10% or not more than one);

(12) authorizes issuance of stock, or options to purchase stock, to directors, officers, or employees in an amount which exceeds 5% of the total amount of the class outstanding;

(13) authorizes:

(A) a new profit-sharing or special remuneration plan, or a new retirement plan, the annual cost of which will amount to more than 10% of average annual income before taxes for the preceding five years, or

(B) the amendment of an existing plan which would bring its cost above 10% of such average annual income before taxes.

Exceptions may be made in cases of

(A) retirement plans based on agreement or negotiations with labor unions (or which have been or are to be approved by such unions); and

(B) any related retirement plan for benefit of non-union employees having terms substantially equivalent to the terms of such union-negotiated plan, which is submitted for action of stockholders concurrently with such union-negotiated plan;

(14) changes the purposes or powers of a company to an extent which would permit it to change to a materially different line of business and it is the company's stated intention to make such a change;

(15) authorizes the acquisition of property, assets, or a company, where the

under Section 19(b)(3)(A) of the Act. Instead, NASDR has requested that the Commission review the proposal under Section 19(b)(2) of the Act. See Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated November 10, 1999 ("Amendment No. 1").

consideration to be given has a fair value approximating 20% or more of the market value of the previously outstanding shares;

(16) authorizes the sale or other disposition of assets or earning power approximating 20% or more of those existing prior to the transaction.

(17) authorizes a transaction not in the ordinary course of business in which an officer, director or substantial security holder has a direct or indirect interest;

(18) reduces earned surplus by 51% or more, or reduces earned surplus to an amount less than the aggregate of three years' common stock dividends computed at the current dividend rate.

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

In its filing with the Commission, NASDR included statements concerning the purpose of, and statutory 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. NASDR 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

NASD Rule 2260 specifies when NASD members must furnish proxy and other materials to beneficial owners, and governs when NASD members may vote proxies on behalf of beneficial owners. Rule 2260 differs in certain respects from the proxy rules of the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex"). Most notably, the NYSE and Amex proxy rules permit exchange members to give proxies on behalf of beneficial owners without written instructions from the beneficial owners, so long as certain requirements are satisfied.⁴ NASDR believes that the differences in the proxy rules maintained by the NASD, NYSE, and Amex may cause confusion for some members and issuers. The purpose of the proposed amendments is to conform the NASD rule to the NYSE and Amex rules.

a. Summary of Current NASD Rules

NASD Rule 2260 requires NASD members to forward proxy and other materials to beneficial owners of stock held in "street name" by the member

when certain conditions are met. Proxy materials must be accompanied by signed proxies and information regarding when the proxies must be returned to the issuer. NASD Rule 2260 currently provides that NASD members may give proxies on beneficial owners when the member holds the stock in a fiduciary capacity. Rule 2260 also provides that a NASD member may give proxies to vote pursuant to the rules of any exchange to which the member is also responsible, provided that the records of the member clearly indicate which procedure it is following.

The NYSE and Amex proxy rules likewise require exchange members to forward proxy materials to beneficial owners. Unlike the NASD's rules, however, the NYSE and Amex proxy rules state that an exchange member may accompany the materials with either: (a) Signed proxies and information specifying when the proxies must be returned to the issuer, or (b) A request for voting instructions. The NYSE and Amex proxy rules also allow exchange members to vote the proxies in certain circumstances if the beneficial owner fails to respond to the request for written instructions. Specifically, an exchange member may vote the shares without instruction if, to the knowledge of the member, the action in question is not contested and the action does not involve authorization for a merger, change of control, or other that could substantially affect the rights and privileges of the stock. With respect to matters not satisfying those requirements, the member may not vote the proxies absent written instructions from the beneficial owner. Supplemental materials to the NYSE and Amex proxy rules list corporate matters that may not be voted on without written instruction (e.g., matters involving changes of control, mergers, voting rights, and mortgaging of property).

Under the NYSE and Amex proxy rules, if an exchange member chooses to send a request for written instructions with the proxies and the proxies involve matters that may be voted on without written instruction, the member must inform the beneficial owner that proxies may be given at the member's discretion unless written instructions are received within a specified time.

b. Summary of Proposed Rule Change

NASDR believes that the current NASD proxy rule, in conjunction with the existing NYSE and Amex proxy rules, has caused confusion among some members and issuers regarding when proxies can be voted by members without instruction from beneficial

owners, particularly by a broker who is only a member of the NASD. NASDR believes that this confusion would be eliminated if the NASD's rules were amended to conform to the NYSE and Amex proxy rules.

Conforming NASD Rule 2260 to the NYSE and Amex proxy rules would require amending the NASD rule to: (a) give NASD members the option of requesting voting instructions instead of simply sending signed proxies to beneficial owners; and (b) in certain circumstances, permit NASD members to vote proxies if the beneficial owner fails to provide written instructions, as long as the member notifies the beneficial owner of that possibility.

Under the proposal, NASD Rule 2260(c)(2) would be amended to provide that, when an issuer satisfies the requirements in the rule that obligate NASD members to forward proxy material to the issuer's beneficial owners, each NASD member shall transmit with the proxy material either: (a) a request for voting instructions and, where the rule would permit the member to give the proxy without written instructions, notice to that effect; or (b) a signed proxy. In addition, a new subparagraph (d)(4) would specify the criteria governing when NASD members could vote proxies without written instructions from beneficial owners. Specifically, the new language would state that NASD members may give proxies without written instructions, provided that the person in the member firm giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting; and such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation, or any other matter which may affect substantially the rights or privileges of such stock.

The proposed rule change would not alter the current obligations of NASD members to give and send proxies, because under the proposal, NASD members would have the option of continuing to treat proxy materials as currently required under rule 2260. NASDR believes that the proposal will eliminate confusion by clarifying that NASD members may give proxies without written instructions from beneficial owners in the same manner they are permitted to do so under NYSE and Amex proxy rules.

c. Adoption of IM-2260-2

Supplemental materials to the NYSE and Amex proxy rules provide specific guidance to exchange members regarding application of the proxy rules.

⁴ See NYSE Rule 452, "Giving Proxies by Member Organization," and Amex Rule 577, "Giving Proxies by Member Organization."

The supplemental materials summarize the NYSE and Amex proxy rules, and enumerate specific instances where exchange members may not give proxies without instructions from the beneficial owner. Under the proposal, that same guidance would be incorporated into the rules of the NASD in the form of a new IM-2260-2. The text of proposed IM-2260-2 is substantially identical to the language in the supplemental materials to the NYSE and Amex proxy rules.

2. Statutory Basis

NASDR believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵ which require that the rules of a registered securities association must be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest. NASDR also believes that the proposed change eliminates confusing and potentially conflicting requirements that affect investors, issuers, and the securities industry.

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

NASDR believes that the proposed rule change will not result in 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

NASDR 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 NASDR 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

Interested persons are invited to submit written data, views, and

arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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, NW, Washington, DC 20549-0609. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-99-63 and should be submitted by January 12, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42235; File No. SR-PCX-99-33]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Composition of the PCX Board of Governors

December 14, 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 and II below, which Items have been prepared by the Exchange. On November 19, 1999, the Exchange submitted Amendment No. 1 to the

proposed rule change.³ On December 2, 1999, the Exchange submitted Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is issuing this order approving the amended proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to modify its Constitution to provide that fifty percent of the Exchange's Board will be representatives of the public. The text of the proposed rule change, as amended, follows. Additions are italicized; deletions are bracketed.

PCX CONSTITUTION

* * * * *

Article II

GOVERNMENT

Board of Governors

Sec. 1(a). The government of the Exchange shall be vested in a Board of Governors (herein sometimes called "the Board") consisting of twenty-one elected Governors, *and* the Chairman of the Board [and the President of the Exchange], provided that [seven] *eleven* of the elected Governors shall be representatives of the public and shall

³ Letter from Michael D. Pierson, Director Regulatory Policy, PCX, to Sharon M. Lawson, Division of Market Regulation ("Division"), SEC, dated November 18, 1999 ("Amendment No. 1"). In Amendment No. 1, the Exchange defined the terms "office member" and "office allied member," which are used in Article III, Section 2(b) of the Exchange Constitution. The Exchange stated that it intends to codify these definitions in the PCX Constitution by the summer of 2000. In addition, the Exchange explained that it intends to stagger the implementation of the revised structure of the Board of Governors ("Board"). As a result, two new public governors will be added in the 2000 term. In addition two additional public governors will attend meetings of the PCX Board in a non-voting advisory capacity during the 2000 term. The Exchange explained that this should enable them to familiarize themselves with the business of the Exchange. Finally, the Exchange clarified the use and composition of three classes of governors elected to the Board and clarified that full implementation of the changes shall be reflected on the PCX's 2001 Board.

⁴ Letter from Robert Pacileo, Staff Attorney, PCX to Sharon M. Lawson, Division, SEC, dated December 1, 1999. In Amendment No. 2, the Exchange added Commentary .01 to Article III, Section 2(b) to explain the staggered implementation of the fifty percent public governor requirement. In addition, the Exchange deleted its proposal to require a minimum of five floor members on the Board at all times. Finally, Amendment No. 2 corrected an incorrect statement in Amendment No. 1, which provided that the Board will have nine non-public elected members under the proposal when in fact it will consist of ten.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁵ 15 U.S.C. 700-3(b)(6).