

its proposed rule change to include a more specific definition of materiality.

Of the six commenters who responded, five commenters thought that NASD should review other types of transactions not currently included in Rule 1014 or the rule proposal.¹⁷ One commenter believed that NASD should review all types of transactions commonly used to avoid liability and regulation,¹⁸ and a second commenter thought that the rule should be broad enough to allow NASD to review any transaction that could have an adverse effect on the payment of arbitration awards and other customer claims.¹⁹ One commenter did not think NASD should review other types of transactions.²⁰ NASD has determined not to expand its review to other types of transactions. Not only does the proposed rule change capture a much broader range of identifiable transactions that can cause potential customer harm, but there are also other means to capture violations outside of the membership application process. However, NASD may consider reviewing other types of transactions if it determines that any such transactions particularly raise investor protection issues.

A. Clarification of Members Required To Submit Applications

With respect to the proposal to require all non-NYSE selling members to submit an application to NASD regardless of whether the buyer is an NYSE member, a slight majority of the commenters supported the proposal. Of the six commenters who responded, four commenters supported the proposal.²¹ One commenter believed this type of review would help regulators better coordinate among themselves.²² Two commenters opposed this proposal.²³ One commenter believed that an NASD review should

depend upon the types of assets and scope of the transactions.²⁴

B. Burden of Proof

All the commenters supported the proposal that applicants bear the burden of proof to demonstrate that they should be approved for membership despite the presence of a regulatory history. Six of the commenters also responded to whether it is appropriate to impose the burden of proof for pending matters such as pending investigations and arbitrations.²⁵ Of the six who responded, five thought it was appropriate to extend the language to pending investigations and arbitrations.²⁶ One commenter thought it was inappropriate.²⁷

Expansion of Scope of Rule 1014 To Include Non-Natural Persons

All six commenters who responded to the proposal to expand Rule 1014 to include non-natural persons supported the proposal.²⁸ One commenter noted that the proposed rule change would clarify any confusion.²⁹

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 proposal 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 NASD. All submissions should refer to File No. SR-NASD-2003-07 and should be submitted by November 13, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48656; File No. SR-NASD-2003-139]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Technical Amendments to Rule 2710

October 17, 2003.

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 September 12, 2003, the National Association of Securities Dealers, Inc. ("NASD") submitted to 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. On October 16, 2003, NASD

¹⁷ See comment letters from Anonymous, dated September 18, 2002; Anderson Corporate Finance, LLC, dated August 28, 2002; Canaccord Capital Corporation, USA, dated September 20, 2002; Kirk Securities Corporation, dated September 17, 2002; and Rhodes Securities, Inc., dated September 16, 2002.

¹⁸ See comment letter from Kirk Securities Corporation, dated September 17, 2002.

¹⁹ See comment letter from Anderson Corporate Finance, LLC, dated August 28, 2002.

²⁰ See comment letter from Anonymous, dated September 13, 2002.

²¹ See comment letters from Anonymous, dated September 18, 2002; Anderson Corporate Finance, LLC, dated August 28, 2002; Kirk Securities Corporation, dated September 17, 2002; and Rhodes Securities, Inc., dated September 16, 2002.

²² See comment letter from Kirk Securities Corporation, dated September 17, 2002.

²³ See comment letters from Anonymous, dated September 13, 2002; and Canaccord Capital Corporation, USA, dated September 20, 2002.

²⁴ See comment letter from Canaccord Capital Corporation, USA, dated September 20, 2002.

²⁵ See comment letters from Anonymous, dated September 13, 2002; Anonymous, dated September 18, 2002; Anderson Corporate Finance, LLC, dated August 28, 2002; Canaccord Capital Corporation, USA, dated September 20, 2002; Kirk Securities Corporation, dated September 17, 2002; and Rhodes Securities, Inc., dated September 16, 2002.

²⁶ See comment letters from Anonymous, dated September 13, 2002; Anonymous, dated September 18, 2002; Anderson Corporate Finance, LLC, dated August 28, 2002; Canaccord Capital Corporation, USA, dated September 20, 2002; and Kirk Securities Corporation, dated September 17, 2002.

²⁷ See comment letter from Anderson Corporate Finance, LLC, dated August 28, 2002.

²⁸ See comment letters from Anonymous, dated September 13, 2002; and Canaccord Capital Corporation, USA, dated September 20, 2002.

²⁹ See comment letter from Anderson Corporate Finance, LLC, dated August 28, 2002.

³⁰ 17 CFR 200.30-3(a)(12)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

filed Amendment No. 1 to the proposed rule change.³ NASD has designated the proposed rule change as “non-controversial” under section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposed rule change effective upon filing with the Commission. 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

NASD is proposing to amend NASD Rule 2710 to delete certain unnecessary rule language that was mistakenly proposed in amendments to Rule 2710 for which the Commission recently published notice of immediate effectiveness. The text of the proposed rule change, as amended, is set forth below. Proposed deletions are in [brackets].

* * * * *

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) No Change.

(b) Filing Requirements

(1) through (5) No Change.

(6) Information Required to be Filed

(A) Any person filing documents that are required to be filed under paragraph (b)(4) above shall provide the following information with respect to the offering through NASD’s electronic filing system:

(i) through (vi) No Change.

(vii) any other information required to be filed under this Rule [by NASD’s electronic filing system].

(B) No Change.

(7) through (11) No Change.

(c) through (d) No Change.

* * * * *

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

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change, as amended, 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. NASD 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

On July 30, 2003, the Commission published notice of the filing and immediate effectiveness of amendments by NASD to NASD Rules 2710 and 6540, both of which address the submission of requests for Underwriting Activity Reports (“UARs”).⁶ This rule filing, however, inadvertently omitted the current language for NASD Rule 2710(b)(6)(A)(vii) because the rule text had not been properly updated by NASD to reflect a rule change previously approved by the Commission.⁷ NASD represents that under the current rule language, the change to that provision proposed in File No. SR-NASD-2003-75 was unnecessary, and therefore, the purpose of the proposed rule change, as amended, is to delete the unnecessary rule language from NASD Rule 2710(b)(6)(A)(vii) that was mistakenly proposed in File No. SR-NASD-2003-75.

2. Statutory Basis

NASD believes that the proposed rule change, as amended, is consistent with the provisions of section 15A(b)(6) of the Act,⁸ which requires, among other things, that NASD’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general to protect investors and the public interest. NASD believes that deleting the language inserted into NASD Rule 2710(b)(6)(A)(vii) by File No. SR-NASD-2003-75 is consistent with the protection of investors and the public interest.

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

NASD believes that the proposed rule change, as amended, would 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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change, as amended, does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ 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.¹¹

NASD has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change, as amended, is technical in nature and acceleration of the operative date will allow NASD to make the technical correction to NASD Rule 2710 with immediate effect. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹²

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

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under section 19(b)(3)(C) of the Act, the Commission considers the period to commence on October 16, 2003, the date NASD filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

¹² For purposes only of accelerating the operative date of the proposed rule change, as amended, the Commission considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³ See letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 15, 2003 (“Amendment No. 1”). In Amendment No. 1, NASD amended the proposed rule change to correct the proposed rule text and to revise the discussion of the purpose of the proposed rule change.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

⁶ See Securities Exchange Act Release No. 48215 (July 23, 2003), 68 FR 44826 (July 30, 2003) (File No. SR-NASD-2003-75).

⁷ See Securities Exchange Act Release No. 45709 (Apr. 9, 2002), 67 FR 18282 (Apr. 15, 2002) (File No. SR-NASD-2001-46).

⁸ 15 U.S.C. 78o-3(b)(6).

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 NASD. All submissions should refer to File No. SR-NASD-2003-139 and should be submitted by November 13, 2003.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48640; File No. SR-PCX-2003-47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc. Relating to the Manner in Which a Contrary Exercise Advice Is Submitted and To Extend by One Hour the Time for Members To Submit Contrary Exercise Advices

October 16, 2003.

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 September 11, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to 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 PCX. The Exchange amended its proposal on September 22, 2003.³ The proposal was

also amended by the Exchange on October 10, 2003.⁴ The Exchange filed the proposed rule change, as amended, under paragraph (f)(6) of Rule 19b-4 under the Act.⁵ 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 proposes to amend PCX Rule 6.24 regarding the manner in which a contrary exercise advice ("CEA") is submitted to the Exchange and to extend by one hour the time for Members and Member Organizations to submit CEAs to the Exchange. Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*; proposed deleted text is [bracketed].

* * * * *

Rule 6.24. (a) [Subject to the restrictions set forth in Rule 6.9 and to such restrictions as may be imposed pursuant to Rule 6.11 or pursuant to the Rules of the Options Clearing Corporation ("OCC"), an outstanding option contract may be exercised during the time period specified in the Rules of the OCC by the tender to the OCC of an exercise notice in accordance with the Rules of the OCC.] *An outstanding option contract may be exercised by the tender to the Options Clearing Corporation ("OCC") of an exercise notice made during the periods, and using the procedures, specified in OCC rules. An exercise notice may be tendered to the OCC only by the clearing member in whose account such option contract is carried with the OCC. Option exercises are also subject to restrictions that are established by or may be imposed by the Exchange in Rules 6.9, 6.11 and in this rule. Members and Member Organizations may establish fixed procedures as to the latest time they will accept exercise instructions from customers.*

(b) [The exercise cut-off time for all non-cash settled options shall be such hour on the business day immediately prior to the expiration date as may be fixed from time to time by the Exchange. The exercise cut-off time, as so fixed by

thirty-day operative date specified in Rule 19b-4(f)(6) of the Act and changed rule language in proposed PCX Rule 6.24(f) and proposed Commentary .06.

⁴ See letter from Mai Sharif Shiver, Senior Attorney, PCX, to Nancy Sanow, Assistant Director, Division, Commission, dated October 9, 2003 ("Amendment No. 2"). In Amendment No. 2, the PCX added language to the rule text that was inadvertently deleted from its original filing.

⁵ 17 CFR 240.19b-4(f)(6).

a member organization or as established pursuant to the preceding sentence, shall also apply in respect of option contracts carried in any proprietary account of such member organization as the latest time at which such member organization, if it is a clearing member, shall tender exercise notices to the OCC, or if it is not a clearing member, shall issue exercise instructions to its clearing member. Notwithstanding the foregoing, member organizations may receive and members may submit exercise instructions and tender exercise notices after the exercise cut-off time but prior to expiration (i) in the case of option contracts carried in an account maintained for another member organization in which only positions of customers of such other member organization are carried, (ii) in order to remedy mistakes or errors made in good faith, (iii) to take appropriate action as the result of a failure to reconcile unmatched Exchange transactions, or (iv) where exceptional circumstances relating to a customer's ability to communicate exercise instructions to the member organization (or the member organization's ability to receive exercise instructions) prior to such cut-off time warrant such action. This subparagraph (b) is intended as a means of providing for relatively uniform procedures in respect of exercise instructions and not to alter or affect in any way the expiration times for an option contract which are fixed in accordance with the Rules of the OCC or any other provision of an option contract, and the exercise prior to expiration of an option contract in contravention of this subparagraph (b) shall neither affect the validity of such exercise nor modify or otherwise affect any right or obligation of any holder or writer of any option contract of such series of options. As used herein with respect to any member organization, the word "customer" shall mean every person other than the member organization.] *Special procedures apply to the exercise of equity options on the last business day before their expiration ("expiring options"). Unless waived by OCC, expiring options are subject to the Exercise by Exception ("Ex-by-Ex") procedure under OCC Rule 805. This rule provides that, unless contrary instructions are given, option contracts that are in-the-money by specified amounts shall be automatically exercised. In addition to OCC rules, the following Exchange requirements apply with respect to expiring options. Option holders desiring to exercise or not exercise expiring options must either: (i) take no action and allow exercise*

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 217 CFR 240.19b-4.

³ See letter from Mai Sharif Shiver, Senior Attorney, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 17, 2003 ("Amendment No. 1"). In Amendment No. 1, the PCX requested that the Commission waive the