

The Commission notes that the rule does not specifically prohibit member-to-member payments to make a market. Nevertheless, the Commission agrees with the NASD that the definition of a promoter in NASD Rule 2460 being approved today, is broad enough to cover payments by one member to another member to publish a quote, make a market, or file an application therewith for a particular security for the purpose of promoting an interest in a particular security. In addition, another proposed rule, IM-2110-5 (SR-NASD-97-37),²⁴ would prohibit certain anticompetitive conduct of broker-dealers. In particular, the rule would prohibit certain "coordinated" activity among member broker-dealers regarding prices (including quotations), trades, or trade reports. Thus, certain coordinated efforts in publishing quotations or setting prices may be subject to the provisions of the proposed rule. The Commission notes that the NASD was concerned that if all member-to-member payments were prohibited, then activity which involved legitimate broker-dealer activity would have to become subject to an exemption. The Commission agrees with the NASD that crafting appropriate exemptions would complicate the rule unnecessarily, when other provisions of the rule and other proposed rules cover the prohibited conduct.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁵ that the proposed rule change (SR-NASD-97-29) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38813; File No. SR-PCX-97-13]

Self-Regulatory Organizations; Pacific Exchange; Order Approving Proposed Rule Change Relating to the Use of the Internet for Providing Market Quotations or Advertising to the General Public and Notice of Filing and Order Granting Accelerated Approval of Amendment Thereto

July 3, 1997.

I. Introduction

On April 23, 1997, the Pacific Exchange, Inc., ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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 relating to the use of the internet for providing market quotations or advertising to the general public. The proposed rule change was published for comment in Securities Exchange Act Release No. 38620 (May 13, 1997), 62 FR 27641 (May 20, 1997). The Commission received no comments on the proposal. On June 26, 1997, the Exchange amended the proposed rule change ("Amendment No. 1") to narrow its scope to market quotations or advertising appearing only on the internet.³ This order approves the proposed rule change and grants accelerated approval to Amendment No. 1.

II. Description of the Proposal

The Exchange is proposing to add three provisions to the text of Rule 9.24, "Radio, Television, Telephone Reports."⁴ The first provision provides that Members and Member

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Margaret J. Blake, Division of Market Regulation, Commission (June 26, 1997). As originally filed, the proposed rule change applied to market quotations or advertising appearing on the internet or "similar electronic networks." Amendment No. 1 removed all references to "similar electronic networks."

⁴ Rule 9.24 currently provides that Member firms desiring to broadcast Exchange quotations on radio or television programs, or in public telephone market reports, or to make use of radio or television broadcasts for any business purpose, shall first obtain the consent of the Exchange by submitting an outline of the program. The rule further provides that the text of all commercials and program material (except lists of market quotations) about securities or investing sponsored by member firms on radio, television, or public telephone market reports, or program material supplied to these media shall be sent to the Exchange promptly following the program in which it is used.

Organizations desiring to make use of the internet for the purpose of providing market quotations or advertising to the general public, must first obtain the consent of the Exchange by submitting an outline of the program to the Exchange.

The second provision provides that the text of all commercials and program material (except lists of market quotations) about securities or investing sponsored by Member or Member Organizations on the internet, or program material supplied to such media, must be sent to the Exchange promptly following the program in which it is used.

Finally, the Exchange is proposing to clarify the limited scope of Rule 9.24 by stating expressly that it only applies to Members and Member Organizations for which the Exchange is the designated examining authority ("DEA").

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, and Section 6(b)(5) of the Act⁵ in particular, in that it promotes just and equitable principles of trade and protects investors and the public interest.

III. Discussion

The Commission believes PCX's proposed rule change is consistent with Section 6(b)(5) of the Act.⁶ Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, and, in general, to further investor protection and the public interest.⁷

PCX proposes requiring Members and Member Organizations to obtain the consent of the Exchange prior to making use of the internet for providing market quotations or advertising to the general public. The Commission believes that Exchange review of market quotations or advertising intended for the general public is necessary for investor protection and overall public interest. The Commission believes that Exchange review of market quotations or advertising appearing on the internet will ensure the accuracy of such information and result in a higher level of investor protection. Similarly, the Commission believes that the text of commercials and program material about securities or investing sponsored by Members or Member Organizations on the internet should be sent to the Exchange promptly following the

⁵ 15 U.S.C. § 78f(b)(5).

⁶ 15 U.S.C. § 78f(b)(5).

⁷ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

²⁴ Securities Exchange Act Release No. 38715 (June 4, 1997), 62 FR 31854 (June 11, 1997) (notice of proposed rule change (SR-NASD-97-37)).

²⁵ 15 U.S.C. § 78s(b)(2).

²⁶ 17 CFR 200.30-3(a)(12).

program in which it is used. The Commission believes that this is appropriate as it will give the Exchange an opportunity to review and analyze the program material as it appeared on the internet, to assure the accuracy of the information, thereby resulting in continued investor protection and overall public interest.

Finally, the Commission believes that amending Rule 9.24 to state expressly that it only applies to Members and Member Organizations for which the Exchange is the DEA is appropriate, as it will clarify the scope of the rule and its application only to Members and Member Organizations.

The Commission finds good cause to approve Amendment No. 1 to the filing prior to the 30th day after the date of publication of the notice of filing because the Amendment does not affect the substantive rights of Members and accelerated approval will facilitate the uninterrupted implementation of the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section 450 5th Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available at the principal office of the Exchange. All submissions should refer to File No. SR-PCX-97-13 and should be submitted by July 3, 1997, in the **Federal Register**.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change and Amendment No. 1 are consistent with the Act and the rules and regulations thereunder applicable to the PCX, and in particular Section 6(b)(5).

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (File No. SR-PCX-97-13) be and hereby is approved, and that Amendment No. 1 filed thereto be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38809; File No. SR-PHLX-97-31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Proposing Amendments to Its Certificate of Incorporation and By-Laws

July 1, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 25, 1999, the Philadelphia Stock Exchange, Inc. ("PHLX" or Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 PHLX hereby proposes amendments to its Certificate of Incorporation and By-Laws. A Table of Contents that provides a section-by-section description of the proposed amendments and the text of the proposed amendments are available at the places specified in Item IV below.

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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statement.

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

PHLX hereby proposes amendments to its Certificate of Incorporation and By-Laws that are designed to promote an enhanced governance structure for the Exchange. These reforms were based upon recommendations made by a Special Committee appointed by the PHLX Board to review and make recommendations regarding the Exchange's governance structure, including the operations of the Exchange and the composition of its Board, committees and other entities involved in the governance of the Exchange.

The Special Committee on Governance was organized in December 1996. Irving M. Pollack, a former SEC Commissioner, was appointed to chair the Committee. The other members of the Committee were: J. Cater Beese, Jr., a former SEC Commissioner, member of the PHLX Board and Chairman of Alex. Brown International; Ronald K. Brandes, a public member of the PHLX Board and Managing Director of Braddis Associates, Inc.; James Dimon, President and Chief Operating Officer of Travelers Group and Chairman and Chief Executive Officer of Smith Barney, Inc.; Joseph Grano, Jr., President of PaineWebber, Inc.; Stephen H. Hanke, a public member of the PHLX Board and Professor of Applied Economics at Johns Hopkins University's Department of Economics; Peter R. Kellogg, Chief Executive Officer and Senior Partner of Spear Leeds & Kellogg; Leon M. Schochet, a member of the PHLX Board and an Investment Limited Partner of J.C. Bradford & Co.; Michael D. Waber, President of Fairview Trading, Inc., and John F. Wallace, Chairman of the PHLX Board and President of Wallace Securities Corp.

On March 4, 1997, the Securities and Exchange Commission's Office of Compliance Inspections and Examinations ("OCIE") issued a report based on a special examination of the Exchange ("OCIE Report"). The OCIE Report specifically recommended an increase in public Governor representation to at least fifty percent (50%) of PHLX Board composition, including non-industry Governors, among other governance reforms. On March 7, 1997, SEC Chairman Arthur

⁸ 15 U.S.C. 78s (b) (2).

⁹ 17 CFR 200.30-3(a) (12).

¹ 15 U.S.C. § 78s(b)(1).