

well as other regulatory activities. Finally, the acceleration of the effectiveness of Amendment No. 2 will enable the Commission to approve its changes at the same time as the other major modifications to the NASD corporate governance procedures proposed in the Notice. Therefore, the Commission believes that granting accelerated approval to Amendment No. 2 is appropriate and consistent with Section 19(b)(2) of the Act.⁵³

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2 to the proposed rule change. Persons making written submissions 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 Amendment No. 2 that are filed with the Commission, and all written communications relating to Amendment No. 2 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 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-97-71 and should be submitted by December 12, 1997.

VII. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁵⁴ that (a) the proposed rule change (SR-NASD-97-71) is approved, including approval of Amendment No. 2 on an accelerated basis (with the effective date of the nomination and election procedures to be immediate and the effective date of the remaining provisions to occur at the time of the January 1998 meeting of the NASD Board), and (b) temporary approval of the proposed rule changes (SR-NASD-96-20 and SR-NASD-96-29), to the extent not superseded by the immediately effective amendments to SR-NASD-97-71, is extended until the

January 1998 meeting of the NASD Board.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-30622 Filed 11-20-97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39322; File No. SR-NASD-97-78]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Amended Interpretation of IM-8310-2, Release of Disciplinary Information, and the Implementation of Interim Pages in Forms U-4 and U-5

November 13, 1997.

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 October 17, 1997,³ the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation, Inc. ("NASDR").⁴ 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

NASDR is proposing to amend the Interpretation on the Release of Disciplinary Information, IM-8310-2 of Rule 8310 of the Procedural Rules of the NASD, to include additional information required to be reported pursuant to the amended Forms U-4, U-5, and BD. Interim pages for Forms U-4 and U-5 also have been filed to facilitate the immediate release of this additional information.⁵ Below is the text of the proposed rule change. Proposed new language is an italics.

IM-8310-2. Release of Disciplinary Information

(a) The Association shall, in response to a written inquiry, *electronic inquiry*,⁶ or telephonic inquiry via a toll-free telephone listing, release certain information contained in its files regarding the employment and disciplinary history of members and their associated persons, including information regarding past and present employment history with Association members; all final disciplinary actions taken by federal, state, or foreign securities agencies or self-regulatory organizations that relate to securities or commodities transactions; all pending disciplinary actions that have been taken by federal or state securities agencies or self-regulatory organizations that relate to securities and commodities transactions and are required to be reported on Form BD for Form U-4 and all foreign government or self-regulatory organization disciplinary actions that relate to securities or commodities transactions and are required to be reported on Form BD or Form U-4; and all criminal indictments, informations or convictions that are required to be reported on Form BD or Form U-4. The Association will also release information *required to be reported on Form BD or Form U-4* concerning civil judgments and arbitration decisions in securities and commodities disputes involving public customers, *pending and settled customer complaints, arbitrations and civil litigation, current investigations involving criminal or*

⁵³ 17 CFR 200.300-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On November 6, 1997, the NASD Regulation, Inc. filed an amendment, which among other things, clarifies the reference to "associated person" and explains the absence of the term "issuer" in the definition of "investment-related." See letter from Alden S. Adkins, General Counsel, NASD Regulations, Inc. to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated November 6, 1997 ("Amendment No. 1"). On November 12, 1997, the NASD Regulation, Inc. amended its proposal to clarify the definition of "appropriate signatory" and to clarify the implementation dates of the interim Forms and the disclosure of additional information. See letter from Alden S. Adkins, General Counsel, NASD Regulation, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated November 12, 1997 ("Amendment No. 2").

⁴ The Association submitted a similar proposal on November 25, 1996. See Securities Exchange Act Release No. 37994 (November 27, 1996) 61 FR 64549 (December 5, 1996) (SR-NASD-96-38). After several negotiations among the Commission, the NASD, and the North American Securities Administrators Association, Inc. ("NASAA"), SR-NASD-96-38 has been withdrawn and replaced in its entirety by the current filing. See letter from Joan C. Conley, Corporate Secretary, NASD Regulation, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated October 17, 1997.

⁵ Copies of Forms U-4 and U-5, containing the interim pages, were submitted as Attachment A to the NASD's rule proposal. A complete set of these revised forms is available for inspection and copying in the Commission's Public Reference Room and is also available from the NASD.

⁶ Upon approval of this proposal, the NASD plans to begin responding to electronic inquiries via the Internet on or about January 1, 1998. See Amendment No. 2, p. 1.

⁵³ 15 U.S.C. 78s(b)(2).

⁵⁴ 15 U.S.C. 78s(b)(2).

*regulatory matters, terminations of employment after allegations involving violations of investment related statutes or rules, theft or wrongful taking of property, bankruptcies less than ten years old, outstanding judgments or liens, any bonding company denial, pay out or revocation, and any suspension or revocation to act as an attorney, accountant or federal contractor.*⁷

* * * * *

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 NASDR 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 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

Under the NASD's Public Disclosure Program,⁸ the NASD, in response to a written inquiry or telephonic inquiry via a toll-free telephone listing, releases certain information contained in the Central Registration Depository ("CRD") regarding the employment and disciplinary history of members and their associated persons, including information regarding past and present employment history with Association members; all final disciplinary actions taken by federal, state, or foreign securities agencies or self-regulatory organizations that relate to securities or commodities transactions; all pending disciplinary actions that have been taken by federal or state securities agencies or self-regulatory organizations that relate to securities and commodities transactions and are required to be reported on Form BD or Form U-4; all foreign government or self-regulatory organization disciplinary actions that relate to securities or commodities

transactions and are required to be reported on Form BD or Form U-4; and all criminal indictments, informations or convictions that are required to be reported on Form BD or Form U-4. The Association also releases information concerning civil judgments and arbitration decisions in securities and commodities disputes involving public customers.

In 1992, the NASD began developing a replacement for the CRD system. In conjunction with that effort, the NASD worked with the NASAA, the Commission, and the New York Stock Exchange to amend Forms U-4, U-5, and BD to accommodate electronic filing of information with the new CRD when it became operational. The Commission approved the amended forms in July 1996.⁹

On November 25, 1996, the NASD filed a proposed rule change designed to permit the NASD to release additional information regarding the disciplinary history of its members and persons associated with a member as part of the Public Disclosure Program.¹⁰ The proposed rule change would have allowed the NASD to release all information on any question on page 3 (Question 22) of the amended Form U-4 and Question 11 of the amended Form BD, as approved by the Commission in July 1996. At the time of this filing, the NASD anticipated that the new CRD system would become operational in the Spring of 1997. The additional information that the NASD proposes to disclose includes:

1. All pending arbitrations and civil proceedings that relate to securities or commodities transactions;
2. Pending written customer complaints alleging sales practice violations and compensatory damages of \$5,000 or more;
3. Settlements of \$10,000 or more of arbitrations, civil suits, and customer complaints involving securities or commodities transactions;
4. Current investigations involving criminal or regulatory matters;
5. Terminations of employment after allegations involving violations of investment-related statutes or rules, fraud, theft, or failure to supervise investment-related activities;
6. Bankruptcies less than 10 years old and outstanding liens or judgments;
7. Bonding company denials, pay outs, or revocations; and

8. Any suspension or revocation to act as an attorney, accountant, or federal contractor.

In January 1997, NASD Regulation senior management determined that the CRD redesign should be reassessed in light of changing business needs and rapidly advancing technology. The CRD reassessment reviewed each of the components of the CRD redesign, developed a revised Internet-based technology architecture and strategy for going forward with CRD modernization, and mapped that architecture into a series of incremental projects that will provide an overall modernization of CRD before the turn of the century.

As a result of the CRD reassessment and revised technology, the NASD is withdrawing the previously proposed rule change (SR-NASD-96-38) to the Public Disclosure Program because it was premised on the implementation of the redesigned CRD and the use of the amended Form U-4, Form U-5, and Form BD.

This filing, which replaces SR-NASD-96-38, proposes the same substantive disclosure. However, to accomplish the release of the additional information, the NASD has reformatted the questions set forth on the page 3 of amended Form U-4; questions 13 through 16 on amended Form U-5; and the Disclosure Reporting Pages for both Forms in a manner that is compatible with its current CRD technology architecture. The reformatted, interim forms contain no substantive changes to any of the questions on those pages.

The Association has clarified the definitions of "investigation" and "sales practice violation" for purposes of the Forms. For purposes of Forms U-4 and U-5 reporting, the instructions clarify that an "investigation" includes an NASD investigation after a "Wells" notice has been given or after a person associated with a member, as defined in the NASD By-Laws, has been advised by the staff that it intends to recommend formal disciplinary action. The instructions further clarify that a "sales practice violation" includes any conduct directed at or involving a customer that would constitute a violation of rules for which a person could be disciplined by any self-regulatory organization.

The Association also proposes a technical correction to the interim Form U-5. On the amended Form U-4,¹¹ the Association defined the term "investment-related" as pertaining to "securities, commodities, banking, insurance, or real estate investment company, investment adviser, futures

⁷ The NASD proposes that the disclosure of this additional information will become effective on February 17, 1998. Information released from January 1 to February 17, 1998, would include only that information that currently is required to be reported on Forms U-4 and U-5. See Amendment No. 2, pp. 1-2.

⁸ See Securities Exchange Act Rel. No. 30629 (April 23, 1992) 57 FR 18535 (April 30, 1992); and Securities Exchange Act Rel. No. 32568 (July 1, 1993) 58 FR 36723 (July 8, 1993).

⁹ See Securities Exchange Act Rel. No. 37407 (July 5, 1996) 61 FR 36595 (July 11, 1996); and Securities Exchange Act Rel. No. 37431 (July 12, 1996) 61 FR 37357 (July 18, 1996). See also Securities Exchange Act Rel. No. 37632 (September 4, 1996) 61 FR 47412 (September 9, 1996).

¹⁰ See *supra* note 5.

¹¹ See *supra* note 9.

sponsor, bank, or savings association." The Association intended that the same definition apply for the Form U-5, but the word "issuer" was inadvertently omitted. Thus, on the interim Form U-5, this omission is corrected so that both the interim Form U-4 and Form U-5 set forth the same definition. Similarly, the definition of the term "appropriate signatory" on the interim Form U-5 is corrected to refer to "issuer" rather than "issuer of securities" because the former term was intended to be used consistently on the amended Forms U-4 and U-5. Thus, the interim Forms U-4 and U-5 have been corrected to reflect the intended reference and its consistent application.

The instructions to and reformatted pages of the proposed interim Forms U-4 and U-5 were submitted with the proposal as Attachment A.¹² The NASD proposes to make the interim Forms and the disclosure of the additional information set forth in this rule filing effective on February 17, 1998. This effective date will permit members and the NASD to complete annual registration renewals and permit the NASD to train members on the use of the interim Forms before the interim Forms are implemented. The NASD proposes to begin responding to electronic inquiries for Public Disclosure Program information via the Internet after this rule filing is approved, on or about January 1, 1998. The information that would be released from January 1 to February 17, 1998, would include only that information that currently is required to be reported on the Forms U-4 and U-5 and is currently released under IM-8310-2.¹³

2. Statutory Basis

The NASD believes the proposed rule change is consistent with Sections 15A(b)(6)¹⁴ and 15A(i)¹⁵ of the Act. The NASD believes the proposed rule change will further the goals of these sections of the Act inasmuch as the increased disclosure will enhance the access of members of the public to information that will help them to determine whether to conduct or

continue to conduct business with an NASD member or any of the member's associated persons.

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

The NASD does not believe the proposed rule change will 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

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. Persons making written submissions 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 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 at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 12, 1997.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-30623 Filed 11-20-97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39328; File No. SR-PCX-97-44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Incorporated Relating to Applicant Specialists on the Exchange

November 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, notice is hereby given that on November 10, 1997, the Pacific Exchange, Incorporated ("PCX" or "Exchange") filed with the Securities Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comment 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 PCX is proposing to make technical changes to its rules on the procedures relating the approval process for applicant specialists on the Exchange. The text of the proposed rule changes is available at the Office of the Secretary, PCX, and in the Public Reference Room at the Commission.

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 PCX 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 PCX has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

¹² See *supra* note 6.

¹³ See *supra* notes 7 and 8.

¹⁴ Section 15A(b)(6) requires that the Association amend its rules to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and in general, to protect investors and the public interest.

¹⁵ Section 15A(i) requires the Association to: (1) Establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons, and (2) promptly respond to such inquiries in writing.

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).