unequal bargaining power of employers and employees,[49] and because they are contrary to the fundamental principles reflected in this nation's anti-discrimination laws.[50] These commenters argued that the Commission should only allow agreements that are truly voluntary and that are entered into after a dispute has arisen.[51] In addition, one commenter supported voluntary post-dispute agreements to arbitrate employment disputes only to the extent that such agreements preserve the substantive protections and remedies afforded by statute, and argued that the NASD should amend its proposal to include such protections.[52]

The NASD Regulation stated it considered the above issues and does not take a position on the desirability of private arbitration agreements between members and their employees, but instead simply determined to remove from its rules the mandatory requirement as to claims of statutory employment discrimination.

IV. Discussion

Under the Act, SROs, like the NASD, are assigned rulemaking and enforcement responsibilities to perform their role in regulating the securities industry for the protection of investors and other related purposes. Pursuant to Section 19(b)(2) of the Act, the Commission is required to approve a rule change of an SRO like the NASD if it determines that the proposal is consistent with applicable statutory standards.[53] These standards include Section 15A(b)(6) of the Act, which provides that the NASD's rules must be designed to, among other things, ''promote just and equitable principles of trade;'' and ''protect investors and the public interest.'' Section 15A(b)(6) also provides that the NASD's rules may not be designed to ''regulate * * * matters not related to the purposes of the [Exchange Act] or the administration of the [NASD].''

By changing its rule, the NASD will no longer require associated persons, solely by virtue of their association or registration with the NASD, to arbitrate claims of statutory employment discrimination. NASD's proposal is consistent with the applicable statutory standards.[54] The statutory employment anti-discrimination provisions reflect an express intention by legislators that employees receive special protection from discriminatory conduct by employers. Such statutory rights are an important part of this country's efforts to prevent discrimination. It is reasonable for the NASD to determine that in this unique area, it will not, as a self-regulatory organization, require arbitration.

With respect to the bifurcation issue raised by the commenters, the Supreme Court, in *Dean Witter Reynolds, Inc.* v. *Byrd*, 470 U.S. 213, 217 (1985), acknowledge the appropriateness of bifurcation between federal statutory and pendant state law claims.

With respect to the issue raised by commenters of whether the rule should be effective immediately or have a delayed effective date, notwithstanding this rule change by the NASD, other SROs continue to have rules that will require employees of their members to arbitrate statutory discrimination claims. The NASD's decision to move the effective date from one year after approval of the proposed rule change to January 1, 1999 is a reasonable compromise. The January 1, 1999 date will permit other SROs to change their rules as the NASD has done, so that employees of member firms of other SROs will not be required to arbitrate these claims.

With respect to other comments that suggested that the NASD should enact other rules concerning employer/employee arbitration agreements or extend this rule to other causes of action, these issues are left to the NASD to consider in the first instance.

In approving this rule, the Commission notes that it has considered the proposed rule's effects upon efficiency, competition, and capital formation.[55]

Amendment No. 2 is a technical amendment; it changes the rule language to clarify that sexual harassment is a form of sex discrimination prohibited under Title VII (as well as certain state statutes). This change will make it clear to the securities industry that sexual harassment claims are encompassed within the term ''employment discrimination'' claims. In addition, as discussed more fully above, Amendment No. 2 also amends the effective date of the proposal to an earlier date, while at the same time still allowing enough time for members and member firms to consider and implement the changes.[56]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[57] that the proposed rule change, as amended, (SR–NASD–97–77) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[58]

Margaret H. McFarland,

Deputy Secretary.

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Management Relations (''Dunlop Commission''). Legislation was introduced in the House and the Senate that would prohibit parties from entering into agreements to resolve employment discrimination claims unless they voluntarily enter into them after such claims arise.

[49] Attorney General Letter.

[50] EEOC Letter.

[51] Attorney General Letter; EEOC Letter; Liddle Letter.

[52] Attorney General Letter. NASD Regulation responded that the content of private arbitration agreements is not germane to the proposed rule change, which simply removes the arbitration requirement imposed through the signing of the Form U–4 from the NASD's rules.

[53] the Commission oversees the arbitration programs of the SROs, like the NASD, through inspections of the SRO facilities and the review of SRO arbitration rules. Inspections are conducted to identify areas where procedures should be strengthened, and to encourage remedial steps either through changes in administration or through the development of rule changes.

[54] 15 U.S.C. 78*o*–3(b)(6).

[55] 15 U.S.C. 78c(f).

[56] Because Amendment No. 2 is technical in nature, it is not subject to a notice and comment requirement.

[57] 15 U.S.C. 78s(b)(2).

[58] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40108; File No. SR–PCX–98–14]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 To Extend the Supervisory Specialist Pilot Program

June 22, 1998.

I. Background

On March 3, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] to establish a temporary, 90-day, Supervisory Specialist Pilot Program (''Program'').[3]

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

[2] 17 CFR 240.19b–4.

[3] Also on March 3, 1998, the PCX filed proposed rule change SR–PCX–98–13 (''Companion filing''), requesting the Commission to approve a one-year pilot of the Program. *See* Securities Exchange Act Release No. 39825 (April 1, 1998), 63 FR 17250. The Companion filing originally was to become effective at the expiration of the temporary, 90-day Program. On March 12, 1998 the PCX filed Amendment No. 1 to the proposed rule change. *See* Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Marc McKayle, Attorney, Division of Market Regulation (''Division''), Commission

Continued

The proposed rule change was published for comment in the **Federal Register** on March 31, 1998.[4] Under the Program, eligible PCX specialist firms may operate two specialist posts, on the PCX Equities Floors only, based upon one Exchange membership. On June 18, 1998, the PCX filed Amendment No. 2, proposing to extend the 90-day pilot, due to expire on June 22, 1998, for an additional 90 days to give PCX an adequate opportunity to respond to concerns regarding the filing raised in comment letters, and to prevent the disruption of specialist firms already operating under the Program.[5] For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

II. Proposed Rule Change

In an effort to streamline the way business is conducted on the Exchange's Equities Floors, and to provide Exchange specialist firms with greater control over the management and costs of their operations, the Exchange proposed to adopt the Supervisory Specialist Pilot Program. Under the Program, a specialist firm may operate two specialist posts based upon one Exchange membership, provided that both posts will be staffed by Specialists who have been qualified by the Exchange as Registered Specialists under the rules of the Exchange. The Program permits one specialist post to be staffed by a Member who is registered as the supervising specialist (''Supervisory Specialist''), while the other post is staffed by an Associated Person of the specialist firm who is otherwise qualified to act as a Registered Specialist (the ''Associate Specialist''). Under the Program, the Supervisory Specialist acts as supervising specialist over the Associate Specialist. Program participants are restricted to Exchange Members with seats on the Equity floor, and no more than two specialist posts may be operated per membership.

III. Comments

The Commission has received three comment letters on the proposal. One comment letter supports the Exchange's rationale for the Program.[6] The others oppose the Program. The two opposing letters claim that the Program will dilute the value of Exchange seats as an investment property.[7] Furthermore, the dissenters argue that such a change to the Exchange's seat operations requires approval by a majority vote of the PCX Membership, as well as the PCX Board of Directors, pursuant to the Article V, Section 1 of the PCX Constitution.

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. In particular, the Commission seeks comment on whether the proposal is consistent with the PCX Constitution. 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 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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–14 and should be submitted by July 20, 1998.

V. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with the Exchange Act Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protest investors and the public. In originally approving the program for a 90-day pilot, the Commission preliminarily found that the Program could enhance liquidity in equity securities traded on the Exchange members by given specialist firms the opportunity to become specialists in more stock without incurring additional membership costs. Since then the Commission has received comment letters expressing concerns with certain aspects of the Program. By approving the Program for a further limited period of time, but without extending it to additional firms, the Commission will prevent disruption to the firms already enrolled in the Program while enabling the Commission to determine whether its preliminary determinations remain correct in light of the comment letters. Approval of the 90-day extension has no bearing on, and should not be interpreted to suggest that the Commission ultimately will approve PCX's Companion filing (SR–PCX–98–13),[9] requesting approval of the pilot for one year.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. First, the Commission notes that the extension is only for 90 days. Second, the approval of the 90-day extension is granted on the condition that the PCX will not enlist any additional specialist firms to the Program during this period. As a result, the extension will merely preserve the status quo to give the PCX additional time to respond to the comment letters and to give the Commission time to consider that response.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PCX–98–14) is hereby approved on an accelerated basis through September 21, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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(''Amendment No. 1''). In Amendment No. 1, the PCX provided a basis for the accelerated effectiveness of the proposal pursuant to Section 19(b)(2) of the Act, explaining that the Program was designed to permit specialist firms greater control over the impact of sharply escalating seat prices, while preserving the quality of the Exchange's markets and services to the public and its members.

[4] Securities Exchange Act Release No. 39784 (March 24, 1998), 63 FR 15472.

[5] *See* letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Richard Strasser, Assistant Director, Division, Commission (June 18, 1998) (''Amendment No. 2'').

[6] *See* letter from Daniel H. Turner, President, Rubicon Securities, Inc. to Jonathan G. Katz, Secretary, Office of the Secretary, Commission (May 12, 1998).

[7] *See* letters from Matthew D. Wayne, Counsel to PBL, Inc., Vanasco & Wayne, to Jonathan G. Katz, Secretary, Office of the Secretary, Commission (April 14, 1998), and John A. Brown, Chairman (retired), M.J.T. Securities, Inc., to Jonathan G. Katz, Secretary, Office of the Secretary, Commission (June 2, 1998).

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

[9] Securities Exchange Act Release No. 39825 (April 1, 1998) 63 FR 17250.

[10] 15 U.S.C. 78s(b)(2).

[11] CFR 200.30–3(a)(12).