

September 4, 2000 deadline? What type of changes would need to be made to the systems of securities firms, investment companies, and vendors? What would be the impact on systems capacity? In light of your answers to the foregoing questions, what changes would need to be made to the current decimals testing schedule?

3. Is the risk of customer confusion because of Dual Pricing Significant, and if so, how should it be addressed?

4. If commenters believe that implementing Dual Pricing by September 4, 2000 is not feasible, what date(s) is(are) feasible to implement Dual Pricing? Commenters should include a discussion of the systems changes and testing schedules that would be needed for their alternative implementation date(s).

5. In addition, if commenters believe that implementing Dual Pricing by September 4, 2000 is not feasible, is the alternative Decimals Pilot proposal feasible or preferable? If commenters believe that the Decimals Pilot is feasible, what, if any, systems changes or other steps would be necessary to facilitate this schedule? In particular, what changes would need to be made to the current decimals testing schedule? What type of changes would need to be made to the systems of securities firms, investment companies, and vendors? What would be the impact on systems capacity? Is there a risk of customer confusion, and if so, how should it be addressed?

6. If commenters believe that the Decimals Pilot is not feasible, what alternative would expedite the implementation of decimal pricing in exchange-listed and Nasdaq securities? Commenters should include a discussion of the systems changes and testing schedules that would be needed for their alternative, including implementation date(s).

7. Commenters are requested to offer specific views on the optional schedule for implementing decimal pricing in options based on exchange-listed and Nasdaq stocks subject to decimal pricing.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All submissions should refer to File No. 4-430 and should be submitted by May 10, 2000. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room. Electronically

submitted comment letters will be posted on the Commission's Internet web site (<http://www.sec.gov>).

III. Conclusion

Because Nasdaq is unable to meet the implementation schedules set forth in the Decimals Order and the Commission is seeking comments on alternative proposals for implementing decimal pricing, the Commission believes that it is in the public interest in maintaining fair and orderly markets and to protect investors to suspend the deadlines in the Decimal Order and the Extension Order.

Accordingly, it is hereby ordered that all deadlines in the Decimals Order and the Extension Order be suspended. After reviewing any comments received, the Commission intends to issue an order for the implementation of decimal pricing.

It is hereby further ordered that the Participants continue to discuss the implementation of decimal pricing collectively and with interested market participants, and work together and with others in developing an implementation plan in anticipation of decimal pricing. The Decimals Order directed the Participants to act jointly in discussing a plan to implement decimal pricing in the equities and options markets, and to discuss that plan with other interested market participants. While this order suspends all deadlines in the Decimals Order, the Order otherwise remains in effect.

By the Commission.

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42668, File No. 4-431]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing of the Plan for Allocation of Regulatory Responsibilities Between the International Securities Exchange LLC and the National Association of Securities Dealers, Inc.

April 11, 2000.

Pursuant to section 17(d) of the Securities Exchange Act of 1934 ("Act"),¹ Rule 17d-2 thereunder,² notice is hereby given that on April 3, 2000, the International Securities

Exchange LLC ("ISE") and the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a plan for the allocation of regulatory responsibilities.

I. Introduction

Section 19(g)(1) of the Act³ among other things, require every national securities exchange and registered securities association ("SRO") to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to section 17(d) or 19(g)(2)⁴ of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). This regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁵ With respect to a common member. Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.⁶ Rule 17d-1, adopted on April 20, 1976,⁷ authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules. When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce

³ 15 U.S.C. 78s(g)(1).

⁴ 15 U.S.C. 78s(g)(2).

⁵ Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session. 32 (1975).

⁶ 17 CFR 240.17d-1 and 17 CFR 240.17d-2.

⁷ Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18809 (May 3, 1976).

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

broker-dealers' compliance with the financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices, and trading activities and practices.

To address regulatory duplication in these other areas, on October 28, 1976, the Commission adopted Rule 17d-2 under the Act.⁸ This rule permits SROs to propose joint plans allocating regulatory responsibilities with respect to common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to and foster the development of a national market system and a national clearance and settlement system, and in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

The ISE and the NASD filed with the Commission a plan for allocating regulatory responsibilities pursuant to Rule 17d-2. The plan is intended to reduce regulatory duplication for firms that are common members of the ISE and the NASD. Included in the plan is an attachment ("ISE Certification") that clearly delineates regulatory responsibilities with respect to ISE rules. The ISE Certification lists every ISE rule that, under the plan, the NASD would bear responsibility for overseeing and enforcing with respect to common members.

The text of the proposed 17d-2 plan is as follows:

Agreement Among the National Association of Securities Dealers, Inc., NASD Regulation, Inc. and The International Securities Exchange LLC; Pursuant to Section 17(d) and Rule 17d-2

This agreement (*Agreement*) pursuant to Section 17(d) and Rule 17d-2 of the Securities Exchange Act of 1934 (Act) is by and among the National Association of Securities Dealers, Inc. (*NASD*), a Delaware Corporation registered as a registered securities association subject to regulation by the Securities and Exchange Commission

(*SEC*) under the Securities Exchange Act of 1934 (the Act), whose principal offices are located at 1735 K Street, NW., Washington, DC 20006, NASD Regulation, Inc. (*NASDR*), a wholly-owned subsidiary of NASD, whose principal offices are located at 1735 K Street, NW., Washington, DC 20006, and the International Securities Exchange LLC, a New York limited liability company registered as a national securities exchange subject to regulation by the SEC under the Act, whose principal offices are located at 60 Broad Street, New York, New York 10004 (hereafter referred to as *Exchange*) (*NASD*, *NASDR*, and *Exchange* hereafter may be referred to collectively as the *parties* or individually as a *party*).

In consideration of the mutual covenants contained hereafter, and in consideration of other valuable consideration, NASD, NASDR, and the Exchange hereby agrees as follows:

1. *Term.* This Agreement shall be effective on the date the SEC approves this Agreement under Section 17(d) (*Effective Date*).

2. *Entities.* The Exchange is a registered securities exchange, as defined in Section 6 of the Act, and a self-regulatory organization, as defined in Section 3(a)(26) of the Act (*SRO*). The NASD is a registered securities association, as defined in Section 15A of the Act and an SRO. Both parties are responsible for fulfilling certain regulatory obligations and performing certain regulatory functions under the Act. Under the Plan of Allocation and Delegation of Functions By NASD to Subsidiaries (*Delegation Plan*), Section II., A., NASD has delegated certain of those regulatory obligations and functions to NASDR, including the regulatory obligations and functions that are the subject of this agreement. For the purposes of this agreement, NASDR shall be considered the entity responsible for fulfilling the NASD's regulatory obligations and performing the NASD's regulatory functions.

3. *Members.* The parties that are SROs have brokers or dealers as their members, and some of the brokers or dealers are members of both such parties (hereinafter, members of both such parties and persons associated with such members are referred to collectively as *Common Members*). Each party that is an SRO has regulatory obligations under the Act and the rules of the party for Common Members.

4. *Structure.*

(a) *Rule 17d-1.* Under Rule 17d-1, the SEC shall designate by written notice to one of the parties the regulatory obligation for assuring that a Common Member, who is also a member of Securities Investor Protection Corporation, complies with applicable financial responsibility rules, as defined in Section 3(a)(40) of the Act. The parties are not requesting that the SEC change the existing designated examining authority (*DEA*) under Rule 17d-1 of any Common Members. Going forward, the parties shall request the SEC to designate the NASD as the DEA under Rule 17d-1 for such members or persons who are solely members of the NASD and that become Common Members. Unless the NASD is designated the DEA for a Common Member, NASDR specifically excludes from this Agreement any undertaking to exercise regulatory

responsibility for, or supervision of, Common Members to assess such Common Members' conduct under applicable financial responsibility rules, including examining for, receiving reports relating to, and enforcing compliance with, such rules.

(b) *Rule 17d-2.* Under Rule 17d-2, the parties may agree, in a plan or agreement, to provide for coordinated, non-duplicative regulation and enforcement, and to service other purposes of the Act: (a) to allocate certain regulatory responsibilities that both parties have to one of the parties; (b) to relieve a party of its regulatory responsibility and obligations for a certain function under the Act if the other party agrees to exercise such responsibility and undertake such obligation for the specified function on behalf of the other party; and, (c) to provide for the allocation of expenses reasonably incurred by the party agreeing to exercise the responsibility and undertake the obligation for the specified function in the plan or agreement.

(1) Pursuant thereto, the Exchange has exclusive regulatory responsibility for identifying, in a certification, as amended by the Exchange from time to time, and attached hereto and made a part of this Agreement (*ISE Certification*), the rules of the Exchange that are identical or substantially similar to NASD rules and, therefore, are the subject of this Agreement.

5. *Services.* NASDR agrees to provide the following services (*Services*) as it relates to Common Members:

(a) *Membership Activities.*

(1) NASDR will receive and process in the Central Registration Depository (*CRD*) applications, reports, information, filings, fingerprint cards, and notices generally relating to: (a) a broker's or dealer's application for membership or participation in the Exchange, (b) associated person status, (c) registration as a principal of any type, a representative of any type, or any other type of employee required to register or required to pass a qualification examination.

(2) NASDR will receive and process in the CRD documentation of notice of the passage of the appropriate qualification examination for such principal, registered representative, or other employee required to qualify by examination and, subsequently, forward such information to the Exchange.

(3) NASDR will advise the Exchange daily of any changes in the rights or status of members (including officer and partner changes), associated persons, registered personnel, and other persons.

(4) *Forwarding Fees.* NASDR shall collect and forward monthly to the Exchange, any applicable fees for the account of the Exchange. NASDR agrees to provide the Exchange with an accounting of such fees in January of each year. The Exchange will reimburse NASDR for reasonable expenses incurred for performing both accounting functions.

(5) Common Members will be required to send to NASDR all letters, termination notices or other material relating to their associated persons.

(6) *Exclusions.*

(a) NASDR will not review the membership application, reports, filings, fingerprint cards,

⁸ Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49093 (November 8, 1976).

notices, or other writings filed to determine if such documentation submitted by a broker or dealer, or a person associated with a broker or a dealer, or other persons required to register or qualify by examination: (a) meets the Exchange requirements for general membership or for specified categories of membership or participation in the Exchange, such as (i) Primary Market Maker Membership (*PMM*); (ii) Competitive Market Maker Membership (*CMM*); or (iii) Electronic Access Membership (*EAM*) (or any similar type of exchange membership or participation that is created after this agreement is executed); or (b) meets the Exchange requirements to be associated with, or employed by, an Exchange member or participant in any capacity, such as a Designated Trading Representative (*DTR*) (or any similar type of participation, employment category or title, or associated-person category or class that is created after this agreement is executed).

(b) NASDR will not review applications or other documentation filed to requires a change in the rights or status described in paragraph 6(a) above, including termination or limitation on activities, of a member or a participant of the Exchange, or a person associated with, or requesting association with, a member or a participant of the Exchange.

(c) When, as a result of processing letters, termination notices, or other material relating to their associated persons, NASDR becomes aware of a statutory disqualification with respect to a Common Member, NASDR shall determine, pursuant to Section 15A(g) or Section 6(c) of the Act, the acceptability or continued acceptability of the person to whom such statutory disqualification applies, but will not make a determination regarding Exchange membership or participation, or association of a person with an Exchange member. NASDR shall advise the Exchange in writing of its actions in this regard. The Exchange shall, within 30 days of receiving such information from NASDR, determine whether to permit a statutorily disqualified Common Member to become or to remain an Exchange member or a participant, or a person associated with a member. The Exchange will advise NASDR of its decision. The Exchange will reimburse NASDR for reasonable expenses incurred for notifying the Exchange of the NASD's decision regarding a statutory disqualification under Section 15A(g) or Section 6(c) of the Act.

(b) *Branch Office Activities.* NASDR will receive and process notices, filings, or registrations received regarding a Common Member's branch offices, including notices, filings, or registrations to designate offices of supervisory jurisdiction, and agrees to provide notice to the Exchange of such filings. The Exchange will reimburse NASDR for reasonable expenses incurred for providing the Exchange notification.

(c) *Examinations.* NASDR will perform routine, cycle, cause, and special examinations of Exchange members, and will provide copies of the examination reports to the Exchange. The Exchange will reimburse NASDR for reasonable expenses incurred for providing examination reports to the Exchange.

(1) This undertaking is limited to examining Common Members for compliance with: (a) the federal securities laws and the rules and regulations thereunder, except that it does not include examining any Common Member for compliance with financial responsibility rules on behalf of the Exchange (unless the SEC has designated NASD as the *DEA* for the Common Member under Rules 17d-1); (b) other applicable federal laws, rules and regulations, including the rules of the Municipal Securities Rulemaking Board (*MSRB*); and (c) the rules of the Exchange that are identical or substantially similar to NASD rules because they have been certified by the Exchange as such, or, when applied to the Common Member's conduct or activities conducted on the Exchange or in connection or in relation to the Exchange, the rules are identical or substantially similar in that the rule's application to the Common Member's conduct or activities on the Exchange, in connection with, or in relation to, the Exchange would not require an examiner to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Common Member's activity, conduct, or output in relation to the rule.

(2) This undertaking specifically excludes any obligation or responsibility for NASDR to examine Common Members for compliance with Exchange rules for which regulatory responsibility is allocated to an SRO under the multilateral Rule 17d-2 agreement relating to options sales practices, as amended from time to time (the *Options Rule 17d-2 Agreement*).

(3) This undertaking specifically excludes any obligation or responsibility for NASDR to examine Common Members for compliance with Exchange rules that are: (i) related to administrative or housekeeping Exchange functions; or (ii) related to the trading in and operation of the Exchange market (*Exchange market rules*).

(d) *Violations.*

(1) If NASDR discovers an apparent violation of a federal statute or regulation or an Exchange rule listed above in paragraph 5.(c)(1) for which NASDR agrees to examine a Common Member for compliance, NASDR shall investigate the apparent violation, notify the Exchange of the results of the investigation and provide a copy of any written report, determine if additional regulatory action is required, take any disciplinary or other regulatory action required, and provide notice to the Exchange at the termination of the matter by enforcement or other action. If a disciplinary proceeding is conducted by NASDR, NASDR will apply the NASD Code of Procedure (the Rule 9000 Series) and other applicable NASD procedural rules. The Exchange will reimburse NASDR for reasonable expenses incurred for providing any information, notices, or reports contemplated under this provision.

(2) If NASDR discovers an apparent violation of an Exchange Rule not within the examination responsibility of NASDR as described above in paragraph 5.(c)(1), NASDR shall notify the Exchange and refer the matter to the Exchange for further examination, investigation, or enforcement or

regulatory action, as determined by the Exchange.

(e) *Advertising Materials.* NASDR will review advertising materials and other communications with customers for compliance with then applicable NASD rules and interpretations. This undertaking specifically excludes any obligation or responsibility for NASDR to review advertising materials and other communications with customers for compliance with Exchange rules that are unique to the Exchange, or, when applied to the member's conduct or activities regarding advertising or other communications with customers, are unique in that the rule's application to the member's conduct or activities would require a reviewer or examiner to develop one or more new reviewing or examination standards, modules, procedures, or criteria in order to analyze the application of the rule to the member's advertising materials or other communications with customers.

6. *Information Sharing.* The parties agree to provide each other with the following information:

(a) *General.* A party shall promptly furnish to the other party any information which the party determines indicates possible financial, operational, or other problems of any Common Member, including but not limited to early warning indications of potential problems resulting from unusual accumulations or concentrations of securities positions or market fluctuations.

(b) *Special Surveillance Categories.* The parties shall inform each other of any special surveillance categories utilized by the other party in its surveillance of a Common Member. As the *DEA* under Rule 17d-1 for a Common Member, NASDR shall furnish the Exchange with a description of the financial or operational factors that would cause a Common Member to be placed in one or another of such categories, and, if the NASDR takes subsequent action against the Common Member, NASDR shall inform the Exchange. The Exchange will reimburse NASDR for reasonable expenses incurred for providing such information and notices contemplated under this provision.

(c) *Common Member Special Surveillance.* As the *DEA* under rule 17d-1 for a Common Member, NASDR shall give the Exchange immediate oral notice of (i) the placing of a Common Member in a Securities Investor Protection Act of 1970 Section 5(a) surveillance category, along with the particular factors that caused such member to be so placed in such category; (ii) any change in such Section 5(a) surveillance category in which any Common Member has been placed and the reasons for such change; and (iii) the removal of any Common Member from the surveillance category and the reasons therefor. NASDR shall confirm such notice in writing at the earliest practicable time. The term "Immediate Notice" shall mean (i) notice by NASDR to the Exchange under this Agreement that is provided at the same time that NASDR provides notice to the SEC; or (ii) where notification to the SEC is not required, at the earliest practicable time. The Exchange will reimburse NASDR for reasonable expenses incurred for providing

any information or notices contemplated under this provision.

(d) *Operational or Other Restrictions.* As the DEA under Rule 17d-1 for a Common Member, NASDR shall give the Exchange prompt oral notice of (i) any decision to suspend, or to place other operational or financial restrictions upon, any Common Member (other than new members) and (ii) of any event that requires notice to either the SEC or the Securities Investor Protection Corporation ("SIPC") in connection with Rule 17a-11 under the Act. NASDR shall confirm such notice in writing at the earliest practicable time. The Exchange will reimburse NASDR for reasonable expenses incurred for providing any information and notices contemplated under this provision.

(e) *Reports.* Upon reasonable request, a party will make available promptly to a requesting party any financial, operational, or related report filed with the party by a Common Member, files, information on customer complaints, termination notices, copies of an examination report, investigative material, or other documents involving compliance with the federal securities laws and regulations and the rules of the parties by the Common Member, or other documents in the possession of the party receiving the request relating to the Common Member as necessary to assist the other party in fulfilling the self-regulatory responsibilities, obligations, and functions allocated under this Agreement. The parties agree that a party will make available promptly to the requesting party witnesses as necessary to assist the other party in fulfilling the self-regulatory responsibilities allocated under this Agreement. The non-requesting party will pay all reasonable travel and other expenses incurred by its employees to the extent that the requesting party requires such employees to serve as a witness, and provide information or other assistance pursuant to the Agreement.

(f) *Customer Complaints.* If a party receives a copy of a customer complaint relating to a Common Member's activity or conduct, and the activity or conduct is not the regulatory responsibility of the party receiving such customer complaint, the party will forward to the other party, on recognition, copies of such customer complaints.

(g) *Disciplinary Actions.* Upon reasonable request of a party, the other party shall use reasonable efforts to furnish the requesting party information on informal or formal disciplinary actions involving a Common Member. The requesting party will reimburse the other party for reasonable expenses incurred for providing such information.

(h) *Information-Miscellaneous.* Where not otherwise provided, in consideration for NASDR assuming any of the above referenced regulatory responsibilities and obligations of the Exchange with respect to Common Members and thereafter providing information to the Exchange in any form that is necessary or desirable to the Exchange in order for the Exchange to fulfill its regulatory obligations under the Act or in order for the Exchange to remain informed of the actions of its members and associated persons, the Exchange will reimburse NASDR for all reasonable expenses incurred in order to provide such information.

7. *Special or Cause Examinations.* Nothing in this Agreement shall restrict or in any way encumber the right of a party to conduct special or cause examinations of Common Members as either party, in its sole discretion, shall deem appropriate or necessary.

8. *Confidential Information.* The parties are subject to the Confidentiality and Non-Disclosure Agreement entered into by the parties on September 21, 1999 (*Confidentiality Agreement*), the provisions of which are attached hereto in their entirety and made a part of this Agreement.

9. *Fees.* NASDR will provide the Exchange with ninety (90) days advance written notice in the event that NASDR decides to charge the Exchange for any expenses incurred or services performed under this Agreement not otherwise set forth above. The Exchange will have thirty (30) days from the date of such notification to inform the NASDR that the Exchange will perform for itself the applicable regulatory responsibilities allocated NASDR under the Agreement or enter into an agreement pursuant to applicable rules of the SEC with another SRO with respect to the performance of such responsibilities.

10. *Indemnification.* Neither party, including respective directors, governors, officers, employees and agents, will be liable to the other party and its directors, governors, officers, employees and agents for any liability, loss or damage resulting from any delays, inaccuracies, errors or omissions with respect to its performing or failing to perform regulatory responsibilities, obligations, or functions, except as otherwise provided for under the Act or in instances of gross negligence, willful misconduct or reckless disregard, or breach of confidentiality. Both parties understand and agree with each other that the regulatory responsibilities are being performed on a good faith and best effort basis and no warranties, express or implied, are made by either party to the other party with respect to any of the responsibilities to be performed by either of these parties hereunder.

11. *Arbitration.* Any claim, dispute, controversy or other matter in question with regard to the Agreement that cannot be resolved by negotiation between the parties shall be submitted to arbitration in accordance with the rules and regulations of the American Arbitration Association; provided, however, that (1) submission of any such claim, dispute, controversy or other matter in question to the American Arbitration Association shall not be required if the parties agree upon another arbitration forum, (2) the foregoing shall not preclude either party from pursuing all available administrative, judicial or other remedies for infringement of a registered patent, trademark, service mark or copyright, (3) the parties shall not submit claims for punitive damages, and do hereby waive any right to the same, and (4) the arbitrators shall not be authorized to award punitive damages.

12. *SEC Approval.*

(a) The parties agree to promptly file this Agreement with the SEC for its review and approval.

(b) If approved by the SEC, the Exchange will notify Common Members of the general

terms of the Agreement and its impact on members. The notice will be sent on behalf of both parties and prior to being sent, NASDR will review and approve the notice.

13. *Definitions.* Unless otherwise defined in this Agreement, or unless the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Act and the rules and regulations thereunder.

14. *Subsequent Parties; Limited Relationship.* This Agreement shall insure to the benefit of and shall be binding upon the parties hereto and their respective legal representatives, successors, and assigns. Nothing in this Agreement, expressed or implied, is intended or shall (i) confer on any person other than the parties hereto, or their respective legal representatives, successors, and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, (ii) constitute the parties hereto partners or participants in a joint venture, or (iii) appoint one party the agent of the other.

15. *Assignment.* Neither party may assign the Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed, *provided, however*, that either party may assign the Agreement to a corporation controlling, controlled by or under common control with the assigning party without the prior written consent of the other party.

16. *Severability.* Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

17. *Termination.*

(a) *Termination for Cause.* Either party may terminate the Agreement due to breach by the other party. The party aggrieved by the breach shall give written notice to the other party that the Agreement shall be terminated not earlier than sixty (60) calendar days from receipt of the notice, and such notice shall state with specificity the grounds for termination. If the breach is curable, the party in breach will have the right to cure such breach prior to the date stated for termination, and, should the breach be cured and written notice of such cure served on the aggrieved party prior to the date stated for termination, such notice shall vacate the notice to terminate.

(b) *Termination for Convenience.* Either party may terminate the Agreement for any other reason by giving written notice to the other party that the Agreement will terminate not less than ninety (90) days from receipt of the notice. The notice will specify the basis for termination. The Exchange will pay NASDR the amount due for authorized work and expenses incurred in completion of such authorized work as of the effective date of termination.

18. *General.* The parties agree to perform all acts and execute all supplementary instruments or documents that may be

reasonably necessary or desirable to carry out the provisions of this Agreement.

19. *Liaison and Notices.* All questions regarding the implementation of this Agreement shall be directed to the persons identified in subsections (a) and (b), as applicable, below. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon (i) actual receipt by the notified party or (ii) constructive receipt (as of the date marked on the return receipt) if sent by certified or registered mail, return receipt requested, to the following addresses:

(a) If to NASDR: NASD Regulation, Inc., Office of General Counsel, 1735 K Street, N.W., Washington, D.C. 20006, Attn: Alden S. Adkins.

With, if a notice of breach or default, a required copy to: National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006, Attn: Office of General Counsel—Contracts Group.

(b) If to the Exchange: International Securities Exchange LLC, Senior Vice President, Chief Regulatory Officer & General Counsel, 60 Broad Street, New York, New York 10004, Attn: Michael J. Simon.

With, if a notice of breach or default, a required copy to: Same address as above.

20. *Regulatory Responsibility.* Pursuant to Section 17(d)(1)(A) of the Act, and Rules 17d-2 thereunder, NASDR and the Exchange jointly request the SEC, upon its approval of this Agreement, to relieve the Exchange of any and all responsibilities with respect to the matters allocated to NASDR pursuant to this Agreement for purposes of Section 17(d) and 19(g) of the Act, provided however that the Exchange will continue to have exclusive regulatory responsibility for ensuring the continued validity of the certifications made under Section 5.(c)(1) herein.

21. *Governing Law.* This Agreement shall be deemed to have been made in the State of New York, and shall be construed and enforced in accordance with the law of the State of New York, without reference to principles of conflicts of laws thereof. Each of the parties hereby consents to submit to the jurisdiction of the courts by or for the State of New York in connection with any action or proceeding relating to this Agreement.

22. *Survival of Provisions.* Provisions intended by their terms or context to survive and continue notwithstanding delivery of the Services by NASDR, the payment of the price by the Exchange, and any expiration of this Agreement shall survive and continue, including but not limited to, the items referred to in Sections 8, 9, and 10.

ISE Certification—ISE Rules Certification for 17d-2 Agreement With NASD

The ISE hereby certifies that the requirements contained in the ISE rules listed below are identical to, or substantially similar to, NASD rules.

ISE Rule 403 (Nominal Employment)
ISE Rule 408 (Prevention of the Misuse of Material Nonpublic Information)
ISE Rule 409 (Disciplinary Action of Other Organizations)

ISE Rule 601 (Registration of Options Principals)
ISE Rule 602 (Registration of Representatives)
ISE Rule 603 (Termination of Registered Persons)
ISE Rule 604 (Continuing Education for Registered Persons)
ISE Rule 605 (Other Affiliations of Registered Persons)
ISE Rule 607 (Branch Offices)
ISE Rule 613 (Statements of Accounts to Customers)
ISE Rule 614 (Statements of Financial Condition to Customers)
ISE Rule 615 (Addressing of Communications to Customers)
ISE Rule 617 (Restrictions on Pledge and Lending of Customers' Securities)
ISE Rule 619 (Guarantees)
ISE Rule 620 (Profit Sharing)
ISE Rule 621 (Assuming Losses)
ISE Rule 622 (Transfer of Accounts)
ISE Rule 623 (Communications to Customers)
ISE Rule 624 (Brokers' Blanket Bond)
ISE Rule 626 (Telephone Solicitation)
ISE Rule 1202 (Margin Requirements)
ISE Rule 1203 (Meeting Margin Calls by Liquidation Prohibited)
ISE Rule 1400 (Maintenance, Retention and Furnishing of Books, Records and Other Information)
ISE Rule 1407 (Market Maker Hedge Exemption from Nasdaq Short Sale Rule)

III. Solicitation of Comments

In order to assist the Commission in determining whether to approve this plan and to relieve the ISE of those responsibilities designated to the NASD, 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, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan 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 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. 4-431 and should be submitted by May 10, 2000.

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

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42660; File No. SR-PCX-00-11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc., Rescinding the Exchange's Off-Board Trading Rules

April 10, 2000.

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 March 26, 2000, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Exchange's proposed rule change raises issues similar to those raised by the New York Stock Exchange's ("NYSE" proposal to repeal NYSE Rule 390, which rule generally prohibits NYSE members and their affiliates from effecting transactions in certain NYSE-listed securities away from a national securities exchange. The Commission recently issued the notice of filing for the NYSE's proposal ("NYSE Notice") and solicited comment on a number of important issues that have broad implications for the structure of the U.S. securities markets.³ Specifically, the Commission requested comment on market fragmentation—the trading of orders in multiple locations without interaction among those orders—and on

⁹ 17 CFR 200.30-3(a)(34).

¹ 15 U.S.C. & 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 42450 (Feb. 23, 2000), 65 FR 10577 (Feb. 28, 2000) File No. SR-NYSE-99-48). The Commission notes that similar proposals have been filed by the American Stock Exchange, Securities Exchange Act Release No. 42460 (February 25, 2000), 65 FR 11618 (March 3, 2000) (File No. SR-Amex-00-05); the Chicago Stock Exchange, Securities Exchange Act Release No. 42459 (Feb. 25, 2000), 65 FR 11619 (March 3, 2000) (File No. SR-CHX-99-28); the Philadelphia Stock Exchange, Securities Exchange Act Release No. 42458 (Feb. 25, 2000), 65 FR 11628 (March 3, 2000) (File No. SR-Phlx-00-12); and the Boston Stock Exchange, SR-BSE-00-02.