

obligations of securities lenders⁵ in GCF Repo transactions. Under the proposed rule change, securities lenders will be permitted to satisfy their collateral allocation requirements in connection with their GCF Repo activity with (1) "comparable securities" (*i.e.*, those that fall within the same generic CUSIP number), (2) benchmark U.S. Treasury securities (*i.e.*, bills, notes, or bonds), or (3) cash. Market participants consider comparable securities to be acceptable substitutes because securities that fall within the same generic CUSIP number tend to have the same level of liquidity. U.S. Treasury securities are also acceptable substitute securities because of their high level of liquidity.

The second change proposed by GSCC applies where the securities borrower, due to reasons beyond its control and despite exercising best efforts, is not able to obtain in a timely manner the securities that were delivered on the day before by the securities lender. Under the proposed rule change, the securities borrower will have the right to return (1) "comparable securities," (2) benchmark U.S. Treasury securities, or (3) cash. The securities borrower will be responsible for making the securities lender whole (through GSCC) for any actual damages directly suffered by the securities lender as a result of not receiving back the same securities that were originally lent.

(ii) Insolvency Situation Involving Mortgage-Backed Securities

The third change proposed by GSCC relates to clarification of its risk management procedures associated with the GCF Repo Service to reflect the nature of MBS and MBS market practice. In the event of a securities borrower's insolvency, it may be impractical or even impossible for GSCC to obtain the identical types of MBS that were originally lent. Moreover, MBS market practice is such that in such a situation, securities lenders in repurchases transactions involving MBS would not expect to receive the same securities back.

The proposed rule change will amend Rule 22, Section 4 of GSCC's rules by giving GSCC the authority in an insolvency situation, where MBS were the underlying collateral, to deliver back to a securities lender "comparable securities" or benchmark U.S. Treasury

securities.⁶ Alternatively, the proposed rule change will permit GSCC to give a securities lender the right to close out the transaction by buying "comparable securities" or U.S. Treasury securities in return for a cash payment by GSCC equal to the value of the securities it bought. However, if GSCC determines that the price paid by the securities lender is unreasonably high, GSCC will be entitled to pay the securities lender a reasonable price as determined by an independent third party pricing source for the "comparable securities" or U.S. Treasury securities.

GSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to GSCC and in particular with Section 17A(b)(3)(F) of the Act because it will enhance the GCF Repo Service by making it more responsive to the needs of GSCC's members and by clarifying certain of GSCC's risk management practices, each in a manner consistent with market practice.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

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

Within thirty-five 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 ninety 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.

⁶ Rule 3 of MBS Clearing Corporation ("MBSCC") reflects MBS market practice of delivering comparable securities in an insolvency situation.

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. Persons making written submissions should file six copies of 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 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC.

All submissions should refer to File No. SR-GSCC-00-05 and should be submitted by December 26, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-30771 Filed 12-1-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43603; File No. SR-NYSE-00-36]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Fee Structure Governing the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Materials and Amending the Components of Coordination Activities

November 21, 2000.

I. Introduction

On August 11, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or

⁵ As provided in GSCC's Rule 46, the use of borrowing and lending terminology in this proposed rule change filing and in GSCC's rules and agreements shall not be deemed to affect the intent of members as to their characterization of their transactions in agreements entered into by the members with each other or with third parties with respect to such transactions.

⁷ 17 CFR 200.30-3(a)(12).

"Commission"), 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 to extend the pilot fee structure governing the reimbursement of member organizations for costs incurred in the transmission of proxy and other shareholder communication materials and to amend the list of coordination services an intermediary must perform to collect the \$20.00 nominee coordination fee. The proposed rule change was published in the **Federal Register** on August 23, 2000.³ The Commission received one comment letter on the proposed rule change.⁴ On October 20, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.⁵ This order approves the amended proposed rule change, including Amendment No. 1 on an accelerated basis through September 1, 2001. The Commission is also soliciting comment on Amendment No. 1 to the proposed rule change.

II. Background

NYSE member organizations that hold securities for beneficial owners in street name solicit proxies from, and deliver proxy and issuer communications to, beneficial owners on behalf of NYSE-listed companies.⁶ For this service, NYSE issuers reimburse NYSE member organizations for reasonable out-of-pocket, clerical, postage, and other expenses incurred in performing such activities. The reimbursement of NYSE member organizations by NYSE issuers is governed by NYSE rules.⁷ Today,

many NYSE member organizations outsource their proxy delivery obligations to proxy distribution intermediaries. Currently, one intermediary handles the majority of the proxy distribution business, Automatic Data Processing, Inc. ("ADP").

Currently, the Exchange has a pilot fee structure ("Pilot Fee Structure") set forth in its Rules that governs the reimbursement of expenses by NYSE issuers to NYSE member organizations for processing and delivering proxy materials and other issuer communications (collectively "Materials") with respect to security holders whose securities are held in street name. Among other things, the Pilot Fee Structure sets certain guidelines concerning the reimbursement of fees for the distribution of Materials, creates incentive fees to eliminate duplicative mailings, and establishes a supplemental fee for intermediaries that coordinate multiple nominees.⁸ The Pilot Fee Structure has been modified and extended several times,⁹ most recently until November 20, 2000.¹⁰

In February 2000, the Exchange proposed extending the Pilot Fee Structure through September 1, 2000.¹¹ At that time, the Commission requested that the Exchange and ADP provide the Commission with descriptions and analysis of the fees permissible under

the Pilot Fee Structure. In response, the Exchange submitted the Proposal and ADP submitted a letter to the Commission.¹²

III. Description of the Proposal

In the Proposal, the Exchange has requested that the Pilot Fee Structure be extended through September 1, 2001.

In addition, the Proposal would amend the functions that an intermediary is expected to perform to recover the nominee coordination fee.¹³ Specifically, the Proposal contains detailed descriptions of the minimum services that must be provided by an intermediary that coordinates the delivery and processing of proxies across multiple nominees. For example, the Proposal specifies that an intermediary must coordinate the search of nominees and beneficial owners by: (1) Searching for all nominees that are clients of the intermediary; (2) obtaining beneficial ownership lists from nominee clients; (3) consolidating nominees' responses to an issuer's requests for the number of beneficial owner customers of the nominee clients; and (4) providing the names and addresses of nominee clients when requested by an issuer pursuant to Rule 14a-13(a)(1)(D) under the Act.¹⁴ In addition, intermediaries collecting the coordination fee will be required to (1) accept issuers' proxies at a single location and prepare such proxies across multiple nominees for distribution to beneficial owners, including packaging, if necessary; (2) transmit issuers' proxy materials by making effective use of bulk mail opportunities; (3) receive and tabulate vote responses; and (4) provide vote reports across multiple nominees.¹⁵

⁸ See Securities Exchange Act Release No. 38406 (March 14, 1997), 62 FR 13922 (March 24, 1997). The Commission originally approved the Pilot Fee Structure for a one-year period, expiring on May 13, 1998. See note 9 *infra* for additional extensions and changes to the original pilot.

⁹ See Securities Exchange Act Release Nos. 39672 (February 17, 1998), 63 FR 9034 (February 23, 1998) (order extending Pilot Fee Structure through July 31, 1998, and lowering the rate of reimbursement for mailing each set of initial proxies and annual reports from \$.55 to \$.50); 40289 (July 31, 1998), 63 FR 42652 (August 10, 1998) (order extending Pilot Fee Structure through October 31, 1998); 40621 (October 30, 1998), 63 FR 60036 (November 6, 1998) (order extending Pilot Fee Structure through February 12, 1999); 41044 (February 11, 1999), 64 FR 8422 (February 19, 1999) (order extending Pilot Fee Structure through March 15, 1999); 41177 (March 16, 1999), 64 FR 14294 (March 24, 1999) (order extending Pilot Fee Structure through August 31, 1999); 41669 (July 29, 1999), 64 FR 43007 (August 6, 1999) (order extending Pilot Fee Structure through November 1, 1999); 42086 (November 1, 1999), 64 FR 60870 (November 8, 1999) (order extending Pilot Fee Structure through January 3, 2000); 42304 (December 30, 1999), 65 FR 1212 (January 7, 2000) (order extending Pilot Fee Structure through February 15, 2000); 42433 (February 16, 2000), 65 FR 10137 (February 25, 2000) (order extending the Pilot Fee Structure through September 1, 2000); and 43151 (August 14, 2000), 65 FR 51382 (August 23, 2000) (order extending the Pilot Fee Structure through October 10, 2000).

¹⁰ See Securities Exchange Act Release No. 43429 (October 10, 2000), 65 FR 62781 (October 19, 2000).

¹¹ Securities Act Release No. 4243 (February 16, 2000), 65 FR 10137 (February 25, 2000).

¹² See letter from Richard J. Daly, Group Co-President, ADP, to Jonathan G. Katz, Secretary, SEC, dated June 28, 2000.

¹³ There is some overlap of the functions that an intermediary needs to perform to collect the proxy mailing fee and the nominee coordination fee. For example, under the Commission's rules, an intermediary is required to respond to an issuer's request for the number of beneficial owners served by the intermediary and forward issuer proxy materials to the beneficial owners, even if the intermediary is not coordinating these functions on behalf of multiple nominees. Intermediaries also traditionally have received and tabulated vote responses from beneficial owners and provided vote reports to the issuer in return for the proxy mailing fee. The proposed rule change is not intended to change existing practices or fee allocation in this regard. The listed functions are relevant to the nominee coordination fee only to the extent that an intermediary performs them on behalf of multiple nominees.

¹⁴ 17 CFR 240.14a-13(a)(1)(D).

¹⁵ The intermediary must provide a vote report, consolidated across multiple nominee clients no less than 10 days before the shareholder meeting. Thereafter, the intermediary must provide updated consolidated vote reports each day before the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 43159 (August 16, 2000), 65 FR 51384 ("Proposal").

⁴ See letter from T. Peter Townsend, Vice President, Investor Relations, Secretary, Exxon Mobil Corp., to Secretary, SEC, dated September 13, 2000.

⁵ See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Senior Special Counsel, Office of Market Supervision, Division of Market Regulation, SEC, dated October 18, 2000 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the language of the nominee coordination fee provision to more clearly articulate what services an intermediary is expected to perform to earn the \$20.00 coordination fee.

⁶ The ownership of shares in street name means that a shareholder, or "beneficial owner," has purchased shares through a broker-dealer or bank, also known as a "nominee." In contrast to direct ownership, where the shares are directly registered in the name of the shareholder, shares held in street name are registered in the name of the nominee, or in the nominee name of a depository, such as the Depository Trust Company.

⁷ See NYSE Rules 451, "Transmission of Proxy Material," and 465 "Transmission of Interim Reports and other Materials." In addition, the text of NYSE Rule 451 also is included at Paragraph 402.10(A) of the Exchange's *Listed Company Manual* (collectively "Rules").

Finally, intermediaries must submit consolidated invoices to issuers for the processing of proxies on behalf of multiple nominees.¹⁶

IV. Summary of Comments

The Commission received one comment letter on the Proposal.¹⁷ The commenter argued that the Pilot Fee Structure is not competitive and ultimately is costly to shareholders. The commenter suggested that the fee for mailing issuer materials be reduced from \$0.50 to \$0.25 per mailing to make it consistent with similar services for registered shareholders. The commenter argued that the current \$0.50 mailing fee does not reflect continued technological improvements that have lowered costs. According to the commenter, this reduction could be recovered in the \$0.50 elimination fee and \$20.00 nominee coordination fee. Further, the commenter requested that intermediaries be required to provide annual justification of their costs that would be subject to an independent review. Finally, the commenter suggests the use of a sliding scale based on volume or a cap on total proxy fees paid by large issuers. In support of this, the commenter states that the current flat fee structure fails to take into account economies resulting from large shareholder bases.

V. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)¹⁸ of the Act.¹⁹ Section 6(b)(4) of the Act²⁰ requires that exchange rules provide the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using the facilities of an exchange.

shareholder meeting. On the day before the shareholder meeting, the intermediary must provide two vote reports consolidated across multiple clients. Finally, on the day of the shareholder meeting, the intermediary must provide a final vote report consolidated across multiple nominee clients.

¹⁶ In the Proposal, the Exchange clarified that the list of coordination activities that an intermediary must perform was not intended to be exclusive. By setting forth the list of coordination activities in the Rules, the Exchange intended to add a level of specificity to provide both intermediaries and issuers with notice as to the minimum services that an intermediary is expected to perform.

¹⁷ See note 4 *supra*.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ In approving this proposal, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

²⁰ 15 U.S.C. 78f(b)(4).

Section 6(b)(5) of the Act²¹ requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, processing information with respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest.

The Commission has decided to extend the pilot through September 1, 2001. The Commission believes that this time frame will permit further consideration by market participants and the Commission of the proxy fee structure.²²

The Commission also believes that the components of the nominee coordination fee are consistent with the requirements of the Act. Currently, the Rules only require that an intermediary provide an issuer with the names and address of the nominees in response to the issuer's request and transmit the issuer's proxies to beneficial owners. The Proposal provides more specific information as to the services an intermediary is expected to perform, at a minimum, in order to collect the \$20.00 nominee coordination fee. The Commission believes that clarifying the minimum services to be provided by intermediaries and specifying these in the Rules will provide market participants, including issuers, with more complete information about the scope of the fees charged and services provided by intermediaries.

The Commission notes that, under the NYSE Proposal, the list of services that an intermediary is required to provide for collecting the \$20.00 nominee coordination fee is not exclusive. The list is considered the minimum services required to be performed for collection of the coordination fee and should be helpful to issuers by providing them with information on the services being provided for the fees they are paying. The Commission also believes that the additional specificity in the rule on the minimum requirements to collect the \$20.00 coordination fee should help to address some of the concerns that have been raised since the inception of the Pilot Fee Structure.

As noted above, there is one intermediary, ADP that provides the majority of proxy and issuer communication delivery services. Thus, there is a lack of competitive market forces to dictate appropriate fees for

services. The Commission believes that until an approach can be developed that would foster competition in the proxy distribution industry so that market forces could determine reasonable expenses for services, that it is appropriate for the Exchange to specify rates of reimbursement for NYSE member organizations that distribute Materials to beneficial owners on behalf of NYSE issuers.

The Commission received one comment letter in response to the proposed rule change.²³ The commenter argued that the Pilot Fee Structure is not competitive and ultimately costly to shareholders and therefore, the commenter believed that certain mailing fees should be reduced. The commenter also raised concerns that the fee structure does not reflect economies of scale from issuers with a large shareholder base.

The Commission, as noted above, also continues to be concerned about the lack of competitive forces driving the fees charged for the delivery and processing of issuer Materials and that is one of the main reasons why the Commission has decided to continue to approve the Rules on a pilot basis. The Commission hopes that market participants will further consider other more competitive approaches to establishing reasonable fees for distributing issuer Materials. The Commission believes that competitive market forces would best dictate reasonable fees. However, in the absence of such a competitive scheme, the Commission believes that it is appropriate for the minimum fees to be governed by NYSE Rules. The Commission also will continue to consider the appropriateness of the fees over the course of the pilot.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register**. In Amendment No. 1, the Exchange merely added clarifying language to the text of the proposed Rules. The substance of the minimum services expected to be provided by an intermediary in order to earn the nominee coordination fee was not changed. Therefore, because the substance of the Rules was not amended and the Proposal was subject to notice and comment by interested persons, the Commission believes that good cause exists pursuant to Sections 6(b)(5)²⁴ and 19(b)²⁵ of the Act to accelerate approval

²¹ 15 U.S.C. 78f(b)(5).

²² See Securities Exchange Act Release No. 41177 (March 16, 1999), 64 FR 14294 (March 24, 1999) for a complete description of the Pilot Fee Structure and the Commission's basis for approval, which is incorporated herein.

²³ See note 4 *supra*.

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ 15 U.S.C. 78s(b).

of Amendment No. 1 to the proposed rule change.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. 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 NYSE. All submissions should refer to File No. SR-NYSE-00-36 and should be submitted by December 26, 2000.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-NYSE-00-36), as amended, is approved through September 1, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00-30721 Filed 12-1-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43619; File No. SR-PCX-00-44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Committee Voting Requirements

November 27, 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 November

20, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with 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 Exchange. 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 PCX is proposing to amend PCX Rule 11.2(a) to replace the word "present" with the word "voting" to allow committee action to be approved by a majority of those voting at a meeting at which a quorum has been established. Below is the complete text of the proposed rule change. Proposed new text is in *italics*. Proposed deletions are in [brackets].

* * * * *

Pacific Exchange, Inc.

Constitution and Rules

* * * * *

Rule 11

Committees of the Exchange

¶6233 Committee Procedures

Rule 11.2(a). Except as otherwise provided in the Constitution, the Rules, or a resolution of the Board, each committee shall determine its own time and manner of conducting its meetings. The vote of a majority of the members of a committee [present] *voting* at a meeting at which a quorum is present shall be the act of the committee. Committees may act by written consent of a majority of the members of the committee.

(b) 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, the Exchange 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 Exchange 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

Currently, the PCX's Board of Governors and the Exchange's standing committees operate under different voting standards. The voting standard applied to committees is more restrictive than that applied to the Board of Governors. The standard for committee voting is set by PCX Rule 11.2(a) which states that "the vote of a majority of the members of a committee present at a meeting at which a quorum is present shall be the act of the committee." This differs from the voting requirement for the Board of Governors which may act upon the affirmative vote of "not less than a majority of the Governors voting at a meeting at which a quorum is present * * *"³ This section allows the Board of Governors to act on the majority vote of the Governors voting, regardless of whether the number of Governors recusing or abstaining reduces the number of those eligible to vote below a quorum, below a majority of the Governors attending or below a majority of the total number of Governors on the Board.

Unlike Section 1(a), PCX Rule 11.2(a) requires a vote of a majority of committee members present at the meeting, rather than a mere majority of those voting. The PCX believes that Rule 11.2(a) should be amended to make it consistent with the requirements set forth for the PCX Board of Governors. Recent changes in the ownership of, or capital investment in, many PCX member firms has increased the number of instances in which committee members must abstain or recuse from a committee vote. This may delay or preclude a committee from taking action, thereby reducing the responsiveness of a committee to rapidly changing market conditions and limiting overall committee effectiveness.

The proposed rule change conforms the committee voting standard to that applied to the PCX Board of Governors. The rule change will allow for greater committee responsiveness, improved timing for committee actions, and consistency across the Exchange with respect to rules of order.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,⁴ in general, and furthers the objectives of Section

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ PCX Constitution, Article II, Section 1(a).

⁴ 15 U.S.C. 78f.