

administrative oversight by Nasdaq, the rule was not extended when its pilot approval terminated on March 1, 2000. Despite this lapse, NASD firms have continued to report listed trades done before 6:30 p.m. within 90 seconds of execution.⁶ To avoid such lapses in the future, and as an expression of its intent that 90-second after-hours trade reporting in listed securities should not have lapsed at any time, Nasdaq has determined to file the instant proposal to make permanent the rule mandating 90-second ACT trade reporting for all transactions in listed securities executed by NASD members prior to 6:30 p.m. ET. Nasdaq believes that 90-second trade reporting is an important component in increasing transparency and improving investor protection outside of normal market hours. By permanently extending 90-second listed trade reporting to 6:30 p.m. ET, the rule also becomes consistent with the Normal Business Hours of the Consolidated Quotation Service ("CQS") established in NASD Rule 6340. Approval of the rule change will also conform the time-related trade reporting obligations for transactions involving listed securities with those now in place for Nasdaq National Market, SmallCap, Convertible Debt and over-the-counter equity issues that were altered as part of a separately operating pilot program extending the availability of several Nasdaq services and facilities until 6:30 p.m. ET.

2. Statutory Basis

Nasdaq believes that the proposed rule changes are consistent with the provisions of 15(a)(b)(6) of the Act⁷ in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

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

Nasdaq does not believe that 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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission accelerate the operative date. The Commission finds good cause to waive the 30-day operative waiting period, because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will correct the inadvertent lapse of the rule as soon as possible. For these reasons, the Commission finds good cause to waive both the 5-day pre-filing requirement and the 30-day operative waiting period.¹⁰

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. 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 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 withdrawn 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 Association. All submissions should refer to file number SR-NASD-2001-50 and should be submitted by September 11, 2001.

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

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44695; File No. SR-PCX-2001-32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Order Service Firms

August 14, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notices is hereby given that on August 7, 2001, 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 Exchange proposes to adopt PCX Rule 6.60 ("Order Service Firms") to allow members and member organizations to accept orders for the purchase and sale of stocks and futures contracts (and options thereon) from Exchange Market Makers and to forward such orders to the appropriate marketplace for execution. The text of the proposed rule change is available at the Office of the Secretary, the PCX and the Commission.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 7 CFR 240.19b-4.

⁶ Nasdaq notes that the inadvertent lapse of the rule did not impact any firm's ultimate obligation to report third market trades. Instead, the rule governed only the time period after execution in which a member must report. See NASD Rule 6420(3)(A).

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

The purpose of the proposed rule change is to allow PCX members and member organizations to accept orders for the purchase and sale of stocks and futures contracts (and options thereon) from Exchange Market Makers and to forward such orders to the appropriate marketplace for execution. Members or member organizations who conduct an order execution service ("order service") typically have as its primary function the execution of hedging transactions in underlying stocks or futures for Exchange options Market Makers. The Exchange options floor members and their personnel route such orders to other markets for execution. The Exchange recognizes the order service business as a floor function for which Exchange approval will be required. The Exchange believes that the proposed rule serves to assist the Exchange in regulating the business activities that its members and member organizations engage in.

Under the requirements of the proposed rule change, members or member organizations seeking to act as Order Service Firms ("OSF") would be required to register with the Exchange. An applicant for registration as an OSF would be required to file a written application with the Membership Department of the Exchange. Applications would be reviewed by the Exchange's Membership Committee. The Membership Committee would consider the applicant's financial condition, regulatory history, and such other factors the Membership Committee deems appropriate. After reviewing the application, the Membership Committee would either approve or disapprove the applicant's registration to become an OSF. Before registration, the Exchange's Membership

Department, upon direction of the Membership Committee, would post the names of the member organization and its nominee(s) on the floor of the Exchange for at least three business days. The Exchange also proposes that an OSF be required to make available to Market Maker customers upon request a statement of financial condition as disclosed on its most recent balance sheet, which would be required to be prepared no later than the tenth business day following each calendar month-end. The Exchange believes that this would assist Market Makers in assessing the financial security of entrusting their orders with a particular OSF. The Exchange also believes that the proposed rule change would allow OSFs the ability to accept orders for the purchase or sale of commodity futures contracts (and options thereon). The OSF, however, would be required to comply with the Commodity Exchange Act ("CEA") and the rules and regulations promulgated thereunder. Such a firm would be required to keep the Exchange's Department of Financial and Operational Compliance Department ("FOCD") apprised of its registration status under the CEA on an ongoing basis and also would be required to keep it apprised regarding any financial reporting or capital requirements.

The Exchange proposes that prior to accepting orders from Market Makers on the Floor of the Exchange, all OSF's would be required to have on file with the Exchange and in effect an updated Letter of Authorization issued for such firm by a member of the Options Clearing Corporation. That Letter of Authorizations would be required to be in a form prescribed by the Exchange and would be required to provide that the issuing Clearing Member accepts financial responsibility for all orders handled by the OSF on the Floor of the Exchange and for all financial obligations of the OSF to the Exchange. Further, the Exchange proposes that Exchange Clearing Members seeking to act as OSFs need not register as such in order to accept orders from Market for which they have an existing letter of Authorization. Clearing Members would not be permitted to authorize more than three OSFs without the prior written approval of the FOCD. In considering a request to authorize more than three such firms, the Exchange proposes that the FOCD considers the Clearing Member's level of access net capital, additional financial resources, and such other factors as the FOCD deems appropriate. Moreover, the Exchange has determined that because of the

limited number of clearing firms that operate on its floor, Clearing Members that act as OSFs would not be counted towards the established limit of three.

Finally, the proposal provides that a Letter of Authorization must remain in effect until a written notice of revocation is filed with the Exchange. If the notice is filed within at least one hour prior to the opening of trading, the revocation would not become effective until the close of trading on that particular day. Upon request by the Clearing Members that files the notice of revocation, the Exchange would post the notice on the Floor of the Exchange.

The Exchange notes that the Commission has approved a similar rule filing of the Chicago Board Options Exchange, Inc. ("CBOE").³ The Commission approved a proposed rule change that recognized the existence of OSF's under CBOE Rules.⁴ The Exchange believes that the proposed rule change would assist its regulatory staff in monitoring the activities of its members and member organizations so as to ensure that investors and the public interest are protected.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,⁵ in general, and furthers the objectives of section 6(b)(5) of the Act,⁶ in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest by establishing a mechanism for improving the PCX regulatory function.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

³ See Securities Exchange Act Release No. 24814 (August 18, 1987), 52 FR 42224 (August 26, 1987) (order approving SR-CBOE-87-07).

⁴ *Id.* In a subsequent amendment, the Commission approved the expansion of CBOE's OSF Rule to allow for the ability to take Market Maker orders for the purchase or sale of commodity futures contracts and options thereon. See Securities Exchange Act Release No. 34841 (October 14, 1994), 59 FR 52999 (October 20, 1994) (order approving SR-CBOE-94-16).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 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 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 PCX.

All submissions should refer to File No. SR-PCXC-2001-32 and should be submitted by September 11, 2001.

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. 34-44697; File No. SR-PCX-2001-29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Options Floor Member Examinations

August 14, 2001.

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 July 26, 2001, 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. On August 2, 2001, the PCX amended the proposal.³ The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(6)⁵ thereunder, which renders the proposal effective upon filing with the Commission.⁶ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new qualification examinations for PCX Options Market Makers and Floor Brokers. The text of the proposed rule

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See July 31, 2001 letter from Michael D. Pierson, Vice President, Regulatory Policy, PCX, to Joseph Morra, Special Counsel, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, the Exchange clarified that (a) the Market Maker examination consists of 100 questions, and that applicants will be given three hours to take the examination; and (b) the Floor Broker examination consists of 121 questions, and that applicants will be given three and one half hours to take the examination.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

⁶ The Exchange provided the Commission with written notice of its intent to file the proposal on July 9, 2001. The Exchange has asked the Commission to waive the 30-day operative delay to allow the proposal to be effective upon filing with the Commission. See Rule 19b-4(f)(6). 17 CFR 240.19b-4(f)(6).

change is available at the Commission and at the PCX.

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 its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The PCX 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

The PCX currently administers examinations to qualify applicants to perform the functions of Market Makers and Floor Brokers on the Options Floor of the Exchange. Market Makers and Floor Brokers are required to pass these examinations pursuant to PCX Rules 6.33 and 6.44, respectively. Before being able to operate in the capacity of an Options Market Maker or Options Floor Broker, a prospective member must successfully complete the proposed examination that corresponds to the individual's role as a floor member. The commission approved these examinations in 1993.⁷

The Exchange now proposes to replace the current examinations with new sets of questions and answers. The new Floor Member Examination, to be taken by both Market Maker and Floor Broker applicants, consists of 100 questions that cover a variety of topics, including: exercise of option contracts, margin and net capital, reporting of financial arrangements, rules on bid-ask spread differentials, priority of bids and offers, the Exchange's automatic execution system, opening and closing rotations, firm quotes, fast markets, trading halts, general market maker obligations, position and exercise limits and other such subjects. Floor Broker applicants must also take an additional examination consisting of 21 questions that cover various topics, including the following: due diligence, limit order display, order types, error accounts, crossing orders, public outcry requirement, priority of bids and offers, fast markets, trading rotations and

⁷ See Securities Exchange Act Release No. 32550 (June 29, 1993), 58 FR 36489 (July 7, 1993) (order approving SR-PSE-91-15).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).