

that act as investment advisers to share in customer account profits and gains subject to the provisions of Rule 205-3 under the Advisers Act. The NASD amended Rule 2330(f)(2), to eliminate the conditions set forth in the rule and to incorporate the terms of Rule 205-3, as may be amended from time to time. The NASD stated that this approach represents a decision by the Board to incorporate whatever performance-based standard the Commission may adopt from time to time.⁶ Thus, in the future, the proposed rule will conform to any subsequent amendments to Rule 205-3 in a Notice to Members within 90 days of the amendment.⁷

III. 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 association,⁸ and, in particular, the requirements of Section 15A(b)(6) of the Act.⁹ The Commission believes that proposed rule change should continue to ensure that NASD members enter into performance fee arrangements only with clients who are financially sophisticated or have the resources to obtain sophisticated financial advice regarding performance fee arrangements. The Commission also believes that cross-referencing Advisers Act Rule 205-3, rather than duplicating the specific provisions of Rule 205-3 in NASD Rule 2330(f)(2), will ensure that NASD Rule 2330(f)(2) remains consistent with Advisers Act Rule 205-3. The Commission notes that otherwise, NASD members acting as investment advisers might be subject to conflicting rules on the same subject. Finally, the Commission believes that NASD Regulation's commitment to issue a Notice to Members within 90 days of any amendments to Advisers Act Rule 205-3 should ensure that members remain aware of the requirements for performance fee arrangements.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Commission notes

that Amendment No. 1 clarifies that the proposal applies to members acting as investment advisers and cross-references Advisers Act Rule 205-3. The Commission believes that Amendment No. 1 will make the requirements of NASD Rule 2330(f)(2) more clear and, therefore, should help to ensure that members comply with the rule. Accordingly, the Commission finds good cause to accelerate approval of Amendment No. 1 to the proposed rule change, consistent with Sections 15A(b)(6)¹⁰ and 19(b)¹¹ of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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, 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR-NASD-99-42 and should be submitted by March 19, 2001.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the amended proposed rule change (SR-NASD-99-42) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43975; File No. SR-PCX-00-27]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Pacific Exchange, Inc. Relating to Options Trade Reporting

February 16, 2001.

I. Introduction

On August 5, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("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 relating to the reporting of options transactions. The proposed rule change was published for comment in the **Federal Register** on November 8, 2000.³ The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

The PCX proposes to adopt new PCX Rule 6.69(a) to require all Exchange members and member organizations who are required to report trades either directly to the Options Price Reporting Authority ("OPRA") or to another party responsible for reporting trades to OPRA, to immediately report all trades to the Exchange for dissemination to OPRA within 90 seconds.

Currently, Commentary .01 to Exchange Rule 6.69 states that trades must be immediately reported at the time of execution. The Exchange proposes to require immediate trade reporting, and in any event, no later than 90 seconds following execution. The Exchange also proposes to amend PCX Rule 10.13 to include violations of proposed Rule 6.69(a) in the Exchange's minor Rule Plan.

III. Discussion

The Commission finds that the proposal is consistent with the requirements of the Act.⁴ In particular, the Commission finds that the proposed rule change furthers the objectives of Section 6(b)(5),⁵ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and

⁶ Telephone conversation between Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, and Katherine A. England, Assistant Director, Commission (October 27, 2000).

⁷ See Amendment No. 1, *supra* note 4.

⁸ In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 78o-3(b)(6).

¹¹ 15 U.S.C. 78s(b).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 43505 (November 1, 2000), 65 FR 67030.

⁴ In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission believes that the proposal, which requires the reporting of all options transactions immediately, and in any event, within 90 seconds of execution, should help to prevent fraudulent and manipulative acts and practices, as well as to promote just and equitable principles of trade. The Commission believes that the proposed rule change should enable the Exchange to provide timely trade information to investors more efficiently. The enhanced transparency associated with timely trade reporting should facilitate price discovery for investors and assist the Exchange's surveillance of its members' trading in listed options.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-PCX-00-27) is approved.

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

Margaret H. McFarland,
Deputy Secretary.

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DEPARTMENT OF STATE

[Public Notice 3567]

Bureau of European Affairs; US Bilateral Assistance to Bosnia and Serbia

The Secretary of State issued on March 15, 2000, a waiver of restrictions under Section 566 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 2000, for bilateral assistance to the Republika Srpska (RS) and Serbia (excluding Kosovo), as follows:

(1) In the Republika Srpska: Support for civilian police restructuring; USAID and State public diplomacy programs promoting democratization, reconciliation, and free and independent media; the Community Reintegration and Stabilization Project of USAID, as well as its Bosnia Business Development, Economic Reform and Democratic Reform Programs; OSCE-supervised elections and human rights

activities; and Trade and Development Agency (TDA) activities designed to assist U.S. businesses in Bosnia. The municipalities of Foca, Pale, and Prijedor are excluded from this waiver, because competent authorities have failed to take necessary and significant steps to apprehend and transfer war crimes indictees to the International Criminal Tribunal for the Former Yugoslavia. These municipalities will not be eligible for new U.S. assistance.

(2) In Serbia: State public diplomacy and USAID programs to support democratic reform, including free and independent media and labor; economic reform and other advisory assistance to the democratic FRY opposition; developing programs with NGOs for the delivery of humanitarian assistance through new distribution mechanisms that are independent of Belgrade regime control; and technical assistance, training grants, and exchanges designed to benefit opposition-controlled municipalities.

The Secretary noted that:

Our bilateral assistance promotes Dayton and an integrated Bosnia. Recipients of U.S. assistance must state in writing their support for Dayton and then act accordingly. Our assistance has promoted the growth of pro-Dayton parties in the RS, development of independent media, minority returns, privatization and market-oriented reform, increased minority representation in the RS police force, and efforts to investigate corruption and curb police abuse.

The promotion of independent media and pro-democracy NGOs has a special significance in the aftermath of the Kosovo conflict. The Milosevic regime in Belgrade has an interest in ensuring that no pro-Western governments can survive in areas of predominantly Serb population. RS authorities have demonstrated their readiness to ensure freedom of movement for members of opposition political parties and the independent media from Serbia. The response from the Belgrade regime has been to curb dissemination of democratically-oriented media from the RS into Serbia and to issue threats against representatives of the RS government.

Section 566 requires publication of a listing and justification of any assistance that is obligated for any country, entity, or canton to which assistance restrictions apply, including a description of the purpose of the assistance project and its location, by municipality.

The following data are for funds obligated during April-July 2000. Locality data are provided where feasible. However, U.S. assistance in Bosnia, including Republika Srpska has largely shifted from physical reconstruction projects to provision of technical assistance and promotion of political and economic reform. As

indicated below, assistance in Serbia is geared toward increasing capabilities of political opposition parties and the independent media. U.S. bilateral aid implementers apply strict screening procedures to ensure that aid beneficiaries, whether of business credits or technical assistance, are firms or organizations in which war crimes indictees have no material influence or interest.

USAID: Bosnia/Republika Srpska

The following list gives, in order, Date of Obligation, Amount of Obligation, Project Number, Project Title, Description of Activity, Justification of Assistance and Location.

- 8/1/00. \$489,957. 180-0019. Democratic Governance. TA and training for managers and administrators of Brcko District. Brcko District (Federation and RS).
- 8/1/00. \$1,425,000. 180-0019. Democratic Governance. Fund team of international experts to provide TA to Brcko District (includes RS).
- 8/1/00. \$1,704,087. 180-0014. Business Development Program. TA for reform of commercial, non-banking laws and financial activities, as well as of accounting and auditing standards. Throughout BiH.
- 8/2/00. \$403,262. 180-0022. Media Training. TA and training to independent electronic and print media in Federation and RS.
- 8/7/00. \$167,000. 180-0021. Political and Social Process. TA and training to local civic organizations to target voter constituencies. Throughout BiH.
- 8/7/00. \$170,000. 180-0021. Political and Social Process. Polling to enable political parties to utilize data to develop election messages. Throughout BiH.
- 8/24/00. \$21,1290. 180-0249. Corporate Governance. Provide TA to develop an employers confederation to address legal and regulatory needs of private firms. Throughout BiH.
- 9/1/00. \$4,778,166. 180-0056. Business Development Program. TA for Business Finance portion of the BDP. Throughout BiH.
- 9/1/00. \$3,150,000. 180-0056. Business Development Program. Provide Business Consulting services, including training and TA, to enterprises seeking loan funds. Throughout BiH.
- 9/1/00. \$59,712. 180-0249. Assessment and Evaluation. Conduct survey to assess impact of USAID-funded civic participation and organizing programs. Throughout BiH.
- 9/29/00. \$2,000,000. 180-021. Political and Social Process. Provide assistance in voter education and civic

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).