

NASAA. Until an agreement is reached with NASAA on expunging factually incorrect information from the CRD system, NASD Regulation will discontinue releasing this information via the PDP. NASD Regulation plans to develop guidelines to implement this policy.

#### *Automation of Public Disclosure Reports*

NASD Regulation also proposes to automate the preparation of disclosure reports. Currently, when NASD Regulation receives a public disclosure request, NASD Regulation staff reviews the CRD record of the subject of the request, identifies events that must be disclosed under the Interpretation, and manually prepares a summary report for the requester. Under the proposal, NASD Regulation will discontinue the manual preparation of these reports and instead use a computer program that automatically generates a report after drawing information directly from the Web CRD database. The report then will be sent by regular or electronic mail to the requester.

One consequence of this approach is that the automatically generated reports will include verbatim any comment submitted by a registered representative, firm, or regulator in response to the last question on the DRPs of the uniform forms.<sup>12</sup> NASD Regulation will inform members and registered persons via a Notice to Members and other communications that the NASD believes that members and registered persons may be subject to civil liability or NASD regulatory sanctions if they submit offensive or potentially defamatory language on the uniform forms. In the future, NASD Regulation may develop electronic notices that would appear on the electronic screen when forms are being completed on-line advising Web CRD users of this issue. NASD Regulation plans to undertake a continuing program to educate members and registered persons on this issue.

After the proposal goes into effect, NASD Regulation will address objections to disclosure of customer names, confidential customer information, or offensive or potentially defamatory language on a case-by-case basis in the following manner. After receiving an objection, NASD

Regulation will identify the filer (*i.e.*, a member firm, regulatory, or self-regulatory organization) of the uniform form containing the language in question and notify the filer of the objectives. NASD Regulation will provide the filer with the opportunity to amend the filing to remove the language in controversy. If the filer determines not to amend, NASD Regulation will apply a balancing test to weigh the value of the language in controversy for regulatory and investor protection purposes against the objector's asserted privacy rights and/or defamation claims.<sup>13</sup> Based on the outcome of this test, NASD Regulation may determine to redact the language in controversy from reports prepared under the PDP. NASD Regulation will inform any requester of a report that has been redacted of the reasons for the redaction. NASD Regulation staff anticipates that objections to disclosure will be infrequent. If objections are more frequent than anticipated, NASD Regulation staff will consider alternative approaches.

### III. Discussion

The Commission finds that the proposal is consistent with the requirements of Section 15A of the Act<sup>14</sup> and the rules and regulations thereunder that govern the NASD.<sup>15</sup> In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act<sup>16</sup> which requires, among other things, that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposal will help further one of the primary objectives of the PDP—to help investors make informed choices about the individuals and firms with whom they choose to do business. Under the PDP, NASD Regulation will now release information contained on the Form U-6, which contains disciplinary and other information provided by SROs and state regulators. This information should help investors determine whether to conduct or continue to conduct business with a particular firm or individual. Further, the disclosure of this additional

information may serve as a deterrent to fraudulent activity.

The Commission also believes that the proposal will help clarify the standards NASD Regulation uses to release information on current or former associated persons and firms. For example, NASD Regulation has clarified its policy about the release of information on a former associated person. Under the proposed rule change, NASD Regulation will release information on a former associated person for a two-year period after the associated person's effective date of termination. This clarification helps balance an investor's interest in obtaining information about a former associated person with the former associated person's interest in privacy.

In addition, the Commission believes that the automation of public disclosure reports should benefit investors and the NASD. For investors, the automation of public disclosure reports should help them receive information in a timelier manner, which in turn should help them make quicker decisions about the individuals and firms with whom they choose to do business. For the NASD, the automation of public disclosure reports should help it reduce its costs in providing these reports to the public.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-NASD-99-45) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42401; File No. SR-PCX-99-38]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Statistical Reports Provided to Market Makers

February 7, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 5, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the

<sup>12</sup> This question typically asks for a summary of the circumstances or details relating to the disclosure event. The response comments are not currently included in the manual reports prepared by the staff and may contain customer names, confidential account information, or offensive or potentially defamatory language (NASD Regulation believes that this type of language will rarely appear on the uniform forms).

<sup>13</sup> If it is impossible for a filer to amend, *e.g.*, the firm is defunct or the person is no longer registered, then NASD Regulation also will apply the balancing test and proceed as described above.

<sup>14</sup> 15 U.S.C. 78o-3.

<sup>15</sup> In addition, pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>16</sup> 15 U.S.C. 78o-3(b)(6).

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 PCX. The Exchange filed Amendment No. 1<sup>3</sup> to the proposed rule change on January 11, 2000. 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 a new procedure, codified in proposed Exchange Rule 6.41, whereby the Exchange would furnish PCX market makers with statistical reports that reflect trading volumes and identify specific trading activity in particular option issues to be used by PCX market makers for marketing and business development purposes. Below is the text of the proposed rule change. Proposed new language is in italics.

#### *Market Maker Marketing Reports*

Rule 6.41. The Exchange will provide its Market Makers with statistical reports designed to measure trading volume and participation in trading activity in each option issue traded on the Exchange. The reports will provide monthly trading information that will identify, by order flow provider, the issue and number of contracts traded, the LMM post where the issue is traded, the contra and executing broker symbols, and whether the trade was executed through the Exchange's Automatic Execution System, through the Limit Order Book, or manually in the trading crowd.

### **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, 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.

<sup>3</sup>Letter from Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, to Richard C. Strasser, Assistant Director, Division of Market Regulation, Commission, dated January 7, 2000 ("Amendment No. 1"). Amendment No. 1 adds Exchange Rule 6.41 to the text of Exchange Rule 6.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The Exchange proposes to furnish its market makers with statistical reports designed to measure trading volume and participation in trading activity in each option issue traded on the Exchange. The reports will provide monthly trading information that will identify, by order flow provider, the issue and number of contracts traded, the Lead market maker ("LMM") post where the issue is traded, the contra and executing broker symbols, and whether the trade was executed through the Exchange's Automatic Execution System, through the Limit Order Book, or manually in the trading crowd.

The Exchange believes these reports will help market makers develop marketing plans specific to order flow providers that the market makers can use to help them increase order flow sent to the PCX. The reports will identify which order flow providers currently are bringing trades to the PCX and how those orders are being executed. In addition, the reports are designed to help PCX market makers support their business relationships and encourage further business development with those order flow providers. Furthermore, these reports will help the market makers identify specific customers to whom they should direct their marketing efforts. The Exchange believes that these reports will help the market makers focus on specific business needs of their customers, so that they can attract more business to the PCX. Finally, the Exchange believes the reports will help it compete for order flow in multiply traded issues.

##### **2. Statutory Basis**

The proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>5</sup> in particular, in that it is designed 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*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

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*

The Exchange did not solicit or receive written comments on the proposed rule change.

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

Within 35 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 90 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 Exchange consents, the Commission will:

(A) by order approve such rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

### **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 in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-99-38 and should be submitted by March 7, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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<sup>6</sup> 17 CFR 200.30-3(a)(12).