Calculation of charges for late payment obligations in excess of $5,000,000 will be based on the ratio of the actual late obligation (rounded to the next highest million) to $5,000,000, multiplied by the late fee for obligations of $5,000,000.

Participants failing to timely satisfy payment obligations on more than four occasions within a rolling ninety day period will be subject to additional late fees for each occurrence. This amount will be determined at MBSCC's discretion depending on the magnitude and history of the participant's late payments, but any additional late fees can be no more than twice the fourth occurrence fee. MBSCC also reserves the discretion to waive or reduce late fees when a particular occurrence is not deemed to be the participant's fault or the participant has provided MBSCC with evidence that it is taking appropriate corrective action to prevent recurrence.

Late fees will accrue on the date on which a late payment is made, and participants will receive a letter notifying them of the late fee. The late fee will be reflected on the participant's bill for the month during which such fee was incurred and is payable at such time.

MBSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [4] and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among MBSCC's participants.

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

MBSCC 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.

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

No comments on the proposed rule change were solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) [5] of the Act and pursuant to Rule 19b–4(e)(2) [6] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by MBSCC. At any time within sixty days of the filing of such 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.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

IV. Solicitation of Comments

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, N.W., Washington, D.C. 20549. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–97–09 and should be submitted by May 11, 1998.

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

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39857; File No. SR–NASD–97–20]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Elimination of the Prohibitions Against NASD Members Accepting Stop Orders and Stop Limit Orders in Exchange-Listed Securities

April 14, 1998.

I. Introduction

On March 10, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposal to amend paragraph (i) of NASD Rule 6440, ''Trading Practices,'' to (1) allow members to accept stop orders [3] in eligible securities; [4] and (2) eliminate the requirement that the stop price equal the limit price in order for a member to accept a stop limit order [5] in an eligible security.

Notice of the proposed rule change was published for comment and appeared in the **Federal Register** on March 28, 1997.[6] No comment letters were received on the proposal. On April 1, 1997, the NASD filed Amendment No. 1 to the proposed rule change.[7] In

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A buy stop order is an order to buy which becomes a market order when a transaction takes place at or above the stop price. Conversely, a sell stop order is an order to sell which becomes a market order when a transaction takes place at or below the stop price. *See* NASD Rule 6440(i)(1).

[4] Under NASD Rule 6410(d), ''eligible securities'' means all common stocks, preferred stocks, long-term warrants, and rights entitling the holder to acquire an eligible security, listed or admitted to unlisted trading privileges on the American Stock Exchange (''Amex'') or the New York Stock Exchange (''NYSE''), and securities listed on the regional stock exchanges which substantially meet the original listing requirements of the Amex or the NYSE.

[5] A buy stop limit order is an order to buy that becomes a limit order at the limit price when a transaction occurs at the stop price. Conversely, a sell stop limit order is an order to sell that becomes a limit order at the limit price when a transaction occurs at the stop price.

[6] *See* Securities Exchange Act Release No. 38429 (March 21, 1997) 62 FR 14953.

[7] *See* Letter from Robert E. Aber, Vice President and General Counsel, NASD, to Katherine England, Assistant Director, National Market System and

Continued

addition, the NASD submitted a letter describing the surveillance procedures it will use to monitor the handling of stop orders and stop limit orders.[8] This order approves the NASD's proposal, as amended.

II. Description of the Proposal

The NASD proposes to amend NASD Rule 6440 to eliminate current restrictions on the ability of NASD members to accept stop orders and certain stop limit orders in eligible securities. Currently, NASD Rule 6440(i)(1) prohibits NASD members from accepting stop orders in eligible securities, and NASD Rule 6440(i)(2) allows members to accept stop limit orders in eligible securities where the stop price and the limit price are the same. The NASD proposes to amend NASD Rule 6440(i) to: (1) allow members to accept stop orders in eligible securities; and (2) eliminate the requirement that the stop price must equal the limit price in order for a member to accept a stop limit order in an eligible security. In addition, the proposal clarifies that NASD members are not obligated to accept stop orders or stop limit orders.

The NASD believes there is no economic or regulatory reason to preclude or restrict investors from placing stop orders or stop limit orders in eligible securities. In this regard, the NASD notes that there are no comparable restrictions on the placement of stop orders or stop limit orders in securities listed on The Nasdaq Stock Market ("Nasdaq"). The NASD believes that investors in the third market[9] also should be able to receive the benefits and protections that result from placing stop orders and stop limit orders. In particular, the NASD believes that the placement of stop orders and stop limit orders will help investors to implement their investment strategies and manage their portfolios.

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 the NASD and, in particular, the requirements of Section 15A(b)(6) in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[10] Specifically, the Commission believes that it is reasonable for the NASD to amend its rules to allow members to: (1) accept stop orders in eligible securities; and (2) accept stop limit orders in eligible securities where the limit price differs from the stop price. The Commission also believes that it is reasonable for the NASD to clarify its rules to indicate that members are not obligated to accept stop orders or stop limit orders.

The Commission believes that amending NASD Rule 6440(i)(1) to permit members to accept stop orders in eligible securities will extend the benefits and protections associated with stop orders to transactions in the third market. In general, an investor enters a stop sell order in a stock whose price has increased substantially in order to protect his or her profit if the stock's price declines; similarly, an investor with a short position may enter a stop buy order to limit his or her losses if the stock's price increases.[11] The Commission believes that allowing NASD members to accept stop orders in eligible securities will extend these benefits to investors trading eligible securities in the third market and provide them with additional flexibility in implementing their trading strategies. The Commission notes that NASD members currently may accept stop orders in securities that are not eligible securities (generally, securities listed on Nasdaq), as well as stop limit orders in eligible securities.[12] The NASD represents that it has not experienced any problems in connection with the use of stop orders for non-eligible securities or with the use of stop limit orders for eligible securities.[13]

The Commission believes that the NASD has developed procedures that will allow it to monitor the handling of stop orders and stop limit orders in eligible securities.[14] In addition to protections afforded by market surveillance, the Commission believes that the NASD's surveillance procedures will help to detect and deter efforts by market makers to use stop orders to manipulate the price of stock. Several characteristics of the trading in the third market minimize the likelihood that NASD market makers would be able to manipulate the price of an eligible security through their handling of stop orders. In this regard, the Commission notes, first, that a limited amount of the trading of eligible securities occurs in the third market.[15] Second, the exchanges, rather than the third market, are the primary price discovery markets for eligible securities; third market makers usually base their quotations on the primary market quote.[16] Third, there are multiple third market makers (as opposed to a single exchange specialists) for each eligible security. The Commission believes that these factors, taken together, would make it difficult for a third market maker to manipulate the price of an eligible security through the use of stop orders.

The Commission also believes that it is reasonable for the NASD to amend NASD Rule 6440(i)(2) to allow members to accept stop limit orders in eligible securities where the stop price differs from the limit price in order to provide investors with additional flexibility in using stop limit orders. A stop limit order, which must be executed at the limit price or better, is designed to

Over-the-Counter Regulation, Division of Market Regulation ("Division"), Commission, dated April 1, 1997 ("Amendment No. 1"). In Amendment No. 1, the NASD corrected a typographical error in NASD Rule 6440(i)(2). Specifically, NASD Rule 6440(i)(2) stated that when a transaction occurs at the stop price, a stop limit order to buy or sell becomes a limit order at the stop price. Amendment No. 1 revises NASD Rule 6440(i)(2) to state that when a transaction occurs at the stop price, a stop limit order to buy or sell becomes a limit order at the limit price.

[8] *See* Letter from Thomas R. Gira, Vice President, NASD Regulation, Inc., to Katherine England, Assistant Director, National Market System and Over-the-Counter Regulation, Division, Commission, dated February 27, 1998.

[9] The third market is the over-the-counter market for exchange-listed securities.

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

[11] *See* Securities Exchange Act Release No. 29063 (April 10, 1991) 56 FR 15652 (April 17, 1991) (order approving File No. SR–Amex–90–31) ("Amex Approval Order").

[12] *See* NASD Rule 6440(i)(2).

[13] Telephone conversation between Thomas R. Gira, Vice President, NASD Regulation, and Yvonne Fraticelli, Attorney, Office of Market Supervision, Division, Commission, on April 2, 1998.

[14] The Commission has had a continuing interest in potential manipulation and trading abuses in connection with elections of stop orders by exchange specialists. *See e.g.*, Division of Trading and Exchanges, SEC, Stop Orders (1963) (detailing various problems associated with the execution of stop orders); Securities Exchange Act Release No. 24021 (January 21, 1987) 52 FR 3370 (February 3, 1987) (order approving File No. SR–Amex–84–32); and Amex Approval Order, *supra* note 10. These abuses typically involved exchange specialists electing stop orders through principal transactions at price levels either well above the market price in the case of stop buy orders or well below the market price in the case of sell stop orders. *See* Amex Approval Order, *supra* note 10. As discussed more fully *infra*, the Commission believes that the NASD has adequately addressed the potential problems that may arise in connection with the handling of stop orders.

[15] In 1993, the third market garnered 7.4% of reported NYSE volume and 9.3% of the reported trades. *See* Division, Commission, *Market 2000: An Examination of Current Equity Market Developments* (January 1994) ("Market 2000 Study") at II–11.

[16] *See* Market 2000 Study, *supra* note 16, at II–8.

guarantee that an order receives an execution at no worse than the limit price. However, if the market drops below the limit price of a sell stop order before the order can be executed, it is possible that the order will be executed. For example, if an investor enters a sell stop limit order where the stop price and the limit price are 34, then the investor's order may be executed only at 34 or better and may not be executed at all if the market moves below 34 before the order can be executed. However, if the investor is able to enter a sell order with a stop price of 34 and a limit price of 32, then the investor's order may be executed at 32 or better. Accordingly, by permitting investors to place orders where the limit price differs from the stop price, the NASD's proposal will increase the opportunities for execution of investors' orders and will allow investors to tailor their orders to reflect their objectives and strategies.

The Commission also believes that it is reasonable for the NASD to amend NASD Rule 6440(i) to clarify that members are not obligated to accept stop orders or stop limit orders. Currently, NASD Rule 6440(i)(2) states that members may accept stop limit orders in eligible securities. The NASD proposes to add language to NASD Rule 6440(i)(2) indicating that members are not obligated to accept stop limit orders.[17] Because this is a clarification of the NASD's existing policy, it does not raise new regulatory issues.

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 of notice thereof in the **Federal Register**. Amendment No. 1 corrects a typographical error in NASD Rule 6440(I)(2). Specifically, NASD Rule 6440(i)(2) stated that when a transaction occurs at the stop price, a stop limit order to buy or sell becomes a limit order at the stop price. Amendment No. 1 revises NASD Rule 6440(i)(2) to state that when a transaction occurs at the stop price, a stop limit order to buy or sell becomes a limit order at the limit price. Because Amendment No. 1 corrects the text of the NASD's rule, the Commission finds that it is consistent with Sections 6(b) and 19(b)(2) of the Act to approve Amendment No. 1 on an accelerated basis.

IV. 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. 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 File No. SR–NASD–97–20 and should be submitted by May 11, 1998.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NASD–97–20) is approved, and that Amendment No. 1 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39855; File No. SR–PCX–97–07]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto, by the Pacific Exchange, Inc., Relating to Position and Exercise Limits

April 13, 1998.

I. Introduction

On March 5, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') submitted to 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 to modify its rules on option position and exercise limits by (a) expanding the scope of the firm facilitation exemption, (b) increasing the position and exercise limits for narrow-based index options, (c) expanding the broad-based index hedge exemption to include broker-dealers, and (d) clarifying the general rule on exercise limits. On March 27, 1997, the PCX submitted an amendment to the Commission regarding its proposal.[3]

The proposed rule change appeared in the **Federal Register** on May 20, 1997.[4] No comments were received on the proposed rule change. This order approves the PCX's proposal, as amended.

II. Description

The Exchange has proposed to modify several of its rules on position and exercise limits for equity and index options as follows:

A. Firm Facilitation Exemption

The PCX's firm facilitation exemption currently applies only to a member firm that facilitates and executes an order for its own customer.[5] The PCX proposes to amend the firm facilitation exemption in two ways. First, a member firm will qualify for the exemption if it facilitates its own customer whose account it carries, whether the firm executes the order itself or gives the order to an independent broker for execution. Second, the exemption will be expanded to include member firms who facilitate another member's customer order. Such a customer order must be for execution only against the member firm's proprietary account. Further, unlike a member firm that facilitates its own customer, the resulting position will not be carried by the facilitating member firm.[6]

Specifically, PCX Rule 6.8, Commentary .08 currently provides that for the purpose of facilitating (in accordance with the provisions of PCX Rule 6.47(b)) orders of its own customer (one that will enter, clear and have the resulting position carried with the firm) in non-multiply-listed Exchange options, the proprietary account of a

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[17] Similarly, NASD Rule 6440(i)(1), as amended, will state that a member may, but is not obligated to, accept a stop order in an eligible security.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Michael D. Pierson; Senior Attorney, Regulatory Policy, PCX, to Matthew S. Morris, Office of Market Supervision, Division of Market Regulation, Commission, dated March 26, 1997 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 38612 (May 12, 1997) 62 FR 27643 (May 20, 1997).

[5] The PCX defines a customer order as one that is entered, cleared, and in which the resulting position is carried with the firm.

[6] The Commission notes that any solicitation of a member by another member or customer to facilitate a customer order must comply with the relevant Exchange rules concerning solicited transactions.