

*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. 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, NW., Washington, DC 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 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 CHX. All submissions should refer to File No. SR-CHX-97-26 and should be submitted by February 6, 1998.

### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission believes that the Exchange's proposal to adopt a limit order display rule is consistent with the policies behind the Commission's own Limit Order Display rule.<sup>4</sup> The Commission recognizes that the Exchange's proposal has the additional requirements that CHX specialists display all limit orders, not just customer limit orders, unless a specified exception exists. In addition, a CHX specialist, under the Exchange's proposal, must increase the size of its quote upon receipt of a limit order even if such order creates a de minimis increase. The Commission recognized, in adopting the Limit Order Display Rule, that SRO's may impose more stringent standards.<sup>5</sup>

The Commission finds that the Exchange's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission

finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires an exchange to have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission therefore finds good cause for approving the proposed rule change (SR-CHX-97-26) prior to the thirtieth day after date of publication of notice thereof in the **Federal Register**.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39539; File No. SR-NASD-97-92]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to By-Law Amendment to Require Members To Update Firm Contact Information Electronically, To Maintain Electronic Mail Account, and for Other Purposes

January 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 19, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>6</sup> 15 U.S.C. § 78f(b)(5).

<sup>7</sup> 15 U.S.C. § 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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

The Association is proposing the following changes to its by-laws, to require its members to update firm contact information electronically, to maintain an electronic mail (e-mail) address, and to make certain other technical changes:

#### By-Laws of the National Association of Securities Dealers, Inc.<sup>2</sup>

##### Article IV—Executive Representative

Sec. 3. Each member shall appoint and certify to the Secretary of the NASD one "executive representative" who shall represent, vote, and act for the member in all the affairs of the NASD, except that other executives of a member may also hold office in the NASD, serve on the Board or committees appointed under Article IX, Section 1 or otherwise take part in the affairs of the NASD. A member may change its executive representative upon giving notice thereof via electronic process or such other process the NASD may prescribe to the Secretary, or may, when necessary, appoint, by notice via electronic process to the Secretary, a substitute for its executive representative. An executive representative of a member or a substitute shall be a member of senior management and registered principal of the member. *Not later than January 1, 1999, each executive representative shall maintain an Internet electronic mail account for communication with the NASD and shall update firm contact information via the NASD Regulation Web Site or such other means as prescribed by the NASD.*

\* \* \* \* \*

##### Article VII—Board of Governors

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Sec. 9. (b) The National Nominating Committee shall consist of no fewer than six and no more than nine members. The number of [Industry] *Non-Industry* committee members shall equal or exceed the number of [Non-Industry] *Industry* committee members. If the National Nominating Committee consists of six members, at least two shall be Public committee members. If the National Nominating Committee consists of seven or more members, at least three shall be Public committee members. No officer or employee of the Association shall serve as a member of

<sup>2</sup> This version of the NASD By-Laws was approved by the Commission in Securities Exchange Act Release No. 39326 (Nov. 14, 1997), 62 FR 62385 (Nov. 21, 1997). Additions are italicized, deletions are bracketed.

<sup>4</sup> See SEC's Limit Order Adopting Release.

<sup>5</sup> See SEC's Limit Order Adopting Release at note 147.

the National Nominating Committee in any voting or non-voting capacity. No more than three of the National Nominating Committee members and no more than two of the Industry committee members shall be current members of the NASD Board.

## **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 NASD 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 NASD 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**

(a) *Amendment to Article IV, Section 3.* On August 5, 1997, the Membership Committee of the NASD Regulation, Inc. ("NASD Regulation") Board of Directors recommended the adoption of an amendment to the NASD By-Laws to require each executive representative, beginning not later than January 1, 1999, to maintain an Internet electronic mail account for communication with the NASD and to update firm contact information via the NASD Regulation Web Site. The NASD Regulation Board approved the recommendation at its September 23, 1997 meeting. The NASD Board of Governors approved the amendment at its December 11, 1997 meeting.

The NASD has long wrestled with how to collect and administer in an effective manner the names of members, executive representatives and other individuals who hold positions of significant responsibility within member firms. This information is used by the NASD Corporate Secretary for member balloting, Member Regulation for compliance purposes, and Corporate Communications in identifying Key individuals for use in target mailings. The current method for acquiring this information is through the filing of an NASD form entitled "NASD Member Firm Contact Questionnaire" (NMFCQ).

The data requested on the NMFCQ is not required on any other form filing (e.g., Form BD or U-4). The data is available in the Central Registration Depository ("CRD"), but in a text form

that renders it nearly impossible to interface to another system. Thus, members are required to file the NMFCQ with the CRD, where the information is data captured into the Member Profile System, an adjunct to the existing CRD system. The data is then viewable throughout the organization via the Member Profile System and is interfaced to regulatory and finance systems as well as the existing corporate mailing system for use in distributing publications, reports, voting ballots, and mail.

A new procedure for collecting NMFCQ information in the future is necessary for two reasons. First, the CRD modernization effort does not include rebuilding this function, so another alternative is required. Second, members are rarely updating these filings. Because the information solicited via the form is very important to support the NASD's business, the NASD must have a more efficient means for firms to update this information, thereby encouraging them to do so more regularly.

The proposed By-Law change will improve the data collection process by requiring a firm to access its NMFCQ via the NASD Regulation Web Site and update it on a periodic basis. (A firm would be able to access only its own NMFCQ; the information would be password-protected to prevent any public access.) The information then would be interfaced to the internal NASD Regulation systems requiring this set of data. Further, the By-Law also would require each member to maintain an Internet electronic mail address on behalf of its executive representative. This electronic mail address would be used proactively to send messages reminding the member to review and update its contact information.

There are other reasons the staff is interested in member Internet access and electronic mail. Once established, it opens up many options for timely communications with members and associated cost savings. It also can assist members with timely internal distribution of NASD information, notices, and publications. Other potential initiatives include eliminating or reducing printed publications, sending more timely announcements and notices, and providing value-added services to members.

The NASD is proposing a one-year transition period to accommodate small firms that may not currently have Internet access or electronic mail accounts.

(b) *Technical Amendment to Article VII, Section 9(b).* The NASD also proposes a technical amendment to

Article VII, Section 9(b) of the NASD By-Laws. In Special Notice to Members 97-75, the NASD proposed a comprehensive revision to its By-Laws to provide for a more streamlined corporate structure. The membership approved these changes on November 13, 1997, and the Securities and Exchange Commission ("Commission") approved them on November 14, 1997.<sup>3</sup> Article VII, Section 9(b) contained a typographical error that provided that the number of Industry committee members on the National Nominating Committee should equal or exceed the number of Non-Industry committee members. The terms "Industry" and "Non-Industry" were transported. Section 9(b) should provide that the number of Non-Industry committee members should equal or exceed the number of Industry committee members. The National Nominating Committee is required to be composed in such a manner by the Undertakings agreed to by the NASD on August 8, 1996.<sup>4</sup>

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

The NASD believes the proposed rule change is consistent with Section 15A(b)(2) in that the proposed rule change will assist the NASD in carrying out the purposes of the Act and to enforce compliance with the Act, the rules and regulations thereunder, and the Rules of the Association.

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

The NASD does not believe 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, as amended.

### *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**

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

<sup>3</sup> See Securities Exchange Act Release No. 39326 (Nov. 14, 1997), 62 FR 62385 (Nov. 21, 1997).

<sup>4</sup> Securities Exchange Act Release No. 37538 (Aug. 8, 1996) (SEC Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, In the Matter of National Association of Securities Dealers, Inc., Administrative Proceeding File No. 3-9056).

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 by order approve such proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.

The NASD proposes to make the rule change effective upon Commission approval.

#### 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 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 number SR-NASD-97-92 and should be submitted by February 6, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

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

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39532; File No. SR-PCX-97-28]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Exchange-Sponsored Hand-Held Terminals for Options Floor Brokers

January 9, 1998.

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 July 3, 1997 and December 12, 1997, respectively, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change and amendment No. 1 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange is proposing to adopt a new program to allow floor brokers on the Options Floor to use Exchange-sponsored hand-held terminals to receive orders sent electronically by Member Firms located off the floor. The proposal will also establish new procedures for electronic order flow handling, routing, execution and trade reporting under the program. The test of the proposed rule change is available at the Office of the Secretary, the Exchange and at the Commission.

#### 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 self-regulatory organization 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 test of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

*General Description.* The Exchange's Member Firm Interface ("MFI")<sup>3</sup> currently permits Exchange Member Firms to use an electronic link with the

Exchange to send their option orders directly to the Exchange for delivery to POETS (Pacific Option Exchange Trading System).<sup>4</sup> Under the proposal, member firms would be able to use the MFI connection to route orders directly to the member firm booth (not by default) or to a floor broker's hand-held terminal located in the trading crowd.<sup>5</sup>

Under the program, Member Firms will be permitted to send their orders electronically to the Exchange via MFI and route them to one of three destinations on the trading floor: (a) To a floor broker standing in the trading crowd; (b) to a Member Firm booth location on the trading floor; or (c) to POETS, where they will be automatically executed by Auto-Ex or maintained in Auto-Book. All orders so transmitted will first be sent through the Server.<sup>6</sup> Orders sent to a Member Firm booth via the Server may be sent subsequently either to POETS or to a floor broker in the trading crowd. Orders sent via the Server to a floor broker in the trading crowd may subsequently be transmitted to a Member Firm booth, to POETS, or to another floor broker on the trading floor.

The Exchange intends to furnish hand-held terminals to be used by floor brokers under the program. In addition, the Exchange will supply booth devices that will have the capability to retrieve and display all orders that were submitted through the device. The Exchange intends to assess users a monthly rental fee for such use.<sup>7</sup>

<sup>4</sup> Orders entered via MFI are delivered to one of three destinations: (a) to Auto-Ex, where they are automatically executed at the disseminated bid or offering price; (b) to Auto-Book which maintains non-marketable limit orders based on limit price and time of receipt; or (c) to a Member Firm's default destination—a particular firm booth or remote entry site—if the order fails to meet the eligibility criteria necessary for either Auto-Ex or Auto-Book or if the Member Firm requests such default for its orders. See generally Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 ("POETS Approval Order").

<sup>5</sup> In that regard, the Exchange is proposing to add a new Rule 6.88(a), which provides: "Members and Member Organizations may send orders electronically through the Exchange's Member Firm Interface and route them directly to POETS, to a Member Firm booth on the Options Floor, to a Floor Broker Hand-Held Terminal located on the Options Floor, or to any other location designated by the Exchange, provided that the Member or Member Organization has been approved by the Exchange to do so."

<sup>6</sup> The Exchange notes that there will be no appreciable delay in order entry due to the transmission of orders through the Server. The Exchange also notes that if a Member Firm routes an order to POETS via MFI for automatic execution or maintenance in Auto-Book, the order will not be sent through the Server. Only orders to be transmitted through the Hand-Held Terminal system will be sent through the Server.

<sup>7</sup> The Exchange will submit a separate rule filing to the Commission to establish these fees.

<sup>5</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.

<sup>3</sup> The MFI is an electronic order delivery and reporting system that allows member firms to route orders for execution by the automatic execution feature of POETS as well as to route limit orders to the Options Public Limit Order Book. Orders that do not reach those two destinations are defaulted to a member firm booth. MFI also provides member firms with instant confirmation of transactions to their systems. Member firms may access POETS by establishing an MFI mainframe-to-mainframe connection.