

public interest. The Exchange believes that the additional functionality will increase the ability for Electronic Access Members to participate in the PIM on behalf of Public Customers.

Accordingly, the proposed rule change could result in greater participation in PIM executions by Public Customers and greater opportunity for price improvement for the orders being executed through the PIM.

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

The ISE does not believe that the proposed rule change will impose any inappropriate burden on competition 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

The ISE 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 proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁷ As required under Rule 19b-4(f)(6)(iii),⁸ the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6)(iii) normally may not become operative prior to 30 days after the date of filing.⁹ However, Rule 19b-4(f)(6)(iii)¹⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative

delay and render the proposed rule change to become operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the 30-day operative delay would enable the Exchange to implement the proposal as quickly as possible. In addition, the Commission notes that the BSE uses an order type that is substantially similar to the ISE's proposed CPO.¹¹ The Commission does not believe that the proposed rule change raises new regulatory issues. For the reasons stated above, the Commission designates the proposal to become operative immediately.¹²

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 the 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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2005-41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303. All submissions should refer to File Number SR-ISE-2005-41. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

¹¹ See Chapter V, Section 18(g) of the BOX Rules (describing the Price Improvement Period ("PIP") and the operation of the BOX Customer PIP Order). See also Securities Exchange Act Release No. 51651 (May 3, 2005), 70 FR 24848 (May 11, 2005) (order approving SR-BSE-2005-01).

¹² For purposes of waiving the operative date of this proposal only, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

www.sec.gov/rules/sro.shtml). 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. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2005-41 and should be submitted on or before September 29, 2005.

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

Jonathan G. Katz,
Secretary.

[FR Doc. E5-4873 Filed 9-7-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52372; File No. SR-NASD-2005-104]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend on a Pilot Basis Rules Concerning Bond Mutual Fund Volatility Ratings

August 31, 2005.

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 August 29, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD has filed the proposal as a "non-controversial" rule change pursuant to

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).

⁸ 17 CFR 240.19b-4(f)(6)(iii).

⁹ *Id.*

¹⁰ *Id.*

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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

NASD is proposing to extend on a pilot basis the provisions of NASD Rule 2210(c)(3) and Interpretive Material 2210-5 concerning bond mutual fund volatility ratings (collectively, the "Rules") until December 29, 2005, unless the Rules are extended or approved on a permanent basis before that date. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in *brackets*.

* * * * *

IM-2210-5. Requirements for the Use of Bond Mutual Fund Volatility Ratings

(This rule and Rule 2210(c)(3) will expire on [August 31] *December 29, 2005*, unless extended or permanently approved by NASD at or before such date.)

(a) through (c) No change.

* * * * *

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

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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

Background and Description of the NASD's Rules on Bond Mutual Fund Volatility Ratings. On February 29, 2000, the SEC approved the adoption of NASD Interpretive Material 2210-5, which permits members and their associated persons to include bond fund volatility ratings in supplemental sales literature (mutual fund sales material that is accompanied or preceded by a

fund prospectus).⁵ At that time, the SEC also approved NASD Rule 2210(c)(3), which sets forth the filing requirements and review procedures applicable to sales literature containing bond mutual fund volatility ratings. IM-2210-5 and Rule 2210(c)(3) initially were approved on an 18-month pilot basis that was scheduled to expire on August 31, 2001.⁶ On August 10, 2001, NASD filed with the Commission a proposed rule change that was effective upon filing that extended the effectiveness of IM-2210-5 and Rule 2210(c)(3) an additional two years until August 31, 2003.⁷ On August 7, 2003, NASD filed a similar proposed rule change with the Commission that was effective upon filing and that extended the effectiveness of IM-2210-5 and Rule 2210(c)(3) until August 31, 2005.⁸ Prior to the pilot, NASD staff interpreted NASD rules to prohibit the use of bond fund volatility ratings in sales material. Under the pilot, IM-2210-5 permits the use of bond fund volatility ratings only in supplemental sales literature and only if certain conditions are met, including that:

- The word "risk" may not be used to describe the rating.
- The rating must be the most recent available and be current to the most recent calendar quarter ended prior to use.
- The rating must be based exclusively on objective, quantifiable factors.
- The entity issuing the rating must provide detailed disclosure on its rating methodology to investors through a toll-free telephone number, a Web site, or both.
- A disclosure statement containing all of the information required by the rule must accompany the rating. The statement must include such information as the name of the entity issuing the rating, the most current rating and the date it was issued, and a description of the rating in narrative form containing certain specified disclosures.

Rule 2210(c)(3) requires members to file bond mutual fund sales literature that includes or incorporates volatility ratings with the Advertising Regulation Department of NASD ("Department") at

least 10 days prior to use for Department approval. If the Department requests changes to the material, the material must be withheld from publication or circulation until the requested changes have been made or the material has been re-filed and approved.

Proposed Rule Change to Extend IM-2210-5 and Rule 2210(c)(3) for 120 Days. NASD intends shortly to submit to the Commission a proposed rule change to make the Rules effective on a permanent basis. However, the process to obtain Commission approval, including publication of the proposal for comment in the **Federal Register** and responding to any comments received, will extend beyond the expiration of the current pilot on August 31, 2005. Therefore, to maintain operation of the pilot pending the approval process of the Rules on a permanent basis, NASD is proposing to extend the pilot for 120 days until December 29, 2005, unless the Rules are extended or approved on a permanent basis before that date.

The proposed rule change will become effective upon filing, will be implemented at the close of business, August 31, 2005, and will expire on December 29, 2005, unless the Rules are extended or approved on a permanent basis before that date.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁹ which requires, among other things, that NASD's rules must 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. NASD believes that extending the effectiveness of IM-2210-5 and Rule 2210(c)(3) for 120 days unless the Rules are extended or approved on a permanent basis before that date will allow members to publish sales material that contains bond fund volatility ratings during this interim period in a manner that will protect investors and serve the public interest.

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

NASD 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, as amended.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Securities Exchange Act Release No. 42476 (February 29, 2000); 65 FR 12305 (March 8, 2000) (SR-NASD-97-89).

⁶ *Id.*

⁷ See Securities Exchange Act Release No. 44737 (August 22, 2001); 66 FR 45350 (August 28, 2001) (SR-NASD-2001-49); NASD Notice to Members 01-58 (September 2001).

⁸ See Securities Exchange Act Release No. 48353 (August 15, 2003); 68 FR 50568 (August 21, 2003) (SR-NASD-2003-126); NASD Notice to Members 03-48 (August 2003).

⁹ 15 U.S.C. 78o-3(b)(6).

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder¹¹ because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate.¹²

NASD has requested that the Commission waive the requirement that the rule change not become operative for 30 days after the date of the filing so that NASD can begin implementation of this proposed rule change as of the close of business on August 31, 2005, in order to prevent the current pilot Rules from lapsing. The Commission believes that such waiver is consistent with the protection of investors and the public interest because the proposed rule change would prevent the current pilot Rules from lapsing while the permanent adoption of the Rules is under consideration.

At any given 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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2005-104 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-104. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR-NASD-2005-104 and should be submitted on or before September 29, 2005.

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

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52373; File No. SR-PCX-2005-99]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Approval of Proposed Rule Changes Relating to Direct Communication Between Parties and Arbitrators

September 1, 2005.

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 August 23, 2005, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The PCX has designated this proposal as "non-controversial" pursuant to Section 19(b)(3)(A)(iii) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective immediately upon filing with the Commission. 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 PCX is proposing to amend the PCX Options and PCX Equities, Inc. arbitration rules to permit parties in an arbitration to communicate directly with the arbitrators if all parties and arbitrators agree, and to establish guidelines for such direct communication. The text of the proposed rule change is available on the PCX's Web site (<http://www.pacificex.com>), at the PCX's Office of the Secretary, and at the Commission's Public Reference Room.

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 PCX has prepared

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).