

existing regulatory framework provides ample means to combat abuses associated with day trading. In addition, one commenter generally stated that it was premature to attempt regulation of day-trading practices. Several individual commenters, in opposing regulation of day trading, emphasized the benefits of electronic trading and their ability to protect themselves.

As noted above, however, NASD Regulation believes that the proposed rule change focuses on the promotion of trading strategies that present very high risk to individuals and, as revised, should be easier for firms to apply to their activities. Firms that are actively promoting a day-trading strategy should be responsible for assessing whether the strategy is appropriate for an individual who opens a day-trading account at that firm. These firms also should be required to disclose the risks of engaging in a day-trading strategy to an individual prior to opening an account for that individual.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act³ in that the proposed rule change is 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 Regulation believes that the proposed rule change codifying the obligation of firms promoting day-trading strategies to disclose the risk of these strategies to non-institutional customers and to determine whether the strategy is appropriate for a customer will help to protect investors and the public interest in an increasingly more sophisticated trading environment.

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

NASD Regulation 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.

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

The proposed rule change was published for comment in NASD Special Notice to Members 99-32 (April 15, 1999). The comment period expired on May 31, 1999. Thirty-nine comment letters were received in response to the

Notice. Copies of the comment letters and a brief summary of the comment letters have been provided to the Commission. Of the 39 comment letters received, approximately 13 were in favor of the proposed rule change, 8 supported risk disclosure only, 12 were opposed to the proposed rule change, and 6 expressed no opinion or addressed broader issues.

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 self-regulatory organization consents, the Commission will:

A. by order approve such proposed 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. In addition, the Commission seeks comment on the following specific issues: (1) whether the proposal should cover existing day-trading accounts; (2) whether the proposed definition of "day-trading strategy" is appropriate; (3) whether the proposed risk disclosure statement is adequate; and (4) whether the firm should be required to obtain a customer's acknowledgment of receipt of the risk disclosure document.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. 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 File No. SR-NASD-99-41 and should be submitted by October 12, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41871; File No. SR-NYSE-99-32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending Exchange Rule 22(b) Regarding Board and Committee Member Disqualifications

September 13, 1999.

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 July 9, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The amendment to Exchange Rule 22(b) codifies the interpretation of the Exchange of the circumstances under which Board and committee members and other persons are obliged to disqualify themselves from participating in matters in which they have a personal interest. The present rule states that no person shall participate in the "adjudication" of any matter in which they are personally interested. The proposed amendment to Exchange Rule 22(b) bars participation in the "consideration, review or adjudication" of any matter in which a person is personally interested.

⁴ 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. 78o-3(b)(6).

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 Exchange 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.

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

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 22(b) to codify the Exchange's interpretation of the circumstances under which Board and committee members and other persons are obligated to disqualify themselves from participating in the consideration of matters in which they have a personal interest.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5)³ of the Act in that it promotes just and equitable principles of trade by insuring that Board and committee members and other persons are not participating in matters in which they have a personal interest.

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

The Exchange believes that the proposed rule change will not 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

The Exchange has 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

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 self-regulatory organization consents, the Commission will:

(A) By order approve such proposed 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 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 NYSE. All submissions should refer to File No. SR-NYSE-99-32 and should be submitted by October 12, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41867; File No. SR-PCX-99-18]

September 13, 1999.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Facilitation Crosses.

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 June 4,

⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. 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 proposes to amend PCX Rule 6.47(b), governing Facilitation Crosses, to provide firms with a guaranteed percentage of cross trades when a firm holds an order for a public customer or a broker-dealer ("customer order") and an order for the proprietary account of a member organization ("facilitation order") that is representing that customer. The text of the proposed rule change follows. Additions are italicized and deletions are bracketed.

¶4987 "Crossing Orders"

Rule 6.47 Non-Facilitation (Regular Way) Crosses

(a) No change.

Facilitation Crosses

(b) A Floor Broker who holds an order for a public customer [of a member organization] or a broker-dealer ("customer order") and an [facilitation] order for the proprietary account of a member organization that is representing that customer (the "facilitation order") may cross those [such] orders [provided that he proceeds in the following manner.] *only if the following procedures and requirements are followed:*

(1) *The size of the customer order subject to facilitation must be at least two hundred (200) contracts.*

(2) [(1)] The option order tickets for [of] both the facilitation order and the [public] customer order [subject to facilitation] must display all of the terms of such orders, including any [contingency] *contingencies* involving, and all related transactions in, either options or underlying or related securities. *The Floor Broker must disclose all securities that are components of the customer order.*

[(2)] The Floor Broker shall disclose all securities which are components of the order subject to facilitation and then shall request bids and offers for the execution of all components of the order, making all persons in the trading crowd, including the Order book Official, aware of his request for a market.]

[(3)] After providing an adequate opportunity for such bids and offers to be made, the Floor Broker must, on behalf of the public customer whose order is subject to facilitation, either bid above the highest bid in the market or offer below the lowest offer in the market, identify the order as being subject to facilitation, and disclose all terms and conditions of such order. After all other market participants are given an opportunity

³ 15 U.S.C. 78f(b)(5).