

The supplemental materials summarize the NYSE and Amex proxy rules, and enumerate specific instances where exchange members may not give proxies without instructions from the beneficial owner. Under the proposal, that same guidance would be incorporated into the rules of the NASD in the form of a new IM-2260-2. The text of proposed IM-2260-2 is substantially identical to the language in the supplemental materials to the NYSE and Amex proxy rules.

2. Statutory Basis

NASDR believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵ which require that the rules of a registered securities association must be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest. NASDR also believes that the proposed change eliminates confusing and potentially conflicting requirements that affect investors, issuers, and the securities industry.

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

NASDR believes that the proposed rule change will not 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

NASDR did not solicit or receive written comments with respect to 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 NASDR consents, the Commission will:

(A) By order approve the 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, as amended, 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 submissions, 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 persons, 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, NW, Washington, DC 20549-0609. 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-99-63 and should be submitted by January 12, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42235; File No. SR-PCX-99-33]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Composition of the PCX Board of Governors

December 14, 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 August 27, 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 and II below, which Items have been prepared by the Exchange. On November 19, 1999, the Exchange submitted Amendment No. 1 to the

proposed rule change.³ On December 2, 1999, the Exchange submitted Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is issuing this order approving the amended proposed rule change on an accelerated basis.

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

The PCX proposes to modify its Constitution to provide that fifty percent of the Exchange's Board will be representatives of the public. The text of the proposed rule change, as amended, follows. Additions are italicized; deletions are bracketed.

PCX CONSTITUTION

* * * * *

Article II

GOVERNMENT

Board of Governors

Sec. 1(a). The government of the Exchange shall be vested in a Board of Governors (herein sometimes called "the Board") consisting of twenty-one elected Governors, *and* the Chairman of the Board [and the President of the Exchange], provided that [seven] *eleven* of the elected Governors shall be representatives of the public and shall

³ Letter from Michael D. Pierson, Director Regulatory Policy, PCX, to Sharon M. Lawson, Division of Market Regulation ("Division"), SEC, dated November 18, 1999 ("Amendment No. 1"). In Amendment No. 1, the Exchange defined the terms "office member" and "office allied member," which are used in Article III, Section 2(b) of the Exchange Constitution. The Exchange stated that it intends to codify these definitions in the PCX Constitution by the summer of 2000. In addition, the Exchange explained that it intends to stagger the implementation of the revised structure of the Board of Governors ("Board"). As a result, two new public governors will be added in the 2000 term. In addition two additional public governors will attend meetings of the PCX Board in a non-voting advisory capacity during the 2000 term. The Exchange explained that this should enable them to familiarize themselves with the business of the Exchange. Finally, the Exchange clarified the use and composition of three classes of governors elected to the Board and clarified that full implementation of the changes shall be reflected on the PCX's 2001 Board.

⁴ Letter from Robert Pacileo, Staff Attorney, PCX to Sharon M. Lawson, Division, SEC, dated December 1, 1999. In Amendment No. 2, the Exchange added Commentary .01 to Article III, Section 2(b) to explain the staggered implementation of the fifty percent public governor requirement. In addition, the Exchange deleted its proposal to require a minimum of five floor members on the Board at all times. Finally, Amendment No. 2 corrected an incorrect statement in Amendment No. 1, which provided that the Board will have nine non-public elected members under the proposal when in fact it will consist of ten.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁵ 15 U.S.C. 700-3(b)(6).

not be, or be affiliated with, a broker or dealer in securities. If at any time the position of the Chairman [or President] is unfilled by a person duly appointed to such position by the Board of Governors, the number of members of the Board of Governors shall be deemed to be reduced accordingly until such position or positions are filled. The Board shall hold regular and special meetings at such times and at such places as it may determine. Notice of meetings of the Board shall be given as provided in Section 8 of this Article II. The Board may act on any matter affecting or concerning this Exchange, except as otherwise provided by the Certificate of Incorporation or this Constitution. Except where a larger vote is required under any provisions of the Certificate of Incorporation or this Constitution, the Board may act on any matter within its jurisdiction by vote of not less than a majority of the Governors voting at a meeting at which a quorum is present or by written consent of a majority of all Governors.

* * * * *

Chairman of the Board of Governors and President

Sec. 2(a). The Chairman of the Board of Governors and the President of the Exchange shall be appointed by the Board of Governors to serve at its pleasure and for such compensation as it may from time to time fix. Neither the Chairman of the Board nor the President shall engage in any other business during his or her incumbency except with approval of the Board, and acceptance of the office shall be deemed to be agreement to uphold the Constitution and Rules of the Exchange. The Chairman of the Board and the President of the Exchange shall be members, ex officio, of all committees of the Exchange except the Nominating Committee. [The President shall be a member of the Board of Governors.]

* * * * *

Article III

ELECTIONS, MEETINGS, TERMS OF OFFICE, PROXIES

Annual Election of Governors

Sec. 2(a). The elected Governors shall be divided into three classes, each [two] of which shall be composed of seven Governors. [, and one of which shall be composed of six Governors.] The seven [six] Governors composing Class I shall have terms expiring at the Annual Meeting in 2002 [1993], and the terms of Governors in Class I shall expire each three years thereafter. The seven Governors composing Class II shall have

terms expiring at the Annual Meeting in 2003 [1994], and the terms of Governors in Class II shall expire each three years thereafter. The seven Governors composing Class III shall have terms expiring at the Annual Meeting in 2004 [1995], and the terms of Governors in Class III shall expire each three years thereafter. Also at each Annual Meeting, the Vice Chairman elect shall become Vice Chairman and a Vice Chairman elect shall be elected to serve for one year from the date of election, and until his or her successor is elected and qualified. The Vice Chairman elect shall be one of the Governors presently in office with at least two years remaining in his or her term, or one of the newly elected Governors.

Eligibility of Governors

Sec. 2(b). Any member, allied member or person who is an officer or director of the parent or subsidiary corporation of a member firm, or a general partner in a partnership which owns or is wholly owned by a member firm, or an officer or director of a member firm or of a participant firm or any subsidiary of the Exchange performing depository or clearing functions, or an officer, director or general partner of the parent or a subsidiary corporation of such clearing member firm or depository participant firm or any person not affiliated with a broker or dealer in securities is eligible to be elected as a member of the Board of Governors. Of the Governors in each of the classes specified in Sec. 2(a) above, at least one shall be a member of the Exchange, at least [two] one shall be an office member[s] or office allied member[s] of the Exchange, and [one] at least three shall be [a] representatives of the public and shall not be, or be affiliated with, a broker or dealer in securities. There shall be at least two floor members on the Board at all times.

Commentary

.01 Pursuant to a letter from the Commission's director of Market Regulation dated June 10, 1999, the Exchange will stagger implementation of the fifty-percent public governors over a two-year period. The Exchange will add two new public governors, for a total of nine public governors, in the year 2000. The Exchange will add two new governors, for a total of eleven public governors, in the year 2001. Beginning in year 2001, there will be 11 representatives of the public on the Board at all times.

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 III 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

A. Introduction

The PCX⁵ proposes to amend Article II, Sections 1(a) and 2(a), and Article III, Sections 2(a) and 2(b) of the PCX Constitution to increase the number of public representatives on the PCX Board of Governors ("Board") to fifty percent.⁶ The Exchange believes that this change will make the Board more balanced, fair and effective.⁷ The Exchange is also proposing to remove the President of the Exchange from the Board.

B. Number of Public Governors

Pursuant to Article II, section 1(a) of the PCX Constitution, the current Board

⁵ The PCX is a non-stock membership corporation registered in the State of Delaware. Its corporate structure and the general parameters of its corporate governance are defined in the PCX Certificate of Incorporation. The Exchange's By-laws, composed of the PCS Constitution and PCX Rules, contain the specific requirements for the composition of the Board, PCX Committees and the daily operations of the Exchange.

⁶ The Exchange will partially implement this rule change in January 2000 at the annual election of PCX Governors, as prescribed by proposed Commentary .01 to Article III, Section 2(b), of the PCX Constitution. Full implementation will conclude with the January 2001 Board elections.

⁷ The Exchange notes that in 1997, it took an initial step towards a more balanced Board composition by increasing, from six to seven, the number of public representatives on the Board, and also by increasing, from one to two, the number of public governors permitted to serve on the Exchange's Executive Committee. See Exchange Act Release No. 38945 (August 18, 1997), 62 FR 44999 (August 25, 1997). In its approval order, the Commission stated that "significant representation by public governors on the Board is desirable and should ensure better protection of public investors and the public interest. Public governors are likely to have little or no stake in internal Exchange politics, and, if carefully selected, public governors should bring diverse experience and increased ethical sensitivity to the Board, thus enhancing the confidence of members and of the public in the Exchange's ability to govern its members appropriately."

consist of twenty elected Governors, the Chairman of the Board and the President of the Exchange. The twenty elected Governors currently include seven representatives of the public.⁸

The Exchange proposes to modify Article II, sections 1(a) to increase the total number of governors on the Board to twenty-one elected governors, of which at least eleven shall be representatives of the public. The eleven public governors will equal fifty percent of the twenty-two governors ("Governors"), who include twenty-one governors elected by PCX members plus the Chairman of the Board, who is appointed by the Board.⁹

C. President of the Exchange

The Exchange proposes to change Article II, sections 1(a) and 2(a) of the Constitution by removing the President of the Exchange from the Board. The Exchange proposes this change to accommodate the increase in the number of public governors. The Exchange notes that the Exchange's President can attend Board meetings and participate without being a voting member of the Board.

D. Eligibility of Governors

The Exchange proposes to amend Article III, section 2(b) of the PCX Constitution, relating to the eligibility of Governors. As amended, this provision will require that, of the Governors in each of the classes specified in Section 2(a),¹⁰ at least one shall be a member of the Exchange, at least one shall be an office member or office allied member of the Exchange,¹¹ and at least three shall

be representatives of the public.¹² The Exchange proposes this rule change to make Article II, section 1(a) consistent with Article III, section 2(b), which sets minimum requirements for the composition of the Board.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)¹³ of the Act, in general, and furthers the objectives of Section 6(b)(3)¹⁴ in particular, because it is designed to assure a fair representation of its members in the selection of its directors and administration of its affairs and to assure that one or more directors shall be representatives of issuers and investors and not be associated with a member of the Exchange, broker, or dealer.

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 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

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amended proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, SEC, 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 in

the Exchange on behalf of the member organization. See *supra* note 3.

¹² This provision currently states, in relevant part, that "at least one shall be a member of the Exchange, at least two shall be office members or office allied members of the Exchange, and one shall be a representative of the public."

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(3).

the Commission's Public Reference Room. Copies of such 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-99-33 and should be submitted by January 12, 2000.

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

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁵ In particular, the Commission finds that the proposal is consistent with the requirements of Sections 6(b)(1), 6(b)(3) and 6(b)(5) of the Act.¹⁶

Section 6(b)(3) of the Act provides, among other things, that one or more directors of an exchange shall be representative of issuers and investors and not associated with a member of the exchange, broker, or dealer. The Commission believes that representation of the public on exchange governing bodies that have decision-making authority is critical to ensuring that the exchange works to protect the public interest.¹⁷ Further, public representation helps to ensure that no single group of investors has the ability to systematically disadvantage other market participants through the exchange governance process.

The proposed change amends the composition of the PCX Board by increasing the number of public directors from seven to eleven. As a result, public governors will comprise fifty percent of the Board. The Commission believes that increasing the number of public governors should substantially further the public's interest and voice on the Board, consistent with Section 6(b)(3). Public governors should bring knowledge of the interests of investors to the governance of the Exchange and should balance the composition of the Board. The Commission further believes that public governors possess a unique perspective, which should enhance the ability of the Board to address Exchange issues in a non-discriminatory fashion. In this way, the public governors may help to prevent unfair discrimination between customers, issuers, brokers, or

⁸ A representative of the public is an individual who is not affiliated with a broker or dealer in securities. PCX Const., Art. II, Section 1(a). The Exchange notes that it considers "public representatives" to be persons who are not employed in the securities industry, and that in the recent past, the Exchange's appointments of public representatives to the Board has been generally consistent with this meaning. See *infra* note 16.

⁹ As described above, the revised structure including eleven public representatives will be staggered so that in 2000 the PCX Board will consist of nine public governors and in 2001 the PCX Board will consist of the required eleven public governors. During the 2000 Board term, there will be nine elected public governors and two non-elected, non-voting advisory public governors who will stand for election in 2001.

¹⁰ PCX Constitution, Article III, Section 2(a) currently states that "[t]he elected Governors shall be divided into three classes, two of which shall be composed of seven Governors, and one of which shall be composed of six Governors."

¹¹ In Amendment No. 1, the Exchange defined an office member as a natural person in whose name a membership is held and who does not exercise trading privileges on a floor of the Exchange on behalf of the member organization and defined an office allied member as an allied member (as defined in PCX Constitution, Article V, Section 6) who does not conduct business while on a floor of

¹⁵ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁶ 15 U.S.C. 78f(b)(1), 78f(b)(3) and 15 U.S.C. 78f(b)(5), respectively.

¹⁷ See Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70884 (December 22, 1998).

dealers in the administration of the Exchange, and protect investors and the public interest, consistent with Section 6(b)(5).

Section 6(b)(1) of the Act requires that an exchange be so organized and have the capacity to carry out the purposes of the Act. The Commission believes that increasing public representation on the PCX Board will also further Section 6(b)(1) of the Act by enabling the Exchange to discharge its regulatory responsibilities and fairly enforce compliance by its members with its rules, the Act and the rules thereunder.

The proposed composition of the Board also furthers Section 6(b)(1) and 6(b)(3) of the Act because it helps to ensure that each member constituency is adequately represented in the governing process of the Exchange.¹⁸ A national securities exchange has many self-regulatory functions, such as, among other things, the discipline of members. Recognizing and providing each member community with representation on the governing Board should protect the members' interests from unfair or uneven assertions of regulatory authority. Further fifty-percent public representation should ensure that the interests of one group of members will not dominate the Exchange and that investor interests will be represented on the Board.

The Commission further believes that the PCX's current application of its definition of public representative is consistent with the requirements of the Act. The current definition, which is not amended by this proposal, states that a public representative is a person who is not a broker-dealer in securities or affiliated with a broker-dealer in securities. This definition, however, permits other securities industry participants to be public governors. The Exchange stated that the recent past appointments of public representatives have usually not included persons employed in the securities industry.¹⁹ The Commission encourages the Exchange to codify this practice by amending its definition of public representatives to exclude those persons that may have an affiliation with the securities industry.²⁰

¹⁸ Each class of governors provides for a minimum of one upstairs firm and one floor member. The Exchange should consider codifying a maximum number of member representation on the Board so that no member constituency can dominate the Board.

¹⁹ Conversation between Kathryn Beck, General Counsel, Exchange, and Mandy S. Cohen, Special Counsel, Division of Market Regulation, Commission on November 23, 1999. See *supra* note 7.

²⁰ The Commission notes that the National Association of Securities Dealers ("NASD") and the

To assist in the transition to eleven public representatives of the Board, the Exchange proposes to have only 9 public governors on the Board in 2000. Two additional public governors will be nominated in 2000 who will stand for election in 2001. During 2000, these governors will attend Board meetings in a non-voting, advisory capacity. The Commission believes that this proposed change should help to ensure a smooth transition to the amended Board composition. This should provide the new public governors with exposure to the unique issues of the securities industry in general, as well as the specific issues that the PCX faces before they are expected to participate in the governance of the Exchange.

The Commission notes that the requirement to have eleven public representatives on the Board will not be fully implemented until 2001 as a result of PCX's desire to implement the change in two steps. Nevertheless, the Exchange is required, pursuant to its Constitution, to ensure that there are eleven public governors on its Board beginning in the year 2001. The Commission therefore expects PCX to have fifty-percent public representation on its Board as of 2001.

In summary, for the reasons discussed above, the Commission believes that the change to fifty-percent public governors should further improve oversight of the Exchange, which should benefit all investors. The Commission continues to urge the PCX to codify its application of the definition of public governor.

The Commission finds good cause to accelerate approval of the proposed rule change as amended prior to the thirtieth day after publication in the **Federal Register**. The Commission believes that the proposed rule change provides significant benefits to investors and the members of the Exchange, as discussed above. By increasing the number of public governors on the PCX Board, the PCX should be governed by a more balanced corporate body.

The Commission notes that the PCX is required to begin its election process for the 2000 election to be held during the annual meeting in January. The Commission believes that it is in the public interest to have the first phase of the staggered implementation of the proposed changes in place for the next election. Further, since the first phase of

Chicago Stock Exchange ("CHX") currently classify their board members as industry/member, non-industry—which would be comparable to the PCX definition of public, and public—which is defined as persons that have no material business relationship with a broker or dealer or the Association or the Exchange, as the case may be. See NASD By-laws Article I; CHX Constitution, Sections 2 and 10.

the implementation has a direct correlation to the full implementation of the proposed rule change by 2001, the Commission believes that it is in the public interest to approve the entire proposed rule change on an accelerated basis. The two non-voting advisory public governors will be nominated in 2000 and will then stand for election to the 2001 Board. Therefore, the Commission believes that good cause exists, consistent with Sections 6(b)(1), (b)(3), and (b)(5)²¹ and 19(b)²² of the Act, to approve the proposed rule change, as amended, on an accelerated basis.

V. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act²³ that the proposed rule change, as amended, (SR-PCX-99-33) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Margaret H. McFarland,
Deputy Secretary.

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SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends part T of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter TA covers the Office of the Deputy Commissioner for Disability and Income Security Programs. Notice is hereby given that Subchapter TAH, Office of Hearings and Appeals, is being amended to reflect changes in the organization designations in the Office of Hearings and Appeals, Office of Policy, Planning and Evaluation and functional responsibilities in the Office of Hearings and Appeals, Special Counsel Staff. The changes are as follows: Section TAH.10 *The Office of Hearings and Appeals—(Organization)*:

G. The Office of Policy, Planning and Evaluation (TAHC). Delete:

1. Division of Litigation Analysis and Implementation (TAHC1).

Renumber:

"2" to "1" and "3" to "2".

Section TAH.20 *The Office of Hearings and Appeals—(Functions)*:

²¹ 15 U.S.C. 78f(b)(1); 15 U.S.C. 78f(b)(93); 15 U.S.C. 78f(b)(5).

²² 15 U.S.C. 78s.

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).