

investors and the public interest.⁵ NASD Regulation believes that it is in the interest of members and associated persons that the rule remain in effect pending the filing of amendments to, and Commission action on, the permanent rule filing.⁶ Therefore, the staff recommends that the pilot rule be extended to January 5, 2001. However, the permanent rule filing will make clear that, once approved, the permanent rule change would supersede the pilot in its entirety.

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, as amended.

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

No written comments were solicited or received with respect to the proposed rule change.

III. 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.⁷ Persons making written submission 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 NASD. All submissions should refer to File No. SR-NASD-99-72 and should be submitted by January 28, 2000.

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

NASD Regulation has requested that the Commission find good cause pursuant to Section 19(b)(2)⁸ for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. 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 of the Act and the rules regulations thereunder.⁹ Rule 10335 is intended to provide a pilot system within the NASD arbitration forum to process requests for temporary injunctive relief. Rule 10335 is intended principally to facilitate the disposition of employment disputes, and related disputes, concerning members who file for injunctive relief to prevent registered representatives from transferring their client accounts to their new firms.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will permit members to have the benefit of injunctive relief in arbitration pending filing of amendments to, and Commission action on, the permanent rule filing that would amend Rule 10335 and make it a permanent part of the Code. The Commission expects that during the extension of the pilot NASD Regulation will amend the proposal to permanently add Rule 10335 to the Code.¹⁰ The Commission believes, therefore, that granting accelerated approval of the proposed rule change is consistent with Section 15A of the Act.¹¹

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NASD-99-72) is approved on an accelerated basis through January 5, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42304; File No. SR-NYSE-99-52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Extending the Pilot Fee Structure Governing the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Materials

December 30, 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 December 28, 1999, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") 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.

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

The Exchange proposes to extend the effectiveness of the pilot fees ("Pilot Fee Structure") currently set forth in Exchange Rule 451, "Transmission of Proxy Material," and Exchange Rule 465, "Transmission of Interim Reports and Other Material," (collectively the "Rules"). The Rules provide guidelines for the reimbursement of expenses by NYSE issuers to NYSE member organizations for the processing and delivery of proxy materials and other issuer communications to security holders whose securities are held in street name. The Pilot Fee Structure is presently scheduled to expire on January 3, 2000. The Exchange proposes to extend the Pilot Fee Structure through February 15, 2000.

The text 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 Exchange included statements concerning the purpose of and basis for

⁵ See Amendment No. 1, *supra* note 3.

⁶ See Securities Exchange Act Release No. 40441 (September 15, 1998), 63 FR 50611 (September 22, 1998).

⁷ In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 15 U.S.C. 78o-3.

¹⁰ See *supra* note 6.

¹¹ 17 U.S.C. 78o-3.

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

As first adopted, the Pilot Fee Structure revised the Rules to lower certain reimbursement guidelines, create incentive fees to eliminate duplicative mailings, and establish a supplemental fee for intermediaries that coordinate multiple nominees.³ The Pilot Fee Structure has been modified and extended several times,⁴ most recently by Commission order dated November 1, 1999.⁵

In June of 1999, the Exchange submitted a proposed rule change to the Commission ("June Filing") to further revise the Pilot Fee Structure and extend its effectiveness through August 31, 2001.⁶ The June Filing proposes to reduce the basic processing fee and nominee coordination fee that NYSE member organizations and proxy distribution intermediaries may recover in connection with the distribution of proxy and shareholder communication materials to shareholders. The June Filing also proposes to define the term "nominee" as it relates to the calculation of the nominee coordination fee.

The Exchange believes that an extension of the Pilot Fee Structure

through February 15, 2000, will give the Commission additional time to fully consider the June Filing without a lapse in the current Rules. Absent an extension of the Pilot Fee Structure, the fees in effect prior to the Pilot Fee Structure (*i.e.*, the fees in effect prior to March 14, 1997) would return to effectiveness after January 3, 2000. The Exchange believes that such a result could be counterproductive and cause confusion among NYSE member organizations and issuers, especially given that the June Filing, proposing to extend the revised Pilot Fee Structure through August 31, 2001, is still pending with the Commission.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act⁷ in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange further believes that the proposed rule change satisfies the requirement under Section 6(b)(5)⁸ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest.⁹

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

The Exchange believes the proposed rule change does 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 not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date; the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Exchange Act¹⁰ and rule 19b-4(f)(6)¹¹ thereunder.

A proposed rule change filed under rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, rule 19b-4(f)(6)(iii) permits the Commission to designate such shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission designate such shorter time period so that the proposed rule change may become operative no later than January 3, 2000. The immediate effectiveness would allow the current Pilot Fee Structure to continue uninterrupted and would provide the Commission with additional time to complete its review of the June Filing.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately upon filing for the following reasons. The proposed rule change extends the expiration date of the Pilot Fee Structure from January 3, 2000, to February 15, 2000. The extension of the Pilot Fee Structure will provide the Commission with the additional time necessary to complete its review and evaluation of the June Filing.

The Commission notes that unless the current expiration date of the Pilot Fee Structure is extended, the reimbursement rates for proxy materials distributed after January 3, 2000, will revert to those in effect prior to March 14, 1997. The Commission believes that such a result could be confusing and counterproductive, especially given that the June Filing proposing to extend the Pilot Fee Structure through August 31, 2001, is still pending with the Commission.

Based on the above reasons, the Commission believes it is consistent with the protection of investors and the public interest that the proposed rule

³ See Securities Exchange Act Release No. 38406 (Mar. 14, 1997), 62 FR 13922 (Mar. 24, 1997). The Commission initially approved the Pilot Fee Structure as a one-year pilot and designated May 13, 1998, as the date of expiration.

⁴ See Securities Exchange Act Release Nos. 39672 (Feb. 17, 1998), 63 FR 9034 (Feb. 23, 1998) (order extending Pilot Fee Structure through July 31, 1998, and lowering the rate of reimbursement for mailing each set of initial proxies and annual reports from \$.55 to \$.50); 40289 (July 31, 1998), 63 FR 45652 (Aug. 10, 1998) (order extending Pilot Fee Structure through October 31, 1998); 40621 (Oct. 30, 1998), 63 FR 60036 (Nov. 6, 1998) (order extending Pilot Fee Structure through February 12, 1999); 41044 (Feb. 11, 1999), 64 FR 8422 (Feb. 19, 1999) (order extending Pilot Fee Structure through March 15, 1999); 41177 (Mar. 16, 1999), 64 FR 14294 (Mar. 24, 1999) (order extending Pilot Fee Structure through August 31, 1999); and 41669 (July 29, 1999), 64 FR 43007 (Aug. 6, 1999) (order extending Pilot Fee Structure through November 1, 1999).

⁵ See Securities Exchange Act Release No. 42086 (Nov. 1, 1999), 64 FR 60870 (Nov. 8, 1999) (order extending Pilot Fee Structure through January 3, 2000).

⁶ See Securities Exchange Act Release No. 41549 (June 23, 1999), 64 FR 35229 (June 30, 1999).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f(b)(5).

⁹ In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78S(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

change become operative immediately upon the date of filing, December 28, 1999. 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 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. 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. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-99-52 and should be submitted by January 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42301; File No. SR-PCX-99-25]

Self Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change To Allow Lead Market Makers To Perform Certain Floor Broker Functions

December 30, 1999.

I. Introduction

On July 13, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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 allow PCX Lead Market Makers ("LMM"s) to perform certain Floor Broker Functions. Notice of the proposed rule change was published in the **Federal Register** on September 21, 1999.³ No comments were received on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The proposed rule change modifies the Exchange's current rules⁴ to allow an LMM to perform certain Floor Broker functions in addition to Order Book Official ("OBO") and Market Maker functions. Under the proposed changes, an LMM acting as a Floor Broker will be required to use due diligence and perform all other obligations of Floor Brokers pursuant to PCX Rules 6.43 through 6.48. An LMM will be permitted, but will not be obligated, to accept non-discretionary orders that are not eligible to be placed in the Public Order Book, and will be permitted to represent such orders as a Floor Broker. An LMM will not be permitted to represent discretionary orders, whether as a Floor Broker or otherwise, and all orders in the LMM's possession that are eligible to be booked will be required to be booked.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the Commission

believes that the proposed rule change is consistent with the Section 6(b)(5)⁵ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest.⁶ The Commission also finds that the proposal may serve to remove impediments to and perfect the mechanism of a free and open market by enabling Exchange LMMs to better serve customers.

The LMM system at the PCX was first approved, on an eighteen-month pilot basis, in 1990.⁷ After granting a number of extensions to the pilot,⁸ the Commission approved the program on a permanent basis on September 22, 1997.⁹ The LMM program was created originally to enhance the ability of the Exchange to compete in a multiple trading environment, and was designed primarily for new option issues and option issues with comparatively low volume. Subsequently, all equity and index options traded on the PCX were made eligible for the LMM program.¹⁰

Exchange members appointed as LMMs assume responsibilities and acquire rights in their appointed options classes that extend beyond the obligations and rights of Market Makers who trade in the same options issue. In addition to performing the regular obligations of a Market Maker, an LMM must assume certain additional obligations that are designed to strengthen the LMM's market making activities.

Pursuant to PCX Rule 6.82, "Lead Market Maker," each LMM is responsible for, among other things: assuring that disseminated market quotations are accurate; honoring guaranteed markets; determining the formula for generating automatically updated market quotations; being present at the designated trading post throughout each trading day; effecting, with respect to trading as a Market

⁵ 15 U.S.C. 78f(b)(5).

⁶ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ See Securities Exchange Act Release No. 27631 (January 17, 1990), 55 FR 2462 (January 24, 1990).

⁸ See Securities Exchange Act Release Nos. 31063 (August 21, 1992), 57 FR 39255 (August 28, 1992); 31635 (December 22, 1992), 57 FR 62414 (December 30, 1992); 33854 (April 1, 1994), 59 FR 16873 (April 8, 1994); 34710 (September 23, 1994), 59 FR 50306 (October 3, 1994); 36293 (September 28, 1995), 60 FR 52243 (October 5, 1995); and 37767 (September 30, 1996), 61 FR 52483 (October 7, 1996).

⁹ See Securities Exchange Act Release No. 39111 (September 22, 1997), 62 FR 51710 (October 2, 1997).

¹⁰ See Securities Exchange Act Release No. 37780 (October 3, 1996), 61 FR 53247 (October 10, 1996).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 41868 (September 13, 1999), 64 FR 51173.

⁴ See PCX Rule 6.82, "Lead Market Makers," and PCX Rule 6.83, "Limitations on Dealings of Lead Market Makers."

¹² 17 CFR 200.30-3(a)(12).