

short securities position. Chase will then transmit to BONY a description of the securities in the BONY securities account (which will be the same securities as in the GSCC special clearance account at Chase). Based on this transmission, BONY will transfer funds equal to the aggregate net funds borrowed position to a demand deposit account in the name of GSCC that is maintained by Chase. Upon Chase's receipt of the funds, Chase will release any liens it may have on the securities in the special GSCC clearance account, and GSCC will release any liens it may have on the securities in the BONY securities account (which accounts are comprised of the same securities). BONY will credit the securities in the BONY securities account to GSCC's regular GCF Repo clearance account at BONY and to the dealers that clear at BONY that are in a net long securities position.

All securities and funds movements occurring on a particular business day between the participating clearing banks will be reversed the next business day within a timeframe established by GSCC and the clearing banks. This timeframe will correspond to the timeframe already established by GSCC's Rule 20 for the reversal of GCF Repo transactions between GSCC and its participating netting members.

## II. Comment Letters

The Commission received one comment letter.<sup>7</sup> The Bond Market Association ("Association") supports the approval of the proposed rule change because the Association believes the change would provide a wide array of market participants with an increased flexibility in satisfying their funding needs as well as the funding needs of their customers.

## III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule change is consistent with these obligations. The proposed rule change should increase the number of transactions that can be cleared through the GCF Repo service and therefore should facilitate the prompt and accurate clearance and settlement of general collateral repo transactions by

increasing the number of such transactions that are cleared and settled through the facilities of GSCC. In addition, the Commission believes the procedures and arrangements GSCC has established for the movements between GSCC's clearing banks of securities and funds related to GCF Repo transactions should help to assure the safeguarding of securities and funds which are in GSCC's custody or control or for which it is responsible.

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-GSCC-99-01) 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.*

[FR Doc. 99-10308 Filed 4-23-99; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41311; File No. SR-NASD-99-15]

### Self-Regulatory Organization; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the National Adjudicatory Council's Call for Review of Membership Decisions

April 20, 1999.

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 March 19, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. On April 16, 1999, the NASD filed an amendment to

the proposal.<sup>3</sup> 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 Change

The NASD is proposing to amend NASD Rule 1015 to temporarily suspend the authority of the NAC to call for review membership decisions issued by district staff. The text of the proposed rule change is available at the NASD Office of the Secretary 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 Association 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

The purpose of the proposed rule change is to temporarily suspend the NAC's authority under NASD Rule 1015 to call for review of membership decisions while the Association considers other options for review of the membership admittance process. Currently, NASD Rule 1015(a)(2) provides that a membership decision rendered by the Department of Member Regulation shall be subject to a call for review by the NAC. Since the Association has not been able to adequately implement this authority, it proposes to suspend NAC review of membership decisions from the date of approval by the Commission until October 31, 1999, for the reasons set forth below.

<sup>3</sup> See letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (April 16, 1999) ("Amendment No. 1"). In Amendment No. 1, the NASD changes the date the suspension of the national Adjudicatory Council's ("NAC's") call for review of membership decisions will end from June 1, 1999 to October 31, 1999. In Amendment No. 1, the NASD also deletes a description of the activities and composition of the Membership Admissions Review Committee.

<sup>7</sup> *Supra* note 4.

<sup>8</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.

In August 1997, the SEC approved substantial revisions to the Rule 1010 Series<sup>4</sup> to conform the rules to the requirements of the SEC's August 8, 1996, Order with respect to the NASD ("Order").<sup>5</sup> One of the main changes required by the order was a transfer of authority to render decisions on membership applications from the district business conduct committees to NASD Regulation staff, subject to appeals by applicants to the National Business Conduct Committee ("NBCC"), the NAC's predecessor.

The Association asserts that during consideration of the revisions to the NASD Rule 1010 Series in 1997, the NBCC requested that a call for review provision for the NBCC be included in the Rule 1010 Series so that members would have a mechanism to provide input on membership decisions. The NBCC was not particularly concerned with decisions to deny or restrict an applicant because such applicants would have a strong incentive to appeal if they believed that the rules had been inconsistently applied. The NBCC was primarily concerned about decisions to grant applications without restriction. The successful applicant would have no basis or incentive to appeal the decision, and the NBCC was concerned that there would not be a mechanism to review the decision if a review appeared to be warranted. Thus, the Association submitted a proposed rule change including the call for review authority in November 1977 which the Commission approved in December 1997.<sup>6</sup>

Since receiving Commission approval, the Association has encountered significant practical problems in implementing this call for review authority. As of November 30, 1998, approximately 1100 membership decisions—including new member application decisions under NASD Rule 1014, decisions to modify or remove a business restriction under NASD Rule 1017, and decisions on continuing member applications under NASD Rule 1018—have been issued under the new membership rules. While the Association has tried several procedures to implement the call for review authority for these decisions, it does not

believe that any of these procedures has been particularly effective. For example, reading the decisions, without review of the entire file, has not proven to be useful. The NASD also believes that it would be duplicative of district staff work and inefficient to review every record in its entirety to determine if it supports the decision. While NASD Regulation staff has found that decisions that deny or restrict an applicant appear to be well-supported by their rationale (in most districts the district director (often a vice president) reviews such decisions before issuing them), the process does not work for decisions that grant a membership application without restriction because they do not contain rationale for the district staff's membership determination. Instead they simply state that the applicant has met all applicable standards. Unlike a call for review of a regular disciplinary decision under the NASD Rule 9000 Series, there is no hearing panel vote and decision that might indicate a close or difficult issue.

The Association also contemplated limiting the number of staff decisions to be considered for a call for review by focusing the process on certain categories of decisions, such as only new member application decisions or certain types of business expansions. The NASD determined, however, that such a procedure might be perceived as biased against those firms that fell within a selected category.

Only one decision has been called for review by the NAC. This decision involved a new issue about the appropriate use of unadjudicated violations and an interpretation of an SEC order against an applicant. The staff believes that the issues raised in this call for review could have been resolved by consultation with the Office of General Counsel ("OGC") prior to the issuance of the district decision and by the issuance of guidelines to district staff on the appropriate consideration of unadjudicated matters in rendering a decision on a membership application.

After discussing the matter with staff, members, and practitioners, the Association has concluded that it is not possible yet to implement a fair and effective call for review mechanism for all Rule 1010 Series decisions. In view of this determination, the NAC and the Board agreed to propose temporary suspension of the NAC's call for review authority until the Association has more fully reviewed the NASD Rule 1010 Series in its entirety, including the role of the NAC in that process.

The Association proposes to make the proposed rule change effective upon

approval by the Commission and remain effective until October 31, 1999.

## (2) Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(8) of the Act,<sup>7</sup> which requires, among other things, that the Association's rules must be designed to provide fair procedures for the denial of membership to any person seeking membership therein. According to the NASD, the proposed rule change would not result in any change to a membership applicant's ability to seek NAC review of a membership decision and thus in no way prejudices a membership applicant's rights under the NASD Rules.

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

The 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.

### (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 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.

## 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. Person 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

<sup>4</sup> Securities Exchange Act Release No. 38908 (Aug. 7, 1997), 62 FR 43385 (Aug. 13, 1997).

<sup>5</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.).

<sup>6</sup> Securities Exchange Act Release Nos. 39350 (Nov. 21, 1997), 62 FR 64000 (Dec. 3, 1997), (File No. SR-NASD-97-81) and 39470 (Dec. 19, 1997), 62 FR 67927 (Dec. 30, 1997), respectively.

<sup>7</sup> 15 U.S.C. 78o-3(b)(8).

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 NASD Regulation. All submissions should refer to File No. SR-NASD-99-15 and should be submitted by May 17, 1999.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99-10423 Filed 4-23-99; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41307; File No. SR-PCX-99-09]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Customer Transaction Charges and On-Line Comparison Charges

April 16, 1999.

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 March 31, 1999, the Pacific Exchange, Inc. ("PCX" 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.

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

The Exchange proposes to change its Schedule of Fees and Charges for Exchange Services by eliminating customer transaction charges<sup>3</sup> for

Pacific Options Exchange Trading System ("POETS")<sup>4</sup> automated executions and modifying its on-line comparison charges. The text of the proposed rule change is available at the Office of the Secretary, PCX, 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 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 Section 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.** Currently, the Exchange charges a customer transaction fee of \$0.12 per contract for trade-related transactions, including POETS automated executions (*i.e.*, market and marketable limit orders transacted through POETS). The Exchange also charges an on-line comparison charge of \$0.25 per trade plus \$0.025 per contract for all trades.

**Proposal.** With regard to customer transaction charges, the Exchange proposes to eliminate the transaction charge of \$0.12 per contract on all customer POETS automated executions until such time that Exchange technology can modify the billing system to allow for transaction charges to be applied based on order size (*i.e.*, \$0.00 for orders of 30 contracts or less). The Exchange proposes this change to remain competitive in the market place.

With regard to on-line comparison charges, the Exchange proposes to change its on-line comparison charges to \$0.05 per contract and to eliminate the per trade charge of \$0.25. The Exchange proposes these changes in an effort to simplify the fee schedule and remain competitive.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>6</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

##### B. Self-Regulatory Organizations' 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 were neither solicited nor received.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and subparagraph (f) of Rule 19b-4 thereunder.<sup>8</sup> 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.<sup>9</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. 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

<sup>8</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 Exchange represents that customer transaction charges are fees charged to members. As a result, the Commission notes that, as this filing relates exclusively to member fees this proposed rule change is properly filed under Section 19(b)(3)(A)(ii) of the Act. 15 U.S.C. 78s(b)(3)(A)(ii).

Telephone conversation between Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, and Joseph P. Morra, Attorney, Division of Market Regulation, Commission, on April 8, 1999.

<sup>4</sup> POETS is the Exchange's automated options trading systems. See generally Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 (January 24, 1990) (Order approving File No. SR-PSE-89-26).

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f).

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