graduates the fee schedules and requires member firm users to absorb a reasonable share of the costs of operating the arbitration service.

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

The NASD does not believe the proposed rule change will impose any burden on competition.

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

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder, in that the proposal constitutes a change to a fee which the NASD imposes on its members. At any time within 60 days of the filing of such 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. 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. 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 at 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–97–40 and should be submitted by July 30, 1997.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–17939 Filed 7–8–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38806; File No. SR–PCX–97–19]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Accelerated Approval to Proposed Rule Change Relating to Its Specialist Evaluation Program

July 1, 1997.

I. Introduction

On May 29, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), 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 extend its specialist evaluation pilot program for an additional six months, until January 1, 1998, and make certain amendments to the pilot.

The proposed rule change was published for comment in Securities Exchange Act Release No. 38712 (June 3, 1997), 62 FR 31857 (June 11, 1997). No comments were received on the proposal. This order approves the proposed rule change on an accelerated basis.

II. Description

On October 1, 1996, the Commission approved a nine-month pilot program for the evaluation of PCX equity specialists.[3] The exchange is now proposing to extend the pilot program for an additional six month period, until January 1, 1998. The Exchange represented that the reason for the extension is to allow it more time to evaluate the impact of the SEC's new order handling rules on the performance criteria.[4] During the extension of the pilot, the Exchange has represented that it will determine an appropriate overall passing score and individual passing scores for each criterion used in the pilot program.

In addition, the Exchange proposes to implement for use in the evaluation program, beginning with the third quarter review period of 1997 (*i.e.*, the quarter beginning July 1, 1997), certain programming changes requested by the Commission in its October 1, 1996 order approving the pilot program. Specifically, the Commission requested that the Exchange reprogram its systems so that the following criteria are calculated using the NBBO instead of the primary market quote: Trading Between the Quote, Book Display Time, and Quote Performance (Equal or Better Quote Performance and Better Quote Performance). The description of these performance criteria will be modified as follows:

Trading Between the Quote[5]

''Trading Between the Quote'' currently measures the number of market and marketable limit orders that are executed between the best primary market bid and offer. For this criterion to count toward the overall evaluation score, ten orders or more must have been executed during the quarter in which the specialist is being evaluated. If less than ten orders are executed, this criterion will not be counted and the rest of the evaluation criteria will be given more weight.

When a market or marketable limit order is executed, the execution price is compared to the primary market bid and

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Prior to the adoption of the pilot program, PCX Rule 5.37(a) provided that the Exchange's Equity Allocation Committee (''EAC'') evaluate all registered specialists on a quarterly basis and that each specialist receive an overall evaluation rating based on three criteria of specialist performance: (1) Specialist Evaluation Questionnaire Survey (''Questionnaire'') (45% of overall score); (2) SCOREX Limit Order Acceptance Performance (10%); and (3) National Market System Quote Performance (45%). *See* PSE Rule 5.37 (July 1995).

The pilot program modifies Rule 5.37(a) by adding three new criteria of performance and eliminating one performance criterion. The new criteria are: (1) Executions (50%) (itself consisting of four criteria: (a) Turnaround Time (15%); (b) Holding Orders Without Action (15%); (c) Trading Between the Quote (10%); and (d) Executions in Size Greater Than BBO (10%)); (2) Book Display Time (15%); and (3) Post-1 p.m. Parameters (10%). The pilot eliminates the SCOREX Limit Order Acceptance Performance criterion. Further, the pilot adds more questions to the Questionnaire, and reduces its weight from 45% to 15% of the overall score. Finally, the National Market System Quote Performance criterion (renamed Quote Performance under the pilot) has been amended to include within it a submeasure for bettering the quote (each of the two submeasures is accorded a weight of 5% of the overall score). For a more detailed description of the performance criteria utilized in the PCX's pilot program, see Securities Exchange Act Release No. 37770 (October 1, 1996), 61 FR 52820 (October 8, 1996) (File No. SR–PSE–96–28). *See also generally* PCX Rule 5.37 (description of the standards and procedures applicable to the EAC's evaluation of specialists).

[4] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (File No. S7–30–95).

[5] ''Trading Between the Quote'' is one of the four criteria which together constitute the ''Executions'' criterion. *See supra* note 3.

offer. The specialist will be awarded points based on the percentage of orders the specialist receives that are executed between the primary market bid and offer. If the execution price falls between the primary market bid and offer, the trade is counted as one that traded between the quote at the time of execution. Each time a trade is executed, the primary market quote will be noted. If the spread of that quote is two or more trading fractions apart, that trade will count as one eligible for the comparison of the execution price to the quote.

The Exchange is now proposing to continue using this criterion, but to replace references to the ''primary market bid and offer'' with references to the ''NBBO.''

Book Display Time

This criterion calculates the percentage of book shares at the best price in the book that is displayed in the specialist's quote, by symbol, and the duration of time that each percentage is in effect. This criterion rates the P/COAST book displayed 100% of the time. The sizes of all open buy limit orders at the best price for the symbol in the specialist's book are totaled and compared to the bid size quote. The sizes of all open sell limit orders at the best price for the symbol in the book are totaled and compared to the offer size quote. This will be done for each symbol traded by the specialist, but only for those orders within the primary market quote. Limit orders in the book that were priced beyond the primary market quote will not be included; they will not be executed until they reach the price in the primary market quote, so the specialist should not be required to cover them in his (her) quote sizes.

The Exchange is now proposing to continue using this criterion, but to replace references to the ''primary market bid and offer'' to references to the ''NBBO.''

Quote Performance

This criterion, on which 10% of each specialist evaluation is based, consists of two submeasures: (a) Equal or Better Quote Performance; and (b) Better Quote Performance.

Equal or Better Quote Performance calculates for each issue traded, the percentage of time in which a specialist's bid or offer is equal to or better than the primary market quote with a 500 share market size or the primary market size, whichever is less, with a 200 share minimum.

Better Quote Performance calculates for each issue traded, the percentage of time in which a specialist's bid or offer is better than the primary market quote with a 500 share market size or the primary market size, whichever is less, with a 200 share minimum. The Exchange is proposing to continue using this criterion, but to replace references to the ''primary market bid and offer'' with references to the ''NBBO.''

In addition, the Exchange has represented that it will submit a proposed rule change with the Commission pursuant to rule 19b–4 under the Act[6] by November 15, 1997 that will specify an overall passing score for the performance evaluation and individual passing scores for each criterion, as well as a request to further extend the pilot beyond January 1, 1998.

III. Discussion

The Commission believes that specialists play a crucial role in providing stability, liquidity, and continuity to the trading of stocks. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules promulgated thereunder, is the maintenance of fair and orderly markets in their designated securities.[7] To ensure that specialists fulfill these obligations, it is important that the Exchange conduct effective oversight of their performance. The PCX's specialist evaluation program is critical to this oversight.

In its order initially approving the specialist evaluation pilot program,[8] the Commission asked the Exchange to monitor the effectiveness of the amended program. Specifically, the Commission requested information about the number of specialists who fell into the bottom 10% of all registered specialists on their respective trading floors in the overall program, whether they subsequently appeared before the EAC, and any restrictions placed upon, or further action taken against, such specialists. The Commission also requested information as to the number of specialists who appeared before the EAC as a result of scoring in the bottom 10% in any two out of four consecutive quarterly evaluations, whether any restrictions were imposed on such specialists, and the results of any formal proceedings that were initiated against them.

In May 1997, the PCX submitted to the Commission its monitoring report regarding its specialist evaluation pilot program. The report describes the PCX's experience with the pilot program during the initial two quarters of its operation (*i.e.*, the fourth quarter of 1996 and the first quarter of 1997). In terms of the overall scope of the program, the Commission continues to believe that the objective measures, together with the floor broker questionnaire, should generate sufficiently detailed information to enable the Exchange to make accurate assessments of specialist performance. In this regard, the increased emphasis on objective criteria under the pilot has been useful in identifying how well specialists carry out certain aspects (*i.e.*, timeliness of execution, price improvement, and market making quality) of their responsibilities as specialists.

However, in the order initially approving the PCX's pilot program, the Commission expressed its concerns about approving a specialist evaluation program that contains objective performance criteria calculated using the primary market quote. The Commission believed that such criteria were more appropriately calculated based on the NBBO. The Exchange now proposes to amend the pilot program, beginning with the third review period of 1997, to utilize the NBBO instead of the primary market quote in the Trading Between the Quote, Book Display Time, and Quote Performance criteria. The Commission believes that the NBBO is a more appropriate standard in this context in that it will enable the Exchange to gauge the performance of PCX specialists in comparison with their competitors not only in the primary market, but in the national market system as a whole.[9] The Commission finds that the PCX's proposal is responsive to the Commission's request for such an amendment.

Further, the Commission has stated previously that true relative performance standards are the preferable means to evaluate the comparative performance of specialists on a national securities exchange.[10] Moreover, the Commission also has

[6] 17 CFR 240.19b–4

[7] Rule 11b–1, 17 CFR 240.11b–1; PSE rule 5.299f).

[8] For a description of the Commission's rationale for initially approving the PCX's adoption of its specialist evaluation pilot program, see Securities Exchange Act Release No. 37770, *supra* note 3. The discussion in the aforementioned order is incorporated by reference into this order.

[9] The Exchange's use of the primary market quote in these three measures did not allow for such comparisons to be made in instances where the primary market quote is not equal to the NBBO. *See Id.* at n.16.

[10] By relative performance standards the Commission means standards that automatically subject specialists that fall below a predetermined threshold of performance to a special performance review by the appropriate exchange authority. *See* Securities Exchange Act Release No. 28843 (February 1, 1991), 56 FR 5040 (February 7, 1991); Division of Market Regulation, The October 1987 Market Break Report (February 1988) at xvii and 4–28 to 4–29.

stated that an effective evaluation program should subject specialists who meet minimum performance levels on the overall program, but need help or guidance in improving their performance in a particular area, to review. While the PCX's specialist evaluation program subjects those specialists falling into the bottom 10% of all specialists on his or her trading floor to review by the EAC, it does not set a minimum performance level on the overall program. In addition, the Exchange has not established minimum performance standards for individual performance criteria. However, the Commission notes that the Exchange has represented that it will establish an overall passing score for the evaluation program as well as individual passing scores for each performance measure during the course of the pilot.

Accordingly, the Commission believes that it is appropriate to extend the current pilot program for an additional six-month period, until January 1, 1998. This six-month period will allow the Exchange to respond to the Commission's continuing concerns with the PCX's specialist evaluation program. Moreover, the Commission expects the Exchange to conduct an ongoing examination of the parameter ranges and corresponding points allotted under each criterion to ensure that they continue to be set at appropriate levels.

The Commission therefore requests that the PCX submit by November 15, 1997 a proposed rule change pursuant to Rule 19b–4 to revise the pilot to adopt a passing score for the overall performance evaluation and each criterion thereof. This proposed rule change also should include any proposal by the PCX is extend the pilot beyond January 1, 1998.

In addition, the Commission requests that the PCX submit a report to the Commission, by November 15, 1997, describing its continuing experience with the pilot. At a minimum, this report should contain data, for the second and third quarters of 1997, on (1) the number of registered specialists who scored in the bottom 10% of all registered specialists on his or her trading floor in the overall program; (2) the number of specialists, who, as a result of scoring in the bottom 10% in any one quarterly evaluation, appeared before the EAC, and the type of restrictions that were imposed on such specialists (*i.e.*, restriction on new allocations or acting as an alternate specialist), or any further action was taken against such specialists; (3) the number of specialists who, as a result of scoring in the bottom 10% in any two out of four consecutive quarterly evaluations, appeared before the EAC, whether any restrictions were imposed on such specialists, and whether formal proceedings were initiated against such specialists; and (4) the number of specialists for who formal proceedings were initiated, the results of such proceedings, including a list of any stocks reallocated from a particular unit.

The Commission notes that the Exchange's pilot program only modifies the performance criteria of Rule 5.37(a). Consequently, the Commission expects the EAC to continue to evaluate the performance of specialists during the pilot period in accordance with the standards and procedures found in the PCX rules.[11]

For the reasons discussed above, the Commission finds that the PCX's proposal to extend its pilot program is consistent with the requirements of Sections 6(b) and 11 of the Act[12] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[13]

Further, the Commission finds that the proposal is consistent with Section 11(b) of the Act[14] and Rule 11b–1 thereunder which allow securities exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets and to remove impediments to and perfect the mechanism of a national market system.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** This will permit the pilot program to continue both on an uninterrupted basis and with the use of the NBBO, instead of the primary market quote, in the calculation of the Trading Between the Quote, Book Display Time, and Quote Performance criteria. In addition, the rule change that implemented the pilot program initially was published in the **Federal Register** for the full comment period, and no comments were received.[15]

Accordingly, the Commission believes that it is consistent with the Act to accelerate approval of the proposed rule change.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–PCX–97–19) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

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[11] In this regard, all specialists falling within the bottom 10% of specialists on their respective floors in any review period are required to meet with the EAC. *See also* PCX Rule 5.37 (standards applicable to specialists falling into the bottom 10% in any two out of four review periods, including those pertaining to the initiation of formal reallocation proceedings). Moreover, PCX Rule 5.36(d), Commentary .03 requires that all specialists falling into the bottom 10% in a review period must be precluded from acting as alternate specialists until their ranking rises above the bottom 10%, unless the EAC determines otherwise. In addition, PCX Rule 5.37(b), Commentary .01 requires that all such specialists shall not be eligible for new allocations until their ranking rises above the bottom 10%; however, the EAC may make exceptions if there are sufficient mitigating circumstances.

As also noted in the Commission's order approving the latter restriction, findings of ''mitigating circumstances'' should not be routine, but should remain the exception and be made only when appropriately warranted. *See* Securities Exchange Act Release No. 37326 (June 19, 1996), 61 FR 32875 (June 25, 1996) (File No. SR–PSE–96–13). Consequently, the Commission expects that appropriate action in accordance with PCX rules will be taken with regard to those specialists falling into the botton 10%.

[12] 15 U.S.C. 78f(b) and 78k.

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

[14] 15 U.S.C. 78k(b).

[15] *See* Securities Exchange Act Release 37770, *supra* note 3.

[16] 15 U.S.C. 78s(b)(2).

[17] 127 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before August 8, 1997. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.