first time broker/dealers that assist churches and other non-profit charitable organizations that raise money through the issuance of securities. Certain church bond and similar offerings by religious and charitable organizations are exempt from SEC registration under Section 3(a)(4) of the Securities Act of 1933 (''Securities Act''),[3] but generally are subject to review by state regulatory authorities. NASD Rule 2710 (the ''Corporate Financing Rule'') subjects ''church bond'' offerings to a filing requirement with the Corporate Financing Department of NASD Regulation (''Department'') so that the Department has an opportunity to determine whether compensation terms and arrangements are fair and reasonable for purposes of the rule.

Department staff have found that the aggregate underwriting compensation received by church bond broker/dealers has been significantly below the maximum amount of underwriting compensation that is permitted under Rule 2710. Although initially there was an issue in some cases of appropriate compliance with SEC Rule 15c2–4,[4] the staff has not recently identified any problems in this area.

In order to more appropriately focus the review efforts of Department staff on the types of offerings that present significant regulatory issues, NASD Regulation proposes to amend the Corporate Financing Rule to exempt certain church bond offerings from the filing requirements, but not the substantive requirements, of the Corporate Financing Rule. NASD Regulation proposes to implement the proposed rule change on the date of SEC approval.

(b) Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[5] of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The elimination of the requirement in Rule 2710 to file certain church bond offerings will allow NASD Regulation to better allocate its Department staff resources.

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

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 Association consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Security and Exchange Commission, 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 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–98–81 and should be submitted by December 10, 1998.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30890 Filed 11–18–98; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 77c(a)(4). The Commission notes that in order for the proposed exemption to apply the offering must qualify under Section 3(a)(4) of the Securities Act, which requires that the offering not be for pecuniary profit, and no part of the net earnings can inure to the benefit of any person, private stockholder, or individual.

[4] 17 CFR 240,15c2–4. Rule 15c2–4 under the Act requires that investor funds forwarded to a broker/dealer in a contingent offering be held in an escrow or special account, depending on whether the broker/dealer can carry customer funds or accounts, until the contingency is reached before the funds can be released to the issuer.

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40679; File No. SR–NYSE–98–32]

November 13, 1998.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Shareholder Approval of Stock Option Plans

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 13, 1998, the New York Stock Exchange, Inc. (the ''Exchange'' or the ''NYSE'') filed with the Securities and Exchange Commission (the ''Commission'' or the ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 is proposing to amend Paragraphs 312.01, 312.03 and 312.04 of its Listed Company Manual (the ''Manual''). The proposed rule change amends the Exchange's shareholder approval policy (the ''Policy'') with respect to stock option and similar plans (''Plans''). The text of the proposed rule change is as follows:

Text of the Proposed Rule Change

Italics indicates additions; **[**brackets**]** indicate deletions.

312.00 Shareholder Approval Policy

312.01 Shareholders' interest and participation in corporate affairs has greatly increased. Management has responded by providing more extensive and frequent reports on matters of interest to investors. In addition, an increasing number of important corporate decisions are being referred to shareholders for their approval. This is

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

[2] 17 CFR 240.19b–4.

especially true of transactions involving the issuance of additional securities.

Good business practice is frequently the controlling factor in the determination of management to submit a matter to shareholders for approval even though neither the law nor the company's charter makes such approvals necessary.The Exchange encourages this growth in corporate democracy. *For example, due to the recent growth of officer and director equity-based compensation arrangements and the increased interest of shareholders in this area, companies may determine to submit stock option and similar plans to shareholders for approval, whether or not the Exchange requires such approval.*

* * * * *

312.03 Shareholder approval is a prerequisite to listing in four situations: (a) Shareholder approval is required with respect to a stock option or purchase plan, or any other arrangement, pursuant to which officers or directors may acquire stock (collectively, a ''Plan'') except:

(1) for warrants or rights issued generally to security holders of the company;

(2) pursuant to a broadly-based Plan **[**that includes other employees (*e.g.* ESOPs)**]**;

(3) where options or shares are to be issued to a person not previously employed by the company, as a material inducement to such person's entering into an employment contract with the company; or

(4) pursuant to a Plan that provides that (i) no single officer or director may acquire under the Plan more than one percent of the shares of the issuer's common stock outstanding at the time the Plan is adopted, and (ii) together with all Plans of the issuer (other than Plans for which shareholder approval is not required under subsections (1) to (3) above), does not authorize the issuance of more than five percent of the issuer's common stock outstanding at the time the Plan is adopted.

* * * * *

312.04 For the purpose of Para. 312.03:

* * * * *

[(g) Whether a Plan is ''broadly-based'' depends on a variety of factors, including, but not limited to the number of officers, directors and other employees covered by the Plan and whether there are separate compensation arrangements for salaried employees and hourly employees. The Exchange will deem a Plan to be ''broadly-based'' if at least 20 percent of the company's employees are eligible to receive stock or options under the Plan and at least half of those eligible are neither officers nor directors (the ''20 percent test''). However, this is a non-exclusive safe harbor and the fact that a Plan does not meet the 20 percent test does not mean that the Exchange will consider the Plan to be narrowly-based. The Exchange encourages a listed company adopting a Plan that does not meet the 20 percent test, but that the company believes is ''broadly-based,'' to discuss the matter with the Exchange staff prior to filing a listing application covering the shares to be issued under the Plan.**]**

(g) ''Officer'' has the same meaning as defined by the Securities and Exchange Commission in Rule 16a–1(f) under the Securities Exchange Act of 1934, or any successor rule.

(h) A Plan is ''broadly-based'' if, pursuant to the terms of the Plan:

at least a majority of the company's full-time employees in the United States, who are ''exempt employees,'' as defined under Fair Labor Standards Act of 1938, are eligible to receive stock or options under the Plan; and

at least a majority of the shares of stock or shares of stock underlying options awarded under the Plan, during the shorter of the three-year period commencing on the date the Plan is adopted by the company or the term of the Plan, must be awarded to employees who are not officers or directors of the company.

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

As a prerequisite to listing, the Policy requires shareholder approval of stock option or purchase plans or any other arrangement pursuant to which either officers or directors acquire stock. The Policy also contains, however, four exemptions from this requirement, including an exemption for ''broadly-based'' Plans. The purpose of the proposed rule change is to amend the provisions in the mutual governing shareholder approval of Plans, including the definition of what constitutes a ''broadly-based'' Plan.

The Exchange historically had not provided a definition of what constitutes a ''broadly-based'' Plan other than to state that such a Plan must include employees other than officers and directors. The one example in the policy of such a Plan was an employee stock option plan, or ''ESOP.'' In December of 1997, the Exchange filed a proposed rule change amending the Policy which was published for public comment[3] by the Commission as required under Section 19(b)(1) of the Act.[4] The Commission received no comments on the proposed rule change, which was subsequently approved on April 8, 1998.[5] Among other things, the Original Proposal codified existing Exchange interpretations regarding ''broadly-based'' plans. Specifically, that proposal stated that the definition of ''broadly-based'' required a review of a number of factors, including the number of persons included in the Plan, and the nature of the company's employees. The Exchange also codified a non-exclusive safe harbor for Plans in which at least 20 percent of a company's employees were eligible, provided that the majority of those eligible were neither officers nor directors.

Following the approval and effectiveness of the Original Proposal, the Exchange and the Commission received a significant number of inquiries and comments regarding the proposal. These originated primarily from the institutional investor community and focused on the definition of ''broadly-based.'' Many commentators were concerned that the Original Proposal could be a ''loop-hole'' pursuant to which companies could establish Plans of significant size that included officers and directors without the need for shareholder approval. Commentators also expressed general concern regarding the potential dilutive effects of Plans.

In response to the inquiries and comments, the Exchange issued a Request for Comment on the definition of ''broadly-based'' Plans. The Exchange received 166 comments in response to that request. These comments are discussed in Section II.C., below. The

[3] Exchange Act Release No. 39659 (February 12, 1998), 63 FR 9036 (February 23, 1998).

[4] 15 U.S.C. 78s(b)(1).

[5] Exchange Act Release No. 39839 (April 8, 1998), 63 FR 18481 (April 15, 1998) (the ''Original Proposal'').

Request for Comment indicated the Exchange's intention to establish a task force (the ''Task Force'') to review the comments and to make recommendations regarding potential changes to the definition of ''broadly-based'' Plan.

The Exchange thereafter established the Task Force to review the comments. The Task Force was composed of representatives of the Exchange's Legal Advisory Committee, Individual Investors Advisory Committee, Pension Managers Advisory Committee, and Listed Company Advisory Committee. In addition, members of the Task Force included representatives of other Exchange constituencies, including a representative from the Council of Institutional Investors. Following its deliberations, the Task Force recommended the following:

(1) Retain, but modify the definition of a ''broadly-based'' Plan. The new definition would classify a Plan as ''broadly-based'' if, pursuant to the terms of the Plan:

(a) At least a majority of the issuer's full-time, exempt U.S. employees [6] are eligible to participate under the plan; and

(b) At least a majority of the shares awarded under the Plan (or shares of stock underlying options awarded under the Plan) during the shorter of the three year period commencing on the date the Plan is adopted by the issuer, or the term of the Plan itself, are made to employees [7] who are not officers or directors of the issuer.[8]

(2) Establish the definition of a ''broadly-based'' Plan as an exclusive test, not a safe harbor.

(3) Revise the Exchange's general policy on shareholder approval issues to recognize the increased use of Plans as means to compensate officers and directors and state the Exchange's view that companies should consider submitting Plans to shareholder whether or not required by Exchange policy.

(4) Direct the Task Force or other appropriate group to immediately commence a study to establish a maximum overall dilution listing standard for all non-tax-qualified Plans that otherwise would be exempt from shareholder approval. The goal would be to complete this study in time for Exchange review prior to the year 2000 proxy statement season.

The rule amendments being proposed in this filing implement the first three Task Force recommendations. In addition, the Exchange has adopted the fourth recommendation and will direct the Task Force to consider a possible listing standard regarding a dilution test.

The Exchange believes that the Task Force's recommendations represent an effective and workable compromise regarding shareholder approval of Plans. The proposal blends tests based both on Plan eligibility and Plan awards. In addition, while providing certainty through the use of an exclusive test, the Exchange believes the proposed amendments also state a general Exchange policy recognizing the increased use of Plans by companies and the Exchange's view that companies should consider submitting Plans to shareholders, whether or not required under the Policy. The Exchange believes the amendments also provide consistency in coverage by adopting the Commission's definition of ''officer,'' as contained in Rule 16a–1(f) under the Act. Finally, the Task Force recognizes that this proposal may only be an interim step in addressing this issue, and recommends that the Exchange consider an overall dilution test. Since the Exchange did not request comment on this issue in its original Request for Comment, the Exchange believes that further study of such a test is prudent.

2. Statutory Basis

The NYSE believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [9] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

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

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

As discussed, the Exchange issued a Request for Comment on the definition of a ''broadly-based'' plan. The Exchange received 166 comment letters in response to that solicitation.[10] As a general matter, the listed company community favored retaining the current shareholder approval policy with respect to stock option plans. In contrast, the institutional investor community generally favored a narrower definition of what constitutes a ''broadly-based'' plan, and suggested that such a definition be an exclusive test, not a non-exclusive safe harbor. The Task Force considered these comments in proposing the compromise position the Exchange is proposing in this filing.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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[6] *See* 29 U.S.C. 213(a) for the definition of ''exempt employees.''

[7] The Exchange proposes a two part test for determining whether a plan is broadly-based. In the first prong, a majority of the company's full-time employees who are ''exempt employees'' must be eligible to receive stock. As a general matter, ''exempt employees'' are salaried employees in an executive, administrative or professional capacity. The Task Force recommended limiting this prong of the definition to ''exempt employees'' since non-exempt employees often are covered by compensation arrangements that do not include stock options.

The second part of the test requires that at least a majority of the shares awarded under a Plan be awarded to employees who are not officers or directors of a company. This part of the test is not limited to ''exempt employees,'' allowing the calculation of the ''majority of shares awarded'' to include both ''exempt employees'' and non-exempt employees who are not officers or directors. The focus of this requirement is to ensure that a company actually implements a Plan in a broadly-based fashion. In this regard, it does not matter whether the awards to persons other than officers or directors are to ''exempt'' or non-exempt employees. Telephone call between Michael Simon, Milbank, Tweed, Hadley & McCloy, and Kelly McCormick, Attorney, Division of Market Regulation, Commission, dated November 12, 1998.

[8] In this regard, the Exchange proposes to use the definition of ''officer'' contained in Commission Rule 16a–1(f) under the Act.

[9] 15 U.S.C. 78f(b)(5).

[10] Interested persons are directed to the public file, located at the places specified in Item IV below, to review the comments received by the NYSE. The public file contains: (1) a Summary of the Comment Letters (Exhibit B); (2) the NYSE Request for Comment (Exhibit 2A); (3) the Comment Letters in Response to the Request (Exhibit 2B); and (4) the Report of the NYSE Task Force (Exhibit 2C).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission requests comment on whether the ''actual participation'' standard of paragraph 312.03(h) of the Manual (which states that at least a majority of the shares of stock or shares underlying options awarded under the Plan, during the shorter of the three-year period commencing on the date the Plan was adopted by the company or the term of the plan, must be awarded to employees who are not officers or directors), in conjunction with the ''eligibility'' portion of proposed paragraph 312.03(h), adequately addresses commenters' concerns regarding non-executive participation, as well as eligibility, in a Plan. The Commission requests comment on whether a company could meet the definition of a broadly-based plan by nominally complying with the participation prong and the thereby avoid the shareholder approval requirements. In particular, could a company either issue grants to non-executive employees in the first three years of the Plan but reserve a majority of the shares actually available under a Plan for executives and directors once the three years has elapsed? Alternatively, could a company not issue any grants during the first three years of the Plan but reserve all shares available under the Plan for grants only to executives and directors once the three years has elapsed? The Commission also requests comment on whether Section 162(m) of the Internal Revenue Code,[11] (which requires shareholder approval of applicable employee remuneration in excess of one million dollars for covered employees for the remuneration to be eligible for deduction as a trade or business expense) provides shareholders with additional protection by affording shareholders an adequate opportunity to vote on certain stock option plans.

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 in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–98–32 and should be submitted by December 10, 1998.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30948 Filed 11–18–98; 8:45 am]

BILLING CODE 8010–01–M

[11] 26 U.S.C. 162(m).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40675; File No. SR–PCX–98–54]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Extension of PCX Specialist Evaluation Program for One Year

November 12, 1998.

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 November 2, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a 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 PCX is proposing to extend its specialist evaluation program for one year.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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

Purpose

On December 22, 1997, the Commission approved a one-year extension of the Exchange's pilot program for the evaluation of equity specialists.[3] The filing was intended to establish an overall score and individual passing scores for specialists, replace the ''Bettering the Quote'' criterion with ''Price Improvement,'' and lower the weighting of the ''Specialist Evaluation Questionnarie'' criterion from 15% to 10% so that Price Improvement could be given a weight of 10%. Subsequently, on May 8, 1998, the Commission approved an Exchange proposal to codify the aforementioned changes.[4] The Exchange is now proposing to extend the pilot program for one year, to January 1, 2000.

The Exchange is requesting a one-year extension of the pilot program so that it will have an opportunity to continue reviewing and evaluating the program before seeking permanent approval. In that regard, on October 29, 1998, the Exchange submitted a report to the Commission responding to particular questions set forth in the May 8, 1998 pilot approval order. The Exchange believes that this program is operating successfully and without any problems, and on that basis, the Exchange believes that a one-year extension of the program is warranted. At this time, the Exchange is not seeking to modify the pilot program.

Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to promote just and equitable principles of trade.

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

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 39477 (December 22, 1997), 62 FR 68334 (December 30, 1997) and Exchange Act Release No. 39358 (November 25, 1997), 62 FR 64035 (December 3, 1997).

[4] *See* Exchange Act Release No. 39976 (May 8, 1998), 63 FR 26834 (May 14, 1998).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).