

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(4)<sup>4</sup> promulgated thereunder because the proposal effects a change in an existing service of GSCC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of GSCC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of GSCC or persons using the service. At any time within sixty 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 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 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 GSCC. All submissions should refer to the File No. SR-GSCC-2002-08

and should be submitted by November 12, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46663; File No. SR-NASD-2002-40]

**Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to Proposed Rule Change, by NASD, Relating to NASD Rules 1022, 1032, 2210, 3010, 3370, IM-1022-1, and IM-1022-2 and New Rules 2865 and IM-2210-7**

October 15, 2002.

**I. Introduction**

On March 22, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to adopt new rules and amend existing rules to provide for the trading of security futures. Notice of the proposed rule change and Amendment No. 1 thereto was published for comment in the **Federal Register** on July 18, 2002.<sup>3</sup> The Commission received two comment letters regarding the proposed rule change.<sup>4</sup> On September 5, 2002, NASD filed Amendment No. 2 to the proposed rule change.<sup>5</sup> On September 26, 2002, NASD filed Amendment No. 3 to the proposed rule change.<sup>6</sup> This order

<sup>5</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> Securities Exchange Act Release No. 46186 (July 11, 2002), 67 FR 47412.

<sup>4</sup> Letter from Jonathan Barton, Chairman, Steering Committee on Securities Futures of the Futures Industry Association and the Securities Industry Association, Inc. ("SIA/FIA Committee"), to Jonathan Katz, Secretary, Commission, dated August 9, 2002; Letter from Richard G. DuFour, Executive Vice President, Chicago Board Options Exchange ("CBOE"), to Jonathan Katz, Secretary, Commission, dated August 21, 2002.

<sup>5</sup> See letter from Gary L. Goldsholle, Associate General Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated September 5, 2002.

<sup>6</sup> See letter from Gary L. Goldsholle, Associate General Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated September 26, 2002.

approves the proposed rule change, accelerates approval of Amendment Nos. 2 and 3, and solicits comments from interested persons on those amendments.

**II. Description of the Proposed Rule Change**

The rule change modifies existing NASD rules and adopts new rules to accommodate the trading of security futures (*i.e.*, futures on individual stocks and narrow-based stock indices).<sup>7</sup> A description of the rule change follows.

*A. New Security Futures Rule 2865*

Under the rule change, NASD is adopting Rule 2865 as its security futures rule. The new rule is based on NASD's existing options rule, Rule 2860. Some aspects of Rule 2865 are substantially similar to corresponding provisions of Rule 2860. However, several provisions of Rule 2865 are tailored specifically to security futures.

*Delivery of Security Futures Risk Disclosure Statement*

Rule 2865(b)(1) will require every member to deliver the security futures risk disclosure statement to each customer at or prior to the time the customer's account is approved for trading security futures. The disclosure statement will discuss the risks of security futures, how they trade, margin, effects of leverage, settlement procedures, customer account protections, and the tax consequences of trading security futures.<sup>8</sup>

*Discretionary Accounts*

Rule 2865(b)(18) establishes discretionary account procedures for security futures that are similar to those for options. These procedures will require that the written authorization of the customer required by NASD Rule 2510 specifically authorize security futures trading in the account. Under the rule change, a discretionary account, even if it is permitted to trade options, cannot trade security futures unless a new written discretionary account authorization specifically authorizing security futures trading is on file.

*Statements of Account*

Rule 2865(b)(15) will require members to deliver a customer account statement no less frequently than each month where there has been an entry during the preceding month with respect to a security futures contract, and quarterly to all customers that have

<sup>7</sup> See *e.g.*, Section 3(a)(55) of the Act, 15 U.S.C. 78c(a)(55).

<sup>8</sup> See Securities Exchange Act Release No. 46612, (October 7, 2002) (file No. SR-NASD-2002-128).

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

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

an open security futures position or money balance. The statement must provide specific information regarding the customer's position, including the market price, mark-to-market value and nominal value of each security futures position as well as the mark-to-market price and market value of other security positions, the total value of all positions, the outstanding debit or credit balance, and account equity.<sup>9</sup>

#### Opening of Accounts

Rule 2865(b)(16) establishes specific procedures for members to follow in order to approve a customer account to trade security futures. These procedures include review by an appropriately qualified principal (a Registered Options and Security Futures Principal or a Limited Principal—General Securities Sales Supervisor), specific guidance as to information the member must ask the customer to provide, and a requirement for the member to furnish the security futures risk disclosure statement at or before the time the member accepts an order from the customer to purchase or sell a security future.

#### Suitability

Rule 2865(b)(19) establishes a heightened suitability standard for security futures, similar to that required for options. The rule provides that if an associated person recommends a security futures transaction, the associated person must have a reasonable basis to believe "that the customer has such knowledge and experience in financial matters that the customer may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the security future." This standard would extend to trading strategies as well as individual trades.

#### Trading Ahead

Rule 2865(b)(25) will require members to exercise due care to avoid trading ahead of customer orders in the same security futures contract. A member must exercise this due care when the member has gained knowledge of or reasonably should have gained knowledge of the customer's order prior to transmitting the member's order for a proprietary account or in any account in which the member or an associated person has an interest.

Security Futures Transactions and Reports by Market Makers in Listed Securities

Rule 2865(b)(24) will require members that are off-board market makers in securities listed on a national securities exchange to regularly report security futures transactions involving 50 or more contracts on such listed securities that are for the benefit of the member or are for the benefit of certain associated persons of the member.

#### B. Front Running Policy

NASD will amend its front running policy, IM-2110-3, to apply to security futures in the same manner that it applies to options. Under the rule change, when a member has material, non-public market information concerning an imminent block transaction in a stock, the member will not be able to trade the security future overlying that stock in its proprietary account, other accounts in which it has an interest, or discretionary accounts. Once the material, non-public market information has been made publicly available, however, the restrictions would no longer apply.

#### C. Qualifications, Registration and Supervision of Registered Persons

##### 1. Registration Procedures and Examinations

The securities industry has a wide array of qualification examinations that registered persons can take to qualify to engage in various aspects of the securities business. To accommodate the introduction of security futures, the rule change modifies several NASD registration categories, and permits the "grandfathering" of persons already registered in those categories. The following registration categories will be broadened to include security futures activities:

- Registered Options Principal (Series 4), which becomes Registered Options and Security Futures Principal.
- Limited Principal—General Securities Sales Supervisor (Series 9/10).
- General Securities Representative (Series 7).
- Limited Representative—Options (Series 42), which becomes Limited Representative—Options and Security Futures.

NASD is working with other self-regulatory organizations to develop new and revised qualification examinations that will test applicants on topics related to security futures. NASD anticipates that new and revised qualification examinations for the associated registration categories will be

completed six months after retail trading in security futures begins. For registered representatives wishing to engage in a security futures business, a new Series 43 examination will be offered. Thereafter, new applicants may choose to take only the Series 7, or, if they wish to engage in security futures business, both the Series 7 and Series 43. Further, because some existing registrants may actually wish to take revised qualification examinations, NASD is modifying its registration categories to allow it to accept other examinations that address security futures, such as the revised Series 3 (containing questions on security futures).

For persons who are or become registered in one of these categories before the implementation of new examinations, the rule change institutes a firm-element continuing education requirement. Under the rule change, NASD will require each such person to complete this program prior to conducting a business in security futures. Thus, these registrants may be "grandfathered" so that they will not have to retake any expanded examinations. These grandfathering procedures will lapse on December 31, 2006. After that date, registrants who have passed an examination that does not include security futures, and who have not already completed this firm-element continuing education program, will be required to retake an examination to function in a registration category with respect to security futures.

##### 2. Other Personnel—Related Changes

The rule change amends other NASD rules relating to the hiring, registration, and supervision of personnel. NASD is amending Rule 1060(a) to exempt from registration with NASD persons associated with a member whose functions are related solely and exclusively to transactions in security futures, provided that they are registered with a registered futures association. In addition, NASD is modifying Rule 3010(e) to require members, when reviewing a job applicant's employment experience that includes experience with a broker-dealer registered pursuant to Section 15(b)(11) of the Act,<sup>10</sup> to review a copy of Commodity Futures Trading Commission ("CFTC") Form 8-T: Notice of Termination of Associated Person, NFA Associate, Branch Office

<sup>9</sup> Amendment No. 2 modified the originally proposed wording of these requirements.

<sup>10</sup> 15 U.S.C. 78o(b)(11).

Manager, Designated Supervisor or Principal.<sup>11</sup>

The rule change amends Rule 3050, which requires associated persons who seek to open accounts or place securities orders with an NASD firm that is not their employer to notify both their employer firm and the executing firm before doing so. Specifically, NASD is broadening the scope of this rule to cover accounts with broker-dealers registered pursuant to Section 15(b)(11) of the Act.

NASD also is modifying its "Taping Rule" (Rule 3010(b)(2)), which requires members who employ certain amounts of personnel who have worked at disciplined firms to adopt special supervisory procedures, including the tape-recording of all telephone calls with customers or prospective customers. The rule change broadens the scope of the Taping Rule to include Futures Commission Merchants ("FCMs") and Introducing Brokers ("IBs") within the group of intermediaries that can potentially meet the definition of a "disciplined firm." The rule change borrows NFA's definition of a disciplined firm.

#### D. Advertising Rule for Security Futures

Under the rule change, NASD will regulate communications with the public regarding security futures through amendments to its existing rules and the addition of Interpretive Material to Rule 2210 (the "Advertising Rule"). Among other things, the rule change specifies that advertisements and sales literature concerning security futures must be approved by "a principal qualified to supervise security futures activities."<sup>12</sup> A General Securities Principal (Series 24) would not be authorized to approve advertisements and sales literature concerning security futures.

The rule change establishes a pre-use filing requirement for advertisements concerning security futures. In general, a member will be required to file a security futures advertisement with NASD's Advertising/Investment Companies Regulation Department at least 10 days before its use. The Department will review the advertisement and then either approve it, disapprove it, or specify changes that

the firm must make before using the communication.

While communications regarding security futures will be subject to the general requirements of NASD's advertising rule, the rule change also establishes several specific requirements on the content of communications regarding security futures. IM-2210-7(d) will require that any statement referring to the potential advantages of security futures be balanced with a statement, in the same degree of specificity, of the corresponding risks. All communications regarding security futures must include a warning that they are not suitable for all investors. In addition, all such communications must state that, upon request, the firm will provide documents that support any claims, comparisons, recommendations, statistics, or other technical data used in the communication. Moreover, communications that are not accompanied or preceded by the security futures risk disclosure statement may not contain statements of historical performance or projections, must be limited to general descriptions of security futures, and must contain contact information for obtaining a copy of the disclosure statement.

#### E. Short Sales

Transactions in security futures are excluded from the short sale provisions of Section 10(a) of the Act.<sup>13</sup> To harmonize NASD's rules with Section 10(a), NASD is amending the affirmative determination provisions of NASD Rule 3370 to exclude transactions in security futures from the application of the rule. In addition, NASD is amending the definition of "bona fide fully hedged" positions to include certain long single stock futures positions in connection with short positions in the underlying stock.

### III. Summary of Comments and Response to Comments

As noted above, the Commission received two comment letters regarding the proposed rule change.<sup>14</sup> The SIA/FIA Committee expressed the view that, to the greatest extent possible, NASD should make proposed Rule 2865 a comprehensive stand alone rule for security futures products. The SIA/FIA Committee also noted its concern with respect to cases where an NASD member may also be a member of an exchange trading security futures. In such an instance of dual membership, the SIA/FIA Committee argued that the NASD's rules should make clear that the

particular exchange's trading rules would take precedence with respect to orders executed on that exchange. In addition, the SIA/FIA Committee urged the NASD to defer to NFA qualifications and rules to the greatest extent possible for dual registrant firms for customers whose transactions will be booked in futures accounts.

The SIA/FIA Committee also detailed five specific areas of concern. First, the SIA/FIA Committee expressed concern with the proposed amendments to NASD Rule 1022, which sets out the various principal registration types and would establish the qualifying examinations that must be taken to attain those principal registration types with respect to security futures. The SIA/FIA Committee asserted that the proposed NASD rule would apply examination requirements too broadly across varying types of securities futures activities and is ambiguous as to the application of examination requirements to other activities.

Second, the SIA/FIA Committee maintained that the intermarket front-running interpretation now applicable to trading in the options and cash markets should not be extended to security futures due to the unique nature of security futures trading. In addition, the SIA/FIA Committee urged that actual knowledge of the processing of a block trade should be a component of a front-running violation.

Third, the SIA/FIA Committee expressed the view that further harmonization between the NASD and NFA rules was necessary with regard to the proposed communications rules. The SIA/FIA Committee stated that there should be no material regulatory differences in what FCMs on the one hand and broker-dealers, on the other hand, can say to current or prospective customers and when and how it can be said.

Fourth, the SIA/FIA Committee articulated a number of concerns regarding proposed NASD Rule 2865. The SIA/FIA Committee argued that Rule 2865(b)(12), dealing with confirmations, should be deleted due to the Commission's final action with respect to SEC Rule 10b-10.<sup>15</sup> In addition, the SIA/FIA Committee stated that language in proposed Rule 2865(b)(15), regarding account statements, indicating that security futures have a market value should be deleted, because security futures will have a mark-to-market price, rather than a market value as such. The SIA/FIA

<sup>11</sup> NASD also is modifying NASD Rule 3010(e) to reflect that members may now review Form U-5s through an internet connection to the WebCRD system, rather than by otherwise obtaining actual copies of such documents.

<sup>12</sup> NASD Rule 2210(b)(1). As originally proposed, this approval would have been required to be performed by a Registered Options and Security Futures Principal. In Amendment No. 2, however, NASD altered this by supplying the quoted language.

<sup>13</sup> 15 U.S.C. 78j(a)(2).

<sup>14</sup> See n. 4, *supra*.

<sup>15</sup> See Securities Exchange Act Release No. 46471 (September 6, 2002), 67 FR 58302 (September 13, 2002).

Committee also suggested deleting language in the same provision regarding margin computation. In Rule 2865(b)(16)(B) and (D), the SIA/FIA Committee recommended conforming the language to more closely match the analogous NFA rule on minimum net equity requirements. The SIA/FIA Committee also noted that it does not believe that there should be a requirement for customers to acknowledge receipt of the risk disclosure statement for options, and therefore that a conforming amendment should be made in proposed Rule 2260(b)(16)(D). The SIA/FIA Committee also expressed concern with regard to proposed Rule 2865(b)(17), and requested that the NASD clarify that, with respect to customer complaints, the maintenance of a separate record for security futures complaints is unnecessary. The SIA/FIA Committee requested that NASD incorporate IM-2310-3, regarding suitability obligations to institutional customers, into Rule 2865(b)(19), either directly or by reference. The SIA/FIA Committee also asserted that the audit trail requirements of proposed Rule 2865 would impose undue burdens on the industry and should be eliminated in favor of internal surveillance tools. Finally, with respect to Rule 2865(b)(24), the SIA/FIA Committee recommended that the NASD adopt a conforming Interpretive Memorandum regarding the prohibition against trading ahead of customer orders when the member is aware or reasonably should be aware of such order.

Fifth, the SIA/FIA Committee requested that NASD modify its proposed amendments to Rule 3370. Specifically, the Committee suggested rule language that would apply the affirmative determination obligation of the Rule to members that hold a security futures position unless the member had assurances that the position would be liquidated prior to expiration.

In its comment letter, CBOE raised three concerns about the proposed rule change with regard to discretionary accounts. First, the CBOE stated its belief that the proposed NASD rule does not sufficiently mirror the comparable CBOE and New York Stock Exchange, Inc. ("NYSE") rules regarding the review and acceptance of security futures discretionary accounts by principals qualified to supervise security futures activities and specifically delegated the authority to review and accept such discretionary accounts.

In addition, CBOE expressed concern about the confirmations provision in the proposed rule change, which required

that initial and maintenance margin be disclosed on the confirmation, but did not require that the purchase price of such transaction be included. CBOE stated that the purpose of the confirmation is to disclose to the customer the terms of the transaction, not the required margin.

Finally, CBOE expressed concern with the characterization of security futures products having an equity value under proposed Rule 2865(b)(15)(B). The CBOE stated its belief that the rule should clarify that security futures contracts, aside from their accrued profit or loss, have zero value for equity purposes.

The NASD responded to the commenters in Amendment No. 2. NASD stated that it believed that several of the SIA/FIA Committee's comments would have eased restrictive aspects of the proposed rules. NASD stated further that it believed that the proposed rule change would further the goal of investor protection by using the NASD's options rules as the basis for the majority of its security futures rules.

However, NASD did agree to make several changes in response to the commenters' suggestions. Specifically, NASD responded to the commenters' concern with respect to confirmations by eliminating NASD's proposed confirmation requirement. The NASD also addressed the SIA/FIA Committee's comment with respect to Rule 2865(b)(15)(B) by eliminating the provision, which pertained to margin equity requirements.

In addition, NASD noted in Amendment No. 2 that it did not agree to make the changes requested by CBOE regarding discretionary accounts. NASD stated that it would consider amending both its options and security futures rules once CBOE's proposed rule change regarding discretionary accounts has been approved. In addition, the NASD amended the account statement requirement to provide that the market price, mark-to-market value and nominal value of security futures must be disclosed on customer account statements.

Finally, NASD stated that it intends to clarify the following issues through a Notice to Members: The application of the NASD's best execution rule, Rule 2320, to security futures; that the Series 55 qualification will not be needed for associated persons to trade security futures; that NASD intends to recognize the Series 30 qualification as acceptable for an associated person in a firm registered as a broker/dealer and either a futures commission merchant or introducing broker to supervise security futures; that the suitability obligations

to institutional customers interpretation, IM-2310-3, will apply to security futures; and when the trading ahead of customer orders requirement, Rule 2865(b)(25), will apply.

#### IV. Discussion

After careful review, and consideration of all comments received, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.<sup>16</sup> In particular, the Commission finds that the proposal is consistent with the requirements of Section 15A(b)(6) of the Act,<sup>17</sup> which requires, among other things, that the rules of a registered national securities association 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 Commission notes that the rules NASD has proposed for security futures are modeled after its rules governing options. The system of joint regulation of security futures established by the Commodity Futures Modernization Act is intended to prevent competitive advantages from arising solely out of differences between securities regulation and futures regulation. In addition, NASD's rules reflect the risks to investors that apply specifically to options transactions.

The Commission believes that the rule change should promote just and equitable principles of trade by preventing regulatory disparities from occurring between options and security futures. In addition, the Commission believes that by recognizing the specific risks of security futures, the rule changes should protect investors that trade security futures.

#### V. Amendment Nos. 2 and 3

The Commission finds good cause to approve Amendment Nos. 2 and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

In Amendment No. 2, NASD made a series of changes to the originally proposed rule text that clarified or corrected the text without changing the substance of requirements. In Amendment No. 3, NASD amended its filing to state that NASD would make the rule changes effective on the date approved by the Commission.

<sup>16</sup> In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>17</sup> 15 U.S.C. 78o(b)(6).

The Commission believes that these amendments merely serve to clarify certain provisions of the proposed rules, and make technical changes that do not raise substantive issues. Accordingly, the Commission believes that there is good cause, consistent with Section 19(b) of the Act,<sup>18</sup> to approve Amendment Nos. 2 and 3 on an accelerated basis.

**VI. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 2 and 3, including whether they are 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 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 Exchange. All submissions should refer to File No. SR-NASD-2002-40 and should be submitted by November 12, 2002.

*Market Data Revenue Sharing Credit*

*Tape A Securities:*

<i>Liquidity Provider Credit</i> .....	<i>40% tape revenue credit per qualifying trade (applicable to limit orders that are residing in the Book and that execute against in-bound marketable orders).</i>
<i>Directed Order</i> .....	<i>40% tape revenue credit per qualifying trade (applicable to any market maker that executes against a Directed Order within the Directed Order Process, as defined in PCXE Rule 7.37(a)).</i>
<i>Cross Order</i> .....	<i>40% tape revenue credit per qualifying trade (applicable to any Cross Order, as defined in PCXE Rule 7.31(s), where the ETP Holder or Sponsored Participant represents all of one side of the transaction and all or a portion of the other side).</i>

*Tape B Securities:*

<i>Liquidity Provider Credit</i> .....	<i>50% tape revenue credit per qualifying trade (applicable to limit orders that are residing in the Book and that execute against in-bound marketable orders [in Tape A or B securities]).</i>
<i>Directed Order</i> .....	<i>50% tape revenue credit per qualifying trade (applicable to any market maker that executes against a Directed Order [in a Tape A or B security] within the Directed Order Process, as defined in PCXE Rule 7.37(a)).</i>

<sup>18</sup> 15 U.S.C. 78s(b).  
<sup>19</sup> 15 U.S.C. 78s(b)(2).  
<sup>20</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> See October 10, 2002 letter from Peter D. Bloom, Regulatory Policy, PCX, to Joseph Morra, Special Counsel, Division of Market Regulation

**VII. Conclusion**

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-NASD-2002-40), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-26781 Filed 10-21-02; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46662; File No. SR-PCX-2002-61]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. To Amend a Market Data Revenue Sharing Program for Certain Transactions on the PCX in Tape A Securities**

October 15, 2002.

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 September 30, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange"),

through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), 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. On October 11, 2002, the PCX amended the proposal.<sup>3</sup> The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6)<sup>5</sup> thereunder, which renders the proposal effective upon filing with the Commission. 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 Rule Change**

The PCX, through PCXE, proposes to modify its fee schedule for services provided to ETP Holders<sup>6</sup> and Sponsored Participants<sup>7</sup> on the Archipelago Exchange, the equities trading facility of PCXE. Specifically, the Exchange proposes to amend its market data revenue sharing program for Tape A securities<sup>8</sup> traded on the Exchange. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

**Schedule of Fees and Charges for Exchange Services**

\* \* \* \* \*

**Archipelago Exchange: Other Fees and Charges**

("Division"), Commission ("Amendment No. 1"). In Amendment No. 1, the PCX provided a new Exhibit A that replaces in its entirety the text of the proposed rule that was included in the original filing. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on October 11, 2002, the date that the PCX filed Amendment No. 1.  
<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).  
<sup>6</sup> See PCXE Rule 1.1(n).  
<sup>7</sup> A "Sponsored Participant" is "a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCXE] Rule 7.29." See PCXE Rule 1.1(tt).  
<sup>8</sup> Tape A securities include securities that are listed for trading on the New York Stock Exchange.