

CHX's E-Session, is consistent with the Section 6(b)(5)⁹ requirements in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.

Under the proposal, the Exchange will allow a person or entity to access the E-Session through his or its own existing Exchange membership, or by leasing the rights to a membership, and will limit the rights and privileges that can be leased for the E-Session to access rights to the trading floor during the E-Session as a floor broker or co-specialist only. Additionally, lessees will be required to register with and be approved by the Exchange as a member or member organization under the Exchange's Constitution and Rules, and will not be entitled to sublease the privileges and rights, nor will they be allowed to vote their interest. The Commission believes that the proposed limitations on access to the E-Session, coupled with the proposed restrictions on the rights of E-Session lessees, should prevent fraudulent and manipulative acts, by allowing the CHX to closely monitor the E-Session.

Additionally, the CHX proposes to require lessees to provide proof of an agreement with a registered clearing firm that is approved by the Exchange, and provide evidence that such clearing firm will guarantee the lessee's obligations for any and all losses incurred through his or its lease of the E-Session trading privileges. The Commission finds that this provision is consistent with section 6(b)(5) of the Act¹⁰ because these requirements should help to ensure that investors are adequately protected with regard to the clearing of trades, and that the Exchange has some recourse should the lessee fail to perform any other contractual obligations.

The Exchange has also proposed that the lessee be considered a "member" or "member organization" for purposes of federal securities laws, and the Exchange's Certificate of Incorporation, Constitution and Rules, except in certain circumstances set forth in the rules. The Commission finds that this requirement is consistent with section 6(b)(5) of the Act¹¹ in that it should help to ensure that lessees participating in the E-Session are subject to the same standards and requirements as are participants in the Primary Trading Session and the Post Primary Trading Session. This proposed requirement also

should help to ensure that participants in all three trading sessions are treated equally.

Finally, the Commission believes that the proposed provision which permits the Exchange to terminate the E-Session trading privileges if the Exchange determines that it is in the best interests of the Exchange, is consistent with section 6(b)(5) of the Act¹² in that it is designed to specifically allow the Exchange, if necessary, to take action to protect investors.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act,¹³ that the proposed rule change, as amended (SR-CHX-99-08), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42402; File No. SR-NASD-99-45]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to the Public Disclosure Program

February 7, 2000.

I. Introduction

On September 15, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation" or "NASDR"), filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder.² In its proposal, NASD Regulation seeks to amend certain aspects of the Public Disclosure Program ("PDP"). Notice of the Proposal was published in the **Federal Register** on December 23,

1993.³ The Commission received no comment letters on the filing and this order approves the proposal.

II. Description of the Proposal

NASD Regulation proposes to amend certain aspects of the PDP in an effort to make the operation of the PDP clearer and fairer to NASD members, associated persons, and the public. The PDP is described in Interpretive Material 8310-2 of the NASD Rules ("the Interpretation"). Under the PDP, NASD Regulation discloses to the public certain information regarding employment history, other business experience, and disciplinary history of NASD members and associated persons. NASD Regulation uses information reported on the uniform forms⁴ to the Central Registration Depository ("CRD") as the source for the PDP. One of the primary purposes of the PDP is to help investors make informed choices about the individuals and firms with whom they may wish to do business.

Persons Subject to the Interpretation

NASD Regulation seeks to clarify which firms or persons will be subject to disclosure through the PDP. Although the NASD currently releases information about current or former members and associated persons, the Interpretation does not explicitly address the issue of disclosure regarding former members and associated persons. Under NASD Regulation's proposal, the firms or persons subject to disclosure through the PDP will be: (1) Current and former NASD members; (2) persons currently associated with an NASD member; and (3) persons who have been associated with an NASD member within the preceding two years. This two-year disclosure period coincides with the period in which an individual can return to the industry without being required to requalify by examination and the initial period in which an

³ See Securities Exchange Act Release No. 42240 (December 16, 1999), 64 FR 72125 (File No. SR-NASD-99-45).

⁴ The uniform forms are Form BD (the Uniform Application for Broker-Dealer Registration); Form BDW (the Uniform Request for Broker-Dealer Withdrawal); Form U-4 (the Uniform Application for Securities Industry Registration or Transfer); Form U-5 (the Uniform Termination Notice for Securities Industry Registration); and Form U-6 (the Uniform Disciplinary Action Reporting Form). Except for the Form U-6, the Commission has approved all of these forms. See Securities Exchange Act Release No. 41594 (July 2, 1999), 64 FR 37586 (July 12, 1999) (adoption of the amended Form BD); Securities Exchange Act Release No. 41356 (April 30, 1999), 64 FR 25144 (May 10, 1999) (adoption of the amended Form BDW); Securities Exchange Act Release No. 41560 (June 25, 1999), 64 FR 36059 (July 2, 1999) (order approving the new Forms U-4 and U-5).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

individual remains subject to the jurisdiction of the Association.⁵

Clarification of the "Required to Reported" Standard

NASD Regulation also seeks to clarify its "required to be reported" standard and the effect of this standard on former members and associated persons, especially in light of former members and associated persons' limited ability to submit information to amend or update a disclosure record.⁶ Until 1996, the NASD only released information actually reported on Form U-4 or Form BD. In 1996, the Commission approved a rule change that permitted the NASD to release information "required to be reported" on Form U-4 or Form BD.⁷ One of the reasons for the proposal was that in some instances, the NASD possessed information about a currently registered person that should have been reported on the person's Form U-4, but the amended Form U-4 had not yet been submitted. The rule change allowed the NASD to release all of the information that it possessed that was "required to be reported" on the Forms U-4 and BD, thereby ensuring that investors received more complete information. The current Interpretation does not, however, explicitly address events and proceedings reported on Form U-5 or Form U-6.⁸

⁵ See NASD Rules 1021(c) and 1031(c); NASD By-Laws Article V, Section 4. Article V, Section 4 of the By-Laws provides that a person whose association with a member has been terminated or revoked shall continue to be subject to the NASD's jurisdiction for certain specified purposes. Under that provision, the two-year period begins on the effective date of the termination, and may be extended under certain circumstances. For purposes of disclosure under the PDP, the two-year period would begin on the effective date of the termination and would not be extended beyond the initial two-year period. The effective date of termination is the date that the Form U-5 is captured by the CRD system. Conversation between Mary Dunbar, Office of General Counsel, NASD Regulation, and Joseph P. Corcoran, Attorney, Division of Market Regulation, Commission on December 10, 1999.

⁶ With the exception of a former associated person filling out Part II of the Form U-5 Internal Review Disclosure Reporting Page ("DRP"), there is currently no other mechanism for a former associated person or member to submit information to amend or update a disclosure record.

⁷ See Securities Exchange Act Release No. 37797 (October 9, 1996), 61 FR 53984 (October 16, 1996).

⁸ Form U-6 is filed by state securities regulators and self-regulatory organizations ("SRO") to report disciplinary and other matters that are also required to be reported on Form U-4 or Form BD. Form U-6 includes DRPs in five categories: (1) Bankruptcy/SIPC/Compromise with Creditors; (2) Civil Judicial; (3) Criminal; (4) Regulatory Action; and (5) SRO Arbitration/Reparation. The format of the Form U-6 DRPs parallels the format of the DRPs used for the Forms U-4, U-5, and BD for those categories. Generally, the Form U-6 reports the identifying information on the subject of the filing (*i.e.*, the individual or entity), the regulator reporting the

NASD Regulation presently interprets the "required to be reported" standard for *current* members and associated persons to include all information reported on Form U-4 or Form BD, as well as information that has been reported on a Form U-5 or Form U-6 that should be, but has not yet been, reported on a Form U-4 or Form BD. For example, a former employer of a currently registered representative may report a customer complaint against that registered representative by amending his Form U-5. NASD Regulation includes information about this complaint in any public disclosure report it issues about the registered representative, even if the current employer of the registered person has not updated his Form U-4 to reflect the complaint.

For *former* members and associated persons, the current interpretation of the "required to be reported" standard has a different result because once an association or membership is terminated, there is no longer a requirement to report on Form U-4 or Form BD, respectively. Consequently, when NASD Regulation receives a public disclosure request about a former associated person or member, NASD Regulation releases all information reported to CRD *up to* the date of the termination of association or membership. However, events and proceedings reported on an initial or amended Form U-5 or Form BD,⁹ or on Form U-6 *after* an individual has terminated his association or *after* termination of a firm's membership, are not released under the PDP. If a former associated person or member reapplies and is approved for NASD registration or membership, NASD Regulation resumes public disclosure under the "required to be reported" standard, which included releasing all information reported on any uniform form during any period of active or inactive registration or membership.

Under the proposed rule change, NASD Regulation will begin releasing information reported on Form U-6 for former members and associated persons, subject to the two-year time limitation discussed above. Among other things, NASD Regulation believes that the information reported on Form U-6 is highly reliable because it is filed by state securities regulators and self-regulatory organizations ("SROs"). NASD Regulation, however, does not

action, and a brief description of the matter being reported, including its status or final resolution.

⁹ The Commission notes that copies of a firm's Form BDW are available to the public through the Commission's Public Reference Room

currently release information that has been reported on a Form U-5 regarding *former* registered persons and does not propose any change to this policy.

Clarifications of Other Types of Information Released Through the PDP

NASD Regulation proposes to clarify that it releases information on awards rendered in the NASD's arbitration forum involving securities or commodities disputes between members and public customers through the PDP, even though this information is not required to be reported on the Form BD. This information is already available to the public pursuant to NASD arbitration rules.¹⁰ and the PDP receives this information from the NASD's Office of Dispute Resolution.

NASD also proposes to continue its current policy of not releasing social security numbers, home addresses, or physical description information reported on the uniform forms. Further, the proposed rule change clarifies that NASD Regulation will not release information through the PDP that it is otherwise prohibited from releasing under Federal law *e.g.*, criminal history record information provided by the Federal Bureau of Investigations.¹¹ The criminal history information that is released through the PDP is the information provided by the associated person or the member on the uniform forms.

Additionally, NASD Regulation proposes to discontinue public disclosure of a limited category of CRD information that it deems to be factually incorrect. NASD Regulation occasionally receives requests to expunge an event from CRD where the person who was the subject of the CRD filing can demonstrate to the NASD's satisfaction that it was factually impossible for him to have been involved in the event (*e.g.*, a person was named in an arbitration as a branch manager of a firm, and the person was working at a different firm at that time). NASD Regulation and the North American Securities Administrators Association ("NASAA") agree that factually incorrect information can be expunged from the CRD if the person obtains a court order of expungement. However, NASD Regulation believes that obtaining a court order can be time-consuming and expensive. Further, NASD Regulation believes that information that can be proven to be factually incorrect should be expunged from the CRD system without a court order and is discussing this issue with

¹⁰ See NASD Rule 10330(f).

¹¹ 28 CFR 50.12(b).

NASAA. Until an agreement is reached with NASAA on expunging factually incorrect information from the CRD system, NASD Regulation will discontinue releasing this information via the PDP. NASD Regulation plans to develop guidelines to implement this policy.

Automation of Public Disclosure Reports

NASD Regulation also proposes to automate the preparation of disclosure reports. Currently, when NASD Regulation receives a public disclosure request, NASD Regulation staff reviews the CRD record of the subject of the request, identifies events that must be disclosed under the Interpretation, and manually prepares a summary report for the requester. Under the proposal, NASD Regulation will discontinue the manual preparation of these reports and instead use a computer program that automatically generates a report after drawing information directly from the Web CRD database. The report then will be sent by regular or electronic mail to the requester.

One consequence of this approach is that the automatically generated reports will include verbatim any comment submitted by a registered representative, firm, or regulator in response to the last question on the DRPs of the uniform forms.¹² NASD Regulation will inform members and registered persons via a Notice to Members and other communications that the NASD believes that members and registered persons may be subject to civil liability or NASD regulatory sanctions if they submit offensive or potentially defamatory language on the uniform forms. In the future, NASD Regulation may develop electronic notices that would appear on the electronic screen when forms are being completed on-line advising Web CRD users of this issue. NASD Regulation plans to undertake a continuing program to educate members and registered persons on this issue.

After the proposal goes into effect, NASD Regulation will address objections to disclosure of customer names, confidential customer information, or offensive or potentially defamatory language on a case-by-case basis in the following manner. After receiving an objection, NASD

Regulation will identify the filer (*i.e.*, a member firm, regulatory, or self-regulatory organization) of the uniform form containing the language in question and notify the filer of the objectives. NASD Regulation will provide the filer with the opportunity to amend the filing to remove the language in controversy. If the filer determines not to amend, NASD Regulation will apply a balancing test to weigh the value of the language in controversy for regulatory and investor protection purposes against the objector's asserted privacy rights and/or defamation claims.¹³ Based on the outcome of this test, NASD Regulation may determine to redact the language in controversy from reports prepared under the PDP. NASD Regulation will inform any requester of a report that has been redacted of the reasons for the redaction. NASD Regulation staff anticipates that objections to disclosure will be infrequent. If objections are more frequent than anticipated, NASD Regulation staff will consider alternative approaches.

III. Discussion

The Commission finds that the proposal is consistent with the requirements of Section 15A of the Act¹⁴ and the rules and regulations thereunder that govern the NASD.¹⁵ In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act¹⁶ which requires, among other things, that the rules of an 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 believes that the proposal will help further one of the primary objectives of the PDP—to help investors make informed choices about the individuals and firms with whom they choose to do business. Under the PDP, NASD Regulation will now release information contained on the Form U-6, which contains disciplinary and other information provided by SROs and state regulators. This information should help investors determine whether to conduct or continue to conduct business with a particular firm or individual. Further, the disclosure of this additional

information may serve as a deterrent to fraudulent activity.

The Commission also believes that the proposal will help clarify the standards NASD Regulation uses to release information on current or former associated persons and firms. For example, NASD Regulation has clarified its policy about the release of information on a former associated person. Under the proposed rule change, NASD Regulation will release information on a former associated person for a two-year period after the associated person's effective date of termination. This clarification helps balance an investor's interest in obtaining information about a former associated person with the former associated person's interest in privacy.

In addition, the Commission believes that the automation of public disclosure reports should benefit investors and the NASD. For investors, the automation of public disclosure reports should help them receive information in a timelier manner, which in turn should help them make quicker decisions about the individuals and firms with whom they choose to do business. For the NASD, the automation of public disclosure reports should help it reduce its costs in providing these reports to the public.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-NASD-99-45) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42401; File No. SR-PCX-99-38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Statistical Reports Provided to Market Makers

February 7, 2000.

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 October 5, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the

¹² This question typically asks for a summary of the circumstances or details relating to the disclosure event. The response comments are not currently included in the manual reports prepared by the staff and may contain customer names, confidential account information, or offensive or potentially defamatory language (NASD Regulation believes that this type of language will rarely appear on the uniform forms).

¹³ If it is impossible for a filer to amend, *e.g.*, the firm is defunct or the person is no longer registered, then NASD Regulation also will apply the balancing test and proceed as described above.

¹⁴ 15 U.S.C. 78o-3.

¹⁵ In addition, pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁶ 15 U.S.C. 78o-3(b)(6).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.