

summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Pursuant to section 15A(g)(3) of the Act,<sup>9</sup> which requires the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members, the NASD has developed examinations, and administers examinations developed by other self-regulatory organizations, that are designed to establish that persons associated with NASD members have attained specified levels of competence and knowledge. NASD Regulation periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The Series 82 examination is a limited representative qualification examination for a person associated with a member whose activities in the investment banking and securities business are limited to effecting sales as part of a primary private securities offering pursuant to Section 3(b), 4(2) or 4(6) of the Securities Act of 1933<sup>10</sup> and the rules and regulations thereunder. The Series 82 examination does not qualify a registered representative to effect sales of municipal or government securities, equity interests in or the debt of direct participation programs, or resales of or secondary market transactions in private placement securities.

A committee of industry representatives, together with NASD Regulation staff, recently undertook a review of the Series 82 examination program. As a result of this review, NASD Regulation is proposing revisions to the Series 82 examination study outline to reflect changes in relevant laws, rules, and regulations covered by the examination, including rules concerning anti-money laundering as well as Regulations FD<sup>11</sup> and S-P,<sup>12</sup> and to reflect more accurately the duties and responsibilities of a private securities offerings representative.

To adequately test the material covered in the revised examination, NASD Regulation is proposing to

reorganize the substantive sections of the outline and to allocate questions to each section as follows: Characteristics of Corporate Securities, 13 questions; Regulation of The Market for Registered and Unregistered Securities, 45 questions; Analyzing Corporate Securities, 15 questions; and Handling Customer Accounts and Industry Regulations, 27 questions.

NASD Regulation is proposing similar changes to the corresponding sections of the Series 82 examination selection specifications and question bank. The Series 82 examination will remain a 2½-hour, 100 multiple-choice question examination with 70% as the passing score.

2. Statutory Basis

NASD Regulation believes that the proposed revisions are consistent with the provisions of sections 15A(b)(6)<sup>13</sup> and 15A(g)(3) of the Act,<sup>14</sup> which authorize the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

*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**

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>15</sup> and Rule 19b-4(f)(1)<sup>16</sup> thereunder, in that the foregoing proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. NASD Regulation proposes to implement the revised Series 82 examination program on August 1, 2002.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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 proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 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 number SR-NASD-2002-49 and should be submitted by May 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-45812; File No. SR-NFA-2002-01]

**Self-Regulatory Organization; Notice of Filing of a Proposed Rule Change by the National Futures Association Relating to Interpretive Notice Regarding NFA Compliance Rule 2-9, Supervision of the Use of Automated Order-Routing Systems**

April 24, 2002.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-7 under the Act,<sup>2</sup> notice is hereby given that on March 5, 2002, the National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed

<sup>9</sup> 15 U.S.C. 78o-3(g)(3).

<sup>10</sup> 15 U.S.C. 77c(b); 15 U.S.C. 77d(2); and 15 U.S.C. 77d(6).

<sup>11</sup> 17 CFR 243.100-103.

<sup>12</sup> 17 CFR 248.1-18; 17 CFR 248.30; and 17 CFR 248, Appendix A.

<sup>13</sup> 15 U.S.C. 78o-3(b)(6).

<sup>14</sup> 15 U.S.C. 78o-3(g)(3).

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

<sup>16</sup> 17 CFR 240.19b-4(f)(1).

<sup>17</sup> [17]: 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 C.F.R. 240.19b-7.

rule change described in Items I, II, and III below, which Items have been prepared by the NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The NFA has also filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC").

The NFA, on March 1, 2002, submitted the proposed rule change to the CFTC for approval. On March 21, 2002, the CFTC issued a notice and request for comment regarding the proposed rule change.<sup>3</sup> Under Section 19(b)(7)(B) of the Act, the proposed rule change may take effect upon approval by the CFTC.

### **I. Self-Regulatory Organization's Description of the Proposed Rule Change**

Section 15A(k) of the Act<sup>4</sup> makes the NFA a national securities association for the limited purpose of regulating the activities of NFA members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Act.<sup>5</sup> The proposed Interpretive Notice to NFA Compliance Rule 2-9 Regarding the Supervision of the Use of Automated Order-Routing Systems ("AORSs") applies to all NFA members who accept orders for futures accounts, regardless of the underlying product and, therefore, will apply to NFA members registered as broker-dealers under Section 15(b)(11) of the Act with regard to their security futures activities.

In November 2000, NFA's Board of Directors—responding to a letter from then CFTC Chairman Rainer—asked its Special Committee to Review Technology ("Special Committee") to develop standards relating to security, capacity, and controls for AORSs that route orders through a futures commission merchant ("FCM"). The Board also directed the Special Committee to find a middle ground between one-size-fits-all requirements that mandate specific technology and guidelines that are so general as to be meaningless. The proposed Interpretive Notice addresses AORS issues by providing interpretive guidance to NFA members on their supervisory responsibilities over orders entered through those systems.

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

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

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

##### **1. Purpose**

The proposed interpretive notice recognizes that NFA members have a supervisory responsibility to process orders in a reliable and timely manner and to impose credit and risk-management controls on trading done by any particular customer. The notice also recognizes that supervisory standards do not change with the medium used but that how those standards are applied may be affected by technology. Therefore, as the Board directed, the notice tries to achieve a middle ground between one-size-fits-all requirements that mandate specific technology and guidelines that are so general as to be meaningless.

Regarding security, the notice states that NFA members who accept orders must adopt and enforce written procedures reasonably designed to protect the reliability and confidentiality of orders and account information at all points during the order-routing process. To that end, the notice states that NFA members should have procedures regarding authentication of users, encryption of information, firewalls, authorization of users, periodic testing of the AORS's security systems, and who will administer system security.

On the subject of capacity, the notice provides that NFA members who accept orders must adopt and enforce written procedures reasonably designed to maintain adequate personnel and facilities for the timely and efficient delivery of customer orders and reporting of executions. In this regard, the procedures should cover capacity reviews, disaster recovery and redundancies, and advance disclosure to customers of both potential systems problems and alternative procedures for customers to use if problems occur.

In connection with credit and risk-management controls, the notice states that NFA members who accept orders

must adopt and enforce written procedures reasonably designed to prevent customers from entering into trades that create undue financial risks for the NFA member or the NFA member's other customers. In particular, the procedures should address pre-execution and post-execution controls and how to determine which controls apply to a particular customer, special considerations for authorizing use of direct access systems, and on going review of the controls imposed.

##### **2. Statutory Basis**

The rule change is authorized by, and consistent with, Section 15A(k) of the Act.<sup>6</sup>

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

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act and the Commodity Exchange Act ("CEA"). The Special Committee considered the economic burdens the rule change could impose on smaller entities and attempted to minimize those burdens. In any event, any burdens imposed are necessary and appropriate in order to ensure that customer orders are handled properly.

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

NFA sent a notice to all NFA members requesting comments on the proposed interpretive notice. NFA received nine comment letters. NFA's FCM, introducing broker ("IB"), commodity pool operators' ("CPO") and commodity trading advisors' ("CTA") Advisory Committees also provided comments. In general:

- All of the commenters except the FCM Advisory Committee supported NFA's efforts to provide guidance to NFA members on their supervisory responsibilities for orders entered through an AORS;
- Several of the commenters questioned the specific approach taken by the proposed interpretive notice, which they interpreted as being overly prescriptive rather than simply providing guidance; and
- Some commenters believed that NFA should not mandate that the supervisory procedures be in writing. Some commenters also felt that it is unnecessary to have procedures covering protections that are already written into an automated system.

<sup>3</sup> 67 FR 14701 (March 27, 2002).

<sup>4</sup> 15 U.S.C. 78o-3(k).

<sup>5</sup> 15 U.S.C. 78o(b)(11).

<sup>6</sup> 15 U.S.C. 78o-3(k).

• In contrast to the other commenters, NFA's FCM Advisory Committee felt that NFA should not issue interpretive guidance on the use of AORs. The FCM Advisory Committee believes that decisions regarding AORs should be a matter of business judgment, not regulation.

#### Special Committee's Response to Comments

The Special Committee considered all of the comments that it received. Although it recognizes the FCM Advisory Committee's concerns, the Special Committee continues to believe that its mandate from the Board requires it to propose interpretive guidance. The Special Committee also believes, however, that the industry needs guidance and that it is appropriate for NFA to issue it. The Special Committee believes that the interpretive notice provides that guidance by clarifying existing requirements.

As noted above, some of the commenters felt the interpretive notice was too prescriptive. As a general matter, the Special Committee believes that the standards must be clear enough to provide meaningful guidance and ensure that firms can be audited for compliance. The Special Committee did, however, agree with a number of the specific comments that were made and revised the interpretive notice accordingly.

Finally, despite some comments, the Special Committee believes that the supervisory procedures should be in writing. It did, however, add a footnote to clarify that the procedures do not have to contain technical specifications or duplicate procedures that are documented elsewhere.

The Board agreed with the Special Committee's conclusions and adopted the Interpretive Notice as recommended.

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

The proposed rule change will become effective upon approval by the CFTC. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.<sup>7</sup>

<sup>7</sup> 15 U.S.C. 78s(b)(1).

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Comments also may be submitted electronically to the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). 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 these filings also will be available for inspection and copying at the principal office of NFA. Electronically submitted comments will be posted on the Commission's Internet website (<http://www.sec.gov>). All submissions should refer to File No. SR-NFA-2002-01 and should be submitted by May 21, 2002.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45793; File No. SR-PCX-2002-11]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. To Limit the Number of Exchange Memberships That Any Person, Associated Person, or Group of Associated Persons May Own

April 22, 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 February 6, 2002, the Pacific Exchange, Inc.

<sup>8</sup> 17 C.F.R. 200.30-3(a)(75).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to adopt a new rule that would limit to 15% the number of Exchange memberships that any person, associated person, or group of associated persons may own directly or indirectly, without an exemption from the Exchange's Board of Governors ("Board").

The text of the proposed rule change appears below. New text is in *italics*.

\* \* \* \* \*

*Rule 1.21(d) No person, associated person or group of associated persons may directly or indirectly beneficially own, or control the voting rights of, more than 15% of the number of authorized memberships of the Exchange unless expressly authorized by the Board through a two-thirds majority of those Governors voting at a meeting at which a quorum is present, provided that such authorization must be approved by not less than a majority of all Governors. In the event that a person, associated person or group of associated persons acquires beneficial ownership of, or control the voting rights of, memberships in excess of this 15% limit as a result of a merger or acquisition of a member firm, then the following will apply: (i) such person, associated person or group of associated persons will not be entitled to exercise any voting rights attached to any memberships in excess of 15% of the number of authorized memberships; and (ii) such person, associated person or group of associated persons must reduce the number of memberships beneficially owned to comply with this Rule within two years.*

\* \* \* \* \*

#### 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