

required to submit ethics training information to NFA. Because the CFTC Statement is general in nature, Member firms have indicated that they would like NFA to provide some type of additional guidance.

In response, NFA's Board of Directors ("Board") adopted the proposed Interpretive Notice to assist NFA Members in interpreting the changes to the ethics training rules. The Interpretive Notice outlines these changes and discusses them in more detail than the CFTC's Statement. This guidance comes in the form of an Interpretive Notice because the Board considers ethics training to be an element of a Member's supervisory obligations under NFA Compliance Rule 2-9.

2. Statutory Basis

The rule change is authorized by, and consistent with, section 15A(k)(2)(D) of the Act.⁵

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.

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

NFA did not publish the rule change to the membership for comment. NFA did not receive comment letters concerning the rule change.

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

The proposed rule change is not effective because the CFTC has not approved the proposed rule change.

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.⁶

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. 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 website (<http://www.sec.gov>). All submissions should refer to File No. SR-NFA-2003-02 and should be submitted by April 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47533; File No. SR-NFA-2003-01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Futures Association Regarding the Interpretive Notice to NFA Compliance Rule 2-9 Concerning Enhanced Supervisory Requirements

March 19, 2003.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-7 under the Act,² notice is hereby given that on March 6, 2003, the National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes 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 changes

from interested persons. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC").

On March 5, 2003, NFA requested that the CFTC make a determination that review of the proposed rule change is not necessary. The CFTC made such a determination on March 17, 2003.

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

The proposed rule change makes two amendments to NFA's Interpretive Notice to NFA Compliance Rule 2-9 Concerning Enhanced Supervisory Requirements. The first amendment refines the triggering criteria to eliminate associated persons who worked at a Disciplined Firm for less than 60 days more than 10 years ago. The second amendment expands the definition of Disciplined Firm to include firms that are barred by the SEC or NASD because of deceptive sales practices involving security futures contracts.

Section 15A(k) of the Act³ makes NFA a national securities association for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Act.⁴ Some of the firms that are affected by this rule change are broker-dealers registered under Section 15(b)(11).

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 Interpretive Notice entitled "Compliance Rule 2-9: Enhanced Supervisory Requirements" ("Notice") was originally issued in 1993 and has been amended and revised from time to time since then. On February 15, 2001, NFA's Board of Directors ("Board") adopted changes to the Notice to impose enhanced supervisory requirements on

⁵ 15 U.S.C. 78o-3(k).

⁶ 15 U.S.C. 78s(b)(1).

⁷ 17 CFR 200.30-3(a)(75).

¹ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.

³ 15 U.S.C. 78o-3(k).

⁴ 15 U.S.C. 78o(b)(11).

firms that had previously been exempted because they had fewer than five APs. The revised Notice also treated FCMs and all of their guaranteed IBs as a single firm for purposes of determining whether the enhanced supervision requirements are triggered. In addition, the definition of a Disciplined Firm was expanded to include firms that have been closed down or permanently barred from the industry solely as a result of promotional material violations.

The Board's 2001 changes to the Notice have achieved their desired effect of adding a number of potentially problematic firms to the group of Members that are required to tape record all conversations with customers and prospects. However, NFA's Telemarketing Procedures Waiver Committee ("Waiver Committee") has granted waiver requests made by several of the newly included firms because the Committee felt that, under their particular circumstances, those firms did not pose a threat to the public and should not be subject to mandatory taping.

Some waivers have been granted in cases where the AP whose prior employment at a Disciplined Firm triggered enhanced supervisory requirements had worked at such a firm for only a short period of time or a long time ago. NFA staff reviewed the employment histories of APs who have worked at Disciplined Firms with regard to their tenure at and the passage of time since such employment to determine if the current triggering criteria can be further refined so as to affect the fewest number of Members while capturing the problem firms that concern the Board.

NFA staff studied a variety of data related to the employment histories of APs who worked for Disciplined Firms. The data was broken down to identify APs with a cumulative tenure of fewer than 60 days with a Disciplined Firm as well as those with fewer than 30 days. Other tables identified APs for whom at least 5, 7 or 10 years had passed since they had last worked at such a firm. Staff also considered the backgrounds of other firms that the APs had worked at and the APs' personal disciplinary histories.

After analyzing this data, it became apparent that when a cumulative tenure of less than 60 days at Disciplined Firms was combined with the passage of more than 10 years since employment with a Disciplined Firm, the resulting group of APs did not have an atypical number of disciplinary actions taken against them and they tended to currently work for firms that did not cause concerns about sales practice training and experience.

Currently, 27 active APs fit the profile of those that have been employed for a cumulative total of less than 60 days at a Disciplined Firm more than 10 years ago and of these 27, only 2 have worked at any other firms that have been charged with violations related to sales practices or promotional material. Both of those actions resulted in settlements in which the firm paid a fine. Not one of the active APs has ever personally been the subject of any disciplinary action by NFA, the CFTC or an Exchange.

Based upon this data, the Board felt that the triggering criteria in the Notice can be further refined while still achieving the Board's desire to impose supervisory enhancements on firms that cause concern. Not including these APs for purposes of calculating whether a Member was subject to enhanced supervision would serve the efficiency and fairness of the Waiver Committee's function by altogether removing some non-problematic firms from the waiver process. The Board, therefore, amended the Notice so that APs who have been employed for a cumulative total of less than 60 days at a Disciplined Firm more than 10 years ago would not be included in the triggering criteria.

The Board also amended the term "Disciplined Firm" in the Notice. Currently, the term Disciplined Firm as it is defined in the Notice includes Members that have been barred by NFA or the CFTC for deceptive sales practices or promotional material. With the advent of trading in security futures products and at the request of the Securities and Exchange Commission, the Board amended the definition of a Disciplined Firm set out in the Notice to include broker-dealers that have been barred from doing business by the SEC or NASD because of deceptive sales practices involving security futures. The Board felt that including these firms would promote NFA's mandate of customer protection and is consistent with the Board's reason for establishing enhanced supervisory requirements. Under the proposed expanded definition of a Disciplined Firm, a Member would be required to count individuals who have been trained at and worked for either Member or non-Member broker-dealers that have been barred by the NASD and SEC for using dishonest sales practices to market security futures products when determining whether the composition of the Member's sales force triggers an obligation to tape and to abide by the other enhanced supervisory requirements established in the Notice.

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Act.⁵

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.

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

NFA did not publish the rule changes to the membership for comment. NFA did not receive comment letters concerning the rule changes.

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

Pursuant to Section 19(b)(7)(B) of the Act,⁶ the proposed rule change became effective on March 17, 2003.

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.⁷

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. 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

⁵ 15 U.S.C. 78o-3(k).

⁶ 15 U.S.C. 78s(b)(7)(B).

⁷ 15 U.S.C. 78s(b)(1).

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 Web site (<http://www.sec.gov>). All submissions should refer to File No. SR-NFA-2003-01 and should be submitted by April 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47549; File No. SR-PCX-2003-04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Amend its Fee Schedule for Services Provided to ETP Holders and Sponsored Participants That Trade Nasdaq Securities on the Archipelago Exchange

March 20, 2003.

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 January 30, 2003, 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 March 19, 2003, the Exchange amended the proposal.³ The PCX has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the PCX under section 19(b)(3)(A)(ii) of the Act,⁴ 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 Exchange, through PCXE, proposes to amend its fee schedule for services provided to ETP Holders and Sponsored Participants that trade Nasdaq securities on the Archipelago Exchange, the equities trading facility of PCXE. The text of the proposed rule change is available at the PCX and at the Commission.

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 PCX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The PCX 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

1. Purpose

The Exchange proposes to amend the fees charged to ETP Holders⁵ and Sponsored Participants⁶ (collectively "Users") that access the ArcaEx trading facility to include certain fees and credits for Nasdaq securities. ArcaEx is scheduled to begin trading Nasdaq securities pursuant to unlisted trading privileges⁷ in the early first quarter of 2003. The Exchange proposes to adopt fees for Nasdaq securities that parallel the Exchange's rate structure for exchange-listed securities.

⁵ See PCXE Rule 1.1(n).

⁶ A "Sponsored Participant" means "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).

⁷ See Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges ("Nasdaq UTP Plan"). The participants in the Nasdaq UTP Plan are the National Association of Securities Dealers, Inc. ("NASD"), the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx"). Eligible securities under the Nasdaq UTP Plan are defined in section III.B.

Trade-Related Charges

(a) *Transaction Fees.* The PCX currently charges all Users a transaction fee of \$0.003 per share for orders in exchange-listed securities that extract liquidity by responding to, and executing against, orders residing in the ArcaEx Book ("Book").⁸ The Exchange proposes to charge this same transaction fee to Users for orders in Nasdaq securities. The Exchange believes that this proposed fee will provide incentives for increasing order flow to ArcaEx, and will have the effect of attracting resting limit orders into the Book, which will help promote liquidity, transparency, and in turn, price discovery. The Exchange notes that the following items continue to be excluded from this fee: (i) Directed Orders, regardless of account type, that are matched within the Directed Order Process;⁹ (ii) Directed Orders for the account of a retail public customer that are executed partially or in their entirety via the other Order processes;¹⁰ (iii) orders executed in the Opening Auction and the Market Order Auction;¹¹ (iv) Cross Orders;¹² and (v) participants in the Nasdaq UTP Plan that transmit orders via telephone.¹³

The PCX also proposes to charge a transaction fee of \$0.004 per share for any unfilled or residual portion of a User's order in Nasdaq securities (including a retail public customer

⁸ ArcaEx maintains an electronic file of orders, called the ArcaEx Book, through which orders are displayed and matched. The ArcaEx Book is divided into four components, called processes—the Directed Order Process, the Display Order Process, the Working Order Process, and the Tracking Order Process. See PCXE Rules 7.36 and 7.37 for a detailed description of these order execution processes.

⁹ The Directed Order Process is the first step in the ArcaEx execution algorithm. Through this Process, Users may direct an order to a Market Maker with whom they have a relationship and the Market Maker may execute the order. To access this process, the User must submit a Directed Order, which is a market or limit order to buy or sell that has been directed to a particular Market Maker by the User. See PCXE Rule 7.37(a)(description of "Directed Order Process").

¹⁰ If a retail public customer order has not been executed in its entirety after progressing through the Directed Order, Display Order, Working Order, and Tracking Order processes, the remaining portion of such order, if eligible, will be routed to another market center or participant. Any executed portion of that order will be subject to the proposed transaction fee of \$0.004 per share.

¹¹ See PCXE Rules 7.35(b) and (c) for a detailed description of the Opening Auction and the Market Order Auction, respectively.

¹² A Cross Order is defined as a two-sided order with instructions to match the identified buy-side with the identified sell-side at a specified price (the cross price), subject to price improvement requirements. See PCXE Rule 7.31(s).

¹³ See footnote 7, *supra*.

⁸ 17 CFR 200.30-3(a)(75).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See March 18, 2003 letter from Rhonda Y. Jones, Regulatory Policy, PCX, to Joseph P. Morra, Special Counsel, Division of Market Regulation, SEC, and attachments ("Amendment No. 1"). Amendment No. 1 replaces and supersedes the original proposed rule change in its entirety. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on March 19, 2003, the date the PCX filed Amendment No. 1. See section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).