Regulatory Information Circular – 2002-11

To: ISE Members

Date: June 28, 2002

Re: Rule Change Notice – Proposed Change to NASD Arbitration Rules

On November 21, 2001, the Commission approved a rule change relating to ISE's arbitration rules. (Securities Exchange Act Release No. 45094 (November 21, 2001).) The rule change created new Rule 1800, which in part states that the NASD's Code of Arbitration, as the same may be in effect from time to time, shall govern ISE arbitrations. These changes were made to faciliate an arrangement between ISE and NASD whereby NASD Dispute Regulation, Inc. provides services related to arbitration proceedings involving ISE Members.

Because ISE's rule incorporates by reference the NASD's Code of Arbitration, we will notify our Members whenever the Commission publishes for comment a proposed rule change to the NASD Code of Arbitration. We similarly will notify Members when the Commission approves any such proposed changes. The Exchange will provide these notices by issuing Regulatory Information Circulars.

Pursuant to these notification procedures, this circular is being issued to advise Members of a pending rule change to the NASD Code of Arbitration. In the June 20, 2002 *Federal Register* the Commission published a notice of a proposed rule change (SR-NASD-2002-62) by the NASD relating to an amendment of its Code of Arbitration Procedure to conform Rule 10314(b) to the current minimum standard applicable to claims. (Securities Exchange Act Release No. 46077 (June 14, 2002).) A copy of the notice is attached for reference.

Any questions regarding the foregoing may be directed to the attention of Jennifer Lamie, Assistant General Counsel (212-897-0234 or jlamie@iseoptions.com).

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

No written comments were solicited or received with respect to the proposed rule change.

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

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

A. By order approve such proposed rule change, or

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, 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 Amex. All submissions should refer to file number SR-Amex-2002–52 and should be submitted by July 11, 2002.

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

Jill M. Peterson,

Assistant Secretary.

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[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46077; File No. SR–NASD–2002–62]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating To Amending Code of Arbitration Procedure To Conform Rule 10314(b) to the Current Minimum Standard Applicable to Claims

June 14, 2002.

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 May 9, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution'') 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 NASD Dispute Resolution. 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

NASD Dispute Resolution is proposing to amend the Code of Arbitration Procedure to conform Rule 10314(b) to the current minimum standard applicable to claims. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

CODE OF ARBITRATION PROCEDURE

* * * * *

10314. Initiation of Proceedings

(a) Unchanged.

(b) Answer—Defenses, counter Claims and/or Cross-Claims:

(1) Within 45 calendar days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission Agreement and a copy of the Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any deposit required under the schedule of fees. The Answer shall specify all [available defenses and] relevant facts *and available defenses* [thereto that will be relied upon at the hearing] *to the Statement of Claim submitted* and may set forth any related Counterclaim the Respondent(s) may have against the Claimant, any Cross-Claim the Respondent(s) may have against any other named Respondent(s), and any Third-Party Claim against any other party or person based on any existing dispute, claim, or controversy subject to arbitration under this Code.

(2) (A) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who pleads only a general denial [as an Answer] *to a pleading that states specific facts and contentions* may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting any facts or defenses at the time of the hearing.

(Remainder of rule unchanged.)

* * * * *

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

In its filing with the Commission, NASD Dispute Resolution 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. NASD Dispute Resolution 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

NASD Dispute Resolution proposes to amend the Code to conform Rule 10314(b) to the current minimum standard applicable to claims, so that Answers need only specify relevant facts and available defenses to the Statement of Claim that was submitted by the claimant, rather than specifying all such facts and defenses that may be relied upon at the hearing.

As background, NASD Dispute Resolution recently streamlined its procedures for review of arbitration claims, NASD Dispute Resolution does not consider a Statement of Claim to be deficient if it meets the minimum requirements of a properly signed Uniform Submission Agreement that names the same respondents as shown on the Statement of Claim, proper fees, and sufficient copies of the Statement of

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

[2] 17 CFR 240.19b–4.

Claim. This has accelerated the claims review process, so that claims can be served promptly after filing.[3] Accordingly, the Statement of Claim may not contain details on the evidence to be presented at the hearing.

Rule 10314(b)(1) currently provides, however, that the ''Answer shall specify all available defenses and relevant facts thereto that will be relied upon at the hearing,'' and Rule 10314(b)(2)(B) provides that a ''Respondent who fails to specify all available defenses and relevant facts in such party's Answer may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting such facts or defenses not included in such party's Answer at the hearing.'' [4] Similarly, Rule 10314(b)(2)(A) provides that ''Respondent who pleads only a general denial as an Answer may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting any facts or defenses at the time of the hearing.''

The National Arbitration and Mediation Committee (NAMC) of NASD Dispute Resolution [5] determined that the above provisions could place the respondent at an unfair disadvantage because the initial claim may be quite brief, but may be expanded substantially by the time of the hearing. Based on Rule 10314(b), the arbitrators may prevent the respondent from introducing additional facts or defenses to the expanded claim. The NAMC recommended, therefore, that Rule 10314(b)(1) be amended to provide that the Answer should only be required to specify all relevant facts and available defenses to the Statement of Claim submitted, which would make the requirement consistent with the streamlined claims procedure; and that Rule 10314(b)(2)(A) be amended to apply only to general denials to pleadings that state specific facts and contentions.

2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[6] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Dispute Resolution believes that the proposed rule change will protect investors and the public interest by harmonizing the requirements for claimants and respondents.

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

NASD Dispute Resolution 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.

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

Written comments were neither solicited nor received.

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

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

A. By order approve the proposed rule change, or

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, 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 NASD.

All submissions should refer to File No. SR–NASD–2002–62 and should be submitted by July 11, 2002.

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

Jill M. Peterson,

Assistant Secretary.

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[3] Although the Uniform Forms Guide (last amended April 2001) (*Http://www.nasdadr.com/pdf-text/uniform_forms_guide.pdf*) continues to recommend that the Statement of Claim set forth the details of the dispute, informal guidance for parties on the Dispute Resolution Website now states, ''A claim is reviewed for the minimum requirements of a properly signed Submission Agreement, proper fees, and sufficient copies of the Statement of Claim. The Statement of Claim should include the dollar amount of damages requested, and the type of claims being made. Any deficiencies can delay the service of the claim.'' Arbitration Case Flow (*Http://www.nasdadr.com/arb_case_flow.asp*) (visited May 3, 2002).

[4] The term ''defenses'' in Rule 10314 is understood to include not only defenses to the specific allegations in the Statement of Claim, but also any affirmative defenses that the respondent may wish to set forth.

[5] NASD Dispute Resolution states that the NAMC includes representation from public investors, from the securities industry, and from the neutrals serving in the NASD Dispute Resolution forum. NASD Dispute Resolution additionally states that this diverse composition ensures a neutral approach in the administration of the forum.

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46070; File No. SR–PCX–2002–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Changes to the PCX's Schedule of Fees and Charges for Exchange Services

June 12, 2002.

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 May 29, 2002, the Pacific Exchange, Inc. (''PCX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which the PCX has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The PCX, through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), is proposing to modify its fee schedule for services provided to Equities

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

[2] 17 CFR 240.19b–4.