

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47458; File No. SR-NYSE-2002-50]

**Self-Regulatory Organizations; Order Approving Proposed Rule Change, as Amended by Amendment No. 1 Thereto, by the New York Stock Exchange, Inc. To Adopt Amendments to Exchange Rules 450 ("Restrictions on Giving of Proxies"), 451 ("Transmission of Proxy Material"), 452 ("Giving Proxies by Member Organizations"), and 465 ("Transmission of Interim Reports and Other Material")**

March 6, 2003.

On October 16, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend NYSE Rule 450 ("Restriction on Giving of Proxies"), NYSE Rule 451 ("Transmission of Proxy Material"), NYSE Rule 452 ("Giving Proxies by Member Organizations"), and NYSE Rule 465 ("Transmission of Interim Reports and Other Material") to allow authorized state-registered investment advisers to receive and vote proxy materials on behalf of beneficial owners. On December 19, 2002, the NYSE amended the proposal to define the term "state" in proposed NYSE Rule 451 by reference to the Investment Advisers Act of 1940 ("Advisers Act"),<sup>3</sup> instead of the Act.<sup>4</sup>

The Commission published the proposed rule change, as amended, for comment in the *Federal Register* on January 28, 2003.<sup>5</sup> The Commission received one comment letter relating to the proposal.<sup>6</sup> This order approves the amended proposal.

Currently, NYSE Rules 450, 451, 452, and 465 provide beneficial owners the ability to authorize investment advisors

to receive proxy material, other related issuer material and to vote proxies on their behalf, if such investment advisers are registered under the Advisers Act, exercise investment discretion pursuant to an advisory contract, and have been designated to the member organization in writing by the beneficial owner.

Title III of the National Securities Markets Improvement Act of 1996 (the "Coordination Act") reallocated regulatory responsibilities for investment advisers between the Commission and the states.<sup>7</sup> Generally, the Coordination Act provides for Commission regulation of advisers with \$25 million or more of assets under management, and state regulation of advisers with less than \$25 million of assets under management. As a result, the Exchange believes that the number of advisers eligible to be registered with the Commission has been reduced by approximately two-thirds. Consequently, because NYSE's current rules require the authorized investment adviser to be registered under the Advisers Act, beneficial owners cannot designate a large number of investment advisers (those with less than \$25 million under management) to exercise investment discretion pursuant to an advisory contract, or to receive and vote proxy materials on their behalf. The proposed amendments would allow such authorization to be extended to advisers registered under state law.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>8</sup> and, in particular, the requirements of section 6 of the Act.<sup>9</sup> The Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The Commission believes that amending NYSE Rules 450, 451, 452, and 465 to allow authorized state-registered advisers to receive and vote proxy materials on behalf of the beneficial owner, would allow for the reasonable expectation that all registered advisers, state and federal, subject to due authorization and regulation, be

permitted to receive and vote proxy materials on their behalf. The Commission also believes that this change recognizes, and is consistent with, the regulatory scheme set up for the registration of investment advisors under state and federal law pursuant to the Coordination Act.<sup>11</sup>

NYSE's rules will continue to require that such investment advisers are exercising investment discretion on behalf of the beneficial owner pursuant to an advisory contract, and have been designated to the member organization in writing by the beneficial owner. These requirements should help to ensure that any state registered adviser is acting on behalf of the beneficial owner.

*It is therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NYSE-2002-50), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47453; File No. SR-PCX-2003-07]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Changes in Marketing Fees Charged to Its Market Makers**

March 6, 2003.

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 24, 2003, 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 Items

<sup>11</sup> See NASAA Comment Letter, *supra* note 6. In its comment letter, the NASAA stated that while federal and state-registered advisers are distinguished based on their levels of assets under management, both federal and state-registered advisers generally perform similar functions. According to the NASAA, while not all clients may want their adviser to vote on their behalf, NASAA believes this option should be available to all investors.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</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>1</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> 15 U.S.C. 80b.

<sup>4</sup> See letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 19, 2002 ("Amendment No. 1").

<sup>5</sup> See Securities Exchange Act Release No. 47215 (January 17, 2003), 68 FR 4263.

<sup>6</sup> See letter from Christine A. Bruenn, NASAA President and Maine Securities Administrator, North American Securities Administrators Association, Inc. ("NASAA"), to Jonathan G. Katz, Secretary, Commission, dated February 18, 2003 ("NASAA Comment Letter"). In its comment letter, the NASAA expressed support for the proposal. See also *infra* note 11.

<sup>7</sup> 62 FR 28112 (May 22, 1997); Release No. IA-1633, File No. S7-31-96.

<sup>8</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(5).