permit the CHX to weigh against a particular firm its activities in other markets, unless the firm is already acting as a specialist in the same issue for which the combination would result in that firm acting as a specialist on the CHX, or to the extent it is relevant to overall firm risk controls and procedures.[32] The CHX has amended its filing to reflect that the focus of the review is on improving the quality of markets and services at the Exchange. As noted above, the commenters have argued that the review procedures for a combination resulting in concentration are extraordinary, and such procedures impose an inappropriate burden on competition that does not exist on their third market competitors. However, the Commission finds that the CHX proposal does not impose an unnecessary burden on competition under section 6(b)(8) of the Act[33] because it establishes review procedures that are intended to prevent undue concentration that could potentially hinder market quality.

Indeed, the CHX has stated that, while its filing reflects the Board's recognition of the risks from greater concentration, it has not made any prejudgments on whether the Exchange is benefited or harmed by consolidation among specialist units. Although the Commission recognizes that the new rules could result in prohibiting a combination from occurring, the Commission finds the factors for consideration in reviewing concentration effects, such as adequate capital, risk controls, and operational efficiencies, are related to legitimate market quality issues which the CHX should be permitted to weigh. Amendment No. 2 also has made clear that competition from other markets will not be considered a factor in a consolidation review. Accordingly, while the proposed rule language states that the Exchange can consider the effect of the consolidation on the Exchange's ability to enhance its position as a market center by promoting competition among members, this factor could not be used in an anticompetitive manner to deny a consolidation because of a specialist's presence in another market. Thus, a firm's decision to route customer orders to another market for different issues, or to make markets on another exchange in different issues, would be irrelevant to the CHX's review.

In addition, as a result of concerns raised by the commenters, the CHX made several changes to the proposal. For example, the commentors raised concerns regarding the confidentiality of information provided to the Committee or Board Panel in connection with reviews. The CHX amended the proposal to clarify that information provided to CHX staff, the Committee, and the Board Panel will be kept confidential, and that members that are specialists or affiliates may not sit on the Committee. Similarly, Board Panels that review Committee decisions will not include specialists or their affiliates. Additionally, the CHX, in response to concerns raised by the commenters that a specialist's activities in other market centers might be used in an anticompetitive manner to prevent consolidation, clarified that the Committee will not consider a member firm's activities in other market centers when it assigns stocks except to the extent that such activity is relevant to the Committee's overall assessment of the firm's risk controls and procedures. The Commission notes that all Board Panel decisions, and the basis for those decisions, must be in writing, and must be communicated to the specialist. With regard to any remaining issues raised by the commenters, the Commission is satisfied that the CHX has adequately addressed those comments.

In summary, the Commission believes the CHX proposal balances competing concerns of its market and allows it to consider the effect of a consolidation resulting in concentration on market quality. The Commission believes this is an appropriate goal and that the rules should not be used, or applied, in an anti-competitive manner.

The Commission finds good cause for approving proposed Amendment No. 2 before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 clarifies the CHX's position on a number of issues raised by the commenters. The Commission finds no legitimate reason to delay approval of proposed Amendment No. 2, given that Amendment No. 2 is responsive to the commenters' concerns. For these reasons, the Commission finds good cause for accelerating approval of proposed Amendment No. 2.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing Amendment No. 2, including whether Amendment No. 2 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 CHX. All submissions should refer to File No. SR–CHX–2000–08 and should be submitted by May 9, 2002.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[34] that the proposed rule change (SR–CHX–2000–08), as amended by Amendment Nos. 1 and 2, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[35]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–9480 Filed 4–17–02; 8:45 am]

BILLING CODE 8010–01–P

[32] *See* Amendment No. 2.

[33] 15 U.S.C. 78f(b)(8).

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45736; File No. SR–NASD–2002–11]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amendments to NASD Rule 2260 To Require Members To Make Reasonable Efforts To Forward Issuer and Trustee Communications to Beneficial Holders of Non-Municipal Debt Securities

April 11, 2002.

On January 17, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 2260 of the rules of the NASD to require a member to make reasonable efforts to forward a

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

[2] 17 CFR 240.19b–4.

communication from an issuer or trustee regarding a debt security other than a municipal security to the beneficial owner of such security. The proposed rule change also clarifies IM–2260 (Suggested Rate of Reimbursement) to reflect that, in forwarding proxies and other materials, members may not charge for envelopes that are provided by the issuer or the trustee, as well as by persons soliciting proxies.

The proposed rule change was published for comment in the **Federal Register** on March 6, 2002.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[4] and, in particular, the requirements of Section 15A of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[6] 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.[7] The Commission believes that the proposed rule change is a reasonable customer protection measure for holders of non-municipal debt securities, as it clarifies that members have an affirmative obligation to make reasonable efforts to forward certain information regarding these debt securities to their beneficial owners.

In addition, the Commission notes that this proposed rule change is consistent with a similar proposed rule change relating to municipal securities submitted by the Municipal Securities Rulemaking Board (''MSRB'') and recently approved by the Commission.[8] In that filing, the MSRB amended its Rule G–15 to provide that brokers, dealers and municipal securities dealers that safekeep municipal securities must make reasonable efforts to retransmit official communications to their safekeeping clients.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR-NASD–2002–11) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–9458 Filed 4–17–02; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 45483 (February 27, 2002), 67 FR 10245.

[4] 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).

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78*o*–3 (b)(6).

[7] *Id.*

[8] *See* Securities Exchange Act Release No. 45562 (March 14, 2002), 67 FR 13030 (March 20, 2002).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45748; File No. SR–PCX–2002–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. To Adopt a Volume Discount Program for Market Makers

April 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 February 28, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On April 11, 2002, the Exchange amended the proposal.[3] The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX 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 proposes to adopt a Volume Discount Program for Market Makers (''Program''). The Program is intended to provide PCX members with rebates once the PCX reaches volume levels that are adequate to sustain the operating and capital investment needs of the Exchange. The text of the proposed rule change is below. Additions are in italics.

PCX Options: Trade-Related Charges

* * * * *

Volume Discount Program

PCX quarterly average daily contract volume	*Per contract reduction in market maker transaction charge for following quarter*
449,000 or lower	*No reduction.*
450,000 to 474,999 ...	*$0.01.*
475,000 to 499,999 ...	*$0.02.*
500,000 to 524,999 ...	*$0.03.*
525,000 or higher	*$0.04.*

* * * * *

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.

[1] 15 U.S.C. 768s(b)(1).

[2] 17 CFR 240.196–4.

[3] *See* April 10, 2002 letter from Cindy L. Sink, Senior Attorney, Regulatory Policy, PCX, to Joseph Morra, Special Counsel, Division of Market Regulation, SEC and attachments (''Amendment No. 1''). In Amendment No. 1, the PCX (1) provided a new Exhibit A that replaces and supersedes the Exhibit A that was filed with the original proposed rule change; and (2) clarified that the Volume Discount Program for Market Makers applies to all market makers, including Lead Market Makers, regardless of individual performance, whenever the overall volume on the Exchange reaches the designated amounts. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on April 11, 2002, the date the PCX filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).