

documents. However, the Board stated its intention that the costs of producing and disseminating magnetic tapes (and paper copies) would be completely covered by user fees.<sup>7</sup> The Board is establishing the 1996 backlog collection fee to defray its cost of disseminating the collection tapes. This is consistent with the Commission's policy that self-regulatory organizations' fees be based on expenses incurred in providing information to the public.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which requires, in pertinent part, that the Board's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Board believes that employing cost-based prices is in the public interest since it will ensure that a complete collection of vital information will be available, at fair and reasonable prices, for the life of the municipal securities. The MSIL system is designed to increase the integrity and efficiency of the municipal securities market by, among other things, helping to ensure that the price charged for an issue in the secondary market reflects all available official information about that issue. The Board believes that the 1996 backlog fee is fair and reasonable in light of the costs associated with disseminating the information, and that the services provided by the MSIL system are available on reasonable and nondiscriminatory terms to any interested person.

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

The Board does not believe that the proposed rule change will impose any burden on competition 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**

The Board has designated this proposed rule change as establishing or changing a dues, fee or other charge under Section 19(b)(3)(A) of the Act,<sup>8</sup> which renders the proposed rule change effective on May 20, 1997, the date of receipt of this filing by the Commission.

At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR-MSRB-97-3 and should be submitted by June 26, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-38692; File No. SR-NASD-97-34]

#### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Miscellaneous Amendments to Arbitration Procedures and Clarifications of the Code of Arbitration Procedure**

May 29, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 5, 1997,<sup>1</sup> the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 self-regulatory organization. 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 Regulation, Inc. ("NASDR") is proposing to amend the Code of Arbitration Procedure ("Code") to make certain minor procedural changes designed to enhance the arbitration process. Specifically, NASDR is proposing to amend: (1) Rule 10305 (formerly Section 16), to permit arbitrators to dismiss claims with and without prejudice; (2) 10310 (formerly Section 21), to extend the time periods for notice of selection of arbitrators and further inquiries concerning an arbitrator; (3) Rule 10311 (formerly Section 22), to permit the Director of Arbitration to grant additional peremptory challenges of arbitrators; (4) Rule 10313 (formerly Section 24), to extend the time in which a party can exercise its right to challenge a replacement arbitrator; and (5) rule 10330 (formerly Section 41), to permit awards to be served by facsimile.

<sup>1</sup> The NASD filed Amendment Nos. 1 and 2 with the Commission on May 13, 1997, and May 22, 1997, respectively, the substance of which are incorporated into the notice. See letters from Elliot R. Curzon, Assistant General Counsel, NASDR, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated May 8, 1997 ("Amendment No. 1") and May 20, 1997 ("Amendment No. 2").

<sup>7</sup> Securities Exchange Act Release No. 28197 (July 12, 1990), 55 FR 29436 (July 19, 1990).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

## 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 self-regulatory organization 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 self-regulatory organization 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

As part of its continuing efforts to enhance the arbitration process, NASDR has been engaged in a comprehensive review of proposals to improve the procedures for arbitration specified in the Code. The amendments to the Code proposed herein are a result of that effort, and are intended to clarify existing provisions, eliminate ambiguities, and adjust certain procedures to accommodate changing practices in arbitration. The amendments were considered and approved by the Securities Industry Conference on Arbitration ("SICA"). In addition, while NASDR does not believe that the rule changes proposed herein will conflict with amendments to the Code to be proposed in response to the recommendations of the NASD's Arbitration Policy Task Force, some of the rule changes proposed herein will ultimately be replaced or superseded by those amendments and are, therefore, temporary in nature. For example, the proposed changes to the peremptory challenge provision discussed below will be superseded when the Association's list selection rule is filed with and approved by the Commission. Nevertheless, NASDR believes that the rule changes proposed herein are important enough to be made now even if some of them will eventually be superseded.

NASDR is proposing to amend Rule 10305 of the Code (formerly Section 16), which relates to dismissal of arbitration proceedings, to clarify that the arbitrators may dismiss a proceeding without prejudice to the claims or defenses of the parties and refer the parties to their judicial remedies and, in addition, to any other dispute resolution forum agreed to by the parties. The Code does not specify the grounds for

dismissals without prejudice; however, such dismissals would generally occur only where appropriate and in the interest of justice, such as where the parties have agreed to the dismissal (especially if they have agreed to proceed in another forum), or where an indispensable party cannot be joined in the arbitration.

NASDR is also proposing to amend Rule 10305 by adding a new subsection (b) granting arbitrators the express authority to dismiss a claim, defense, or proceeding with prejudice as a sanction for willful and intentional material failure to comply with an order of the arbitrator(s), but only if lesser sanctions have proven ineffective.<sup>2</sup> This provision is intended to establish clearly that arbitrators have the power to issue orders in aid of the arbitration process and to enforce those orders by use of the ultimate sanction of dismissal with prejudice. Such a sanction would be used, for example, where a party refused to produce documents necessary for another party's claim or defense. In such instances, after the arbitrators have imposed lesser sanctions that have not induced compliance with the order, the arbitrators may dismiss a claim, defense, or the entire arbitration proceeding, with prejudice.

NASDR is proposing to amend Rules 10310, 10311, and 10313 of the Code (formerly Sections 21, 22, and 23), which relate to arbitrator selection, peremptory challenges and arbitrator disclosures, to extend the time limitations on a party to (1) seek additional information under Rules 10310 and 10313 about replacement arbitrators, and (2) exercise a peremptory challenge under Rule 10311, from 5 days to 10 days prior to the hearing. In addition, Rule 10310 is proposed to be amended to extend the Arbitration Department's obligation to provide the parties with the names and histories of the arbitrators from 8 to 15 days prior to the date of the first hearing. The proposed rule change further amends Rule 10310 to replace "the Director of Arbitration" with "the Director" whenever it occurs.

NASDR is also proposing to amend Rule 10311 to permit the Director to grant additional peremptory challenges under certain circumstances. Currently, the rule permits the Director to grant additional peremptory challenges in multi-party cases when the Director, "in the interests of justice," determines that

additional peremptory challenges are warranted by the circumstances of the case. For example, on occasion a party will discover grounds for a cause challenge to one arbitrator after the party has used its peremptory challenge against that arbitrator. In such an instance, the party may argue that it would have used its peremptory challenge differently had it known of the information. Under the current rule if that circumstance arose in a multi-party case, the Director may, "in the interests of justice," grant additional challenges. NASDR believes that similar circumstances may arise in single-party cases and, therefore, is seeking to amend the rule to permit the Director to grant such additional challenges.

NASDR is also proposing to amend Rule 10330 of the Code (formerly Section 41) to permit the Office of Dispute Resolution to serve arbitration awards by facsimile or other electronic means if the recipient agrees. The Office frequently is asked to provide arbitration awards to parties by facsimile. Because the Code does not provide for this method of service, the Office serves the award by facsimile and also duplicate service by one of the other methods specified in the Code. By amending the Code to permit facsimile service, the Office will not be required to serve duplicates by another approved method. Nevertheless, the Office will not use the facsimile method of service unless both parties have agreed to this form of service in order to prevent disagreements over when an award was served for purposes of time limitations on appeals.

The proposed rule change also amends references to numbers, such as "eight (8)" or "fifteen (15)", throughout the proposed rule change to delete the word from and retain the Arabic numeral.

#### 2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act<sup>3</sup> in that clarifying procedures, eliminating ambiguities, and adjusting procedures to accommodate changing practices are consistent with the NASD's longstanding goal of providing the investing public with a fair, efficient, and cost-effective forum for the resolution of disputes.

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

The NASD does not believe that the proposed rule change will impose any inappropriate burden on competition.

<sup>2</sup> While it is believed that arbitrators currently have plenary power to issue such dismissal orders, this power is rarely exercised because it is not expressly provided for in the Code and arbitrators appear to be reluctant to wield such sanctioning power without express authority.

<sup>3</sup> 15 U.S.C. 78o-3.

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

No written comments were either solicited or received.

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

Within 35 days of the 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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-97-34 and should be submitted by June 26, 1997.

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

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

[FR Doc. 97-14618 Filed 6-4-97; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-38690; File No. SR-PCX-97-17]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Incorporated Relating to a Correction to its Rules on Listing Requirements**

May 28, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 13, 1997, the Pacific Exchange, Inc. ("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 self-regulatory organization. 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 is proposing to modify its Rule 3.2(b) in order to correct a cross-reference in its rules on listing requirements. The text of the proposed rule change is available at the office of the Secretary, 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 self-regulatory organization 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 self-regulatory organization 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**

On July 22, 1994, the Commission approved an Exchange proposal to modify its listing and maintenance standards.<sup>2</sup> Under the rule change, a

new Rule 3.2(b) was added, stating in part that "Any security listed pursuant to this Rule 3.2, paragraphs (c) through (i) . . . Shall be designated as a Tier I security." Subsequently, on December 16, 1994, the Commission approved an Exchange proposal to adopt listing standards for Limited Partnership Rollups.<sup>3</sup> In that filing, the Exchange added a new Rule 3.2(i) ("Limited Partnerships"), and changed the numbering of existing Rule 3.2(i) ("Other Securities") to Rule 3.2(j). However, the cross-reference in Rule 3.2(b) was not also changed at that time. Accordingly, the Exchange is now proposing to make this technical correction by modifying Rule 3.2(b) to state, in part, that "Any security listed pursuant to this Rule 3.2, paragraphs (c) through (j) . . . shall be designated as a Tier I security."

**2. Statutory Basis**

The Exchange represents that the proposed rule change is consistent with section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>5</sup> in particular, in that it is designed to promote just and equitable principles of trade.

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

The Exchange represents that the proposed rule change will not impose any inappropriate burden on competition.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change is concerned solely with the administration of the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and subparagraph (e) of Rule 19b-4 thereunder.<sup>7</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

<sup>3</sup> See Securities Exchange Act Release No. 35111 (Dec. 16, 1994), 59 FR 66388 (Dec. 23, 1994) (order approving SR-PSE-94-36).

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4.

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

<sup>2</sup> See Securities Exchange Act Release No. 34429 (Jul. 22, 1994), 59 FR 38998 (Aug. 1, 1994) (order approving SR-PSE-93-12).