with Section 16(c) of the 1940 Act (although the Fund is not one of the trusts described in Section 16(c) of the 1940 Act) as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) of the 1940 Act with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

11. The Participating Entities and the relevant Advisor or its affiliate shall at least annually submit to the Board of a Fund such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by the conditions contained in the application and said reports, materials and data shall be submitted more frequently, if deemed appropriate, by the Board. The obligations of Participating Entities to provide these reports, materials and data to the Board of the Fund when it so reasonably requests, shall be a contractual obligation of all Participating Entities under their agreements governing participation in each Fund.

12. If a Qualified Plan should become an owner of 10% or more of the assets of a Fund, the Fund shall require such Plan to execute a participation agreement with such Fund which includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Fund.

Conclusion

Applicants submit, based on the grounds summarized above, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19533 Filed 8–1–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46272; File No. SR–ISE–2002–11]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 Relating to a Market Maker Inactivity Fee

July 26, 2002.

I. Introduction

On April 16, 2002, the International Securities Exchange LLC (''ISE'') 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 impose a Competitive Market Maker (''CMM'') inactivity fee. On May 6, 2002, the Exchange's rule proposal was published for comment in the **Federal Register**.[3] The Commission received two comment letters on the proposal.[4] On April 30, 2002 and June 19, 2002, ISE submitted Amendment Nos. 1 and 2 to the proposal, respectively. [5] On June 19, 2002, the ISE submitted a response to comments.[6] This order approves the proposed rule change, publishes notice of Amendment Nos. 1 and 2 to the proposed rule change, and grants accelerated approval of Amendment Nos. 1 and 2.

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45816 (April 24, 2002), 67 FR 30406.

[4] *See* letters to Jonathan G. Katz, Secretary, Commission, from Henry Swartz, Principal, Equity Financial Products, Banc of America Securities, LLC, (''Banc of America'') dated May 23, 2002 (''Banc of America Letter''), and Matthew D. Wayne, Chief Legal Officer, Knight Financial Products LLC, (''Knight'') dated April 30, 2002 (''Knight Letter'').

[5] *See* letters from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 29, 2002 (''Amendment No. 1'') and June 18, 2002 (''Amendment No. 2''). In Amendment No. 1, the ISE made a technical change to the rule text. In Amendment No. 2, the ISE clarified the application of the fee between lessors and lessees, changed terminology to reflect the fact that the ISE has ''demutualized'' and that trading rights are now reflected in shares of Class B Common Stock, removed obsolete language from the Primary Market Maker (''PMM'') inactivity fee regarding the effective date of that fee, and extended the proposed effective date from July 1, 2002 to August 1, 2002.

[6] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Jonathan G. Katz, Secretary, Commission, dated June 18, 2002 (''ISE Response'').

II. Description of the Proposed Rule Change

The Exchange proposes to adopt a fee that would allow it to charge $25,000 per month to inactive CMM memberships, effective August 1, 2002.[7] The fee would apply to the owner of an inactive CMM membership except with regard to an owner that entered into a lease prior to August 1, 2002. In that case, the fee would apply to the lessee, if the lessee has been approved to operate the membership.

The fee would not apply to a member that holds an inactive CMM membership in a group of securities in which it also is operating the PMM membership pursuant to a lease. In that case, the member cannot operate both the PMM and CMM membership, and the member reasonably may want to retain control of the CMM membership so that it can operate the membership when its PMM lease expires. The proposal also would authorize the Exchange staff to grant exemptions if a member holds multiple inactive CMM memberships. In that situation, the Exchange could grant exemptions for all but one such membership as long as the member presents a business plan establishing that trading will begin in the inactive memberships over a reasonable time period.

The Exchange represents that it based the amount of the fee on conservative estimates of the revenues lost due to an inactive CMM membership. In addition, the Exchange represents that it would periodically reevaluate this fee to maintain the relationship between the amount of the fee and the lost revenue being recouped.

III. Comments Received

The Commission received comments on the proposal from Banc of America and Knight.[8] Banc of America objected to the proposal for several reasons. In particular, Banc of America argued that no precedent supports the proposed fee; the proposal improperly targets owners that do not operate their memberships, and that owners could not always rely on leasing to avoid the fee because seats would unlikely be leased continually and the proposed effective date would not provide enough time for owners to lease their seats; the fee would add to the start-up costs for market makers which may result in a barrier to entry to the exchange; and to require

[7] *See* Amendment No. 2, *supra* note.

[8] *See* Banc of America Letter and Knight Letter, supra note.

additional members to trade could reduce liquidity on the exchange.[9]

ISE responded to Banc of America's comment regarding precedent for the fee by arguing that its PMM inactivity fee and the Philadelphia Stock Exchange, Inc.'s shortfall fee, which imposes a fee on specialists who do not meet certain volume thresholds, set precedent for the CMM inactivity fee.[10] In response to Banc of America's argument that the proposal targets owners, ISE believes that the purpose of an exchange is to provide a market place on which members can trade, and that it is reasonable for an exchange to take action that encourages the active use of its trading rights and that imposes fees for revenues that are foregone when those rights are not used.[11] ISE believes that this is particularly true due to its recent demutualization. ISE notes that the proposed fee applies only to those persons with trading rights associated with its Series B–2 Common Stock, the CMM interests. In addition, ISE notes that Banc of America is free to hold its Class A Common Stock (the ISE Class A Stock representing virtually all the equity in the ISE) for investment purposes without being subject to an inactivity fee. Further, ISE believes that leasing is a viable alternative for an owner of a CMM membership to avoid the fee.[12] ISE notes that it provided all ISE members with notice of this proposed fee on April 18, 2002, and amended the proposal to delay the effective date by one month. In addition, ISE represents that some current ISE members that already have trading operations on the ISE and could promptly begin trading in such memberships once entering into a lease, are seeking to lease or buy additional memberships.

With regard to Banc of America's claim that the fee could be a barrier to entry, ISE notes that a potential lessee can control the time it enters into a lease and is approved for membership so that it can start trading immediately.[13] In addition, if a member leases multiple CMM memberships, the proposal permits the ISE to grant a lessee an exemption from the fee if the lessee is operating one membership and presents a reasonable plan for opening trading in all additional memberships. Thus, ISE believes that the proposed inactivity fee would not create a barrier to entry to the ISE market because the fee could be avoided. Finally, Banc of America suggested that the proposed fee could reduce liquidity on ISE.[14] In contrast, ISE believes that the fee would likely enhance liquidity on the Exchange.[15]

Knight supported a monthly fee applicable to inactive CMM memberships but argued that the amount of the fee should be no more than $10,000 per month, one-tenth the amount charged to inactive PMM memberships.[16] ISE responded to Knight's concern by noting that although there is a ten-to-one ratio between PMMs and CMMs on the ISE, both the PMM and CMM inactivity fees are based on the approximate revenue the ISE foregoes when a membership is not trading. ISE represents that PMMs do not, on average generate ten times the fees that a CMM generates. ISE believes that both the $100,000 PMM inactivity fee and the $25,000 CMM inactivity fee fairly represent the lost revenue for each category of membership and thus each fee is proper.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether Amendments No. 1 and 2 are 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 also will be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2002–11 and should be submitted by August 23, 2002.

V. Discussion

After careful review, 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 exchange[18] and, in particular, the requirements of section 6 of the Act.[19] Among other provisions, section 6(b)(4) of the Act[20] requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

The Commission notes that the Exchange currently imposes an inactivity fee on PMM memberships and that the Phlx also imposes a similar fee on its specialists.[21] In addition, the Commission believes that under ISE's unique market structure the proposal should provide an appropriate incentive for entities that control ISE trading rights to encourage participation on the Exchange. In this regard, the Commission notes that shares of ISE common stock, exclusive of trading rights, may be held for investment purposes without being subject to the proposed fee.[22] Finally, the Commission believes that the criteria used by the Exchange to calculate the amount of the fee is consistent with its obligation to equitably allocate reasonable fees and charges among its members.

VI. Conclusion

The original rule proposal was noticed for public comment in April 2002. Amendment No. 1 makes a technical correction to the rule text. Amendment No. 2 makes, technical changes, clarifies the proposal, and extends the effective date in response to comments. The Commission believes that it has received and fully considered substantial, meaningful comments with respect to the ISE's proposal, and that Amendment Nos. 1 and 2 do not raise issues that warrant delay. In addition, the Commission notes that ISE proposes August 1, 2002, as the effective date for this proposal. Accordingly, pursuant to section 19(b)(2) of the Act,[23] the Commission finds good cause to approve Amendment Nos. 1 and 2 prior to the thirtieth day after notice of the

[9] *See* Banc of America Letter, supra note.

[10] *See* ISE Response, *supra* note 6. *See also* Exchange Act Release No. 45442 (February 13, 2002), 67 FR 8330 (February 22, 2002) (File No. SR–Phlx–2001–115).

[11] *See* ISE Response, *supra* note 6. *See also* ISE Rule 300(b), which requires non-member owners of market maker shares to lease the trading rights to approved members.

[12] *See* ISE Response, *supra* note 6.

[13] *See* ISE Response, *supra* note 6.

[14] *See* Banc of America Letter, *supra* note 4.

[15] *See* ISE Response, *supra* note 6.

[16] *See* Knight Letter, *supra* note 4.

[17] *See* ISE Response, supra note 6.

[18] The Commission has considered the proposed rules' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f.

[20] 15 U.S.C. 78f(b)(4).

[21] *See supra* note 10.

[22] *See* ISE Response, *supra* note 6.

[23] 15 U.S.C. 78s(b)(2).

Amendments is published in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[24] that Amendment Nos. 1 and 2 to the ISE's proposed rule change are hereby granted accelerated approval; and

It is also ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change (File No. SR–ISE–2002–11), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19535 Filed 8–1–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46256; File No. SR–NASD–2002–62]

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

July 25, 2002.

I. Introduction

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''), 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 the NASD Code of Arbitration Procedure to conform Rule 10314(b) to the current minimum standard applicable to claims.

The proposed rule change was published for comment in the **Federal Register** on June 20, 2002.[3] The Commission received two comments on the proposal.[4] This order approves the proposed rule change.

II. Description of the Proposal

In its proposal, NASD Dispute Resolution proposed 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.

In the proposal, NASD Dispute Resolution explained that it 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 Claim. The proposed rule change would make the minimum requirements contents of an Answer consistent with those of a Statement of Claim.

III. Summary of Comments

The Commission received two comments on the proposal.[5] Commenters noted a perceived ambiguity in the proposed text of NASD Rule 10314(b)(1). In the proposed rule change, NASD Dispute Resolution had proposed the following text: ''The Answer shall specify all relevant facts and available defenses to the Statement of Claim submitted. . . .'' One commenter suggested that the modifier ''all'' should be placed before ''available defenses,''[6] while another suggested that ''the'' should precede ''relevant facts.''[7] NASD Dispute Resolution maintains, and the Commission agrees, that the proposed rule text does not require the revisions proposed by the commenters.[8]

IV. Discussion

After careful review, 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[9] and, in particular, the requirements of section 15A of the Act[10] 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,[11] 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.[12] The Commission believes that the proposed rule harmonizes the pleading requirements for claimants and respondents in arbitration proceedings administered by NASD Dispute Resolution in a manner consistent with the Act. Further, the Commission has carefully considered the suggestions submitted by commenters and has concluded that the proposed rule text does not require the revisions proposed by the commenters.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–NASD–2002–62) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19534 Filed 8–1–02; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before October 1, 2002.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to

[24] *Id.*

[25] *Id.*

[26] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46077 (June 14, 2002), 67 FR 42088 (June 20, 2002).

[4] *See* letters to Jonathan G. Katz, Secretary, Commission, from Franklin Geerdes, Attorney, dated May 24, 2002 (''Geerdes Letter''); Martin L. Feinberg, Attorney, dated July 7, 2002 (''Feinberg Letter'').

[5] *See* note 4, *supra.*

[6] *See* Feinberg Letter.

[7] *See* Geerdes Letter.

[8] Telephone conference between Jean I. Feeney, Associate Vice President and Chief Counsel, NASD Dispute Resolution and Geoffrey Pemble, Attorney, Division of Market Regulation, Commission (July 25, 2002).

[9] 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).

[10] 15 U.S.C. 78*o*–3.

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] *Id.*

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).