

traders sufficient time to study and pass the examination. This time period also takes into consideration that some traders with many years of experience in the securities industry may not have been required to take either the Series 7 or Series 62 examinations.

This examination will consist of ninety questions, and candidates will have three hours to complete the examination. The passing score for the examination will be 70%.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)⁷ and 15A(g)(3)⁸ of the Act in that the NASD is required to prescribe standards of training, experience and competence for persons associated with NASD members. Pursuant to this statutory obligation, the NASD develops and administers examinations to establish that persons associated with NASD members have attained specified levels of competence and knowledge.

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

NASD Regulation 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, as amended.

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 consent, 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. 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 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-97-21 and should be submitted by May 19, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38537; File No. SR-NASD-97-11]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 by National Association of Securities Dealers, Inc., Relating to the Release of Disciplinary Information

April 22, 1997.

I. Introduction

On February 11, 1997, the NASD Regulation, Inc. (NASD Regulation) filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ a proposed rule change consisting of an Interpretation on the Release of Disciplinary Information in IM-8310-2 of the Rules of the National Association of Securities Dealer's, Inc. ("NASD"). On March 10, 1997, NASD Regulation filed with the Commission Amendment No. 1. The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register**.² One comment

letter was received.³ For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposal

The NASD's Public Disclosure Program ("Program") currently provides through the Central Registration Depository ("CRD") a synopsis of all pending NASD disciplinary information regarding members and associated persons, including information on disciplinary complaints⁴ when they are issued by the Association and disciplinary decisions when they are issued by any Committee or Board of the Association. Recently, the Commission approved an amendment that requires the Association to provide copies of disciplinary complaints and decisions upon request.⁵

The Interpretation on the Release of Disciplinary Information ("Interpretation"), contained in IM-8310-2,⁶ currently permits the Association to issue information regarding certain specified significant disciplinary decisions when they become final.⁷ The specified decisions are limited to those that impose sanctions of a suspension, bar or fine of \$10,000 or more.

The Program has expanded to now provide a synopsis of all pending NASD disciplinary information regarding members and associated persons, including information on the filing of disciplinary complaints. While the information is available through CRD, concerns have been raised because there is a disparity in accessibility of the information. The NASD does not publish, to the membership or the press, the issuance of a significant complaint regarding a member or associated person with whom the individual does

³ See letter from Steven Alan Bennett, Senior Vice President and General Counsel, Bank One Corporation, to Mr. Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated April 7, 1997, supporting the proposed rule change and Amendment No. 1.

⁴ This rule filing relates to "disciplinary complaints," and does not address "customer complaints."

⁵ See, Securities Exchange Act Release No. 37797 (October 9, 1996); 61 FR 53984 (October 16, 1996).

⁶ The Interpretation was previously cited as "Resolution of the Board of Governors—Notice to Membership and Press of Suspensions, Expulsions, Revocations, and Monetary Sanctions and Release of Certain Information Regarding Disciplinary History of Members and Their Associated Persons" and appeared after paragraph 2301 of the NASD Manual, following Article V, Section 1 of the Rules of Fair Practice.

⁷ The publication of information is normally done through a monthly press release containing information about significant disciplinary actions that have become final during the preceding month. In addition, a more detailed press release may be issued on a more expedited basis about a case of particular importance.

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 15 U.S.C. 78o-3(g)(3).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1) (1988).

² See Securities Exchange Act Release No. 38380 (March 10, 1997), 62 FR 12866 (March 18, 1997).

business. Moreover, the current provisions of IM-8310-2 do not permit the Association to be pro-active in providing notification to the membership and the press of non-final disciplinary decisions and does not permit the Association to publicize other (final or non-final) disciplinary decisions that do not meet the current publication criteria, but that nonetheless involve a significant policy or enforcement issue that should be brought to the attention of the public.

In considering this issue, NASD Regulation believes that the interests of the public in obtaining improved access to information concerning significant disciplinary matters must be balanced against the legitimate interests of respondents not to be subject to unfair publicity concerning adjudicated allegations of violations (*i.e.*, complaints) and non-final determinations of violations (*i.e.*, non-final decisions). Proposed Interpretation IM-8310-2 seeks to balance these interests by authorizing the Association to release information on disciplinary matters that could most significantly affect investors' interest and by enhancing the disclosure accompanying the release of disciplinary information.

The Association would be authorized to release information on those disciplinary complaints that present the most significant investor protection issues, *i.e.* violations of anti-fraud, anti-manipulation, and sales practices rules that affect investors. In addition, the Association would be authorized to release to the public information the President of NASD Regulation determines should be publicized in the public interest as well as information on any NASD-initiated⁸ disciplinary complaint that contains an allegation of a violation of a specifically identified statute, rule or regulation of the SEC, NASD, or Municipal Securities Rulemaking Board ("MSRB")⁹ that is determined by the NASD Regulation Board of Directors to involve serious misconduct that affects investors ("Designated Rules").¹⁰ The Association

would also be authorized to release information on final and non-final disciplinary matters that: (1) Meet the current criteria for significant disciplinary decisions; (2) meet the specific criteria proposed for disciplinary complaints, or (3) the President of NASD Regulation determines should be publicized in the public interest.

The proposal also provides for, in limited circumstances, the release of information on disciplinary complaints that contain allegations of violations of other rules and regulations not included on the list of Designated Rules, but nonetheless involve serious misconduct that could affect investors. Proposed Interpretation IM-8310-2 would authorize the President of NASD Regulation to issue information on any complaint or group of complaints that involve a significant policy or enforcement determination where the release of the information is deemed to be in the public interest.

In order to ensure that the appropriate disclosures accompany information on any disciplinary complaint, NASD Regulation proposed to require that any disciplinary complaint be accompanied by a disclosure regarding the status of the complaint. The Interpretation currently requires disclosure that "the issuance of a disciplinary complaint represents the initiation of a formal proceeding by the Association in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint." The proposed amendment would expand this disclosure to include the following statement: "Because this complaint is unadjudicated, you may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint." NASD Regulation believes that this disclosure will help to enable recipients of the information to view it in an appropriate context and, thereby, provide appropriate protections to the respondent.¹¹

With respect to non-final disciplinary decisions, NASD Regulation proposed to amend the Interpretation to require that the current significance test for

release of information on final decisions also be applied to the release of information on non-final decisions—with the additional requirement that non-final decisions be accompanied by appropriate disclosures as to the status of the case.¹² As a result of these changes, the Association would be authorized to release information on non-final disciplinary decisions that impose monetary sanctions of \$10,000 or more, penalties of expulsion, revocation, suspension, or a bar from being associated with member firms.

Association would be authorized to release information on non-final disciplinary decisions that impose monetary sanctions of \$10,000 or more, penalties of expulsion, revocation, suspension, or a bar from being associated with member firms.

In addition, the proposal would require the release of information on all non-final and final decisions that contain allegations of a Designated Rule violation, regardless of the extent to the sanction or whether any sanction had, in fact, been imposed. NASD Regulation believes that where information on a disciplinary complaint is released because it includes an allegation of a violation of one or more Designated Rules, information on the decision involving the same matter should also be released based on the same public policy interests that justify the release of compliant information—regardless of whether the decision results in the finding of a violation and the imposition of sanction, a dismissal of the allegation, or a reversal of earlier findings.

NASD Regulation also proposed amending the provision regarding waiving the release of information in a particular case where the release of the information would be deemed to violate fundamental notions of fairness or work an injustice. The proposed amendment transfers the authority to grant exceptions from the Board of Governors of the NASD to the National Business Conduct Committee ("NBCC"), in order to facilitate consideration of any application for an exception pursuant to the standard NBCC review procedures for motions by respondents.

III. Discussion

The Commission believes the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the NASD. In particular, Section 15A(b)(6)

⁸With respect to the methodology for the release of information on complaints and decisions, it is anticipated that information will be released through an omnibus press release (that is subsequently included in an NASD Notice to Members), a press release on an individual matter, or through the NASD Regulation WebSite.

⁹NASD Regulation maintains the authority and responsibility to enforce compliance with MSRB rules with respect to member firms.

¹⁰NASD Regulation proposed a list of Designated Rules that included those SEC, NASD, and MSRB rules that prohibit significant fraudulent activity or egregious conduct. The list of Designated Rules was published in Securities Exchange Act Release No. 38380 (March 10, 1997), 62 FR 12866 (March 18, 1997). In addition, the list of Designated Rules will

be published in the Notice to Members announcing the approval of this rule proposal. In the future, any changes to the list will be filed with the Commission as a proposed rule change in accordance with Rule 19b-4(e)(1). In addition, the changes to the list will be published by the Association in a Notice to Members.

¹¹While the Association receives request for disciplinary information from either telephonic inquiries or written inquiries, the requested information is released in written form and will be accompanied by the disclosure.

¹²As proposed, paragraph (c) of Interpretation IM-8310-2 would be redesignated as subparagraph (d)(1) and the provisions that currently prevent the Association from releasing information on non-final disciplinary decisions would be deleted.

of the Exchange Act¹³ requires that the rules of a national securities association 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 and processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. The Commission believes that the NASD Regulation's proposal to expand the Association's authority to release information on significant disciplinary complaints and significant final and non-final disciplinary decisions is consistent with the Association's obligations to protect investors and the public interest.

The Commission believes investor confidence in NASD members will be enhanced because more information will be available to the public under the proposed Interpretation. Moreover, the Commission believes that providing the public with more complete information on the disciplinary history of NASD members will aid investors in making informed decisions with respect to choosing a broker.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act that the proposed rule change and Amendment No. 1 (SR-NASD-97-11) be and hereby is approved. The Interpretation IM-8310-2 should become effective 30 days after the date a Notice to Members is issued announcing adoption of the proposed rule change and containing the list of Designated Rules. The Notice to Members shall be issued within 45 days of publication of this approval order in the **Federal Register**.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-10882 Filed 4-25-97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38530; File No. SR-PSE-97-01]

Self-Regulatory Organizations; Pacific Stock Exchange Incorporated; Order Granting Approval to Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1, Relating to the Exchange's Limitation of Liability in Connection With Indexes on Which Options Are Listed or Traded on the Exchange

April 21, 1997.

On January 13, 1997, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "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 clarify the scope of the Exchange's rule concerning the limitation of liability of the Exchange, its affiliates, index licensors, and administrators in connection with indexes on which options are listed or traded on the Exchange.

The proposed rule change was published for comment in the **Federal Register** on February 13, 1997.³ No comments were received concerning the proposal. On February 18, 1997, the PSE submitted Amendment No. 1. This order approves the proposal as amended.⁴

PSE Rule 7.13 currently provides that the Exchange shall have no liability for damages, claims, losses, or expenses caused by any errors, omissions or delays in calculating or disseminating the index value. The proposed rule change deletes this rule and replaces it with one that defines the scope of the Exchange's limited liability more clearly.⁵ In addition, the proposal

extends the limited liability provisions to any affiliates of the Exchange as well as any "Index Licensor" or "Administrator."⁶ However, in order to conform its limitation of liability provisions to those of other self-regulatory organizations ("SROs"), the PSE represented that it will not rely on this rule to limit its liability for intentional misconduct or for any violation of the federal securities laws.⁷

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, and, in particular, with the requirements of Section 6(b).⁸ Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)⁹ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to facilitate transactions in securities, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.¹⁰

The Commission finds that the proposed limitation of liability language will provide the PSE with protection that is substantively similar to protection already afforded other self-regulatory organizations.¹¹

Administrator, including, but not limited to, flood, extraordinary weather conditions, earthquake or other act of God, fire, war, insurrection, riot, labor dispute, accident, action of government, communications or power failure, or equipment or software malfunction. In addition, the proposed rule change states that these parties disclaim all applicable warranties with respect to any basket or stocks or index traded on the Exchange.

The proposal defines "Index and basket information" as (a) information relating to the inclusion and relative representation of stocks in any index from which a basket is derived, such as an index's values, a basket's component stocks, the weighted summation of the bids or offers of a basket's component stocks, and basket and component stock last sale and quotation information and (b) other information relating to a basket or its index.

⁶ The proposal defines an "Index Licensor" or "Administrator" as any person who: (a) licenses to the Exchange the right to use (i) an index that is the basis for determining the inclusion and relative representation of a basket's component stocks or (ii) any trademark or service mark associated with such an index; (b) collects, calculates, compiles, reports and/or maintains such an index, or index and basket information relating to such an index; (c) provides facilities for the dissemination of index and basket information; and/or (d) is responsible for any of the activities described above.

⁷ Amendment No. 1, *supra* note 4.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ In approving this rule, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

¹¹ See American Stock Exchange Rules 902C and 1003; Chicago Board Options Exchange Rule 24.14;

¹³ 15 U.S.C. § 78o-3.

¹⁴ 17 CFR 200.30-3(a)(12) (1989).