

EXHIBIT 1.—PARTICIPANT OPERATING PROCEDURES FEES—Continued

Institutional Delivery (ID) System: [other ID system fees are not reprinted here.]

Present fee		Proposed fee	
—five	1,500.00 per year	—five	1,600.00 per year.
—more than five	1,800.00 per year	—more than five	1,600.00 per year and an additional \$200 per year for each copy beyond five.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40074; File No. SR-NASD-98-32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Filing Requirements for Independently Prepared Research Reports

June 4, 1998.

AGENCY: Securities and Exchange Commission ("SEC").**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

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 April 9, 1998, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation, Inc. ("NASD Regulation"). On May 14, 1998, the NASD filed an amendment, which has been incorporated in this filing, to clarify the proposed change and delete its request for accelerated approval.¹ 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 is proposing to amend Rule 2210 of the Conduct Rules of the NASD to exclude independently-prepared research reports from the filing requirements of Rule 2210. Below is the

text of the proposed rule change. Proposed new language is in italics.

AMENDMENTS TO NASD CONDUCT RULE 2210

Paragraph (c)(6) of Conduct Rule 2210 is amended by adding new paragraph (G), as follows: (6) The following types of material are excluded from the foregoing filing requirements and *(except for research reports under paragraph (G)) the foregoing spot-check procedures:*

* * *

(G) any research report concerning an investment company registered under the Investment Company Act of 1940, provided that:

(i) the report is prepared by an entity (the "research firm") that is independent of the investment company, its affiliates, and the member using the report;

(ii) in preparing the report, the services of the research firm have not been procured by the investment company, any of its affiliates or any member using the report;

(iii) the research firm prepares and distributes similar types of reports with respect to a substantial number of investment companies;

(iv) the report is distributed and updated with reasonable regularity in the normal course of the research firm's business; and

(v) the report has not been materially altered by the member using the report.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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**(a) Purpose**

NASD Conduct Rule 2210 requires that any "advertisement" or "sales literature" (as defined by the rule) concerning a registered investment company be filed with the Advertising/Investment Companies Regulation Department ("Department") and meet the content standards of that rule, as well as all applicable Commission rules. The rule defines "sales literature" to include a research report. Consequently, Rule 2210 requires that NASD members file all investment company research reports, including any research report that has been prepared by an entity that is independent of the investment company and its affiliates and of any NASD member, and whose services are not produced by the investment company or any of its affiliates or any NASD member to prepare the report ("independent research firms").

As the investment company industry has grown in recent years, so too has the coverage of this industry by independent research firms. Many of these firms publish reports that analyze a wide variety of investment companies and provide information, such as each investment company's historical performance, the investment company's fees and expenses, and a description and narrative analysis of the investment company's investment strategies and portfolio management style.

NASD members use these independently-prepared research reports in a number of ways. Some members may make the entire research service available to customers at a branch office. Members may also distribute an independently-prepared research report concerning a particular investment company as part of the selling process.

The proposed rule change would clarify the meaning, administration and enforcement of Rule 2210 insofar as it may appear to apply to certain types of independently-prepared research

¹ Letter from John Ramsey, Vice President, Deputy General Counsel, NASD Regulation, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated May 13, 1998.

reports. The proposed rule change would clarify that these types of independently-prepared research reports would not have to be filed with the Department. The Department intends to interpret the term "independent" in (G)(i) of the proposed rule change in a manner similar to the use of that term in NASD Rule IM-2210-3 regarding rankings.

Under the proposed rule change, these research reports would continue to be subject to the Department's spot-check procedures. Moreover, the proposed rule change would impose certain conditions designed to ensure that the opinions in the research reports are objective, that the presentation is balanced, and that investors have access to regular updates of the reports. In particular, the proposed rule change would impose several requirements derived from an analogous SEC rule, Rule 139, which provides a safe harbor from the definition of "offer for sale" and "offer to sell" in the Securities Act of 1933.

Thus, under the proposed rule change, a published article that analyzes only a few funds or that is not regularly updated in the normal course of business would have to be filed with the Department if it is to be distributed or made generally available to customers or the public. Moreover, while a member could distribute an independently-prepared research report concerning a particular fund without filing the report with the Department, if the member alters the report in any material way, then the member would have to file it with the Department if it is to be distributed or made generally available to customers or the public.

NASD Regulation believes that the proposed rule change would not raise significant investor protection concerns. In its filing and review program, the Department rarely has found significant issues with the types of research reports that would be expected by the proposed rule change. Moreover, to ensure that investors are adequately protected, the proposed rule change would except these types of research reports only from the filing requirements, and not the content requirements of applicable NASD rules. Under the proposed rule change, these research reports would continue to be subject to the content requirements of Rule 2210 as well as Conduct Rule 2110 (requiring that a member "observe high standards of commercial honor and just and equitable principles of trade"); Rule 2120 (prohibiting use of manipulative, deceptive or other fraudulent devices); and IM-2310-2 (requiring fair dealing with customers, including an avoidance

of fraud violations). In addition, Conduct Rule 2210 would continue to require that these research reports be approved prior to use by a registered principal of the member.

The proposed rule change would apply to independently-prepared research reports that are contained in software or that are electronically communicated, as well as those on paper.

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)² of the Act, which require that the Association adopt and amend its rules to promote just and equitable principles of trade, and generally provide for the protection of investors and the public interest in that the proposed rule change allows the dissemination of certain research reports, subject to the content requirements of the NASD Conduct Rules.

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 consents, 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, including whether the proposed rule change is consistent with the Act.

² 15 U.S.C. 78o-3.

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 the file number in the caption above and should be submitted by July 6, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-15781 Filed 6-12-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40070; File No. SR-PCX-98-19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Capital Requirements and Guaranteed Participation of Lead Market Makers

June 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 16, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, and amended such proposed rule change on June 4, 1998,² as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² Amendment No. 1 clarified the text of the proposed rule change. See letter from Michael D. Pierson, Senior Attorney, to Heidi Pilpel, Special Counsel, Division of Market Regulations, SEC (June 4, 1998).