

net capital requirement during the preceding 12 months. NASD Regulation staff have received several requests from members asking for a waiver or interpretation to relieve the member from this requirement in certain circumstances. For example, if a full-service member changed its business by divesting itself of clearing responsibilities so that it no longer holds customer funds or securities, it would still be required to maintain bond coverage that is based on the higher net capital requirement that applied during the preceding year. Currently, Rule 3020 does not permit the staff to provide any relief to the member.

NASD Regulation is proposing to amend Rule 3020 to permit the staff to exempt a member from the requirements of the rule in circumstances similar to those described above and upon a showing of good cause. This authority will permit the staff to adjust the fidelity bond requirements applicable to a member to better tailor the requirements to changes in a member's business. In addition, the proposed rule change will also permit the staff to include conditions in an exemption to ensure that any subsequent increase in capital requirements is accompanied by a corresponding increase in coverage.

The rule change applies a "good cause" standard that will require a member to demonstrate that a modification from the bonding requirement is justified by the level of loss exposure that may be expected from the member. NASD Regulation notes that the fidelity bonding premiums are set for certain net capital thresholds on the basis of loss experience. The premiums are changed from time to time to reflect changes in loss experience and to ensure that sufficient funds are available to pay any losses reported to the insurer. In addition, generally losses incurred in a prior year are reported against the firm's current year. NASD Regulation intends to apply this authority only where it is clear that an exemption will not have any unintended impact on the insurance pool, and the modified coverage would adequately protect the member against potential losses.

Request for exemption would be considered under recently adopted Procedures for Exemption in the 9600 Series of Rules in the Code of Procedure. Under the procedures, the staff issues written determinations that are subject to review by the National Adjudicatory Council.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with

the provisions of Section 15A(b)(6) of the Act,⁵ in that the proposed amendments are designed to accommodate members whose financial circumstances have changed so that they could obtain an exemption from maintaining fidelity bond coverage at higher previous levels if they can show that there is no regulatory reason for the higher coverage required by Rule 3020, without otherwise compromising investor protection.

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 Act

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 NASD consents, the Commission will:

(A) by order approved 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. 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, 450 Fifth Street, NW, Washington, DC 20549. 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-98-33 and should be submitted by July 1, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority:⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-15418 Filed 6-9-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40069; File No. SR-NASD-98-38]

Self-Regulatory Organizations; Notice of Filing and Partial Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to NASD Order Audit Trail System and Record-Keeping Rules

June 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1935 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 22, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly-owned subsidiary, NASD Regulation, Inc., ("NASDR") 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 the NASDR. 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 NASDR is proposing to amend NASD Books and Records Rule 3110 and NASD Order Audit Trail System ("OATS") Rules 6954 and 6957 to: require members to record certain information when an order is transmitted to a non-member; explicitly detail the recordkeeping requirements that will apply to OATS data; require members to record and maintain

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁵ 15 U.S.C. 78f(b)(6).

information related to "orders" as that term is defined in the OATS rules; indicate effective dates for compliance with the proposed amendments to Rule 3110; and make three nonsubstantive, technical revisions to Rules 3110 and 6957. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

CONDUCT RULES

3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION

3110. Books and Records

(h) [(c)] Order Audit Trail System Record-Keeping Requirements

(1) Each member that is a Reporting Member, as that term is defined in Rule 6951(n), shall record and maintain with respect to each order, *as that term is defined in Rule 6941(j)*, for such security that is received or executed at its trading department: (A) [(1)] an identification of each registered person who receives the order directly from a customer; (B) [(2)] an identification of each registered person who executes the order; and (C) [(3)] [where] an order is originated by the member and transmitted manually to another department, an identification of the department that originated the order.

(2) *Each Reporting Member shall maintain and preserve records of the information required to be recorded under paragraph (h)(1) of this Rule for the period of time and accessibility specified in SEC Rule 17a-4(b).*

(3) *The records required to be maintained and preserved under paragraph (h)(1) of this Rule may be immediately produced or reproduced on "micrographic media" as defined as SEC Rule 17a-4(f)(1)(i) or by means of "electronic storage media" as defined in SEC Rule 17a-4(f)(1)(ii) that meets the conditions set forth in SEC Rule 17a-4(f) and be maintained and preserved for the required time in that form.*

NASD SYSTEMS AND PROGRAMS

6950. ORDER AUDIT TRAIL SYSTEM

6954. Recording of Order Information

(a) Procedures

(1) through (3): No change;

(4) (A) Each Reporting Member shall maintain and preserve [retain] records of the information required to be recorded under this Rule *for the period of time and accessibility specified in SEC Rule 17a-4(b)* [in accordance with Rule 3110].

(B) *The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on "micrographic media" as*

defined in SEC Rule 17a-4(f)(1)(i) or by means of "electronic storage media" as defined in SEC Rule 17a-4(f)(1)(ii) that meet the conditions set forth in SEC Rule 17a-4(f) and be maintained and preserved for the required time in that form.

(b) No change.

(c) Order Transmittal

(1) through (5): No change

(6) *When a member transmits an order to a non-member, the Reporting Member shall record: (A) the fact that the order was transmitted to a non-member, (B) the order identifier assigned to the order by the Reporting Member, (C) the market participant symbol assigned by the Association to the Reporting Member, (D) the date the order was first originated or received by the Reporting Member, (E) the date and time the order is transmitted, (F) the number of shares to which the transmission applies, and (G) for each manual order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member.*

6957. Effective Date

(a) through (c): No change

(d) Rule 3110

The requirements of Rule 3110(h)(1)(A) [Rule 3110(c)(1)] and Rule 3110(h)(1)(B) [Rule 3110(c)(2)] shall be effective on March 1, 1999, and the requirements of Rule 3110(h)(1)(C) [Rule 3110(c)(3)] shall be effective on July 31, 2000. *The requirements of Rule 3110(h)(2) and Rule 3110(h)(3) shall be effective on March 1, 1999.*

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 NASDR 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 NASDR 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

Background. The Commission approved NASD OATS Rules 6950

through 6957 on March 6, 1998.³ The OATS rules require member firms to capture and record specific information related to the handling or execution of orders for equity securities in The Nasdaq Stock Market ("Nasdaq"). Relevant information regarding those orders must be specified to the hour, minute, and second. Firms must then report that information to OATS. The rules also require members to synchronize their business clocks to one time source. The Commission also approved new Rule 3110(c), which requires members to record and maintain certain information that is relevant to the OATS data reporting requirements.

OATS reporting will be implemented in phases. By March 1, 1999, electronic orders received by Electronic Communications Networks ("ECNs") or at the trading departments of market makers are subject to reporting. Electronic orders are defined as orders that are captured in an electronic order-routing or execution system. By August 1, 1999, all electronic orders are subject to reporting. By July 31, 2000, all manual or non-electronic orders are subject to reporting.

The types of orders that must be reported under the OATS rules include those received from a customer for handling or execution, those received from another member firm for handling or execution, and those originated by a department or desk within a firm for execution by another department or desk within that same member firm. Order events that must be reported under the rules include the receipt, modification, cancellation, execution, or routing of an order to another member firm, another department of the same firm, or an ECN. Orders for a proprietary account generally are exempted.

Discussion. The NASDR proposes to amend the OATS Rules and the books and records requirements that apply specifically to OATS data. The first three amendments are non-substantive, technical revisions to Rules 3110 and 6957. The first amendment would renumber Rule 3110(c) to Rule 3110(h).⁴ The second amendment would revise Rule 6957(d) to refer to Rule 3110(h) instead of to Rule 3110(c). Rule 3110(c) is hereinafter referred to as Rule 3110(h). The third amendment would revise Rule 3110(h) to change the word "where" to "when" because "when"

³ See Exchange Act Release No. 39729 (March 6, 1998) 63 FR 12559 (March 3, 1998) (order approving file SR-NASD-97-56).

⁴ The Commission notes that the new Rule 3110(h) was not intended to replace existing Rule 3110(c), which does not deal with OATS. That paragraph is not affected by this filing.

has a more accurate meaning in the context of the sentence in which it appears.

The fourth amendment would revise OATS Rule 6954(c) by adding a new paragraph (6). Rule 6954(c) sets forth the order information that must be recorded under the OATS rules when an order is transmitted, either from one department to another within a member firm or to another member. Rule 6954(c) does not, however, contain a requirement that a member record information when an order is transmitted to a non-member, such as a foreign broker/dealer or a foreign exchange. The NASDR proposes to add new paragraph (6) to require members to record certain information when an order is transmitted to a non-member, including the fact that it was so transmitted. NASD members will be required to report this information to OATS pursuant to Rule 6955. This new information will allow the NASDR to track what has happened to an order that a member has received and reported to OATS that is then routed to a non-member. Without this new requirement, there is no way to track this information.

The fifth amendment would revise both OATS Rule 6954(a)(4) and Rule 3110(h) to set forth specific record-keeping requirements. OATS Rules 6954(a)(1) and 6954(a)(4) require members to record specified information and to retain records of that information; Rule 3110(h) requires members to record and maintain information required by OATS. However, those rules do not specify how long the records must be maintained or the requirements that apply when members wish to utilize micrographic media or electronic storage media to maintain the records. To provide certainty to member firms on record retention requirements related to OATS data, the NASDR proposes to add new language to both Rule 6954(a)(4) and Rule 3110(h) to make explicit the record-keeping requirements related to OATS data. The rules have been revised to specifically reference the record retention period specified in SEC Rule 17a-4(b) and the conditions set forth in SEC Rule 17a-4(f) for reproducing records on micrographic media or by means of electronic storage media.

The sixth amendment would revise Rule 3110(h)(1) to require members to record and maintain information related to an "order," as that term is defined in OATS Rule 6951(j). As stated above, new rule 3110(h) was adopted to require members to record and maintain information relevant to the OATS data recording and reporting requirements. The OATS rules require firms to record

and report to OATS information related to an "order." For purposes of the OATS rules, the term "order" as defined in Rule 6951(j) means "any oral, written, or electronic instruction to effect a transaction in a Nasdaq Stock Market equity security that is received by a member from another person for handling or execution, or that is originated by a department of a member for execution by the same or another member, other than any such instruction to effect a proprietary transaction originated by a trading desk in the ordinary course of a member's market making activities." The NASDR proposes to similarly limit Rule 3110(h) to require members to record and maintain information only with respect to "orders" in Nasdaq equity securities.

Finally, the seventh amendment would revise Rule 6957(d) to indicate the effective dates for compliance with the proposed amendments to Rule 3110(h).

2. Statutory Basis

The NASDR believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵ which requires, among other things, that the Association's rules must 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. The NASDR believes that requiring members to record certain information when an order is transmitted to a non-member and to record and maintain information related to an "order" as defined in the OATS rules and explicitly detailing the record-keeping requirements that apply to OATS data will further these requirements.

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

The NASDR does not believe that the proposed rule change will impose a 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

The proposed rule change was reviewed by the NASDR National Adjudicatory Council ("NAC") and the NASD Small Firm Advisory Board ("SFAB"). The NAC did not have any comments on the proposal. The SFAB did not have any comments on the proposed rules, but did express its

concerns about the costs that will be required for compliance by small firms with the OATS rules that already have been approved by the SEC and are scheduled to be implemented starting in March 1999.

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

With respect to amendments one through three (*i.e.*, (1) renumber Rule 3110(c) to Rule 3110(h); (2) revise Rule 6957(d) to refer to Rule 3110(h) instead of Rule 3110(c); and (3) revise Rule 3110(h) to change the word "where" to "when."): The foregoing rule change is concerned solely with the administration of the NASD and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and subparagraph (e)(3) of Rule 19b-4 thereunder.⁷

At any time within 60 days of the filing of such 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.

With respect to amendments four through seven (*i.e.*, (4) add new paragraph (6) to Rule 6954(c); (5) revise Rules 6954(a)(4) and 3110(h) to set forth specific record-keeping requirements related to OATS data, referencing SEC Rule 17a-4; (6) revise Rule 3110(h)(1) to require members to record and maintain information related to an "order" as defined in Rule 6951(j); and (7) revise Rule 6957(d) to establish the effective dates for compliance with the proposed amendments to Rule 3110(h)): 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.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 19b-4(e)(3).

⁵ 15 U.S.C. 78o-3(b)(6).

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 submissions, 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, 450 Fifth Street, NW, Washington, DC. Copies of such filing also will be available for inspection and copying at the NASD. All submissions should refer to File No. SR-NASD-98-38 and should be submitted by July 1, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-15419 Filed 6-9-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40063; File No. SR-PCX-98-21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment 1 Thereto by the Pacific Exchange, Inc., Relating to Fines for Disruptive Action on the Options Floor

June 3, 1998.

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 April 16, 1998, 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 May 28, 1998, the Exchange filed Amendment 1 to the proposal with the Commission.³ 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 Term of Substance of the Proposed Rule Change

PCX is proposing to increase its recommended fines under the Minor Rule Plan ("MRP") for disruptive action involving physical contact between members while on the options trading floor. Proposed new language is in *italics*; proposed deleted language is in *brackets*.

6133 Minor Rule Plan

Rule 10.13(a)-(j)—No change.

(k) Minor Rule Plan: Recommended Fine Schedule.

(i) Options Floor Decorum and Minor Trading Rule Violations	Fines		
	1st violation	2nd violation	3rd violation
1.-16. No change			
17. Disruptive action involving physical contact while on the trading floor. (Rule 6.2)	\$[500.00] 1,500.00	\$[1,000.00] 3,000.00	\$[2,500.00] 5,000.00
18.-34. No change.			

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 Exchange 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 Exchange 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

The Exchange is proposing to increase the recommended fines under the MRP⁴ for disruptive action involving physical contact between members while on PCX's Options Trading Floor. These fines are currently set at \$500, \$1,000 and \$2,500 for first, second and third

violations, respectively, during a running two-year period. The Exchange is proposing to increase these fines at \$1,500, \$3,000, and \$5,000, respectively.⁵ The purpose of the rule change is to deter future incidents of disruptive conduct involving physical contact. The Exchange notes that there has been a moderate increase recently in the number of such cases, and the Exchange intends that the proposed rule change will serve to reverse that trend.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment 1 clarifies the purpose section of the filing by noting that fines over \$2,500 are subject to higher reporting requirements than fines of \$2,500 or less. See Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Lisa Henderson, Attorney, SEC, dated May 26, 1998.

⁴ Rule 19d-1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. See Securities Exchange Act Release No. 21013 (June 1,

1984), 49 FR 23828 (June 8, 1984) (order approving amendments to paragraph (c)(2) of Rule 19d-1 under the Act). Pursuant to PCX Rule 10.13, the Exchange may impose a fine on any member or member organization for any violation of an Exchange rule that has been deemed to be minor in nature and approved by the Commission for inclusion in the MRP. PCX Rule 10.13(h)-(j) sets forth the specific Exchange rules deemed to be minor in nature.

⁵ As noted in PCX Rule 10.13(e), pursuant to Securities Exchange Act Release No. 30958, any person or organization found in violation of a minor rule under the MRP is not required to report such violation on SEC Form BD, provided that the sanction imposed consists of a fine not exceeding

\$2,500 and the sanctioned person or organization has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Accordingly, any fine imposed in excess of \$2,500 will be subject to reporting on SEC Form BD in addition to the immediate, rather than periodic, reporting requirement of Section 19(d)(1) of the Act. See Securities Exchange Act Release No. 32080 (January 22, 1992), 57 FR 3452 (noting that fines in excess of \$2,500, assessed under New York Stock Exchange, Inc. ("NYSE") Rule 476A, are not considered pursuant to the NYSE's minor rule violation plan and are thus subject to the current reporting requirements of Section 19(d)(1) of the Act).