

Creation Units, approximately 100,000 shares, will be required to be outstanding at the start of trading. The Commission believes this minimum number is sufficient to help to ensure that a minimum level of liquidity will exist at the start of trading. Furthermore, the Commission finds that registering the Fund shares in book-entry form through DTC, managing the distribution of dividends from net investment income, if any, and permitting beneficial owners of the Funds to offer the DTC book-entry Dividend Reinvestment Service are characteristics of the Fund that are consistent with the Act and should allow for the maintenance of fair and orderly markets and perfect the mechanism of a free and open market.

Further, the Commission believes that the Exchange's proposal to trade the Fund in minimum fractional increments of  $\frac{1}{64}$  of \$1.00 is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in the Fund. Additionally, the Commission believes that the proposed original listing fee of \$5,000 is reasonable as is the proposed method for calculating the annual fee.

#### *D. Dissemination of Information and Regarding the Fund*

The Commission believes that the Values and figures that the Exchange proposes to have disseminated for the Fund will provide investors with timely and useful information concerning the value of the Fund. The Exchange represents that the Value information will be disseminated, every 15 seconds during regular Amex trading hours, through the facilities of the CTA and will reflect currently-available information concerning the value for Shares of the Fund. On a daily basis, the Exchange represents that it will disseminate the Shares outstanding, the cash amount per Creation Unit Aggregation, and the net asset value. The Exchange represents that the closing prices of the Fund's Deposit Securities are readily available from, as applicable, the relevant exchanges, automated quotation systems, or on-line information services such as Bloomberg or Reuters. The intra-day value of the Underlying Index will be available from Dow.

#### *E. Accelerated Approval*

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act. The Commission notes that the proposed rule change is based on the listing and trading standards in Amex Rule 1000A *et seq.* (Index Fund Shares), which the Commission previously approved after soliciting public comment on the proposal pursuant to Section 19(b)(1) of the Act.<sup>24</sup> The Commission does not believe that the proposed rule change raises novel regulatory issues that were not addressed in the Amex filing. Accordingly, the Commission believes it is appropriate to permit investors to benefit from the flexibility afforded by this new instrument by trading them as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,<sup>25</sup> to approve the proposal on an accelerated basis.

#### **V. Conclusion**

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>26</sup> that the proposed rule change (SR-Amex-00-53), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>27</sup>

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

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**BILLING CODE 8010-01-M**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43370; File No. SR-NASD-00-38]

#### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Application of NASD Rules and Interpretive Materials to Certain Exempted Securities**

September 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>24</sup> See *supra* note 6 (approving SR-Amex-00-14); Securities Exchange Act Release No. 42542 (March 17, 2000), 65 FR 16437 (March 28, 2000) (noticing SR-Amex-00-14).

<sup>25</sup> 15 U.S.C. 78s(b)(5).

<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</sup> 17 U.S.C. 200.30-3(a)(12).

("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 16, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, 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 NASD Regulation.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.<sup>4</sup>

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NASD proposes to amend its rules to: (1) Codify an NASD staff interpretation that the non-cash compensation provisions set forth in paragraph (g) of NASD Rule 2820, "Variable Contracts of an Insurance Company," apply to group variable contracts that are exempted securities; and (2) adopt new NASD Rule 0116, "Application of Rules of the Association to Exempted Securities," to enumerate the NASD rules and interpretive materials that apply to exempted securities, including government securities, other than municipal securities. The text of the proposed rule

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> On September 11, 2000, NASD Regulation filed Amendment No. 1 to the proposal. See letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 11, 2000 ("Amendment No. 1"). In Amendment No. 1, NASD Regulation amended proposed NASD Rule 0116 to: (1) delete a reference to NASD Rule 2300; (2) replace a reference in proposed NASD Rule 0116 to IM-2520 with a reference to IM-2522; and (3) add references to NASD Rules 8110, 8120, 8210, 8221, 8222, 8223, 8224, 8225, 8226, 8227, 8310, IM-8310-1, IM-8310-2, 8230. In addition, Amendment No. 1 clarifies that the non-cash compensation provisions in NASD Rule 2820 will appear in NASD Rule 2820(g) rather than NASD Rule 2820(h) as a result of a rule change approved in October 1999 that deleted paragraph (c) of NASD Rule 2820. See Securities Exchange Act Release No. 4204 (October 20, 1999), 64 FR 58112 (October 28, 1999) (order approving File No. SR-NASD-98-14).

<sup>4</sup> In its proposal, NASD Regulation asked the Commission to approve the proposal on an accelerated basis. The Commission received two comment letters asking the Commission not to approve the proposal on an accelerated basis. See letter from Carl B. Wilkerson, Chief Counsel, Securities, American Council of Life Insurers, to Jonathan G. Katz, Secretary, Commission, dated August 4, 2000; and letter from David A. Winston, Vice President, Government Affairs, National Association of Insurance and Financial Advisors, dated August 30, 2000. The Commission is publishing the proposal for comment with a 15-day comment period.

change appears below. Proposed new language is in *italics*.

\* \* \* \* \*

## 0100. GENERAL PROVISIONS

### 0110. Adoption and Application of Rules

#### 0116. Application of Rules of the Association to Exempted Securities

(a) *For purposes of this Rule, the terms "exempted securities" and "municipal securities" shall have the meanings specified in Sections 3(a)(12) and 3(a)(29) of the Act, respectively.*

(b) *Unless otherwise indicated within a particular provision, the following Rules of the Association and Interpretative Materials thereunder are applicable to transactions and business activities relating to exempted securities, except municipal securities, conducted by members and associated persons: 2110, 2120, 2210, IM-2210-1, IM-2210-2, IM-2210-3, 2250, 2270, 2300, 2310, IM-2310-2, IM-2310-3, 2320, 2330, IM-2330, 2340, 2430, 2450, 2510, 2520, IM-2520, 2770, 2780, 2820(g), 2910, 3010, 3020, 3030, 3040, 3050, 3060, 3070, 3110, IM-3110, 3120, 3130, IM-3130, 3131, 3140, 3230, 3310, IM-3310, 3320, IM-3320, 3330, 8110, 8120, 8210, 8221, 8222, 8223, 8224, 8225, 8226, 8227, 8310, IM-8310, IM-8310-1, IM-8310-2, 8320, and 8330.<sup>5</sup>*

\* \* \* \* \*

## 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

#### (1) Purpose

The Government Securities Act Amendments of 1993 ("GSAA")<sup>6</sup> eliminated the statutory limitations on the NASD's authority to apply sales-practice rules to members' transactions in exempted securities, including government securities, other than municipal securities.<sup>7</sup> To implement the expanded sales practice authority

granted to it pursuant to the GSAA, the NASD in 1995 submitted a proposal to the Commission to apply various NASD rules to exempted securities, including government securities, other than municipal securities. The Commission approved the NASD's proposal.<sup>8</sup> The 1996 Order and NASD Notice to Members 96-66 (October 1996) list the NASD rules that apply to members' transactions in exempted securities other than municipal securities.<sup>9</sup> However, this list was not incorporated into a specific NASD rule and does not currently appear in the NASD Manual. The proposal will codify in proposed NASD Rule 0116 the list of NASD rules and interpretative materials applicable to exempted securities, including government securities, other than municipal securities, and, as discussed more fully below, will add NASD Rule 2820(g) to the list. NASD Regulation believes that codifying this information in an NASD rule will enable members and other interested parties to identify the rules applicable to exempted securities, other than municipal securities, in a more efficient manner.

In Amendment No. 1, NASD Regulation proposes to add NASD Rules 8110, 8120, 8210, 8221, 8222, 8223, 8224, 8225, 8226, 8227, 8310, IM-8310, IM-8310-1, IM-8310-2, 8320, and 8330 to proposed NASD Rule 0116. According to NASD Regulation, the 8000 Series rules were excluded inadvertently from the original proposal and should be included in proposed NASD Rule 0116 because they are applicable to transactions and business activities relating to exempted securities.<sup>10</sup>

NASD Regulation notes that at the time the NASD identified the NASD

rules that would apply to exempted securities other than municipal securities, the NASD had not adopted NASD Rule 2820(g).<sup>11</sup> Accordingly, NASD Rule 2820(g) was not listed as one of the provisions applicable to exempted securities. NASD Rule 2820(g), the non-cash compensation rule, limits the manner in which members may pay or accept non-cash compensation in connection with the sale or distribution of variable contracts.

NASD Regulation states that because certain group variable contracts are exempted securities under the Act, questions have arisen regarding whether NASD Rule 2820(g) applies to group variable contracts.<sup>12</sup> According to NASD Regulation, NASD Regulation staff have interpreted NASD Rule 2820(g) to apply to group variable contracts that are exempted securities since the adoption of NASD Rule 2820(g). To clarify the application of NASD Rule 2820(g) to group variable contracts that are exempted securities, NASD Regulation proposes to codify the current staff interpretation by including NASD Rule 2820(g) in proposed NASD Rule 0116.<sup>13</sup>

#### (2) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, 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. NASD Regulation believes that the proposed rule change will assist members and associated persons in more easily identifying those NASD rules applicable to transactions and business activities relating to exempted securities (other than municipal securities).

### 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

<sup>8</sup> See Securities Exchange Act Release No. 37588 (August 20, 1996), 61 FR 44100 (August 27, 1996) (order approving File No. SR-NASD-95-39) ("1996 Order").

<sup>9</sup> Specifically, NASD Regulation notes that the 1996 Order and Notice to Members 96-66 indicate that the following NASD rules and interpretative materials are applicable to transactions and business activities relating to exempted securities (other than municipal securities) conducted by NASD members and associated persons: 2110, 2120, 2210, IM-2210-1, IM-2210-2, IM-2210-3, 2250, 2270, 2300, 2310, IM-2310-2, IM-2310-3, 2320, 2330, IM-2330, 2340, 2430, 2450, 2510, 2520, IM-2520, 2770, 2780, 2910, 3010, 3020, 3030, 3040, 3050, 3060, 3070, 3110, IM-3110, 3120, 3130, IM-3130, 3131, 3140, 3230, 3310, IM-3310, 3320, IM-3320 and 3330.

<sup>10</sup> See Amendment No. 1, *supra* note 3. The 1996 Order indicated that various NASD rules in the 8000 Series applied to exempted securities, including government securities, other than municipal securities. The Commission subsequently approved amendments to the 8000 Series that adopted NASD Rules 8221 through 8227. See Securities Exchange Act Release No. 38908 (August 7, 1997), 62 FR 43385 (August 13, 1997) (order approving File No. SR-NASD-97-28) ("1997 Order"). As indicated above, proposed NASD Rule 0116 includes NASD Rules 8221 through 8227 in its list of NASD rules that are applicable to exempted securities, including government securities, other than municipal securities.

<sup>11</sup> See Amendment No. 1, *supra* note 3.

<sup>12</sup> Section 3(a)(12)(A)(iv) of the Act includes as an exempted security " \* \* \* any security arising out of a contract issued by an insurance company, which \* \* \* security is issued in connection with a qualified plan as defined in subparagraph (C) of this paragraph."

<sup>13</sup> Because Rule 2820(g) applies only to transactions in variable products, the proposed rule change would result in Rule 2820(g) expressly applying to all variable products, including variable products that are exempted securities, such as group variable or similar products. NASD Regulation is not at this time recommending that other provisions of Rule NASD Rule 2820 apply to exempted securities.

<sup>5</sup> See Amendment No. 1, *supra* note 30.

<sup>6</sup> Government Securities Act Amendments of 1993, Pub. L. No. 103-202, § 1(a), 107 Stat. 2344 (1993).

<sup>7</sup> The terms exempted securities, government securities, and municipal securities are defined in Sections 3(a)(12), 3(a)(42), and 3(a)(29) of the Act, respectively. Rules for municipal securities are promulgated by the Municipal Securities Rulemaking Board.

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 not solicited. However, NASD Regulation received a letter from the National Association for Variable Annuities ("NAVA"), which argues that the non-cash compensation rules do not apply to sales of group variable annuities for several reasons.<sup>14</sup> First, NAVA contends that the specific language of NASD Rule 2820 limits its application to activities of members in connection with variable contracts, to the extent such activities are subject to regulation under the federal securities laws.<sup>15</sup> However, although certain provisions of the federal securities laws do not apply to exempted securities, other provisions of the federal securities laws do apply, including the anti-fraud provisions. Therefore, NASD Rule 2820(a) does not restrict the application of NASD Rule 2820(g) to group variable activities.

Second, NAVA argues that because NASD Rule 2820(g) was not specifically included in the 1996 Order's list of NASD rules applicable to exempted securities, the non-cash compensation provisions do not apply to sales of group variables. As described above, NASD Rule 2820(g) had not been adopted at the time the NASD identified the NASD rules that would apply to exempted securities, other than municipal securities. Accordingly, NASD Rule 2820(g) was not listed as one of the provisions applicable to exempted securities.

Third, NAVA argues that if the non-cash compensation rules do apply to group variables, separate contests should be permissible for group variable products given their different design, cost structures and commission payouts. With respect to the allowance of separate contests for group variable products, NASD Regulation staff has stated in Question #22 of Notice to Member 99-55 (July 1999) that a member may structure a non-cash arrangement that is limited only to a specific division of the firm. Therefore, if a separate sales force or division sells group variable contracts, as the NAVA

letter indicates often occurs, then a separate contest may be appropriate. However, where the same salesperson sells both group variable products and individual variable annuities, separate contests would not be permissible, *i.e.*, the contest must be based on the entire universe of products within a specific product category that the individual sells.

**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 Exchange 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 and Amendment No. 1 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-00-38 and should be submitted by October 19, 2000.<sup>16</sup>

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

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

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<sup>16</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43342; File No. SR-PCX-00-08]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Stock Exchange, Inc. Relating to the Dissolution of the Appointments Committee**

September 26, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 20, 2000, the Pacific Stock Exchange, Inc. ("PCX" or the "Exchange") 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 Exchange. On September 21, 2000, the Exchange filed Amendment No. 1 to the proposal.<sup>3</sup> 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 has filed with the Commission a proposed rule change to dissolve the Options Appointments Committee and to transfer all powers of the Options Appointments Committee to the Options Allocation Committee. The text of the proposed rule change is available at the Office of the Secretary, the 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 PCX 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 PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In Amendment No. 1, the Exchange made technical corrections to the rule language and made non-substantive changes to the purpose section of the filing for clarity. See letter from Cindy L. Sink, Senior Attorney, Regulatory Policy, PCX to Jennifer L. Colihan, Division of Market Regulation, Commission, dated September 20, 2000.

<sup>14</sup> See letter from Mark J. Mackey, President and Chief Executive Officer, NAVA, to John M. Ramsay, Vice President and Deputy General Counsel, Office of General Counsel, NASD Regulation, dated April 16, 1999.

<sup>15</sup> NASD Rule 2820(a) states "[t]his Rule shall apply exclusively (and in lieu of Rule 2830) to the activities of members in connection with variable contracts, to the extent such activities are subject to regulation under the federal securities laws."