to Rule 19b–4(e)(4)[5] promulgated thereunder because the proposal effects a change in an existing service of a registered clearing agency that: does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible; and does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty 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.

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, N.W., Washington, D.C. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–98–17 and should be submitted by November 18, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

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[5] 17 CFR 240.19b–4(e)(4).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 40592; File No. SR–NASD–98–77]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Central Registration Depository Fees

October 22, 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 October 16, 1998, the National Association of Securities Dealer, Inc. (''NASD'' or ''Association'') 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 NASD. 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 NASD is proposing to amend Schedule A of the NASD By-Laws revise the fees imposed for filings made with the Central Registration Depository (''CRD''). The text of the proposed rule change is as follows (addition are *italicized;* deletions are [bracketed]):

Schedule A to the NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the [Corporation] NASD[,] shall be determined on the following basis:

* * * * *

Section 2—Fees

(a) No change.

(b) [Each member shall be assessed a fee of $85.00 for each application filed with the Association for registration of a registered representative or registered principal. Additionally, each member shall be assessed a surcharge of $95.00 for registrations involving a special registration review filed with the Association.]

The NASD shall assess each member a fee of:

(1) $85.00 for each initial Form U–4 filed by the member with the NASD for the registration of a representative or principal, except that [The] *the* following *discounts* shall apply to the filing of [applications] *Forms U–4* to [register or] transfer the registration of [registered persons] *representatives* or [registered] principals in connection with acquisition of all or a part of a member's business by another member:

Number of registered personnel transferred	Discount Percent
1,000–1,999	10
2,000–2,999	20
3,000–3,999	30
4,000–4,999	40
5,000 and over	50

(2) $40.00 for each initial Form U–5 filed by the member with the NASD for the termination of a registered representative or registered principal, plus a late filing fee of $80.00 if the member fails to file the initial form U–5 within 30 days after the date of termination:

(3) $20.00 for each amended Form U–4 or Form U–5 filed by the member with the NASD:

(4) $95.00 for the additional processing of each initial or amended Form U–4 or Form U–5 that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings:

(5) $10.00 for each fingerprint card submitted by the member to the NASD, plus any other charge that may be imposed by the United States Department of Justice for processing such fingerprint card: and

(6) $15.00 annually for each of the member's registered representatives and principals to renew the registration for the following year.

(c)–(g) No change.

(h)(i) Each member shall be assessed a fee of $40.00 for each notice of termination of a registered representative or registered principal filed with the Corporation as required by Section 3 of Article IV of the By-Laws.

(ii) A late filing fee of $65.00 shall be assessed a member who fails to file with the Corporation written notice of termination of a registered representative or registered principal within thirty (30) calendar days of such termination.

(II) In the event a member believes it should not be required to pay the late filing fee, it shall be entitled to a hearing in accordance with the procedures set forth in the Rule 9640 Series.

(i)–(k) No change.

Section 3—Elimination of Duplicate Assessments and Fees

Two or more members under substantially the same ownership or control shall be required to pay only one personnel assessment *and one*

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

[2] 17 CFR 240.19b–4.

registration renewal fee annually for those individuals employed by more than one of the members and only one fee annually for each branch office registered at the same location by more than one of the members. There shall be only one registration fee applicable to each applicant registered simultaneously with two or more members under substantially the same ownership or control. [If a substantial number of the registrants of a member are to be dually registered with another member under substantially the same ownership and control and this additional registration cannot be effected simultaneously, there shall be a $5.00 fee applicable to each applicant at the time of the second registration provided that arrangements are made with the Association for special processing of such applicants, and appropriate certification is made by each affiliated member. The registration fee referred to in Section 2 of this Article will apply if the foregoing provisions are not applicable.]

Section 9—[Subscription Charges for Firm Access Query System (FAQS)] ***Reserved***

[(a) Each firm electing to subscribe to the Firm Access Query System (FAQS) will be assessed a user fee consisting of three components (1) a monthly data base access charge, (2) an hourly usage fee, and (3) a charge per 1,000 characters (''kilocharacter'') of information sent or received. The fee schedule to be paid by each firm is as follows:

(1) Monthly Data Base Access Charge—$70.00
(2) Hourly Usage Charge—$70.00 per hour; and
(3) Kilocharacter Transmission Charge—$0.70.

Each firm which subscribes to the service will provide its own terminal and modem.]

* * * * *

[Section 14—Service Charge for Fingerprints Submitted]

[In addition to such charge as may be imposed by the United States Department of Justice, there shall be a service charge of $2.50 for each fingerprint cart submitted to the Association's Membership Department.]

[Section 15—Fees for Central Registration Depository]

[(a) Each member shall be assessed a Software Subscription Fee of $300 for each copy of CRD software purchased. Each member shall be assessed a fee of $10.00 for each set of Branch Filing Software.]

[(b) Each member shall be assessed an annual Software Subscription Maintenance Fee of $300 for each copy of the CRD software purchased by the member.] [3]

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 NASD 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 NASD 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 proposed rule change amends Schedule A of the NASD By-Laws to revise various fees charged for operating the CRD and to include all CRD fees in Section 2 of Schedule A.[4] NASD Regulation's CRD system has been the single registration system for broker-dealers for over 15 years. The CRD system enables ''one stop'' filing of broker-dealer and broker registration forms, eliminating the need for separate filings with the 50 states, the Commission, the New York Stock Exchange Inc., and other regulators. The CRD system also provides a centralized funds collection and distribution system (handing over $420 million per year) and a uniform reporting structure (with staff processing and reviewing approximately one million filings per year). When the CRD system was implemented in the early 1980s, it was estimated that the benefits to NASD members from the system (*e.g.*, reduced administrative costs, faster processing of filing, etc.) would be more than $50 million per year ($94 million in 1997 dollars).

The NASD believes that the modernized CRD system, scheduled for release in the third quarter of 1999, will provide additional benefits by:

- Reducing overall processing time for initial registrations and transfers by at least three to six days per filing, thereby reducing the number of days that brokers are restricted from conducting business, [5]
- Reducing member registration system development and maintenance costs; and
- Reducing registration processing costs (*e.g.*, replacing paper filings with electronic form filing through NASD Regulations, Inc.'s Web site) and providing current registration processing status and other information through the Web site.

The cost of developing, maintaining, and operating the CRD system is largely paid for by members through a series of fees charged by the NASD for CRD filings and other CRD-related activity. Non-NASD members are not charged for the use of the system.[6] The NASD last increased CRD fees on August 1, 1995.[7] CRD costs have increased since that time for a number of reasons, including: (1) development and maintenance of an Internet-based modernized CRD system; (2) implementation of the enhanced Public Disclosure Program, including Public Disclosure on the Internet; and (3) increased filing volume due to changes in disclosure reporting requirements.

The NASD believes that CRD fees should be set at a level that fully covers the costs of the CRD/Public Disclosure system and department. Currently, such fees do not cover the full costs of these systems and activities. The revised fee structure is based on the principal cost drivers for CRD, which include: (1) the number of registered individuals; (2) the number of filings; and (3) the number of disclosure events and proceedings [8] reported with each filing and the costs associated with reviewing these items. To recover such costs most effectively,

[3] A table describing changes to the NASD Registration Fee Structure is included in the NASD Regulation, Inc. Website, www.nasdr.com/3430d.htm.

[4] Currently, CRD-related fees are found in Sections 2,9, 14 and 15 of Schedule A.

[5] Under Article V, Section 1 of the NASD By-Laws, an individual may not engage in the investment banking or securities business until the NASD has approved an appropriate registration for the individual.

[6] The CRD fees amended by this filing apply only to fees charged to member firms and not to any other parties. Non-NASD member participants in the CRD are not affected by these changes. *See* E-mails from John Ramsay, Office of General Counsel, NASD Regulation, to Anitra Cassas, Division of Market Regulation, Commission, dated October 16, 1998.

[7] Exchange Act Release No. 36025 (July 26, 1995), 60 FR 39200 (August 1, 1995) (File No. SR–NASD–95–32).

[8] The term ''disclosure events and proceedings'' means events and proceedings that must be reported on Form U–4 or Form U–5. This includes, for example, certain criminal charges or convictions, regulatory actions, formal investigations, investment-related civil judgments or injunctions, arbitration proceedings and awards, customer-initiated sales practice complaints, settlements, and bankruptcies.

the fee structure will be changed as described in the following paragraphs.

First, the NASD will charge a $20.00 fee for each amended Form U–4 or U–5 filed with the CRD.[9] Currently, the NASD charges $85.00 for the filing of an initial Form U–4 and $40.00 for an initial Form U–5 by an NASD member,[10] but does not charge any fee for the filing of amendments to Form U–4 or U–5. Thus, under the new fee structure, an NASD member that filed an amended Form U–4 *e.g.,* to change the representative's home address or request registration in an additional jurisdiction, would be charged $20.00. Similarly, if the member filed an amended Form U–5, *e.g.,* to terminate such representative's registration in a particular jurisdiction, the member also would be charged $20.00. The new fees for filing amended Forms will help the NASD recover the costs of processing such Forms, which account for a large portion of overall filing volume for the CRD system.

Second, the NASD will charge $95.00 as an additional processing fee for each initial or amended Form U–4 or Form U–5 that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings. Currently, the NASD charges a $95.00 Special Registration Review (''SRR'') fee only if an event or proceeding is reported on an initial Form U–4. Thus, under the current fee structure, if an NASD member hires a representative who has a misdemeanor conviction that is reportable on Form U–4, the member is charged $85.00 for the initial Form U–4 plus a $95.00 SRR fee, for a total of $180.00; if the member subsequently files an amended Form U–4 to report a customer complaint, no additional fee is charged and the total charge for the two filings is $180.00. Using the same example under the new fee structure, the member would still pay $85.00 for the initial Form U–4, plus an additional $95.00 processing fee because the initial Form includes a disclosure event, for a total of $180.00. However, when the member reports the subsequent customer complaint, the member will be charged $20.00 for the amended Form U–4, plus $95.00 as an additional processing fee for the initial reporting of a new disclosure event, for a total of $115.00 for the amended Form U–4. The combined charges for the two filings would be $295.00.

Third, the fee for a late filing of a Form U–5 (*i.e.,* more than 30 days after the individual's termination) will be increased form $65.00 to $80.00. The NASD believes that raising the fee will help to discourage late filings by its members.

Fourth, the NASD will increase the fee for processing a fingerprint card from $2.50 to $10.00.[11] The NASD will continue to add any fee charged by the Federal bureau of Investigation for processing a fingerprint card.

Fifth, the NASD will implement a new annual renewal processing fee of $15.00 per registered representative or principal. In the past, the NASD has sent invoices to its members in October or November for registration renewal for the following year. An invoice includes fees for NASD personnel assessments under Section 1 of Schedule A of the NASD by-Laws, NASD branch office fees, maintenance fees for other exchanges, and state agent and broker-dealer renewal fees.[12] The annual renewal processing fee would be in addition to the NASD personnel assessment. To ensure that duplicate renewal fees are not paid, the NASD proposes to amend Section 3 of Schedule A to provide that if an individual is employed by two or more NASD members under substantially the same ownership or control, then only one renewal fee will be charged.

Sixth, in section 3 of Schedule A, the NASD will eliminate the reduced fee for registrations with more than one member that are made simultaneously. Section 3 currently provides that simultaneous registrations with broker-dealers under common control are charged a single NASD registration fee, with a provision for a $5.00 fee in certain cases where in fact the registrations are not filed simultaneously. While the single registration fee for simultaneous registrations will be retained, the $5.00 reduced fee for registrations with more than one member that are not made simultaneously will be eliminated. This reduced fee is being eliminated because the CRD/Public Disclosure department does not realize any cost savings form anon-simultaneous filing in the modernized CRD system environment.

Seventh, upon the deployment of the modernized CRD system, the NASD will eliminate the Firm Access Query System (''FAQS'') charges set forth in Section 9 of Schedule A. FAQS is an electronic system that enables subscribing NASD members to review the registration and examination data maintained on the CRD relating to individuals registered or seeking to be registered with the member. Through FAQS, subscribers also may elect to schedule exams, review accounting transactions and balances, and file select Form U–4 amendments and Forms U–5 electronically. Under the modernized CRD system, the information and services provided today by FAQS will be available to firms through the Internet without a usage charge. The date of the elimination of FAQS charges will be announced 45 days in advance in a Notice to Members.

Finally, the CRD software license and maintenance fees currently set forth in Section 15 will be eliminated due to the change from a distributed software approach to the Internet-based approach of the modernized CRD system. As noted above, the costs of the modernized CRD system will be recovered through the filing fees. There are no separate license usage or maintenance fees for the modernized CRD system.

The NASD will begin to charge most of the revised fees described in this filing, except those related to FAQS, on January 1, 1999. The current FAQS fees will continue to be assessed until the deployment of the modernized CRD system, currently scheduled for he third quarter of 1999. The first annual renewal processing fee under the new fee structure will be collected with registration renewals in the fourth quarter of 1998. The NASD believes that the revenue from the new fees will cover the likely costs of the CRD/Public Disclosure system and department at projected levels of registration activity.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[13] which requires, among other things, that the Association's rules must provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Association operates or controls. The NASD believes that the revised fee structure equitably distributes CRD costs among its members by adjusting the fees to reflect the costs associated with different types of filings. The NASD believe that it is reasonable for the overall level of fees to be set at a level that fully covers the costs of the CRD/Public Disclosure

[9] An initial Form U–4 is the first Form U–4 filed by each member for a representative who is becoming registered for the first time or who is transferring his registration from another member. Similarly, the initial Form U–5 refers to the first Form U–5 filed by each member upon the termination of a registration.

[10] The fees for initial filings remain the same.

[11] *See* Rule 17f–2 under the Act. 17 CFR 240.17f–2.

[12] *See, e.g.,* NASD Notice To Members 97–70.

[13] 15 U.S.C. 78o–3(b)(5).

system and department at projected levels of registration activity.

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

The NASD 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NASD has neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change, which establishes or changes a due, fee, or other charge, has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and subparagraph (e)(2) of Rule 19b–4 thereunder.[15]

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

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, N.W., Washington, D.C. 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 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–77 and should be submitted by November 18, 1998.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[16]

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[14] 15 U.S.A. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(e)(2).

[16] 17 CFR 200.30–3(as)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40577, File No. SR–PSE–97–02]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments 1 and 2 to the Proposed Rule Change by the Pacific Exchange, Inc., Relating to the Proprietary Hand-Held Terminal Program for Floor Brokers

October 20, 1998.

I. Introduction

On January 17, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') [1] filed a proposed rule change with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] to adopt Rule 6.89 governing the use by PCX Members and Member Organizations (''Members'') of proprietary brokerage order routing terminals (''Terminals'') on the options floor of the Exchange. On March 30, 1998, and June 5, 1998, respectively, the Exchange filed Amendments 1 [4] and 2 [5] with the Commission.

Notice of the proposal was published for comment and appeared in the **Federal Register** on February 18, 1997.[6] Two comment letters were received on the proposed rule change.[7] The PCX responded to IB's comment letter.[8] This order approves the Exchange's proposal, including Amendments No. 1 and 2 on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to adopt rules governing Terminals that Members may use on the options floor of the Exchange. The rules include specific provisions on Exchange approval of

[1] The Exchange changed its name from the Pacific Stock Exchange to the PCX subsequent to the filing of this proposed rule change. For record-keeping purposes the file number will remain SR–PSE–97–02.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *See* Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to David Sieradzki, Attorney, Division of Market Regulation (''Division''), Commission, dated March 27, 1998 (''Amendment No. 1''). In Amendment No. 1, the Exchange makes three substantive changes to the proposal. First, the Exchange states that approval to use Terminals on the floor of the Exchange will not be granted on an issue by issue basis. Instead, the Exchange will approve the use of any Terminal system that does not interfere with any Exchange-sponsored hand-held terminals, POETS, or any other equipment on the floor. Subject to those conditions, once the Exchange has approved a Member or Member Firm to use a Terminal, the approval is not restricted to particular options trading crowds. Second, the Exchange amends the market making restriction in Section 4(d)(3) to make the definition of market making consistent with the definition of market making in PCX's Exchange-sponsored hand-held terminal filing (SR–PCX–97–28) and Section 3(a)(38) of the Act. *See* Securities Exchange Act Release No. 39970 (May 7, 1998), 63 FR 26662 (May 13, 1998) and 15 U.S.C. 78c(a)(38). Third, the Exchange removes provisions designating the proposal as a pilot program. finally, the Exchange modifies the format of the proposal so that it will be a change to the text of the Rules of the Exchange, rather than a written policy.

[5] *See* Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to David Sieradzki, Attorney, Division, commission, dated June 3, 1998 (''Amendment No. 2''). Amendment No. 2 makes one non-substantive change to the text of the Rule, removing a reference to the fact that the Exchange intends to roll out its own brokerage order routing system. In addition, the Exchange clarified, through an internal cross-reference, that any decision to terminate approval for a Terminal system under PCX rule 6.89(g) would be based on the factors set forth in PCX rule 6.89(b).

[6] *See* Securities Exchange Act Release No. 38270 (February 11, 1997), 62 FR 7286 (February 18, 1997).

[7] Letter from Earl H. Nemser, Managing Director, Interactive Brokers, LLC (''IB''), to Jonathan G. Katz, Secretary, Commission, dated March 11, 1997; letter from Earl H. Nemser, The Timber Hill Group, LLC (''Timber Hill''), to Chairman Levitt, Commissioners Hunt, Unger, Carey and Johnson, Commission, dated June 8, 1998. In further support of its March 11 comment letter, on August 15, 1997, IB supplemented its comment letter with a working paper entitled ''Affirmative Obligations of Market Makers: An Idea Whose Time Has Passed?'' Letter from Bradford L. Jacobowitz, General Counsel, IB, to Jonathan G. Katz, Secretary, Commission, dated August 14, 1997.

[8] Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Jonathan G. Katz, Secretary, Commission, dated April 21, 1997.