

general, to protect investors and the public interest. As noted above, Nasdaq believes the harmonization of Nasdaq's disclosure rules with Regulation FD will minimize issuer confusion while at the same time allowing issuers to utilize current technologies for the broad, non-exclusionary dissemination of material information to the public. In addition, Nasdaq believes the development of a list of categories of material information that must be disclosed to the MarketWatch Department prior to public dissemination will provide greater transparency for issuers while allowing Nasdaq to continue to ensure the fair and adequate dissemination of material information to the public.

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

Nasdaq 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 NASD 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. 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-2002-85 and should be submitted by August 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-19890 Filed 8-6-02; 8:45 am]

BILLING CODE 8010-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46289; File No. SR-NASD-2002-103]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend NASD Interpretive Material 8310-2 Regarding the Release of Disciplinary Information to the Public**

July 31, 2002.

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 July 31, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD. The NASD filed the proposal pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> The NASD provided the Commission with notice of its intent to file the proposed rule change on June 28, 2002. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

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

The NASD proposes to amend NASD Interpretive Material 8310-2 ("IM-8310-2") to clarify the terms under which the NASD will release disciplinary information to the public. The proposed rule change will become operative on September 1, 2002. The text of the proposed rule change is below. Proposed additions are in *italics*; proposed deletions are in *brackets*.

#### **IM-8310-2. Release of Disciplinary Information**

(a) through (c) No change.

(d)(1) [The Association] *NASD* shall release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD [Regulation, Inc.] *Regulatory Policy and Oversight* to be in the public interest. [The Association] *NASD* also may release to the public information with respect to any disciplinary decision issued pursuant to the Rule 8220 Series imposing a suspension or cancellation of the member or a suspension of the association of a person with a member, unless the National Adjudicatory Council determines otherwise. The National Adjudicatory Council may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice. [The Association] *NASD* may release to the public information on any [other final, litigated,] disciplinary decision issued pursuant to the Rule 8220 Series or Rule 9000 Series, not specifically enumerated in this paragraph, regardless of sanctions imposed, so long as the names of the parties and other identifying information is redacted.

(A) NASD shall release to the public, in unredacted form, information with respect to any disciplinary decision issued pursuant to the Rule 9300 Series that does not meet one or more of the criteria in IM-8310-2(d)(1) for the release of information to the public, provided that the underlying decision issued pursuant to the Rule 9200 Series meets one or more of the criteria in IM-8310-2(d)(1) for the release of information to the public, and information regarding such decision has been released to the public in unredacted form.

(B) In the event there is more than one respondent in a disciplinary decision issued pursuant to the Rule 9000 Series, and sanctions imposed on one or more, but not all, of the respondents meets one or more of the criteria in Rule IM-8310-2(d)(1) for the release of information to the public, NASD shall release to the public, in unredacted form, information with respect to the respondent(s) who meet such criteria, and may release to the public, in redacted form, information with respect to the respondent(s) who do not meet such criteria. Notwithstanding the foregoing, NASD shall release to the public, in unredacted form, information with respect to any respondent in a disciplinary decision issued pursuant to the Rule 9300 Series if the sanctions imposed on such respondent in the underlying decision issued pursuant to Rule 9200 meet one or more of the criteria for release of information to the public, and information with respect to that respondent has been released in unredacted form.

(2) No change.

(e) through (l) 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 NASD included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. 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 purpose of the proposed rule change is to amend IM-8310-2 to clarify the circumstances under which the NASD shall redact information released to the public with respect to Hearing Panel and Extended Hearing Panel disciplinary decisions issued under the Rule 9200 Series (hereinafter collectively referred to as "Hearing Panel decisions"), and National Adjudicatory Council ("NAC") disciplinary decisions issued under the Rule 9300 Series. The proposed rule change also conforms the timing for the release of information in redacted form to the timing for the release of information in unredacted form with respect to both Hearing Panel and NAC decisions. As further detailed below, the proposed rule change is effective immediately upon filing and will become operative on September 1, 2002.

IM-8310-2(d)(1) requires the NASD to release to the public information with respect to any disciplinary decision that: imposes a suspension, cancellation or expulsion of a member; suspends or revokes an associated person's registration; suspends or bars an associated person; or imposes monetary sanctions of \$10,000 or more. The NASD also may release to the public information about cases that involve a significant policy or enforcement determination where the President of NASD Regulatory Policy and Oversight (formerly the President of NASD Regulation, Inc.) deems the release of such information to be in the public interest.<sup>6</sup>

Additionally, pursuant to an amendment effective July 10, 2000,<sup>7</sup> IM-8310-2 permits the NASD to publish in redacted form decisions that do not meet any of the criteria for release of information to the public. As defined in IM-8310-2(d)(1), a redacted decision is one in which the names of the parties and other identifying information (such as the names of employer firms and addresses) are redacted prior to its release.

<sup>6</sup> In this transitional period, Mary Schapiro is serving both as President of NASD Regulation, Inc. and President of NASD Regulatory Policy and Oversight. NASD is describing Ms. Schapiro solely as President of NASD Regulatory Policy in the text of IM-8310-2 to avoid the necessity of amending the rule filing at such time as NASD Regulation, Inc. no longer exists.

<sup>7</sup> See Securities Exchange Act Release No. 42783 (May 15, 2000), 65 FR 32140 (May 22, 2000) (SR-NASD-2000-05).

The first proposed amendment to IM-8310-2(d)(1) would permit the prompt release, in redacted form, of disciplinary decisions that do not meet one or more of the criteria for release of information to the public under IM-8310-2(d)(1). IM-8310-2(d)(1) currently provides that the NASD shall promptly publish on its web site "any disciplinary decision" that meets one or more of the criteria for release of disciplinary information to the public. The July 10, 2000 amendment to IM-8310-2(d)(1) that permits the NASD to publish in redacted form disciplinary decisions that do not meet one or more of the criteria for release of information to the public, however, provides that release of information with respect to such decisions is limited to the publication of "final, litigated decisions."

Limiting the publication of redacted disciplinary decisions to "final, litigated decisions" has the unintended consequence of preventing the NASD from promptly releasing information with respect to Hearing Panel decisions; rather, the NASD must wait until the time for appeal has expired. Further, in the event the decision is appealed or called for review, the NAC decision is considered the "final, litigated decision," and the Hearing Panel decision is never published. The proposed rule change would amend IM-8310-2(d)(1) to change "final, litigated, disciplinary decision" as to the release of information in redacted form to "any disciplinary decision." This rule change would eliminate the current internal inconsistency in IM-8310-2 by establishing the same standard for the release of unredacted and redacted information, thereby permitting the NASD to publish all disciplinary decisions (in unredacted or redacted form as the case may be) promptly after issuance.

Proposed IM-8310-2(d)(1)(A) would address the situation in which the NAC lowers the sanctions imposed in a Hearing Panel decision so that the NAC decision no longer meets the criteria for release of information to the public. In such cases, the NASD releases information to the public with respect to the Hearing Panel decision in unredacted form on the NASD's web site and in redacted form with respect to the NAC decision.

To make it easier to follow the history of a case, NASD Office of Hearing Officers ("OHO") is in the process of enhancing its web site by adding a direct link from Hearing Panel decisions that are appealed or called for review to the subsequent NAC decisions. Linking an unredacted Hearing Panel decision to a redacted NAC decision clearly

eliminates the effectiveness of redacting the NAC decision; not linking the two decisions, however, obscures the subsequent history of the Hearing Panel decision. To eliminate the anomalous practice of initially releasing information about the same disciplinary matter first in unredacted form and then in redacted form, the proposed rule change would require the NASD to release NAC decisions that do not meet the publication criteria in unredacted form if the underlying Hearing Panel decision meets the criteria for release of information under IM-8210-2 and has been published in unredacted form. This proposed rule change would permit public investors and other interested persons who have read an unredacted Hearing Panel decision to follow the history of a disciplinary matter without having to read a NAC decision that redacts information previously released to the public.

Proposed IM-8310-2(d)(1)(B) would address the situation in which sanctions imposed on one or more, but not all, of the respondents in Hearing Panel or NAC decisions meet the criteria for release of information to the public. The proposed rule change would clarify that, in such situations, the NASD will release information with respect to both Hearing Panel and NAC decisions in unredacted form as to the respondents who meet the publication criteria and in redacted form as to the respondents who do not meet the publication criteria.

In some cases, a subsequent NAC decision may modify the sanctions imposed by the Hearing Panel so that particular respondent(s) in the Hearing Panel decision no longer meet the criteria for release of information to the public. Consistent with proposed IM-8310-2(d)(1)(A) as discussed above, information regarding respondents in NAC decisions that do not meet the criteria for release of information to the public will be released in unredacted form if the sanctions imposed on the respondent in the underlying Hearing Panel decision meet one or more of such criteria and the Hearing Panel decision as to that respondent was published in unredacted form.

## 2. Statutory Basis

The NASD believes that the proposal is consistent with the provisions of section 15A(b)(6) of the Act,<sup>8</sup> which requires, among other things, that NASD rules 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

NASD believes that the proposed rule change is designed to accomplish these ends by clarifying that the NASD will release information to the public with respect to Rule 9200 Series disciplinary decisions upon the issuance of such decisions and clarifying the circumstances under which the NASD will redact information with respect to all Rule 9000 Series disciplinary decisions.

### *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, 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

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> 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 proposal 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 20549-0609. 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-2002-103 and should be submitted by August 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-19891 Filed 8-6-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46294; File No. SR-PCX-2002-46]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Size of Option Orders Eligible for Facilitation Crossing

August 1, 2002.

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 July 25, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6). PCX provided the Commission with notice of its intention to file this proposal on July 16, 2002.

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).