Division of Enforcement from an administrative law judge's initial decision. The law judge dismissed an administrative proceeding against Russell Ponce.

The open meeting scheduled for Wednesday, October 27, 1999 at 2:00 p.m. has been canceled. The subject of this meeting was consideration of whether to issue a release requesting comments regarding when or under what conditions the Commission should accept financial statements of foreign private issuers that are prepared using standards promulgated by the International Accounting Standards Committee.

At time, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: October 25, 1999.

[FR Doc. 99–28316 Filed 10–26–99; 11:41 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42039]

Notice of Intention To Cancel Registrations of Certain Transfer Agents

October 20, 1999.

Notice is given that the Securities and Exchange Commission (''Commission'') intends To issue an order, pursuant to section 17A(c)(4)(B) of the Securities Exchange Act of 1934 (Exchange Act),[1] cancelling the registrations of the transfer agents whose names appear in the attached Appendix.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Gregory J. Dumark, Special Counsel, at 202/942–4187, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

Background

Section 17A(c)(4)(B) of the Exchange Act provides that if the Commission finds that any transfer agent registered with the Commission is no longer in existence or has ceased to do business as a transfer agent, the Commission shall by order cancel that transfer agent's registration. Accordingly, at any time after November 29, 1999, the Commission intends to issue an order cancelling the registrations of any or all of the transfer agents listed in the Appendix.

The Commission has made efforts to locate and determine the status of each of the transfer agents listed in the Appendix. In some cases, the Commission was unable to locate the transfer agent, and in other cases, the Commission learned that the transfer agent was no longer in existence or had ceased doing business. Based on the facts it has, the Commission believes that the transfer agents listed in the Appendix are no longer in existence or have ceased doing business as a transfer agent.

Any transfer agent listed in the Appendix that believes its registration should not be cancelled must notify the Commission in writing prior to November 29, 1999. Written notifications must be mailed to: Gregory J. Dumark, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001, or be sent by facsimile to Gregory J. Dumark at (202) 942–9695.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

Appendix

Registration No.	Name
(84–5767)	American Transfer & Registrar Inc.
(84–5394)	First Federal Savings & Loan Association of Montana.
(84–5779)	Franklin American Corp.
(84–5686)	Selena T. Jackson.
(84–5562)	Stephen Rudolph Jones, d/b/a New York Stock Transfer.
(84–1864)	Library Bureau, Inc.
(84–1606)	Mt. Olive Church of God in Christ-United Mission, Inc.
(84–1960)	Odenton Federal Savings & Loan Association.

[FR Doc. 99–28200 Filed 10–27–99; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78q–1(c)(4)(B).

[2] 17 CFR 200.30–3(a)(22).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42043; File No. SR–NASD–98–14]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 4, 5, and 6 to the Proposed Rule Change Relating to Sales Charges and Prospectus Disclosure for Mutual Funds and Variable Contracts

October 20, 1999.

I. Introduction

On March 12, 1998,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend Rule 2820 (the ''Variable contracts Rule'') and Rule 2830 (the ''Investment Company Rule'') of the Conduct Rules of the NASD. The Investment Company Rule would be amended to: (1) provide maximum aggregate sales charge limits for fund-of-funds arrangements; (2) permit mutual funds to charge installment loads; (3) prohibit loads on reinvested dividends; (4) impose redemption order requirements for shares subject to contingent deferred sales loads

[1] NASD Regulation initially submitted the proposed rule change on February 17, 1998; however, the submission failed to provide a statutory basis section. Because proposed rule changes are not deemed filed until all necessary components, such as a statutory basis section, are provided, the proposed rule change was deemed filed when the Commission received NASD Regulation's amendment providing the statutory basis for the proposed rule change (''Amendment No. 1''). *See* Letter to Katherine A. England, Assistant Director, Commission, from Joan C. Conley, Secretary, NASD Regulation, dated March 12, 1998. NASD Regulation submitted another amendment on June 11, 1998, making certain technical corrections (''Amendment No. 2''). *See* Letter to Katherine A. England, Assistant Director, Commission, from Joan C. Conley, Secretary, NASD Regulation, dated June 10, 1998. Amendment No. 2, however, was insufficient in form. As a result, on July 13, 1998, NASD Regulation filed another amendment, superseding and replacing all previous versions of the filing (''Amendment No. 3''). *See* Letter to Katherine A. England, Assistant Director, Commission, from Joan C. Conley, Secretary, NASD Regulation, dated July 10, 1998. The substance of Amendment No. 3 was published in the **Federal Register**.

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

[3] 17 CFR 240.19b–4.

("CDSLs"); and (5) eliminate duplicative prospectus disclosure. The Variable Contracts Rule would be amended to eliminate the specific sales charge limitations in the rule and a filing requirement relating to changes in sales charges.

The proposed rule change was published for comment in the **Federal Register** on August 17, 1998.[4] The NASD subsequently filed amendments to the proposed rule change on August 13, 1998, June 4, 1999, and September 13, 1999, respectively.[5] The Commission received 8 comments on the proposal.[6] This order approves the proposed rule change, as amended.

II. Description

A. Proposed Amendments to the Investment Company Rule

1. Fund-of-Funds

The National Securities Market Improvement Act of 1996 (the "1996 Amendments") amended the Investment Company Act of 1940 ("1940 Act") to, among other things, broaden the ability of mutual fund sponsors to establish "fund-of-funds" arrangements.

The Investment Company Rule currently does not take into account two-tier fund-of-funds structures in which asset-based sales charges are imposed at both the acquiring and underlying fund levels. The proposed amendments would amend the Investment Company Rule to ensure that, if a fund-of-funds charges distribution fees at both levels, the combined sales charges do not exceed the maximum percentage limits currently contained in the rule. The amended rule would permit an acquiring fund, an underlying fund, or both, to charge an asset-based sales fee that in the aggregate may not exceed .75 percent of average net assets and a service fee that in the aggregate does not exceed .25 percent of average net assets. Consistent with the current rule, aggregate front-end and deferred sales charges would be limited in any transaction to 7.25 percent, or 6.25 percent if the contract includes a service fee.

2. Deferred Sales Loads

In September 1996, the Commission amended Rule 6c–10 under the 1940 Act to permit new types of deferred stocks, such as back-end and installment loads. The proposed amendments to the Investment Company Rule also would permit these types of deferred sales charges. The amendments would conform the definition of "deferred sales charge" in the Investment Company Rule to the definition of "deferred sales load" in Rule 6c–10 under the 1940 Act (*i.e.*, "any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption").

3. Loads on Reinvested Dividends

The proposed amendments would prohibit loads on reinvested dividends. When NASD Regulation proposed to prohibit loads on reinvested dividends in Notice to Members 97–48, commenters representing unit investment trust ("UIT") sponsors objected to the proposed amendments. Although NASD Regulation does not believe that this practice is prevalent, it continues to believe that it is appropriate to prohibit loads on reinvested dividends for all investment companies, including UITs. It asserts that loads on reinvested dividends constitute excessive compensation, regardless of the type of investment company that imposes them. NASD Regulation proposes to defer implementation of this prohibition until April 1, 2000, to address the commenters' Y2K concerns.[7]

4. CDSL Calculations

The proposed amendments would prohibit members from selling fund shares that impose a CDSL unless the method used by the fund to calculate CDSLs in partial redemptions requires that investors be given full credit for the time they have invested in the fund. Because a CDSL declines over the period of a shareholder's investment, a first-in-first-out ("FIFO") redemption order requirement generally would ensure that transactions are subject to the lowest applicable CDSL. The proposed amendments, however, also would expressly provide that if a redemption order other than FIFO (*e.g.*, last-in-first-out, or "LIFO") would result in a redeeming shareholder paying a lower CDSL, the other method could be used.

5. Prospectus Disclosure

The Investment Company Rule currently prohibits a member from offering or selling shares of a fund with an asset-based sales charge unless its prospectus discloses that long-term shareholders may pay more than the economic equivalent of the maximum front-end sales charges permitted by the rule. In March 1998, the Commission adopted significant revisions to prospectus disclosure requirements for mutual funds. Included in the amendments is a requirement that the prospectuses of funds with asset-based sales charges include disclosure regarding Rule 12b–1 plans that is similar to the type of disclosure required by the Investment Company Rule. Accordingly, the proposed amendments would eliminate the prospectus disclosure requirement in the Investment Company Rule.

B. Proposed Amendment to the Variable Contracts Rule

In Notice to Members 97–48, NASD Regulation proposed to amend the Variable Contracts Rule to eliminate the maximum sales charge limitations. The commenters to NTM 97–48 strongly supported the proposed amendment because they viewed specific sales charge limits in the Variable Contracts Rule as unnecessary and inconsistent

[4] *See* Exchange Act Release No. 40310 (August 7, 1998), 63 FR 43974 (August 17, 1998).

[5] *See* Letter from Joan C. Conley, Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated August 12, 1998 ("Amendment No. 4"). Amendment No. 4 made grammatical and technical changes to the proposed rule language. NASD Regulation asserted that the changes contained in Amendment No. 4 were non-substantial, and that Amendment No. 4 superseded and replaced the previous filing and amendments thereto. *See* Letter from Thomas M. Selman, Vice President, Investment Companies/Corporate financing, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 19, 1999 ("Amendment No. 5"). Amendment No. 5 provided certain changes, discussed below, in response to commenters' concerns. *See* Letter from Thomas M. Selman, Vice President, Investment Companies/Corporate Financing, NASD Regulation, to Christine Richardson, Division of Market Regulation, Commission, dated September 13, 1999 ("Amendment No. 6"). As discussed below, Amendment No. 6 provides clarification with respect to certain issues.

[6] *See* Letters from Kathleen H. Moriarty, Carter, Ledyard & Milburn, to Jonathan G. Katz, Secretary, Commission, dated September 4, 1998 ("Carter Letter"); Felice R. Foundos, Chapman & Cutler, to Jonathan G. Katz, Secretary, Commission, dated September 4, 1998 ("Chapman & Cutler Letter"); Michael R. Rosella, Battle Fowler, to Jonathan G. Katz, Secretary, Commission, dated September 8, 1998 ("Battle Fowler Letter"); Nora M. Jordan, Davis Polk & Wardwell, dated September 8, 1998 ("Davis Polk Letter"); Frances M. Stadler, Deputy Senior Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated September 8, 1998 ("'ICI Letter"); Nathalie P. Maio, Senior Vice President, Deputy General Counsel, Prudential, to Jonathan G. Katz, Secretary, Commission, dated September 4, 1998 ("Prudential Letter"); Philip A. Heimowitz, Cahill Gordon & Reindel, to Jonathan G. Katz, Secretary, Commission, dated September 4, 1998 ("Cahill Letter"); and Mark J. Mackey, President and Chief Executive Officer, National Association for Variable Annuities, to Jonathan G. Katz, Secretary, Commission, dated September 8, 1998 ("NAVA Letter").

[7] *See* Amendment No. 5. NASD Regulation originally proposed to include a "grandfather provision" that would exempt from the operation of the prohibition all investment companies that currently impose such fees. The grandfather clause provision has since been eliminated. *See* Amemdment No. 6.

with the ''reasonableness'' standard enacted in the 1996 Amendments. Consistent with these comments, the proposed amendments would eliminate the maximum sales charge limitations in the Variable Contracts Rule. The proposed amendments also would make a conforming change to eliminate the requirement in the rule to file with the Advertising/Investment Companies Regulation Department the details of any changes in a variable annuity's sales charges.

III. Summary of Comments

A. Proposed Amendments to the Investment Company Rule

1. Fund-of-Funds

NASD Regulation proposed to amend the Investment Company Rule to ensure that the combined sales charges of a fund-of-funds that charges a distribution fee at both the acquiring and underlying fund levels, do not exceed the maximum percentage limits that are currently permitted by the rule. Under the proposed amendment, the aggregate asset-based sales charges of an acquiring fund and an underlying fund would not be subject to the cumulative sales limits that apply to other investment companies with asset-based sales charges. Instead, any asset-based fee charged by the acquiring fund and the underlying fund could not, in the aggregate, exceed .75% of average net assets. In addition, any service fee charged by the acquiring fund and the underlying fund could not, in the aggregate, exceed .25% of average net assets. The acquiring and underlying funds in a fund-of-funds structure, however, would remain individually subject to the cumulative limits in the Investment Company Rule.

The Commission received comment on the proposed definition of ''fund-of-funds.'' As proposed, ''fund-of-funds'' would have been defined as ''an investment company that invests any portion of its assets in the securities of registered open-end investment companies or registered unit investment trusts.'' Chapman & Cutler and the ICI believed this definition was too broad and might include funds that invest only a small portion of their assets in other funds. They suggested that the definition of ''fund-of-funds'' be modified to more closely reflect traditional fund of funds, such as those companies relying on Sections 12(d)(1)(F) and 12(d)(1)(G) of the 1940 Act.[8] In the alternative, the ICI suggested that the definition include only funds whose investments in other funds exceed the limits permitted under Section 12(d)(1)(A) of the 1940 Act.[9]

NASD Regulation has modified the definition of ''fund-of-funds'' by narrowing its scope to include only investment companies that acquire securities issued by other investment companies in excess of the amounts permitted under Section 12(d)(1)(A) of the 1940 Act.[10]

2. Deferred Sales Loads

NASD Regulation proposed to conform the definition of ''deferred sales charge'' in the Investment Company Rule to the definition in Rule 6c–10 under the 1940 Act (*i.e.,* ''any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption''). The Commission did not receive comment on this aspect of the proposal.

3. Loads on Reinvested Dividends

NASD Regulation proposed to prohibit NASD members from imposing front-end or deferred sales loads on the shares purchased through reinvested dividends. Several commenters objected to this prohibition.[11] In particular, the commenters believed that the prohibition would be especially disadvantageous to UITs. Although the prohibition contained a ''grandfather clause'' for existing UITs so that it would only apply to investment companies, including UITs, registered after a certain date, commenters believed that it would disrupt the reinvestment options for those UITs that were not eligible for the ''grandfather clause.'' [12] Some commenters asserted that such a prohibition was not justified because UIT investor does not pay a sales charge twice on the same assets when he or she purchases shares through reinvested dividends.[13] Moreover, some commenters pointed out that unlike mutual fund underwriters, UIT sponsors are not permitted to receive fees pursuant to Rule 12b–1 under the 1940 Act. Commenters believe that UIT sponsors should be permitted to recoup their expenses through sales charges imposed on reinvested dividends.[14]

Several commenters asserted that prohibiting such sales charges would be inconsistent with Commission exemptive orders that permit certain UIT sponsors to impose sales charges on reinvested dividends, subject to certain conditions.[15] Other commenters asserted that this prohibition would require certain UITs that offered deferred sales load structures to create multiple classes of shares, which could raise issues under the 1940 Act and the federal tax laws.[16]

Commmenters also believed that the prohibition would require UITs to develop expensive new computer systems to separate reinvestment shares when deferred sales charges are deducted.[17] Davis Polk questioned the Commission's authority to approve this portion of the rule change, given the Commission's moratorium on the implementation of new Commission rules that require major reprogramming of regulated entities' computer systems between June 1, 1999, and March 31, 2000.[18]

NASD Regulation responded to these comments by stating that it continues to believe that loads on reinvested dividends constitute excessive compensation, regardless of the type of investment company that imposes them. NASD Regulation believes that the proposed rule is not inconsistent with exemptive relief granted to UITs under the 1940 act, as that relief does not refer to any dividend reinvestment program, and that the exemptive orders provide no relief from the application of NASD Conduct Rules.[19]

NASD Regulation asserted that the proposed rule would not require UITs to adopt a multiple class structure, but provided no rationale to support this belief. Instead, it deferred to the Commission's Division of Investment Management for its expertise on the matter. In contrast to commenters' interpretation of the potential effect of the rule change, NASD Regulation believes that, whether an investment

[8] *See* Chapman & Cutler Letter; and ICI Letter.

[9] *See* ICI Letter.

[10] *See* Amendment No. 5.

[11] *See* Carter Letter; Chapman & Cutler Letter; Battle Fowler Letter; Davis Polk Letter; ICI Letter; Prudential Letter; and Cahill Letter. NASD Regulation has since eliminated the ''grandfather clause.'' *See* Amendment No. 6. Instead, NASD Regulation proposes to defer the prohibition until April 1, 2000. *See* Amendment No. 5.

[12] *See* Carter Letter; and Davis Polk Letter.

[13] *See* Carter Letter; Davis Polk Letter; Prudential Letter; and Cahill Letter.

[14] *See* Chapman & Cutler Letter; Prudential Letter; and Cahill Letter.

[15] *See* Carter Letter; ICI Letter; Prudential Letter; and Cahill Letter.

[16] *See* Battle Fowler Letter; and Chapman & Cutler Letter.

[17] *See* Carter Letter; and Davis Polk Letter.

[18] *See* Davis Polk Letter.

[19] NASD Regulation asserts that although the exemptive relief ''permitted UIT sponsors to charge installment loads, it does not appear to refer to any dividend reinvestment program. Indeed, we understand that at least two of these orders applied to fixed portfolio UITs that offered dividend reinvestment only into no-load mutual funds.'' *See* Amendment No. 5.

company's loads on reinvested dividends are excessive, is unrelated to whether the investment company charges Rule 12b–1 fees. NASD Regulation stated that the prohibition on charging front-end or deferred sales loads on shares purchased through reinvested dividends would apply to investment companies that have no Rule 12b–1 plan just as it would apply to investment companies that have such plans. It notes that, under the proposed rule change, UITs would not be prohibited from imposing sales charges on the initial purchase of UIT shares, which UITs may set at a level to adequately compensate them for their distribution costs.

NASD Regulation responded to the commenters' Y2K concerns by amending the proposed rule change to delay implementation of the prohibition until April 1, 2000.[20]

4. CDSL Calculations

NASD Regulation also proposed to reinstate requirements previously applicable under Rule 6c–10 under the 1940 Act concerning the order in which fund shares subject to a CDSL must be redeemed when an investor redeems some, but not all, of his fund shares. Chapman & Cutler commented that some investors, for business or tax reasons, may want to apply a different order of redemption than the one specified by the proposed rule (FIFO), and that the proposed rule therefore should be modified to allow investors to dictate a different order of redemption.[21] The ICE commented that, while it does not object to the provision, it believes that the rule language should be modified to specify that it applies to partial redemptions. The ICI also recommended that the proposed rule language be modified to provide that an order of redemption other than FIFO may be used if such an order ''could'' (rather than ''would'') result in the shareholder paying a lower CDSL.[22]

NASD Regulation indicated that it does not intend to modify the proposed rule. NASD Regulation stated that it was not aware of any significant problems that had arisen as a result of identical requirements that were previously imposed on the investment company industry by Rule 6c–10 under the 1940 Act. NASD Regulation also is concerned that if investors were permitted to consent to a different order of redemption, investment company account agreements could include standard language that effectively would allow a fund sponsor to determine the order of redemption. Further, NASD Regulation does not believe it is necessary to modify its proposal to reflect that it applies only to partial redemptions because, if all shares are redeemed, the issue of redemption order becomes moot.[23]

5. Prospectus Disclosure

NASD Regulation proposes to eliminate a prospectus disclosure requirement in the Investment Company Rule that is already required by Commission rules. The Commission did not receive comment on this aspect of the proposal.

B. Proposed Amendment to the Variable Contracts Rule

NASD Regulation proposes to amend the Variable Contracts Rule to eliminate sales charge limits for variable annuity contracts, as well as to eliminate the requirement in the rule to file the details of any changes in a variable annuity's sales charges. NAVA strongly supported eliminating the sales charge limits on variable annuity sales loads. NAVA also believed that the imposition of sales charge restrictions on variable annuities would be inconsistent with the purpose and intent of the ''reasonableness'' standard adopted in the 1996 Amendments.[24]

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Association, and, in particular, with the requirements of Section 15A(b)(6).[25] Section 15A(b) requires that the rules of the Association, among other things, be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Commission finds that the proposed rule change will further these requirements by adapting the Investment Company Rule and the Variable Contracts Rule to take into account recent legislation, regulations promulgated by the Commission, and new distribution arrangements.[26]

A. Amendments to the Investment Company Rule

1. Fund-of-Funds

The Commission finds that the proposed application of aggregate sales charge limits on fund-of-funds that charge distribution fees at both levels to be consistent with the Act. Specifically, the Commission believes that the proposed amendment clarifies that the Investment Company Rule applies to two-tier fund-of-funds structures in which asset-based sales charges are imposed at both the acquiring and underlying fund levels. The application of these sales charge limits should help to ensure that charges remain reasonable and do not become excessive for investors.

The Commission also believes that the definition of ''fund-of-funds'' being adopted is consistent with the common understanding of the type of investment company that constitutes a fund-of-funds. As proposed, ''fund-of-funds'' would have been defined as ''an investment company that invests any portion of its assets in the securities of registered open-end investment companies or registered unit investment trusts.'' The commenters indicated that the proposed definition was broader than the traditional understanding of what constitutes a fund-of-funds. In response to public comment, NASD Regulation revised this definition to include only those investment companies that acquire securities issues by another investment company in excess of the amounts permitted under Section 12(d)(1)(A) of the 1940 Act. Section 12(d)(1)(A) of the 1940 Act permits an investment company to purchase a limited amount of the total outstanding voting stock of another investment company.[27] Therefore, the definition of fund-of-funds will exclude investment companies that invest only a small portion of their assets in other funds' shares. The Commission believes that the definition being adopted

[20] *See* Amendment No. 5.

[21] *See* Chapman & Cutler Letter.

[22] *See* ICI Letter.

[23] *See* Amendment No. 5.

[24] *See* NAVA Letter.

[25] 15 U.S.C. 78o–3(b)(6).

[26] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

[27] Section 12(d)(1)(A) generally prohibits any registered investment company and companies controlled by it (the ''acquiring company'') from acquiring securities of any other investment company (the ''acquired company''), and any investment company and companies controlled by it (the ''acquiring company'') from acquiring any security issued by a registered investment company (the ''acquired company'') if, after the acquisition, the acquiring company would own in the aggregate (i) more than 3% of the total outstanding voting stock of the acquired company; (ii) securities issued by the acquired company having an aggregate value in excess of 5% of the value of the total assets of the acquiring company; or (iii) securities issued by the acquired company and all other investment companies (other than treasury stock of the acquiring company) having an aggregate value in excess of 10% of the value of the total assets of the acquiring company.

sufficiently addresses the concern that a fund-of-fund might assess unlimited sales loads (*i.e.,* excessive layering of sales loads) by clarifying that the Investment Company Rule applies to those fund-of-funds that invest more than a *de minimis* amount of their assets in the shares of other investment companies. The Commission further believes that NASD Regulation's modification to its proposed definition of fund-of-funds will make it more manageable for investment companies in a fund-of-funds structure to monitor and enforce compliance with the requirements of the Investment Company Rule.

2. Deferred Sales Loads

The Commission finds it appropriate to amend the definition of ''deferred sales charge'' in the Investment Company Rule to conform to the definition in Rule 6c–10 under the 1940 Act (*i.e.,* ''any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption''). The Commission believes that conforming the definition in this manner will allow for more flexibility in structuring deferred sales loads (*e.g.,* by permitting installment loads), as taken into account by the 1996 Amendments to Rule 6c–10. The Commission also notes that the conforming definition will prevent possible confusion and compliance burdens that could result from inconsistent definitions in Commission and NASD rules.

3. Loads on Reinvested Dividends

NASD Regulation proposed to prohibit NASD members from imposing front-end or deferred sales loads on shares purchased with reinvested dividends. As noted above, the Commission received substantial comment on this aspect of the proposal, all of it critical. Specifically, commenters believed that the proposed prohibition included in NASD Rule 2830(d)(6) would create a disadvantage for UITs by restricting only front-end and deferred sales loads, but not asset-based sales charges, *e.g.*, Rule 12b–1 fees, which UIT's are not permitted to charge. Commenters believe that UITs would be disadvantaged because non-UIT funds would be permitted to charge Rule 12b–1 fees on reinvested dividends, and therefore recoup their distribution costs, while UITs would not. As noted by the NASD, UITs may set the sales charge on the initial purchase at a level to adequately compensate them for their distribution costs.

Commenters further asserted that the proposed rule change would require UITs to create two classes of units with different characteristics, which would result in each class representing a different pool or specified securities, and would therefore raise issues under the 1940 Act and federal tax law. NASD Regulation asserted its view that ''complying with the proposed amendments should not require UITs to adopt a multiple class structure.'' NASD Regulation also consulted with staff in the Commission's Division of Investment Management on the matter, and the staff agrees that complying with the proposed amendments should not result in the creation of multiple classes.[28] The Commission believes that the proposed rule change is consistent with the Act in that it should prevent sales charges from exceeding the appropriate limits, thereby benefiting investors and the public interest.

4. CDSL Calculations

The Commission believes that it is consistent with the Act to reinstate requirements previously applicable under Rule 6c–10 under the 1940 Act, concerning the order in which fund shares subject to a CDSL must be redeemed when an investor redeems some, but not all, of his fund shares. Although commenters asserted that investors should be able to choose the order of redemption used in calculating the CDSL applied to their shares, the Commission agrees with NASD Regulation that such discretion could result in investment companies incorporating standard language into account agreements, effectively allowing a fund sponsor to determine the order of redemption. The Commission believes that the provision provides sufficient flexibility as proposed. Specifically, the provision provides that if a redemption order other than FIFO (*e.g.*, LIFO) would result in a redeeming shareholder paying a lower CDSL, the other method may be used. This approach should benefit investors by permitting them to pay the lowest CDSL when partially redeeming shares.

5. Prospectus Disclosure

The Commission finds it appropriate to eliminate a prospectus disclosure requirement currently included in the Investment Company Rule in light of the Commission's 1998 revisions to the prospectus disclosure requirements for mutual funds. Specifically, the Commission requires that mutual funds with asset-based sales charges include disclosure in their prospectuses regarding Rule 12b–1 plans that is similar to the disclosure required in the Investment Company Rule. The adoption of this prospectus disclosure requirement made the prospectus disclosure requirement in the Investment Company Rule duplicative and unnecessary.

B. Proposed Amendment to the Variable Contracts Rule

The Commission believes that the elimination of the maximum sales charge limitations from the Variable Contracts Rule is appropriate in light of the ''reasonable'' standard adopted in the 1996 Amendments. Specifically, in 1996, the 1940 Act was amended to exempt variable annuity (as well as variable life insurance) contracts from the specific charge restrictions contained in Sections 26 and 27. In place of the specific charge restrictions, the 1996 amendments added a section to the 1940 Act[29] to regulate variable contract charges by requiring that the fees and charges under a variable contract, in the aggregate, be reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company.[30] The Commission believes eliminating the maximum sales charge limitations from the Variable Contracts Rule is appropriate in light of the 1996 amendments.

Because Rule 2820 provisions regulating sales charges for variable annuities are being eliminated, NASD Regulation also proposed to eliminate the requirement to file with the Advertising/Investment Companies Regulation Department the details of any changes in a variable annuity's sales charges.[31] The Commission believes the elimination of this filing requirement is appropriate in light of the concurrent elimination of the maximum sales charge limitations in the Variable Contracts Rule.

The Commission finds good cause to approve Amendment No. 4 to the proposed rule change prior to the 30th days after the date of publication of notice filing thereof in the **Federal Register**. Amendment No. 4 makes grammatical and technical changes to the proposed rule language and supersedes and replaces the previous filing and amendments thereto. It does not substantive modify the proposal. Accordingly, the Commission believes that it is consistent with Sections

[28] *See* Amendment No. 5.

[29] *See* Section 26(e)(2) of the 1940 Act.

[30] Insurance companies issuing variable contracts are required to represent in the contract registration statements that fees and charges are reasonable.

[31] *See* Amendment No. 6.

15A(b)(6) and 19(b)(2) of the Act to approve Amendment No. 4 to the proposed rule change on an accelerated basis.

The Commission finds good cause to approve Amendment No. 5 to the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 5 does two things. First, in response to commenters, Amendment No. 5 modifies the definition of ''fund-of-funds'' so that it includes only those investment companies that acquire securities issued by any other investment company in excess of the amounts permitted under Section 12(d)(1)(A) of the 1940 Act. This definition is narrower than the one originally proposed and should make clear that the combined sales charge limits apply only to those structures traditionally understood to be funds-of-funds. Second, also in response to commenters, Amendment No. 5 delays the implementation of the prohibition of sales loads on reinvestment dividends until April 1, 2000. This addresses commenters concerns regarding Y2K and the computer systems changes that the proposed rule change will necessitate. Accordingly, the Commission believes that is consistent with Sections 15A(b)(6) and 19(b)(2) of the Act to approve Amendment No. 5 to the proposed rule change on an accelerated basis.

The Commissions finds good cause to approve Amendment No. 6 to the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 6 clarifies that the prohibition of front-end or deferred sales charges on shares of investment companies purchased with reinvested dividends is not meant to apply to investment companies whose registration statements became effective under the Securities Act of 1933 prior to April 1, 2000. Amendment No. 6 also clarifies that the definition of ''fund-of-funds'' is intended only to cover an investment company that invests in the securities of another registered investment company. Accordingly, the Commission believes that it is consistent with Sections 15A(b)(6) and 19(b)(2) of the Act to approve Amendment No. 6 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 4, 5, and 6 including whether the proposed rule changes are 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. 20549–0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NASD–98–14 and should be submitted by November 18, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–NASD–98–14) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

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[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42050; File No. SR–PCX–99–32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Adoption of a Continued Listing Fee

October 21, 1999.

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 August 25, 1999, the Pacific Exchange, Inc. (''PCX'' or ''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. 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 PCX is proposing to adopt a new $500 per month/per issue fee that will apply to Options Market Makers and Lead Market Makers (''LMMs'') who want to continue trading certain low-volume option issues.

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 discusses 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.

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 adopt a new Continued Listing Fee for option issues. The purpose of the new fee is two-fold. First, it is designed to facilitate the delisting of inactive or low-volume option issues that are currently listed and traded on the PCX. The Exchange recognizes the industry-wide need to reduce the overall amount of quotation and last sale reporting information that is currently being disseminated through the Options Price Reporting Authority (''OPRA''). At the same time, the Exchange is seeking to provide the members who trade these inactive issues with an opportunity to continue trading the ones that they deem to be most promising, subject to the fee.[3] Second, the new fee is designed to allow the Exchange to recover the costs of

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

[2] 17 CFR 240.19b–4.

[3] In September 1999, 273 of the approximately 800 issues traded on the Exchange were subject to the new fee. Of those issues, LMMs paid the $500 fee for 190 issues. Consequently, 83 issues were eligible for redistribution and were posted for reallocation. Because there were no applicants for those issues, the Reallocation Committee delisted them. Meeting among Michael Pierson, Director, Regulatory Policy, PCX; and Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission; Gordon Fuller, Special Counsel, Division of Market Regulation, Commission; Ira Brandriss, Attorney, Commission; and Melinda Diller, Law Clerk, Commission (October 8, 1999).