of the Acquiring Fund's shares. As a result, each Fund may be deemed to be an affiliated person of an affiliated person of the other Fund.

4. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) exempting them from section 17(a) to the extent necessary to complete the Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b). Applicants state that the terms of the Reorganization are reasonable and fair and do not involve overreaching. Applicants also state that the investment objectives of the Acquired Fund are identical to those of the Acquiring Fund, and that their investment policies and strategies and similar. Applicants further state that the Boards, including a majority of the Disinterested Trustees, found that the participation of the Funds in the Reorganization is in the best interests of each Fund and its shareholders and that such participation will not dilute the interests of the existing shareholders of each Fund. In addition, applicants state that the Reorganization will be on the basis of the Funds' relative net asset values.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–18518 Filed 7–24–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44573; File No. SR–NASD–2001–21]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to the Fee Structure of the Code of Arbitration Procedure

July 18, 2001.

I. Introduction

On March 23, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] proposed a rule change to amend Rule 10301 of the Code of Arbitration of the NASD, to amend the Code of Arbitration of Procedure (''Code'') to clarify or simplify several fee-related provisions of the Code.

On April 20, 2001, the NASD filed Amendment No. 1 to the proposal.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on April 30, 2001.[4] The Commission received one comment letter on the proposal.[5] On July 17, 2001, the NASD filed Amendment No. 2 to the proposal.[6] This notice and order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendment No. 2.

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Laura Leedy Gansler, Counsel, NASD Dispute Resolution, Inc., to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated April 19, 2001 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 44214 (April 24, 2001), 66 FR 21423.

[5] *See* letter from Linda P. Drucker, Vice President & Associate General Counsel, Charles Schwab, to Jonathan Katz, Secretary, Commission, dated May 22, 2001 (''Schwab Letter'').

[6] *See* letter from Laura Leedy Gansler, Counsel, NASD Dispute Resolution, Inc., to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission dated July 16, 2001 (''Amendment No. 2''). In Amendment No. 2, the NASD modify the proposed changes to Rule 10306 of the Code to clarify that parties will be responsible of payment of fees in the event of settlement in accordance with the terms of the Code.

II. Description of the Proposal

Rule 10306 of the Code relating to the assessment or payment of fees provides that parties to arbitrations may settle their dispute at any time. The proposed rule change amends Rule 10306 to provide that if settling parties fail to agree on the allocation of outstanding fees, the fees will be divided equally among all parties by default. The proposed rule change also modifies the timing of the payment of adjournment fees.

Rule 10319 of the Code currently requires parties requesting adjournment of an arbitration hearing to deposit a fee at the time the adjournment is requested. If the adjournment is not granted, the deposit is returned; if it is granted, the arbitrators may return the deposit in their discretion. The proposed rule change provides that payment of the adjournment fee is required only if an adjournment is granted, rather than requiring a deposit of fees when a request for adjournment is made. The proposed rule change also addresses a technical imperfection in the current adjournment fee rule. The current rule provides that, for initial adjournment requests, the fee is equal to the amount of the initial hearing session fee; for second or subsequent adjournment requests, the amount is twice the initial hearing session fee, but not more than $1,000. The Exchange represents that the intent of this portion of the current rule is to discourage repeat adjournments, by having second and subsequent adjournments cost substantially more than the first adjournment. When the NASD's new fee schedule went into effect in March 1999, hearing session fees were generally increased.[7] For several claim categories, the hearing session fee now exceeds $1,000, meaning that the rule as presently written can result in a lower fee for second and subsequent adjournments. To address this anomaly, the proposed rule change increases the current $1,000 cap to $1,500.

Finally, the proposed rule change amends Rule 10328 of the Code, governing amendments to pleadings, to clarify that when a claim is amended to increase the amount in dispute, NASD Dispute Resolution will recalculate filing fees, hearing session deposits, surcharges, and process fees based on the new, increased claim.

III. Summary of Comments

The Commission received one comment letter on the proposed rule

[7] *See* Securities Exchange Act Release No. 41056 (February 16, 1999), 64 FR 10041 (March 1, 1999) (File No. SR–NASD–97–79).

change.[8] The Commenter expressed concern that, as drafted, the amendment proposed by the NASD to Rule 10306(b) was a disincentive to settlement because parties would be obligated to pay for hearings that were scheduled months in advance if the case settled. In pertinent part, the proposed rule language stated:

The terms of a settlement agreement do not need to be disclosed to NASD Dispute Resolution. However, the parties will remain responsible for payment of fees incurred, including fees for previously scheduled hearing sessions.

The Commenter pointed out that one of the factors that contributes to the decision to settle a case is the desire to avoid fees and assessments. However, the Commenter felt that under the NASD's proposed language, parties who settled their case after a hearing was scheduled, but several months before the hearing was held, would necessarily incur hearing fees.

In response to the Commenter's concerns, the NASD submitted Amendment No. 1 to the proposed rule change.[9] In Amendment No. 1, the NASD noted that Rules 10332(f) and (g) of the Code provide that settling parties are only responsible for payment of hearing session fees for hearings held or scheduled within eight days of the date that NASD Dispute Resolution is notified of the settlement. Therefore, the NASD explained that under the current rule and the proposed rule change, settling parties would only be responsible for fees for hearing sessions that were held, or scheduled to be held, within eight days of the date the NASD Dispute Resolution receives notice of the settlement.

However, the NASD amended the proposed rule to eliminate any possible confusion regarding whether the proposed rule change would alter the Code's current provisions regarding what hearing session fees settling parties are required to pay. The NASD proposed to amend Rule 10306(b) to read, in pertinent part:

The terms of a settlement agreement do not need to be disclosed to the NASD Dispute Resolution. However, the parties will remain responsible for payment of fees incurred under the Code.[10]

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[11] The Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that the Association's rules be designated 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. Specifically, the Commission believes that the proposed rule change will help protect investors and the general public by simplifying and clarifying various fee-related provisions of the Code.

V. Amendment No. 2.

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In amendment No. 2, the Exchange clarified that the proposed rule change would not effect the applicability of the Code's current provisions regarding what hearing session fees settling parties are required to pay.

The Commission finds that the NASD's proposed change in Amendment No. 2 simply clarifies the proposed rule change and raises no new regulatory issues. Further, the Commission believes that Amendment No. 2 does not significantly alter the original proposal, which was subject to full notice and comment period. Therefore, the Commission finds that granting accelerated approval to Amendment No. 2 is appropriate and consistent with Section 19(b)(2) of the Act.[13]

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether the proposed amendment 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 amendment, all written statements with respect to the proposed amendment that are filed with the Commission, and all written communications relating to the amendment 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–2001–21 and should be submitted by August 15, 2001.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NASD–2001–21), as amendment, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–18445 Filed 7–24–01; 8:45 am]

BILLING CODE 8010–01–M

[8] *See* note 4, *supra.*

[9] *See* note 5, *supra.*

[10] *See* note 4, *supra.*

[11] In approving this rule proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78*o*(b)(6).

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release no. 34–44571; File No. SR–PCX–2001–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to Membership, Options Floor and Market Maker Fees

July 18, 2001.

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 May 31, 2001, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On July 12, 2001, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission

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

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Cindy L. Sink, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated by July 11, 2001 (''Amendment No. 1''). In Amendment No. 1, the Exchange requested that the proposed rule change be considered a ''non-controversial'' rule change pursuant to paragraph (f)(6) of Rule 19b–4 under Section 19b–4(b)(3)(A)(iii) of the Act. In the Exchange's original filing, it had invoked Section 19(b)(3)(A)(ii) of the Act and Rule 19b–4(f)(2) thereunder as the basis for effectiveness upon filing of the proposed rule change. In addition, in