

proposes to retain the "defamatory in nature" standard proposed in NtM 01-65. Although this standard was the subject of many comments, it has been used successfully in the arbitration forum in registered representative/member firm arbitrations, and NASD believes that it is appropriate as proposed.

NASD proposed in NtM 01-65 to limit expungement relief in stipulated awards to cases involving "factual impossibility" or "clear error" on the basis that persons in those circumstances should be able to avail themselves of the settlement opportunity outside of arbitration, and then request that an arbitrator issue an award that incorporates the stipulated settlement and includes expungement relief for certain named parties. In excluding the other two grounds for expungement from its initial proposal, NASD noted that it believed that it was unlikely that claimant or claimant's counsel would agree that the claim or information at issue was lacking in legal merit or was defamatory in nature. In response to comments, NASD proposes to modify the original proposal to allow expungement relief in stipulated awards (or on the basis of a settlement) based on all three grounds, with a uniform requirement that there be specific judicial or arbitral findings in all such cases. In connection with making the required arbitral findings in such cases, NASD will explore the use of telephonic versus in-person hearings, as well as the option of making a decision based on briefs and affidavits from the parties and relevant third parties.

In response to commenters' concerns about the burdens and costs in naming NASD as an additional party in any judicial proceeding seeking expungement relief or confirming an arbitration award containing expungement relief and serving NASD with the appropriate court papers, NASD proposes to retain these requirements, but it further proposes to permit parties to ask NASD to waive the requirement that it be made a party upon a showing that the expungement relief being requested is within the established standards. This will save members and NASD time and expense by enabling NASD to review the findings of the arbitrators or court and determine to waive participation in the judicial proceeding if the findings meet at least one of the standards in the rule. If the expungement order fails to meet at least one of the standards in the rule, NASD will participate in the judicial proceeding and oppose the expungement. NASD also proposes to retain discretion not to oppose

expungement relief in exceptional cases where the basis for the expungement does not fall within one of the three standards. NASD would exercise such discretion only if it determines that the expungement is meritorious and would have no material adverse effect on investor protection, the integrity of the CRD system, or regulatory requirements.

After reviewing the comments, NASD also determined not to adopt a rule or Interpretive Material that would explicitly articulate NASD's authority to pursue disciplinary actions for violations of just and equitable principles of trade against a member or associated person who seeks to have information about an arbitration claim expunged after there has been an award rendered against that member by the arbitrators or seeks to expunge any arbitration award that does not contain an expungement order and a finding of at least one of the criteria described in the Notice. NASD believes that it currently has authority under Rule 2110 to bring a disciplinary action against NASD members and their associated persons who contravene the standards set forth in NASD's proposed rule and policies. NASD will revisit this issue in the future should it appear that such a rule is necessary.

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 self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, as amended, or

B. Institute proceedings to determine whether the proposed rule change, as amended, 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, as amended, 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, as amended, that are filed with the Commission, and all written

communications relating to the proposed rule change, as amended, 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 No. SR-NASD-2002-168 and should be submitted by March 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47418; File No. SR-ODD-2003-01]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Supplement To Amend the Options Disclosure Document Regarding Options on Fund Shares, Settlement Prices for Index Options, and the Exemption of Standardized Options from the Provisions of the Securities Act of 1933; and Amendment to the Options Disclosure Document Front Cover Page To Identify the Markets in Which Options Are Traded

February 27, 2003.

On February 25, 2003, the Options Clearing Corporation ("OCC") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Rule 9b-1 under the Securities Exchange Act of 1934 ("Act"),¹ five definitive copies of a Supplement to its options disclosure document ("ODD"), which amends the ODD to describe, among other things, the risks and characteristics of trading in options, and, in particular, options on fund shares, settlement prices for index options, and the exemption of standardized options from the provisions of the Securities Act of 1933.² The ODD would also be amended to update its front inside cover page so

¹¹ 17 CFR 200.3-3(a)(12).

¹ 17 CFR 240.9b-1.

² See letter from Jean M. Cawley, First Vice President and Deputy General Counsel, OCC, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated February 24, 2003.

that it contains a current list of the U.S. exchanges that trade options issued by the OCC.

The ODD currently contains general disclosures on the characteristics and risks of trading standardized options. The Commission has approved options exchange proposals to list and trade options on particular fund shares based on fixed-income securities.³ To accommodate options on these particular types of funds, the Commission also approved an OCC proposal to replace the terms "stock fund options" and "stock fund shares" with the terms "fund options" and "fund shares" respectively, and also eliminated all references to "stock" or "equity" within the definitions to these terms.⁴ To provide a description of options on these particular types of fund shares based on fixed-income securities, the proposed Supplement amends the ODD to state that the term "fund shares" may include non-equity securities.

The Commission has also approved an OCC rule proposal that gives the OCC the ability to fix settlement prices for OCC-cleared index options where appropriate in the case of market disruptions.⁵ The proposed Supplement amends the ODD to incorporate a description of this change.

In addition, the Commission recently exempted standardized options issued by a registered clearing agency and traded on a registered national securities exchange or association from the provisions of the Securities Act of 1933,⁶ except for the antifraud provisions of Section 17A of the Securities Act of 1933.⁷ As a result, standardized options covered by the ODD are no longer required to be registered under the Securities Act of 1933, an OCC registration statement will no longer be available for inspection at the OCC's office, and copies of an OCC prospectus for standardized options will no longer be available from the OCC or the U.S. options markets. The proposed Supplement amends the ODD to

incorporate descriptions of these changes.

Finally, the ODD would also be amended to update its front inside cover page so that it contains a current list of the U.S. exchanges that trade options issued by the OCC. Specifically, the list would be amended to delete reference to the New York Stock Exchange, Inc. ("NYSE") (which no longer trades standardized options issued by the OCC) and its corporate address, and to add The International Securities Exchange, Inc. ("ISE") (which currently trades standardized options issued by the OCC) and its corporate address.

The Commission has reviewed the proposed ODD Supplement and finds that it complies with Rule 9b-1 under the Act.⁸ The Supplement is intended to be read in conjunction with the more general ODD, which, as described above, discusses the characteristics and risks of options generally. The Supplement provides additional information describing options on fund shares and the types of securities that can underlie them, the OCC's ability to fix settlement prices for OCC-cleared index options where appropriate in the case of market disruptions, and the implications resulting from the exemption of standardized options from the provisions of the Securities Act of 1933.

Finally, the Commission has reviewed the proposed changes that update the front inside cover page of the ODD. Specifically, the Commission finds that it accurately identifies the markets in which options are currently traded pursuant to Rule 9b-1(c)(4) under the Act.⁹

Rule 9b-1 under the Act¹⁰ provides that an options market must file five copies of an amendment or supplement to the ODD with the Commission at least 30 days prior to the date definitive copies are furnished to customers, unless the Commission determines otherwise, having due regard to the adequacy of information disclosed and the public interest and protection of investors.¹¹ In addition, five definitive copies shall be filed with the Commission not later than the date the amendment or Supplement, or the amended options disclosure document, is furnished to customers. The Commission has reviewed the Supplement and amendment, and finds them consistent with the protection of

investors and in the public interest to allow the distribution of these documents as of the date of this order.

It is therefore ordered, pursuant to Rule 9b-1 under the Act,¹² that the proposed Supplement (SR-ODD-2003-01) regarding options on fund shares, settlement prices for index options, and the exemption of standardized options from the provisions of the Securities Act of 1933, as well as the proposed amendment to the Options Disclosure Document front cover page to identify the markets in which options are currently traded are approved. The Commission has also determined that definitive copies can be furnished to customers as of the date of this order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47428; File No. SR-PCX-2003-05]

Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Linkage Fee Charges

March 3, 2003.

On January 31, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² to provide for fees for certain options intermarket linkage orders. The proposed rule change was published in the **Federal Register** on February 13, 2003.³ No comment letters were received on the proposal. On February 27, 2003, the Exchange withdrew the proposed rule change.⁴

¹ 17 CFR 240.9b-1.

² 17 CFR 200.30-3(a)(12).

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ See Securities Exchange Act Release No. 47330 (February 6, 2003), 68 FR 7405.

⁶ See letter from Mai Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 26, 2003.

³ See Securities Exchange Act Release Nos. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002) (approving File No. SR-Amex-2001-35); and 46435 (August 29, 2002), 67 FR 57046 (September 6, 2002) (approving File No. SR-CBOE-2002-47).

⁴ See Securities Exchange Act Release No. 46914 (November 26, 2002), 67 FR 72261 (December 4, 2002) (approving File No. SR-OCC-2002-22).

⁵ See Securities Exchange Act Release No. 46561 (September 26, 2002), 67 FR 61943 (October 2, 2002) (approving File No. SR-OCC-2002-09).

⁶ See Securities Exchange Act Release No. 47082 (December 23, 2002), 68 FR 188 (January 2, 2003) (adopting File No. S7-29-02 creating an exemption for standardized options from provisions of the Securities Act of 1933 and from the registration requirements of the Act).

⁷ 15 U.S.C. 78q-1.

⁸ 17 CFR 240.9b-1.

⁹ 17 CFR 240.9b-1(c)(4).

¹⁰ 17 CFR 240.9b-1.

¹¹ This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.