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.

Margaret H. McFarland, Deputy Secretary.

Appendix

<table>
<thead>
<tr>
<th>Registration No.</th>
<th>Name</th>
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<tbody>
<tr>
<td>(84–5767)</td>
<td>American Transfer &amp; Registrar Inc.</td>
</tr>
<tr>
<td>(84–5394)</td>
<td>First Federal Savings &amp; Loan Association of Montana</td>
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<tr>
<td>(84–5779)</td>
<td>Franklin American Corp.</td>
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<tr>
<td>(84–5686)</td>
<td>Selena T. Jackson</td>
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<tr>
<td>(84–5562)</td>
<td>Stephen Rudolph Jones, d/b/a New York Stock Transfer</td>
</tr>
<tr>
<td>(84–1864)</td>
<td>Mt. Olive Church of God in Christ-United Mission, Inc.</td>
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</tbody>
</table>

SECURITIES AND EXCHANGE COMMISSION


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, 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.


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...
certain changes, discussed below, in response to Regulation, Commission, dated July 19, 1999. The NASD subsequently filed amendments to the proposed rule change on August 13, 1998, June 4, 1999, and September 13, 1999, respectively.3 The Commission received 8 comments on the proposal. 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 on 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 sales charges, 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, NASD Regulation proposed 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 requirements 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

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 Amendment No. 6.
with the "reasonableness" standard enacted in the 1996 Amendments.
Conspicuous 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. 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.

   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.

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. 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." 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. 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.

   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. 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.

   Commenters also believed that the prohibition would require UITs to develop expensive new computer systems to separate reinvestment shares when deferred sales charges are deducted. 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.

   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.

   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

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8 See Chapman & Cutler Letter; 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 of "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 sponsor 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 to a variable annuity 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, 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 consistent with the Act. Specifically, the Commission believes that the proposed application of aggregate sales charge limits on fund-of-funds that invests any portion of its assets in the securities of registered open-end investment companies or registered unit investment trusts.26 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.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 NAVA Letter.
25 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).
26 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 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.
27 See Amendment No. 5.
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 UIT’s 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 UIT’s would not. As noted by the NASD, UIT’s 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. 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 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. 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. 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 substantively modify the proposal. Accordingly, the Commission believes that it is consistent with Sections 2830(d)(6) and 2831 of the 1940 Act.
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 Commission 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 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 PCX is proposing to adopt a new fee for 190 issues. Consequently, 83 issues were traded on the Exchange were subject to the new fee. Of those issues, LMMs paid the $500 per month per issue fee that will be charged to 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 Continuation 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.

Second, the new fee is designed to allow the Exchange to recover the costs of soliciting public 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.