

qualified orders will be made monthly in arrears to qualifying specialists at a rate calculated as a single weighted average rate based on volume for the month most recently ended. A qualifying specialist is an equity specialist. Qualifying orders are certain orders delivered electronically from off the floor of the Exchange, excluding all orders for Portfolio Depositary Receipts, Index Fund Shares, and Trust Issued Receipts. System Orders up to 2,099 shares of a member or member organization trading as an agent for the account of a non-member competing market maker will not be subject to revenue sharing.

In its pending filing with the Commission relating to the Exchange's proposed New Equity Market Structure,⁶ the Exchange has stated that specialists will not be permitted to charge commissions upon the execution of orders delivered electronically from off the floor for securities traded under the New Equity Market Structure. Specialists would continue to be able to charge floor brokerage on manually delivered orders and could charge a fee on hand delivered orders when acting as principal if the member leaving the order consents. In addition, following the implementation of the New Equity Market Structure, the Amex will share Exchange revenue with specialists based on a specified rate schedule to effectively offset the specialists' loss of floor brokerage with respect to orders delivered electronically from off the floor. The elimination of specialist commissions and the Exchange's revenue sharing initiative that are the subject of the instant filing are independent from and not conditioned upon implementation of the New Equity Market Structure.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(4) in particular in that it is intended to assure the equitable allocation of reasonable dues, fees and other charges among members, issuers, and other persons using the Exchange facilities.⁷

⁶ See Securities Exchange Act Release No. 41527 (June 15, 1999), 64 FR 33533 (June 23, 1999) (notice of filing of File No. SR-Amex-99-08).

⁷ The Commission notes that the filing may raise questions concerning payment for order flow. To the extent that it does raise such issues, Exchange members should consider any associated disclosure obligations, namely pursuant to Rules 10b-10 and 11Ac1-3 under the Act, 17 CFR 240.10b-10 and 17 CFR 240.11Ac1-3, respectively.

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

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee, or other charge imposed by the Exchange, has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and subparagraph (f)(2) of Rule 19b-4 thereunder.⁹

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposed rule is 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 in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-99-

44 and should be submitted by November 26, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42073; File No. SR-NASD-99-62]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Trade Reporting of Listed Securities

October 28, 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 October 20, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On October 28, 1999, Nasdaq filed an amendment to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and to grant accelerated approval to the proposed rule change, as amended, on a pilot basis through March 1, 2000.

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Thomas P. Moran, Assistant General Counsel, Nasdaq, to Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated October 28, 1999 ("Amendment No. 1"). In Amendment No. 1, Nasdaq changes the start date for mandatory 90-second trade reporting for listed securities from October 25, 1999 to November 15, 1999. Nasdaq also notes it will make available its ITS/CAES system until 6:30 pm. Eastern Time beginning on or about October 29, 1999. Finally, Nasdaq states it will coordinate with both the New York Stock Exchange ("NYSE") and the American Stock Exchange ("AMEX") regarding the dissemination of material news by those exchanges' listed companies during the 4:00 p.m. to 6:30 p.m. time period, and will, if appropriate, initiate trading and quotation halts in the Third Market in consultation with those markets.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(2). In reviewing the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 USC 78c(f).

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

Pursuant to the provisions of Section 19(b)(1) under the Act,⁴ Nasdaq is filing a proposed rule change to mandate 90-second trade reporting for over-the-counter transactions in listed securities that take place between 4:00 p.m. and 6:30 p.m. Eastern Time. This rule change will conform the trade reporting obligations for transactions involving listed securities with those for Nasdaq National Market, SmallCap, Convertible Debt and over-the-counter equity issues that were amended as part of a separately proposed pilot program extending the availability of several Nasdaq services and facilities until 6:30 p.m. Eastern Time.⁵ Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

6400. Reporting Transactions in Listed Securities

6420. Transaction Reporting

(a) When and How Transactions are Reported

(1) Registered Reporting Members shall transmit through ACT, within 90 seconds after execution, last sale reports of transactions in eligible securities executed during the trading hours of the Consolidated Tape otherwise than on a national securities exchange. Registered Reporting Members shall also transmit through ACT, within 90 seconds after execution, last sale reports of transactions in eligible securities executed in the United States otherwise than on a national securities exchange between 4:00 p.m. and [5:15] 6:30 p.m. Eastern Time. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution.

(2) (A) No Change.

(B) Non-registered Reporting Members shall, within 90 seconds after execution,

transmit through ACT or the ACT Service Desk (if qualified pursuant to Rule 7010(i), or if ACT if unavailable due to system or transmission failure, by telephone to the Nasdaq Market Operations Department, last sale reports of transactions in eligible securities executed in the United States otherwise than on a national securities exchange between the hours of 4:00 p.m. and [5:15] 6:30 p.m. Eastern Time. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution.

(3)(A) All members shall report transactions in eligible securities executed outside the hours of 9:30 a.m. and [5:15] 6:30 p.m. Eastern Time as follows:

- (i) by transmitting the individual trade reports through ACT on the next business day (T+1) between 8:00 a.m. and [5:15] 6:30 p.m. Eastern Time;
- (ii) No Change; and
- (iii) No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq 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

In Nasdaq's third market, NASD members trade stocks listed on the NYSE and AMEX using Nasdaq's quotation, communication and execution system. The NASD collects quotations from broker-dealers that trade these securities over-the-counter and provides such quotations to the Consolidated Quotation System ("CQS") for dissemination. Additionally, the NASD collects trade reports to the Consolidated Tape Association ("CTA") for inclusion in the Consolidated Tape. From 9:30 a.m. to 4:00 p.m. Eastern Time, NASD members registered as CQS market makers use Nasdaq's Computer Assisted Execution System ("CAES") to access the quotes of other CQS market makers and the Intermarket Trading System ("ITS") to access the quotes of other U.S. exchanges. Trades executed through Nasdaq's ITS/CAES system are automatically forwarded to ACT for trade reporting purposes. Pursuant to NASD Rule 6340, participation as a CQS market maker between 4:00 p.m. and

6:30 p.m. Eastern Time is strictly voluntary.

In response to requests from Nasdaq CQS market makers that wish to have the option of expanding their trading activity after 4:00 p.m. Eastern Time, Nasdaq has determined to expand, until 6:30 p.m. Eastern Time, the availability of ITS/CAES and ACT services for listed securities effective October 29, 1999. This expansion will be on a pilot basis beginning October 29, 1999 and terminating on March 1, 2000. Participation in the Third Market after 4:00 p.m. Eastern Time will continue to be voluntary.

Currently, NASD rules mandate submission of trade reports in listed securities within 90 seconds after execution only until 5:15 p.m. Eastern Time. In order to conform listed trade reporting obligations with those for Nasdaq National Market, SmallCap, Convertible Debt and over-the-counter equity securities, Nasdaq is proposing to modify its ACT trade reporting rules to require 90-second trade reporting of listed securities until 6:30 p.m. Eastern Time. By extending 90-second listed trade reporting to 6:30 p.m. Eastern Time, the rule will be consistent with the Normal Business Hours of the CQS. In addition, expansion of listed trade reporting obligations to 6:30 p.m. Eastern Time will allow NASD member firms to modify their Nasdaq-related trade reporting programming to the same time parameters. To allow sufficient time for NASD members to modify their internal systems to comply with the expansion of 90-second trade reporting for listed securities, Nasdaq requests that, like its 90-second trade reporting rules for Nasdaq securities, its proposed changes to NASD Rule 6240 not take effect until November 15, 1999. All member firms participating in the Third Market are expected, however, to report trades as soon as possible after execution and, to the extent they are able to do so before November 15, 1999, within 90 seconds.

In addition, Nasdaq will make available, on or about October 29, 1999, its ITS/CAES system until 6:30 p.m. Eastern Time. Operation of Nasdaq's ITS/CAES system beyond its current 4:00 p.m. close will be consistent with all rules and procedures that are currently applicable to ITS/CAES trading and quotation activity during the 9:30 a.m. to 4:00 p.m. Eastern Time period.

Finally, Nasdaq has agreed to coordinate with both NYSE and AMEX regarding the dissemination of material news by their listed companies during 4:00 p.m. to 6:30 p.m. Eastern Time, and will, if appropriate, initiate trading and

⁴ 15 U.S.C. 78s(b)(1).

⁵ See Securities Exchange Act Release No. 42003 (October 13, 1999) (SR-NASD-99-57). In SR-NASD-99-57, Nasdaq proposed, and the SEC approved, the following changes (in italics) to NASD Rule 4617:

4617. Normal Business Hours

A Nasdaq market maker shall be open for business as of 9:30 a.m. Eastern Time and shall close no earlier than 4:00 p.m. Eastern Time. Should a market maker wish to *voluntarily* remain open for business later than 4:00 p.m. Eastern Time, it shall so notify the Nasdaq Market Operations via a Nasdaq terminal and shall close only on the hour or the half hour, but no later than 6:30 p.m. Eastern Time. *Nasdaq market makers whose quotes are open after 4:00 p.m. Eastern Time shall be obligated to comply, while their quotes are open, with all NASD Rules that are not by their express terms, or by an official interpretation of the Association, inapplicable to any part of the 4:00 p.m. to 6:30 p.m. Eastern Time period.*

quotation halts in the Third Market in consultation with those markets.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act⁶ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-99-62 and should be submitted by November 26, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission has reviewed carefully the NASD's proposal,⁷ and for

the reasons discussed below, finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Sections 11A and 15A.⁸

Specifically, the Commission finds that the proposed rule change furthers the goals of the national market system as reflected in Sections 11A(a)(1)(C)(iii) and (iv) of the Act.⁹ Congress found in those provisions that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities, and to assure the practicability of brokers executing investors' orders in the best market. Section 11A(a)(1) further provides that the linking of all markets for qualified securities through communication and data processing facilities would foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders. The proposed rule will make available with respect to listed securities the same trade reporting information currently available for transactions involving Nasdaq National Market, SmallCap, Convertible Debt and over-the-counter equity issues until 6:30 p.m. Eastern Time. The proposed rule will enhance transparency in the after-hours market, allowing investors an opportunity to better evaluate the after-hours market before deciding to participate. Ultimately, the proposed rule should enhance investor protection and confidence, because it will provide more complete information upon which to base trading decisions.

The Commission finds that the proposed rule change is consistent with Section 15A of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposal

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78k-1 and 78o-3.

⁹ 15 U.S.C. 78k-1(a)(1)(C)(iii) and (iv).

accomplishes these objectives by extending to listed securities Nasdaq's systems, so that market participants who choose to offer trading to customers in the after-hours market reap the benefits of greater transparency, and linkage of the various market participants engaged in after-hours trading through ITS/CAES.

Nasdaq has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act¹⁰ for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The Commission finds good cause for granting accelerated approval for the proposed rule change because the pilot will benefit investors by improving the transparency of the after-hours market and assisting broker-dealers in fulfilling their duty of best execution for their customer orders.

The Commission further finds that good cause exists for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The first item in Amendment No. 1 merely changes the start date for mandatory 90-second trade reporting for listed securities until 6:30 p.m. Eastern Time from October 25, 1999, to November 15, 1999. The second item in Amendment No. 1 makes Nasdaq's ITS/CAES, system available until 6:30 p.m. Eastern Time beginning on or about October 29, 1999. The filing originally stated that ITS/CASES would not be available until on or about November 8, 1999. Finally, in Amendment No. 1, Nasdaq states it will coordinate with both the NYSE and the AMEX regarding the dissemination of material news by those exchanges' listed companies during 4:00 p.m. to 6:30 p.m. Eastern Time, and will, if appropriate, initiate trading and quotation halts in the Third Market in consultation with those markets. The availability of ITS/CAES during the 4:30 p.m. to 6:30 p.m. Eastern Time period, and the coordination with the NYSE and AMEX regarding trading halts, further ensure investor protection. Accordingly, the Commission believes that there is good cause for accelerating the approval of all of the items in Amendment No. 1.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-NASD-99-62), as amended, is approved as a pilot program through March 1, 2000.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ *Id.*

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ In approving this rule, the Commission has considered the proposed rule's impact on

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42068; File No. SR-PCX-99-40]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Pacific Exchange, Inc. Relating to Order Book Officials

October 28, 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 October 8, 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 proposes to modify its rules pertaining to the Exchange's Order Book Officials ("OBO") on the Options Trading Floor by clarifying existing provisions, eliminating superfluous provisions, incorporating current policies and procedures, and deleting certain Option Floor Procedure Advices ("OFPA's") and incorporating relevant language from the OFPAs into the text of PCX Rule 6. The text of the proposed rule change is available at the Office of the Secretary, the PCX, and at the Commission.

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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed 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

Exchange 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 proposes to amend PCX Rule 6 ("Options Trading—Rules Principally Applicable to Trading of Options Contracts"). Specifically, the Exchange proposes to delete the following OFPs: OFPA E-2, Subject: Posting of Market Maker Assignments; OFPA A-4, Subject: Timeliness of Entering Orders in the Book; OFPA B-7, Subject: Issuing a Call for Market Makers and; OFPA G-4, Subject: Transactions Following a Change in the Status of Orders in the Book. The Exchange proposes to delete these OFPAs and to incorporate the relevant language from them into the text of PCX Rule 6. The Exchange believes this will centralize the rules and obligations of OBOs.

The Exchange proposes to add the language of OFPA E-2, regarding the posting of Market Maker assignments, to PCX Rule 6.51(b). The proposal requires that a list of Market Makers holding primary appointments in a particular issue be maintained by the OBO at each trading post where the issue is traded. The Exchange proposes this rule change to clarify and centralize the responsibilities of the OBO and to simplify the process of posting Market Maker assignments. The Exchange proposes to require the OBO to maintain the list of Market Makers holding primary appointments in a particular issue, instead of the Options Floor Manager in cooperation with the Options Appointment Committee, currently required in OFPA E-2, because the Exchange believes that the OBO will be able to maintain such list more easily and quickly.

The Exchange proposes to add the language from OFPA A-4, regarding the timeliness of entering orders in the Book, to PCX Rule 6.52(c). The proposal requires that OBOs report to Floor Officials, instead of the Option Floor Trading Committee, any instances that appear to violate a Floor Brokers' obligation to ensure that the urgency of the need to deal with the Book at a given moment is consistent with the maintenance of a fair and orderly Book market. The Exchange proposes this change because more immediate action may be necessary and can be taken if

reported to Floor Official on the Floor when such a violation occurs.

The Exchange proposes to eliminate unnecessary and superfluous language in PCX Rule 6.52, Commentary .01, which states that "[a]s of the effective date of these Rules, the Committee has not designated any additional types of orders that may be accepted by Order Book Officials." The Exchange believes this language is unnecessary given that Commentary .01 states that "an Order Book Official may only accept such other types of orders that have been designated by the Options Floor Trading Committee."

The Exchange proposes to change the reference in PCX Rule 6.53 From "Department of Member Firms" to "Options Surveillance Department" to reflect the current practice regarding where copies of recodes are sent.

To replace of OFPA B-7, regarding when a call for Market Makers is issued, the Exchange proposes to add Commentary .01 to PCX Rule 6.53. Specifically, the Exchange proposes that OBOs should have the responsibility for issuing a call for Markers Makers to come to specified post. Only the OBO may cause this call to be made. In addition, the Exchange proposes that a call for Market Makers be made only after it has been determined that those Market Makers present at the post are not carrying out the functions of Markers as stipulated in PCX Rule 6.37, and not only on the basis of the number of Market Makers present at the post.

The Exchange also proposes that if as few as two Market Makers are present and the OBO determines that an orderly market is being maintained with respect to quote and size, then a call will not be issued merely to bring more Market Makers to the post. However, the provision is not in any way to be taken as limitation on the responsibilities of the OBO to issue such calls for Market Makers as may be necessary to implement the full requirements of PCX Rule 6.37. The Exchange proposes this rule change to centralize OBO obligations regarding the issuing of a call for Market Makers to come to a post in the text of PCX Rule 6.

Finally, the Exchange proposes to clarify language in PCX Rule 6.56 regarding the term "displayed" as currently stated in OFPA G-4, Subject: Transactions Following a Change in the Status of Orders in the Book. Specifically, the Exchange proposes to define the term "displayed," as used in PCX Rule 6.56 to include either verbally made known a new bid or offer or having entered the new bid or offer on the quotation screen. The Exchange proposes this rule change to centralize

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.