

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53371; File No. SR-NASD-2005-144]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Order Entry and Execution Practices

February 24, 2006.

I. Introduction

On December 8, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended, ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change relating to order entry and execution practices. The proposed rule change was published in the **Federal Register** on January 23, 2006.³ The Commission has received one comment on the proposal.⁴ This order approves the proposed rule change.

II. Description of the Proposal

The NASD proposed to add Rule 3380 to prohibit members and associated persons from splitting any order into multiple smaller orders for execution or any execution into multiple smaller executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind payment to the member or associated persons as a result of the execution of such orders or the transaction reporting of such executions.

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,⁵ particularly Section 15A(b)(6) of the Act,⁶ which requires that an association's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove

impediments to, and perfect the mechanism of, a free and open market and, in general, protect investors and the public interest.

In its comment letter on behalf of Sun Trading LLC,⁷ the commenter argues, in essence, that the rule proposal should be limited to the splitting of customer orders, and that trade shredding should be permitted for member proprietary trades, since this could allow members to make tighter and more efficient markets. Accordingly, the commenter suggests that the Commission limit the application of the rule to exclude trading by market makers and proprietary trading firms where no customer orders are involved. The commenter believes that the Commission has adequately addressed the issue of trade shredding in the newly adopted Regulation NMS and that further steps would be counter productive.

While Regulation NMS will revise the current plan formulas, which allocate market data revenues based either solely on the number of trades, or on trade and share volume, to reduce the emphasis on trade volume, the Commission believes it is appropriate for self-regulatory organizations ("SROs") to take additional steps to address trade shredding and its potentially distortive effects. The Commission notes that, to date, it has approved rule changes to address the practice of trade shredding from four SROs.⁸ The remaining SROs have filed proposed rule changes to address the issue of trade shredding.⁹

The Commission believes that the proposed rule change should further deter the distortive practice of trade shredding, and, therefore, promote just and equitable principles of trade.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (File No. SR-NASD-2005-144), be and hereby is, approved.

⁷ See *supra* note 4.

⁸ See Securities Exchange Act Release Nos. 52341 (August 26, 2005), 70 FR 52455 (September 2, 2005) (SR-BSE-2005-20); 52683 (October 26, 2005), 70 FR 66480 (November 2, 2005) (SR-NYSE-2005-62); 53070 (January 6, 2006), 71 FR 2286 (January 13, 2006) (SR-Phlx-2005-63); 53088 (January 10, 2006), 71 FR 2605 (January 17, 2006) (SR-CBOE-2005-92).

⁹ See SR-Amex-2005-112, SR-CHX-2006-03, SR-PCX-2006-10. National Stock Exchange expects to file a trade shredding rule change proposal in the near future.

¹⁰ 15 U.S.C. 78s(b)(2).

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

Nancy M. Morris,
Secretary.

[FR Doc. E6-3029 Filed 3-2-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53376; File No. SR-PCX-2006-12]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Clearly Erroneous Executions

February 27, 2006.

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 February 23, 2006, the Pacific Stock Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. 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 amend PCX Equities, Inc. ("PCXE") Rule 7.10(e) pertaining to clearly erroneous executions of securities issued in initial public offerings. The text of the proposed rule change is set forth below.³ Brackets indicate deletions; italics indicates new text.

* * * * *

Rules of the PCX Equities, Inc.

Rule 7

Rule 7.10

Clearly Erroneous Executions

(a)-(d) No Change.

(e) Trade Nullification and Price Adjustments for UTP Securities that are Subject of Initial Public Offerings ("IPOs"). Pursuant to SEC Rule 12f-2, as amended, the Corporation may extend unlisted trading privileges to a security that is the subject of an initial public offering when at least one transaction in

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange inadvertently indicated that the title of PCXE Rule 7.10 was new text. The Commission corrected this technical error in the text of the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 53132 (January 17, 2006), 71 FR 3584.

⁴ See email comment from Jefferson Wigley, Managing Member, Sun Trading LLC, dated February 15, 2006 ("Sun Trading Letter").

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78o-3(b)(6).

the subject security has been effected on the national securities exchange or association upon which the security is listed and the transaction has been reported pursuant to an effective transaction reporting plan. A clearly erroneous error [will] *may* be deemed to have occurred in the opening transaction of the subject security if the execution price of the opening transaction on the Corporation is the lesser of \$1.00 or 10% away from the opening price on the listing exchange or association. In such circumstances, the Officer shall declare the opening transaction null and void or adjust the transaction price to the opening price on the listing exchange or association. Clearly erroneous executions of subsequent transactions of the subject security will be reviewed in the same manner as the procedure set forth in (c)(1). Absent extraordinary circumstances, any such action of the Officer pursuant to this subsection (e) shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. Each party involved in the transaction shall be notified as soon as practicable by the Corporation, and the party aggrieved by the action may appeal such action to the PCXE CRO in accordance with the provisions of subsection (c)(2)–(4) above.

* * * * *

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 purpose of the proposed rule change is to revise the procedures for trade nullifications ("busts") and price adjustments ("adjusts") for securities issued in initial public offerings ("IPOs") from an automatic to a discretionary basis. Given the unique nature of IPOs, public customers have an expectation that the opening of the

security will be orderly and that the pricing will be reasonable for the listing company. Opening execution prices transacted on the primary listed exchange (and other market centers) represent the price of the stock in the secondary market, which may not necessarily reflect the IPO pricing disseminated prior to the start of secondary market trading by the underwriters/syndicates. According to the Exchange, there may be varying first prices in a security that is issued in an IPO because market centers may have different prices at the same second.

Due to the possibility of varying prices at the same second in a security issued in an IPO, PCXE staff reviews the openings of IPOs on ArcaEx on a best efforts basis. The review of IPO opening prices utilizes criteria that also are used to judge erroneous executions during the pre-core, core and post-core sessions. IPO trades are evaluated for uniformity with the primary listed exchange as well as with other market centers' prices. Currently, initial trades on ArcaEx that are executed at prices more than \$1.00 from the primary listed exchange's opening price are automatically busted or adjusted to the primary listed exchange's opening price.

Under the proposed rule, PCXE staff would have the discretion to bust or adjust initial trades that are executed more than \$1.00 from the primary listed exchange's opening price. The Exchange believes that the change from automatic to discretionary adjustments or busts is necessary because often the primary exchange lists the IPO at multiple first prices. Many times, but not always, the first price is not indicative of the actual price of the IPO and thus the PCXE staff must review all of the first prices to determine if the trade at issue has to be adjusted or busted.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act⁵ in particular, because 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule change will impose 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 on the proposed rule change were neither solicited nor received.

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 Exchange consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change 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 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form at <http://www.sec.gov/rules/sro.shtml>; or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2006-12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090

All submissions should refer to File Number SR-PCX-2006-12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site <http://www.sec.gov/rules/sro.shtml>. 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 Section. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX-2006-12 and should be submitted on or before March 24, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Nancy M. Morris,
Secretary.

[FR Doc. E6-3030 Filed 3-2-06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending February 10, 2006

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST-2006-23881.

Date Filed: February 7, 2006.

Parties: Members of the International Air Transport Association.

Subject: TC3 South Asian Subcontinent—South West Pacific. Singapore, 21 November—30 November 2005.

Intended effective date: 1 April 2006 (Memo 0930).

Minutes: TC3 South Asian Subcontinent—South West Pacific. Singapore, 21 November—30 November 2005 (Memo 0943).

Tables: TC3 South Asian Subcontinent—South West Pacific

Singapore, 21 November—30 November 2005.

Intended effective date: 1 April 2006 (Memo 0381).

Docket Number: OST-2006-23892.

Date Filed: February 8, 2006.

Parties: Members of the International Air Transport Association.

Subject: TC3 South East Asia—South West Pacific between Malaysia and American Samoa. Singapore, 21 November—30 November 2005.

Intended Effective Date: 1 April 2006 (Memo 0924).

Minutes: TC3 South East Asia—South West Pacific between Malaysia and American Samoa. Singapore, 21 November—30 November 2005 (Memo 0943).

Fares: TC3 South East Asia—South West Pacific between Malaysia and American Samoa. Singapore, 21 November—30 November 2005. Specified fare tables.

Intended effective date: 1 April 2006 (Memo 0383).

Docket Number: OST-2006-23915.

Date Filed: February 9, 2006.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote Number S 084. RP 1720a-13 Digit Numbering System for Traffic Documents Request for an Additional Form Code for Increased Usage of Electronic Tickets (ETs) in an OPTAT Environment.

Intended effective date: 20 February 2006.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6-2963 Filed 3-2-06; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending February 10, 2006

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such

procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST-2005-23898.

Date Filed: February 8, 2006.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 1, 2006.

Description: Application of Pacific Airways, Inc. requesting a certificate of public convenience and necessity to transport passengers, property, and mail in interstate air transportation.

Docket Number: OST-2005-22228 and OST-1997-2558.

Date Filed: February 9, 2006.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 2, 2006.

Description: Amendment of Continental Micronesia, Inc. to its application for renewal of certain segments of its certificate for Route 171 to include authority, pursuant to the Department's August 23, 2005 notice on streamlining regulatory procedures, to provide scheduled air transportation of persons, property and mail between Guam and Cairns, Australia; Guam and Nagoya, Japan; and Honolulu and Nagoya, Japan and authority to integrate this authority with authority currently held by Continental Micronesia, Inc.

Docket Number: OST-2003-16773 and OST-2003-16774.

Date Filed: February 10, 2006.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 3, 2006.

Description: Application of Ameristar Air Cargo, Inc. d/b/a Ameristar Charters requesting renewal of its certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons on a permanent basis.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6-2962 Filed 3-2-06; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property at Pease International Tradeport, Portsmouth, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: The FAA is requesting public comment on the Pease Development

⁶ 17 CFR 200.30-3(a)(12).