

system that provides an electronic SOES interface. Such facilities allow the public customer to enter orders into a member-provided electronic entry device, which flows through the member's network into the member's own computer system and then, without manual intervention, into SOES. This Notice clarifies that such activity is permissible under the NASD rules, provided that the member undertakes measures to ensure that all relevant NASD rules and system protections are followed, as described below.

1. Compliance With NASD Rules, Including SOES Rules (NASD Rules 4710-4770): Any member that chooses to offer SOES access to a public customer must ensure that orders submitted through this member-provided service comply with SEC and NASD rules, including the SOES rules and its interpretations.² For example, the member must ensure that agency orders for public customers are within the maximum order size as required by NASD Rule 4730(c)(3). In addition, agency orders involving a single investment decision in excess of the maximum order size may not be divided into smaller parts for purposes of meeting the size requirements for orders entered into SOES. Thus, any trades entered within any five-minute period in accounts controlled by an associated person or customer will be presumed to be based on a single investment decision.

Furthermore, members must ensure that rules related to the Short-Sale Rule, including the Affirmative Determination Rule, are complied with. Finally, members must also be able to continue to meet their obligations to comply with the SEC's Confirmation Rule, Rule 10b-10.

2. Internal System Controls Regarding a Member's Procedures for Supervision of Submission of SOES Orders: NASD SOES order entry firms that provide public customers with SOES access should have in place at the time they offer such access to public customers adequate written procedures and controls that permit the member to effectively monitor and supervise the entry of electronic orders.

Among the items that should be addressed in such written controls and procedures are controls to monitor for: (1) the entry of unauthorized orders; (2) orders that exceed or attempt to exceed credit or SOES order size and other parameters that the member has established for a particular public customer; (3) activity by a public customer that could be considered manipulative or an attempt to improperly affect the price of the

security or related products; (4) violations of the Affirmative Determination and Short-Sale Rules. Wherever possible, such controls should be automated and system driven.

In addition, the firm's procedures must provide for the identification of locations where the firm makes SOES order entry devices available to its public customers and provides ongoing technical support and maintenance. If such site does not qualify as a branch office or office of supervisory jurisdiction (OSJ) of the member under NASD rules, a member must still supervise such activity by providing for periodic visits to such locations to ensure that certain restrictions on activities are in place and that the site is not conducting a securities business at such locations. For guidance on what constitutes a branch office or OSJ in member off-site locations, please see the interpretive letter dated March 17, 1998, and listed under NASD Rule 3010 on the NASD Regulation Web Site (www.nasdr.com—from the Home Page, click on "Members Check Here," then click on "Interpretive Letters").

3. Acknowledgment of Responsibility for Orders: Any member that provides its public customers with access to SOES should understand that the member is responsible for honoring all executions that may occur. Consequently, any member that chooses to provide such service must make appropriate determinations under NASD rules, including the SOES rules, prior to providing the service to a particular public customer that the public customer is capable of using the means of access being provided by the firm. In particular, the "know your customer rule" embedded in the NASD Conduct Rules requires that the member providing customer electronic access to SOES assess the ability of the customer to use such access.

4. Right to Examine: The member acknowledges that, as an SRO responsible for examining the activity of a member, NASD Regulation may examine the member's books, records, and facilities to determine whether a violation of NASD rules and/or the federal securities laws, rules, and regulations may have occurred. Such examination may include an examination of the electronic system itself, as well as the member's records regarding its public customers and their activity.

5. Fees for Execution of SOES Orders: All orders entered by public customers into SOES are subject to the same fee schedule that Nasdaq has established for the entry of orders by members. For example, Nasdaq currently charges 50

cents per order executed by the member entering a SOES order for a public customer. As long as that fee is in place, Nasdaq will bill the member entering the public customer pass-through order that amount for an execution that the public customer receives.

Endnotes

- 1 SEC Rule 11Ac1-1(c).
- 2 NASD Notice to Members 88-61.

[FR Doc. 98-23279 Filed 8-28-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40360; File No. SR-NASD-98-61]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Reporting Transactions in Exchange-Listed Securities

August 25, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),¹ notice is hereby given that on August 12, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, Nasdaq Stock Market, Inc. ("Nasdaq"), 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 self-regulatory organization. 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

Nasdaq is proposing to amend a rule of the NASD, to eliminate an unnecessary provision relating to the reporting of transactions in exchange-listed securities traded in the third market. Below is the text of the proposed rule change. Proposed deletions are in [brackets].

* * * * *

6420. Transaction Reporting

- (a) through (c) No Change
- (d) Procedures for Reporting Price and Volume

Members which are required to report pursuant to paragraph (b) above shall transmit last sale reports for all

¹ 15 U.S.C. 78s(b)(1).

purchases and sales in eligible securities in the following manner:

(1) through (2) No Change

(3)(A) For principal transactions, except as provided below, report each purchase and sale transaction separately and report the number of shares and the price. For principal transactions which are executed at a price which includes a mark-up, mark-down or service charge, the prices reported shall exclude the mark-up, mark-down or service charge. [Such reported price shall be reasonably related to the prevailing market, taking into consideration all relevant circumstances including, but not limited to, market conditions with respect to the security, the number of shares involved in the transaction, the published bids and offers with size at the time of the execution (including the reporting firm's own quotation), accessibility to market centers publishing bids and offers with size, the cost of execution and the expenses involved in clearing the transaction.]

* * * * *

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 self-regulatory organization 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 self-regulatory organization 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 NASD is proposing to eliminate an unnecessary provision of the rules applicable to the reporting of transactions in exchange-listed securities. Specifically, NASD Rule 6420(d)(3)(A), which is the general rule requiring NASD members to report all principal transactions in exchange-listed securities in the third market, contains language requiring members to report transactions in a manner "reasonably related to the prevailing market taking into consideration all relevant circumstances. * * *" While this provision accompanied a change to the trade reporting rules approved in 1980 (which was intended to make comparable the reporting of third

market trades with exchange transactions by requiring third market trades to be reported on a "gross" basis, exclusive of any mark-up or mark-down charged to the customer),² Nasdaq believes that this particular language is superfluous in the context of exchange-listed securities and does not serve any meaningful purpose with respect to the trade reporting for these securities.

Indeed, Nasdaq believes that the language has served only to promote the misperception that the rule provides flexibility in the manner in which NASD members may report third market transactions. It is argued that this has led to inaccurate trade reporting, and has been used as a basis for not extending the NASD's ITS/CAES link to all exchange-listed securities. As recognized by the Commission in its recent proposal to expand ITS/CAES to all listed securities, however, the Commission believes that any issues concerning timely and accurate trade reporting have already been addressed for the most part.³ In particular, while the Commission appears to concur that the rules could be clarified in this fashion, the rules are nonetheless the same for the reporting of both 19c-3 securities, and non-19c-3 securities, and thus Nasdaq agrees that there is no basis for not extending the ITS/CAES linkage to all exchange-listed securities. Nasdaq believes that other NASD rules and procedures, along with a member's best execution obligations, provide the necessary protections to ensure accurate and appropriate trade reporting in exchange-listed securities. As the Commission has indicated on several occasions, an effective surveillance program, along with the requirements of Exchange Act Rule 10b-10 (the confirmation rule), ensure compliance with trade reporting obligations and the proper disclosure of any mark-up or mark-down.⁴ Accordingly, Nasdaq believes that the best practice would be to remove the less-than-clear language from the rule.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act⁵ in that the proposed rule change

facilitates the accurate reporting of transactions in the third market. Section 15A(b)(6) requires that the rules of a registered national securities association are 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, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Association does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were either solicited or received.

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

Within 35 days of the 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 the proposal 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. 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. 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

² See Exchange Act Release No. 16960 (July 7, 1980), 45 FR 47291 (July 14, 1980) (approving SR-NASD-80-03).

³ See Exchange Act Release No. 40260 (July 24, 1998), 63 FR 40748 (July 30, 1998), n.67 and accompanying text (proposed amendments to National Market System plan).

⁴ See e.g., *id.* at nn. 63, 67; Exchange Act Release No. 18713 (May 6, 1982), 47 FR 20413 (May 12, 1982), n.13 (adoption of final amendments to National Market System plan).

⁵ 15 U.S.C. 78o-3

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 at the Commission's Public Reference Room, located at the above address. 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-98-61 and should be submitted by September 21, 1998.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 98-23318 Filed 8-25-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40353; File No. SR-PCX-98-37]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Workstation Fee Change

August 24, 1998.

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 August 4, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. 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 Exchange is proposing to modify its Schedule of Rates for Exchange Services by changing the workstation fee applicable to PCX specialists, to provide specialists with one extra PC at no additional charge.

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

Currently, under the Exchange's Schedule of Rates, specialists are charged a Specialist Systems Fee of \$1,550 per month. The systems fee covers costs associated with trading service functions and the cost of two PCs for the basic P/COAST workstation configuration. The Exchange is proposing to keep the systems fee at \$1,550 while providing three PCs as part of the basic workstation configuration for each specialist.

The current P/COAST workstations use two PCs to provide basic post trading functions. These functions include, but are not limited to, order entry, routing, execution, processing of preopening and end of day activity, support for multiple trading floors, backup recovery and book functionality. Under the rule change, a third PC would be provided to each specialist at no additional charge. This would enable each post to conduct all of the above functions and also process ITS commitments without the use of a dedicated ITS terminal.

(2) Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,³ general, and furthers the objectives of Section 6(b)(4),⁴ in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

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

Because the foregoing proposed rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁵ and subparagraph (e)(2) of Rule 19b-4 thereunder.⁶ 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 change is consistent with the Act.⁷ Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. 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, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-98-37

⁵ 15 U.S.C. § 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(e)(2).

⁷ In reviewing these rules, the Commission has considered the proposed rule change's impact on efficiency, competition and capital formation. 15 U.S.C. § 78c(f).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. § 78f(b).

⁴ 15 U.S.C. § 78f(b)(4).