

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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-2003-44 and should be submitted by November 6, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval on a Pilot Basis

After careful review, the Commission finds that proposed Interpretation .03 to CBOE Rule 6.25 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ In particular, the Commission finds that the proposed Interpretation is consistent with the requirements of Section 6(b)(5)⁸ of the Act, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principals of trade, 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 Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade is such that execution of a trade at that particular price indicates that an "obvious error" may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether such an "obvious error" has occurred should be based on specific and objective criteria

and subject to specific and objective procedures. The Commission believes that CBOE's proposed Interpretation .03 to CBOE Rule 6.25 establishes such specific and objective criteria for determining when a trade may involve an "obvious price error," and thus may be adjusted or nullified in a fair and non-discriminatory manner. The Commission notes that if there are no quotes for comparison, CBOE has specified that trading officials may determine the Theoretical Price, which would then be used to adjust or nullify transactions resulting from an obvious price error.

The Commission finds good cause, pursuant to Section 6(b)(5)⁹ and Section 19(b)¹⁰ of the Act, to accelerate approval of Interpretation .03 to CBOE Rule 6.25 on a pilot basis, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the provisions of the proposal are substantially similar to CBOE's SBT obvious price error rule, CBOE Rule 43.5(b)(5), which the Commission has approved.¹¹ The Commission also notes that it has recently approved "obvious error" rules for ISE and PCX that provide procedures for the nullification or adjustment of a trade.¹² Furthermore, the provisions of the proposed rule change would be in effect on a temporary basis until the earlier of approval of File No. SR-CBOE-2001-04 or December 1, 2003, whichever occurs earlier. Finally, the Commission notes that the procedures to implement Interpretation .03 to CBOE Rule 6.25 were adopted on a pilot basis in Securities Exchange Act Release No. 48556.¹³ The Commission finds, therefore, that granting accelerated approval of the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**, is appropriate and consistent with Section 6(b)(5)¹⁴ of the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that Interpretation .03 to CBOE Rule 6.25, as set forth in the proposed rule change be

and hereby is approved on an accelerated basis. Interpretation .03 to CBOE Rule 6.25 specifies that the Interpretation will expire upon final Commission approval of File No. SR-CBOE-2001-04 or December 1, 2003, whichever occurs earlier.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48606; File No. SR-NASD-2003-134]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Amend Rule 4710 To Allow Nasdaq National Market Execution System Order Entry Firms To Automatically Internalize in SuperMontage

October 8, 2003.

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 22, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. On September 26, 2003, Nasdaq amended the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Nasdaq proposes to amend Rule 4710 to allow the Nasdaq National Market Execution System ("NNMS" or "SuperMontage") to automatically

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b).

¹¹ See Securities Exchange Act Release No. 47628 (April 3, 2003), 68 FR 17697 (April 10, 2003) (File No. SR-CBOE-00-55).

¹² See Securities Exchange Act Release No. 48538 (September 25, 2003), 68 FR 56858 (October 2, 2003) (File No. SR-PCX-2002-01); and Securities Exchange Act Release No. 48097 (June 26, 2003), 68 FR 39604 (July 2, 2003) (File No. SR-ISE-2003-10).

¹³ See *supra* note 3.

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78s(b)(2).

⁷ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

¹⁶ 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, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 25, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq expands upon the purpose of the proposed rule change.

match any non-directed buy and sell quotes/orders entered by an NNMS Order Entry Firm against the quotes/orders of that same NNMS Order Entry Firm on the other side of the market if such a quote/order on the other side of the market is at the best bid/offer in Nasdaq. Nasdaq expects to implement the proposed rule change within 60 days after approval by the Commission. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

4710. Participant Obligations in NNMS

(a) No change.
 (b) Non-Directed Orders
 (1) No change.
 (A) No change.
 (B) No change.
 (i) through (iii) No change.
 (iv) Exceptions—The following exceptions shall apply to the above execution parameters:
 (a) If a Nasdaq Quoting Market Participant *or NNMS Order Entry Firm* enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's *or NNMS Order Entry Firm's* own Quote/Order if the participant is at the best bid/best offer in Nasdaq. [This exception shall not apply to Non-Directed Orders entered by NNMS Order Entry Firms.] Nasdaq Quoting Market Participants *and NNMS Order Entry Firms* may [, and NNMS Order Entry Firms must,] avoid any attempted automatic system matching permitted by this paragraph through the use of an anti-internalization qualifier (AIQ) quote/order flag containing the following values: "Y" or "I", subject to the following restrictions:

Y—if the Y value is selected, the system will execute the flagged quote/order solely against attributable and non-attributable quotes/orders (displayed and reserve) of Quoting Market Participants and NNMS Order Entry Firms other than the party entering the AIQ "Y" flagged quote/order. If the only available trading interest is that of the same party that entered the AIQ "Y" flagged quote/order, the system will not execute at an inferior price level, and will instead return the latest entered of those interacting quote/orders (or unexecuted portions thereof) to the entering party.

I—if the I value is selected, the system will execute against all available trading interest, including the quote/orders of the NNMS Order Entry Firm or Nasdaq

Quoting Market Participant that entered the AIQ "I" flagged order, based exclusively on the execution algorithm selected when entering the AIQ I flagged quote/order.

[The I value described above shall be available for the use of Nasdaq Quoting Market Participants on May 12, 2003.]

- (b) No change.
- (2) through (8) No change.
- (c) through (e) 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, as amended, 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. 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

1. Purpose

Currently, SuperMontage rules provide a general exception to the system's execution algorithms that allow non-directed orders entered by NNMS Market Makers and NNMS ECNs to first match off against any quotes/order previously entered by that same party on the opposite side of the market if that previously entered quote/order is at the best bid/offer in Nasdaq.⁴ Market participants can voluntarily avoid or control this automatic matching functionality through use of anti-internalization qualifiers that will either skip quotes/orders entered by them on the opposite side of the market or execute against them based solely on the execution algorithm selected.

NNMS Order Entry Firms are currently prohibited from using this automatic matching functionality and are instead required to enter all non-directed orders with an anti-

internalization qualifier that prevents an automatic match. Nasdaq represents that, in response to requests from NNMS Order Entry Firms, it seeks to give NNMS Order Entry Firms the same capability as all other NNMS users to have their non-directed orders match off against quote/orders previously entered by them on the opposite side of the market if those previously entered quotes/orders are at the best bid or offer price in Nasdaq, as appropriate. Like all other system users, NNMS Order Entry Firms would have the voluntary ability to prohibit or control any automatic matching through the use of an anti-internalization qualifier. Nasdaq believes that providing NNMS Order Entry Firms with the opportunity to have their quotes/orders on opposite sides of the market match off against each other will provide an additional incentive for such firms to post increased liquidity in the SuperMontage system, thereby benefiting all users.⁵

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,⁶ in general, and with Section 15A(b)(6) of the Act,⁷ 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 person 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.

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

Nasdaq does not believe that the proposed rule change, as amended, 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.

⁴ Nasdaq clarified that the rules governing UTP Exchanges do not explicitly permit this function, although NASD Rule 4710(e) contemplates that such a function may be provided by Nasdaq to a UTP Exchange pursuant to contract. Consequently, at the request of Nasdaq, Commission staff has removed a reference to UTP Exchanges contained in the original filing. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Ann E. Leddy, Attorney, Division, Commission (October 8, 2003).

⁵ See Amendment No. 1, *supra* note 3.

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(6).

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

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

B. Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change 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-2003-134 and should be submitted by November 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-26099 Filed 10-15-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48603; File No. SR-PCX-2003-48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto, by the Pacific Exchange, Inc. Relating to the Establishment of a New Total Order Imbalance Indicator

October 8, 2003.

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 September 22, 2003, the Pacific Exchange, Inc. ("PCX") submitted to 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. On September 30, 2003, the PCX submitted Amendment No. 1 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.

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

The PCX through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its rules governing the Archipelago Exchange facility ("ArcaEx"), the equities trading facility of PCXE, by: (1) amending PCXE Rule 1.1(q) to add the definition of Total Imbalance and Market Imbalance; and (2) amending PCXE Rule 7.35 to add a new Total Imbalance indicator to its Market Order Auction and Trading Halt Auction display.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics*.

* * * * *

PCX Equities, Inc.

Rule 1—Definitions

Rule 1.1—(No change).

(a)—(p)—(No change).

(q) For the purposes of the Opening Auction, the Market Order Auction and the Trading Halt Auction, as the case may be[,]:

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Peter D. Bloom, Managing Director, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 29, 2003 ("Amendment No. 1"). In Amendment No. 1, the PCX submitted a new Form 19b-4, which replaced the original filing in its entirety.

(1) the term "Imbalance" shall mean the number of buy or sell shares that [can not] *cannot* be matched with other shares at the Indicative Match Price at any given time.

(A) the term "Total Imbalance" shall mean the net Imbalance of buy (sell) orders at the Indicative Match Price for all orders that are eligible for execution during the applicable auction.

(B) the term "Market Imbalance" shall mean the imbalance of any remaining buy (sell) Market Orders that are not matched for execution during the applicable auction.

(r)—(aaa)—No change.

* * * * *

Rule 7—Equities Trading

Opening Session Auctions

Rule 7.35 (No change).

(a)—(b)—(No change.)

(c) Market Order Auction.

(1) Publication of Indicative Match Price and Imbalances

(A) Beginning at 5:00 am (Pacific Time), and *updated real-time thereafter*, [various times thereafter as determined from time to time by the Corporation,] the Indicative Match Price of the Market Order Auction and the volume of *Market and Limit orders* available to trade at such price, and the *Market and Total Imbalance associated with the Market Order Auction, if any*, shall be published via electronic means [as determined from time to time by the Corporation. If such a price does not exist (*i.e.*, there is an Imbalance of market orders), the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist]. *Market orders shall be included for purposes of calculating the Total Imbalance and Market Imbalance. Limit orders shall only be included in the Total Imbalance calculations.*

Example 1:

(1) Market order to buy 5000 shares;

(2) Auction-Only Limit Order to sell 1000 at 50;

(3) Limit order to sell 1000 at 50.50; and

(4) Limit order to sell 500 at 50.75.

The Archipelago Exchange will publish an Indicative Match Price of 50.75, a volume of 2500 shares, a buy Market Imbalance of 2500 shares, and a Total Imbalance of 2500 shares.

Example 2:

(1) Market order to buy 3000 shares;

(2) Market order to sell 1000 shares;

(3) Limit order to sell 1000 shares at 41.00; and

(4) Limit order to sell 1000 shares at 41.25.

The Archipelago Exchange will publish an Indicative Match Price of

⁸ 17 CFR 200.30-3(a)(12).