

that is effectively sharing market data revenue associated with transactions in Nasdaq-listed securities by "mutualizing" revenues with certain of its members,<sup>11</sup> notwithstanding the Commission's Order of Summary Abrogation (the "Order") regarding market data revenue sharing programs.<sup>12</sup> Because Nasdaq is not permitted to share market information revenues from Nasdaq-listed securities, and because it has too many market participants to effect a "mutualization" ploy, Nasdaq believes that it is placed in a fundamentally unfair competitive position. Nasdaq is proposing wide-ranging price reductions across multiple services,<sup>13</sup> but Nasdaq represents that it incurs substantial costs in order to operate ACT and to support its regulatory function. Nasdaq believes that the only way for it to compete with an exchange that can single out firms to "mutualize" with is to provide preferred pricing to its members that continue to support Nasdaq with their orders. Accordingly, Nasdaq believes that it is reasonable to offer free reporting of SuperMontage trades to a firm only if the firm's use of ACT and SuperMontage during a particular month is sufficiently consistent to allow Nasdaq to conclude that the lost revenue will be partially offset by other ACT revenue and transaction execution revenue.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of section 15A of the Act,<sup>14</sup> in general and with section 15A(b)(5) of the Act,<sup>15</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD

(eliminating trade reporting fees associated with the NASD's Alternative Display Facility).

<sup>11</sup> Securities Exchange Act Release No. 46688 (October 18, 2002), 67 FR 65816 (October 28, 2002) (SR-CSE-2002-14) (describing the Cincinnati Stock Exchange's market data revenue sharing program for Nasdaq securities).

<sup>12</sup> Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002).

<sup>13</sup> See File Nos. SR-NASD-2003-51 (filed March 24, 2003) (reporting of non-SuperMontage trades); SR-NASD-2003-53 (filed March 24, 2003) and SR-NASD-2003-54 (filed March 24, 2003) (Nasdaq Testing Facility); SR-NASD-2003-47 (filed March 21, 2003) and SR-NASD-2003-48 (filed March 21, 2003) (NWII logons); SR-NASD-2003-43 (filed March 20, 2003) and SR-NASD-2003-46 (filed March 20, 2003) (computer-to-computer interface pricing); see also Securities Exchange Act Release No. 47300 (January 31, 2003), 68 FR 6234 (February 6, 2003) (SR-NASD-2003-10) (quotation update fees).

<sup>14</sup> 15 U.S.C. 78o-3.

<sup>15</sup> 15 U.S.C. 78o-3(b)(5).

operates or controls. Nasdaq believes that the proposal, as amended, will allow a reduction in the overall level of ACT fees paid by market participants while ensuring that each participant pays an equitable share of the costs associated with ACT.

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

The foregoing rule change, as amended, has become effective upon March 27, 2003, the date of filing of Amendment No. 1 to the proposed rule change, pursuant to section 19(b)(3)(A)(ii) of the Act<sup>16</sup> and subparagraph (f)(2) of rule 19b-4 thereunder,<sup>17</sup> because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the 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.<sup>18</sup>

## 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

<sup>16</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>17</sup> 17 CFR 240.19b-4(f)(2).

<sup>18</sup> For purposes of determining the effective date of the filing and calculating the 60-day abrogation period, the Commission considers the period to commence on March 27, 2003, the date that Nasdaq filed Amendment No. 1.

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 Nasdaq. All submissions should refer to File No. SR-NASD-2003-56 and should be submitted by April 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 03-8632 Filed 4-8-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47615; File No. SR-PCX-2002-54]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to a One Tick Step Up Requirement for Auto-Ex in Certain Option Issues

April 2, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 27, 2002, 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 self-regulatory organization. On March 19, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change. 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 amend its rules by adopting a one tick step up requirement for Market Makers who are participating on the Exchange's Automatic Execution System ("Auto-Ex") in certain option issues. The text of the proposed rule change is below. Additions are in italics.

\* \* \* \* \*

<sup>19</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

**5231 Automatic Execution System**

Rule 6.87(a)–(d)—No change.

(e) Market Maker Requirements and Eligibility. Any Exchange Member who is registered as a Market Maker and who has obtained written authorization from a clearing member is eligible to participate on the Auto-Ex system, subject to the following conditions and requirements:

(1)–(7)—No change.

(8) Auto-Ex Tick Better Requirement in Certain Issues.

(A) Except as provided in subsection (B), below, Lead Market Makers who are participating on Auto-Ex must assure that Exchange staff (i.e., the Order Book Official or Control Room staff) have set the Auto-Ex System either:

(i) to execute incoming electronic orders at prices that are one trading increment better than the Exchange's disseminated bid or offering price when another options exchange is disseminating the national best bid or offer at a price that is one trading increment better than the price being disseminated by the Exchange. The order will default for manual representation in the trading crowd when another options exchange is disseminating a price that is more than one trading increment better than the price being disseminated by the Exchange, or

(ii) to execute incoming electronic orders at the NBBO pursuant to Rule 6.87(i).

(B) Applicability. The requirements of subsection (A), above, will apply only to non-broker-dealer orders for ten contracts or less in option issues that are ranked in the 120 most actively traded equity options based on the total number of contracts traded nationally for a specified month based on volume as reported by the Options Clearing Corporation. For each current month, the Exchange's determination of whether an equity option ranks in the top 120 most active issues will be based on volume statistics for the three calendar months of trading activity beginning four months prior to the current month. In addition, the requirements of Subsection (A), above, will only apply to orders in option series that are not designated as LEAPS pursuant to Rule 6.4(e).

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## 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 is proposing to adopt new PCX rule 6.87(e)(8) relating to the Exchange's Auto-Ex System for options trading. Currently, Options Market Makers who are logged on to Auto-Ex are obligated to meet certain requirements as set forth in PCX rule 6.87(e)(1)–(7). The Exchange is proposing to adopt a new rule requiring Lead Market Makers ("LMMs") on Auto-Ex to "step up" and execute certain orders at better prices than the Exchange is disseminating, if another options exchange is disseminating that better price.

Current PCX rule 6.87(i) allows Auto-Ex to be set to execute inbound electronic orders at prices reflecting the national best bid or offer ("NBBO") in selected issues, subject to the approval of the Options Floor Trading Committee ("OFTC"). Under the proposal, LMMs who are participating on Auto-Ex must assure that Exchange staff (i.e., the Order Book Official or Control Room staff) sets the Auto-Ex System in either of two ways for the selected issues as defined in PCX Rule 6.87(e)(8)(B). First, when another options exchange is disseminating a price at the NBBO and that price is one trading increment better than the price being disseminated by the Exchange, the Exchange staff may set the Auto-Ex system may to execute incoming electronic orders at prices that are one trading increment better than the Exchange's disseminated bid or offering price. Where the Exchange is disseminating a price that is more than one trading increment inferior to the price being disseminated by another options exchange, the order will default for manual representation in the trading crowd.

Alternatively, an LMM may have the Exchange staff set the Auto-Ex system to execute incoming electronic orders at the NBBO pursuant to PCX rule 6.87(i). Pursuant to PCX rule 6.87(i), any order that is not executed at the NBBO will be manually presented in the trading crowd if it is more than one trading

increment away from the PCX market price.

Proposed PCX rule 6.87(e)(8) will apply only to non-broker-dealer orders for ten contracts or less in option issues that are ranked in the 120 most actively traded equity options based on the total number of contracts traded nationally for a specified month based on volume as reported by the Options Clearing Corporation. In addition, the rule will only apply to orders in option series that are not designated as LEAPS pursuant to PCX rule 6.4(e).

The Exchange's determination of whether an equity option ranks in the top 120 most active, nationally-traded issues will be based on volume statistics reported by the Options Clearing Corporation. For each current month, the Exchange's determination of whether an equity option ranks in the top 120 most active issues will be based on volume statistics for the three calendar months of trading activity beginning four months prior to the current month. The Exchange intends to notify its Members of the issues that are designated to be in the top 120 via a regulatory bulletin that will be published at the beginning of each month.

#### 2. Basis

The Exchange believes that the proposal is consistent with section 6(b)(5)<sup>3</sup> of the Act in that it designed to promote just and equitable principles of trade, to remove impediments and to 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

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

<sup>3</sup> 15 U.S.C. 78s(b)(2).

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, 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, 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 PCX. All submissions should refer to File No. SR-PCX-2002-54 and should be submitted by April 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-8608 Filed 4-8-03; 8:45 am]

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#### SMALL BUSINESS ADMINISTRATION

##### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

**DATES:** Submit comments on or before June 9, 2003.

**ADDRESSES:** Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Linda K. Waters, Program Analyst, Office of Government Contracting, Small Business Administration, 409 3rd Street SW., Suite 8800, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Linda K. Waters, Program Analyst, (202) 205-7315 or Curtis B. Rich, Management Analyst, (202) 205-7030.

**SUPPLEMENTARY INFORMATION:**

*Title:* "Prime Contracts program Quarterly Report Part A and B".

*Form No's:* 843 A & B.

*Description of Respondents:* Procurement Center Representatives.

*Annual Responses:* 63.

*Annual Burden:* 1,020.

**SUPPLEMENTARY INFORMATION:**

*Title:* "Application for Certificate of Competency".

*Form No:* 1531.

*Description of Respondents:* Small Business Owners.

*Annual Responses:* 300.

*Annual Burden:* 2,400.

**SUPPLEMENTARY INFORMATION:**

*Title:* "7(j) Management and Technical Assistance Program Sponsored Training Impact and Longitudinal Studies".

*Form No's:* 2167, 2168, 2169, 2170, 2171.

*Description of Respondents:* Person involved in the Executive Education Program (EEP).

*Annual Responses:* 500.

*Annual Burden:* 250.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Charles Ou, Economist, Office of Advocacy, Small Business Administration, 409 3rd Street SW., Suite 7800, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Charles Ou, Economist, (202) 205-6966 or Curtis B. Rich, Management Analyst, (202) 205-7030.

**SUPPLEMENTARY INFORMATION:**

*Title:* "Value of Worker Training Programs to Small Business".

*Form No:* N/A.

*Description of Respondents:* Small and Large Businesses.

*Annual Responses:* 1.

*Annual Burden:* 1,244.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Sandra L. Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW., Suite 8300 Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Sandra L. Johnston, Program Analyst, (202) 205-7528 or Curtis B. Rich, Management Analyst, (202) 205-7030.

**SUPPLEMENTARY INFORMATION:**

*Title:* "CDC Annual Report Guide".

*Form No's:* 1253 & 1235A.

*Description of Respondents:* Certified Development Companies.

*Annual Responses:* 270.

*Annual Burden:* 7,560.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Marcia Pixley, Regulatory Fairness Coordinator, Office of the National Ombudsman, Small Business Administration, 409 3rd Street SW., Suite 7125 Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Marcia Pixley, Regulatory Fairness Coordinator, (202) 619-1732 or Curtis B. Rich, Management Analyst, (202) 205-7030.

**SUPPLEMENTARY INFORMATION:**

*Title:* "Small Business and Agriculture Regulatory Enforcement Form".

*Form No:* 1993.

*Description of Respondents:* Small Business Owners and Farmers.

*Annual Responses:* 1,000.

*Annual Burden:* 500.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Cynthia G. Pitts, Program Analyst, Office of Disaster Assistance, Small Business Administration, 409 3rd Street SW., Suite 6050 Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Cynthia G. Pitts, Program Analyst, (202) 205-7570 or Curtis B. Rich, Management Analyst, (202) 205-7030.

<sup>4</sup> 17 CFR 200.30-3(a)(12).