

OFAC list and has identified no valid matches.<sup>2</sup>

### 3. Withdrawal-By-Transfer Service

For securities on deposit that are sought to be withdrawn pursuant to DTC's Withdrawal-By-Transfer Service, including Withdrawal-By-Transfer requests for Direct Registration, DTC will act on the instructions of the withdrawing participant only after DTC has screened the investor in whose name the securities are to be registered against the OFAC list and has identified no valid match.

For each service, in the event that DTC identifies a match against the OFAC list, DTC would attempt to remove false-positive matches. For valid matches, DTC would present the matches to participants through a new Participant Terminal System function called "OFAP." Participants would be required to review each certificate registration identified as a potential match through the "OFAP" function by comparing the certificate registration to the OFAC text information and respond with a comment for each registration by providing factual information sufficient for DTC to conclude, in its sole discretion, that the investor is or is not the person or entity listed on the OFAC list.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>3</sup> and the rules and regulations thereunder because it will enhance DTC's compliance with applicable laws thereby reducing risks and associated costs to DTC and its participants.

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

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

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

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments it receives.

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

Within thirty-five 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 ninety 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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-DTC-2005-14 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549-9303.

All submissions should refer to File No. SR-DTC-2005-14. 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at <http://www.dtc.org/impNtc/mor/index.html>. 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 submission should refer to File No. SR-DTC-2005-14 and should be submitted on or before December 5, 2005.

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

**Jonathan G. Katz,**  
Secretary.

[FR Doc. E5-6248 Filed 11-10-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52746; File No. SR-NASD-2005-106]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Regarding Fees for Closed-End Funds Listing on the Nasdaq Capital Market

November 7, 2005.

On August 31, 2005, 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"), 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> a proposed rule change regarding fees for closed-end funds listing on the Nasdaq Capital Market.<sup>3</sup> Nasdaq has proposed to amend NASD Rules 4510 and 4520 to: (i) Decrease the entry fee for listing a closed-end fund on the Nasdaq Capital Market to \$5,000 (of which \$1,000 is a non-refundable application fee) per fund; and (ii) adopt a new annual fee schedule for closed-end funds on the Nasdaq Capital Market, which is identical to that of funds listed on the Nasdaq National Market.<sup>4</sup> The proposed rule change was published for comment in the **Federal Register** on October 3,

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> Subsequent to the Nasdaq filing of this proposed rule, Nasdaq filed, and the Commission approved, another proposed rule change which renamed "The Nasdaq SmallCap Market" as "The Nasdaq Capital Market." See Securities Exchange Act Release No. 52489 (September 21, 2005) 70 FR 56948 (September 27, 2005).

<sup>5</sup> Nasdaq recently adopted new listing fees for Closed-End Funds listing on the Nasdaq National Market. See Securities Exchange Act Release No. 52277 (August 17, 2005), 70 FR 49347 (August 23, 2005) (SR-NASD-2005-096).

<sup>2</sup> DTC is already screening the registration information for securities it is holding as part of its Custody Service.

<sup>3</sup> 15 U.S.C. 78q-1.

2005.<sup>5</sup> The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.<sup>6</sup> In particular, the Commission believes that the proposed rule change is consistent with section 15A(b)(6) of the Act<sup>7</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles 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.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-NASD-2005-106) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. E5-6246 Filed 11-10-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52720; File No. SR-PCX-2005-120]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Remote Market Makers

November 2, 2005.

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 October 21, 2005, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A)

of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 Rule 6.35 by eliminating the restriction contained in PCX Rule 6.35(h)(4) that prohibits a Remote Market Maker (“RMM”) from concurrently trading and/or quoting the same option issue as an RMM who is a Nominee of the same OTP Firm. The text of the proposed rule change is set forth below. Additions are in italics and deletions are in brackets.

#### Rules of the Pacific Exchange, Inc., Rule 6 Options Trading—Appointment of Market Makers

Rule 6.35 (a) thru 6.35(g)—No Change  
(h) If an OTP Holder or OTP Firm has two or more Nominees that are registered as Remote Market Makers, then:

(1) The number of OTPs held in the name of such Remote Market Makers may be aggregated for the purpose of determining the number of options issues eligible for primary appointment pursuant to subsection (g)(2) above;

(2) The primary appointment applies to the OTP Holder or OTP Firm, subject to the approval of the Exchange; *and*

(3) The distribution of the option issues within the primary appointments for each Remote Market Maker will be at the discretion of the OTP Holder or OTP Firm.; *and*

(4) At no time will a Remote Market Maker concurrently trade or quote the same option issue as a Remote Market Maker or Lead Market Maker who is a Nominee for the same OTP Holder or OTP Firm.]

(i)—No Change  
Commentary: .01 thru .05—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, 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

PCX Rule 6.35 governs the appointment of Market Makers. The rule change would eliminate PCX Rule 6.35(h)(4), which prohibits two or more RMMs who are Nominees of the same OTP Firm from concurrently trading options in the same class.

The current restriction on RMMs that are from the same OTP Firm concurrently trading the same issues was included as part of Amendment No. 2 to PCX-2002-36,<sup>5</sup> (Rules of PCX Plus). This restriction grew out of early concerns over trade allocation and the possibility that an OTP Firm could unfairly game the “size pro rata” allocation method that PCX Plus utilizes. It was thought that having multiple RMMs in the same issue, quoting smaller individual markets, could somehow cause a greater contract allocation than a single RMM quoting the same aggregate size market. PCX Rule 6.76, Priority and Order Allocation Procedures, governs trade allocations for trades executed on the PCX Plus System. Specifically, PCX Rule 6.76(a)(4) outlines the Size Pro Rata Allocation. By reviewing this rule, one can see that the PCX allocation method is based strictly on the market size that Market Makers are quoting at the time of a trade. A single Market Maker quoting one size would be entitled to no more or no less than two or more Market Makers quoting the same aggregate size. Due to the fact that trade allocations are based strictly on quote size, and not the number of quoters, the Exchange believes that PCX Rule 6.76(h)(4) is obsolete and serves no purpose.

Some PCX OTP Firms are large businesses that have multiple Nominees that pursue separate and distinct trading strategies, and each of these Nominees may be interested in serving in an RMM capacity. Under present PCX rules, each OTP Firm is limited to allowing only one RMM to trade a particular options issue, regardless of the number of Nominees the firm may employ. By eliminating the current restriction on affiliated RMMs, these individual Nominees will be able to concurrently trade the same options issue. The

<sup>5</sup> See Securities Exchange Act Release No. 52515 (September 27, 2005), 70 FR 57638 (October 3, 2005).

<sup>6</sup> The Commission has considered the proposed rule’s impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</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.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003).