

(2) a manager or co-manager of an underwriting syndicate for a secondary offering of a security on the day of the secondary offering of that security.

(e)-(g) 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 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

NASD Rule 4611(d) provides that an NASD member may register as a Nasdaq market maker in an issue by entering a registration request "on-line" via a Nasdaq terminal. For issues that have been trading on Nasdaq for more than five days, however, "on-line" registrations are not effective until the day after the registration request is made ("One-Day Delay Rule"). This one-day delay for market maker registration in non-IPOs is designed to minimize the potential for "fair weather" market making. Specifically, the one-day delay helps to assure that members registering as market makers are making a legitimate commitment of their capital to the issue for the betterment of the market, not just to capture short-term trading profits during brief periods of favorable market conditions.

While Nasdaq continues to believe that the one-day delay in market maker registration serves to minimize the potential for "fair weather" market makers, there have been instances where managers and co-managers of an underwriting syndicate for a secondary offering have been precluded from trading the issue on the day of the secondary offering because they did not submit a market maker registration request on the day before the offering. Accordingly, in light of the inherent commitment of managers and co-managers of underwriting syndicates to their issues, the need for these members to make a market in the stock to manager their risk, and the additional liquidity and pricing efficiency that these market makers can provide, Nasdaq is proposing to amend NASD

Rule 4611(d) to permit managers and co-managers of a secondary offering to register in that issue on a same-day basis on the day of the secondary offering.

Nasdaq believes the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be 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. Specifically, by permitting managers and co-managers of secondary offerings to become registered market makers in such issues on the day of the secondary offering, Nasdaq believes the proposal will enhance the liquidity and stability of the market, facilitate greater market maker competition, and promote the capital formation process by enabling managers and co-managers of secondary offerings to better manage their risks associated with the offering. At the same time, given the inherent commitment of managers and co-managers to the stocks they underwrite, Nasdaq does not believe that permitting managers and co-managers of secondary offerings to register in such issues on a same-day basis on the day of the offering will compromise the regulatory purposes underlying the "One-Day Delay Rule."

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

Nasdaq believes that the proposed rule change will not 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

Comments 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 NASD 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. 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 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 number SR-NASD-97-31 and should be submitted by June 6, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority (17 CFR 200.30-3(a)(12) (1989)).

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38608; File No. SR-NASD-97-17]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Fees Charged for the Nasdaq Level 1 Service

May 12, 1997.

On March 3, 1997, the National Association of Securities Dealers, Inc. ("NASD") and the Nasdaq Stock Market, Inc. ("Nasdaq") (hereinafter referred to collectively as "Nasdaq" or the "Nasdaq Stock Market") submitted to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b) of the Securities Exchange

Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to increase the monthly fee charged for Nasdaq Level 1 Service. On March 18, 1997, the Nasdaq Stock Market filed Amendment No. 1 to the proposal.³

Notice of the proposal, as amended, was published for comment and appeared in the **Federal Register** on March 26, 1997.⁴ No comment letters were received on the proposed rule change.

This order approves the Nasdaq proposal.

I. Description of the Proposal

The Nasdaq Stock Market proposes to establish a fee increase for Nasdaq Level 1 Service⁵ to reflect the increased value of the data being disseminated via this Service. Under the new SEC Order Handling Rules,⁶ Nasdaq quotations now contain additional information that was not previously available to subscribers. That is, pursuant to SEC Rule 11Ac1-4,⁷ customer limit orders are now displayed in market maker quotations. In addition, Nasdaq's Level 1 Service includes price information from electronic communications networks ("ECNs") that was not previously available through this Service. Thus; to reflect the increased value of the transparency of Nasdaq quotes under these new rules and the price discovery information available in the Nasdaq Stock Market, Nasdaq believes that the fee for such service should be increased.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, Nasdaq clarifies that the filing is made on behalf of the NASD and the Nasdaq Stock Market, Inc. Amendment No. 1 also includes additional discussion regarding the statutory basis for the fee increase for Nasdaq Level 1 Service. Finally, Amendment No. 1 corrects several typographical errors in the original filing. See letter from Eugene A. Lopez, Assistant General Counsel, Office of General Counsel ("OGC"), Nasdaq, to Michael Walinskas, Senior Special Counsel, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated March 17, 1997 ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 38417 (March 18, 1997), 62 FR 14487 (March 26, 1997).

⁵ This service includes the following data: (1) inside bid/ask quotations calculated for securities listed on The Nasdaq Stock Market and securities quoted on the OTC Bulletin Board ("OTCBB") Service; (2) the individual quotations or indications of interest of broker/dealers utilizing the OTCBB service; and (3) last sale information on securities classified as designated securities in the Rule 4630, 4640, and 4650 Series and securities classified as over-the-counter equity securities in the Rule 6600 Series. See NASD Rule 7010(a).

⁶ See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (Order Handling Rules Adopting Release).

⁷ 17 CFR 240.11Ac1-4.

Nasdaq proposes to increase by \$1.00 the current monthly fee for the receipt of Nasdaq quote and trade information, resulting in a \$20 fee per month per authorized device for Level 1 Service. As noted above, the Nasdaq Level 1 Service will include limit order information (i.e., the best priced orders to buy and sell) and ECN prices. This information provides valuable information to investors and other market participants and helps in price discovery. This fee increase will become effective immediately upon issuance of this order because over 60% of Nasdaq securities as measured by median daily dollar volume now are subject to the new SEC order handling rules.⁸ Nasdaq believes that value of the Level 1 Service has increased substantially since Nasdaq's higher volume securities now are subject to the new rules.

II. Discussion

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 national securities association, and, in particular, the requirements of Section 15A(b)(5).⁹ Section 15A(b)(5) requires that the rules of a national securities association provide 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 association operates or controls. The Commission believes that the increased fee for Nasdaq Level 1 Service is reasonable and results in an equitable allocation of the costs associated with gathering and disseminating the additional information required as a result of implementation of the new Order Handling Rules. Accordingly, the Commission finds that the Nasdaq's proposal is appropriate and consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NASD-97-17) is approved.

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

⁸ Telephone conversation between Eugene A. Lopez, Assistant General Counsel, OGC, Nasdaq, and James T. McHale, Special Counsel, OMS, Division, Commission, on May 8, 1997. As originally proposed, Nasdaq was to delay implementation of the fee increase until the latter of April 1, 1997, or such time when more than half of Nasdaq securities as measured by median daily dollar volume are subject to the Order Handling Rules.

⁹ 15 U.S.C. 78o-3(b)(5).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38609; File No. SR-PCX-97-14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc., Relating to Name Change From SCOREX to P/COAST

May 12, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 28, 1997, the Pacific 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 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

The Exchange is proposing to amend its Rules to change references to its electronic equity order routing and execution system, from "SCOREX" to "P/COAST." The text of the proposed rule change is attached as Exhibit A to the rule filing.

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

During 1996, the Exchange phased out its former electronic equity order

¹ 15 U.S.C. 78s(b)(1).