

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 CBOE. All submissions should refer to File No. SR-CBOE-00-15 and should be submitted by July 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43005; File No. S7-24-89]

### Joint Industry Plan; Solicitation of Comments and Order Approving Request To Extend Temporary Effectiveness of Reporting Plan for Nasdaq/National Market Securities Trade on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., and the Boston, Chicago, Philadelphia and Cincinnati Stock Exchanges

June 30, 2000.

#### I. Introduction

On June 27, 2000, the National Association of Securities Dealers, Inc. ("NASD"), on behalf of itself and the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange ("CSE") and the Philadelphia Stock Exchange, Inc. ("Phlx") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposal to extend the operation of a joint transaction reporting plan ("Plan")<sup>1</sup> for

Nasdaq/National Market ("Nasdaq/NM") (previously referred to as Nasdaq/NMS) securities traded on an exchange on an unlisted or listed basis.<sup>2</sup> The proposal would extend the effectiveness of the Plan, as amended by Amendment No. 10, through March 31, 2001.<sup>3</sup> The Commission also is extending certain exemptive relief as described below. The June 2000 Extension Request also request that the Commission approve the Plan, as amended, on a permanent basis on or before March 31, 2001. During the extension of the Plan, the Commission will consider whether to approve the proposed Plan, as amended, on a permanent basis.

#### II. Background

The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/NM securities listed on an exchange or traded on an exchange pursuant to a grant of UTP.<sup>4</sup> The Commission approved trading pursuant to the Plan on a one-year pilot basis, with the pilot period to commence when transaction reporting pursuant to the Plan commenced. The Commission originally approved the Plan on June 26, 1990.<sup>5</sup> Accordingly, the pilot period commenced on July 12, 1993 and was scheduled to expire on July 12, 1994.<sup>6</sup> The Plan has since been in operation on an extended pilot basis.<sup>7</sup>

"limited participant" and reports quotation information and transaction reports only in Nasdaq/NM securities listed on the BSE. Originally, the American Stock Exchange Inc. ("Amex") was a Participant but withdrew its participation from the Plan in August 1994.

<sup>2</sup> Section 12 of the Act generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits unlisted trading privileges ("UTP") under certain circumstances. For example, Section 12(f), among other things, permits exchanges to trade certain securities that are traded over-the-counter ("OTC/UTP"), but only pursuant to a Commission order or rule. The present order fulfills this Section 12(f) requirement. For a more complete discussion of the Section 12(f) requirement, see November 1995 Exchange Order, *infra* note 7.

<sup>3</sup> On December 23, 1999, the Commission approved the addition of CSE as a Participant to the Plan. The Plan was also changed to reflect that the Midwest Stock Exchange is now called the Chicago Stock Exchange. See Securities Exchange Act Release No. 42269 (December 23, 1999), 65 FR 799 (January 6, 2000).

<sup>4</sup> See Section 12(f)(2) of the Act.

<sup>5</sup> See Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) ("1990 Plan Approval Order").

<sup>6</sup> See letter from David R. Rusoff, Foley & Lardner, to Betsy Prout, Division of Market Regulation. ("Division"), dated May 9, 1994.

<sup>7</sup> See Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); Securities Exchange Act Release No. 35221 (January 11, 1995), 60 FR 3886 (January 19, 1995); Securities Exchange Act Release No. 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995); Securities Exchange Act Release No. 36226 (September 13, 1995), 60 FR

#### III. Description of the Plan

The Plan provides for the collection from Plan Participants and the consolidation and dissemination to vendors, subscribers and others of quotation and transaction information in "eligible securities."<sup>8</sup> The Plan contains various provisions concerning its operation, including: Implementation of the Plan; Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information; Reporting Requirements (including hours of operation); Standards and Methods of Ensuring Promptness, Accuracy and Completeness of Transaction Reports; Terms and Conditions of Access, Description of Operation of Facility Contemplated by the Plan; Method and Frequency of Processor Evaluation; Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan; Calculation of the Best Bid and Offer ("BBO"); Dispute Resolution; and Method of Determination and Imposition, and Amount of Fees and Charges.<sup>9</sup>

#### IV. Exemptive Relief

In conjunction with the Plan, on a temporary basis, the Commission

49029 (September 21, 1995); Securities Exchange Act Release No. 36368 (October 13, 1995); 60 FR 54091 (October 19, 1995); Securities Exchange Act Release No. 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995) ("November 1995 Extension Order"); Securities Exchange Act Release No. 36589 (December 13, 1995), 60 FR 65696 (December 20, 1995); Securities Exchange Act Release No. 36650 (December 28, 1995), 61 FR 358 January 4, 1996); Securities Exchange Act Release No. 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); Securities Exchange Act Release No. 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996); Securities Exchange Act Release No. 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996); Securities Exchange Act Release No. 37772 (October 1, 1996), 61 FR 52980 (October 9, 1996); Securities Exchange Act Release No. 38457 (March 31, 1997), 62 FR 16880 (April 8, 1997); Securities Exchange Act Release No. 38794 (June 30, 1997) 62 FR 36586 (July 8, 1997); Securities Exchange Act Release No. 39505 (December 31, 1997) 63 FR 1515 (January 9, 1998); Securities Exchange Act Release No. 40151 (July 1, 1998) 63 FR 36979 (July 8, 1998); Securities Exchange Act Release No. 40896 (December 31, 1998), 64 FR 1834 (January 12, 1999); Securities Exchange Act Release No. 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999); and Securities Exchange Act Release No. 42268 (December 23, 1999), 65 FR 1202 (January 6, 2000).

<sup>8</sup> The Plan defines "eligible security" as any Nasdaq/NM security as to which unlisted trading privileges have been granted to a national securities exchange pursuant to Section 12(f) of the Act or that is listed on a national securities exchange. On May 12, 1999, the Commission expanded the number of eligible Nasdaq/NM securities that may be traded by the CHX pursuant to the Plan from 500 to 1000. See May 1999 Approval Order, *supra* note 7.

<sup>9</sup> The full text of the Plan, as well as "Concept Paper" describing the requirements of the Plan, are contained in the original filing which is available for inspection and copying in the Commission's public reference room.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> See Letter from Robert E. Aber, Vice President and General Council, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated June 27, 2000 ("June 2000 Extension Request"). The June 2000 Extension Request also requests that the Commission continue to provide exemptive relief, previously granted in connection with the Plan on a temporary basis, from Rules 11Ac1-2 and 11Aa3-1 under the Securities Exchange Act of 1934, as amended ("Act"). 15 U.S.C. 78a *et seq.* The signatories to the Plan are the Participants for purposes of this release, however, the BSE joined the Plan as a

granted an exemption to vendors from Rule 11Ac1-2 under the Act regarding the calculation of the BBO<sup>10</sup> and granted the BSE an exemption from the provision of Rule 11Aa3-1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data. As discussed further below in the Summary of Comments, the Participants ask in the June 2000 Extension Request that the Commission grant an extension of the exemptive relief described above to vendors until the BBO calculation issue is fully resolved. In addition, in the June 2000 Extension Request, the Participants request that the Commission grant an extension of the exemptive relief described above to the BSE for as long as the BSE is a Limited Participant under the Plan.

#### V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it is consistent with the Act. The Commission continues to solicit comment regarding the BBO calculation, the trade through rule and any issues presented by changes occurring in the market place. 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 communications relating to the proposal 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. All submissions should refer to File No. S7-24-89 and should be submitted by July 31, 2000.

#### VI. Discussion

The Commission finds that an extension of temporary approval of the operation of the Plan, as amended, through March 31, 2001, is appropriate and in furtherance of Section 11A of the Act.<sup>11</sup> The Commission believes that the

<sup>10</sup> Rule 11Ac1-2 under the Act requires that the best bid or best offer be computed on a price/size/time algorithm in certain circumstances. Specifically, Rule 11Ac1-2 under the Act provides that "in the event two or more reporting market centers make available identical bids or offers for a reported security, the best bid or offer . . . shall be computed by ranking all such identical bids or offers \* \* \* first by size \* \* \* then by time." The exemption permits vendors to display the BBO for Nasdaq securities subject to the Plan on a price/size basis.

<sup>11</sup> In approving this extension, the Commission has considered the extension's impact on efficiency,

extension will provide the Participants with additional time to seek Commission approval of pending proposals concerning the BBO calculation and to begin to make reasonable proposals concerning a trade through rule to facilitate the trading of OTC securities pursuant to UTP. With respect to a trade through rule, the Commission notes that it has recently expanded the ITS linkage to all securities, thereby expanding the coverage of the ITS trade through rule.<sup>12</sup> While the Commission continues to solicit comment on these matters, the Commission believes that these matters should be addressed directly by the Participants on or before December 31, 2001 so that the Commission may have ample time to determine whether to approve the Plan on a permanent basis by March 31, 2001.

The Commission also finds that it is appropriate to extend the exemptive relief from Rule 11Ac1-2 under the Act until the earlier of March 31, 2001, or until such time as the calculation methodology of the BBO is based on a price/size/time algorithm pursuant to a mutual agreement among the Participants approved by the Commission. The Commission further finds that it is appropriate to extend the exemptive relief from Rule 11Aa3-1 under the Act, that requires transaction reporting plans to include market identifiers for transaction reports and last sale data, to the BSE through March 31, 2001. The Commission believes that the extensions of the exemptive relief provided to vendors and the BSE, respectively, are consistent with the Act, the Rules thereunder, and specifically with the objectives set forth in Sections 12(f) and 11A of the Act and in Rules 11Aa3-1 and 11Aa3-2 thereunder.

#### VII. Conclusion

*It Is Therefore Ordered*, pursuant to Section 12(f) and 11A of the Act and paragraph (c)(2) of Rule 11Aa3-2 thereunder, that the Participants' request to extend the effectiveness of the Joint Transaction Reporting Plan, as amended, for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis through March 31, 2001, and certain exemptive relief through March 31, 2001, is approved.

competition, and capital formation. 15 U.S.C. 78(c)(f).

<sup>12</sup> Securities Exchange Act Release No. 42212 (December 9, 1999), 64 FR 70297 (December 16, 1999).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42998; File No. SR-PCX-00-17]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange Inc., Relating to Mandatory Decimal Pricing Testing

June 30, 2000.

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 June 23, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") 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 Exchange. The Exchange has designed this proposal as one concerned solely with the administration of the Exchange under Section 19(b)(3)(A)(iii) of the Act,<sup>3</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 adopt new Rule 1.15(b), *Mandatory Decimal Pricing Testing*, which would require member organizations to participate in industry testing of computer systems designed to prepare for the industry conversion to decimal pricing. The text of the proposed rule change is available at the PCX and at the Commission.

#### 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 proposed rule change and discussed any comments it received on the proposed

<sup>13</sup> 17 CFR 200.30-3(a)(29).

<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)(iii).