

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In the September/October 2000 issue of Nasdaq's *Subscriber Bulletin*,<sup>5</sup> Nasdaq announced that it had increased the bandwidth of its Enterprise Wide Network II from 128 kilobits ("kb") to 192 kb. This increased bandwidth provides Nasdaq with the ability to support increased share volume and net products and trading applications that will be introduced. A description of the history of EWN II and the recent bandwidth increase may be found in SR-NASD-00-73.<sup>6</sup> *Subscriber Bulletin* also announced that the increased cost of the expanded bandwidth (\$375 per month per circuit) would be passed on to Nasdaq subscribers beginning December 1, 2000. Nasdaq absorbed all of the increased costs for the month of November 2000.

On December 13, 2000, the Commission received Nasdaq's proposed rule change to amend the subscriber fees for NASD members as described above.<sup>7</sup> Because the filing was made under Section 19(b)(3)(A)(ii), which makes the rule change immediately effective upon filing with the Commission, the fee increase became effective as of December 13, 2000. In this filing, Nasdaq seeks to recover the costs associated with the expanded bandwidth for the period of December 1-12, 2000, as announced in the *Subscriber Bulletin*.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act<sup>8</sup> which requires that the rules of the NASD 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 NASD operate or controls. Nasdaq provided its subscribers with ample advance notice of the fee increase, and has limited the fee increase to the additional cost that it is incurring as a result of the expanded bandwidth. Nasdaq did not pass on the costs of the expanded bandwidth to subscribers that Nasdaq incurred in November 2000. As such,

<sup>5</sup> *Subscriber Bulletins* are mailed to Nasdaq Workstation II subscribers and also may be found at [www.nasdaqtrader.com/trader/news/subscriberbulletins](http://www.nasdaqtrader.com/trader/news/subscriberbulletins).

<sup>6</sup> Securities Exchange Act Release No. 43769 (December 22, 2000).

<sup>7</sup> *Id.*

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

Nasdaq believes that it is equitably allocating charges among members for the use of EWN II during the period of December 1-12, 2000.

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

Nasdaq does not believe that the proposed rule change will impose any burden on competition that it 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*

Nasdaq has not solicited or received written comments on the proposed rule change.

**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, 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 maybe 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-00-79 and should be submitted by February 6, 2001.

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

**Margarety H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-1195 Filed 1-12-01; 8:45 am]

BILLING CODE 8010-01-M

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43811; File No. SR-00-38]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Modifying its Options Trade-Related Transaction Charges and Changing its Firm Transaction Fee**

January 5, 2001

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 November 16, 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.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended.

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

The Exchange proposes to amend its Schedule of Rates and Charges to create a new fee category in the transactions portion of the "PCX Options: Trade-Related Charges." The new fee category will be entitled "Broker-Dealer."<sup>4</sup> The PCX also seeks to change the fees charged for firm transactions.

<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> The Exchange filed its proposed rule change on November 16, 2000. On December 15, 2000, however, the Exchange filed Amendment No. 1, which clarified that the proposed fee is comparable to the fee charged by the Philadelphia Stock Exchange, Inc. ("Phlx"). See Letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Susie Cho, Attorney, Division of Market Regulation ("Division"), Commission (December 15, 2000).

<sup>4</sup> The term "Broker-Dealer" as used in this rule filing will include transactions in which a market maker is trading for a customer account, any trade for a joint back officer ("JBO") account, all trades for a firms account, except trades in which the firm is trading with its own customer on contra side.

## 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 Section 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 proposes to amend its Schedule of Rates and Charges to create a new fee category in the transactions portion of the "PCX Options: Trade-Related Charges." The new fee category will be entitled "Broker-Dealer." The PCX also seeks to change the fees charged for firm transactions.

Currently, the PCX Schedule of Rates and Charges contains two categories of transactions under its options trade related charges. These categories include market maker transactions and firm transactions. The market maker charge is \$0.21 per contract. The firm charge consists of \$0.85 per contract side where the premium is less than \$1.00 per contract and a \$0.115 per contract side where the premium is \$1.00 or more per contract. This fee structure does not address those instances where a broker/dealer processes a transaction through a customer account of the market maker or through a firm account created through a JBO arrangement with a clearing firm. In these situations the broker/dealer pays no transaction fees (customer account) or pays the applicable firm fee.

The Exchange now proposes to modify its Schedule of Rates and Charges. First, the Exchange proposes to change its options trade-related transaction charges by creating a new category entitled "Broker-Dealer." The PCX believes that this modification is needed in order to create a billing category for broker-dealer activity that does not fall within the structure of the Schedule of Rates and Charges. This new category will cover transaction and comparison charges incurred by broker-dealer activity originating both on and off the PCX floor. This new fee consists of \$0.19 per contract transaction charge

and \$0.05 per contract comparison charge. The fee will apply to broker-dealers who are routing orders through firm or customer accounts carried by member clearing firms. The broker-dealer fee does not apply to certain firm/proprietary orders that are included within the firm transaction charge.

The PCX believes that the proposed fee is reasonable. The Exchange also represents that it is comparable to fees charged by the Phlx.<sup>5</sup> Like the broker-dealer charge applied by the Phlx, the PCX's proposed broker-dealer fee applies to orders for any account in which the holder of a beneficial interest is a broker-dealer or person associated with or employed by a broker-dealer, including JBO accounts.<sup>6</sup>

The Exchange also proposes to change its firm transaction fee. The firm transaction fee applies to member firm proprietary trades that have a customer of that firm on the contra side of the transaction. To simplify billing, the Exchange proposes to change the rate to a revenue neutral rate of \$0.100 per contract regardless of premium size.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>8</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

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

The PCX 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

The Exchange did not solicit or receive comments on the proposed rule change.

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

The proposed rule change has become effective pursuant to Section

19(b)(3)(A)(ii) of the Act,<sup>9</sup> and Rule 19b-4(f)(2) thereunder,<sup>10</sup> in that it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such 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.

## 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, N.W., Washington, D.C. 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 the File No. SR-PCX-00-38 and should be submitted by February 6, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 01-1153 Filed 1-12-01; 8:45 am]

**BILLING CODE 8010-01-M**

<sup>5</sup> See Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000).

<sup>6</sup> *Id.*

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).