

it to implement these \$0.50 strike price intervals immediately.

The Commission believes that it is consistent with the protection of investors and the public interest that the proposed rule change become operative immediately as of January 31, 2001.<sup>9</sup> 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.

#### 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 CBOE. All submissions should refer to File No. SR-CBOE-01-02 and should be submitted by March 16, 2001.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-4498 Filed 2-22-01; 8:45 am]

BILLING CODE 8010-01-M

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43968; File No. SR-NASD-01-05]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Relating to Access to, and Fees Assessed for, the Automated Confirmation and Transaction Service

February 15, 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 January 12, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. On February 8, 2001, Nasdaq amended the proposal.<sup>3</sup> On February 13, 2001, Nasdaq again amended the proposal.<sup>4</sup> Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>5</sup> and Rule 19b-4(f)(6) thereunder,<sup>6</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, as amended, from interested persons.

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

Nasdaq proposes to amend NASD Rule 7010(g) to create "Nasdaq ACT," an internet-based means for member firms to report trades to the Automated Confirmation and Transaction ("ACT") Service. Nasdaq also proposes to establish fees to be assessed for the use of Nasdaq ACT. The text of the proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets.

#### Rule 7010 System Services

(a)-(f) No Change.

(g) Confirmation Transaction Service (ACT):

Transaction Related Charges:

Comparison .....	\$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares)
Automated Give-Up .....	\$0.01/side per 100 shares (minimum 400 shares; maximum 7,500 shares)
Late Report—T+N .....	\$0.288/side
Browse/query .....	\$0.288/query <sup>1</sup>
Terminal fee .....	\$57.00/month (ACT only terminals)
CTCI fee .....	\$575.00/month
Nasdaq ACT .....	\$300/month (full functionality) or \$150/month (up to an average of twenty transactions per day each month) <sup>2</sup>
Service desk .....	\$57.00/month <sup>[2]3</sup>
Trade Reporting .....	\$.029/side (applicable only to reportable transaction not subject to trade comparison through ACT) <sup>[3]4</sup>
Risk Management Charges ...	\$.035/side and \$17.50/month per correspondent firm

#### Footnotes

<sup>9</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</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> See February 8, 2001 letter from Jeffrey S. Davis ("Davis"), Assistant General Counsel, Nasdaq, to Katherine A. England ("England"), Assistant Director, Division of Market Regulation ("Division"), SEC ("Amendment No. 1"). In Amendment No. 1, Nasdaq converted the proposal

to a non-controversial filing pursuant to Section 19(b)(3)(A) and Rule 19b-4(f)(6). 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b-4(f)(6). Nasdaq also asked the Commission to waive the 30-day operative waiting period. The Commission considers Nasdaq's original filing as satisfying the 5-day pre-filing notice requirement. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence as of February 8, 2001, the date of the last substantive amendment to the proposal.

<sup>4</sup> See February 13, 2001 letter from Davis to England ("Amendment No. 2"). In Amendment No.

2, Nasdaq completely replaced the original proposed rule language with new language, to correct inaccuracies in the text of the proposed rule as it was originally filed. The new proposed rule language in Amendment No. 2 does not change the substance of the proposal, which creates a new method for accessing ACT, and establishes fees for using the new method of access. Telephone conversation between Davis and Joseph Morra, Special Counsel, Division, SEC, February 13, 2001.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>1</sup>Each ACT query incurs the \$0.288 fee; however, the first accept or decline processed for a transaction is free, to insure that no more than \$0.288 is charged per comparison. Subsequent queries for more data on the same security will also be processed free. Any subsequent query on a different security will incur the \$0.288 query charge.

<sup>2</sup>For the purposes of this service only, a transaction is defined as an original trade entry, either on trade date or as-of transactions per month.

<sup>12,3</sup>The ACT service desk is available to ACT participants that: (1) do not have access to Nasdaq equipment and that average five or fewer trades per day during the previous calendar quarter; or (2) utilized the Nasdaq Workstation I to report trades as of June 1999, do not have access to Nasdaq equipment, and average 20 or fewer trades per day during the previous calendar quarter.

<sup>13,4</sup>The trade reporting service charge is applicable to those trades input into ACT for reporting purposes only, such as NSCC Qualified Special Representative reports and reports of internalized transactions.

(h)-(p) 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

#### 1. Purpose

Nasdaq proposes to amend NASD Rule 7010(g) to create Nasdaq ACT, an internet-based ACT service that will permit NASD members to report trades to ACT. Nasdaq ACT will offer functionality that is identical to that offered through the current modes of reporting to ACT, as described below. Nasdaq also proposes to establish fees to be assessed for the use of Nasdaq ACT.

ACT is the Nasdaq system used by members to report and compare trades for clearance and settlement, and to transmit trade reports for regulatory purposes and public dissemination. After members enter trade information into ACT (as required by NASD ACT and trade-reporting rules),<sup>7</sup> the system sends locked-in trades to clearing. Under current NASD rules, members must report trades to ACT for certain transactions executed in the over-the-counter market, including transactions in Nasdaq National Market securities ("NNM"), Nasdaq SmallCap securities ("SmallCap"), Over-the-Counter Bulletin Board ("OTCBB") securities, Nasdaq convertible debt securities, exchange-listed securities effected in the over-the-counter market, and securities traded exclusively in the over-the-

counter market (e.g., Pink Sheet securities).<sup>8</sup>

There generally are three methods to report trades to ACT: (1) Ordering a Nasdaq Workstation II service ("NWII"); (2) using the Nasdaq ACT Service Desk; or (3) having another firm that has access to ACT through the NWII trade report (commonly known as a "give-up" relationship). Each mode of trade-report entry accomplishes the same result, but they have different characteristics. The NWII offers the full-range of ACT functionality, including entry of trade reports, ACT trade scan, comparison of trade reports, No/Was trade corrections, trade statistics, risk management requests, risk management scan, risk management alerts, clearing broker scan, and various clearing alerts. NWII is the optional delivery mechanism for large NASD members, many of whom use the wide-ranging functionality that it offers in addition to ACT.

The ACT Service Desk was designed as a cost effective method of trade reporting for firms that effect very few transactions in Nasdaq securities or other securities traded in the over-the-counter market.<sup>9</sup> As such, NASD rules limit participation in the ACT Service Desk to only those members who do not have access to Nasdaq equipment and who have effected an average of five or fewer trades per day during the previous calendar quarter.<sup>10</sup> If a firm has reported more than five trades per day during the previous calendar quarter, the firm must either order a NWII to report trades or enter into a give-up arrangement.<sup>11</sup>

In a "give-up" arrangement, a member who reports or accepts a trade in ACT on behalf of another member would identify in the ACT screen give-up box the member on whose behalf the trade was being reported or accepted. Where the executing broker accepts a trade that has been reported by another member, the reporting member would have to

<sup>8</sup> *Id.*

<sup>9</sup> The ACT Service Desk is a phone-based service that allows firms to report trades over the phone to Nasdaq Market Operations staff, who in turn input the trades into the Act system for dissemination to the tape. See generally, Securities Exchange Act Release No. 27908 (April 17, 1990), 55 FR 15313 (April 23, 1990) (SR-NASD-90-15) (notice establishing ACT Service Desk).

<sup>10</sup> See footnote to NASD Rule 7010(g).

<sup>11</sup> See footnote to NASD Rule 7010(g).

report the trade with the executing broker as the contra-side and identify the prime brokerage customer as the contra-side give-up. The executing broker may then accept the trade as presented. This would avoid a second trade report and ensure that the prime brokerage customer is identified to the NASD.

Nasdaq Act will provide the same basic ACT features and functions offered through the NWII service. In the case of Nasdaq ACT, however, clients that use some but not all ACT functionality will have the opportunity to reduce their expenses by purchasing a scaled-back version of the service. Specifically, users will be able to purchase Nasdaq ACT with full ACT functionality for \$300 per month per terminal. On the other hand, users that need only the trade entry and trade query function (and not risk management) and who enter an average of 20 or fewer trades per day per month will be assessed \$150 per month per terminal.

Nasdaq believes that Nasdaq ACT will be a cost-effective alternative for many users that are currently accessing ACT. For instance, clearing firms use ACT to manage their risk with their clients to ensure that the clients to not extend their trading activity beyond their "cap" limits. Back-office personnel use ACT to compare trades effected on their trading floors. These users do not take advantage of the quote engine or the other execution systems offered on NWII. In addition, some market participants may choose to use Nasdaq ACT to serve as a back-up or redundancy for their NWII terminals.

#### 2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>12</sup> which requires, among other things, that the Association's rules must be designed to foster cooperation and coordination with person 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

<sup>7</sup> See NASD Rules 4630, 4640, 4650, 6100, 6400, 6600, and 6700.

<sup>12</sup> 15 U.S.C. 78o-3(b)(6)

and a national market system, and, in general to protect investors and the public interest. Nasdaq believes that the proposed rule change is consistent with the purposes of the Act in that it will provide a cost effective and efficient mechanism to report trades, and therefore facilitate clearance and settlement. Additionally, Nasdaq believes the proposed rule change will enhance the process by which members engage in the comparison and clearing of securities transactions.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>13</sup> which requires that the Association's rules 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 Nasdaq operates or controls.

#### *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 or appropriate in furtherance of the purposes of the Act, as amended.

#### *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**

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6)<sup>15</sup> thereunder. 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>16</sup>

Nasdaq has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal to become immediately operative upon filing, because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow member firms that wish to report trades to ACT via the internet to access the service immediately. The Commission finds no reason to require NASD members to wait 30 days before participating in a service that is designed to be both efficient and cost-effective. For these reasons, the Commission finds good cause to designate that the proposal become operative upon filing.<sup>17</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 NASD. All submissions should refer to file number SR-NASD-01-05 and should be submitted by March 16, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

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

[FR Doc. 01-4427 Filed 2-22-01; 8:45 am]

**BILLING CODE 8010-01-M**

<sup>17</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43971; File No. SR-PCX-00-05]

### **Self-Regulatory Organizations; Order Granting Partial Approval of Proposed Rule Change and Notice of Filing and Order Granting Partial Accelerated Approval of Amendments No. 2 and 3 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to Its Automatic Execution System**

February 15, 2001.

#### **I. Introduction**

On March 8, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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 to allow broker-dealer orders to be eligible for automatic execution through the Exchange's Automatic Execution system ("Auto-Ex") on an issue-by-issue basis. The Exchange also proposed to adopt rules to establish means of improving compliance with rules pertaining to the use of Auto-Ex. On June 27, 2000, the PCX filed Amendment No. 1 to the proposed rule change.<sup>3</sup> Notice of the proposed rule change, including Amendment No. 1, was published for comment in the **Federal Register** on July 25, 2000.<sup>4</sup> The Commission received four comment letters with respect to the proposal.<sup>5</sup> On January 18, 2001, the PCX filed Amendment No. 2 to the proposed rule change.<sup>6</sup> On January 26, 2001, the

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

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

<sup>3</sup> See letter from Michael D. Pierson, Vice President, Regulatory Policy, PCX, to Gordon Fuller, Special Counsel, Division of Market Regulation ("Division"), Commission, dated June 26, 2000 ("Amendment No. 1"). In Amendment No. 1, the PCX revised some of the text of the proposed rule change.

<sup>4</sup> Securities Exchange Act Release No. 43049 (July 18, 2000), 65 FR 45810.

<sup>5</sup> See letters from David B. Bayless, Morrison & Foerster LLP ("Morrison & Foerster"), to Jonathan G. Katz, Secretary, Commission, dated August 14, 2000 ("Morrison & Foerster Letter"); David M. Battan, Vice President and General Counsel, Interactive Brokers LLC ("Interactive Brokers"), to Jonathan G. Katz, Secretary, Commission, dated August 15, 2000 ("Interactive Brokers Letter"); Mike Ianni, to Jonathan G. Katz, Secretary, Commission, dated August 9, 2000 ("Ianni E-Mail"); and William M. Thomas, Member of Congress, forwarding a letter from Austin Kalb, Chief Executive Officer, OutSource International Corporation ("OutSource International"), to Jonathan G. Katz, Secretary, Commission, dated August 14, 2000 ("OutSource International Letter").

<sup>6</sup> See letter from Cindy Sink, Senior Attorney, Regulatory Policy, PCX, to Sapna Patel, Attorney, Division, Commission, dated January 17, 2001.

<sup>13</sup> 15 U.S.C. 78o-3(b)(5).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> The 60-day abrogation period began February 8, 2001. See footnote 3, *supra*.