

order, (2) an order being facilitated, or (3) orders being crossed, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option of the same class as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument.

This prohibition of the proposed rule change would continue until either (1) all of the terms of the order of which the member or associated person has knowledge are disclosed to the trading crowd, or (2) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. The rule specifies that the terms of an order are "disclosed" to the trading crowd on the Exchange when the order is entered into the System or into the Facilitation Mechanism.

## 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 ISE 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

The Exchange is proposing to adopt Supplementary Material .02 to Rule 400 (Just and Equitable Principles of Trade) to prohibit the use of non-public information received during the facilitation and solicitation processes. ISE Rule 717(d)-(e), in conjunction with ISE Rule 716(d), required that orders be displayed to the trading crowd before being crossed with facilitation orders or orders that have been solicited. The purpose of this requirement is to provide the trading crowd with an opportunity to participate in the transaction with the facilitating member or the solicited party.

The Exchange seeks to codify its policy prohibiting either a member or a person associated with a member from using non-public information for the member's benefit by trading in the underlying stock or in related instruments prior to exposing the order

to the trading crowd. This policy prevents members and associated persons from using undisclosed information about imminent options transactions to trade the relevant option or any closely related instrument in advance of the trading crowd. Such action would undermine the ability of crowd participants to participate in the execution of the order at equally favorable terms as the member representing the order.

#### 2. Statutory Basis

The basis for this proposed rule change is the requirement under section 6(b)(5) of the Act<sup>3</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

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

The Exchange believes that the proposed rule change does not 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 has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

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 ISE 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 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 the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR-ISE-01-02 and should be submitted by March 20, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43988; File No. SR-NASD-00-37]

### Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Permanent Approval of the Nasdaq Application of the OptiMark System

February 20, 2001.

On June 19, 2000, 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") a proposed rule change, 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> to seek permanent approval of the Nasdaq Application of the OptiMark System without any restrictions on the trading activity to be conducted through the facility. Notice of the proposed rule change was published on August 9, 2000, in the **Federal Register**, to solicit comment from

<sup>4</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. 78f(b)(5).

interested persons.<sup>3</sup> On February 12, 2001, the Nasdaq withdrew the proposed rule change.<sup>4</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43986; File No. SR-PCX-01-10]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to an Interim Intermarket Linkage Program

February 20, 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 February 6, 2001,<sup>3,4</sup> 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 PCX. PCX 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.<sup>7</sup> 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 is proposing to adopt a rule providing for the implementation of

<sup>3</sup> Securities Exchange Act Release No. 43107 (Aug. 2, 2000), 65 FR 48771.

<sup>4</sup> See letter from Peter R. Geraghty, Assistant General Counsel, Nasdaq, to John Polise, Senior Special Counsel, Division of Market Regulation, Commission, dated February 12, 2001.

<sup>5</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>3-4</sup> On February 9, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change. See letter from Michael Pierson, Vice President, Regulatory Policy, PCX, to John Roeser, Attorney, Division of Market Regulation, Commission, dated February 8, 2001 ("Amendment No. 1"). In Amendment No. 1, the PCX made technical changes to the proposed rule text.

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

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

<sup>7</sup> The Commission has agreed to waive the 5-day pre-filing notice requirement. See 17 CFR 240.19b-4(f)(6)(iii).

"interim linkages" with other option exchanges.<sup>8</sup>

#### 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 PCX 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 PCX 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

The purpose of this proposed rule change is to implement certain aspects of an intermarket options linkage on an "interim" basis.<sup>9</sup> This interim linkage would utilize existing systems to facilitate the sending and receiving of order flow between PCX market makers and their counterparts on the other option exchanges as an interim step towards development of a "permanent" linkage.

The Commission has approved a linkage plan that now includes all five option exchanges.<sup>10</sup> The option exchanges continue to work towards implementation of this linkage. However, because the implementation may take a significant amount of time, the option exchanges have discussed implementing an "interim" linkage. Such a linkage would use the existing market infrastructure to route orders between market makers on the participating exchanges in a more efficient manner.

The key component of the interim linkage would be for the participating exchanges to open their automated customer execution systems, on a limited basis, to market maker orders. Specifically, market makers would be able to designate certain orders as "customer" orders, and thus would

<sup>8</sup> On January 30, 2001, the Commission approved similar proposals submitted by the Chicago Board Options Exchange, Inc. ("CBOE") and the International Securities Exchange LLC ("ISE"). See Securities Exchange Act Release No. 43904 (January 30, 2001), 66 FR 9112 (February 6, 2001).

<sup>9</sup> Under the proposal, the interim linkage would be for a pilot period expiring on January 31, 2002.

<sup>10</sup> See Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); and 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000).

receive automatic execution of those orders on participating exchanges.

This proposed rule would authorize the PCX to implement bilateral or multilateral interim arrangements with the other exchanges to provide for equal access between market makers on our respective exchanges. The Exchange currently anticipates that the initial arrangements would allow PCX Designated Lead Market Makers ("LMMs") and their equivalents on the other exchanges, when they are holding customer orders, to effectively send those orders to the other market for execution when the other market has a better quote. Such orders would be limited in size to the lesser of the size of the two markets' automatic execution size for customer orders.

All interim linkage orders must be "immediate or cancel" (that is, they cannot be placed on an exchange's limit order book), and a market maker may send a linkage order only when the other (receiving) market is displaying the national best bid or offer and the sending market is displaying an inferior price. This will allow a market maker to access the better price for its customer. In addition, if the interim linkage includes principal orders, it would allow market makers to attempt to "clear" another market displaying a superior quote. Any exchange participating in the interim linkage will implement heightened surveillance procedures to help ensure that their market makers send only properly-qualified orders through the linkage.

LMM participation in the interim linkage will be voluntary. Only when an LMM and its equivalent on another exchange believe that this form of mutual access would be advantageous will the exchanges employ the interim linkage procedures. The PCX believes that the interim linkage will benefit investors and will provide useful experience that will help the exchanges in implementing the full linkage.

###### 2. Statutory Basis

The PCX believes that the proposed rule change meets the requirement of section 6(b)(5) under the Act<sup>11</sup> in that it is 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 transaction in securities to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in

<sup>11</sup> 15 U.S.C. 78f(b)(5).