to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

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

The Exchange 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 has neither solicited nor 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 Exchange 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 such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file number SR–CBOE–2002–08 and should be submitted by April 29, 2002.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8367 Filed 4–5–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45671; File No. SR–NASD–2002–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Automatic Refreshing of Quotations in Nasdaq's SuperMontage System and the Withdrawal of Market Makers That Fail To Maintain a Clearing Relationship

March 28, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 3, 2002, 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'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq submitted Amendment No. 1 on March 5, 2002.[3] 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 Rules 4710(b)(5) and 4619(c) to modify the procedures for refreshing exhausted market maker quotes in, and withdrawing market makers that fail to maintain proper clearing arrangements from, Nasdaq's future Order Display and Collector Facility (collectively referred to as the Nasdaq National Market System ''NNMS'' or ''SuperMontage''). Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

4710. Participant Obligations in NNMS

(a) through (b)(4) No Change.

(5) If an NNMS Market Maker's Attributable Quote/Order is reduced to zero on one side of the market due to NNMS executions, the NNMS will close the Market Maker's quote in the NNMS [with respect to both sides of its market] *on that side of the market,* and the NNMS Market Maker will be permitted a grace period of [three minutes] *30 seconds* within which to take action to restore its Attributable Quote/Order if the market maker has not authorized use of the QR functionality or does not otherwise have an Attributable Quote/Order on that side[s] of the market in the system. An NNMS Market Maker that fails to transmit an Attributable Quote/Order in a security within the allotted time will have [its] the *exhausted side of its* quotation restored by the system at *a price $0.01 inferior* to the lowest displayed bid price [and] *or* the highest displayed offer price in that security *as appropriate. If all bids and/or offers are exhausted so that there are no longer any Quote/Orders displayed on the bid and/or offer side of the market, the system will refresh a market maker's exhausted bid or offer quote to a normal unit of trading priced $0.01 inferior to the lesser of either: (a) The last valid displayed inside bid/offer in the security before all such bids/offers were exhausted; or b) the market maker's last displayed bid/offer before exhaustion. If the resulting bid/offer quote would create a locked or crossed market, NNMS will instead re-open the exhausted market maker's bid/offer quote at a price $0.01 inferior to the unexhausted inside bid/offer in that security. If at any time this automatic quote restoration process would result in the creation of a bid/offer of less than $0.01, the system will refresh that bid/offer to a price of $0.01*. Except as provided in subparagraph (b)(6) of this rule, an NNMS Market Maker that withdraws from a security may not re-register in the system as a market maker in that security for twenty (20) business days. The requirements of this subparagraph shall not apply to a market maker's Agency Quote.

(6) through (10) No Change.

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 4, 2002 (''Amendment No. 1''). In Amendment No. 1, Nasdaq modified its filing, as originally-proposed, by removing the words ''at least'' from each reference to the phrases ''at least $0.01 inferior'' and ''at least one penny inferior'' in both Nasdaq's proposed amendments to NASD Rule 4710(b)(5) and the text of Nasdaq's Form 19b–4.

4619. Withdrawal of Quotations and Passive Market Making

(a)–(b) No Change.

(c) Excused withdrawal status may be granted to a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction service, thereby terminating its registration as a market maker in Nasdaq issues. Provided however, that if the Association finds that the market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4620 and the Rule 4700 Series governing the Nasdaq National Market Execution System. *Market makers that fail to maintain a clearing relationship will have their NNMS system status set to ''suspend'' and be thereby prevented from entering, or executing against, any quotes/orders in the system.*

* * * * *

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

As part of its ongoing preparation for the launch of SuperMontage,[4] Nasdaq is engaging in a continuing review of the system's functionality and rules with a view to constant improvement. As a result of this review, and in consultation with industry professionals, Nasdaq has determined to: (a) modify SuperMontage's procedure for the automatic re-entering of the quotations of market makers that have been reduced to zero on either the bid or offer side of the market as the result of previous executions; and (b) alter the NNMS system status of market makers that fail to maintain a clearing relationship.

a. *Refreshing Exhausted Quotations* First, Nasdaq proposes to change the way Nasdaq market makers' quotes on the SuperMontage would be automatically refreshed after being reduced to zero by executions. Currently, the NASD rules for SuperMontage provide that if a market maker's quote/order is reduced by executions to zero on either the bid or offer side of the market, and not voluntarily refreshed by that market maker within 3 minutes, the system will automatically zero out and refresh *both* sides of the quote to a size of 100 shares priced at the lowest bid or highest offer currently being displayed by any other quoting participant in that security.

Upon further review, and after consulting with market participants, Nasdaq has determined to make several improvements to this process. First, Nasdaq proposes to reduce, from 3 minutes to 30 seconds, the amount of time that a market maker can leave its bid or offer quotation at zero before SuperMontage begins its automatic quote refreshing process. Nasdaq believes that the current 3 minute time period is simply too long for a quote to remain inaccessible given the rapid automated nature of trading that is expected in the SuperMontage environment.

Further, Nasdaq proposes to limit the automatic refreshing of quotes to the single bid or offer side of a quotation that has been reduced to zero through executions. Under current NASD rules for SuperMontage, if a market maker is displaying a two-sided quote and either its bid or offer is reduced to zero and not voluntarily refreshed, the system will automatically zero out the market maker's entire quote (both the bid and offer sides) and create a new bid and offer based on the displayed prices of other quoting participants in the security. Upon further review, Nasdaq has determined that altering both sides of the market maker's quote in this situation unfairly disadvantages the orders of market participants that remain on the unexhausted side of that quote. By automatically zeroing out and refreshing a side of the market maker's quote where trading interest remains, the orders represented by that unexhausted side of the quote lose their execution priority in the system and have their ability to interact with the quotes and orders of others unfairly impaired. To remedy this situation, Nasdaq proposes to alter the process for the refreshing of exhausted quotes in SuperMontage so that the process only operates against the sides of market makers' quotations where trading interest has been reduced to zero by executions. In addition, Nasdaq has determined to refresh exhausted bid/offers to prices $0.01 inferior to the lowest bid or highest offer displayed in the particular security. The unexhausted sides of such quotes would remain displayed in the system and available for execution.

Finally, Nasdaq also proposes to establish a method for refreshing the exhausted sides of market maker quotations in situations where there are no available quotes from which to determine a refresh price. In this situation, SuperMontage would refresh the exhausted side of a quote to a normal unit or trading at a price level that is one penny inferior to the lesser of either: (a) the last valid displayed inside bid/offer in the security before all such bids/offers were exhausted; or (b) the market maker's last displayed bid/offer. If the resulting bid/offer quote would create a locked or crossed market, NNMS would instead re-open the market maker's bid/offer quote at a price that is one penny inferior to the unexhausted contra side of the market. Nasdaq believes that this process provides a uniform and fair method to quickly establish reasonable market maker quotes in situations where no trading interest is being currently displayed.

b. *Withdrawal of Quotations for Failure to Maintain a Clearing Relationship*

In addition to changing the way SuperMontage will handle exhausted quotes, Nasdaq also proposes to alter the designation given to market makers that withdraw from the market based on their failure to maintain a clearing relationship. Currently, when a market maker seeks to leave the market because of a lack of a clearing relationship, it is placed in ''excused withdrawal'' status. In that status, the market maker is expected not to enter quotes or orders into the SuperMontage, but is not technologically prevented from doing so. To ensure that withdrawing market makers are precluded from participating in the system without a clearing relationship, Nasdaq proposes that such market makers have their system status designated as ''suspend.'' Once a market maker is designated in the system as being in a suspend status, SuperMontage would be able to prevent that market maker from placing quotes or orders into the system. Once the market maker regains a clearing relationship, the suspend status would be lifted, and the market maker would be free to participate again. Nasdaq

[4] See Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (order approving SuperMontage).

believes that this proposal should enhance the integrity of the system and significantly reduce the potential for inappropriate quoting and trading activity.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of section 15A(b)(6) of the Act,[5] in that the proposals are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, 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 and a national market system, and, in general, to protect investors and the public interest.

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.

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

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 self-regulatory organization consents, the Commission will:

A. by order approve the 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, 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, 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 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 NASD. All submissions should refer to File No. SR–NASD–2002–01 and should be submitted by April 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–8366 Filed 4–5–02; 8:45 am]

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[5] 15 U.S.C. 78*o*-3(b)(6).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45662; File No. SR–PCX–2002–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Addition of a Surcharge Fee for the Automatic Execution of Broker-Dealer Orders

March 27, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on February 4, 2002, the Pacific Exchange, Inc. (''Exchange'' or ''PCX'') 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 PCX. On March 21, 2002, the PCX submitted Amendment No. 1 to the proposed rule change.[3] 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

The PCX is proposing to modify its Schedule of Fees and Charges by adding a surcharge fee for the automatic execution of broker-dealer orders.

The text of the proposed rule change, as amended, 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 PCX included statements concerning the purpose of and basis for the proposed rule change, as amended, 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 Exchange is proposing to adopt a $0.45 per contract surcharge fee for all broker-dealer orders [4] executed via the Exchange's automatic execution system (''Auto-Ex''). On November 6, 2001, the Commission approved a PCX rule change proposal to permit broker-dealer orders to be executed on Auto-Ex.[5] The November 6, 2001 Rule Change was implemented on an issue-by-issue basis, subject to the approval of the Options Floor Trading Committee.[6]

The Exchange proposes to implement a $0.45 per contract surcharge on all trades executed pursuant to this

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Cindy L. Sink, Senior Attorney, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 20, 2002 (''Amendment No. 1''). In Amendment No. 1, the PCX elaborated, in detail, on the purpose for the proposed rule change. The changes made by Amendment No. 1 have been incorporated into this notice. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on March 21, 2002, the date the PCX filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[4] A broker-dealer order is an order for the account of a registered broker-dealer.

[5] *See* Securities Exchange Act Release No. 45032 (November 6, 2001), 66 FR 57145 (November 14, 2001) (SR–PCX–2000–05) (approving portion of proposal that allowed for orders for the account of broker-dealers to be executed on Auto-Ex on an issue-by-issue basis) (''November 6, 2001 Rule Change'').

[6] *Id.*