

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,<sup>5</sup> 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.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

## 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"),<sup>1</sup> and Rule 19b-4<sup>2</sup> 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.<sup>3</sup> The

<sup>6</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 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

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<sup>4</sup> 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.<sup>5</sup> The November 6, 2001 Rule Change was implemented on an issue-by-issue basis, subject to the approval of the Options Floor Trading Committee.<sup>6</sup>

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

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).

<sup>4</sup> A broker-dealer order is an order for the account of a registered broker-dealer.

<sup>5</sup> 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").

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

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

proposed rule change, as amended. The Exchange represents that, under this proposal, *all* trades executed via Auto-Ex on behalf of broker-dealers will be uniformly assessed the fee. The Exchange also represents that the surcharge for automatic execution of broker-dealer orders will only be charged to member firms. The Exchange asserts that these firms will be assessed the fee monthly. The Exchange represents that bills will be issued to these firms approximately five days after the end of each trade month. The Exchange asserts that the surcharge will not apply to non-members.

The Exchange represents that the November 6, 2001 Rule Change to Auto-Ex extends the benefits of automatic execution to broker-dealers.<sup>7</sup> The Exchange asserts that such change provides instant execution without the need for a floor broker. The Exchange represents that the fast turnaround time minimizes the possibility that the market will move away from the prevailing quote. The Exchange asserts that broker-dealers who want to access the PCX's markets, but who do not want to pay the surcharge, can send their orders to the PCX for manual execution by Floor Brokers. The Exchange believes, however, that the benefits of automatic execution outweigh the burden of paying the surcharge.

The Exchange represents that broker-dealer orders that are automatically executed on Auto-Ex are not subject to brokerage fees that would otherwise be imposed by PCX members. The Exchange believes that the floor brokerage fees on broker-dealer order executions are generally comparable to the proposed surcharge amount. The Exchange represents that broker-dealer orders routed to Floor Broker Hand Held Terminals are not subject to the surcharge. The Exchange asserts that the surcharge is in addition to existing fees.

The Exchange represents that the fee will recoup costs associated with developing the new feature allowing automatic execution of broker-dealer orders in designated option issues. The Exchange asserts that the costs required to allow its Pacific Options Exchange Trading System ("POETS") to accept and execute these orders included an extensive system design change, programming and testing, and that billing programming was also required. The Exchange believes the fee is reasonable.

<sup>7</sup> The Exchange represents that, previously, these benefits were only available to public customers.

## 2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with section 6 of the Act,<sup>8</sup> in general, and with section 6(b)(4) of the Act,<sup>9</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

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

The PCX does not believe that the proposed rule change, as amended, 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

Written comments on the proposed rule change, as amended, were neither solicited nor received.

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

The foregoing proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and subparagraph (f)(2) of Rule 19b-4<sup>11</sup> thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of March 21, 2002, 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>12</sup>

## 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change between the

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> See 15 U.S.C. 78(b)(3)(C).

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 PCX. All submissions should refer to File No. SR-PCX-2002-10 and should be submitted by April 29, 2002.

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

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

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[USCG-2002-11843]

### National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of agency policy; request for comment.

**SUMMARY:** The Coast Guard proposes to revise its list of agency actions that we have determined do not individually or cumulatively have a significant effect on the human environment and, thus, are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA). Consistent with the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA, the Coast Guard has periodically reviewed its NEPA implementing procedures and has determined that it was necessary to clarify some existing categorical exclusions (CEs) to prevent misinterpretation and to create new CEs to reduce excessive and needless paperwork for actions that have proven to have no potential for significant impacts. The purpose of this notice is to provide the public an opportunity to comment on the proposed changes to our list of categorical exclusions.

**DATES:** Comments and related material must reach the Docket Management Facility on or before May 8, 2002.

**ADDRESSES:** To make sure your comments and related material are not

<sup>13</sup> 17 CFR 200.30-3(a)(12).