

Participants at any time and will be retained by the system until they are executed or cancelled. Each GTC and Day order will, like all other representations of trading interest in SuperMontage, be individually time-stamped and executed if appropriate. Reminders of quote/orders reduced by execution, and retained by the system, will retain the time priority of their original entry.

4. After-Hours Session

If approved, the After-Hours Session in a SuperMontage environment will run from 4:00 p.m. (Market close) to 6:30 p.m. Eastern Time.¹¹ At market close, SuperMontage Non-Directed Order Processing ends for the day, and all Day orders expire and are returned to the entering party. GTC orders that have not been executed or cancelled will be retained by the system for the next trading session. Such orders will not, however, be available for execution in the after-hours session. During the after-hours session, Quoting Market Participants may continue to enter new GTC orders and cancel any previously entered GTC order. GTC orders are not displayed during the after-hours session. Day orders may not be entered during the after-hours session.

b. Time Priority in SuperMontage

The default priority for executing Non-Directed Orders in SuperMontage is price/time. As such, the system, unless requested otherwise by the party entering the Non-Directed Order,¹² will access the highest buy prices or the lowest sell prices residing in the system.¹³ Generally, among equally priced buying interest, or equally priced selling or market-priced interest, the system is programmed to automatically access the quotes/orders that were entered first into the system.¹⁴ This time priority attaches to a quote/order based upon the date and time it was entered into NNMS and remains until the quote/order is executed in full or it is cancelled by the entering party or by NNMS. The ability to execute against a particular quote/order will not impact

¹¹ See note 7, *supra*.

¹² A party entering a Non-Directed Order may also elect to have it order interact in the system on a price/time basis that takes into account access fees or on a price/size/time basis. See Rule 4710(b)(1)(B)(i), (ii) and (iii).

¹³ If a Non-Directed Order is entered by a NNMS Market Maker or ECN, NNMS will, before sending it to a Quoting Market Participant, first attempt to match the order off against the entering party's own quote/order, if that quote/order is at the best price in Nasdaq. See Rule 4710(b)(1)(B)(iv)(a).

¹⁴ Parties entering Non-Directed Orders also have an option to preference such orders to a particular market participant. See Rule 4710(b)(1)(B)(iv)(b).

its time priority. For example, a GTC order entered at 7:45 a.m. is not executable, but such an order will have time priority over all other orders entered after that time. Similarly, that GTC order would retain its time priority over all other orders entered on days after that GTC order was entered into NNMS. In short, if NNMS allows the entry of the quote/order at a particular point in the trading day, the quote/order's time priority is established at that time.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,¹⁵ in general, and with Section 15A(b)(6) of the Act,¹⁶ in particular, 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

Nasdaq neither solicited nor received written comments with respect to 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 self-regulatory organization 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.¹⁷

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 USC 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 No. SR-NASD-2002-92 and should be submitted by July 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Jill M. Peterson,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46143 ; File No. SR-NYSE-2002-22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Extending the Pilot Regarding Shareholder Approval of Stock Option Plans Through August 31, 2002

June 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 June 26,

¹⁷ Nasdaq has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act to approve the proposed rule change prior to the 30th day of publication in the **Federal Register**.

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁵ 15 U.S.C. 78o-3.

¹⁶ 15 U.S.C. 78o-3(b)(6).

2002, the New York Stock Exchange, Inc. ("NYSE" 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. 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 Exchange proposes to extend, until August 31, 2002, the effectiveness of the amendments to Sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a "broadly-based" stock option plan, which were approved by the Commission on a pilot basis (the "Pilot") on June 4, 1999.³ The Pilot was subsequently amended and extended on March 30, 2001 until September 30, 2001.⁴ The Pilot has since been extended until January 11, 2002,⁵ March 11, 2002,⁶ May 13, 2002,⁷ and June 30, 2002.⁸

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 Sections A, B, and C below, of the most significant aspects of such statements.

³ Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999) (notice of filing and order granting accelerated approval, on a pilot basis, to File No. SR-NYSE-98-32) ("Original Pilot Approval Order").

⁴ Securities Exchange Act Release No. 44141, 66 FR 18334 (April 6, 2001) (order granting approval, on a pilot basis, to the File No. SR-NYSE-00-32).

⁵ Securities Exchange Act Release No. 44886 (September 28, 2001), 66 FR 51083 (October 5, 2001) (notice of filing and immediate effectiveness of File No. SR-NYSE-2001-37) ("2001 Extension Request").

⁶ See Securities Exchange Act Release No. 45275 (January 14, 2002), 67 FR 2718 (January 18, 2002) (File No. SR-NYSE-2002-03).

⁷ See Securities Exchange Act Release No. 45546 (March 12, 2002), 67 FR 10272 (March 18, 2002) (File No. SR-NYSE-2002-14).

⁸ See Securities Exchange Act Release No. 45918 (May 13, 2002), 67 FR 35174 (May 17, 2002) (File No. SR-NYSE-2002-18).

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

1. Purpose

On July 13, 2000, the Exchange filed a proposed rule change seeking to extend the effectiveness of the Pilot until September 30, 2003.⁹ Following receipt of comments from interested parties and the SEC staff, on January 19, 2001, the Exchange amended the 2000 Extension Request to shorten the three-year extension request to one year and to amend the definition of "broadly based" under the Exchange's rule. While the 2000 Extension Request was under consideration, the Commission extended the Pilot to provide the Commission and the Exchange with additional time to review and evaluate comment letters.¹⁰ On March 30, 2001, the Commission approved the 2000 Extension Request, which amended and extended the Pilot, on a pilot basis until September 30, 2001.¹¹ The Exchange's 2001 Extension Request became effective on September 28, 2001, on a pilot basis, and extended the Pilot until January 11, 2002 to provide additional time to evaluate the issues presented by the Pilot.¹² The Pilot was again extended until March 11, 2002, May 13, 2002, and June 30, 2002 for the same reasons.¹³

The Exchange proposes to further extend the effectiveness of the Pilot

⁹ Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 (August 10, 2000) (notice of filing of File No. SR-NYSE-00-32) ("2000 Extension Request").

¹⁰ See Securities Exchange Act Release Nos. 43329 (September 22, 2000), 65 FR 58833 (October 2, 2000) (notice of filing and immediate effectiveness of File No. SR-NYSE-00-38); 43647 (November 30, 2000), 65 FR 77407 (December 11, 2000) (notice of filing and immediate effectiveness of File No. SR-NYSE-00-52); and 44018 (February 28, 2001), 66 FR 13821 (March 7, 2001) (notice of filing and immediate effectiveness of File No. SR-NYSE-2001-04).

¹¹ See note 4 *supra*.

¹² See note 5 *supra*. One comment letter was received regarding the extension of the Pilot by the 2001 Extension Request. See letter from Sarah A.B. Teslick, Executive Director, Council of Institutional Investors ("CII") to Jonathan G. Katz, Secretary, Office of the Secretary, Commission, dated October 16, 2001. The CII commented that the 2001 Extension Request should have been released for public comment prior to the Commission approving another extension to the Pilot and that any future proposed extensions should be released for prior public comment, that the Pilot not be extended after January 11, 2002, that the NYSE should be required to submit a dilution standard for approval which should be in place before the 2002 proxy season, and that the Commission act on the proposed disclosure standards for stock option plans. The Commission notes that the disclosure standards were approved by it on December 21, 2001. See note 14 *infra* below.

¹³ See notes 6 through 8 *supra*.

until August 31, 2002 to provide additional time to evaluate the issues presented by the Pilot, in light of recently adopted requirements relating to disclosure of equity compensation plan information.¹⁴ In addition, on June 6, 2002, the Exchange's special Committee on Corporate Accountability and Listing Standards ("Committee") recommended to the Exchange's Board of Directors that shareholders "be given the opportunity to vote on all equity-compensation plans."¹⁵ The NYSE represents that its Board of Directors is expected to vote at its August 2002 Board meeting on the final recommendations from the Committee and on rule changes to implement them. The Exchange requests an extension of the Pilot until August 31, 2002 to provide time within which to file such rule changes as are approved by its Board of Directors in August. The Exchange believes that, upon filing of such rule changes, further extension of the Pilot will likely be necessary to provide time for notice, comment and approval of such rule changes.¹⁶

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act,¹⁷ which requires, among other things, that an Exchange have rules 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 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

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.

¹⁴ Release Nos. 33-8048 and 34-45189 (December 21, 2001), 67 FR 232 (January 2, 2002).

¹⁵ *Report of Corporate Accountability and Listing Standards Committee*, June 6, 2002, p. 17.

¹⁶ Telephone conversation between Janet M. Kissane, Office of General Counsel, NYSE, and Sapna C. Patel, Attorney, Division of Market Regulation, Commission, on June 26, 2002.

¹⁷ 15 U.S.C. 78f(b)(5).

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

Because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁸ and Rule 19b-4(f)(6)¹⁹ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)²⁰ normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),²¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change become operative on or before June 30, 2002, in order to allow the Pilot to continue in effect on an uninterrupted basis. In addition, under Rule 19b-4(f)(6)(iii), the Exchange is required to provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission. The Commission waived the five-day pre-notice and thirty-day operative date requirements for this proposed rule change.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change to extend the Pilot through August 31, 2002, become operative on June 30, 2002. The Commission notes that unless the Pilot is extended, the Pilot will expire and the provisions of Sections 312.01, 312.03, and 312.04 of the Exchange's Listed Company Manual that were amended in the Pilot will revert to those in effect prior to June 4, 1999. The Commission believes that such a result could lead to confusion.

The Commission recognizes that the Pilot has generated many comment letters from commenters that do not support the NYSE's definition of "broadly-based" stock option plans under the Pilot.²² The Commission also notes that many commenters were critical of the NYSE's existing rules on broadly-based plans prior to the adoption of the original Pilot. As noted above, if the Pilot is not extended, the rules prior to the Pilot will go into effect. The proposed rule change merely extends the duration of the Pilot for only a short period of time and does not deal with the substantive issues presented by the Pilot itself.

Based on these reasons, the Commission has determined that it is consistent with the protection of investors and the public interest that the proposed rule change to extend the Pilot through August 31, 2002, become operative on June 30, 2002.²³ 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 above-mentioned self-regulatory organization.

²² See Original Pilot Approval Order, note 3 *supra*.

²³ For purposes only of accelerating the operative date of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

All submissions should refer to the File No. SR-NYSE-2002-22 and should be submitted by July 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46138; File No. SR-PCX-2002-32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Changes in Marketing Fees

June 27, 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 May 30, 2002, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which the PCX has prepared. 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 change its marketing fee for certain options and to adopt new marketing fees for recently listed options. The text of the proposed rule change 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 and discussed any comments it had 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.

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ *Id.*

²¹ 17 CFR 240.19b-4(f)(6)(iii).