

exchanges charge for aggregated order data.²¹

Nasdaq anticipates that offering a significantly discounted non-professional rate for DepthView and PowerView will provide an opportunity for many investors to take advantage of the transparency offered by these new feeds.

Redistribution

There will be no restrictions regarding redistribution of the data in TotalView, DepthView, or PowerView to qualified vendors and broker-dealers that have entered into distributor agreements with Nasdaq. As is current practice, the display requirements that Nasdaq chooses to place on these data feeds will be covered under the Distributor Agreements we enter into with distributors of Nasdaq data, rather than being subject to rule. The display requirements will be minimal and are not expected specifically to preclude vendors from blending this data with data from other sources to create an integrated feed. However, Nasdaq plans to require vendors specifically to identify the data from the feeds as data coming from Nasdaq, so as to distinguish it from data that they may get from other sources. The specific display requirements are available on NasdaqTrader.com.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,²² in general and with Section 15A(b)(5) of the Act,²³ in particular, which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

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

Nasdaq 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.

²¹ For example, NYSE's Open Order Book, which was approved by the SEC in December 2001, has a monthly charge of \$5,000.00 for access and \$50.00 per display. See Securities Exchange Act Release No. 45138 (December 7, 2001), 66 FR 64895 (December 14, 2001).

²² 15 U.S.C. 78o-3.

²³ 15 U.S.C. 78o-3(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq did not solicit or receive 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 NASD 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, 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-2002-33 and should be submitted by October 18, 2002.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46520; File No. SR-PCX-2002-26]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to Proposed Rule Change Relating to Maintenance of Books and Records

September 20, 2002.

On April 22, 2002, 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")¹ and Rule 19b-4 thereunder,² a proposed rule change to codify the existing obligations of PCX members to keep and preserve books and records, and to maintain daily position statements and error account information. PCX submitted Amendment No. 1 to the proposed rule change on June 11, 2002.³ The proposed rule change was published for comment in the **Federal Register** on July 9, 2002.⁴ The Commission received no comments on the amended proposal. On September 11, 2002, PCX submitted Amendment No. 2 to the proposed rule change.⁵ This order approves the proposed rule change, as amended. In addition, the Commission is publishing this notice to solicit comments on Amendment No. 2 from interested

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 10, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange: (1) stated that the proposed rule change was being filed pursuant to Section 19(b)(2) of the Act and requested accelerated effectiveness; (2) revised typographical errors in the proposed rule text; (3) added the parenthetical (including any interpretation relating thereto) to proposed PCX Rule 4.20(a); and (4) clarified that the phrase "contra organization" in proposed PCX Rule 4.20(b) is an industry term of art that also means counter party.

⁴ See Securities Exchange Act Release No. 46128 (June 26, 2002), 67 FR 45577.

⁵ See letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated September 10, 2002 ("Amendment No. 2"). In Amendment No. 2, PCX revised the second sentence of proposed Rule 4.20(b) to read: "Each Member or Member Organization must promptly report any differences to the contra organization and make every effort to promptly resolve the differences."

²⁴ 17 CFR 200.30-3(a)(12).

persons, and approving Amendment No. 2 on an accelerated basis.

The proposed rule change would require all Members and Member Organizations to make, keep current, and preserve such books and records as the Exchange may prescribe and as those that may be prescribed by the Act and the rules and regulations thereunder (including any interpretation relating thereto). The proposed rule further provides that no Member or Member Organization may refuse to make available to the Exchange such books, records or other information as may be called for under the PCX rules or as may be requested in connection with an Exchange investigation.

With respect to maintaining daily position statements, the proposed rule generally provides that each Member and Member Organization must receive daily position statements with respect to securities held by the Options Clearing Corporation or any member thereof, the Depository Trust and Clearing Corporation or any similar clearing organization and must reconcile securities and money balances at least once per month by comparing those position statements against the Member or Member Organization's books and records. As proposed, each Member and Member Organization would be required to maintain reports that evidence reconciliation for at least six years, the first two years in an easily accessible place.

Finally, regarding error accounts, the proposed rule provides that each Member or Member Organization, which conducts business as a floor broker must make available to the Exchange, upon request, accurate and complete records of all trades cleared in such Member or Member Organization's error account. The proposed rule would also require that the error account records include certain audit trail data elements including, for example, name of the security, quantity, and the nature and amount of the error.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁶ and, in particular, the requirements of Section 6 of the Act⁷ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5)

⁶ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f.

of the Act⁸ because the proposed rule change requires the Exchange's members to maintain books and records in a manner that is consistent with federal securities laws. The Commission believes such consistency should foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Commission also believes that the requirements relating to the maintenance and reconciliation of daily position statements and error accounts should have similar beneficial results.

The Commission finds good cause for approving proposed Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 2, the Exchange clarified that members must make every effort to resolve differences that may occur on position statements. The Commission believes that Amendment No. 2 should strengthen PCX's rule by requiring members to resolve inaccuracies. Therefore, the Commission believes that good cause exists pursuant to Sections 6(b)(5)⁹ and 19(b)¹⁰ of the Act to accelerate approval of Amendment No. 2 to the proposed rule change.

Interested persons are invited to submit written date, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 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 PCX. All submissions should refer to File No. SR-PCX-2002-26 and should be submitted by October 18, 2002.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78s(b).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-PCX-2002-26), as amended by Amendment No. 1, is approved, and Amendment No. 2 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46517; File No. SR-PCX-2002-50]

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 Automatic Execution of Broker-Dealer Orders in Designated Option Issues

September 20, 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 July 29, 2002, 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 Amendment No. 1 to the proposed rule change on August 26, 2002.³ The Exchange filed the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)(6) thereunder,⁵ 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.

¹ 15 U.S.C. 78s(b)(2).

² 17 CFR 200.30-3(a)(12).

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

⁵ In Amendment No. 1, the Exchange added a clarifying phrase to its proposed rule text in order to define the "top 120" most actively traded option issues. See letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 23, 2002 ("Amendment No. 1").

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).