

- Connection to Nasdaq SDP: \$250 per month per subscriber (regardless of number of terminals); and
- Market data redistribution charges: as set by relevant market data provider and passed through to Tools Plus subscribers at cost.

The SDP and CTCI charges relate to Tools Plus' CTCI and SDP connections to Nasdaq's systems and are in addition to any SDP and CTCI connections a customer may have to link directly to Nasdaq. The purposes for which Tools Plus connects to Nasdaq are limited and, accordingly, do not require a large amount of bandwidth. Nasdaq Trading Applications is able to send and receive data for a number of customers using the same SDP and CTCI connections and the fees charged to the subscribers to Tools Plus for the connections reflect these economies of scale. An NWII that displays Tools Plus connects directly to Nasdaq systems through an application-programming interface ("API"). Nasdaq directly bills customers of Tools Plus for API linkages.<sup>19</sup>

In addition, Nasdaq proposes to charge the following fees for Tools Plus:

- Installation fee of \$13,550 for Tools Plus and one terminal and \$140 for each additional terminal;
- One-time port charge of \$1,250 for each line or \$2,500 for two lines for access to Tools Plus;
- Training Fees of \$400 per day plus travel expenses for on-site training and \$150 for training course at Nasdaq (2 hours of training per user is included in price of installation); and
- ECN access maintenance charge of \$250 per month for each customer (regardless of number of terminals) for each ECN accessed through Tools Plus.<sup>20</sup>

Nasdaq also creates custom interfaces for Tools Plus subscribers. Subscribers are supplied with a Statement of Work that outlines the time and resources needed to complete the project. The Statement of Work must be approved and signed by both the subscriber and Nasdaq before any programming begins. As is currently the case, each Tools Plus subscriber would receive one custom interface to the subscriber's clearing firm as part of the cost of installation of Tools Plus. Nasdaq proposes to charge by the hour for all other customized programming and maintenance on custom interfaces based on the labor schedule set forth below:

Standard Labor rates for:

| Calendar year 2002              | Calendar year 2003 and thereafter |
|---------------------------------|-----------------------------------|
| Senior Programmer: \$175/hour.  | \$200/hour                        |
| Programmer: \$125/hour .....    | \$150/hour                        |
| Junior Programmer: \$100/hour.  | \$125/hour                        |
| Project Management: \$150/hour. | \$175/hour                        |
| Network Engineer: \$125/hour    | \$150/hour                        |
| Operations Support: \$100/hour. | \$125/hour                        |

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>21</sup> in general, and with Section 15A(b)(5) of the Act,<sup>22</sup> in particular, in that it provides 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. Nasdaq believes that the fees are reasonable in that they have been calculated to approximate the fees previously charged for Tools and Tools Plus products.

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

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### A. 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 on the proposed rule change contained in this filing.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>23</sup> and subparagraph (f) of Rule 19b-4,<sup>24</sup> thereunder because it establishes or changes a due, fee or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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 the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2002-164 and should be submitted by January 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>25</sup>

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

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BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46982; File No. SR-PCX-2002-70]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Amend Its Schedule of Fees and Charges Relating to the Archipelago Exchange

December 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 15, 2002, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which the PCX has prepared. The Commission is

<sup>19</sup> Fees related to API linkages are set forth at NASD Rule 7010(f).

<sup>20</sup> This charge only applies to subscribers who route orders to the ECN.

<sup>21</sup> 15 U.S.C. 78o-3.

<sup>22</sup> 15 U.S.C. 78o-3(b)(5).

<sup>23</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>24</sup> 17 CFR 240.19b-4(f).

<sup>25</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> CFR 240.19b-4.

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, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its fee schedule for services provided to ETP Holders and Sponsored Participants (collectively "Users") on the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE. Specifically, the PCX proposes to (1) increase the per share transaction fee for odd-lot orders in listed securities that are routed away via ArcaEx and executed by another market center; and (2) increase the transaction credit for Market Makers who provide liquidity in exchange-listed American Depositary Receipts ("ADRs"). 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 the statements.

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

##### 1. Routing Service Fee

The PCX currently charges all Users a transaction fee of \$0.004 per share for any unfilled or residual portion of an odd-lot order in a listed security, including exchange-traded funds ("ETFs"), that is routed away via ArcaEx and executed by another market center or participant. The PCX proposes to increase this transaction fee to \$0.03 per share to conform to the current fee of \$0.03 per share that is applied to odd-lot orders executed on ArcaEx. The PCX notes that odd-lot orders that are created as a result of a partial fill of a round lot that are subsequently routed away and executed on another market will continue to be subject to the \$0.004 per share fee applicable to round lot orders. The PCX believes that this fee is reasonable and is structured to allocate

fairly the costs of operating the ArcaEx facility.

##### 2. Market Maker Transaction Credit

The PCX is proposing to increase the level of the transaction credit paid to market makers who provide liquidity in exchange-listed American Depositary Receipts ("ADRs"). Currently, market makers who enter "Q Orders"<sup>3</sup> in exchange-listed ADRs that are subsequently executed against incoming marketable orders earn a credit of \$0.0015 per share. The PCX proposes to increase the level of the transaction credit for ADRs from \$0.0015 to \$0.002 per share.<sup>4</sup> The increased credit of \$0.002 is the same amount that is currently applied to orders that provide liquidity in ETFs.<sup>5</sup> The PCX states that this credit is intended to create additional incentives to market makers to provide liquidity in ADRs that are traded on the ArcaEx facility.

The PCX believes that the proposal is consistent with section 6(b) of the Act,<sup>6</sup> particularly section 6(b)(4) of the Act,<sup>7</sup> 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 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 PCX 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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4 (f) thereunder<sup>9</sup> because it changes a PCX

<sup>3</sup> Q Orders are limit orders that are submitted to ArcaEx by a market maker in those securities in which the market maker is registered to trade. See PCXE Rule 7.31(k).

<sup>4</sup> The current \$0.02 per share credit that is provided to any market maker that executes against an odd-lot order in the Odd Lot Tracking Order Process will remain in effect.

<sup>5</sup> The increased credit of \$0.002 parallels a recent change to the User Transaction Credit for certain transactions in ADRs. See Securities Exchange Act Release No. 46784 (November 7, 2002), 67 FR 69283 (November 15, 2002) (SR-PCX-2002-68).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f).

fee. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that that 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 proposal 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 in Washington, DC. Copies of the 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-2002-70 and should be submitted by January 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

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

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### OFFICE OF SPECIAL COUNSEL

#### Change of Address for Dallas Office

**AGENCY:** Office of Special Counsel  
**ACTION:** Notice

**SUMMARY:** Effective Monday, December 9, 2002, the Dallas Field Office (DFO) of the U.S. Office of Special Counsel (OSC) moved to the A. Maceo Smith Federal Building, 525 Griffin Street, Room 824, Box 103, Dallas, TX 75202. The DFO telephone number continues to be (214) 767-8871. Additional OSC contact information can be found on the agency Web site at <http://www.osc.gov>.

**EFFECTIVE DATE:** December 9, 2002.

<sup>10</sup> 17 CFR 200.30-3(a)(12).