III. Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[8] Specifically, the Commission finds that the proposal is consistent with the requirements of section 15A(b)(6) of the Act,[9] which requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices; 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, in general, to protect investors and the public interest.

When the Commission approved the original proposal that instituted limit order protection for Nasdaq securities, it stated:

> The Commission believes that the rule change [which instituted NASD IM–2110–2] will enhance investor confidence by improving the quality of executions for customers. By giving a customer's limit order priority over the market maker's proprietary trading, more trade volume will be available to be matched with the customer's order, resulting in quicker and more frequent executions for customers.
>
> The NASD's proposal will also improve the price discovery process in NASDAQ securities. Limit orders aid price discovery by adding liquidity to the market and by tightening the spread between the bid and ask price of a security. In the past, customers may have refrained from placing limit orders because of the uncertainty of and difficulty in obtaining an execution at a price between the spread. The new rule will encourage dealers to execute customer limit orders in a timely fashion so that they may resume their proprietary trading activities. The practice of delaying executions until the inside price reaches the customer's limit order also impedes price discovery by shielding those orders from the rest of the investing public. More expeditious handling of customer limit orders * * * will provide investors with a more accurate indication of the buy and sell interest at a given moment.[10]

The Commission cited this provision in approving the OTCBB Manning pilot in February 2001.[11] In the February 2001 approval order, the Commission also stated its view that a Manning pilot on the OTCBB was an appropriate first step in bringing limit order protection to the OTCBB, and that the pilot program would afford Nasdaq the opportunity to study the application of the rule and to consider further refinements.[12]

The Commission believes that it is appropriate at this time to approve limit order protection for all OTCBB securities on a permanent basis. In making this determination, the Commission notes that Nasdaq did not observe any material impact on market quality for the OTCBB securities subject to the pilot.[13] The rationale for approving limit order protection for Nasdaq securities and the pilot for OTCBB securities applies equally to approving the OTCBB Manning rule on a permanent basis: Limit order protection ensures that a market maker considers the limit orders of customers when executing its own orders and thus prevents the isolation of customer limit orders that might otherwise occur if a market maker were freely able to trade ahead of them. The Commission believes that the liquidity and transparency of the market in OTCBB securities should improve as a result of applying Manning protection to them on a permanent basis.

Under Section 19(b)(2) of the Act,[14] the Commission may not approve a proposed rule change prior to the thirtieth day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing. The Commission hereby finds good cause for approving the proposal, as revised by Amendment No. 1, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The revisions to the proposed rule text made by Amendment No. 1 are technical in nature and consistent with Nasdaq's proposal to extend Manning protection to all OTCBB securities on a permanent basis. Accordingly, the Commission believes it is appropriate to approve the amended proposal at this time.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposal, 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 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–2002–153 and should be submitted by January 14, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[15] that the proposed rule change (SR–NASD–2002–153), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32320 Filed 12–23–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47012; File No. SR–NASD–2002–269]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. To Modify Maximum Execution Fees and Credits for SuperMontage Transactions in Low-Priced Securities

December 26, 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 November 22, 2002, the National Association of Securities Dealers, Inc. (''NASD''), 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 has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under section 19(b)(3)(a)(ii) of the Act[3] and Rule 19b–

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[8] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78o(b)(6).

[10] *See* Securities Exchange Act Release No. 34279 (June 29, 1994), 59 FR 34883 (July 7, 1994).

[11] *See supra* note 6, 66 FR at 10543.

[12] *See id.*

[13] *See supra* note 6.

[14] 15 U.S.C. 78s(b)(2).

[15] *Id.*

[16] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

4(f)(2) thereunder,[4] which renders the rule effective upon Commission receipt of this filing. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to modify the caps on the SuperMontage order execution charges and liquidity provider credits applicable to Non-Directed and Preferenced Orders for securities that are priced at $1.00 or less per share. Nasdaq will implement the rule change on December 1, 2002. Because the transition from the SuperSOES, SOES, and SelectNet environment to SuperMontage will still be in progress at that time, Nasdaq will continue to charge its filed prices for SuperSOES, SOES, SelectNet, and quotation updates for stocks that have not transitioned, while charging the SuperMontage prices established through SR–NASD–2002–44,[5] SR–NASD–2002–91,[6] SR–NASD–2002–135,[7] SR–NASD–2002–151,[8] and SR–NASD–2002–169 for stocks that have transitioned.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 7010. System Services

(a)–(h) No change.

(i) Nasdaq National Market Execution System (SuperMontage)

The following charges shall apply to the use of the Nasdaq National Market Execution System (commonly known as SuperMontage) by members:

Order Entry:	
Non-Directed orders (excluding Preferenced Orders)	No charge.
Preferenced Orders:	
Preferenced Orders that access a Quote/Order of the member that entered the Preferenced Order).	No charge.
Other Preferenced Orders	$0.02 per order entry.
Directed Orders	$0.10 per order entry.
Order Execution:	
Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the NNMS:	
Charge to member entering order	$0.003 per share executed (but no more than [$75] *$120* per trade for trades in securities executed at $1.00 or less per share).
Credit to member providing liquidity	$0.002 per share executed (but no more than [$50] *$80* per trade for trades in securities executed at $1.00 or less per share).
Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the NNMS.	$0.001 per share executed (but no more than [$25] *$40* per trade for trades in securities executed at $1.00 or less per share).
Directed Order	$0.003 per share executed.
Non-Directed or Preferenced Order entered by a member that accesses a Quote/Order of such member.	No charge.
Order Cancellation:	
Non-Directed Orders (excluding Preferenced Orders)	$0.01 per order cancelled.
Preferenced Orders	$0.01 per order cancelled.
Directed Orders	$0.10 per order cancelled.
Entry and Maintenance of Quotes/Orders by Nasdaq Quoting market Participants:	
Initial entry of Quote/Order	No charge.
Change of Quote/Order due to order execution through Super Montage.	No charge.
Cancel/replace of Quote/Order to increase size	No charge.
Cancel/replace of Quote/Order to change price	$0.01.
Cancel/replace of Quote/Order to decrease size manually	$0.01.
Cancellation of Quote/Order	$0.01.
Cancellation of Quote/Order due to order purge or timeout	$0.0075.

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.

[4] 17 CFR 240.19–4(F)(2).

[5] Securities Exchange Act Release No. 45906 (May 10, 2002), 67 FR 34965 (May 16, 2002) (SR–NASD–2002–44). SR–NASD–2002–44 established a fee scheduled for members' use of SuperMontage.

[6] Securities Exchange Act Release No. 46343 (August 13, 2002), 67 FR 53822 (August 19, 2002) (SR–NASD–2002–91). SR–NASD–2002–91 provides that the fees for the use of SuperMontage by a national securities exchange trading Nasdaq securities on an unlisted trading privileges basis (a ''UTP Exchange'') may be established by means of an agreement between Nasdaq and the UTP Exchange.

[7] Securities Exchange Act Release No. 46648 (October 11, 2002), 67 FR 64439 (October 18, 2002) (SR–NASD–2002–135). SR–NASD–2002–135 established the maximum execution fees and credits for transactions in low-priced securities that are being modified by SR–NASD–2002–169.

[8] Securities Exchange Act Release No. 46917 (November 26, 2002), 67 FR 72254 (December 4, 2002) (SR–NASD–2002–151). SR–NASD–2002–151 increased the fees and credits applicable to execution of non-directed, directed, and preferenced orders.

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

1. Purpose

Earlier this year, Nasdaq filed proposed rule changes to control trading costs for low-priced securities traded through its SuperSOES and SuperMontage transaction execution systems.[9] These proposed rule changes were filed in response to market activity that caused the prices of many Nasdaq securities to fluctuate, and in some cases lose significant value. As the price of a security declines, market participants generally need to purchase or sell an increasing number of total shares to participate actively in the market for the issue. This increase in the size of individual transactions, when combined with an unlimited per share fee and credit structure, had the potential to raise execution costs to market participants and result in disproportionate credits to liquidity providers. Accordingly, Nasdaq established caps on the order execution fees and liquidity provider credits for Non-Directed and Preferenced Orders that execute at prices of $1.00 or less.

Under the original fee schedule for SuperMontage, as established by SR–NASD–2002–44,[10] a member that entered a Non-Directed or Preferenced Order paid $0.002 per share executed for an order executed against the Quote/Order of a market participant that does not charge an access fee, and the liquidity provider received a $0.001 credit. Members paid $0.001 per share for an order executed against the Quote/Order of a market participant that charges an access fee, with the liquidity provider receiving no credit. Under SR–NASD–2002–135,[11] for trades in securities priced at $1.00 or less, these fees were capped $75 if the order executed against the Quote/Order of a market participant that did not charge an access fee, and $37.50 if the order executed against the Quote/Order of a market participant that charged an access fee. Similarly, the maximum credit to a liquidity provider for a transaction in a low-priced security was $37.50. Thus, the caps applied to the execution of orders for more than 37,500 shares.[12] To the extent that an executed order contained more shares, the excess shares were free.

In SR–NASD–2002–151,[13] Nasdaq increased the order execution charges and credits applicable to Non-Directed and Preferenced Orders: $0.003 for orders that access the Quote/Order of a market participant that does not charge an access fee, with a $0.002 credit to the liquidity provider.[14] The fee change, which was effective November 1, 2002, was not intended to change the per share revenue that Nasdaq receives from transactions, however, because the execution fee increase is offset by the increase in the credit. Nasdaq's revenue remains $0.001 per share for all trades that are not subject to the caps.

The fee change has had an indirect and adverse effect on Nasdaq's revenues, however, because the fee caps were not adjusted to the extent necessary to avoid allowing a higher number of shares to trade without charge. Specifically, the caps currently apply to the execution of low-priced orders with more than 25,000 (rather than 37,500) shares.[15]

Nasdaq introduced the caps because of a concern that the cost of transactions in low-priced stocks could become unreasonably high, and recognized that the caps would result in some lost revenue. It has concluded, however, that the current level of the caps must be increased to reflect the higher fees and credits instituted under SR–NASD–2002–151.[16] Without this change, Nasdaq will be allowing a far greater number of shares to trade without charge (*i.e.,* because they are part of a trade for more than 25,000 shares) than it had originally intended when it introduced the fee caps at the 37,500 share level.

Accordingly, Nasdaq is proposing to increase the cap to $120 for orders that access the Quote/Order of a market participant that does not charge an access fee, $40 for orders that access the Quote/Order of a fee-charging market participant, and $80 for the liquidity provider credit. These caps reflect a 40,000 share level, above which additional shares are free (slightly higher than the original 37,500 share level).[17]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[18] in general, and with section 15A(b)(5) of the Act,[19] in particular, in that it provides for the equitable allocation of reasonable dues, fees 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 result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[20] and Rule 19b–4(f)(2) thereunder, because it establishes or changes a due, fee, or charge imposed by the self-regulatory organization.[21] At any time within 60 days of the filing of such 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 submissons 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

[9] Securities Exchange Act Release No. 46648 (October 11, 2002), 67 FR 64439 (October 18, 2002) (SR–NASD–2002–135) (SuperMontage); Securities Exchange Act Release No. 46456 (September 3, 2002), 67 FR 57470 (September 10, 2002) (SR–NASD–2002–106) (SuperSOES). SR–NASD–2002–135 and SR–NASD–2002–106 were effective upon filing. Nasdaq has also filed with the Commission a proposed rule change to apply the fee and rebate limits established by SR–NASD–2002–106 retroactively, as of July 1, 2002. *See* SR–NASD–2002–107 (August 5, 2002).

[10] *See* note 5, *supra.*

[11] *See* note 7, *supra.*

[12] 37,500 shares × $0.002 = $75.00.
37,500 shares × $0.001 = $37.50.

[13] *See* note 8, *supra.*

[14] The fee to access the Quote/Order of a market participant that charges an access fee remained $0.001.

[15] 25,000 shares × $0.003 = $75.
25,000 shares × $0.002 = $50.
25,000 shares × $0.001 = $25.

[16] *See* note 8, *supra.*

[17] 40,000 shares × $0.003 = $120.
40,000 shares × $0.002 = $80.
40,000 shares × $0.001 = $40.

[18] 15 U.S.C. 78*o*–3.

[19] 15 U.S.C. 78*o*–3(b)(5).

[20] 15 U.S.C. 78s(b)(3)(a)(ii).

[21] 17 CFR 240.19b–4(f)(2).

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 NASD. All submissions should refer to file number SR–NASD–2002–169 and should be submitted by January 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–32321 Filed 12–23–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47010; File No. SR–PCX–2002–74]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to New Order Types Called ''IOC Cross Orders'' and ''PNP Cross Orders'' and Amending PCXE Rule 7.37

December 16, 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 December 9, 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 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 rules governing the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE, by: (1) Adopting two new order types, an Immediate-or-Cancel (''IOC'') Cross Order and a Post No Preference (''PNP'') Cross Order; and (2) amending PCXE Rule 7.37 to provide for a limited exemption from the trade-through restrictions for these new order types. The text of the proposed rule change is below. Proposed new text is italicized and proposed deleted text is bracketed.

PCX Equities, Inc.—Rule 7: Equities Trading

Orders and Modifiers

Rule 7.31(a)–(x)—No change.

(y)–(z)—Reserved.

(aa) Immediate-or-Cancel (''IOC'') Cross Order. An IOC Cross Order is an order that is to be executed in its entirety as a cross transaction as soon as such order is received; provided, however, the Corporation will cancel an IOC Cross Order at the time of order entry if:

(1) the cross price locks or crosses the BBO; or

(2) the cross price would cause an execution at a price that trades through the NBBO, except as provided in Rule 7.37; or

(3) the cross price is between the BBO and does not improve the BBO by the MPII pursuant to Rule 7.6(a), Commentary .06.

(bb) PNP (Post No Preference) Cross Order. A Cross Order that is to be executed in whole or in part on the Corporation and the portion not so executed is to be canceled, without routing any portion of the Cross Order to another market center. When the cross price is equal to or better than the NBBO and is at the BBO, the relevant portion of the PNP Cross Order will be matched first against displayed orders with priority in the Arca Book, and then the remainder of the PNP Cross Order will be matched. Any unexecuted portion of the PNP Cross will be canceled. The Corporation will cancel either the entire PNP Cross Order at the time of order entry, or the unexecuted portion of a PNP Cross Order at any time during the order execution process, whichever is applicable, if:

(1) the cross price would cause an execution at a price that trades through the NBBO, except as provided in Rule 7.37;

(2) the cross price is between the BBO and does not improve the BBO by the MPII pursuant to Rule 7.6(a), Commentary .06.

* * * * *

Order Execution

Rule 7.37. Subject to the restrictions on short sales under Rule 10a–1 under the Exchange Act, like-priced orders, bids and offers shall be matched for execution by following Steps 1 through 5 in this Rule; provided, however, for an execution to occur in any Order Process, the price must be equal to or better than the NBBO, unless the Archipelago Exchange has routed orders to away markets at the NBBO, where applicable (however, a User may submit a NOW Order or Primary Only Order that may be routed to an away market without consideration of the NBBO). This rule will not apply to *designated order types including IOC, NOW, PNP, IOC Cross and PNP Cross orders in* securities that are subject to an exemption from the Commission under SEC Rule 11Aa3–2(f) to the trade-through provisions of the ITS Plan (''*ITS* Trade-Through Exempt Securities''). Orders in *ITS* Trade-Through Exempt Securities [designated as IOC, NOW and PNP orders] will be effected at a price no more than three cents ($0.03) away from the best bid and offer quoted in CQS.

(a)–(e)—No change.

* * * * *

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.

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

As part of its continuing efforts to enhance participation on the ArcaEx facility, the PCX is proposing to adopt two new order types called an ''IOC Cross Order'' and a ''PNP Cross Order.'' The PCX believes that these new order types will provide ETP Holders[3] and Sponsored Participants[4] (collectively ''Users'') with more flexibility to facilitate cross transactions. The PCX is also proposing to amend PCXE Rule 7.37 so that these new order types will be subject to the SEC's *de minimis* exemption from the trade-through restrictions of the Intermarket Trading

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[22] 27 CFR 200.30–3(a)(12).

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

[2] CFR 240.19b–4.

[3] *See* PCXE Rule 1.1(n).

[4] A ''Sponsored Participant'' means ''a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCXE] Rule 7.29.'' *See* PCXE Rule 1.1(tt).