

the proposed rule change, as amended, would establish a uniform fee schedule for the Nasdaq Facilities that takes account of the higher volumes associated with the combining of the Nasdaq Facilities for purposes of determining pricing discounts. Nasdaq does not currently anticipate that the new pricing structure would have a material impact on its financial results.

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

Nasdaq does not believe that the proposed rule change, as amended, 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 states that 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, as amended, is subject to Section 19(b)(3)(A)(ii) of the Act<sup>18</sup> and subparagraph (f)(2) of Rule 19b-4<sup>19</sup> thereunder because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. 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.<sup>20</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. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-013 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-013. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2006-013 and should be submitted on or before March 8, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53254; File No. SR-NASD-2006-008]

#### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change To Re-establish a Fee Pilot for National Quotation Data Service

February 8, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 24, 2006, 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 the Nasdaq. The 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

Nasdaq proposes to re-establish retroactively through September 1, 2005, a pilot program under NASD Rule 7010(h), which reduced from \$50 to \$10 the monthly fee that non-professional users pay to receive National Quotation Data Service ("NQDS"). Nasdaq is simultaneously filing a separate rule proposal to re-establish the same pilot program prospectively through December 29, 2006, the date the pilot inadvertently was permitted to lapse. The text of the rule is below. There is no new proposed language.<sup>3</sup>

7010. System Services

\* \* \* \* \*

(h) National Quotation Data Service (NQDS)

(1) Except as provided in subparagraph (2) of this section, the charge to be paid for each interrogation or display device receiving all or any portion of the information disseminated through the NQDS shall be \$50.00 per

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Changes are marked to the rule text that appears in the electronic NASD Manual found at <http://www.nasdaq.com>. Prior to the date when The Nasdaq Stock Market LLC ("Nasdaq LLC" commences operations, Nasdaq LLC will file a conforming change to the rules of Nasdaq LLC approved in Securities Exchange Act Release No. 53128 (January 13, 2006).

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>19</sup> 17 CFR 240.19b-4(f)(2).

<sup>20</sup> The effective date of the original proposed rule change is January 30, 2006, and the effective date of Amendment No. 1 is February 1, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, the Commission considers the period to commence on February 1, 2006, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>21</sup> 17 CFR 200.30-3(a)(12).

month. The NQDS information that will be provided through service consists of individual market maker quotations, Nasdaq Level 1 Service and the Last Sale Information Service.

(2) The charge to be paid by a non-professional for each interrogation or display device receiving all or any portion of the NQDS information disseminated through an authorized vendor shall be \$10.00 per month.

(3) A "non-professional" is a natural person who is neither:

(A) Registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association;

(B) Engaged as an "investment adviser" as that term defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor

(C) Employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

## 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.

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

#### 1. Purpose

Nasdaq proposes to re-establish retroactively through September 1, 2005, the fee reduction pilot program under NASD Rule 7010(h) that reduced from \$50 to \$10 the monthly fee that non-professional users pay to receive NQDS.

NQDS delivers market maker quotations, Nasdaq Level 1<sup>4</sup> service (including calculation and display of the inside market), and last sale

<sup>4</sup> Pursuant to NASD Rule 7010(e), Nasdaq separately distributes Level 1 data to non-professionals for a monthly fee of \$1.00.

information that is dynamically updated on a real-time basis. NQDS data is used not only by firms, associated persons, and other market professionals, but also by non-professionals who receive the service through authorized vendors, including, for example, on-line brokerage firms. Prior to August 31, 2000, NQDS data was available through authorized vendors at a monthly rate of \$50 for professionals and non-professionals users alike. In August 2000, the NASD, through Nasdaq, filed a rule change to reduce from \$50 to \$10 the monthly fee that non-professional users pay to receive NQDS data.<sup>5</sup> The Commission approved the pilot on August 22, 2000, and the fee reduction commenced on August 31, 2000 on a one-year pilot basis.<sup>6</sup> On September 5, 2001, August 29, 2002, August 15, 2003, and August 20, 2004, Nasdaq filed proposed rule changes to extend the pilot for additional one-year periods.<sup>7</sup>

Nasdaq has consistently supported broad, effective dissemination of market information to public investors. Thus, Nasdaq is proposing to re-establish the fee-reduction pilot for the remainder of 2006. The pilot would cover the period from January 24, 2006, through December 29, 2006. Nasdaq notes that the existing pilot reduced by 80% the fees that non-professionals paid for NQDS data prior to August 31, 2000. Continuing the reduction of NQDS for non-professional users demonstrates Nasdaq's continued commitment to individual investors and responds to the dramatic increase in the demand for real-time market data by non-professional market participants. In addition, NASD member firms often supply real-time market data to their customers through automated means. Thus, NASD member firms' customers would benefit from the continued fee reduction.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,<sup>8</sup> in general, and with section 15A(b)(5) of the Act,<sup>9</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges

<sup>5</sup> See Securities Exchange Act Release No. 43190 (August 22, 2000), 65 FR 52460 (August 29, 2000) (notice of filing and order granting accelerated approval of NASD-00-47).

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

<sup>7</sup> See Securities Exchange Act Release Nos. 44788 (September 13, 2001), 66 FR 48303 (September 19, 2001); 46446 (August 30, 2002), 67 FR 57260 (September 9, 2002); 48386 (August 21, 2003), 68 FR 51618 (August 27, 2003); and 50318 (September 3, 2004), 69 FR 54821 (September 10, 2004).

<sup>8</sup> 15 U.S.C. 78o-3.

<sup>9</sup> 15 U.S.C. 78o-3(b)(5).

among members and issuers and other persons using any facility or system which the Nasdaq operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. Nasdaq also believes that the fee reduction enhances the public's access to market data that is relevant to investors when they make financial decisions and encourages increased public participation in the securities markets.

### 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 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 is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-008 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR–NASD–2006–008. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–008 and should be submitted on or before March 8, 2006.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53253; File No. SR–PCX–2005–123]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Currency Trust Shares.

February 8, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on November 11, 2005, the Pacific Exchange, Inc. (“PCX” or “Exchange”), through its wholly owned subsidiary PCX Equities,

Inc. (“PCXE” or “Corporation”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On January 13, 2006, PCX filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On January 13, 2006, PCX filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through PCXE, proposes to amend its rules governing the Archipelago Exchange (“ArcaEx”), the equities trading facility of PCXE. The Exchange proposes new PCXE Rule 8.202 in order to permit trading, either by listing or pursuant to unlisted trading privileges (“UTP”), shares issued by a trust that holds a specified non-U.S. currency (“Currency Trust Shares”). In addition, the Exchange proposes to trade, pursuant to UTP, Euro Shares (“Shares” or “Euro Shares”), which represent units of fractional undivided beneficial interest in and ownership of the Euro Currency Trust (the “Trust”), which is sponsored by Rydex Specialized Products LLC.

The text of the proposed rule change appears below. Additions are in italics. Deleted items are in [brackets].

\* \* \* \* \*

Rule 8.202.

Currency Trust Shares

*(a) The Corporation will consider for trading, whether by listing or pursuant to unlisted trading privileges, Currency Trust Shares that meet the criteria of this Rule.*

*(b) Applicability. This Rule is applicable only to Currency Trust Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the trust issued receipts rules, Bylaws, and all other rules and procedures of the Board of Directors shall be applicable to the trading on the Corporation of such securities. Currency Trust Shares are included within the definition of “security” or “securities” as such terms*

<sup>3</sup> In Amendment No. 1, the Exchange clarified and supplemented certain aspects of its proposal. Amendment No. 1 replaces and supplements the information provided in various sections of the Exchange's Form 19b–4.

<sup>4</sup> In Amendment No. 2, the Exchange further clarified and supplemented certain aspects of its proposal.

*are used in the Bylaws and Rules of the Corporation.*

*(c) Currency Trust Shares. The term “Currency Trust Shares” as used in the Rules shall, unless the context otherwise requires, mean a security that (a) is issued by a trust (“Trust”) that holds a specified non-U.S. currency deposited with the Trust; (b) when aggregated in some specified minimum number may be surrendered to the Trust by the beneficial owner to receive the specified non-U.S. currency; and (c) pays beneficial owners interest and other distributions on the deposited non-U.S. currency, if any, declared and paid by the Trust.*

*(d) Designation of Non-U.S. Currency. The Corporation may trade, either by listing or pursuant to unlisted trading privileges, Currency Trust Shares that hold a specified non-U.S. currency. Each issue of Currency Trust Shares shall be designated as a separate series and shall be identified by a unique symbol.*

*(e) Initial and Continued Listing. Currency Trust Shares will be listed and traded on the Corporation subject to application of the following criteria:*

*(1) Initial Listing —the Corporation will establish a minimum number of Currency Trust Shares required to be outstanding at the time of commencement of trading on the Corporation.*

*(2) Continued Listing —following the initial 12 month period following commencement of trading on the Corporation of Currency Trust Shares, the Corporation will consider the suspension of trading in or removal from listing of such series under any of the following circumstances:*

*(i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Currency Trust Shares for 30 or more consecutive trading days; or*

*(ii) if the Trust has fewer than 50,000 Currency Trust Shares issued and outstanding; or*

*(iii) if the market value of all Currency Trust Shares issued and outstanding is less than \$1,000,000; or*

*(iv) if the value of the applicable non-U.S. currency is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Trust, custodian or the Exchange or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated applicable non-U.S. currency value;*

*(v) if the Indicative Trust Value is no longer made available on at least a 15-second delayed basis; or*

<sup>10</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.