

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53371; File No. SR-NASD-2005-144]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Order Entry and Execution Practices

February 24, 2006.

#### I. Introduction

On December 8, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended, ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to order entry and execution practices. The proposed rule change was published in the **Federal Register** on January 23, 2006.<sup>3</sup> The Commission has received one comment on the proposal.<sup>4</sup> This order approves the proposed rule change.

#### II. Description of the Proposal

The NASD proposed to add Rule 3380 to prohibit members and associated persons from splitting any order into multiple smaller orders for execution or any execution into multiple smaller executions for transaction reporting for the primary purpose of maximizing a monetary or in-kind payment to the member or associated persons as a result of the execution of such orders or the transaction reporting of such executions.

#### III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,<sup>5</sup> particularly Section 15A(b)(6) of the Act,<sup>6</sup> which requires that an association's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove

impediments to, and perfect the mechanism of, a free and open market and, in general, protect investors and the public interest.

In its comment letter on behalf of Sun Trading LLC,<sup>7</sup> the commenter argues, in essence, that the rule proposal should be limited to the splitting of customer orders, and that trade shredding should be permitted for member proprietary trades, since this could allow members to make tighter and more efficient markets. Accordingly, the commenter suggests that the Commission limit the application of the rule to exclude trading by market makers and proprietary trading firms where no customer orders are involved. The commenter believes that the Commission has adequately addressed the issue of trade shredding in the newly adopted Regulation NMS and that further steps would be counter productive.

While Regulation NMS will revise the current plan formulas, which allocate market data revenues based either solely on the number of trades, or on trade and share volume, to reduce the emphasis on trade volume, the Commission believes it is appropriate for self-regulatory organizations ("SROs") to take additional steps to address trade shredding and its potentially distortive effects. The Commission notes that, to date, it has approved rule changes to address the practice of trade shredding from four SROs.<sup>8</sup> The remaining SROs have filed proposed rule changes to address the issue of trade shredding.<sup>9</sup>

The Commission believes that the proposed rule change should further deter the distortive practice of trade shredding, and, therefore, promote just and equitable principles of trade.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (File No. SR-NASD-2005-144), be and hereby is, approved.

<sup>7</sup> See *supra* note 4.

<sup>8</sup> See Securities Exchange Act Release Nos. 52341 (August 26, 2005), 70 FR 52455 (September 2, 2005) (SR-BSE-2005-20); 52683 (October 26, 2005), 70 FR 66480 (November 2, 2005) (SR-NYSE-2005-62); 53070 (January 6, 2006), 71 FR 2286 (January 13, 2006) (SR-Phlx-2005-63); 53088 (January 10, 2006), 71 FR 2605 (January 17, 2006) (SR-CBOE-2005-92).

<sup>9</sup> See SR-Amex-2005-112, SR-CHX-2006-03, SR-PCX-2006-10. National Stock Exchange expects to file a trade shredding rule change proposal in the near future.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53376; File No. SR-PCX-2006-12]

### Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Clearly Erroneous Executions

February 27, 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 February 23, 2006, the Pacific Stock 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. 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 proposes to amend PCX Equities, Inc. ("PCXE") Rule 7.10(e) pertaining to clearly erroneous executions of securities issued in initial public offerings. The text of the proposed rule change is set forth below.<sup>3</sup> Brackets indicate deletions; italics indicates new text.

\* \* \* \* \*

#### Rules of the PCX Equities, Inc.

##### Rule 7

##### Rule 7.10

##### Clearly Erroneous Executions

(a)-(d) No Change.  
(e) Trade Nullification and Price Adjustments for UTP Securities that are Subject of Initial Public Offerings ("IPOs"). Pursuant to SEC Rule 12f-2, as amended, the Corporation may extend unlisted trading privileges to a security that is the subject of an initial public offering when at least one transaction in

<sup>11</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.

<sup>3</sup> The Exchange inadvertently indicated that the title of PCXE Rule 7.10 was new text. The Commission corrected this technical error in the text of the proposed rule change.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 53132 (January 17, 2006), 71 FR 3584.

<sup>4</sup> See email comment from Jefferson Wigley, Managing Member, Sun Trading LLC, dated February 15, 2006 ("Sun Trading Letter").

<sup>5</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78o-3(b)(6).