

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40424; File No. SR-NASD-98-68]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Submission of Trade Reports in PORTAL-Designated Securities to the Automated Confirmation and Transaction Service

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 September 8, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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

Nasdaq proposes to interpret the definition of "ACT Eligible Security" in Rule 6110(a) of the rules of the NASD for the Automated Confirmation Transaction Service ("ACT") to include all securities designated as PORTAL securities pursuant to the Rule 5320 Series of the PORTAL Market Rules to the extent transactions in such PORTAL-designated securities are voluntarily submitted to ACT solely for reconciliation, comparison, and/or clearance and settlement.

#### 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

Since 1983, NASD Rule 11180 has required each member that is a participant in a registered clearing agency to subscribe to and reconcile all eligible transactions through the Trade Acceptance and Reconciliation Service ("TARS"), a system operated by Nasdaq. TARS is an on-line reconciliation facility that allows both parties to a trade, through the Nasdaq Workstation, to reconcile breaks on contract sheets from their clearing corporation with respect to over-the-counter ("OTC") and exchange-listed stocks. None of the trade information submitted to TARS is disseminated to the public in any manner. TARS has been offered as an independent service, distinct from ACT. ACT is the Nasdaq-operated system used by members to compare trades and to submit trades to clearance and settlement at The Depository Trust Company ("DTC"). Pursuant to the rules for Reporting Transactions in Over-the-Counter Equity Securities in the Rule 6600 Series, members are obligated to transmit through ACT last sale reports of transactions in OTC equity securities for which real-time trade reporting is not otherwise required, which results in public dissemination of last sale reports for these transactions. Thus, unlike TARS, ACT includes a function for the public dissemination of last sale reports.

Because of low reconciliation activity in TARS, Nasdaq determined to integrate TARS functionality into ACT and eliminate the TARS service. Pursuant to proposed rule change SR-NASD-98-47, Nasdaq eliminated TARS by deleting NASD Rule 11180 and amended ACT rules to integrate the TARS functionality into ACT. This proposed rule change was effective upon filing on July 9, 1998, in accordance with Section 19(b)(3)(A) of the Act.<sup>3</sup> Pursuant to proposed rule change SR-NASD-98-47, Nasdaq proposes to implement the elimination of TARS as of September 8, 1998. Thereafter, transactions in OTC equity securities, that are not otherwise required to be submitted to ACT under the Rule 6600 Series, may voluntarily be submitted to ACT solely for the purpose of taking advantage of the reconciliation, comparison and/or clearing functions in ACT.

Nasdaq has been advised by a number of members that they have been using the TARS service for reconciliation of

transactions in equity securities designated as PORTAL securities under the Rule 5320 Series of the PORTAL Market Rules. The PORTAL Market is a system operated by Nasdaq for securities sold in a private placement by an issuer under the exemption from registration provided by Section 4(2) of the Securities Act of 1933 ("1993 Act"),<sup>4</sup> that qualify for resale by investors under Rule 144A under the 1993 Act.<sup>5</sup> Designation of a security issue as a PORTAL security qualifies the issue for book-entry clearance and settlement at DTC. Thus, all PORTAL securities are depository eligible. Recently, members have requested advice as to whether they can continue to voluntarily submit trade details with respect to transactions in equity PORTAL-eligible securities, previously submitted through TARS, into ACT for purposes of reconciliation, comparison, and/or clearance only.

Currently, the definition of "ACT Eligible Security" in Rule 6110(a) of the ACT Rules does not directly reference PORTAL, privately placed, or restricted securities. Thus, PORTAL-designated securities are not specifically excluded by this definition from treatment as an ACT eligible security.<sup>6</sup> Nasdaq is proposing to temporarily interpret the definition of "ACT Eligible Security" to include all PORTAL-designated securities to the extent those securities are voluntarily submitted to ACT solely for reconciliation, comparison, and/or clearance and settlement. Nasdaq has initiated modifications and procedures related to ACT that will inhibit the ability of any person entering a transaction in a security with a CUSIP number for a PORTAL security from designating the transaction as a "reportable trade," thereby preventing last sale reports for PORTAL-designated securities from being publicly disseminated. ACT will treat any entry involving a PORTAL-designated security as one submitted solely for reconciliation, comparison, and/or clearance and settlement purposes.

Finally, in light of the limited use of ACT for PORTAL-designated securities,

<sup>4</sup> 15 U.S.C. 77(d)(2).

<sup>5</sup> 17 CFR 230.144A.

<sup>6</sup> The definition of "ACT Eligible Security" does include, among other securities, all OTC Equity Securities as defined in Rule 6600. The definition of "OTC Equity Security" in Rule 6610(d) does specifically exclude all restricted securities, as defined in Rule 144(a)(3) under the 1993 Act, and PORTAL-designated securities. Nasdaq is not proposing to amend or interpret this latter definition as such an amendment would subject all PORTAL-designated securities to the mandatory 90 second "reporting" requirements of the Rule 6600 Series, and would result in the public dissemination of last sale information for such transactions.

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

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

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

it is Nasdaq's position that the submission of trade details in PORTAL-designated securities to ACT will not subject these transactions to SEC fees pursuant to Section 31 of the Act,<sup>7</sup> as PORTAL-designated securities are not subject to "prompt last sale trade reporting" as that term is used for the purposes of Section 31 fee assessment.

## 2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>8</sup> which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. The NASD believes that the proposed rule change is wholly consistent with the purposes of the Act in that it will encourage members to submit trade details of transactions in PORTAL-designated securities to the Association through ACT for reconciliation, comparison, and clearance and settlement purposes and will, thereby, provide the Association with trade details regarding such transactions and facilitate clearance and settlement in such securities.

### *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*

Nasdaq has neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the

NASD and, therefore, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>9</sup> and subparagraph (e)(1) of Rule 19b-4 thereunder.<sup>10</sup> 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 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.<sup>11</sup> Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 No. SR-NASD-98-68 and should be submitted by October 7, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40418; File No. SR-PCX-98-38]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Equity Trading Halts Due to Extraordinary Market Volatility**

September 9, 1998.

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 August 4, 1998, as amended on August 31, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange.<sup>3</sup> 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 Exchange is proposing to codify its rules relating to trading halts in equity securities due to extraordinary market volatility.

#### **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 Exchange 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. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1982).

<sup>2</sup> 17 CFR 240.19b-4 (1991).

<sup>3</sup> On August 31, 1998, the PCX an amendment with the Commission, requesting that the Commission treat the filing as a "non-controversial" rule filing pursuant to Rule 19b-4(e)(6), 17 CFR 240.19b-4(e)(6). The amendment also clarified the background to the PCX's existing circuit breaker policy and proposed rule change, and made technical corrections to the filing. See Letter from Michael Pacileo, Staff Attorney, PCX to Joshua Kans, Attorney, Division of Market Regulation, Commission, dated August 31, 1998. The Commission deems the proposal filed upon receipt of the August 31, 1998 amendment.

<sup>7</sup> 15 U.S.C. 78ee.

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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>10</sup> 17 CFR 240.19b-4(e)(1).

<sup>11</sup> In reviewing this proposed rule change, the Commission has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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