

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The Exchange has designated the proposed rule change as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and Rule 19b-4(f)(2) thereunder.<sup>7</sup> Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the 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 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 ISE. All submissions should refer to File No. SR-ISE-2001-25 and should be submitted by November 13, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44940; File No. SR-NASD-2001-59]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees for Historical Research Reports and Licensing the Redistribution of Information from Such Reports**

October 16, 2001.

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 25, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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. 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 is proposing to amend NASD Rule 7010(p) to modify the fees charged for historical research reports provided through Nasdaq's NasdaqTrader.com web site, and to establish a fee for licensing the redistribution of information contained in such reports. 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)-(o) No change

(p) Historical Research and Administrative Reports

*(1) The charge to be paid by the purchaser of an Historical Research Report regarding a Nasdaq security through the NasdaqTrader.com website shall be determined in accordance with the following schedule:*

	Number of fields of information in the report		
	1-10	11-15	16 or more
<b>A. Market Summary Statistics</b>			
For a day .....	\$10	\$15	\$20
For a month, quarter, or year .....	\$15	\$20	\$25
<b>B. Index Weighting Information</b>			
For a day .....	\$15	\$30	\$45
<b>C. Nasdaq Issues Summary Statistics</b>			
For a security for a day .....	\$10	\$15	\$20
For a security for a month, quarter, or year .....	\$20	\$30	\$40
For all issues for a day .....	\$50	\$75	\$100
For all issues for a month, quarter, or year .....	\$100	\$150	\$200
<b>D. Intra-Day Quote and Intra-Day Time and Sales Data</b>			
For a security and/or a market participant for a day .....	\$15	\$25	\$35
For all market participants for a day or for all securities for a day .....	\$30	\$40	\$50
<b>E. Member Trading Activity Reports</b>			
For a security and a market participant for a day .....	\$15	\$25	\$50
For all securities for a market participant for a day .....	\$30	\$50	\$75

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 19b-4(f)(2).

<sup>8</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.

	Number of fields of information in the report		
	1–10	11–15	16 or more
F. Nasdaq may, in its discretion, choose to make a report that purchasers wish to obtain every trading day available on a subscription discount basis. In such cases, the price for a subscription to receive a report every trading day in a month shall be the applicable rate to receive the report for a day times 20; the price for a subscription to receive a report every trading day in a quarter shall be the applicable rate to receive the report for a day times 60; and the price for a subscription to receive a report every trading day in a year shall be the applicable rate to receive the report for a day times 240.			

(2) The charge to be paid by the purchaser of an Historical Research Report regarding a Nasdaq security that wishes to obtain a license to redistribute the information contained in the report to subscribers shall be determined in accordance with the following schedule:

	Number of subscribers				
	1–500	501–999	1,000–4,999	5,000–9,999	10,000+
A. Market Summary Statistics					
More often than once a month .....	\$250	\$350	\$450	\$550	\$750
Once a month, quarter, or year .....	\$125	\$175	\$225	\$275	\$375
B. Index Weighting Information					
More often than once a month .....	\$1,000	\$1,500	\$2,500	\$3,500	\$5,000
Once a month, quarter, or year .....	\$500	\$550	\$600	\$750	\$1,000
C. Nasdaq Issues Summary Statistics					
More often than once a month .....	\$500	\$600	\$700	\$800	\$1,000
Once a month, quarter, or year .....	\$250	\$300	\$350	\$400	\$500
D. Intra-Day Quote and Intra-Day Time and Sales Data					
For a security and/or a market participant for a day .....	\$200	\$300	\$400	\$500	\$700
For all market participants for a day or for all securities for a day ..	\$1,000	\$1,500	\$2,500	\$3,500	\$5,000

(3) The charge to be paid by the purchaser of [separate] an Historical Research [and Administrative] Report[s] regarding an OTC Bulletin Board security or other OTC security through the OTCBB.com website shall be as follows:

[(1)](A) Daily Detailed Reports—\$7 per day, per security and/or market participant for reports containing 15 fields or less. \$15 per day, per security and/or market participant for reports exceeding 15 fields.

[(2)](B) Summary Level Activity Reports—\$25 per report.

[(3)](4) Administrative Reports—\$25 per user, per month.

\* \* \* \* \*

## 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

##### Historical Research Reports

In 2000, Nasdaq established a fee structure for providing historical research reports pertaining to Nasdaq, OTC Bulletin Board or other OTC issues to investors.<sup>3</sup> Before that time, Nasdaq had provided such reports on an ad hoc basis to persons requesting this information by telephone. To alleviate the demand upon staff resources and to increase the quality, speed, and availability of the information to market participants, investors, and other interested parties (hereafter referred to as "customers"), Nasdaq developed an automated request and delivery system that allows the delivery of these reports in a timely and systematic manner at a fixed price, based on a standardized pricing methodology. Customers are able to access the reports through the Internet on the Nasdaq Trader.com (for Nasdaq issues) and OTCBB.com (for OTCBB and other OTC issues) websites by directing an Internet browser to the

appropriate website. Once at the proper location within the website, the customer may choose from a list of standardized reports, input the necessary information pertaining to the desired security or market participant, and provide credit card information for payment.<sup>4</sup> Once completed, the report is sent via e-mail directly to the customer.

Currently, historical research reports are divided into two categories: "Daily Detailed Reports" and "Summary Level Activity Reports." Examples of Daily Detailed Reports include a Market Maker Price Movement Report (displays all market maker quote changes and the best bid and offer throughout a chosen day for a selected security), and a Time and Sales Report (provides a record of media-reported trades in the selected security, indicating the reported time, price and share volume). Summary Level Activity Reports provide trade and/or quote information over a monthly or quarterly period. Fees for the Daily Detailed Reports are set on a two-tiered basis, based on the number of data fields contained in the report. Examples of fields, depending on the type of report chosen, include reported volume, reported price, reported time, inside bid/ask, short sale indicator, etc. Nasdaq assesses a fee of \$7 for reports

<sup>3</sup> See Securities Exchange Act Release No. 42341 (Jan. 14, 2000), 64 FR 69811 (Jan. 21, 2000) (SR-NASD-99-70).

<sup>4</sup> Credit card information is provided using a secure website connection.

with 15 or fewer fields of information for each trading day requested,<sup>5</sup> and a fee of \$15 for reports with more than 15 fields of information for each trading day of information. Fees for Summary Level Activity Reports are set at \$25 per report.

Nasdaq believes that this system for distributing historical research reports has been a successful method of providing beneficial information to customers in an efficient manner. However, Nasdaq believes that the fee structure for these reports should more clearly differentiate among the varieties of reports that are provided to customers, with prices that are calibrated to the size of the report, the frequency with which the report is provided, and the type of information contained in the report. Accordingly, Nasdaq is proposing a new fee schedule for historical research reports relating to Nasdaq securities.<sup>6</sup>

As is true under the current rule, the price of reports varies with the fields of information contained in the report. The new proposed schedule would assess different fees for reports with 1 to 10 fields of information, 11 to 15 fields, and 16 or more fields. The proposed fee schedule would also introduce categories for a wider variety of reports than are reflected in the current fee schedule.<sup>7</sup>

- **Market Summary Statistics:** This category consists of data reports that provide a summary of overall market performance. Reports in this category include (but are not limited to) end-of-day or end-of-month market statistics (e.g., most actives, advances, declines, overall trading volumes, and similar statistics), index summary reports (e.g., high, low, and close values for all indexes), pre-market and after-hours market indicators, and after-hours market statistics. The prices charged for these reports would depend on whether the report provided information about a day or a month, quarter, or year.

- **Index Weighting Information:** This category consists of data report that provide information about Nasdaq indexes, including (but not limited to)

the weightings, pricing, depository receipt multipliers, total shares outstanding, and/or market capitalization for each issue in a Nasdaq index, or the calculation report, pre-market indicator or after-hours indicator for each of the Nasdaq indexes. These reports are provided on a per day basis.

- **Nasdaq issues Summary Statistics:** This category consists of data reports that provide information about a particular security that is listed on Nasdaq. Information contained in these reports may include high, low or closing prices, high, low, or closing quotes, trading volumes, or dividends, IPO trading summary statistics, monthly short interest, or monthly share volume. The prices charged for these reports would depend on whether they cover a particular security or all listed securities, and whether they cover a day or a month, quarter, or year.

- **Intra-Day Quote and Intra-Day Time and Sales Data:** This category consists of data that provide detailed intra-day quote and/or time and sales information during a particular time of day or throughout the trading day. These reports are provided on a per day basis. The prices charged for these reports would depend on whether they cover a particular security or a particular market participant or all securities or market participants.

- **Member Trading Activity Reports:** This category consists of reports that provide data about a specific market participant's trading activity, such as ACT Compliance Reports, Equity Audit Trail Reports, and SelectNet Activity Reports. These reports are provided on a per day basis, and the prices charged would depend on whether they cover a particular security traded by the market participant or all securities.

The proposed fee schedule would also allow Nasdaq to offer discounted subscription pricing to customers who wish to subscribe to receive a daily report for each day of a month. The price would be the applicable per day price for the report, multiplied by twenty. Thus, in a month with more than twenty trading days, the reports would be received at a discount. Similarly, the price for a quarterly subscription would be the applicable per day price for the report multiplied by 60, and the price for an annual subscription would be the applicable per day price for the report multiplied by 240.

#### *Redistribution Licensing Fees*

The purchase of an historical research report relating to a Nasdaq security does not currently provide the purchaser with a license to redistribute the data

from the report to other persons. However, Nasdaq has received numerous requests from various organizations—primarily organizations that provide research and analytical products to institutional investors, individual investors and market participants—that wish to redistribute such data to their customers. Although in some cases (e.g., the market summary reports) the data is available from data vendors that subscribe to Nasdaq market data feeds (e.g., Level 1), these organizations seek data distribution arrangements that are more tailored to their needs and those of their customers. Nasdaq has also found that market data vendors seek ways to supplement their current Nasdaq data feed offerings with more specific historical data to provide more in-depth analytical information to their customers. Accordingly, Nasdaq is proposing a fee schedule that would allow a customer who signs an addendum to the Nasdaq vendor agreement to receive and redistribute information found in historical research reports relating to Nasdaq securities.<sup>8</sup> The fees would be paid instead of, not in addition to, the fees charged to a customer who does not want a license to redistribute. The structure of the proposed licensing fee schedule is similar to the structure for the purchase of reports. Available reports would be divided into four categories: Market Summary Statistics, Index Weighting Information, Nasdaq Issues Summary Statistics, and Intra-Day Quote and Intra-Day Time and Sales Data.<sup>9</sup> For the first three categories, the level of the fee charged would depend on whether the reports would be redistributed more than once a month or only once a month. For Intra-Day Quote and Intra-Day Time and Sales Data, the level of the fee charged would depend on whether the reports provide information with respect to one market participant or all market participants.

#### *2. Statutory Basis*

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5)<sup>10</sup> and 15A(b)(6)<sup>11</sup> of the Act. Section 15A(b)(5)<sup>12</sup> requires the equitable allocation of reasonable fees and charges

<sup>5</sup> Thus, an investor requesting a report containing 12 fields of information for a three trading-day period would be charged \$21.

<sup>6</sup> Nasdaq is not at this time modifying (i) the fees for administrative reports, which are firm-specific reports that generally serve to assist NASD members in auditing their own internal systems, verifying back-end processing, and projecting monthly costs, or (ii) the fees for historical data reports on OTC Bulletin Board or other OTC securities obtained through the OTCBB.com website.

<sup>7</sup> The examples of reports covered by each category are not intended to be exclusive. New reports may be made available and assigned to an appropriate category in the future.

<sup>8</sup> Nasdaq is not at this time proposing to license the redistribution of information from historical data reports relating to OTC Bulletin Board or other OTC securities.

<sup>9</sup> Member Trading Activity reports, which are sold only to the market participant whose trading is described in the report, would not be available for licensed redistribution.

<sup>10</sup> 15 U.S.C. 78o-3(b)(5).

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

<sup>12</sup> 15 U.S.C. 78o-3(b)(5).

among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6)<sup>13</sup> requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that this service provides beneficial information to customers and that the fees for reports are equitably allocated on the basis of the size, frequency, and type of report sold to a particular customer. Nasdaq also believes that licensing the redistribution of the information will respond to customer requests for licensing arrangements and will allow broader dissemination of the information.

#### *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. 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 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 Nasdaq. All submissions should refer to file number SR-NASD-2001-59 and should be submitted by November 13, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[(Release No. 34-44938; File No. SR-PCX-2001-35)]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating To Split Price Executions of Auto-Ex Orders**

October 15, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on August 31, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange") 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 the PCX. The proposed rule change has been filed by the PCX as a "non-controversial" rule change under Rule 19b-4(f)(6)<sup>3</sup> under the Act. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

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

The PCX proposes to adopt Rule 6.87(p) permitting split-price executions. Below is the text of the proposed rule change. Proposed new language is *italicized*.

\* \* \* \* \*

Rule 6.87(a)-(m)—No change.

(n)-(o)—Reserved.

(p) *Auto-Ex Split-Price Executions.* When the best bid or offer on the Exchange's book constitutes the best bid or offer on the Exchange, contra-side incoming Auto-Ex orders will be executed as follows:

(1) When the best bid or offer on the Exchange's book constitutes the best bid or offer on the Exchange and is for a size less than the Auto-Ex guaranteed size for the issue, that best bid or offer will be denoted in the Exchange's disseminated quote by a "Book Indicator." An incoming Auto-Ex order will be executed against the order in the book. In the event the order in the book is for a smaller number of contracts than the Auto-Ex order, the balance of the Auto-Ex order up to the firm quote size for the issue will be assigned to Market-Makers on the Auto-Ex wheel at the same price at which the initial portion of the order was executed. Any remaining balance thereafter will be:

(A) Assigned to market Makers on the Auto-Ex wheel at the Auto-Quote price if Auto-Quote constitutes the new prevailing market bid or offer that is equal to or better than the NBBO; or

(B) Executed against any order in the book that constitutes the new prevailing market bid or offer with the balance of the Auto-Ex order being assigned to Market Makers on the Auto-Ex wheel at that price up to the firm quote size. Any additional remaining balance of an Auto-Ex order shall be handled in accordance with (A) or (B) of this paragraph.

(2) Notwithstanding paragraph (1) above, if the bid or offer generated by the Exchange's Auto-Quote system (or any Exchange approved proprietary quote generation system used in lieu of the Exchange's Auto-Quote system) crosses or locks the Exchange's best bid or offer established by an order in the Exchange's customer limit order book, or is outside the NBBO, then Auto-Ex orders for options of that series will not be automatically executed but instead will be rerouted to Floor Broker Hand-Held Terminals or to another location in the event of system problems or contrary firm routing instructions. These rerouted orders will be executed in accordance with Rule 6.86.

<sup>13</sup> 15 U.S.C. 78o-3(b)(6).