

Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CHX-2001-26 and should be submitted by March 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45411; File No. SR-NASD-2001-88]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to Computer to Computer Interface Fees

February 6, 2001.

#### I. Introduction

On December 7, 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 ("SEC" or "Commission"), 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> a proposed rule change to increase the fees charged to non-members that continue to use the x.25 Computer to Computer Interface ("CTCI") to access Nasdaq services. On January 10, 2002, Nasdaq submitted Amendment No. 1 to the proposal.<sup>3</sup>

The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on January 18, 2002.<sup>4</sup> The comment period was for 15 days and expired on February 2, 2002. No comments were received on the proposal, as amended. In this order, the Commission is approving the proposed rule change, as amended, on an accelerated basis.

#### II. Description of the Proposal

Nasdaq's CTCI network is a point-to-point dedicated circuit connection from the premises of brokerages and service providers to Nasdaq's Trumbull, Connecticut processing facilities.

Through CTCI, firms are able to enter trade reports to Nasdaq's Automated Confirmation Transaction Service and orders to Nasdaq's Small Order Execution and SuperSOES systems. CTCI also processes SelectNet transaction confirmation reports.

In response to numerous requests from market participants that Nasdaq upgrade the speed and reliability of its CTCI data transmission environment, Nasdaq began the process last year of "sunsetting" its CTCI x.25/bisynch network in favor of a new network that provides greater capacity and a more efficient transmission protocol. The CTCI x.25/bisynch network can only transmit data up to 19.2 kilobits per second ("kb"). The new Transmission Control Protocol/Internet Protocol ("TCP/IP") CTCI network operates over the Enterprise Wide Network II and provides connectivity over more powerful 56kb and T1 data lines. In order to take advantage of the new CTCI network, users are required to upgrade their current x.25/19.2kb lines to either 56kb or T1 lines. Although the conversion process has been underway since January of 2001, as of late November, 295 x.25 CTCI circuits held by 60 firms remained active.

Nasdaq represents that as more and more users convert to TCP/IP, Nasdaq's per circuit cost of continuing to offer the x.25 CTCI connections increases. Since the x.25 CTCI network is provisioned to support over 600 circuits, Nasdaq believes that it is appropriate to pass through the expense of that network to those firms that have failed to transition. According to Nasdaq, the fee increase, together with continued transition support from Nasdaq staff, will allow Nasdaq to "sunset" the x.25 CTCI network on March 31, 2002 (or sooner, if all x.25 CTCI subscribers have transitioned prior to that date).<sup>5</sup>

NASD proposes to increase the fee assessed on NASD non-members that continue to use the x.25 CTCI to access Nasdaq services rather than transitioning to TCP/IP. Nasdaq plans to assess the new fee during the months of

February and March 2002 and to terminate remaining x.25 CTCI circuits at the end of March, although both the date for implementing the new fee and the date for terminating x.25 CTCI circuits are subject to adjustment.

#### III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>6</sup> In particular, the Commission believes that the proposal, as amended, is consistent with the requirements of section 15A(b)(5) of the Act<sup>7</sup> because 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 association operates or controls. The Commission notes that an identical proposed rule change for members became immediately effective upon filing on January 10, 2002.<sup>8</sup> Further, the Commission notes that Nasdaq has represented that as more and more users convert to TCP/IP, Nasdaq's per circuit cost of continuing to offer the x.25 CTCI connections increases. Nasdaq has stated that the proposed rule change, as amended, will permit it to pass through the expense of that network to those firms that have failed to transition.

Pursuant to section 19(b)(2) of the Act,<sup>9</sup> the Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that Nasdaq plans to assess the new fee during the months of February and March 2002 and to terminate remaining x.25 CTCI circuits at the end of March. The Commission also notes that members also will be assessed an identical fee in February and March 2002 and therefore, the proposed fee will be consistent with the fee charged to members. Further, Nasdaq has represented to the Commission that the new fee is necessary due to a decrease in the number of subscribers of x.25 CTCI circuits and is comparable to the fee assessed to subscribers of the TCP/IP CTCI circuits. Accordingly, the Commission finds that there is good cause, consistent with section 15A of

<sup>4</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> See letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 8, 2002 ("Amendment No. 1").

<sup>4</sup> See Securities Exchange Act Release No. 45266 (January 10, 2002), 67 FR 2714.

<sup>5</sup> Nasdaq has indicated that those members utilizing the remaining x.25 CTCI circuits will be unable to link to the CTCI system at the end of March. Nasdaq does not foresee any circumstances that would cause it to adjust the date of termination of the x.25 CTCI circuits at this time. January 3, 2002 telephone conversation between John M. Yetter, Assistant General Counsel, Nasdaq, and John Riedel, Staff Attorney, Division, Commission.

<sup>6</sup> In approving the proposed rule change, as amended, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78o-3.

<sup>8</sup> See Securities Exchange Act Release No. 45264 (January 10, 2002), 67 FR 2942 (January 22, 2002).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

the Act,<sup>10</sup> to approve the proposal on an accelerated basis.

#### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-NASD-2001-88), as amended, is approved on an accelerated basis.

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. 34-45416; File No. SR-PCX-2001-23]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Amending Exchange Rule 6.46 To Adopt New Sanctioning Guidelines for Enforcing Compliance With the Exchange's Options Order Handling Rules

February 7, 2002.

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 December 26, 2001, the Pacific 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 Exchange. 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 proposes to adopt new sanctioning guidelines that will assist in effectively enforcing compliance with the Exchange's options order handling rules. The text of the proposed rule change is available at the PCX's Office of the Secretary and at the Commission.

#### 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.

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

###### (1) Purpose

The Exchange believes that the proposed rule change will assist it in effectively enforcing compliance with its options order handling rules.<sup>3</sup> The Exchange represents that it has undertaken to address and will continue to address the importance of compliance with order handling rules such as Best Execution, Limit Order Display, Priority, Firm Quote and Trade Reporting. The proposed rule change sets forth sanctioning guidelines for each separate area of the order handling rules. Each of these areas are discussed in detail below.

The Exchange states that currently, violations of the Exchange Firm Quote, Limit Order Display, and Priority Rules are treated as formal disciplinary actions and outside the scope of the Exchange's Minor Rule Plan ("MRP").<sup>4</sup> Violations of Trade Reporting and Best Execution obligations, however, are generally handled pursuant to the Exchange's MRP. While the MRP provides general guidance with respect to fine levels to be imposed for each distinct violation, nothing in the MRP prohibits the Exchange from removing a single violation of these obligations from the MRP and enforcing it as a formal disciplinary matter. The Exchange may also file a formal disciplinary action if it deems that a

member or member organization's conduct amounts to a pattern or practice with respect to violations of the rules covered by its MRP.

The Exchange believes that the proposed guidelines set forth in this filing would serve to assist the Exchange's Regulatory Staff and the Ethics and Business Conduct Committee ("EBCC") in determining appropriate remedial sanctions for violations of all Exchange rules. The Exchange further believes that the proposed guidelines would work to promote consistency and uniformity in the imposition of penalties.<sup>5</sup> With respect to the order handling rules, the guidelines provide both a range of fines as well as non-monetary sanctions that could be assessed against offending members. Fine amounts would differ depending on the number of disciplinary actions that have been brought by the Exchange against the particular member or member organization. The general principles that apply to all rule violations as well as the particular sanctions relating to the order handling rules are discussed in detail below.

##### A. General Principles Applicable to All Sanction Determinations

According to the Exchange, the proposed sanctioning guidelines would be used by various Exchange bodies that adjudicate disciplinary actions, including the EBCC, the PCX Board of Governors, the PCX Surveillance and Enforcement Departments, for in-house adjudications (collectively, "Adjudicatory Bodies"), in determining appropriate remedial sanctions. The Exchange believes that it is important to note that the proposed guidelines do not prescribe fixed sanctions for particular violations. Rather, they assist Adjudicatory Bodies in imposing sanctions consistently and fairly. The Exchange believes that the proposed guidelines serve to promote consistency and uniformity in the imposition of penalties by applying the following general principles in connection with the imposition of sanctions in all cases.

(1) Disciplinary sanctions are remedial in nature. The proposed guidelines set forth that the sanctions imposed should be designed to prevent and deter future misconduct.

(2) Progressively escalating sanctions on recidivists. Repeated acts of

<sup>3</sup> The Exchange filed this proposed rule change in accordance with the provisions of Section IV.B.i of the Commission's September 11, 2000 Order Instituting Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3-10282 (the "Order").

<sup>4</sup> See PCX Rule 10.13.

<sup>5</sup> The Exchange submitted to the Commission a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where the violations are identified through the Exchange's automated surveillance system. See letter from Hassan A. Abedi, Manager, Enforcement, PCX, to Nancy J. Sanow, Assistant Director, Commission, dated December 21, 2001.

<sup>10</sup> 15 U.S.C. 78o-3.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</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.