

Since approval, these standards continue to operate on a pilot basis which terminates on June 30, 2005.<sup>7</sup> NASD has determined to seek an extension of its current pilot until December 31, 2005. NASD believes that such an extension provides for an appropriate continuation of the current Manning price-improvement standard while the Commission continues to analyze the issues related to customer limit order protection in a decimalized environment. NASD is not proposing any other changes to the pilot at this time.

## 2. Statutory Basis

NASD 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)(6) of the Act,<sup>9</sup> in particular, which require, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will improve treatment of customer limit orders and enhance the integrity of the market.

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

NASD 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

NASD asserts that the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder<sup>11</sup> because the rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; nor
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.<sup>12</sup> NASD has requested that the Commission waive the 30-day operative delay and designate the proposed rule change effective immediately so that the pilot can continue uninterrupted.

The Commission hereby grants the request.<sup>13</sup> The Commission believes that such waiver is consistent with the protection of investors and the public interest because it will allow the protection of customer limit orders provided by the pilot to continue without interruption and designates the proposed rule change to be operative 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. 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-2005-085 on the subject line.

### *Paper Comments:*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

<sup>12</sup> In addition, Rule 19b-4(f)(6)(iii) states that NASD must provide the Commission with written notice of its intent to file the proposed rule change at least five days prior to the date of filing of the proposed rule change. NASD satisfied this requirement.

<sup>13</sup> For purposes only of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-NASD-2005-085. 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 at the principal office of NASD and at the Commission's Public Reference Room. 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 the File Number SR-NASD-2005-085 and should be submitted on or before August 1, 2005.

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. 34-51954; File No. SR-NSCC-2005-07]

### **Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Charges for Communications Fees To Continue Operating Legacy Communication Networks**

June 30, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on June 17, 2005, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items

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

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

Quotations submitted to Nasdaq that do not meet this standard are rounded to the nearest minimum quotation increment (namely, \$0.01), specifically, rounded down for buy orders and rounded up for sell orders. See Securities Exchange Act Release No. 43876 (January 23, 2001), 66 FR 8251 (January 30, 2001) (SR-NASD-01-07).

<sup>7</sup> See Securities Act Release No. 50893 (December 20, 2004), 69 FR 78078 (December 29, 2004).

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

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change would revise the fees charged to members that fail to migrate their communications systems from legacy networks to The Depository Trust & Clearing Corporation's ("DTCC's") Securely Managed and Reliable Technology ("SMART") system<sup>2</sup> or to the Securities Industry Automation Corporation's ("SIAC's") Secure Financial Transaction Infrastructure ("SFTI") networks.

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

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

Beginning in 2003, NSCC has periodically informed members of the need to migrate their telecommunications connectivity from SIAC's legacy based Broker and Access networks to DTCC's SMART system or SIAC's SFTI.<sup>4</sup> While several advantages exist in having all members successfully migrate, NSCC's main objective in insourcing these services into its own data processing operations is to provide consistent business continuity planning capabilities across all NSCC services. In the event of a large-scale regional disruption, any member accessing NSCC through a legacy network will not have

the benefits provided by the other communications vehicles which could create exposure to these members and their counterparties.<sup>5</sup>

While most NSCC members have complied with stated migration requirements, several members continue to access NSCC through legacy networks, which is imposing significant unnecessary costs on NSCC for continued support of these systems. NSCC rules provide that members will be charged for communications charges at cost. Therefore, in order to encourage these members to migrate and in order to equitably allocate costs among its members, NSCC intends to allocate its costs for continued support of legacy networks among the members using such systems on a pro rata basis. NSCC plans to soon issue an important notice to members specifying the date such fees will become effective.<sup>6</sup>

In order to avoid bearing these costs, members currently using legacy systems are required to take the following actions: (i) As soon as possible, ensure adequate communications connectivity through SMART and/or SFTI, (ii) successfully complete testing through the newly-established pathways, (iii) complete full conversion of all input/output for applicable NSCC applications directly to/from NSCC through SMART and/or SFTI, and (iv) cancel the legacy network connections.

The proposed change is consistent with Section 17A of the Act<sup>7</sup> and the rules and regulations thereunder applicable to NSCC because it will enable NSCC to equitably allocate costs among its members.

#### *(B) Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

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

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> thereunder because the proposed rule establishes or changes a due, fee, or other charge. At any time within sixty 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. 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-NSCC-2005-07 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NSCC-2005-07. 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

<sup>2</sup> SMART is DTCC's centralized, end-to-end managed communications infrastructure that provides connectivity support for all post-trade clearance and settlement processing. Most of the services offered by DTCC's subsidiaries, The Depository Trust Company, the Fixed Income Clearing Corporation, and NSCC are accessible through SMART. SMART is interoperable with SFTI.

<sup>3</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>4</sup> DTCC Important Notices Z#0008, Z#0009, and Z#0010.

<sup>5</sup> SMART is designed to withstand catastrophic disaster scenarios and is set up to operate in DTCC's multiple remote sites to ensure its operability in the event of disruption. Legacy network connections are not automatically configured to "fail over" to DTCC's remote processing sites and therefore do not provide members using these networks with the resilience that would be needed in the event of a large-scale regional disruption.

<sup>6</sup> NSCC expects that the migration deadline will be set for the end of 2005.

<sup>7</sup> 15 U.S.C. 78q-1.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at <http://www.nscc.com>. 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-NSCC-2005-07 and should be submitted on or before August 1, 2005.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51972; File No. SR-PCX-2005-84]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trading Securities in Subpenny Increments

July 5, 2005.

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 June 30, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have substantially been prepared by the Exchange. The Exchange has filed this proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), is proposing to amend the interpretation to PCXE Rule 7.6(a) to

reflect the anticipated extension of a Commission exemption that permits securities transactions to be entered, executed, and reported in subpenny increments, although such quotations are disseminated in rounded, penny increments without a rounding identifier. The text of the proposed rule change is available on the PCX Web site (<http://www.pacificex.com>), at the Exchange's principal office, and at the Commission's Public Reference Room.

#### 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 III below. The self-regulatory organization 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

The Commission previously granted PCX an exemption from Rules 11Ac1-1, 11Ac1-2, and 11Ac1-4 under the Act<sup>5</sup> with respect to securities priced less than \$1.00 per share that permits Archipelago Exchange, a facility of PCX ("ArcaEx"), electronic trading permit ("ETP") holders of ArcaEx, and vendors that distribute ArcaEx quotation information to enter, execute, and report quotations in exchange-listed, Nasdaq National Market, and SmallCap securities in increments less than \$0.01 per share, although such quotations are disseminated in rounded, penny increments without a rounding identifier.<sup>6</sup> In conjunction with the initial grant of this exemption, the Exchange modified Interpretation .05 to PCXE Rule 7.6(a) on a pilot basis to reflect a subpenny minimum price variation for securities priced less than \$1.00. That pilot rule is operative until September 30, 2005.<sup>7</sup> Subsequently, the Exchange requested the Commission to

<sup>5</sup> 17 CFR 240.11Ac1-1, 240.11Ac1-2, and 11Ac1-4.

<sup>6</sup> See Letter from David S. Shillman, Associate Director, Division of Market Regulation, Commission, to Mai S. Shiver, Director of Regulatory Policy, PCX, dated September 24, 2004.

<sup>7</sup> See Securities Exchange Act Release No. 50441 (September 24, 2004), 69 FR 58570 (September 30, 2004).

extend the exemption to permit the Exchange to accept and execute orders and quotations of all exchange-listed, National Market, and SmallCap securities in increments less than \$0.01 per share, although such quotations are disseminated in rounded, penny increments without a rounding identifier.<sup>8</sup> That exemption expires on June 30, 2005.<sup>9</sup> PCX has requested the Commission, in a separate letter, to extend this exemption until the effective date of Rule 612 of Regulation NMS.<sup>10</sup> With this filing, the Exchange is amending Interpretation .05 to PCXE Rule 7.6(a) to reflect the anticipated extension of this Commission exemption.<sup>11</sup>

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>13</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments and perfect the mechanisms of a free and open market, and to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose 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 on the proposed rule change were neither solicited nor received.

<sup>8</sup> See Letter from David S. Shillman, Associate Director, Division, Commission, to Mai S. Shiver, Director of Regulatory Policy, PCX, dated February 10, 2005.

<sup>9</sup> See *id.*

<sup>10</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (Regulation NMS adopting release). Rule 612, which governs sub-penny quotations, will become effective on August 29, 2005.

<sup>11</sup> The Commission notes that it has granted the Exchange the extension it requested. See Letter to Alden Adkins, Chief Regulatory Officer, PCX, from Annette L. Nazareth, Director, Division, Commission, dated July 1, 2005.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>12</sup> 17 CFR 240.19b-4.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).