

public interest, and do not unfairly discriminate among issuers, consistent with sections 6(b) and 15A(b) of the Act.¹²² The Commission therefore finds the proposals, as amended, to be consistent with the Act and the rules and regulations thereunder.

V. Accelerated Approval of NYSE Amendments No. 1 and 2 and Nasdaq Amendments No. 2 and 3

The Commission finds good cause for approving NYSE Amendments No. 1 and 2 and Nasdaq Amendments No. 2 and 3 to the NYSE and Nasdaq proposed rule changes prior to the thirtieth day after the amendments are published for comment in the **Federal Register** pursuant to section 19(b)(2) of the Act.¹²³ NYSE Amendment No. 1 proposes technical corrections to the proposed rule language of the NYSE proposal. NYSE Amendment No. 2 proposes changes to the NYSE proposal based on discussions with Commission staff and in response to the comment letters. As discussed more fully above, NYSE Amendment No. 2, among other things, does the following: (1) Clarifies the terms “equity compensation plan,” “material revision,” and “repricing”; (2) defines “evergreen,” “formula” and “discretionary” plans; and (3) provides new transition rules. Nasdaq Amendment No. 3, which replaces Nasdaq Amendment No. 2 in its entirety, also does the following: (1) States that the Nasdaq Board of Directors approved the Nasdaq proposed rule changes for filing with the Commission; and (2) proposes clarifying and conforming changes to the Nasdaq proposal based on recommendations from Commission staff and in response to the comment letters. As discussed more fully above, Nasdaq Amendment No. 3, among other things, also clarifies the term “material amendment,” proposes an exception to shareholder approval for plans that provide a way to purchase shares on the open market or from the issuer at fair market value, and discusses evergreen plans and repricings.

The Commission believes that the proposed changes in NYSE Amendments No. 1 and 2 and Nasdaq Amendments No. 2 and 3 not only address many concerns raised in the comment letters, but are necessary to the conformity and proper application of the NYSE and Nasdaq listing standards relating to shareholder approval of equity compensation plans. The Commission therefore believes that accelerated approval of NYSE

Amendments No. 1 and 2 and Nasdaq Amendments No. 2 and 3 is appropriate. The Commission also notes that the amendments provide further clarification to portions of the NYSE and Nasdaq proposals that have already been noticed for comment and do not separately raise any new regulatory issues. Based on the above, the Commission finds, consistent with sections 6(b)(5),¹²⁴ 15A(b)(6),¹²⁵ and 19(b)¹²⁶ of the Act, that good cause exists to accelerate approval of NYSE Amendments No. 1 and 2 and Nasdaq Amendments No. 2 and 3.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning NYSE Amendments No. 1 and 2 and Nasdaq Amendments No. 2 and 3 to the NYSE and Nasdaq proposed rule changes, including whether NYSE Amendments No. 1 and 2 and Nasdaq Amendments No. 2 and 3 are 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 offices of the NYSE and Nasdaq. All submissions should refer to File No. SR-NYSE-2002-46 and SR-NASD-2002-140 and should be submitted by July 24, 2003.

VII. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule changes, SR-NYSE-2002-46 and SR-NASD-2002-140, as amended, are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and a national securities association, respectively, and, in particular, with section 6(b)(5) of the Act¹²⁷ and with

section 15A(b)(6) of the Act,¹²⁸ respectively.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹²⁹ that the proposed rule changes, SR-NYSE-2002-46 and SR-NASD-2002-140, and Nasdaq Amendment No. 1 are approved, and that NYSE Amendments No. 1 and 2 and Nasdaq Amendments No. 2 and 3 are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³⁰

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03-16883 Filed 7-2-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48100; File No. SR-PCX-2003-23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. and Amendment No. 1 Thereto To Reduce Archipelago Exchange Facility Fees and Charges for the Execution and Routing of Odd-Lot Orders and To Clarify the Application of Market Data Revenue Sharing Credit

June 26, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 30, 2003, the Pacific Exchange, Inc. (“PCX” or “Exchange”) submitted to 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. On June 26, 2003, the PCX filed Amendment No. 1 to the proposed rule change.³ 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, through its wholly-owned subsidiary PCX Equities, Inc. (“PCXE”),

¹²⁸ 15 U.S.C. 78o-3(6).

¹²⁹ 15 U.S.C. 78s(b)(2).

¹³⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the PCX made a technical correction to the proposal, the substance of which has been incorporated into this notice. See letter from Peter D. Bloom, Acting Managing Director, Regulatory Policy, PCX to Tim Fox, Attorney, Division of Market Regulation, Commission, dated June 25, 2003.

¹²² 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78o-3(b)(6).

¹²³ 15 U.S.C. 78s(b)(2).

¹²⁴ 15 U.S.C. 78f(b)(5).

¹²⁵ 15 U.S.C. 78o-3(b)(6).

¹²⁶ 15 U.S.C. 78s(b).

¹²⁷ 15 U.S.C. 78f(b)(5).