

limits its purview to transactions arising out of the use or operation of Nasdaq execution or communication systems and explicitly requires that the parties to a reviewable transaction be readily identifiable by Nasdaq through its systems. The Commission believes that the amended rule better reflects Nasdaq's interpretation of the scope of its rule. Nasdaq has represented that in the past it has declined to adjudicate petitions on the grounds that the transaction would be more appropriately reviewed by the market center on which it was executed. Therefore, the Commission believes that the proposed rule change clarifies the application and operation of the rule for market participants.

Nasdaq also proposes to amend NASD rule 11890 to state that Nasdaq's authority to review transactions based upon its own motion may be exercised in the event of extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. The Commission believes that the proposal clarifies Nasdaq's authority to nullify or modify transactions on its own motion and provides Nasdaq with the flexibility to address a variety of extraordinary market conditions expeditiously. The Commission notes that Nasdaq expects to assert its authority primarily in circumstances where the disruption or malfunction of a system resulted in the execution of trades with obvious errors, such as a price substantially unrelated to the inside market. Nasdaq has also represented that it will not attempt to break or modify trades entered into through, or reported to, a UTP exchange. Nasdaq will endeavor to coordinate its actions with other market centers to achieve consistent treatment of trades outside Nasdaq's jurisdiction.

Regarding the review of Nasdaq determinations by the MORC, Nasdaq proposes that an officer empowered to review transactions on Nasdaq's own motion (*i.e.*, the President or an Executive Vice President) may determine that the number of transactions affected by a decision to break or modify trades on Nasdaq's own motion is such that the decision must be accorded immediate finality in order to maintain a fair and orderly market and to protect investors and the public interest. The Commission believes that Nasdaq's proposal is reasonable and that the market may be well served by the finality it provides. Furthermore, Nasdaq has represented, and the Commission expects, that Nasdaq would

use this authority only on rare occasions. For example, Nasdaq believes that there may be circumstances in which review by the MORC of a large number of trades would be impractical and could expose market participants to unacceptable levels of risk.⁸

Finally, Nasdaq proposes to describe in greater detail the parameters for communications between Nasdaq and market participants. The Commission believes that the proposal may clarify procedural aspects of the process of reviewing transactions and therefore promote the fair and efficient resolution of disputes.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal, as amended, is consistent with the Act and the rules and regulations thereunder. It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NASD-2002-127), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47223; File No. SR-PCX-2002-75]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc., Through Its Subsidiary PCX Equities, Inc., Relating to New Order Types and To Amend PCXE Rule 7.37

January 21, 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 December 9, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its subsidiary, PCX Equities, Inc. ("PCXE"),

⁸ For example, Nasdaq believes that if an erroneously priced order or quote causes a large number of transactions to occur at prices far in excess of a security's true value and if a decision is made to break all of the affected trades, some sellers may appeal the decision to break the trades. If a market participant is a party to trades on both sides of the market, and some remain broken while others are appealed and reinstated, it will suffer losses that arise solely from the inconsistent treatment of its trades.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 PCX. On January 15, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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, PCXE, proposes to amend its rules governing the Archipelago Exchange, the equities trading facility of PCXE, by: (1) Adopting several new order types to accommodate the trading of securities listed on the Nasdaq Stock Market, Inc., on an unlisted trading privileges ("UTP") basis; (2) amending PCXE rule 7.37 to provide for a limited exemption from the trade-through restrictions for some of these new order types; (3) amending certain provisions of the Working Order Process to reflect the unique operational requirements of two proposed order types; and (4) making several minor technical rule changes to conform to the Nasdaq UTP Plan, which extends UTP to Nasdaq SmallCap securities. The text of the proposed rule change follows:

Additions are *italicized*; deletions are in [brackets].

PCX Equities, Inc.

Rule 1 Definitions

Rule 1.1(a)-(z)—No change.

Nasdaq/[NM] Security

(aa) The term "Nasdaq/[NM] Security" shall mean any security (i) designated as *an eligible* [national market system] security pursuant to the "*Nasdaq Unlisted Trading Privileges Plan*", *as amended*, [NASD's "National Market System Securities Designation Plan with respect to Nasdaq Securities,"] filed with and approved by the Commission pursuant to SEC rule 11Aa2-1 under the Exchange Act and (ii) that is either listed on the Corporation pursuant to rule 5 or as to which unlisted trading privileges have been granted pursuant to section 12(f) of the Exchange Act.

Rule 1.1 (bb)-(hh)—No change.

OTC/UTP Plan

(ii) The term "OTC/UTP Plan" shall mean the Nasdaq *Unlisted Trading*

³ In Amendment No. 1, the Exchange submitted a new form 19b-4, which replaced the original filing in its entirety.