

access to the system by all NASD members, as well as encourage OE Firms to enter orders into SuperMontage and thereby increase liquidity in the market to the benefit of all market participants. Further, even though the orders of OE Firms will not be matched off against orders entered by the same OE Firm on the other side of the market,¹³ Nasdaq has represented that in all other respects, Non-Attributable Orders entered by OE Firms will be processed in the same manner as other non-attributable orders placed into SIZE by NNMS Market Makers. As a result, the Commission believes that OE Firms will have far greater access to the SuperMontage than currently exists.

The Commission further believes that the proposal is consistent with the goals of Section 11A(a)(1)(C), particularly Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly market to assure the economically efficient execution of securities transactions. The proposal should provide OE Firms with greater flexibility to reflect buying and selling interest at various price levels by entering Non-Attributable Orders directly into SuperMontage, instead of relying on electronic communications networks and NNMS Market Makers to post their trading interest.

Accordingly, the Commission finds good cause, pursuant to Sections 15A(b)(6) and 19(b)(2) of the Act,¹⁴ for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the pilot will enable Nasdaq to allow OE Firms to enter orders into Nasdaq and thereby, remove a barrier to access to the SuperMontage, while enabling the Commission, NASD, Nasdaq, and market participants to gain actual experience with the pilot before the Commission considers permanent approval of the pilot.¹⁵ As a result, market participants will be able to better assess the impact of the proposal and offer insightful and valuable public comment on the pilot. Further, the Commission notes that several commenters suggested that OE Firms be allowed to enter orders directly into the order display facility as part of the

original public comment process on the SuperMontage proposal.¹⁶ The Commission notes that the proposed rule change addresses those comments.

I. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act¹⁷, that the proposed rule change, as amended, (File No. SR-NASD-2002-173) be, and it hereby is, approved on an accelerated basis, as a 90-day pilot beginning on February 10, 2003 and expiring on May 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-2950 Filed 2-5-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47295; File No. SR-PCX-2002-64]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by Pacific Exchange, Inc., Relating to Rules Governing the Intermarket Linkage, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto

January 31, 2003.

I. Introduction

On September 26, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt new rules, governing the operation of the intermarket linkage (the "Linkage"). The proposed rule change was published for comment in the **Federal Register** on December 26, 2002.³ The Commission received no comments on the proposed rule change. On January 29, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ This order

approves the proposed rule change, provides notice of filing of Amendment No. 1 and grants accelerated approval to Amendment No. 1.

II. Description of Proposal

In general, the proposed rules contain relevant definitions, establish the conditions pursuant to which market makers may enter Linkage orders, impose obligations on the Exchange regarding how it must process incoming Linkage orders, and establish a general standard that members should avoid trade-throughs.⁵ The proposed rules establish potential regulatory liability for members who engage in a pattern or practice of trading through other exchanges, whether or not the exchanges traded through participate in the Linkage, provide procedures to unlock and uncross markets, and codify the "80/20 Test" contained in section 8(b)(iii) of the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (the "Plan"),⁶ which provides that a market maker on an Exchange would be restricted from sending principal orders (other than P/A orders, which reflect unexecuted customer orders) through the Linkage if the market maker effects less than 80 percent of specified order flow on the Exchange.

III. Discussion

The Commission has reviewed the PCX's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,⁷ and with the requirements of section 6(b).⁸ In particular the Commission finds that the proposed rule change is designed to

Order" contained in PCX Rule 6.92(a)(12) to state that such orders are immediate or cancel orders; (2) PCX Rule 6.93(e) to clarify the Lead Market Market's obligation to address a linkage order when such order is not eligible to be automatically executed; (3) PCX Rule 6.94(a) to clarify language regarding liability for trade-throughs at the end of the trading day and to request approval of this provision only for a one-year pilot period; and (4) PCX Rule 6.94(e) to clarify that members may not engage in a pattern or practice of trading through.

⁵ Trade-throughs occur when broker-dealers execute customer orders on one exchange at prices inferior to another exchange's disseminated quote.

⁶ Approved by the Commission in Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000), as subsequently amended. See Securities Exchange Act Release No. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001) ("Initial Amendment Order") and Securities Exchange Act Release No. 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47274 (January 29, 2003); and 47298 (January 31, 2003).

⁷ In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b).

¹³ Nasdaq's proposed rule change would eliminate the ability of OE Firms to use this feature no later than April 28, 2003.

¹⁴ 15 U.S.C. 78o-3(b)(6) and 78s(b)(2).

¹⁵ The Commission notes that approval of the pilot should not be interpreted as suggesting that the Commission is predisposed to approving the proposal on a permanent basis if requested by the NASD.

¹⁶ See Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 47026 (December 18, 2002), 67 FR 78843.

⁴ See letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 28, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange proposed to amend: (1) The definition of "Linkage