

customer limit orders—the lesser of \$0.05 per share or one-half of the current inside spread—is appropriate for the pilot program. As the Commission has previously noted, market makers electing to trade ahead of customer limit orders must be required to do so by a sufficiently large increment, otherwise the benefits of limit orders on price competition are lost.²⁵ The Commission believes that the proposed increment for the pilot program satisfactorily balances the interests of providing limit order protection against the benefits of offering price improvement. However, the Commission expects that, during the pilot period, Nasdaq will study all aspects of new NASD Rule 6541. After reviewing the pilot's operation, Nasdaq will have the opportunity to propose further refinements to the rule, if necessary.

In addition, one commenter recommended that NASD Rule 6541 include a two-minute standard for contemporaneous executions, rather than five minutes proposed by Nasdaq. The Commission believes that the five-minute standard is a reasonable first step, and that Nasdaq will have the opportunity to propose any appropriate refinements to NASD Rule 6541 at the conclusion of the pilot program.

B. Pilot Program

The Commission is approving this proposal on a 12-month pilot basis ending as of February 8, 2002. As noted above, Nasdaq has stated that NASD Rule 6541 will not become operational until 30 days after issuance of a Notice to Members discussing the operation of the new rule and that the pilot securities will be subject to a phase-in period.

C. Accelerated Approval of Amendment Nos. 1 and 2

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposal prior to the thirtieth day after the date of public notice in the **Federal Register**, pursuant to Section 19(b)(2) of the Act.²⁶ The original proposal has been published in the **Federal Register**, and public comment on the proposal was favorable. The Commission believes that Amendment Nos. 1 and 2 do not materially alter the original filing, but merely clarify the obligations imposed by NASD Rule 6541 in a manner consistent with the obligations that already exist with respect to Nasdaq National Market and

SmallCap securities. The Commission believes, moreover, that approving Amendment Nos. 1 and 2—which set forth and describe the trading-ahead increment—at the same time as the original proposal furthers the investor protection goals of the Act.

VI. Solicitation of Comments on Amendments Nos. 1 and 2

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether the amendments 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 office of the NASD. All submissions should refer to File No. SR–NASD–00–22 and should be submitted by March 8, 2001.

VII. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²⁷ that the proposed rule change (SR–NASD–00–22) is approved on a pilot basis and that Amendment Nos. 1 and 2 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43943; File No. SR–NASD–00–79]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to EWN II Fees for NASD Members

February 8, 2001.

Introduction

On December 21, 2000, the National Association of Securities Dealers, Inc. (“NASD”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), submitted to the Securities and Exchange Commission (“Commission”), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² a proposed rule change relating to Enterprise Wide Network II (“EWN II”) Fees for NASD Members.

The proposed rule change was published for comment in the **Federal Register** on January 16, 2001.³ No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

In its proposed rule change, Nasdaq proposed to pass on costs associated with increased bandwidth demands of the EWN II to NASD members for the period December 1–12, 2000.⁴ In the September/October 2000 issue of Nasdaq's *Subscriber Bulletin*,⁵ Nasdaq announced that it had increased the bandwidth of its Enterprise Wide Network II from 128 kilobits (“kb”) to 192 kb. This increased bandwidth provides Nasdaq with the ability to support increased share volume and new products and trading applications that will be introduced. A description of the history of EWN II and the recent bandwidth increase may be found in SR–

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Securities Exchange Act Release No. 43814 (January 8, 2001), 66 FR 3630.

⁴ Nasdaq previously filed under section 19(b)(3)(A)(ii) a proposed rule change to increase the fees beginning December 13, 2000, which was immediately effective upon filing. Securities Exchange Act Release No. 43769 (December 22, 2000) (SR–NASD–00–73), 66 FR 826 (January 4, 2001). Nasdaq also filed a parallel rule filing to effect amendments to the EWN II fee structure to apply to non-NASD members. Securities Exchange Act Release No. 43768 (December 22, 2000) (SR–NASD–00–74), 66 FR 824 (January 4, 2001).

⁵ *Subscriber Bulletins* are mailed to Nasdaq Workstation II subscribers and also may be found at www.nasdaqtrader.com/trader/news/subscriberbulletins.

²⁵ See Securities Exchange Act Release No. 43084 (July 28, 2000), 65 FR 48406, 48420 (August 8, 2000) (proposing release for rules relating to disclosure of order execution and routing practices).

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ *Id.*

²⁸ 17 CFR 200.30–3(a)(12).

NASD-00-73.⁶ The *Subscriber Bulletin* also announced that the increased cost of the expanded bandwidth (\$375 per month per circuit) would be passed on to Nasdaq subscribers beginning December 1, 2000. Nasdaq absorbed all of increased costs for the month of November 2000.

Because the original filing relating to NASD members was made under section 19(b)(3)(A)(ii), which makes the rule change immediately effective upon filing with the Commission, the fee increase became effective as of December 13, 2000. In this filing, Nasdaq seeks to recover the costs associated with the expanded bandwidth for the period of December 1-12, 2000, as announced in the *Subscriber Bulletin*.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed the Nasdaq's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of section 15A of the Act⁷ and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with sections 15A(b)(5) of the Act.⁸ Section 15A(b)(5) requires that the rules of a registered securities association provide 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 fee increases proposed by Nasdaq would pass on the costs associated with increasing the capacity of EWN II to users of the Nasdaq Workstation II service.

The Commission believes that Nasdaq's proposal to increase NASD members' fees relating to the EWN II for the period December 1-12, 2000 is a fair means of recovering the costs associated with increasing the bandwidth of the EWN II. The Commission finds that the proposal is consistent with section 15A(b)(5)⁹ insofar as the new fees reflect the additional cost that Nasdaq is incurring as a result of the expanded bandwidth. The Commission believes that such fee increases, necessitated by recent system volume increases, are a reasonable means by which Nasdaq intends to ensure adequate capacity of its EWN II system and thus, protect the

ongoing integrity of the Nasdaq market.¹⁰

Nasdaq has requested that the Commission approve this proposed rule change on an accelerated basis.¹¹ The original EWN II fee increases for members were effective upon filing with the Commission on December 13, 2000, and have been subject to a full notice and comment period,¹² and that this current proposal imposing the same fees for the period of December 1-12, 2000, has been subject to a full notice and comment period.¹³ No comments were received on either filing. Thus, the proposed rule change concerns issues that previously have been the subject to a full comment period pursuant to section 19(b) of the Act.¹⁴ For these reasons, the Commission believes accelerated approval of the proposal is appropriate. Accordingly, the Commission finds good cause for approving the proposed rule change (SR-NASD-00-79) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

IV. Conclusion

It is therefore Ordered, pursuant to section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-NASD-00-79) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43941; File No. SR-PCX-00-40]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Pacific Exchange, Inc. Relating to Audit Committee Requirements for Listed Companies

I. Introduction

On October 23, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly-owned subsidiary, PCX Equities, Inc. ("PCXE"), submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change amending the PCXE's audit committee requirements. PCXE filed Amendment No. 1 to the proposed rule change on November 22, 2000.³ The **Federal Register** published the proposed rule change for comment on December 7, 2000.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

PCXE proposes to modify PCXE Rule 5.3(b), regarding audit committee requirements for listed domestic issuers, to conform to recommendations made by the Blue Ribbon Committee on Improving Effectiveness of Corporate Audit Committees and rule changes adopted by other self-regulatory organizations ("SROs").⁵ The proposed rule change specifies four requirements for qualified audit committees, defines certain terms for purposes of the proposed audit committee requirements, and sets forth requirements for companies listing on PCXE in conjunction with an initial public offering.

First, proposed rule 5.3(b)(1) requires the board of directors of companies listed on PCXE to adopt and approve a

¹⁰ In approving this rule, 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).

¹¹ Telephone conversation between Mary Dunbar, Vice President, Nasdaq, and Geoffrey Pemble, Attorney, Division of Market Regulation, Commission, on February 7, 2001.

¹² Securities Exchange Act Release No. 43769 (December 22, 2000) (SR-NASD-00-73), 66 FR 826 (January 4, 2001).

¹³ Securities Exchange Act Release No. 43814 (January 8, 2001) (SR-NASAD-00-79), 66 FR 3630 (January 16, 2001).

¹⁴ 15 U.S.C. 78s(b).

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).

⁶ Securities Exchange Act Release No. 43769 (December 22, 2000) (SR-NASD-00-73), 66 FR 826 (January 4, 2001).

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(b)(5).

⁹ *Id.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Letter dated November 20, 2000 from Cindy L. Sink, Senior Attorney, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). Amendment No. 1 specifies an implementation plan for the proposed rule change.

⁴ Securities Exchange Act Release No. 43641 (Nov. 29, 2000), 64 FR 55514.

⁵ See Securities Exchange Act Release Nos. 42231 (Dec. 14, 1999), 64 FR 71523 (Dec. 21, 1999) (approving SR-NASD-99-48); 42232 (Dec. 14, 1999), 64 FR 71518 (Dec. 21, 1999) (approving SR-AMEX-99-38); 42233 (Dec. 14, 1999), 64 FR 71529 (Dec. 21, 1999) (approving SR-NYSE-99-39).