

option instead of meeting the new maintenance standards. Similarly, issuers that are applying for listing could, during the pilot period, choose to meet the proposed original listing standards rather than the existing original listing standards. The standards that would be included in the pilot are: (1) The new bid price requirement found in NASD Rule 4450(b)(4); and (2) the new stockholders' equity standard, which replaces the old net tangible assets standard, found in NASD Rules 4310(c)(2)(A)(i), 4310(c)(2)(B)(i), 4320(e)(2)(A)(i), 4320(e)(2)(B)(i), 4420(a)(5), 4420(b)(1), and 4450(a)(3). Nasdaq has proposed that the pilot program would operate until July 1, 2001, or such earlier time as the Commission acts on Nasdaq's request for permanent approval of the proposal.<sup>11</sup>

The Commission finds that the proposed pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD.<sup>12</sup> In particular, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act.<sup>13</sup> Section 15A(b)(6) requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

With respect to the pilot proposal to lower the bid price requirement in Maintenance Standard 2 of NASD rule 4450 from \$5 to \$3, the Commission notes that the bid price requirement for initial listing will remain \$5.<sup>14</sup> Nasdaq's listing rules generally establish a higher initial requirement and a somewhat lower continued requirement to allow for market fluctuations.<sup>15</sup> Establishing a

new bid price requirement of \$3 for continued listing would make this standard similar to other existing standards that require issuers to comply with maintenance requirements that are more flexible than the original listing requirements. Accordingly, the Commission believes it is reasonable and consistent with the Act to approve this aspect of the pilot program while the Commission continues to study the overall proposal by, among other things, considering any public comments that may be submitted.

With respect to the pilot proposal to replace the net tangible assets standard with a stockers' equity standard, the Commission notes that it has previously approved a similar proposal to institute market capitalization and stockholders' equity requirements on the NYSE.<sup>16</sup> In that case, the Commission stated that the amount of stockholders' equity is not an inappropriate measure of a company's suitability for listing on an exchange.<sup>17</sup> Accordingly, the Commission believes it is reasonable and consistent with the Act to approve this aspect of the pilot program while the Commission continues to study the overall proposal by, among other things, considering any public comments that may be submitted.

Pursuant to Section 19(b)(2) of the Act,<sup>18</sup> the Commission finds good cause for approving the pilot program prior to the thirtieth day after publication of the filing of this proposal in the **Federal Register**. The Commission believes that accelerated approval of the pilot will enable the Commission and Nasdaq to gain experience with the new standards before the Commission considers granting them permanent approval. Furthermore, the Commission notes that accelerated approval of the pilot program will allow certain issuers that meet the proposed standards to remain listed even if they might fail to meet the existing standards. These companies, in the absence of the pilot, would immediately be subject to delisting as required by the existing maintenance criteria. If the Commission were subsequently to approve the proposal on a permanent basis, these companies would be eligible to relist under the new standards but only after delisting had

disrupted trading in their securities. However, if the Commission were to approve the pilot but not permanently approve the proposal, these companies would still have to be delisted, but the timing of their delisting would have far less potential for market disruption. In the interests of reducing market disruption, the Commission believes that the better course of action would be to approve the pilot program on an accelerated basis. The Commission also notes that it has approved similar pilot programs on the NYSE relating to the implementation of new listing standards.<sup>19</sup> Finally, the Commission notes that the pilot will be of only short duration, and the public will have an opportunity to offer comments on all aspects of the overall proposal.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule change (SR-NASD-2001-14) is partially approved with respect to the pilot program which will bend on the earlier of July 1, 2001, or when the Commission takes final action on the overall proposal.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44246; File No. SR-NASD-2001-29]

### Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish the Nasdaq ReSource<sup>SM</sup> Service

May 2, 2001.

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 April 24, 2001, the National Association of

<sup>11</sup> By approving the pilot, the Commission permits Nasdaq, for the duration of the pilot period, to replace the existing bid price and net tangible assets standards with the new proposed standards. However, if the pilot expires before the Commission takes action on the proposed rule change, the old standards would have to be reinstated because Nasdaq would no longer have authority for the new standards.

<sup>12</sup> For purposes of approving the pilot program on an accelerated basis, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78o-3(b)(6).

<sup>14</sup> See NASD Rules 4420(a)(5), 4420(b)(4), and 4420(c)(3).

<sup>15</sup> Compare NASD Rule 4420 (giving issuers of Nasdaq National Market securities the option of meeting one of three entry standards which include requirements that the market value of publicly held

shares be at least \$8 million, \$18 million, or \$20 million, respectively) with NASD Rule 4450 (giving issuers of Nasdaq national Market securities the option of meeting one of two maintenance standards which include requirements that the market value of publicly held shares be at least \$5 million or \$15 million, respectively).

<sup>16</sup> See Securities Exchange Act Release No. 42194 (December 1, 1999), 64 FR 69311 (December 10, 1999) approving SR-NYSE-99-29).

<sup>17</sup> See *id.*, 64 FR at 69314.

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> See Securities Exchange Act Release No. 41648 (July 26, 1999), 64 FR 41986 (August 2, 1999) (publishing notice of SR-NYSE-99-29 and approving on an accelerated basis a pilot program relating to continued listing criteria); Securities Exchange Act Release No. 41459 (May 27, 1999), 64 FR 30088 (June 4, 1999) (publishing notice of SR-NYSE-99-17 and approving on an accelerated basis a pilot program relating to original listing criteria).

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

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

Pursuant to the provisions of Section 19(b)(1) of the Act, and Rule 19b-4 thereunder, Nasdaq is herewith filing a proposed rule change of the NASD to establish Nasdaq's new ReSource<sup>SM</sup> Service. The ReSource<sup>SM</sup> Service is voluntary and is designed to assist NASD members in complying with Rule 11Ac1-5 under the Act.<sup>3</sup> Nasdaq will file a separate proposed rule change outlining the fee schedule for the ReSource<sup>SM</sup> Service.

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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**

On November 17, 2000, the Commission adopted Rules 11Ac1-5<sup>4</sup> and 11Ac1-6<sup>5</sup> under the Act.<sup>6</sup> Generally, the Rules seek to improve the ability of public investors to evaluate how their orders are handled after being submitted to a broker-dealer for execution. Rule 11Ac1-5 (the "Rule") requires "market centers" that trade national market system securities to

prepare and make publicly available standardized, monthly reports containing statistical information concerning the handling and execution of their "covered orders."<sup>7</sup> A "market center" under the Rule is defined as "any exchange market maker, OTC market maker, alternative trading system, national securities exchange, or national securities association."<sup>8</sup> To facilitate cross-market comparisons, the Rule establishes and defines uniform measures of execution quality, including effective spread, rate of price improvement and disimprovement, fill rate, and execution speed.

Nasdaq proposes to offer a new voluntary service—Nasdaq ReSource<sup>SM</sup>—to assist NASD member market centers in meeting their reporting obligations under Rule 11Ac1-5. Nasdaq plans to collect, compile, and web-host the reports required by the Rule. These reports will be referred to as Execution Quality Reports (or "XQ Reports<sup>SM</sup>") and will be made available on a free, publicly accessible web site. Through certain existing systems, members already provide Nasdaq with a portion of the data required to complete XQ Reports<sup>SM</sup>. In order to ensure complete XQ Reports<sup>SM</sup>, however, firms will be required to submit additional data to Nasdaq for certain categories of orders. Member firms will be required to provide an electronic file containing execution and cancellation information for orders routed to Nasdaq execution systems, orders routed to ECNs, orders routed to non-NASD members, and certain orders executed as riskless principal, depending on which method the subscriber chooses to report riskless principal transactions.<sup>9</sup>

##### **2. Statutory Basis**

Nasdaq believes that the proposed rule change is consistent with Section 11A(a)(1)(C) of the Act, which provides, in relevant part, that it is in the public

interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors orders to be executed without the participation of a dealer.<sup>10</sup> In adopting Rule 11Ac1-5, the Commission stated that the Rules would help further these important national market system objectives. Nasdaq represents that many market centers, however, do not have the necessary systems in place to collect and disseminate the required statistical information. Moreover, developing such systems and allocating firm personnel necessary to produce internally the reports required by the Rule may be a significant burden on some firms and may not be completed by the applicable compliance dates. Nasdaq believes that the ReSource<sup>SM</sup> Service will enable NASD member market centers to comply with Rule 11Ac1-5 in a more cost-effective and timely manner. By facilitating compliance with Rule 11Ac1-5 by NASD members that are market centers, the ReSource<sup>SM</sup> Service would serve to advance the purposes of Section 11A(a)(1)(C).

In addition, Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act.<sup>11</sup> Section 15A(b)(6) requires the NASD's rules, among other things, to protect investors and the public interest. As described above, the Nasdaq ReSource<sup>SM</sup> Service is designed to assist NASD members in complying with SEC Rule 11Ac1-5, and the rule is designed to improve the ability of public investors to evaluate how broker-dealers are handling their orders. Nasdaq believes that by providing the service to members, it will both facilitate the Commission's goals and fulfill its own obligations to protect investors and the public interest.

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

Nasdaq 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.

<sup>3</sup> 17 CFR 240.11Ac1-5.

<sup>4</sup> 17 CFR 240.11Ac1-5.

<sup>5</sup> 17 CFR 240.11Ac1-6.

<sup>6</sup> See Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414 ("Adopting Release").

<sup>7</sup> The Rule defines "covered order" as any market order or any limit order (including immediate-or-cancel orders) received by a market center during regular trading hours at a time when a consolidated best bid and offer is being disseminated, and, if executed, is executed during regular trading hours. Excluded from the definition of "covered order" is any order for which the customer requests special handling for execution, including, but not limited to, orders to be executed at a market opening or closing price, orders submitted with stop prices, orders to be executed only at their full size, orders to be executed on a particular type of tick or bid, orders submitted on a "not held" basis, orders for other than regular settlement, and orders to be executed at prices unrelated to the market price at the time of execution. 17 CFR 240.11Ac1-5(a)(8).

<sup>8</sup> 17 CFR 240.11Ac1-5(a)(14).

<sup>9</sup> See NASD Rule 4632(d)(B) and NASD Notice to Members 00-79.

<sup>10</sup> 15 U.S.C. 78k-1(a)(1)(C).

<sup>11</sup> 15 U.S.C. 78o-3(b)(6).

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

Nasdaq did not solicit or receive written comments on the proposed rule change.

### III. 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. 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 at 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-2001-29 and should be submitted by May 29, 2001.

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

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>12</sup> In particular, the proposed rule change is consistent with the requirements of Section 15A(b)(6)<sup>13</sup> of the Act in that it is designed to foster cooperation and coordination with persons engaged in processing information with respect to securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In addition, the proposed rule change is consistent with Section 11A(a)(1)(C) of the Act,<sup>14</sup> which provides that it is in

the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities. In adopting Rule 11Ac1-5, the Commission stated that the Rules would help further this and other national market system objectives.<sup>15</sup> Many market centers may not have the necessary systems in place to collect and disseminate the statistical information required by the Rule. Moreover, developing such systems and allocating firm personnel necessary to produce internally the reports required by the rule may be a significant burden on some firms and may not be completed by the applicable compliance dates.<sup>16</sup> The Commission anticipated that self-regulatory organizations might choose to provide services to assist their members in complying with the Rule.<sup>17</sup> The ReSource<sup>SM</sup> Service could enable many NASD member market centers to comply with Rule 11Ac1-5 in a more cost-effective and timely manner.

Pursuant to Section 19(b)(2),<sup>18</sup> the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Accelerated approval of the ReSource<sup>SM</sup> Service will give subscribing firms an alternative means to comply with Rule 11Ac1-5 and allow sufficient time for market centers to develop and test their systems. Members must begin this process as soon as possible to ensure that they are prepared to comply with the Rule on August 1, 2001. Nasdaq states that many NASD members have inquired as to whether Nasdaq will offer such a service. Nasdaq believes that members may be hesitant to subscribe to the Service due to concern the ReSource<sup>SM</sup> Service may not be approved or approved too late to enable members to comply with Rule 11Ac1-5. Moreover, a prospective subscriber of Nasdaq's ReSource<sup>SM</sup> Service may be hesitant to commit resources to programming and testing systems for ReSource<sup>SM</sup> if there is a possibility that approval will be delayed. Accelerated approval will

eliminate uncertainty regarding the ReSource<sup>SM</sup> Service.

Accelerated approval of the ReSource<sup>SM</sup> Service also will facilitate Nasdaq's ability to develop and test systems. Nasdaq represents that based on conversations with members, it has developed an estimate of the number of firms that are likely to subscribe and the resources required to provide the ReSource<sup>SM</sup> Service. However, Nasdaq cannot confirm its estimates until it confirms the number of subscribers, which practically can be accomplished only when a subscriber pays for the ReSource<sup>SM</sup> service. In addition, the cost of the ReSource<sup>SM</sup> Service will be an important factor that potential subscribers will consider in determining whether to subscribe. Accelerated approval of the ReSource<sup>SM</sup> service will enable Nasdaq to finalize their fee schedule sooner.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change, SR-NASD-2001-29 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 01-11518 Filed 5-7-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-44233; File No. SR-PCX-00-25)

### Self-Regulatory Organizations; Notice of Filing of Amendment No. 3 to Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Archipelago Exchange

April 30, 2001.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 19, 2001, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its subsidiary PCX Equities, Inc. ("PCXE" or "Corporation"), filed with the Securities and Exchange Commission ("Commission" or "SEC") Amendment No. 3 to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PCXE. On December 15, 2000, the proposed rule change and Amendment No. 1 was published for comment in the

<sup>15</sup> See *supra* note 6.

<sup>16</sup> The initial compliance date for the reporting of listed securities under Rule 11Ac1-5 was May 1, 2001. The Commission has temporarily exempted (until July 31, 2001) all orders in Nasdaq securities. Letter from Annette L. Nazareth, Director, Division of Market Regulation, SEC, to Stuart J. Kaswell, Senior Vice President and General Counsel, Securities Industry Association, dated April 12, 2001.

<sup>17</sup> See *supra* note 6.

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78o-3(b)(6).

<sup>14</sup> 15 U.S.C. 78k-1(a)(1)(C).

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.