

the proposal is based on Section 6(b)(6)⁶ that requires an exchange to have rules that provide for the appropriate discipline of members for violations of the Exchange Act, the rules and regulation thereunder, and the rules of the Exchange.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) by order approve such proposed rule change; or
- (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. 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 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 Exchange. All submissions should refer to File No. SR-ISE-2002-19 and should be submitted by January 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47021; File Nos. SR-NASD-2002-162; SR-NYSE-2002-36]

Self-Regulatory Organizations; Notice of Extension of Comment Period for the Proposed Rule Changes by the National Association of Securities Dealers, Inc. and New York Stock Exchange, Inc. Relating to Supervisory Control Amendments

December 18, 2002.

On August 16, 2002, the New York Stock Exchange ("NYSE" or "Exchange"), and on November 4, 2002, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission") proposed rule changes pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² regarding the supervisory and supervisory control procedures of member firms. A complete description of the proposed rule changes is found in the notices of filing, which were published in the **Federal Register** on November 27, 2002.³ The comment periods expire on December 18, 2002.

To give the public additional time to comment on the proposed rule changes, the Commission has decided to extend the comment periods pursuant to Section 19(b)(2) of the Act.⁴ Accordingly the comment periods shall be extended until January 17, 2003.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

⁷ 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 Nos. 46858 (November 20, 2002), 67 FR 70994 (SR-NYSE-2002-36) and 46859 (November 20, 2002), 67 FR 70990 (SR-NASD-OP2002-162); see also Securities Exchange Act Release No. 46858A (November 27, 2002, 67 FR 72261 (SR-NYSE-2002-36 Correction)).

⁴ 15 U.S.C. 78s(b)(2).

including whether the proposed rule 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 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-NYSE-2002-36 or SR-NASD-2002-162 and should be submitted by January 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47022; File No. SR-NASD-2002-158]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Establishment of a Nasdaq Official Closing Price and a Trade Report Modifier With Which To Identify That Price to the Public

December 18, 2002.

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 November 1, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. The Commission is publishing this notice to solicit

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁶ 15 U.S.C. 78f(b)(6).

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

Nasdaq is proposing to establish a Nasdaq Official Closing Price ("NOCP"), and a trade report modifier with which to identify that price to the public. Nasdaq would program its proprietary systems to append the new modifier—"M" for Market Close—to one trade report message in each Nasdaq National Market and SmallCap security to identify it as the NOCP in that security. The dissemination of the NOCP would not affect the consolidated last sale price disseminated pursuant to the national market system plan governing trading of Nasdaq securities ("Nasdaq UTP Plan") or the last sale price of any exchange that is a member of that plan.

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 IV 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 Background

Currently, Nasdaq does not have an official closing price. Instead, market participants generally use a last sale price that vendors identify from among the last sale prices that Nasdaq disseminates in its role as the Exclusive Securities Information Process ("ESIP") for the Nasdaq UTP Plan. As the ESIP, Nasdaq currently disseminates a consolidated last sale price ("Consolidated Close"), which is the price of the last trade reported to the ESIP by any UTP Participant prior to 4:01:30 p.m. In addition, Nasdaq disseminates the last sale price of each individual participant in the Nasdaq UTP Plan ("Individual Market Close"), including Nasdaq, which is the price of the last trade reported by each individual Participant market center prior to 4:01:30 p.m. Nasdaq market participants rely on either the

Consolidated Close or Nasdaq's Individual Market Close for many post-close activities, including pricing indices, large institutional orders (commonly called "market-on-close orders"), and mutual fund values. The Consolidated Close is the primary measure of the market for a variety of constituents, including sell-side and buy-side institutions, market indexers, securities issuers, and individual investors.

Despite their widespread acceptance, the Consolidated Close and Nasdaq Individual Market Close are imperfect measures of the value of Nasdaq issues at the close of normal market hours. For instance, the Consolidated Close is somewhat arbitrary in that it is simply the price of the final unmodified trade to be reported to Nasdaq prior to 4:01:30 p.m. by any Nasdaq member or UTP Exchange. Due to wide disparities in the speed at which market participants report trades within Nasdaq's 90-second trade reporting window, trades reported at 4:01:30 p.m. can be significantly away from the market when it closes at 4:00:00 p.m. In addition, although Nasdaq has traditionally monitored the Consolidated Close to guard against the prospect of gaming, as a result of changes to the Nasdaq UTP Plan, Nasdaq no longer performs that function on behalf of other UTP Plan Participants. As a result, Nasdaq is concerned that the Consolidated Close may no longer reliably and accurately reflect each security's value at the close of the market.

Mechanics of the Proposal

Nasdaq proposes to replace the methodology currently used to calculate Nasdaq's Individual Market Close with the NOCP methodology described below. The NOCP would be based on the price of the last unmodified trade reported to Nasdaq's proprietary trade reporting system—Automated Confirmation Transaction System or "ACT"—at or before 4:00:02 p.m. (the "Predicate Trade"). Nasdaq systems would "normalize" the price of the Predicate Trade by comparing it to Nasdaq's best bid and ask prices (*i.e.*, the best prices displayed by all SuperMontage participants) at the time the Predicate Trade was reported, or by comparing it to the Nasdaq best bid and offer at 4:00:00 p.m. for trades reported after that time ("Predicate BBO").³ If the price of the Predicate Trade falls at either side of or within the Predicate

BBO, that price becomes the NOCP. If the price of the Predicate Trade falls outside the Predicate BBO, Nasdaq would adjust it up to the Predicate BBO bid if it is below the bid price or down to the Predicate BBO ask if it is above the ask price. As described in more detail below, the NOCP methodology would only impact the Individual Market Close for Nasdaq; it would not impact the Consolidated Close or Individual Market Closes of the UTP Exchanges that are disseminated by the ESIP.

The Predicate Trade can be any trade that currently updates the Individual Market Close for Nasdaq, subject to certain limitations. First, Nasdaq would only consider trades submitted with the Nasdaq market center identifier. Specifically, Nasdaq would only consider trade reports submitted to ACT, either by NASD members or by UTP Exchanges that use Nasdaq's proprietary execution systems. Nasdaq would not consider trades reported by NASD members to any venue outside of Nasdaq, including the NASD Alternative Display Facility or other UTP Exchanges, nor would it consider any trades reported by UTP Exchanges not executed through Nasdaq proprietary systems. Thus, if no NASD member reports a trade in a given security to Nasdaq prior to 4:00:02 p.m., Nasdaq would report no NOCP in that security.

Second, Nasdaq would only consider unmodified trades reported at or before 4:00:02 p.m. Nasdaq chose 4:00:02 p.m. as the proper reference point to provide every trade type a reasonable chance to set the close. The current close disadvantages certain trade types that are reported too quickly to set the closing price, such as trades reported via Nasdaq execution systems or by market participants' own automated systems, which often report trades almost instantly. In fact, NASD members report over 90 percent of trades to Nasdaq within two seconds of execution, despite Nasdaq's 90-second trade reporting window. Nasdaq believes that unmodified trades would more accurately reflect the true state of the market at the close of normal market hours. Thus, Nasdaq would not consider trade reports submitted after 4:00:02 p.m. and, with one exception, it would not consider any trades reported with a modifier, such as a .T (after normal market hours), .OR (out of range), or .PRP (prior reference price).⁴

³ Nasdaq Market participants would not have the ability to append the new modifier to trade reports; only Nasdaq trade reporting systems would append this modifier, and only for transactions in Nasdaq National Market and SmallCap Market securities.

⁴ Nasdaq would consider a trade submitted to Nasdaq with a .SLD modifier (reported more than 90 seconds after execution) or a .PRP modifier to

Third, Nasdaq would adjust the NOCP only if the Predicate Trade is cancelled or corrected by 4:30:00 p.m., even though Nasdaq would continue to accept trade cancel and correction messages via ACT until 5:15:00 p.m. If, between 4:00:02 p.m. and 4:30:00 p.m., a market participant enters a cancel or

correct message regarding the Predicate Trade, Nasdaq would process that message, and recalculate the NOCP. Nasdaq would not consider in the NOCP calculation any cancel or correct message that arrives after 4:30:00 p.m. Nasdaq believes 4:30:00 p.m. is the proper deadline because data vendors,

mutual funds, and investors need a timely, definitive closing price, and, even on busy days, Nasdaq receives over 99 percent of cancels and corrections before 4:30 p.m.

Consider the following example:

Time of report	Price of report	Market center	Concurrent BBO
3:59:55	19.98	Nasdaq	20.00–20.02
3:59:58	20.00 .SLD	Nasdaq	19.99–20.01
4:00:00	20.02	NASD	20.01–20.02
4:00:01	20.05	CINN	19.99–20.01
4:00:03	20.02	Nasdaq	20.01–20.02
4:01:29	19.95	CINN	19.99–20.01

In this scenario, Nasdaq's Individual Market Close, under the proposed NOCP methodology, would be 20.00, whereas the Nasdaq Individual Market Close under the current methodology would be 20.02 and the Consolidated Close would be 19.95. The Predicate Trade would be the trade reported at 3:59:55 p.m.; the Predicate BBO would be 20.00–20.02; and the Nasdaq NOCP would result from normalizing the 19.98 price up to the Predicate BBO of 20.00. The NASD and CINN prints are not eligible to be the Predicate Trade because UTP Exchanges reported them to the ESIP, not to ACT. Nor is the 3:59:59 p.m. trade eligible since it has an .SLD modifier appended. The 4:00:03 p.m. and 4:01:29 p.m. trades are ineligible because they were reported after 4:00:02 p.m.

Impact on the Consolidated Last Sale Calculation

The NOCP would not be eligible to set the Consolidated Close under the Nasdaq UTP Plan, although the Predicate Trade would be eligible as are all unmodified trade reports. While the NOCP is based on an actual trade, it is not necessarily an actual trade price. Therefore, Nasdaq believes that including it in the Consolidated Close is not consistent with the Nasdaq UTP Plan. It would also give Nasdaq an unfair advantage by manufacturing an additional opportunity for Nasdaq to set the Consolidated Close. To avoid that result, Nasdaq would append the .M modifier and publish it with a trade size of zero to signal to the ESIP and vendors not to include it in the Consolidated Close calculation. The NOCP would, on the other hand, be used to populate the Nasdaq Individual Market Close field

that the ESIP currently disseminates. The Predicate Trade would be reported to the ESIP according to Nasdaq's existing trade reporting rules and it would be eligible to set the Consolidated Close, as it would be today.

Nasdaq recognizes that it must educate investors and vendors about its new NOCP and the .M modifier to avoid creating confusion. Currently, the Nasdaq ESIP disseminates a Closing Trade Summary Report that includes the Consolidated Close as well as the Individual Market Closes for Nasdaq and for each UTP Exchange that trades Nasdaq securities. If this proposal is approved, the Individual Market Close field for Nasdaq in the Closing Trade Summary Report would contain the NOCP in place of its last sale price. Neither the Consolidated Close nor any of the Individual Market Closes for any UTP Exchange would be affected by this proposal.

The Nasdaq ESIP is engaged in a development effort to accommodate the new trade modifier and its treatment in the consolidated data streams. Nasdaq has also discussed the addition of the new .M trade modifier with the UTP Operating Committee, and has made it clear that any UTP participant can use the new trade modifier if it chooses.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the provisions of sections 15A of the Act⁵ in general, and with section 15A(b)(6) of the Act⁶ in particular, because it is designed, among other things, to protect investors and the public interest. Nasdaq's current proposal is consistent with the NASD's obligations under these provisions of the Act because it would result in the

public dissemination of information that more accurately reflects the trading in a particular security at the close. Furthermore, to the extent a security is a component of an index, the index would more accurately reflect the value of the market, or segment of the market, the index is designed to measure. The corresponding result should be trades, or other actions, executed at prices more reflective of the current market when the price of an execution, or other action, is based on the last sale, the high price or low price of a security, or the value of an index.

Nasdaq also believes the proposal is consistent with the NASD's obligations under its transaction reporting plan for Nasdaq National Market System securities approved by the Commission.⁷

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.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such

be the Predicate Trade if, and only if, it is the only trade of the day by any market participant. In that

case, the Predicate BBO would be the BBO at the time the trade was reported.

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ See Securities Exchange Act Release No. 18590 (March 24, 1982), 47 FR 13617 (March 31, 1982).

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Nasdaq consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. 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 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-2002-158 and should be submitted by January 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47026; File No. SR-PCX-2002-64]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Rules for the Options Intermarket Linkage

December 18, 2002.

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 September 26, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in items I, II, and III below, which items have been prepared by the self-regulatory organization.

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 is proposing to adopt new rules relating to the operation of the Options Intermarket Linkage. The text of the proposed rule change is below; proposed new language is italicized.

* * * * *

Intermarket Linkage

Definitions

Rule 6.92(a). The following terms have the meaning specified in this rule solely for the purposes of rules 6.92—6.95.

(1) "Aggrieved Party" means a Member of a Participant Exchange whose bid or offer was traded-through.

(2) "Block Trade" means a trade on a Participant Exchange that:

(i) Involves 500 or more contracts and has a premium value of at least \$150,000;

(ii) Is effected at a price outside of the NBBO; and

(iii) Involves either:

(A) A cross (where a Member of the Participant Exchange represents all or a portion of both sides of the trade), or

(B) Any other transaction (i.e., in which such Member represents an order of block size on one side of the transaction only) that is not the result of an execution at the current bid or offer on the Participant Exchange.

Contemporaneous transactions at the same price on a Participant Exchange will be considered a single transaction for the purpose of this definition.

(3) "Broker/Dealer" means an individual or organization registered with the United States Securities and Exchange Commission in accordance with section 15(b)(1) of the Exchange Act or a foreign broker or dealer exempt from such registration pursuant to rule 15a-6 under the Exchange Act.

(4) "Complex Trade" means the execution of an order in an option series in conjunction with the execution of one or more related orders in different option series in the same underlying security occurring at or near the same

time for the equivalent number of contracts and for the purpose of executing a particular investment strategy.

(5) "Crossed Market" means a quotation in which the Exchange disseminates a bid (or offer) in a series of an Eligible Option Class at a price that is greater than (or less than) the price of the offer (or bid) for the series then being displayed by another Participant Exchange.

(6) "Customer" means an individual or organization that is not a Broker/Dealer. Used with reference to a Linkage Order, it means an order which, if executed, would result in the purchase or sale for an account in which no Broker/Dealer has an interest.

(7) "Eligible Market Maker," with respect to an Eligible Option Class, means a market maker that:

(i) Is assigned to, and is providing two-sided quotations in, the Eligible Option Class;

(ii) Is logged on to participate in Auto-Ex in such Eligible Option Class; and

(iii) Is in compliance with the requirements of rule 6.95 (relating to limitation on principal order access).

(8) "Eligible Option Class" means all option series overlying a security (as that term is defined in section 3(a)(10) of the Exchange Act) or group of securities, including both put options and call options, which class is traded on the Exchange and at least one other Participant Exchange.

(9) "Firm Customer Quote Size" with respect to a P/A Order means the lesser of (a) the number of option contracts that the Participant Exchange sending a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Customer orders entered directly for execution in that market; or (b) the number of option contracts that the Participant Exchange receiving a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Customer orders entered directly for execution in that market. This number will be at least 10.

(10) "Firm Principal Quote Size" means the number of option contracts that a Participant Exchange guarantees it will execute at its disseminated quotation for incoming Principal Orders in an Eligible Option Class. This number will be at least 10.

(11) "Linkage" means the systems and data communications network that link electronically the Participant Exchanges for the purposes specified in the Plan.

(12) "Linkage Order" means an order routed through the Linkage as permitted

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.