

should refer to File No. SR-DTC-2002-06 and should be submitted by July 28, 2003.

IV. Discussion

Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.¹³ The rule change should allow DTC to reduce settlement risk and improve its safeguarding of securities and funds by reducing the risk that the completion of settlement will be delayed because a settling bank is late or is unable to wire funds to DTC in settlement of its obligations.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. Participants and their settling banks have been on notice for over a year that DTC intended to require the use of NSS, and some have been working with DTC during this time to address procedural or operational issues they had with the DTC proposal. Now that those issues have been resolved by DTC's amendments to the proposed rule change, accelerated approval will allow DTC to implement the requirement to use NSS as soon as possible, which in turn will allow DTC to improve its risk reduction efforts.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-2002-06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48110; File No. SR-NASD-2003-97]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to Extension on a Pilot Basis of NASD Rule 7010(k) Relating to Fees for the Trade Reporting and Compliance Engine (TRACE)

June 30, 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 June 17, 2003, the National Association of Securities Dealers, Inc. ("NASD"), 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 NASD. NASD filed an amendment to the proposed rule change on June 27, 2003.³ NASD has designated the proposed rule change as "establishing or changing a due, fee,

or other charge" under section 19(b)(3)(A)(ii) of the Act⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposal effective upon filing with the Commission. 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

NASD is proposing to amend NASD Rule 7010(k) relating to fees for the Trade Reporting and Compliance Engine ("TRACE") prior to the expiration of the pilot program for fees on June 30, 2003. NASD is proposing to extend the pilot program for TRACE fees to January 31, 2004. NASD is not proposing any revisions to the current fee structure for TRACE as part of this rule filing. Therefore, as a result of the proposed rule change, the current fee structure would remain in effect to January 31, 2004. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

7010. System Services

- (a) through (j) No Change.
- (k) Trade Reporting and Compliance Engine (TRACE)
 - (Rule 7010(k) shall expire on [June 30, 2003] *January 31, 2004*, unless amended, extended, or permanently adopted by NASD pursuant to SEC approval at or before such date).
 - The following charges shall be paid by participants for the use of the Trade Reporting and Compliance Engine ("TRACE"):

System fees	Transaction reporting fees	Market data fees
From 07/01/02 to 12/31/02: Web Browser Access: \$85/month for 1 user ID; \$75/month for 2-9 user IDs; \$70/month for 2-10+ user, IDs, except If less than 25 trades per month, in October, November, or December 2002-\$25/month per user ID	From 07/01/02 to 12/31/02: Trades up to and including \$200,000 par value-\$0.50/trade; Trades between \$201,000 and \$999,999 par value-\$0.0025 times the number of bonds traded/trade; Trades of \$1,000,000 par value or more— \$2.50/trade	BTDS Professional Display—\$60/month per terminal, except For a period of one calendar month to be an- nounced: Waiver of fee (\$0)

¹³ 15 U.S.C. 78q-1(b)(3)(F).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Kosha K. Dalal, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated June 27, 2003 (Amendment No. 1). In Amendment No. 1, NASD moved the placement of a footnote

marked for deletion in the rule filing to clarify that the footnote was part of the actual rule text and not simply a footnote to the rule filing.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

System fees	Transaction reporting fees	Market data fees
From 01/01/03 to [06/30/03] 01/31/04: Level I Trade Report Only Web Browser Access—\$25/month per user ID Level II Full Service Web Browser Access—\$85/month per user ID, except For a period of one calendar month to be announced: Level II Full Service Web Browser Access—\$25/month per user ID From 01/01/03 to [06/30/03] 01/31/04: Trades up to and including \$200,000 par value—\$0.475/trade; Trades between \$201,000 and \$999,999 par value—\$0.002375 times the number of bonds traded/trade; Trades of \$1,000,000 par value or more—\$2.375/trade CTCI—\$25/month/line	From 07/01/02 to 12/31/02: Cancel/Correct—\$3/trade, except For October 2002—\$1.50/trade For November 2002—\$2.25/trade From 01/01/03 to [06/30/03] 01/31/04: Cancel/Correct—\$1.50/trade	BTDS Internal Usage Authorization—\$500/month per application/service.
Third Party—\$25/month	From 07/01/02 to 12/31/02: “As of” Trade Late—\$3/trade, except For October 2002—\$1.50/trade For November 2002—\$2.25/trade From 01/01/03 to [06/30/03] 01/31/04: “As of” Trade Late—\$3/trade Browse & Query—\$0.05 after first page	BTDS External Usage Authorization—\$1,000/month per application/service. BTDS Non-Professional Display—\$1/month per terminal.

(1) System Related Fees. There are three methods by which a member may report corporate bond transactions that are reportable to NASD pursuant to the Rule 6200 Series. A member may choose among the following methods to report data to NASD: (a) a TRACE web browser; (b) a Computer-to-Computer Interface (“CTCI”) (either one dedicated solely to TRACE or a multi-purpose line); or (c) a third-party reporting intermediary. Fees will be charged based on the reporting methodology selected by the member.

(A) Web Browser Access

(i) For the period commencing July 1, 2002 and ending December 31, 2002, the charge to be paid by a member that elects to report TRACE data to NASD via a TRACE web browser shall be as follows: for the first user ID registered, a charge of \$85 per month; for the next two through nine user IDs registered, a charge of \$75 per month, per such additional user ID; and for ten or more user IDs registered, a charge of \$70 per month, per user ID from two to ten or more. If a member reports less than 25 trades per month to the TRACE system in October, November, or December 2002, the charge to be paid by a member for the TRACE web browser shall be \$25, per such month, per user ID.

(ii) For the period commencing January 1, 2003 and ending [June 30, 2003] *January 31, 2004*, the charge to be

paid by a member that elects to report TRACE data to NASD via a TRACE web browser shall be as follows: \$25 per month, per user ID for Level I Web Trade Report Only Browser Access and \$85 per month, per user ID for Level II Full Service Web Browser Access. Notwithstanding the above sentence, following the effective date of increased bond data dissemination as approved by the SEC on January 31, 2003^[5], NASD shall announce a period of one calendar month during which the charge for Level II Full Service Web Browser Access shall be \$25 per month, per user ID.

(B) through (C) No Change.

(2) Transaction Reporting Fees
 For each transaction in corporate bonds that is reportable to NASD pursuant to the Rule 6200 Series, the following charges shall be assessed against the member responsible for reporting the transaction:

(A) Trade Reporting Fee

(i) For the period commencing July 1, 2002 and ending December 31, 2002, a member shall be charged a Trade Reporting Fee based upon a sliding

^[5] [On January 31, 2003, the SEC approved amendments to NASD Rule 6250 of the TRACE rules that will allow NASD to begin disseminating transaction information on more than 4,000 qualifying Investment Grade corporate debt securities. See Securities Exchange Act Release No. 47302 (January 31, 2003), 68 FR 6233 (February 6, 2003) (File No. SR-NASD-2002-174).]

scale ranging from \$0.50 to \$2.50 per transaction based on the size of the reported transaction. Trades up to and including \$200,000 par value will be charged a \$0.50 fee per trade; trades between \$201,000 par value and \$999,999 par value will be charged a fee of \$0.0025 multiplied by the number of bonds traded per trade; and trades of \$1,000,000 par value or more will be charged a fee of \$2.50 per trade.

(ii) For the period commencing January 1, 2003 and ending [June 30, 2003] *January 31, 2004*, a member shall be charged a Trade Reporting Fee based upon a sliding scale ranging from \$0.475 to \$2.375 per transaction based on the size of the reported transaction. Trades up to and including \$200,000 par value will be charged a \$0.475 fee per trade; trades between \$201,000 par value and \$999,999 par value will be charged a fee of \$0.002375 multiplied by the number of bonds traded per trade; and trades of \$1,000,000 par value or more will be charged a fee of \$2.375 per trade.

(B) Cancel or Correct Trade Fee

For the period commencing July 1, 2002 and ending December 31, 2002, a member shall be charged a Cancel or Correct Trade Fee of \$3.00 per canceled or corrected transaction. To provide firms with time to adjust to the new reporting system, the Cancel or Correct Trade Fee will not be charged until the later of October 1, 2002 or 90 days after

the effective date of TRACE. For the month of October 2002, the Cancel or Correct Trade Fee shall be \$1.50 per canceled or corrected transaction. For the month of November 2002, the Cancel or Correct Trade Fee shall be \$2.25 per canceled or corrected transaction. For the period commencing January 1, 2003 and ending [June 30, 2003] *January 31, 2004*, a member shall be charged a Cancel or Correct Trade Fee of \$1.50 per canceled or corrected transaction.

(C) "As of" Trade Late Fee

For the period commencing July 1, 2002 and ending December 31, 2002, a member shall be charged an "As of" Trade Late Fee of \$3.00 per transaction for those transactions that are not timely reported "As of" as required by these rules. To provide firms with time to adjust to the new reporting system, the "As of" Trade Late Fee will not be charged until the later of October 1, 2002 or 90 days after the effective date of TRACE. For the month of October 2002, the "As of" Trade Late Fee shall be \$1.50 per such transaction. For the month of November 2002, the "As of" Trade Late Fee shall be \$2.25 per such transaction. For the period commencing January 1, 2003 and ending [June 30, 2003] *January 31, 2004*, a member shall be charged an "As of" Trade Late Fee of \$3.00 per canceled or corrected transaction.

(D) No Change.

(3) No Change.

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

In its filing with the Commission, NASD 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. NASD 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

Extension of Pilot Program for TRACE Fees

NASD is proposing to extend and/or renew the pilot program for TRACE fees that is scheduled to expire on June 30, 2003 to expire on January 31, 2004.

NASD believes the additional time will allow it to more fully reassess the overall impact of the TRACE fee structure. As a result of several changes to the TRACE fee structure during the pilot period, additional time to review and analyze the fee structure is necessary. NASD believes that the proposed fee structure for TRACE is reasonable. However, NASD remains committed to reviewing and reassessing the impact of the overall TRACE fee structure over time to ensure that the fees are reasonable and equitable for participants in the TRACE system.

NASD expects to submit a rule filing to the SEC prior to the January 31, 2004 expiration date seeking approval of a permanent fee structure for TRACE.

Background

On July 1, 2002, TRACE became effective. On June 28, 2002, the Commission approved proposed NASD fees relating to the operation of the TRACE system (Rule 7010(k)) on a pilot basis for a six-month period expiring on December 28, 2002.⁶ As part of that rule filing (Amendment No. 3 to SR-NASD-2002-63), NASD committed to review and reassess the proposed TRACE fees as soon as practicable and within six months after the effective date of TRACE.

On November 15, 2002, NASD submitted a proposed rule change to the SEC to reduce certain TRACE fees for the fourth quarter of 2002 (*i.e.*, the Web Browser Access Fee, the Cancel or Correct Fee, and the "As of" Trade Late Fee). These fees were reduced effective as of October 1, 2002.⁷

On December 12, 2002, NASD submitted a proposed rule change to the SEC to extend the pilot program for TRACE fees to February 28, 2003 and to modify the pilot effective January 1, 2003.⁸ As of January 1, 2003, NASD divided the Web Browser Access Fee into two service and fee levels—Level I with no access to real-time TRACE data, and Level II with access to real-time TRACE data. The fee for Level I Trade Report Only Web Browser Access is \$25 per month, per user ID and the fee for

Level II Full Service Web Browser Access is \$85 per month, per user ID. A participant may register for a combination of Level I and Level II service based on its usage and needs.

As of January 1, 2003, NASD also reduced trade reporting fees by 5% for 2003 and reduced the Cancel or Correct Fee from \$3.00 to \$1.50 effective January 1, 2003. The "As of" Trade Late Fee continued at \$3.00 per trade.

On February 27, 2003, NASD filed, for immediate effectiveness, a rule filing to extend the pilot program for TRACE fees to June 30, 2003.⁹

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹⁰ which requires, among other things, that NASD's rules 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 NASD operates or controls. NASD is proposing to extend the pilot program for TRACE fees to January 31, 2004, to allow NASD greater time to analyze and reassess TRACE fees.

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

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act¹¹ and Rule 19b-4(f)(2) thereunder,¹² because the proposal is "establishing or changing a due, fee, or other charge" imposed by NASD. The rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(2) thereunder, and will be operational immediately.

At any time within 60 days of this filing, the Commission may summarily

⁶ See Securities Exchange Act Release No. 46145 (June 28, 2002), 67 FR 44911 (July 5, 2002) (File No. SR-NASD-2002-63).

⁷ On November 22, 2002, the Commission issued a notice that this proposed rule change had become effective upon filing with the Commission. See Securities Exchange Act Release No. 46893 (November 22, 2002), 67 FR 72008 (December 3, 2002) (File No. SR-NASD-2002-167).

⁸ On December 19, 2002, the Commission issued a notice that this proposed rule change had become effective upon filing with the Commission. See Securities Exchange Act Release No. 47056 (December 19, 2002), 67 FR 79205 (December 27, 2002) (File No. SR-NASD-2002-176).

⁹ See Securities Exchange Act Release No. 47444 (March 4, 2003), 68 FR 11602 (March 11, 2003) (File No. SR-NASD-2003-25).

¹⁰ 15 U.S.C. 78o-3(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹³

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 NASD. All submissions should refer to file number SR-NASD-2003-97 and should be submitted by July 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48106; File No. SR-PCX-2002-62]

Self Regulatory Organizations; The Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change To Amend the PCX's Market Data Revenue Sharing Program for Tape A Securities Traded on the Archipelago Exchange

June 27, 2003.

On October 4, 2002, The Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange

Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ a proposed rule change to modify its market data revenue sharing program for Tape A securities by increasing the level of the transaction credits paid with respect to transactions in Tape A securities from 40% to 50% for Users (as defined in the notice) that meet certain requirements. The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on November 19, 2002.² The Commission received two comments on the proposal.³ On May 12, 2003, the PCX responded to the comment letters.⁴

The PCX proposes to modify its Tape A market data revenue sharing program by increasing the percentage of transaction credits from 40% to 50%, a percentage that is consistent with similar market data revenue sharing programs operated by other self-regulatory organizations.⁵ As set forth in its July 2, 2002 Order of Summary

¹ 15 U.S.C. 78s(b)(1).

² See Securities Exchange Act Release No. 46805 (November 8, 2002), 67 FR 69794.

³ See December 10, 2002 letter from Darla C. Stuckey, Corporate Secretary, The New York Stock Exchange, Inc. ("NYSE"), to Jonathan G. Katz, Secretary, Commission ("NYSE Letter"); December 20, 2002 letter from W. Hardy Callcott, Senior Vice President and General Counsel, Charles Schwab & Co., Inc., to Jonathan G. Katz, Secretary, Commission ("Schwab Letter"). The Schwab Letter comments generally on market data revenue sharing, and does not specifically address the PCX's proposal to increase the percentage of market data revenue sharing in Tape A securities from 40% to 50%. The NYSE Letter incorporates by reference comments filed in previous proposed rule changes on the subject of market data revenue sharing programs, and further objects to the proposed rule change because the NYSE believes the proposal (1) "would cause NYSE to fund even more PCX payment for [order] flow than it currently does, which payments withdraw orders from the auction for reasons other than best execution"; (2) would present conflict of interest problems for PCX broker-dealers, thereby undermining the discharge of best execution obligations; and (3) "would provide incentives for markets to purchase prints of trades not executed through their facilities," skewing the perception of a particular market's liquidity" which would result in that market receiving market data revenue in contravention of the Consolidated Tape Association Plan.

⁴ See May 12, 2003 letter from Kathryn L. Beck, Senior Vice President, General Counsel, Corporate Secretary, and Chief Regulatory Officer, PCX, to Joseph Morra, Special Counsel, Division of Market Regulation, Commission ("PCX Response Letter"). The PCX limited its response to the concerns raised in the NYSE Letter. In short, the PCX (1) stated it does not pay for order flow, and does not fund its market data revenue sharing program directly or indirectly; (2) denied that the market data revenue sharing program conflicts with broker-dealers' best execution obligations; and (3) states that the PCX cannot print trades that are executed elsewhere.

The NYSE Letter, the Schwab Letter, and the PCX Response Letter are available in the Public Reference Room.

⁵ See e.g., Securities Exchange Act Release No. 46911 (November 26, 2002), 67 FR 72251 (December 4, 2002)(SR-BSE-2002-10).

Abrogation ("Abrogation Order"),⁶ the Commission will continue to examine the issues surrounding market data fees, the distribution of market data rebates, and the impact of market data revenue sharing programs on both the accuracy of market data and on the regulatory functions of self-regulatory organizations. In the interim, the Commission believes it is reasonable to allow the PCX to operate market data revenue sharing programs that place the PCX on substantially similar footing as other self-regulatory organizations.

Thus, after careful review of the proposed rule change, the comment letters, and the PCX Response Letter, 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 exchange⁷ and, in particular, the requirements of section 6 of the Act⁸ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act,⁹ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The decision to allow the PCX to increase the percentage of transaction credits available from 40% to 50%, however, is narrowly drawn, and should not be construed as resolving the issues raised in the Abrogation Order, and does not suggest what, if any, future actions the Commission may take with regard to market data revenue sharing programs.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-PCX-2002-62), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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⁶ Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002)(File Nos. SR-NASD-2002-61, SR-NASD-2002-68, SR-CSE-2002-06, and SR-PCX-2002-37)(Order of Summary Abrogation).

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

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).