

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51005; File No. SR-NASD-2004-142]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change To Establish Fees for Companies With a Dual Listing on the New York Stock Exchange and Nasdaq

January 10, 2005.

On September 28, 2004, 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"), 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> a proposed rule change to adopt a fee schedule for issuers that are dually listed on the New York Stock Exchange ("NYSE") and Nasdaq. The proposed rule change was published for comment in the **Federal Register** on December 3, 2004.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

The filing establishes a fee schedule for NYSE issuers that chose to dually list on Nasdaq during Nasdaq's initial pilot, January 12, 2004, to December 31, 2004. The annual listing fee for dually listed issuers will be \$15,000. It will apply to NYSE issuers that are currently dually listed, as well as issuers who choose to do so in the future. Nasdaq will use the fee to support the cost of issuer services, including regulatory oversight and to fund future product and service investments.

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 registered securities association<sup>4</sup> and, in particular the requirements of Section 15A of the Act.<sup>5</sup> The Commission finds specifically that the proposed rule change is consistent with Section 15A(b)(5)<sup>6</sup> and 15A(b)(6)<sup>7</sup> of the Act, in that Nasdaq's dual listing program with the lower listing fee has the potential to bring new issuers that

would not otherwise dually list, to the Nasdaq market. Without this program, it is unlikely that an issuer would choose to dually list its securities. Nasdaq believes that issuers that dually list may eventually determine to transfer their listings to Nasdaq.<sup>8</sup> The Commission believes that competition among listing markets has the potential to benefit the public, issuers, and the listing markets.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NASD-2004-142) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5-151 Filed 1-14-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51004; File No. SR-NASD-2004-140]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change To Eliminate Entry and Application Fees for Exchange-Listed Issuers Transferring Listings to Nasdaq

January 10, 2005.

On September 20, 2004, 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"), 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> a proposed rule change to eliminate the entry and application fees imposed upon issuers listed on a national securities exchange that transfer their listings to Nasdaq. The proposed rule change was published for comment in the **Federal Register** on December 3, 2004.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

Pursuant to this proposed rule change, Nasdaq will eliminate entry and application fees for exchange issuers that transfer their listing to Nasdaq on

or after September 17, 2004. For issuers that have paid these fees, Nasdaq will refund the money. These issuers will be subject to the same level of annual fees and listing of additional shares fees as other Nasdaq issuers. Nasdaq states that it does not anticipate that a large number of issuers will change their listing market,<sup>4</sup> thus Nasdaq expects that the proposed rule change will not have a material financial impact on Nasdaq. Nasdaq states that the proposed rule change will not affect Nasdaq's commitment of resources to its regulatory oversight of the listing process or its regulatory programs. More specifically, Nasdaq represents that companies that switch their listing will be reviewed for compliance with Nasdaq listing standards in the same manner as any other company that applies to be listed on Nasdaq. Nasdaq will conduct a full and independent review of each issuer's compliance with Nasdaq's listing standards.

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 registered securities association<sup>5</sup> and, in particular the requirements of Section 15A of the Act.<sup>6</sup> The Commission finds specifically that the proposed rule change is consistent with Section 15A(b)(5)<sup>7</sup> and 15A(b)(6)<sup>8</sup> of the Act, because while Nasdaq is eliminating certain fees for this group of issuers based on Nasdaq's belief that review of their applications will not require the same amount of resources as is required to review applications of other issuers, Nasdaq will continue to review for and enforce compliance with its listing requirements by these issuers. The Commission believes that Nasdaq's program may ultimately benefit issuers and investors because competition among listing markets has the potential to enhance the quality of services that listing markets provide.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NASD-2004-140) be, and it hereby is, approved.

<sup>4</sup> Nasdaq stated that, as of November 12, 2004, seven issuers had become dually listed on Nasdaq. Nasdaq's goal is for these issuers to eventually transfer their listings to Nasdaq. *See also* Securities Exchange Act Release No. 51005, January 10, 2005, re fees for dually listed issuers.

<sup>5</sup> 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).

<sup>6</sup> 15 U.S.C. 78o-3.

<sup>7</sup> 15 U.S.C. 78o-3(b)(5).

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

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

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

<sup>3</sup> *See* Securities Exchange Act Release No. 50741 (November 29, 2004), 69 FR 70296.

<sup>4</sup> 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).

<sup>5</sup> 15 U.S.C. 78o-3.

<sup>6</sup> 15 U.S.C. 78o-3(b)(5).

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>8</sup> *See also* Securities Exchange Act Release No. 51004, January 10, 2005, re fees for exchange listed issuers that transfer to Nasdaq.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>12</sup> 17 CFR 240.19b-4.

<sup>13</sup> *See* Securities Exchange Act Release No. 50740 (November 29, 2004), 69 FR 70299.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5-152 Filed 1-14-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51014; File No. SR-PCX-2004-83]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change, and Amendment No. 1 Thereto, by the Pacific Exchange, Inc. Relating To Changing the Opening Time and the Commencement of the Opening Auction on the Archipelago Exchange

January 10, 2005.

On October 22, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary PCX Equities, Inc. ("PCXE") submitted to the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to change the opening time and the commencement of the Opening Auction of its facility, the Archipelago Exchange ("ArcaEx"), from 5 a.m. (Pacific time) to 1 a.m. (Pacific time) and modify PCXE Rules 7.34 and 7.35, respectively. On November 22, 2004, the PCX submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The **Federal Register** published the proposed rule change for comment on December 6, 2004.<sup>4</sup> The Commission received no comments on the proposed rule change, as amended.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.<sup>5</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>7</sup> in

particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest. The Commission believes that the proposed rule change is reasonably designed to provide additional liquidity for customers seeking to participate in the Nasdaq-listed and exchange-listed markets by extending the ArcaEx's Opening Auction during the hours before the primary markets open for trading. The Commission believes that having a PCX Market Management staff member on-site at the ArcaEx facility beginning at 1 a.m. (Pacific time), in conjunction with the Exchange's employment of third-party data vendors, should enable the Exchange to coordinate its trading halts with those that are instituted for regulatory reasons by the primary markets, including the foreign markets with whom the PCX represents it is establishing contacts. In addition, this arrangement should permit the Exchange to exercise its discretion to institute a trading halt on ArcaEx when the trading halt is for a non-regulatory reason.

Further, the Commission recognizes that the Exchange has represented that the PCX Market Management staff member will be able to monitor the quoting and trading activity of its Users<sup>8</sup> during that time period. In addition, the Commission notes that the Exchange has represented that it will not begin trading at 1 a.m. (Pacific time) until the Securities Information Processors ("SIPs" are ready to accommodate quoting and trading beginning at 1 a.m. (Pacific time) and have provided ArcaEx with notification that they are prepared to disseminate quotes and trades at that time. The Commission believes that this precondition to commencing trading at 1 a.m. (Pacific time) is appropriate because the quote and trade data disseminated by SIPs are fundamental to market transparency.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change, as amended, (SR-PCX-2004-83) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5-159 Filed 1-14-05; 8:45 am]

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## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB) Office of Management and Budget, Fax: 202-395-6974.

(SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235; Fax: 410-965-6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410-965-0454 or by writing to the address listed above.

1. *Report of Death by Funeral Director—20 CFR 404.715, 404.720, 416.635—0960-0142.* SSA uses the information on form SSA-721 to make timely and accurate decisions based on

<sup>10</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.

<sup>3</sup> Amendment No. 1 replaced and superceded the original filing in its entirety.

<sup>4</sup> Securities Exchange Act Release No. 50756 (November 30, 2004), 69 FR 70489.

<sup>5</sup> In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> See PCXE Rule 1.1(yy).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).