program scheduled to expire on July 31, 2004.[4] Currently, because all Linkage orders received by the CBOE are for the account of a broker-dealer market maker on another exchange, the fees applicable to P and P/A Orders are the same as fees applicable to market makers on other exchanges that submit orders to the CBOE outside of the Linkage, taking into account how those orders are handled at the CBOE. The Exchange now proposes extending the pilot program to July 31, 2005.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act[5] in general and furthers the objectives of section 6(b)(4) of the Act[6] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges.

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

The Exchange 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

The Exchange has neither solicited nor received any comments on this 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. Comments may be submitted by any of the following methods:

Electronic comments:

• Use the Commission's Internet comment from (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2004–40 on the subject line.

Paper comments:

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml.*) 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–40 and should be submitted on or before August 18, 2004.

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

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, applicable to a national securities exchange,[7] and, in particular, with the requirements of section 6(b) of the Act[8] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with section 6(b)(4) of the Act,[9] which requires that the rules of the Exchange provide for the equitable allocation or reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2005, will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,[10] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval will preserve the Exchange's existing pilot program for Linkage fees without interruption as the CBOE and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[11] that the proposed rule change (SR–CBOE–2004–40) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17114 Filed 7–27–04; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50059; File No. SR–NASD–2004–021]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Reporting of Cancelled Trades

July 22, 2004.

On February 4, 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''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to require members to report the cancellation of any trades previously submitted to the Nasdaq Market Center. On May 19, 2004, Nasdaq filed an amendment to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on June 17,

---

[4] *See* Securities Exchange Act Release No. 49172 (February 2, 2004), 69 FR 6008 (February 9, 2004) (SR–CBOE–2004–06).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] In approving this rule, the Commission notes that it has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(2).

[11] *Id.*

[12] 17 CFR 200.30–3 (a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Commission, dated May 18, 2004 (''Amendment No. 1''). Amendment No. 1 replaced Nasdaq's February 4, 2004 filing in its entirety.

2004.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change is consistent with the provisions of section 15A of the Act,[5] applicable to a national securities association.[6] In particular, the Commission believes that the proposal is consistent with section 15A(b)(6) of the Act[7] which requires, among other things, that the rules of a securities association be designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change should improve the quality and accuracy of information disseminated by Nasdaq about transactions in its market. Under the proposal, members must notify Nasdaq, through a submission, when they cancel a trade previously reported to the Nasdaq Market Center.[8] The member that originally had the obligation to report the trade also will bear the responsibility to report the cancellation of the trade.[9] The Commission believes that, by assuring Nasdaq has timely notice of cancelled trades, this reporting requirement should improve the accuracy of the information disseminated by Nasdaq to market participants and should help to ensure that Nasdaq maintains an accurate audit trail.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change, as amended, (SR–NASD–2004–021) be, and hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17176 Filed 7–27–04; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* Securities Exchange Act Release No. 49844 (June 10, 2004), 69 FR 33980.

[5] 15 U.S.C. 78o–3.

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

[7] 15 U.S.C. 78o–3(b)(6).

[8] Under the proposal, members will not be required to submit a cancellation report if Nasdaq cancels a trade using its authority under NASD Rule 11890. In such situations, Nasdaq would submit the cancellation report.

[9] For cancelled trades executed through the Nasdaq Market Center execution service, which automatically submits trade reports, the member that would have been responsible for submitting the original report (but for the system reporting the trade) will be responsible for initiating the cancellation. For example, when a trade executed between two market makers in the Nasdaq Market Center execution service is subsequently cancelled, the sell side member is responsible for initiating the cancellation.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50054; File No. SR–PCX–2004–49]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Its Rules Governing the Archipelago Exchange by Adding a New Order Modifier Entitled ''Don't Arb Me''

July 21, 2004.

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 3, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), 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 the Exchange. 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 Exchange is proposing to amend its rules governing the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE, to add a new order type entitled the ''Don't Arb Me'' modifier. The ''Don't Arb Me'' modifier will increase processing capability for orders in exchange-listed securities that are traded-through by an away market block trade. The text of the proposed rule change appears below. New text is in italics.

* * * * *

Rule 7 Equities Trading

Orders and Modifiers

Rule 7.31 Orders and Modifiers

* * * * *

(dd) Don't Arb Me Modifier. A limit order in which the Corporation will re-price the order at the block price subsequent to the limit order being traded-through by another market center's block trade. The order shall be ranked in the Arca Book pursuant to Rule 7.36 and assigned a new time price priority as of the time of each reposting. This modifier will apply only to exchange-listed securities.

* * * * *

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

In its filing with the Commission, the Exchange 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. The Exchange 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

As part of its continuing efforts to enhance participation on the ArcaEx facility, the PCX is proposing to include an additional processing capability for orders in exchange-listed securities in situations when an order is traded-through by another market's block trade. The Exchange believes that such capability will protect ArcaEx orders from being arbitraged by other market centers.

Currently, PCXE Rule 7.56 (''ITS Trade-Throughs and Locked Markets'') describes the interaction between markets in exchange-listed securities when an order in the ArcaEx Book is traded-through. This rule specifies that block trades[3] are generally exempted from the trade-through rule.[4] Pursuant to the Intermarket Trading System (''ITS'') Plan and PCXE rules, an ETP Holder that trades through another market with a block trade is obligated to send a commitment to the market center it traded through at the block price,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* PCXE Rule 7.57 (''Block Trade Policy''). Block trades are trades in excess of 10,000 shares or $200,000; effected at a price outside the bid or offer displayed from another ITS participating market center; and involves either a cross of block size or any other transaction of block size that is not the result of an execution at the current bid or offer on the Corporation.

[4] *See* PCXE Rule 7.56, Commentary .01.