for the Commission to assure fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Section 15A(b)(6) requires that the rules of the NASD be designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in processing information with respect to an facilitating transactions in securities, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[9] The Commission believes that the proposal to make available to the UTP Exchanges on a limited basis the NWII, the NWII/API, and the CTCI for the submission of quotations and trade reports of Nasdaq-listed securities will enable Nasdaq to fulfill its existing obligations as the ESIP, provide the UTP Exchanges with the means to participate effectively in trading Nasdaq-listed securities, and maintain a fair, orderly, and efficient marketplace for the benefit of all investors in Nasdaq-listed securities.

Nasdaq believes that good cause exists to approve this rule proposal on an accelerated basis. Nasdaq will make these services available to eligible UTP Exchanges as soon as this proposal is approved. Any delay in approval could delay the launch of trading by up to five UTP Exchanges, resulting in a potential loss of any increased competition that may be derived from the addition of these UTP Exchanges.

Pursuant to section 19(b)(2) of the Act,[10] 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 thereof in the **Federal Register** so that UTP Exchanges will be able to trade Nasdaq securities as soon as they are capable of doing so.

## V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NASD–2001–81) is hereby approved on an accelerated basis through February 28, 2002.

[9] In reviewing this proposal, the Commission has considered its potential impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

[11] 15 U.S.C. 78s(b)(2).

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–28718 Filed 11–15–01; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45038; File No., SR–PCX–2001–43]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Exchange's Delisting Criteria

November 6, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on October 29, 2001, the Pacific Exchange, Inc. (''Exchange'' or ''PCX'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the PCX. On November 6, 2001, the PCX submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[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 Mai S. Shiver, Senior Attorney, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 5, 2001 (''Amendment No. 1''). In Amendment No. 1, the PCX clarified in Commentary .01 and Commentary .02 to PCX rule 3.7 that it will look to the primary market in which the underlying security trades in determining whether the underlying security satisfies the price requirements for adding additional series of options contracts. The PCX also made a technical correction to subparagraph 4 of Commentary .01 to PCX rule 3.7. The PCX also changed the word ''Thursday'' to the phrase ''the last trading day'' in subparagraph 3 of Commentary .02 to PCX rule 3.7. The PCX also withdrew the proposed change of the word ''shall'' to ''will'' in paragraph (a) and commentary .01 to PCX rule 3.7. Lastly, the PCX added subparagraph 5 of Commentary .01 to PCX rule 3.7 to add that an underlying security will not be deemed to meet the requirements for continued approval for Exchange options transactions when the issue, in the case of underlying security that is principally traded on a national securities exchange, is delisted from trading on that exchange and fails to meet certain criteria, or the issue, in the case of an underlying security that is principally traded through the facilities of a national securities association, is no longer designated as a National Market System security.

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

The PCX proposes to amend PCX Rule 3.7, which governs the withdrawal of approval for securities underlying options traded on the Exchange (''Delisting Criteria Rule'' or ''PCX rule 3.7'').

Below is the text of the proposed rule change. Proposed new language is *italicized;* deletions are in brackets.

* * * * *

**¶ 3597 Withdrawal of Approval of Underlying Securities**

Rule 3.7(a) The approval of an underlying security for exchange transactions shall be withdrawn by the Exchange if the underlying security fails to meet the then current requirements necessary to maintain such approval or for any reason the Exchange deems necessary. In the event the Exchange withdraws approval, no additional series of option contracts of the class covering that underlying security shall be opened; provided, however, that where exceptional circumstances have cause the noncompliance of an underlying security with subsection *(B) or* (C) [or (D) of section 1 of Commentary .01 or section 2 or 3 of Commentary .01 hereunder, the Exchange may, in the interest of maintaining a fair and orderly market or for the protection of investors, open additional series of option contracts of the class covering the subject underlying security.

(b) No change.

Commentary:

.01 In connection with rule 3.7(a), the Exchange has adopted certain requirements which must be met in order for an underlying security to maintain approval for exchange transactions. Therefore the Exchange shall take the action prescribed by rule 3.7(a) for the withdrawal of an underlying security when any one of the following occurs:

1. The Exchange ordinarily relying upon information publicly available at the Securities and Exchange Commission determines that:

(A) The issuer has failed to make timely reports as required by any applicable sections of the Securities Exchange Act of 1934, and such failure has not been corrected within 30 days after the date the report was due to be filed;

(B) There is a failure to have a minimum off 6,300,000 shares of the underlying security held by persons other than those who are subject to the requirement of section 16(a) of the Securities Exchange Act of 1934, as amended; or

(C) There is a failure to have a minimum of 1,600 holders of the underlying security.

2. The volume of trading in the underlying security is less than 1,800,000 shares in the preceding twelve months.

3. The market price per share of an underlying security closes below *$3.00 on the previous trading day* [$5.00], as measured by the highest closing price recorded in *the primary* [any] market on which the underlying security trades. [, on majority of the business days of any six-month period.]

4. If an underlying security is approved for opotions listing and trading under the provisions of Rule 3.6, Commentary .05, the trading volume and price history of the Original Security (as therein defined) prior to but not after the commencement of trading in the Restructure Security (as therein defined), including ''when issued'', may be taken into account in determining whether the trading volume and market price requirements of subsections 2 and 3 of this Commentary .01 [as well as the trading volume and market price requirements of Rule 3.7, Commentary .04, subsections 3 and 4] are satisfied, provided, however, that in the case of a Restructure Security approved for options listing and trading under subsection (d) of Commentary .05 to Rule 3.6, such trading volume requirements must be satisfied based on the trading volume history of the Restructure Security.

*5. The issue, in the case of an underlying security that is principally traded on a national securities exchange, is delisted from trading on that exchange and neither meets NMS criteria nor is traded through the facilities of a national securities association, or the issue, in the case of an underlying security that is principally traded through the facilities of a national securities association, is no longer designed as a NMS security.*

.02 In connection with Rule 3.7(a) and Commentary .01.3 thereto, the Exchange shall direct that no additional series of options contracts of the class covering an underlying security be opened at any time when the market price per share of the subject underlying security is less than *$3.00.* [$5.00 as measured by the highest closing price recorded in any market on which the underlying security trades.] *Subject to Paragraph 3 of Commentary .01 above, the market price per share of the underlying security will be determined as follows:*

*1. for intra-day series additions, the last reported trade in the primary market in which the security is traded at the time the Exchange determines to add these additional series intra-day;*

*2. for next-day series additions, the closing price reported in the primary market in which the security is traded on the last trading day preceding the day on which such series additions are authorized; and*

*3. for expiration series additions, the closing price reported in the primary market in which the security is traded on the last trading day preceding expiration Friday.*

.03 No change.

[.04 Notwithstanding paragraph 3 to Commentary .01 and Commentary .02, the Exchange may continue to open for trading additional series of option contracts of a class covering an underlying security, provided:

1. The aggregate market value of the underlying security equals or exceeds $50 million;

2. Customer open interest (reflected on a two-sided basis) equals or exceeds 4,000 contracts for all expiration months;

3. Trading volume in the underlying security (in all markets in which the underlying security is trading) has been at least 2,400,000 shares in the preceding twelve months; and

4. The market price per share of the underlying security closed at $3 or above on a majority of the business days during the preceding six calendar months, as measured by the highest closing price reported in any market in which the underlying security traded, and further provided the market price per share of the underlying security is at least $3 at the time such additional series are authorized for trading. During the next consecutive six calendar month period, to satisfy this commentary .04, the price of the underlying security as referenced in this Commentary .04(4) shall be $4.]

[.05–.12].*04–.11* No change.

* * * * *

## 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 PCX included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments its received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX 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

PCX rule 3.7 specifies maintenance requirements for securities underlying options classes traded on the Exchange and restricts the Exchange from adding new series of an options class in the event that the underlying security fails to meet certain criteria. The Delisting Criteria Rule currently provides that the Exchange may not list additional series if, *inter alia*, the underlying security has not closed above $5 for the majority of business days during the preceding six calendar months as measured by the highest closing price reported in the primary market in which the underlying security is traded (''$5 guideline''). However, exceptions to the $5 guideline allow the Exchange to add series even if the underlying security does not satisfy the $5 guideline. Pursuant to the exceptions, the Exchange may add additional series where the underlying security has closed above $3 for the majority of business days during the preceding six calendar months and the underlying price is at least $3 at the time the new series are authorized (''$3 exception''). Once the Exchange relies upon the $3 exception in adding new series, during the next consecutive six-month period, it must increase the $3 exception to $4 in order to authorize new series pursuant to the exception.

The Exchange asserts the application of the Delisting Criteria Rule creates unnecessary confusion and administrative burdens on the Exchange. The Exchange believes that the Delisting Criteria Rule also results in disputes between the exchanges, as inconsistent application of the requirements competitively disadvantage an exchange, depending upon its interpretation. Further, the Exchange does not believe it is necessary or desirable to restrict the ability of investors to trade options on securities trading between $3 or $5. Accordingly, the Exchange proposes to amend PCX rule 3.7 to simplify the requirements and to clarify the circumstances under which the Exchange may add new options series. The proposal is based on, and is consistent with, a similar rule change by the Chicago Board Options Exchange (''CBOE Rule 5.4'') that the Commission recently approved.[4]

[4] *See* Securities Exchange Act Release No. 44964 (October 19, 2001), 66 FR 54559 (October 29, 2001) (order approving File No. SR–CBOE–2001–29).

The proposed requirement specifies the following: (1) New series may not be added for the next day unless, in addition to satisfying the other requirements of the rule, the underlying security closed at or above $3 on the previous trading day in the primary market in which the underlying security is traded; (2) new series may not be added intra-day unless, in addition to satisfying the other requirements of the rule, the last reported trade in the underlying security at the time the Exchange determines to add the new series is at or above $3 on the primary market in which the underlying security is traded; [5] and (3) new series may not be added following an options expiration unless, in addition to satisfying the other requirements of the rule, the closing price of the underlying security on the last trading day preceding expiration Friday is at or above $3 on the primary market in which the underlying security is traded.[6] Except as otherwise provided in this proposal, the Exchange does not propose to change other requirements currently contained in Rule 3.7 (such as the number of share that must be held by non-insiders, number of holders and trading volume).

The Exchange believes that this proposal removes unnecessarily complex requirements while it reasonably assures that securities underlying options have indicia of liquidity needed to maintain fair and orderly markets. In determining to list new options series under the new less restrictive standard, the Exchange believes that its own systems and those of the Options Price Reporting Authority are capable of handling increased capacity requirements.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with section 6 of the Act [7] in general, with section 6(b)(5) of the Act [8] specially, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change, as amended, 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 not received any written comments from members or other interested parties.

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

Because the foregoing proposed rule change, as amended: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act [9] and rule 19b–4(f)(6) [10] thereunder.

A proposed rule change filed under rule 19b–4(f)(6) normally requires that the self-regulatory organization give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change; however, rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time period. The PCX seeks to have the Commission waive the five-day notice. The Commission finds good cause to waive the five-day notice because the Commission acknowledges that this proposal is substantially similar and based on another exchange's rule recently noticed and approved by the Commission.[11]

A proposed rule change filed under rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The PCX seeks to have the proposed rule change, as amended, become operative immediately. The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, as amended, operative as of November 6, 2001.[12] The Commission notes that the proposed rule change, as amended, is substantially similar in all material respects to the rule of another exchange that the Commission has already noticed for public comment and approved [13] and, therefore, the proposed rule change raises no new issues of regulatory concern. At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change 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.[14]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 PCX. All

[5] The Exchange will use the closing price per share in the primary market in which the underlying security trades and the price per share of the last reported trade in the primary market in which the underlying security trades at the time the Exchange determines to ad the series intra-day. *See* Amendment No. 1, *supra* note 3.

[6] The Exchange confirms that it will look to the primary market in which the underlying security trades for all three types of new series additions. Telephone conversation between Mai Shiver, Senior Attorney, PCX, and Frank N. Genco, Division of Market Regulation, Commission, on November 6, 2001.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] *See supra* note 5.

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] *See supra* note 5.

[14] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78(b)(3)(C).

submissions should refer to File No. SR–PCX–2001–43 and should be submitted by December 7, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–28720 Filed 11–15–01; 8:45 am]

**BILLING CODE 8010–01–M**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### North American Free Trade Agreement; Invitation for Applications for Inclusion on the Chapter 19 Roster

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Invitation for Applications.

**SUMMARY:** Chapter 19 of the North American Free Trade Agreement (NAFTA) provides for the establishment of a roster of individuals to serve on binational panels convened to review final determinations in antidumping or countervailing duty (AD/CVD) proceedings and amendments to AD/CVD statutes of a NAFTA Party. The United States annually renews its selections for the Chapter 19 roster. Applications are invited from eligible individuals wishing to be included on the roster for the period April 1, 2002 through March 31, 2003.

**DATES:** Applications should be received no later than December 7, 2001.

**ADDRESSES:** We strongly encourage applicants to submit their applications by email to *naftapanel@ustr.gov* or by fax to Sandy McKinzy, Attn: Chapter 19 Roster Applications, at (202) 395–3640. Alternatively, applicants may submit their applications by U.S. mail, first class, postage prepaid, to Sandy McKinzy, Attn: Chapter 19 Roster Applications, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. Applications delivered by messenger or commercial overnight delivery service will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** Amber L. Cottle, Assistant General Counsel, (202) 395–3581.

**SUPPLEMENTARY INFORMATION:**

#### Binational Panel Reviews Under NAFTA Chapter 19

Article 1904 of the NAFTA provides that a party involved in an AD/CVD proceeding may obtain review by a binational panel of a final AD/CVD determination of one NAFTA Party with respect to the products of another NAFTA Party. Binational panels decide whether such AD/CVD determinations are in accordance with the domestic laws of the importing NAFTA Party, and must use the standard of review that would have been applied by a domestic court of the importing NAFTA Party. A panel may uphold the AD/CVD determination, or may remand it to the national administering authority for action not inconsistent with the panel's decision. Panel decisions may be reviewed in specific circumstances by a three-member extraordinary challenge committee, selected from a separate roster composed of fifteen current or former judges.

Article 1903 of the NAFTA provides that a NAFTA Party may refer an amendment to the AD/CVD statutes of another NAFTA Party to a binational panel for a declaratory opinion as to whether the amendment is inconsistent with the General Agreement on Tariffs and Trade (GATT), the GATT Antidumping or Subsidies Codes, successor agreements, or the object and purpose of the NAFTA with regard to the establishment of fair and predictable conditions for the liberalization of trade. If the panel finds that the amendment is inconsistent, the two NAFTA Parties shall consult and seek to achieve a mutually satisfactory solution.

#### Chapter 19 Roster and Composition of Binational Panels

Annex 1901.2 of the NAFTA provides for the maintenance of a roster of at least 75 individuals for service on Chapter 19 binational panels, with each NAFTA Party selecting at least 25 individuals. A separate five-person panel is formed for each review of a final AD/CVD determination or statutory amendment. To form a panel, the two NAFTA Parties involved each appoint two panelists, normally by drawing upon individuals from the roster. If the Parties cannot agree upon the fifth panelist, one of the Parties, decided by lot, selects the fifth panelist from the roster. The majority of individuals on each panel consist of lawyers in good standing, and the chair of the panel must be a lawyer.

Upon each request for establishment of a panel, roster members from the two involved NAFTA Parties will be requested to complete a disclosure form, which will be used to identify possible conflicts of interest or appearances thereof. The disclosure form requests information regarding financial interests and affiliations, including information regarding the identity of clients of the roster member and, if applicable, clients of the roster member's firm.

#### Criteria for Eligibility for Inclusion on Chapter 19 Roster

Section 402 of the NAFTA Implementation Act (Pub. L. 103–182, as amended (19 U.S.C. 3432)) (''Section 402'') provides that selections by the United States of individuals for inclusion on the Chapter 19 roster are to be based on the eligibility criteria set out in Annex 1901.2 of the NAFTA, and without regard to political affiliation. Annex 1901.2 provides that Chapter 19 roster members must be citizens of a NAFTA Party, must be of good character and of high standing and repute, and are to be chosen strictly on the basis of their objectivity, reliability, sound judgment, and general familiarity with international trade law. Aside from judges, roster members may not be affiliated with any of the three NAFTA Parties. Section 402 also provides that, to the fullest extent practicable, judges and former judges who meet the eligibility requirements should be selected.

#### Procedures for Selection of Chapter 19 Roster Members

Section 402 establishes procedures for the selection by the Office of the United States Trade Representative (USTR) of the individuals chosen by the United States for inclusion on the Chapter 19 roster. The roster is renewed annually, and applies during the one-year period beginning April 1 of each calendar year.

Under Section 402, an interagency committee chaired by USTR prepares a preliminary list of candidates eligible for inclusion on the Chapter 19 Roster. After consultation with the Senate Committee on Finance and the House Committee on Ways and Means, USTR selects the final list of individuals chose by the United States for inclusion on the Chapter 19 roster.

#### Remuneration

Roster members selected for service on a Chapter 19 binational panel will be remunerated at the rate of 800 Canadian dollars per day. Previously, panel members were remunerated at a rate of 400 Canadian dollars per day.

#### Application

Eligible individuals who wish to be included on the Chapter 19 roster for the period April 1, 2002 through March 31, 2003 are invited to submit applications. Applicants submitting their applications by U.S. mail should submit one original application and one copy. Applicants submitting their applications by email or fax only need to submit one original application. Applications must be typewritten, and should be headed Application for

[15] 17 CFR 200.30–3(a)(12).