

On October 28, 2003, the NYSE filed Amendment No. 1 to the proposed rule change.⁵ This order approves the proposed rule change, as amended.

II. The Amended Proposal

As more fully discussed in the Commission's Notice,⁶ the Exchange's amended proposal removes previous requirements that an issuer seeking to voluntarily delist a security from the NYSE obtain approval of its audit committee; notify 35 of its largest shareholders of the proposed delisting; and publish a press release announcing the proposed delisting. Under the amended proposal, the issuer is required only to furnish the Exchange with a certified board resolution evidencing board approval of the delisting.

In simplifying the voluntary delisting process, the amended proposal continues an evolution that began in 1999 when the Exchange amended its Rule 500 to remove the requirement of a shareholder vote ("1999 Amendment").⁷ In approving the 1999 Amendment, the Commission directed the Exchange to review periodically the shareholder notification requirement of NYSE Rule 500 to determine whether it remained warranted and consistent with the protection of investors.

III. Summary of Comments

Two of the commenters supported the proposal,⁸ noting that eliminating the delisting requirements in NYSE Rule 500 should create a more level playing field for markets trading securities currently listed on the NYSE by bringing the NYSE's requirements in line with the requirements of other exchanges.⁹ The other of these commenters expresses its view that NYSE Rule 500, even after the 1999

Amendment, still represents a significant impediment to delisting by functioning as an anti-competitive tool by which the NYSE has prevented the migration of listed companies to other exchanges.¹⁰

Two of the commenters argue that the proposal does not go far enough to facilitate voluntary delisting from the Exchange.¹¹ One of these commenters suggests that the proposal should require the NYSE to approve delisting notifications by issuers in good standing as a routine item.¹² The other commenter suggests that the NYSE clarify two issues in its proposal. First, NYSE should make clear that when an issuer applies to the Commission for voluntary delisting, trading of the stock on the NYSE would be suspended during the pendency of the application. Second, this commenter recommends that NYSE amend the proposal to delete the requirements that the issuer apply for delisting on the Exchange and provide a certification of the resolution of the board of directors regarding delisting.

In response to the concerns expressed by the commenters, NYSE submitted Amendment No. 1 to the proposal. In Amendment No. 1, NYSE proposes to add a representation to clarify its policy with respect to the suspension of securities during the pendency of an issuer's application to delist from the Exchange.

IV. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹³ Specifically, the Commission believes that the amended proposal is consistent with section 6(b)(5) of the Act,¹⁴ which requires, among other things, that the rules of an exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Commission also

believes the amended proposal is consistent with section 11A(a)(1)(C)(ii) of the Act, which states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition between exchange markets.¹⁵ Specifically, by reducing the restrictions imposed on issuers that wish to delist their securities from the Exchange, the Commission believes that the amended proposal should remove a significant barrier to intermarket competition within the national market system.

V. Conclusion

For the reasons discussed above, the Commission finds that the amended proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁶ that the proposed rule change, as amended (SR-NYSE-2003-23), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-27854 Filed 11-4-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48697; File No. SR-PCX-2003-58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

October 24, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on October 14, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁵ See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Esq., Assistant Director, Division of Market Regulation, Commission, dated October 27, 2003 ("Amendment No. 1"). In Amendment No. 1, the NYSE proposes to delete the words "apply to" from the rule text and to add the following sentence regarding suspension of trading to the Purpose section of the filing: "The Exchange notes that in the case of a voluntary transfer to another listed market, the Exchange would suspend trading the security being voluntarily delisted as of the close of business on the trading day preceding the date the issuer has arranged to commence trading in the other market. This is the process followed by other listed markets when an issuer traded there transfers its listing to the Exchange." Because this is a technical amendment, it is not subject to notice and comment.

⁶ See *supra* note 3, at 7-10. A full description of the proposal is contained in the Notice.

⁷ See Securities Exchange Act Release No. 41634 (July 21, 1999), 64 FR 40633 (July 27, 1999) (SR-NYSE-97-31).

⁸ See ICI Letter and ABC Letter, *supra* note 4.

⁹ See ICI Letter, *supra* note 4.

¹⁰ See ABC Letter, *supra* note 4.

¹¹ See Peake Letter and Nasdaq Letter, *supra* note 4.

¹² See Peake Letter, *supra* note 4. In addition, this commenter makes several points regarding Commission Rule 12d2-2 under the Act and separating regulation from trading on the NYSE. As neither issue is squarely raised by the proposal, this order will not address those comments.

¹³ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78k-1(a)(1)(C)(ii).

¹⁶ *Id.*

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.