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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

Release Nos. 33-7422, 34-38728, File No. S7-17-97

RIN 3235-AH18

Covered Securities Pursuant to Section 18 of the Securities Act of 1933

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes for comment Rule 146(b) under section 18 of the Securities Act of 1933, as amended. The Rule would designate securities listed on certain national securities exchanges, or tiers or segments thereof, as covered securities. Covered securities under section 18 of the Securities Act are exempt from state law registration requirements.

DATES: Comments should be submitted by July 17, 1997.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Mail Stop 6-9, 450 Fifth Street, NW., Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comments should refer to File No. S7-17-97; this file number should be included in the subject line if E-mail is used. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room at the same address. Electronically submitted comment letters will be posted on the Commission's web site (<http://www.sec.gov>).

FOR FURTHER INFORMATION CONTACT: Sharon M. Lawson, Senior Special Counsel, James T. McHale, Special Counsel, or David S. Sieradzki, Esq., at 202/942-0181, 202/942-0190, or 202/942-0135; Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission (Mail Stop 5-1), 450 Fifth Street, NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 11, 1996, The National Securities Markets Improvement Act of 1996 ("NSMIA")¹ was signed into law. Among other changes made to the federal securities laws, NSMIA amends section 18 of the Securities Act of 1933, as amended ("Securities Act")² to provide for exclusive federal registration of securities listed, or authorized for listing, on the New York Stock Exchange ("NYSE"), the American Stock Exchange ("Amex"), or listed on the National Market System of the Nasdaq Stock Market ("Nasdaq/NMS"), or any other national securities exchange designated by the Commission to have substantially similar listing standards to those markets. More specifically, section 18(a) provides that "no law, rule, regulation, or order, or other administrative action of any State * * * requiring, or with respect to, registration or qualification of securities * * * shall directly or indirectly apply to a security that—(A) is a covered security." Covered securities are defined in section 18(b)(1) to include those securities listed, or authorized for listing, on the NYSE, Amex, or listed on Nasdaq/NMS, or those securities listed, or authorized for listing, on a national securities exchange (or tier or segment thereof) that has listing standards that the Commission determines by rule are "substantially similar" to those of the NYSE, Amex, or Nasdaq/NMS.

The Pacific Exchange, Incorporated ("PCX"), the Chicago Board Options Exchange, Incorporated ("CBOE"), the Chicago Stock Exchange, Incorporated ("CHX"), and the Philadelphia Stock Exchange, Incorporated ("Phlx") (collectively the "Petitioners") have petitioned the Commission to adopt a rule which finds their listing standards to be substantially similar to those of the NYSE, Amex, or Nasdaq/NMS and, therefore, entitling securities listed pursuant thereto to be deemed covered securities under section 18 of the Securities Act.³ After careful

comparison, the Commission preliminarily believes that currently the listing standards of Tier I of the PCX and the listing standards of the CBOE are substantially similar to the listing standards of the NYSE, Amex, or Nasdaq/NMS. With regard to the CHX and Phlx, the Commission preliminarily believes that while most of their Tier I listing standards are substantially similar to those of the NYSE, Amex, or Nasdaq/NMS, they differ in several important areas. Accordingly, the Commission today is soliciting comments on proposed Rule 146(b), and on whether securities listed on Tier I of the CHX and Phlx should be included in the Rule.⁴ The proposed rule finds that the listing standards of Tier I of the PCX and the listing standards of the CBOE are substantially similar to those of the NYSE, Amex, or Nasdaq/NMS, and securities listed thereon should be deemed covered securities under section 18(b)(1) of the Securities Act. If adopted, the rule would provide those covered securities with an exemption from state blue sky provisions as set forth under section 18(a) of the Securities Act.

II. Background

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards serve as a means for a self-regulatory organization ("SRO") to screen issuers and to provide listed status only to bona fide companies with sufficient float, investor base and trading interest to maintain fair and orderly markets. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity.

Indeed, many States have recognized the importance of listing standards by excepting from state registration requirements securities traded on the NYSE, the Amex, or Nasdaq/NMS.⁵ In enacting section 18, Congress intended to codify in the Securities Act an exemption from state registration requirements similar to these state law

¹ Pub. L. No. 104-290, 110 Stat. 3416 (1996).

² 15 U.S.C. 77r.

³ See Letter from David P. Semak, Vice President, Regulation, Pacific Stock Exchange, Incorporated (n/k/a Pacific Exchange, Inc.), to Arthur Levitt, Jr., Chairman, Commission, dated November 15, 1996 ("PCX Petition"); letter from Alger B. Chapman, Chairman, CBOE, to Jonathan G. Katz, Secretary, Commission, dated November 18, 1996 ("CBOE Petition"); letter from J. Craig Long, Esq., Foley and Lardner, to Jonathan G. Katz, Secretary, Commission, dated February 4, 1997 ("CHX Petition"); and letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to Jonathan G. Katz, Secretary, Commission, dated March 31, 1997 ("Phlx Petition") (collectively the "Petitions").

⁴ As discussed herein, if the CHX and Phlx decide to revise their Tier I listing standards in several areas to more closely conform to those of the NYSE, Amex, or Nasdaq/NMS, the Commission likely will include securities listed on these markets in the Rule. See Section III, C, *infra*.

⁵ See, e.g., Del. Code Ann. tit. 6 § 7309(a)(8) (1996).

provisions.⁶ Finally, in order to avoid competitive disparities, Congress provided the Commission with the discretionary authority to extend similar preemption treatment to other national securities exchanges (or tiers or segments thereof) that have substantially similar listing standards.⁷

III. Discussion

As noted above, the PCX, CBOE, CHX, and Phlx all have petitioned the Commission to adopt a rule as contemplated by section 18.⁸ The Petitioners assert that their Tier I listing standards⁹ are substantially similar to those of the NYSE, the Amex, or Nasdaq/NMS, and that until the Commission acts to provide them with the benefits of the section 18 exemption, they will be at a competitive disadvantage to these markets. The Commission recognizes the competitive concerns raised by the Petitioners, but notes that the statute requires the Commission to make an independent finding that the petitioners' listing standards are substantially similar to those of the NYSE, the Amex or Nasdaq/NMS.

In addition, Congress intended that the Commission monitor the listing requirements of the regional exchanges, consistent with its supervisory authority under the Securities Exchange Act of 1934 ("Exchange Act"), to ensure the continued integrity of these markets and the protection of investors.¹⁰ For example, if a regional exchange proposed to lower its listing standards for common stock, the Commission likely would consider this to be a substantive revision which may change the finding that the regional exchange's listing standards are substantially similar to those of the NYSE, Amex, or Nasdaq/NMS.¹¹ Accordingly, in

reviewing future proposed changes to SRO listing standards, the Commission will consider whether the proposed change(s) will require an amendment to Rule 146(b). In the event that the Commission determines that a proposed change in listing standards would require an amendment to Rule 146(b), and where the proposed rule change is subject to full notice and comment under section 19(b) of the Exchange Act, the Commission may conclude that it is unnecessary to provide notice and comment for the corresponding amendment to this Rule.¹² Finally, the Commission notes that enforcement of an SRO's listing standards is subject to periodic inspections by Commission staff, as is enforcement of all SRO rules, and should the Commission find that an exchange designated in Rule 146(b) is not adequately enforcing its requirements for initial and continued listing, the Commission will take appropriate action to "revoke" that exchange's exemption.

With regard to applying the "substantially similar" standard, the Commission notes that under section 18(b)(1)(B) of the Securities Act the Commission has the authority to compare the listing standards of a petitioner with those of either the NYSE, Amex, or Nasdaq/NMS. The Commission initially has attempted to compare a petitioner's listing standards for all securities with only one of these markets.¹³ If a petitioner's listing standards in a particular category did not meet the standards of that market, the Commission compared the petitioner's standards to the other two markets. Additionally, the Commission has interpreted the substantially similar standard to require listing standards at least as comprehensive as those of the markets named in section 18(b)(1)(A). If a petitioner's standards were higher than such markets, then the Commission still determined that the petitioner's standards were substantially

however, all three primary markets were to raise their listing standards, and the Commission believed that the change was significant enough so that failure to adopt the new standard rendered the exchanges designated in Rule 146(b) to have substantially inferior standards, then the Commission may require the latter exchanges to raise their standards in order to maintain their exemption under the Rule.

¹² Although the Administrative Procedure Act states that an agency must provide general notice of the proposed rulemaking and an opportunity for comment, these requirements do not apply if the agency for good cause, finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B).

¹³ For purposes of comparing the listing standards of the CBOE and Tier I of the PCX, the Commission used the listing standards applicable to securities listed on the Amex.

similar to these markets. Finally, the Commission has reviewed the listing standards for each type of security in making the substantially similar determination. Differences in language or approach of the listing standards for a particular security did not necessarily lead to a determination that the listing standards of a petitioner are not substantially similar to those of the named exchange.

The Commission has reviewed the current Tier I listing standards of the PCX, and the current listing standards of the CBOE and, for the reasons discussed below, preliminarily believes that these listing standards are substantially similar to those of the NYSE, the Amex or Nasdaq/NMS. As noted above, the Commission preliminarily believes that while most of the Tier I listing standards of the CHX and Phlx meet the substantially similar requirement, they differ from those of the NYSE, Amex, or Nasdaq/NMS in several important respects. Accordingly, the proposed Rule will designate securities listed on Tier I of the PCX and securities listed on the CBOE as covered securities under section 18 of the Securities Act.

A. Tier I of the Pacific Exchange, Inc.

1. Common Stock¹⁴

With limited exceptions, the PCX's quantitative¹⁵ initial listing requirements for common stock listing on Tier I of the Exchange are identical to, or slightly higher than, those of the Amex.¹⁶ Amex and PCX have virtually identical requirements relating to net worth and pre-tax income of listed companies, public distribution of shares¹⁷ and market value of shares publicly held. There are only two material differences between the initial listing standards of the PCX and Amex which render the PCX's standards slightly more restrictive than those of the Amex. First, the PCX requires that issuers applying for listed status have a net income of \$400,000 in the last fiscal year, or two of the last three fiscal years, while the Amex does not have a net

⁶ H.R. Rep. No. 622, 104th Cong., 2d Sess., pt. 1, at 30 (1996) ("Legislative History"). As a result of this federal preemption of the state registration process, SRO listing standards have become all the more critical to preserving the integrity of U.S. financial markets and protecting investors.

⁷ See Legislative History *supra* note 6.

⁸ See Petitions, *supra* note 3.

⁹ The Commission notes that presently the CBOE has one tier, or segment, for listing purposes.

¹⁰ See Legislative History, *supra* note 6.

¹¹ If, however, either the NYSE, Amex, or Nasdaq/NMS raised its listing standards with respect to a particular security, a conforming change by the exchanges designated in Rule 146(b) may not necessarily be required for two reasons. First, section 18(b)(1)(B) requires that the regional exchanges' listing standards be substantially similar to only one of the primary markets in order to qualify for the exemption. Second, a listing standard change made by the primary market should not force the regional exchanges to conform their listing standards. Otherwise, a single primary market would be, in effect, setting the listing standards for all the regional exchanges. If,

¹⁴ See generally, PCX Rules 3.2(c), 3.3, and 3.5(b) and Amex Sections 102, 120, 121, 122, 123 and 1003.

¹⁵ As used herein, the term "quantitative" refers to listing standards bearing on the financial status of the issuer as well as the depth and liquidity of the issue.

¹⁶ The Commission notes that it has used the listing standards applicable to securities listed on the Amex for the purposes of this comparison. See *supra*, note 13 and accompanying text. In addition, in the PCX Petition, the Exchange noted that the PCX's Tier I listing standards in most respects were "substantially identical" to those of the Amex.

¹⁷ The term "public distribution of shares" refers to the issuer's "float," or number of shares that are outstanding and available for public trading.

income requirement. Second, the Amex has a minimum market price requirement of \$3 per share¹⁸ for a reasonable period of time prior to the filing of a listing application. In contrast, the PCX requires a closing bid price of \$5 at the time of filing of the listing application and for a majority of business days during the six month period prior to the filing of the application.

PCX's qualitative¹⁹ initial listing standards for common stock listed on Tier I of the exchange are either identical or substantially similar to those of the Amex. Amex and PCX have virtually identical requirements relating to the number of independent directors required, conflicts of interest, composition of the audit committee (both exchanges require the audit committee to be comprised of a majority of independent directors), and annual meetings. Moreover, the rules of both the PCX and the Amex have minimum voting rights standards that are substantially similar to each other and protect the voting rights of common shareholders.

Although the PCX requirements relating to quorum, corporate action requiring shareholder approval, publication and content of annual reports, and publication of interim reports differ slightly from those of the Amex, the Commission preliminarily believes that, taken as a whole, they are substantially similar to those of the Amex. Both exchanges have provisions regarding shareholder approval for certain corporate activities. Although Amex rules differ slightly from PCX's by specifically requiring a majority of shareholder votes cast (either in person or by proxy) to approve certain corporate action, whereas PCX rules do not provide for a minimum required number of votes,²⁰ both exchanges have substantially similar requirements regarding which particular corporate actions require a shareholder vote.²¹

The Commission preliminarily believes that the maintenance requirements for common stock listed on Tier I of the PCX, while not identical,

are substantially similar to those of the Amex. With respect to public distribution of shares, both the PCX and Amex require the same number of shares publicly held, but the PCX requires 400 (or 300 round lot) public stockholders, while the Amex requires 300 public stockholders. Both the Amex and PCX have delisting criteria which are triggered by poor financial conditions and/or operating results of the issuer.²² In addition, the Amex may delist an equity issue (i) if the issuer has sustained losses from continuing operations or net losses for its five most recent fiscal years; or (ii) has sustained losses that are so severe that the ability of the issuer to continue operations or meet its obligations as they come due is questionable.²³ The PCX has no provisions like (i) and (ii) above, although the PCX requires a minimum bid price for continued listing of \$3 per share. The minimum bid price requirement, while not a complete substitute for the Amex criteria, can help to remove issuers in continuing financial distress or near bankruptcy. Based on the above, the Commission preliminarily believes that the differences in the maintenance criteria for common stock listed on the Amex and on Tier I of the PCX are not critical and that, taken as a whole, the criteria are substantially similar.

2. Preferred Stock²⁴

With one exception, the PCX's quantitative initial listing requirements for preferred stock on Tier I of the Exchange are identical to those of the Amex. Amex and PCX have identical requirements relating to net worth and pre-tax income of listed companies, share price, public distribution of shares, and market value of shares publicly held. As noted above in the discussion of listing requirements for common stock, the PCX has an issuer net income requirement of \$400,000 in the last fiscal year, or two of the last three fiscal years, while the Amex has no corresponding requirement.

The PCX and Amex have substantially similar provisions for voting rights for holders of preferred shares and redemption of preferred stock. With respect to conversion rights, if the preferred shares are convertible into common shares, the common shares must meet the PCX's Tier I listing

requirements. In addition, the PCX will not list a convertible issue where the issuer can change the conversion price other than as allowed in the issuer's articles of incorporation. The Amex will not list a convertible issue where the issuer has discretion to reduce the conversion price unless the issuer establishes a minimum 10 day period within which such price reduction will be in effect.²⁵

The Commission preliminarily believes that the maintenance standards for preferred stock listed on PCX's Tier I, while not identical, are substantially similar to those of the Amex. In addition, where the maintenance standards of the PCX and Amex differ, the PCX's standards are, for the most part, more demanding than those of the Amex. The PCX requires a preferred issue to maintain a public float of at least 100,000 shares with a minimum of 150 public holders and a minimum market value of \$1,000,000. The Amex requires a preferred issue to maintain a public float of at least 50,000 shares with a market value of at least \$1,000,000. The Amex does not require a minimum number of public shareholders. Both Amex and PCX have identical maintenance requirements relating to the net worth of the issuer.

3. Bonds and Debentures²⁶

While the PCX and the Amex take a different approach to regulating the listing of debt securities, the Commission believes that the rules of both exchanges are designed to ensure that issuers of debt securities can meet their debt obligations as they come due, thereby protecting investors. Accordingly, the Commission preliminarily believes that the PCX's rules relating to the initial and continued listing of debt securities on Tier I of the Exchange are substantially similar to those of the Amex.

Under Amex rules, the Exchange may list a debt security if any of the following conditions are met: (a) The issuer of the debt security also has equity securities listed on the Amex or the NYSE; (b) an issuer of equity securities listed on the Exchange (or the NYSE) directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security; (c) an issuer of equity

¹⁸ Section 102(b) of the Amex rules permits the Exchange to consider listing an issue selling for less than \$3 per share in certain instances.

¹⁹ The term "qualitative" as used here refers to listing standards that do not bear on the financial status of the issuer, and includes corporate governance standards.

²⁰ We note that although PCX rules do not specifically dictate the number of votes required, this would presumably be governed by the laws of the state of incorporation.

²¹ See, e.g., PCX Rule 3.3(d) and Amex section 711 regarding applications to list additional shares reserved for options granted to officers, directors, or key employees of the company.

²² See generally, PCX Rule 3.5(b)(3)(i),(ii) and Amex Section 1003(a)(i),(ii).

²³ The Amex applies these delisting standards generally to all securities listed on the Exchange, and provides additional separate maintenance standards for certain specific securities.

²⁴ See generally, PCX Rules 3.2(d), 3.3(h) and 3.5(c) and Amex Sections 103, 124 and 1003.

²⁵ It is important to emphasize that such transactions constitute tender offers subject to Rule 13e-4 of the Exchange Act. See, e.g., letter regarding Heritage Entertainment, Inc. (Apr. 10, 1987). Accordingly, such an offer must remain open for a minimum of 20 business days. See Exchange Act Rules 13e-4(f)(1)(i) and 14e-1(a). 17 CFR 240.13e-4(f)(1)(i) and 17 CFR 240.14e-1(a).

²⁶ See generally, PCX Rules 3.2(e) and 3.5(d) and Amex Sections 104 and 1003.

securities listed on the Amex or NYSE has guaranteed the debt security; (d) a nationally recognized securities [sic] rating organization ("NRSRO")²⁷ has assigned a current rating to the debt security that is no lower than an S&P Corporation "B" rating or equivalent rating by another NRSRO; or (e) if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned:

- (i) An investment grade rating to an immediately senior issue; or
- (ii) a rating that is no lower than an S&P Corporation "B" rating, or an equivalent rating by another NRSRO, to a *pari passu* or junior issue.

In addition, a debt issue listed on the Amex must have an aggregate market value or principal amount of \$5,000,000. These requirements are designed to ensure that the issuer (or guarantor) of a debt security listed on the Amex is in reasonably sound financial condition, while also providing the Amex with considerable flexibility in determining which debt issues qualify for listing on the Exchange.

While the PCX rules do not provide the Exchange with quite as much flexibility in determining which debt issues qualify for listing, the PCX's rules also focus on the financial condition of the issuer. PCX rules require an issuer of a debt security to have net worth, pre-tax income, and net income equal to those of issuers of common stock listed on Tier I, as well as to appear to have the ability to meet interest and principal payments as they come due. In addition, where the common stock of the issuer of a debt security is listed on the PCX, Amex or NYSE, PCX rules require the debt issue to have an aggregate market value and principal amount of at least \$5,000,000, and at least 100 public beneficial holders. Where the common stock of the issuer of the debt security is not listed on the PCX, Amex or NYSE, PCX rules require the debt issue to have an aggregate market value and principal amount of at least \$20,000,000, and at least 100 public holders.

PCX rules relating to redemption for debt securities are virtually identical to those of the Amex. With respect to conversion rights, if the debt security is convertible into common shares, the common shares must meet the PCX's Tier I listing requirements.²⁸

The Commission preliminarily believes that the maintenance

requirements for debt securities listed on PCX Tier I, while not identical, are substantially similar to those of the Amex. The PCX and Amex have identical requirements relating to the continuing net worth of the issuer.²⁹ Further, with regard to earnings, both exchanges may delist a debt issue if the issuer has sustained losses from continuing operations or net losses for its five most recent fiscal years. The Amex also may delist a debt security if the issuer has sustained losses that are so severe that the ability of the issuer to continue operations or meet its obligations as they come due is questionable. Finally, the PCX requires that debt securities maintain an aggregate market value and principal amount of at least \$1,000,000 each and have 100 public beneficial holders. The Amex requires the aggregate market value or the principal amount of the bonds publicly held to be \$400,000, but has no minimum number of public holders.

4. Options³⁰

With respect to standardized options, the Commission preliminarily believes that the listing standards of the PCX are substantially similar to those of the Amex. The Commission notes that no exchange has standards establishing qualifications for issuers of exchange-traded options since all such options are issued by the Options Clearing Corporation ("OCC").³¹ All of the exchanges that trade standardized options have minimum standards for the selection of underlying stocks and other underlying interest, and these standards are essentially the same on all exchanges that trade a particular type of option.³²

With respect to initial selection criteria for underlying securities, both the Amex and the PCX have virtually identical quantitative requirements relating to number of shares publicly held, number of public shareholders, market price of the underlying security and trading volume. Both exchanges require that an underlying security be listed on a national securities exchange or designated a National Market System ("NMS")³³ security. Under PCX rules, where a security has been listed on a

national securities exchange or designated as a NMS security for less than one year preceding application for approval as an underlying security the Exchange may consider, in calculating the trading volume of the security, over-the-counter volume as reflected in the Nasdaq system. The Amex has no corresponding provision.

The Commission preliminarily believes that the maintenance requirements for underlying securities for options listed on PCX Tier I, while not identical, are substantially similar to those of the Amex. Amex and PCX have virtually identical requirements for the underlying security relating to number of shares publicly held, number of public shareholders, trading volume and market price per share.

With regard to broad-based index options, the Commission notes that the listing of a class of index options on a new underlying index must be filed with the Commission as a proposed rule change under section 19(b) of the Exchange Act. Both the PCX and the Amex, however, have substantially similar requirements for all stock index options listed on each respective exchange. More specifically, the PCX's position and exercise limits, requirements regarding dissemination of index values, margin requirements, and settlement terms are substantially similar to those of the Amex.

Both the PCX and the Amex trade narrow-based index options which have separate initial listing and maintenance requirements. Both exchanges have rules allowing certain narrow-based index options to be listed using an expedited procedure which involves submitting to the Commission a proposed rule change to list the option under section 19(b)(3)(A) of the Exchange Act. The Commission preliminarily believes that, while the requirements for the expedited listing of narrow-based index options differ slightly, they are substantially similar. The PCX and the Amex have virtually identical eligibility criteria for index components relating to market value, trading volume, calculation of the index, reporting the underlying index value and inclusion of non-U.S. component securities. Finally, the Commission preliminarily believes that the maintenance requirements for underlying securities comprising narrow-based index options listed on PCX Tier I, while not identical, are substantially similar to those of the Amex.

²⁷ The acronym "NRSRO" generally refers to Nationally Recognized Statistical Rating Organization. See, e.g. Regulation S-B, 17 CFR 228.10(e).

²⁸ Changes in conversion prices under PCX and Amex listing standards are handled the same as noted for preferred securities. See Section III, A(2), *supra*.

²⁹ See generally, PCX Rule 3.5(c)(3)(i),(ii) and Amex Section 1003(a)(i), (ii).

³⁰ See generally, PCX Rules 3.6, 3.7 and 7.3 and Amex Sections 915, 916 and 901(C).

³¹ All options issued by the OCC have the equal protection of OCC's backup system of clearing member obligations, margin deposits and clearing funds. See PCX, CBOE and Phlx Petitions, *supra* note 3.

³² See PCX and Phlx Petitions, *supra* note 3.

³³ See Exchange Act Rule 11Aa2-1, 17 CFR 240.11Aa2-1.

5. Warrants³⁴

The Commission preliminarily believes that the PCX's Tier I listing requirements for warrants, while not identical, are substantially similar to those of the Amex. First, both exchanges require that the security underlying the warrant be listed on the respective exchange (or the NYSE under Amex rules). Second, while the public distribution requirements are different,³⁵ the Commission preliminarily believes that both exchanges' rules are sufficient to ensure the depth and liquidity of the issue. There are other notable differences between the listing standards of the PCX and the Amex. First, where the stock underlying a warrant has split 3 for 2 or greater, the Amex requires a corresponding split in the warrant. Second, the PCX and Amex have different rules relating to warrant exercise price provisions. In particular, the PCX will not list a warrant where the issuer may change the exercise price other than in accordance with the issuer's warrant agreement. The Amex will not list a warrant where the issuer has discretion to reduce the exercise price, unless the company establishes a minimum period of 10 days within which such price reduction will be in effect.³⁶ Taken as a whole, however, the Commission preliminarily believes that the differences between the two exchanges are not significant for purposes of the substantially similar finding.

With regard to maintenance standards, the Amex does not have a separate requirement for warrants, but will apply its general suspension and delisting policies in sections 1001 through 1006 of the Amex Company Guide. The PCX requires that the underlying security subject to the warrant continue to meet maintenance standards for that security. Taken as a whole, however, the Commission preliminarily believes that the listing standards for warrants on Tier I of the PCX are substantially similar to those of the Amex.

6. Currency and Index Warrants³⁷

The PCX and the Amex have nearly identical initial listing requirements regarding currency and index warrants.

³⁴ See generally, PCX Rules 3.2(f) and 3.5(e), and Amex Sections 105 and 1001—1006.

³⁵ PCX rules require a public distribution of 500,000 warrants to no less than 250 public holders, while the Amex requires either 500,000 warrants held by at least 800 public holders or 1,000,000 warrants held by at least 400 public holders.

³⁶ See *supra* note 25.

³⁷ See generally, PCX Rule 8.3(a), and Amex section 106.

More specifically, standards relating to issuer net worth and net income, public distribution, term of the warrants, settlement value, automatic exercise provisions, inclusion of foreign country securities, and changes in the number of warrants outstanding are identical. Neither the PCX nor the Amex have separate maintenance requirements relating to currency and index warrants.³⁸

7. Other Securities³⁹

The Commission preliminarily believes that the listing standards for other securities on the PCX are substantially similar to those of the Amex.⁴⁰ Both exchanges have provisions whereby they will consider listing any security not otherwise covered by the exchange's listing standards, provided the issue is otherwise suited for auction market trading. The Amex and the PCX have virtually identical requirements relating to the issuer's total assets, net worth,⁴¹ the number of trading units initially sold to the public and number of public holders of the security. The PCX requires that the security have a principal amount or aggregate market value of \$20,000,000 while the Amex requirement is \$4,000,000. The Commission preliminarily believes that, taken as a whole, the PCX's listing standards for other securities are substantially similar to those of the Amex.

8. Contingent Value Rights ("CVRs")⁴²

The Amex does not have separate listing standards for CVRs, therefore, the Commission has compared the PCX's listing standards for CVRs with the NYSE's CVR listing standards. Both the PCX and the NYSE require that the issuer of the CVR meet the net worth and earnings requirements for common

³⁸ Unlike the PCX, Amex rules allow for the listing and trading of warrants on narrow-based, or industry group, indexes. Pursuant to Section 106(i) of the Amex Company Guide, narrow-based index warrants listed on the Amex must continuously be comprised of nine or more stocks. The PCX currently does not have such a maintenance requirement because the PCX is not currently approved for narrow-based index warrant trading. See Securities Exchange Act Release No. 37007 (March 21, 1996) at note 8.

³⁹ See generally, PCX Rule 3.2(j) and Amex Section 107.

⁴⁰ The Commission notes that the both the PCX's and Amex's rules provide for the trading of limited partnership interests, and that these listing standards are substantively identical.

⁴¹ See Securities Exchange Act Release No. 30087 (Dec. 17, 1991) (Order approving PCX's listing standards for other securities).

⁴² See generally, PCX Rule 3.2(g) and 3.5(f) and NYSE Listed Company Manual Paragraph 703.18.

stock listed on the exchange,⁴³ and have \$100,000,000 in assets. The PCX requires a public distribution of 600,000 units to 1,200 holders while the NYSE requires a public distribution of 1,000,000 units to 400 holders. Additionally, the PCX requires that CVRs have a minimum aggregate market value of \$18,000,000, while the NYSE requirement is \$4,000,000. Finally, both exchanges require that CVR's have a minimum maturity of one year. The Commission preliminarily believes that, while different in some respects, the CVR listing standards of both exchanges will serve to ensure adequate depth and liquidity of the issue, and that the exchange's requirements are substantially similar.

The maintenance requirements for CVRs of both the PCX and NYSE are substantially similar, requiring the CVR to maintain an aggregate market value of at least \$1,000,000. In addition, under the rules of both exchanges a CVR may be delisted if the related equity security to which the cash payment at maturity is tied is delisted.

9. Equity Linked Notes ("ELNs")⁴⁴

The PCX and the Amex have virtually identical listing standards for ELNs. Both Exchanges have requirements relating to the term of the ELNs, net worth of the issuer, total original issue price, public distribution, market value of the ELNs, and the market capitalization and trading volume of the underlying "linked" security. While the exchanges' rules differ slightly with regard to requirements for non-U.S. issuers, the Commission preliminarily believes that, as a whole, the PCX's listing standards for ELN's are substantially similar to those of the Amex.

10. Unit Investment Trusts ("UITs")⁴⁵

The PCX and the Amex have virtually identical listing requirements relating to UITs. Specifically, the net worth, number of interests distributed, number of holders, minimum term, and voting requirements of the two exchanges are nearly identical. Further, PCX rules requiring that the trustee of a UIT be a trust company or banking institution with substantial capital and surplus, as well as conflict of interest provisions, while not identical, are substantially similar to the requirements of the Amex. Finally, the PCX and Amex have substantially similar criterion for

⁴³ In the case of PCX, the issuer must meet the Tier I Listing Requirements for common stock.

⁴⁴ See generally, PCX Rule 3.2(j)(3) and Amex section 107(B).

⁴⁵ See generally, PCX Rule 3.2(h) and 3.5(g) and Amex Section 118(B), 1002 and 1006.

determining whether or not to delist a UIT.⁴⁶

B. Chicago Board Options Exchange⁴⁷

1. Common Stock⁴⁸

With limited exceptions, the CBOE's quantitative initial listing requirements applicable to common stock listed on the Exchange are identical to those of the Amex.⁴⁹ Amex and CBOE have virtually identical requirements relating to net worth⁵⁰ and pre-tax income of listed companies, public distribution of shares⁵¹ and market value of shares publicly held. There are only two notable differences between the initial listing standards of the CBOE and Amex, but these render the CBOE's standards slightly more restrictive than those of the Amex. First, the CBOE requires that issuers applying for listed status have a net income of \$400,000, while the Amex does not have a net income requirement. Second, the Amex has a minimum market price requirement of \$3 per share⁵² for a reasonable period of time prior to the filing of a listing application. In contrast, the CBOE requires a stock price of \$5 per share at the time of filing.

CBOE's qualitative initial listing standards for common stock listed on the exchange, where they are not identical, are substantially similar to

those of the Amex. Amex and CBOE have virtually identical requirements relating to the number of independent directors required, conflicts of interest, composition of the audit committee,⁵³ corporate action requiring shareholder approval,⁵⁴ publication and content of annual reports and annual meetings. Moreover, the rules of both the CBOE and the Amex have minimum voting rights standards that are substantially similar to each other and protect the voting rights of common shareholders. Although the CBOE requirements relating to quorum, and publication of interim reports differ slightly from those of the Amex, the Commission preliminarily believes that, taken as a whole, the qualitative initial listing standards of the CBOE are substantially similar to those of the Amex.

The Commission preliminarily believes that the maintenance requirements for common stock listed on the CBOE are virtually identical to those of the Amex. The Amex and CBOE have virtually identical requirements relating to the required number of shares outstanding, number of public shareholders and aggregate market value of shares publicly held. Moreover, the Amex and CBOE have virtually identical requirements relating to the financial condition of the issuer. Finally, while the CBOE has a minimum bid price of \$3 per share and the Amex does not have a minimum bid price for continued listing, the Amex will consider delisting an issue that is selling for "a substantial period of time" at a low price per share.

2. Preferred Stock⁵⁵

With one exception, the CBOE's quantitative initial listing requirements for preferred stock on the Exchange are identical to those of the Amex. Amex and CBOE have identical requirements relating to net worth and pre-tax income of listed companies, share price, public distribution of shares, and market value of shares publicly held. As noted above in the discussion of listing requirements for common stock, the CBOE has an issuer net income requirement of

\$400,000, while the Amex has no corresponding requirement.

The CBOE and Amex have substantially similar provisions for voting rights for holders of preferred shares.⁵⁶ Both Exchanges require a majority vote for the creation of a class of preferred stock equal in preference to the issue to be listed. The CBOE does not have any rule relating to conversion or redemption rights. The Amex will not list a convertible issue where the issuer has discretion to reduce the conversion price unless the issuer establishes a minimum 10 day period within which such price reduction will be in effect.⁵⁷ The Commission preliminarily does not find these differences critical, and believes that the CBOE's listing standards for preferred securities are substantially similar to those of the Amex.

The Commission preliminarily believes that the maintenance standards for preferred stock listed on the CBOE are virtually identical to those of the Amex. CBOE and the Amex have virtually identical requirements relating to public float and minimum market value.

3. Bonds and Debentures⁵⁸

The CBOE and the Amex have virtually identical listing requirements for bonds and debentures. Both Exchanges require the issue to have a market value or principal amount of at least \$5,000,000 and have virtually identical requirements relating to conversion and redemption provisions. In addition, both Exchanges review the financial status of the issuer or bond rating of the issue to be listed.

The Commission preliminarily believes that the maintenance requirements for debt securities listed on CBOE, are virtually identical to those of the Amex. The CBOE and Amex have identical requirements relating to the continuing net worth of the issuer.

4. Options⁵⁹

With respect to standardized options, the Commission preliminarily believes that the listing standards of the CBOE are substantially similar to those of the Amex. The Commission notes that no exchange has standards establishing qualifications for issuers of exchange-

⁴⁶ The Commission notes that the PCX maintenance requirements for UITs are more demanding because the PCX requires UITs to maintain an aggregate market value of \$1,000,000, while the Amex has no corresponding provision. Additionally, the UIT will be delisted on the PCX if the security to which the cash payment of the UIT at term is tied is delisted. See PCX Rule 3.5(g).

⁴⁷ Although the CBOE's business has been almost exclusively devoted to options, their rules give them the authority to list and trade non-option securities as well. See Chapter XXXI of CBOE Rules.

⁴⁸ See generally, CBOE Rules 31.5(A), 31.9, 31.10, 31.11, 31.12 and 31.94(C)(a), (b)(i) and Amex Sections 102, 120, 121, 122, 123 and 1003(a), (b)(i).

⁴⁹ The Commission notes that it has used the listing standards applicable to securities listed on the Amex for the purposes of this comparison. See *supra*, note 13 and accompanying text. In addition, in the CBOE Petition the Exchange states that the Commission, in approving the CBOE's listing standards for non-option securities, noted that the new listing standards were, with slight variations, the same as the existing listing standards on the American Stock Exchange. See Securities Exchange Act Release No. 28556 (Oct. 19, 1990), 55 FR 43233 (Oct. 26, 1990).

⁵⁰ CBOE defines net worth as total assets less total liabilities, while the Amex uses stockholder's equity to measure the financial size of a company applying for listed status.

⁵¹ The term "public distribution of shares" refers to the issuer's "float," or number of shares that are outstanding and available for public trading.

⁵² Section 102(b) of the Amex rules permit the Exchange to consider listing an issue selling for less than \$3 per share in certain instances. The \$3,000,000 aggregate market value requirement may not be waived by the Exchange.

⁵³ Amex rules require that the audit committee be comprised of a majority of independent directors, while CBOE rules require that the audit committee be composed entirely of independent directors. See Securities Exchange Act Release No. 28556 (Oct. 19, 1990), 55 FR 43233 (Oct. 26, 1990).

⁵⁴ See, e.g., CBOE Rules 31.79, 31.80 and 31.81 and Amex Section 711 regarding applications to list additional shares reserved for options granted to officers, directors, or key employees of the company.

⁵⁵ See generally, CBOE Rules 31.5(B), 31.13 and 31.94(C)(b)(ii) and Amex sections 103, 124 and 1003(b)(ii).

⁵⁶ The only substantive difference is that where the Amex requires a two-thirds vote of the preferred shareholders to create a class of preferred stock more senior to the issue to be listed, the CBOE requires a majority vote.

⁵⁷ See *supra* note 25.

⁵⁸ See generally, CBOE Rules 31.5(C), 31.14 and 31.94(C)(B)(iii) and Amex sections 104, 125 and 1003(b)(iii).

⁵⁹ See generally, CBOE Rules 5.3, 5.4 and 24.2 and Amex sections 915, 916 and 901(C).

traded options since all such options are issued by the Options Clearing Corporation ("OCC").⁶⁰ All of the exchanges that trade standardized options have minimum standards for the selection of underlying stocks and other underlying interest, and these standards are essentially the same on all exchanges that trade a particular type of option.⁶¹

With respect to initial selection criteria for underlying securities, both the Amex and the CBOE have virtually identical quantitative requirements relating to number of shares publicly held, number of public shareholders, market price of the underlying security and trading volume. Both Exchanges require that an underlying security be listed on a national securities exchange or designated as an NMS security.

The Commission preliminarily believes that the maintenance requirements for underlying securities for options listed on CBOE, while not identical to the Amex standards, are substantially similar to those of the Amex. Amex and CBOE have virtually identical requirements for the underlying security relating to number of shares publicly held, number of public shareholders, trading volume and market price per share. In addition, Amex and CBOE have virtually identical rules relating to delisting options.

With regard to broad-based index options, the Commission notes that the listing of a class of index options on a new underlying index must be filed with the Commission as a proposed rule change under section 19(b) of the Exchange Act. Both the CBOE and the Amex, however, have substantially similar requirements for all stock index options listed on each respective exchange. More specifically, the CBOE's position and exercise limits, requirements regarding dissemination of index values, margin requirements, and settlement terms are substantially similar to those of the Amex.

Both the CBOE and the Amex trade narrow-based index options which have separate initial listing and maintenance requirements. Both exchanges have rules allowing certain narrow-based index options to be listed using an expedited procedure which involves submitting to the Commission a proposed rule change to list the option under section 19(b)(3)(A) of the Exchange Act. The Commission

preliminarily believes that, while the requirements for the expedited listing of narrow-based index options differ slightly, they are substantially similar. The Amex and the CBOE have virtually identical eligibility criteria for index components relating to market value, trading volume, calculation of the index, reporting the underlying index value and inclusion of non-U.S. component securities. Finally, the Commission preliminarily believes that the maintenance requirements for underlying securities comprising narrow-based index options listed on CBOE, while not identical, are substantially similar to those of the Amex.

5. Warrants⁶²

The Commission preliminarily believes that the CBOE's listing requirements for warrants, while not identical, are substantially similar to those of the Amex. Both exchanges require that the security underlying the warrant be listed on the respective exchange.⁶³ In addition, both CBOE and Amex have public distribution requirements identical to those for common stock. There are some differences, however, in each Exchange's listing standards for warrants. First, the Amex will not list a warrant where the issuer has discretion to reduce the exercise price unless the company establishes a minimum period of 10 days within which such price reduction will be in effect.⁶⁴ Second, under Amex rules, redeemable issues must be redeemable pro rata or by lot. Third, the Amex requires at least 20 days notice if the issuer is going to extend the expiration date of the warrants. Finally, where the stock underlying a warrant has split 3 for 2 or greater, the Amex requires a corresponding split in the warrant. While the CBOE has no corresponding rules relating to exercise price, redemption, extension of expiration date or stock splits, the Commission preliminarily believes that, taken as a whole, the CBOE's listing standards for warrants are substantially similar to those of the Amex.

6. Currency and Index Warrants⁶⁵

The CBOE and the Amex have nearly identical initial listing requirements

regarding currency and index warrants. More specifically, standards relating to issuer tangible net worth and net income, public distribution, term of the warrants, settlement value, automatic exercise provisions, inclusion of foreign country securities, position and exercise limits and changes in the number of warrants outstanding are identical.

Both the Amex and the CBOE provide a maintenance standard for stock index warrants in that they require the index to be comprised of at least nine stocks at all times. In addition, Amex rules allow for the listing of warrants on stock index industry groups pursuant to section 19(b)(3)(A) of the Exchange Act, if the Exchange follows the procedures and criteria set forth in Commentary .02 to Amex Rule 901C ("Designation of Stock Index Options").

7. Other Securities⁶⁶

The Commission preliminarily believes that the listing standards for other securities on the CBOE are substantially similar to those of the Amex.⁶⁷ Both exchanges have provisions whereby they will consider listing any security not otherwise covered by the exchange's listing standards, provided the issue is otherwise suited for auction market trading. The Amex and the CBOE have virtually identical requirements relating to the issuer's total assets, stockholder's equity, the number of trading units initially sold and principal amount or aggregate market value of the issue. With respect to public distribution, both CBOE and Amex require a minimum of 400 public shareholders.⁶⁸

8. Contingent Value Rights ("CVRs")⁶⁹

As noted above, the Amex does not have separate listing standards for CVRs, therefore, the Commission has compared the CBOE's listing standards for CVRs with the NYSE's CVR listing standards. Both the CBOE and the NYSE require that the issuer of the CVR meet the net worth and earnings requirements for common stock listed on the exchange, and have \$100,000,000 in assets. Moreover, both the CBOE and the

⁶⁶ See generally, CBOE Rule 31.5(F), and Amex Section 107.

⁶⁷ The Commission notes that the rules of both the CBOE and Amex allow for the trading of other miscellaneous securities. Both exchanges have substantially similar listing standards for the trading of limited partnership interests, paired securities, subscription rights, and foreign issuer securities.

⁶⁸ Where the security is traded in \$1,000 increments, the CBOE requires a minimum of 100 shareholders while the Amex does not require a minimum number of shareholders.

⁶⁹ See generally, CBOE Rule 31.5(H), and NYSE Listed Company Manual Paragraph 703.18.

⁶⁰ All options issued by the OCC have the equal protection of OCC's backup system of clearing member obligations, margin deposits and clearing funds. See PCX, CBOE and Phlx Petitions, *supra* note 3.

⁶¹ See PCX and Phlx Petitions, *supra* note 3.

⁶² See generally, CBOE Rule 31.5(D) and Amex section 105.

⁶³ CBOE rules require that the security underlying the warrant be listed on the CBOE, Amex or NYSE, while Amex rules require the security underlying the warrant to be listed on the Amex or the NYSE.

⁶⁴ See *supra* note 25.

⁶⁵ See generally, CBOE Rule 31.5(e), and Amex Section 106.

NYSE require a public distribution of 1,000,000 units to 400 holders, and a minimum aggregate market value of \$4,000,000. Finally, both exchanges require that CVR's have a minimum maturity of one year. Accordingly, other than the greater size and earnings criteria applicable to all issuers listing on the NYSE, the CVR listing standards of the CBOE and NYSE are substantively identical.

While the CBOE has no separate maintenance requirements for CVRs, the CBOE will apply its general suspension and delisting policies set forth in CBOE Rule 31.94 to CVRs.⁷⁰ The NYSE will consider delisting a CVR if the market value of the publicly-held CVRs is less than \$1,000,000 or when the related equity security to which the cash payment at maturity is tied is delisted.

9. Equity Linked Notes ("ELNs")⁷¹

The CBOE and the Amex have virtually identical listing standards for ELNs. Both Exchanges have requirements relating to the term of the ELNs, net worth of the issuer, total original issue price, public distribution, market value of the ELNs, and the market capitalization and trading volume of the underlying "linked" security. Moreover, both exchanges have substantially similar requirements for ELNs linked to non-U.S. stocks. Accordingly, the Commission preliminarily believes that the CBOE's listing standards for ELN's are substantially similar to those of the Amex.

10. Unit Investment Trusts (UITs)⁷²

The CBOE and the Amex have virtually identical listing requirements relating to UITs. Specifically, the net worth, number of interests distributed, number of holders, minimum term, and voting requirements of the two exchanges are nearly identical. Further, CBOE rules requiring that the trustee of a UIT be a trust company or banking institution with substantial capital and surplus, as well as CBOE's conflict of interest provisions, while not identical, are substantially similar to the requirements of the Amex. Finally, the CBOE and Amex have virtually identical maintenance standards for UITs.

C. Philadelphia Stock Exchange and Chicago Stock Exchange

The Commission also has reviewed the Tier I listing standards of the Phlx⁷³ and CHX,⁷⁴ and preliminarily believes that, while most of their Tier I listing standards are substantially similar to those of the NYSE, Amex, or Nasdaq/NMS, they differ in several important respects. Unlike the NYSE, Amex, or Nasdaq/NMS, the Phlx does not have a maintenance standard for bonds and debentures listed on Tier I of the Exchange. Moreover, with respect to currency and index warrants, the Phlx has no public distribution, aggregate market value, nor term to maturity requirements. Additionally, issuers of "other securities" listed on Tier I of the Phlx are required to have pre-tax income of only \$100,000 in three of the four last fiscal years, versus the Amex requirement⁷⁵ that issuers have \$750,000 in pre-tax income in their last fiscal year, or in two of their last three fiscal years.⁷⁶ With respect to the CHX, common stock listed on Tier I of the Exchange is not subject to any minimum share price requirement for continued listing.

The Commission preliminarily believes that these deficiencies are material and prevent the Commission from making a determination that the Tier I listing standards of the CHX and Phlx are substantially similar to those of the NYSE, Amex, or Nasdaq/NMS. Should the Phlx and CHX decide to revise their Tier I listing standards to conform them to the NYSE, Amex, or Nasdaq/NMS prior to adoption of the proposed Rule, however, the Commission likely would include securities listed on these markets in Rule 146(b). Alternatively, should the Phlx and CHX revise their Tier I structure to include within Tier I only those securities with listing standards substantially similar to those of the NYSE, Amex, or Nasdaq/NMS, the Commission would consider including securities listed on the revised Tier I of Phlx and CHX in the Rule.

D. Conclusion

For the reasons discussed above, the Commission preliminarily believes that the listing standards applicable to PCX's

Tier I securities, and the listing standards of the CBOE are substantially similar to those of the Amex.

Accordingly, securities listed on these Exchanges should be deemed covered securities and entitled to an exemption from state blue sky provisions as set forth in section 18(a) of the Securities Act. With respect to the Tier I listing standards of the CHX and Phlx, the Commission preliminarily believes that while most of these standards are substantially similar to the listing standards of the NYSE, Amex, or Nasdaq/NMS, they differ in several important areas.⁷⁷ Should the CHX and Phlx decide to revise their listing standards in these areas to more closely conform to those of the NYSE, Amex, or Nasdaq/NMS before adoption of the proposed rule, the Commission will likely include securities listed on these markets within the Rule.

The Commission preliminarily believes that the proposed rule offers potential benefits for investors. If adopted, the proposed rule will facilitate listings on qualifying exchanges, or tiers or segments thereof, which should increase competition and enhance the overall liquidity of the U.S. securities markets. The Commission does not anticipate that the proposed rule would result in any costs for U.S. investors or others. The Commission preliminarily believes that the proposed rule would serve to reduce the cost of raising capital because it would streamline the registration process for issuers listing on the PCX Tier I or the CBOE. At the same time, the proposed rule does not undercut the state securities review of offerings because the listing standards of the PCX Tier I and the CBOE that would qualify for an exemption from state securities registration are substantially similar to other markets that are already exempt from state registration. Thus, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation and preliminarily believes that it would promote these three objectives.⁷⁸ Finally, the proposed rule would impose no recordkeeping or compliance burdens, and merely would provide a limited purpose exemption under the federal securities laws.

IV. Request for Comments

The Commission seeks comments on the desirability of adopting Rule 146(b). Comments should address whether the listing standards of the CBOE and the listing standards applicable to PCX's

⁷⁰ More specifically, CBOE Rule 31.94(C)(a) requires issuers of all securities listed on the Exchange, including CVRs, to meet certain minimum net worth and earnings standards.

⁷¹ See generally, CBOE Rules 31.5(I), and Amex Section 107(B).

⁷² See generally CBOE Rules 31.5(G) and 31.94(E), and Amex Sections 118(B), 1002 and 1006.

⁷³ See generally, Phlx Rules 803, 804, 810, 812, 837, 839, 842, 843, 846, 847-851.

⁷⁴ See generally, CHX Article XXVIII, Rule 8-17, 19, 20.

⁷⁵ Amex has the lowest requirement of the NYSE, Amex or Nasdaq/NMS with regard to pre-tax income for issuers of other securities.

⁷⁶ Section 107 of the Amex Company Guide generally requires issuers of other securities to meet the earnings requirements for issuers of common stock.

⁷⁷ See Section III, C, *supra*.

⁷⁸ 15 U.S.C. 77b(b).

Tier I are substantially similar to those of the Amex, and whether the Tier I listing standards of the CHX and Phlx are substantially similar to those of the NYSE, Amex, or Nasdaq/NMS. Additionally, comments should address whether the Commission should consider a different approach in designating securities listed on certain national securities exchanges as "covered securities." Commentators also may wish to discuss whether there are any legal or policy reasons for distinguishing between the NYSE, Amex, and Nasdaq/NMS and the regional exchanges for purposes of the Rule. The Commission also solicits comments on the costs and benefits of the proposed rule. Specifically, the Commission requests commentators to address whether the proposed amendment would generate the anticipated benefits, or impose any costs on U.S. investors or others. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. Commentators should provide empirical data to support their views. Finally, commentators should consider the proposed rule's effect on competition, efficiency and capital formation.

V. Administrative Requirements

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. section 605(b), the Chairman of the Commission has certified that the proposed rule would not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release as Appendix A. The Paperwork Reduction Act does not apply because the proposed amendments do not impose recordkeeping or information collection requirements, or other collections of information which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et. seq.*

VI. Statutory Basis

The adoption of Rule 146(b) is being proposed pursuant to 15 U.S.C. 77r *et seq.*, particularly section 18 of the Securities Act unless otherwise noted.

Text of the Proposed Rule

List of Subjects in 17 CFR Part 230

Securities.

For the reasons set forth in the preamble, Title 17, Chapter II of the

Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78l, 78m, 78n, 78o, 78w, 78ll(d), 78t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

2. Section 230.146 is amended by revising the section heading, redesignating the introductory text as paragraph (a), redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (a)(2) and adding paragraph (b) to read as follows:

§ 230.146 Rules under Section 18 of the Act.

* * * * *

(b) *Covered securities for purposes of section 18.* (1) For purposes of Section 18(b) of the Act (15 U.S.C. 77r), the Commission finds that the following national securities exchanges, or segments or tiers thereof, have listing standards that are substantially similar to those of the New York Stock Exchange ("NYSE"), the American Stock Exchange ("Amex"), or the National Market System of the Nasdaq Stock Market ("Nasdaq/NMS"), and that securities listed on such exchanges shall be deemed covered securities:

(i) Tier I of the Pacific Exchange, Incorporated; and

(ii) The Chicago Board Options Exchange, Incorporated.

(2) The designation of securities in paragraphs (b)(1)(i) and (ii) of this section as covered securities is conditioned on such exchanges' listing standards (or segments or tiers thereof) continuing to be substantially similar to those of the NYSE, Amex, or Nasdaq/NMS.

Dated: June 10, 1997.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

Note: Appendix A to the Preamble will not appear in the Code of Federal Regulations.

Appendix A—Regulatory Flexibility Act Certification

I, Arthur Levitt, Jr., Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that proposed Rule 146(b) ("Rule") under the Securities Act of 1933 ("Securities Act"), which will designate securities listed on certain national securities exchanges, or tiers or segments thereof, as covered securities

under Section 18 of the Securities Act, and therefore provide them with an exemption from state registration requirements, will not have a significant economic impact on a substantial number of small entities for the following reasons. Under the Securities Act, a small entity is defined as "an issuer whose total assets on the last day of its most recent fiscal year were \$5,000,000 or less." Issuers of this size generally will not qualify for listing on the national securities exchanges, or tiers or segments thereof, designated in proposed Rule 146(b). More specifically, both the Chicago Board Options Exchange, Incorporated and Tier I of the Pacific Exchange, Incorporated require issuers of common stock to have net worth of at least \$4,000,000. I do not believe that there are a substantial number of small entities which have total assets less than \$5,000,000, yet a net worth of at least \$4,000,000. For example, none of the issuers of common stock listed exclusively on Tier I of the Pacific Exchange have total assets of \$5,000,000 or less. In addition, the proposed rule imposes no record-keeping or compliance burden, but merely exempts certain qualifying securities from state law registration requirements.

Dated: June 9, 1997

Arthur Levitt, Jr.,
Chairman.

[FR Doc. 97-15769 Filed 6-16-97; 8:45 am]

BILLING CODE 8010-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN-128-6763b; TN-166-9634b; TN-180-9712b; TN-182-9713b; FRL-5841-3]

Approval and Promulgation of Implementation Plans, Tennessee: Approval of Revisions to the Nashville/Davidson County Portion of the Tennessee SIP Regarding New Source Review, Volatile Organic Compounds and Emergency Episodes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve State implementation plan (SIP) revisions submitted by the State of Tennessee for the purpose of revising the Nashville regulations for new source review (NSR) and volatile organic compounds (VOC) and for the purpose of adding a new regulation for emergency episodes. The EPA proposes to disapprove the submitted revisions to sections 7-17(c)(4)(ii) and 7-17(c)(4)(iii) of the Nashville regulation for the