identified. Under current NRC staff guidance, a minority or low-income community is identified if the impacted area's percentage of minority or low-income population significantly exceeds that of the State or County. ''Significantly'' is defined by staff guidance to be 20 percentage points. Additionally, if either the minority or low-income population percentage in the impacted area exceeds 50 percent, environment justice matters are considered in greater detail. As indicated above, numeric guidance is helpful; thus, the staff should continue to use such guidance in identifying minority and low-income communities. The staff's analysis will be supplemented by the results of the EIS scoping review discussed below.

3. Scoping

The NRC will emphasize scoping, the process identified in 10 CFR 51.29, and public participation in those instances where an EIS will be prepared. Reliance on traditional scoping is consistent with the E.O. and CEQ guidance. *See* E.O. 12898, 59 FR at 7632 (Section 5–5); CEQ Guidance at 10–13. CEQ guidance reminds us that ''the participation of diverse groups in the scoping process is necessary for full consideration of the potential environmental impacts of a proposed agency action and any alternatives. By discussing and informing the public of the emerging issues related to the proposed action, agencies may reduce misunderstandings, build cooperative working relationships, educate the public and decision makers, and avoid potential conflicts.'' CEQ Guidance at 12. Thus, it is expected that in addition to reviewing available demographic data, a scoping process will be utilized preceding the preparation of a draft EIS. This will assist the NRC in ensuring that minority and low-income communities, including transient populations, affected by the proposed action are not overlooked and in assessing the potential for significant impacts unique to those communities.

III. Guidelines for Implementation of NEPA as to EJ Issues

- The legal basis for analyzing environmental impacts of a proposed Federal action on minority or low-income communities is NEPA, not Executive Order 12898. The E.O. emphasized the importance of considering the NEPA provision for socioeconomic impacts. The NRC considers and integrates what is referred to as environmental justice matters in its NEPA assessment of particular licensing or regulatory actions.
- In evaluating the human and physical environment under NEPA, effects on low-income and minority communities may only be apparent by considering factors peculiar to those communities. Thus, the goal of an EJ portion of the NEPA analysis is (1) to identify and assess environmental effects on low-income and minority communities by assessing impacts peculiar to those communities; and (2) to identify significant impacts, if any, that will fall disproportionately on minority and low-income communities. It is not a broad ranging review of racial or economic discrimination.
- In developing an EA where a Finding of No Significant Impact is expected it is not necessary to undertake an EJ analysis unless special circumstances warrant the review. Special circumstances arise only where the proposed action has a clear potential for off-site impacts to minority and low-income communities associated with the proposed action. In that case, an appropriate review may be needed to provide a basis for concluding that there are no unique environmental impacts on low-income or minority communities that would be significant.
- EJ-related issues normally are not considered during the preparation of generic or programmatic EISs. In general, EJ-related issues, if any, will differ from site to site and, thus, do not lend themselves to generic resolutions. Consequently, EJ, as well as other socioeconomic issues, are considered in site-specific EISs.
- ''EJ per se'' is not a litigable issue in NRC proceedings. Rather the NRC's obligation is to assess the proposed action for significant impacts to the physical or human environment. Contentions must be made in the NEPA context, must focus on compliance with NEPA, and must be adequately supported as required by 10 CFR part 2 to be admitted for litigation.
- The methods used to define the geographic area for assessment and to identify low-income and minority communities should be clear, yet, allow for enough flexibility that communities or transient populations that will bear significant adverse effects are not overlooked during the NEPA review. Therefore, in determining the geographic area for assessment and in identifying minority and low-income communities in the impacted area, standard distances and population percentages should be used as guidance, supplemented by the EIS scoping process, to determine the presence of a minority or low-income population.
- The assessment of disparate impacts is on minority and low-income populations in general and not to the ''vaguely defined, shifting subgroups within that community.'' *See* PFS, CLI–02–20, 56 NRC 147 (2002).
- In performing a NEPA analysis for an EIS, published demographic data, community interviews and public input through well-noticed public scoping meetings should be used in identifying minority and low-income communities that may receive adverse environmental impacts.

Dated at Rockville, Maryland, this 30th day of October, 2003.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–27805 Filed 11–4–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48720; File No. SR–NYSE–2003–23]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Repealing Exchange Rule 500 and Amending Section 806 of the Listed Company Manual

October 30, 2003.

I. Introduction

On August 20, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to delete Exchange Rule 500 in its entirety and amend Section 806 of the Exchange's Listed Company Manual regarding the application by an issuer to delist its securities from the Exchange. Notice of the proposed rule change was published for comment in the **Federal Register** on September 10, 2003.[3] The Commission received four comments regarding the proposal.[4]

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

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 48435 (September 3, 2003), 68 FR 53413 (''Notice'').

[4] *See* letters to Jonathan G. Katz, Secretary, Commission, from Craig S. Tyle, General Counsel, Investment Company Institute (''ICI'') dated October 1, 2003 (''ICI Letter''); John Endean, President, American Business Conference (''ABC''), dated September 30, 2003; Edward S. Knight, Executive Vice President, Nasdaq Stock Market (''Nasdaq''), dated October 6, 2003 (''Nasdaq Letter''); and Junius Peake, Professor, University of Northern Colorado, dated September 29, 2003 (''Peake Letter'').

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.

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BILLING CODE 8010–01–P

[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).

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–4[2] 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.

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

[2] 17 CFR 240.19b–4.