the manner in which this provision concerning ''any other market center'' would be applied, as described below.

If both the proprietary and agency trading which are under review were executed in another market center, the Exchange would refer the matter to that market's regulatory staff, unless that market center does not have a substantially similar rule relating to ''trading along'' activity executed in that market center. If the market does not have a substantially similar rule, Exchange rules would govern the analysis.

If either the proprietary or agency trading were executed on the Exchange and the other market center has a rule which is not substantially similar, the Exchange would pursue the matter under Exchange rules. However, if the rules are substantially similar, the rule of the market center where the proprietary trading occurred would govern the analysis of that trading. All investigations would be coordinated through existing Intermarket Surveillance Groups procedures.

To be ''substantially similar,'' the difference in application of the rules to the transaction must be minor and technical in nature, and not materially different such as would be the case if the other rule contained an additional broad exemptive clause under which the proprietary trading is exempted.

2. Statutory Basis

The statutory basis for the proposed rule change is the requirement under Section 6(b)(5) of the Act [3] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change will enable member organizations to add depth and liquidity to the Exchange's market, while continuing to provide customer protection through the requirement of customer approval for trading along situations.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Inerested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–94–34 and should be submitted by March 11, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3930 Filed 2–17–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39635; File No. SR–PCX–97–21]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Suspension of Its Automatic Execution System (''Auto-Ex'') During Unusual Market Conditions

On June 4, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] The filing was thereafter amended on August 8, 1997.[3] In this filing, as amended, the Exchange proposed amendments permitting suspension of its Automatic Execution System (''Auto-Ex'') during unusual market conditions, and related actions. Notice of this proposed rule filing was published in the **Federal Register** On August 19, 1997 (''Notice'').[4] The Commission did not receive comment letters on the filing.

I. Description of Proposal

The Exchange is proposing to modify its Rule 6.28 (''Unusual Market Conditions'') to address situations involving system failures, ranging from ''frozen screens'' in an issue (where quote changes are entered into the system, but such changes are not reflected in the market being disseminated) to a floor-wide system malfunction of the POETS system (where all screen displays on the floor fail).[5] Rule 6.28 currently provides that whenever on Options Floor Official determines that ''an unusual condition or circumstance'' exists, because of an influx of orders or other unusual conditions or circumstances, and the interests of maintaining a fair and orderly market so require, such official may declare a ''fast market'' in one or more classes of option contracts.[6] The

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

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Michael D. Pierson, Office of Regulatory Policy, Exchange to Mandy S. Cohen, Division of Market Regulation, Commission dated August 7, 1997. A further technical amendment was filed on February 9, 1998. *See* Letter from Michael D. Pierson, Office of Regulatory Policy, Exchange to Mandy S. Cohen, Division of Market Regulation, Commission dated February 9, 1998.

[4] *See* Securities Exchange Act Release No. 38927 (August 12, 1997), 62 FR 44159 (August 19, 1997) (File No. SR–PCX–97–21).

[5] ''POETS'' is an acronym for the Pacific Options Exchange Trading System.

[6] *See also* PCX Options Floor Procedure Advice G–9 (''Fast Market Procedures'').

proposed amendments are designed to provide additional safeguards and procedures to deal with such situations.

First, the Exchange is proposing to modify subsection (a) of Rule 6.28 to require the agreement of two Options Floor Officials before a ''fast market'' can be declared. Second, the Exchange is proposing to add a new subsection (b)(7), to allow the Options Floor Officials who have declared a fast market to suspend Auto-Ex if, because of an influx of orders or other unusual market conditions or circumstances, they determine that such action is appropriate in maintaining a fair and orderly market. The initial suspension of Auto-Ex is limited to five minutes and a Floor Governor must be notified immediately. Suspension of Auto-Ex may be continued for a longer period following determination by two Options Floor Officials and one Floor Governor (or a senior operations officer if no Floor Governor is available) that such action is appropriate. In the event that the three officials do not agree, a two-thirds majority prevails.[7] Upon suspension of Auto-Ex, all market and marketable limit orders thereafter entered through the Exchange's Member Firm Interface will be routed to a booth on the Exchange floor designated by the firm that entered the order. The order can then be taken to the crowd manually and represented by a floor broker.

The Exchange is also proposing to amend its Rule 6.87 (''Automatic Execution System''), by adding three new subsections relating to suspensions of Auto-Ex. Whenever a POETS system or vendor quote feed malfunction affects the Exchange's ability to disseminate or update market quotes on a floor-wide basis, the senior person then in charge of the Exchange's Control Room will be able to halt Auto-Ex on a floor-wide basis, upon declaration of a ''fast market'' by two Floor Officials.[8]

Similarly, if a POETS malfunction occurs and market markers are physically unable to update their quotations in an issue or issues at the same trading post or trading quad, two Floor Officials may declare a ''fast market'' and direct the order book official (''OBO'') to turn off Auto-Ex in only the affected issue or issues.[9] Under either scenario, once the system malfunction has been corrected and the market quotes have been updated, two Floor Officials (or the senior person then in charge of the Control Room in the event of a floor-wide malfunction) may re-start Auto-Ex.[10]

Finally, the Exchange is also proposing to amend Rule 6.37 (''Obligations of Market Makers'') by adding a new subsection (b)(4), which provides that if the interest of maintaining a fair and orderly market so requires, two Floor Officials may declare a fast market and allow market makers in an issue to make bids and offers with spread differentials of up to two times, or in exceptional circumstances, up to three times, the legal limits permitted under Rule 6.37(b)(1). The rule further directs such Floor Officials to consider the following factors in making the determination to allow wider markets: (A) whether there is an extreme influx of option orders due to pending news, a news announcement of other special events; (B) whether there is an imbalance of option orders in one series or on one side of the market; (C) whether the underlying security is trading outside the bid or offer in such security then being disseminated; (D) whether PCX floor members receive no response to orders placed to buy or sell the underlying security; and (E) whether a vendor quote feed for POETS is clearly stale or unreliable.

II. Discussion

The Commission has determined at this time to approve the Exchange's proposal. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act. The Commission must approve a proposed PCX rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the PCX.[11] In evaluating a given proposal, the Commission examines the record before it and all relevant factors and necessary information. In addition, Section 6 of the Act establishes specific standards for PCX rules against which the Commission must measure the Proposal.[12]

The Commission has evaluated the PCX's proposed rule change in light of the standards and objectives set forth in the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[13] Specifically, the Commission finds that the proposed rule change provides a reasonable mechanism for the Exchange to respond to system malfunctions that impact the integrity of Auto-Ex.

The Commission notes that this proposal only authorizes senior Exchange floor personnel to suspend Auto-Ex in circumstances that involve technical system malfunctions affecting the accuracy of Auto-Ex, and is limited to five minutes, unless extension is approved by additional Exchange officials. The Exchange indicates in its filing that the proposed rule change is similar to certain procedures followed by the Chicago Board Options Exchange (''CBOE'') with regard to its automated system, the change to which were approved in 1995.[14] The Commission further notes that the proposed rule change is more restrictive than the CBOE procedures and provides greater safeguards, in that it does now allow control room personnel to unilaterally disengage Auto-Ex prior to approval of Exchange floor officials.

Moreover, the Commission believes that the Exchange has provided adequate procedures for use in the event of Auto-Ex suspension. In the event that the system is shut down, all limit orders entered through the Exchange's Member Firm Interface will be forwarded to a booth on the Exchange floor designated by the firm that entered the order and then taken to the crowd manually and represented by a floor broker.

Finally, the Commission believes that the allowing market makers to increase the spread differentials on particular issues in the event of a fast market by Exchange Officials and with such officials specific approval appropriately balances the interests of the various participants while allowing the Exchange and its market makers to respond to rapid changes in market conditions.

III. Conclusion

The Commission believes that the proposed rule change is consistent with Act, and, particularly, with Section 6 thereof.[15] Specifically, the changes contained in this rule filing are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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

[7] *Cf.* CBOE Rule 6.6(e).

[8] Proposed subsection (d)(1), *Floor-Wide POETS System Malfunction.*

[9] Proposed subsection (d)(2), *Non-Floor-Wide POETS System Malfunction.* Proposed subsection (d)(3) (''Other Unusual Conditions'') further provides that if there are other unusual market conditions not involving a POETS System malfunction, two Floor Officials may suspend Auto-Ex in accordance with Rule 6.28(b).

[10] *Cf.* CBOE Rule 6.8, Interpretation and Policy .03.

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

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] Securities Exchange Act Release No. 35695 (May 9, 1995), 60 FR 26058 (May 16, 1995).

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

public interest.[16] In addition, the Commission believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate to the purposes of Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–PCX–97–21), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret M. McFarland,

Deputy Secretary.

[FR Doc. 98–3999 Filed 2–17–98; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–100]

Determinations Under Section 304 of the Trade Act of 1974: European Communities' Banana Regime

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determinations, termination and monitoring.

SUMMARY: The United States Trade Representative (USTR) has determined that certain acts, policies and practices of the European Communities (''EC'') that discriminate against U.S. banana marketing companies and distort international banana trade violate, or otherwise deny benefits to which the United States is entitled under, the General Agreement on Tariffs and Trade (GATT) 1994 and the General Agreement on Trade in Services (GATS). This determination is based on the report of a dispute settlement panel convened under the auspices of the World Trade Organization (WTO) at the request of the United States, Ecuador, Guatemala, Honduras, and Mexico and the report of the WTO Appellate Body reviewing the panel report. The Appellate Body report and the panel report, as modified by the Appellate Body report, (''the WTO reports'') were adopted by the WTO Dispute Settlement Body (DSB) on September 25, 1997. Following the adoption of the reports by the DSB and during a WTO arbitration hearing convened on December 17, 1997 to establish ''the reasonable period of time'' for the EC to implement the WTO reports, the EC stated its intention to comply with its international obligations and to implement all the rulings and recommendations in the WTO reports within a ''reasonable period of time,'' that is, by January 1, 1999. In light of the foregoing, the USTR will not take action under section 301 of the Trade Act of 1974 (''the Trade Act'') at this time and has terminated this investigation. However, the USTR will monitor the EC's implementation of the WTO reports, and will take action under section 301(a) of the Trade Act if the EC does not come into compliance.

EFFECTIVE DATE: February 10, 1998.

ADDRESSES: 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Rachel Shub, Associate General Counsel (202) 395–7305; William Kane, Associate General Counsel (202) 395–6800; or Ralph Ives, Deputy Assistant U.S. Trade Representative, (202) 395–3320.

SUPPLEMENTARY INFORMATION: On September 27, 1995, the USTR initiated an investigation under section 302(b) of the Trade Act (19 U.S.C. 2412(b)) regarding the EC's regime for the importation, sale and distribution of bananas and requested public comment on the issues raised in the investigation and the determinations to be made under section 304 of the Trade Act. 60 FR 52026 of October 4, 1995. This investigation specially concerned EC Council Regulation No. 404/93 and related measures distorting international banana trade and discriminating against U.S. marketing companies importing bananas from Latin America, including a restrictive and discriminatory licensing scheme designed to transfer market share in the wholesale distribution sector from U.S. banana marketing firms to firms of EC or African, Caribbean and Pacific (''ACP'') nationality.

As required under section 303(a) of the Trade Act, the United States held consultations with the EC under the procedures of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). After holding a first set of consultations with the EC on October 26, 1995, the United States and the governments of Guatemala, Honduras and Mexico decided to delay the request for a dispute settlement panel until Ecuador, the world's largest banana exporter, had completed its accession and could join the dispute settlement proceeding. Pursuant to a new request filed jointly by the governments of Ecuador, Guatemala, Honduras, Mexico and the United States (''Complaining parties''), a second set of WTO consultations with the EC was held on March 14, 1996. A dispute settlement panel was established on May 8, 1996.

Pursuant to Section 304(a)(1)(A) of the Trade Act (19 U.S.C. 2414(a)(1)(A)), the USTR must determine in this case whether any act, policy or practice of the EC violates, or otherwise denies benefits to which the United States is entitled under, any trade agreement. If that determination is affirmative, the USTR must take action under section 301 of the Trade Act (19 USC 2411), subject to the specific direction of the President, if any, unless the USTR finds that one of the circumstances set forth in section 301(a)(2)(B) exists.

Reasons for Determinations

(1) EU Acts, Policies and Practices

The WTO panel in this case circulated its report on May 22, 1997. It included numerous findings that the EC banana regime is inconsistent with the EC's WTO obligations. The EC appealed all of the panel's adverse findings, and the Complaining Parties cross-appealed three. On September 9, 1997, the Appellate Body issued its report confirming all the major panel findings against the EC regime, and reversing the panel report on two issues that had been decided in the EC's favor (agreeing with the Complaining parties). On September 25, 1997, the DSB adopted the Appellate Body and the panel report (as modified by the Appellate Body report). The WTO reports include findings that the following EC measures violate the EC's obligations under various provisions of the GATT 1994 and/or the GATS: The EC's discriminatory allocation of shares of its market to certain ACP countries and to certain countries signatory to the Banana Framework Agreement; (2) the EC's discriminatory rules for reallocating annual country shares in the event of a country's shortfall; (3) the EC's discriminatory distribution to EC and ACP banana distribution companies of ''Category B'' licenses to import bananas from non-EC, non-ACP countries (mainly Latin America); (4) the EC's requirements for obtaining licenses to import from Latin America, which impose burdens not imposed on imports from ACP counties; (5) the EC's distribution of licenses to ripeners in the EC, which discriminates against U.S. and Latin America firms in favor of EC firms; (6) the EC's discriminatory export certificate requirements; and (7) the EC's distribution to EC and ACP banana distribution companies of additional licenses, so-called ''hurricane licenses,'' to import from Latin America. (The Complaining parties did not challenge

[16] In approving these rules, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).