

coordination with persons engaged in facilitating transactions in securities, and to remove impediments to an perfect the mechanism of a free and open market and a national market system.

#### *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.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing proposed rule change: Does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and because Amex provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission,<sup>8</sup> the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder.

At any time within 60 days of October 23, 2001, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **IV. Solicitation of Comments**

Interested 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, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex.

All submissions should refer to File No. SR-Amex-2001-89 and should be submitted by December 7, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-45048; File No. SR-NASD-2001-81]

### **Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding Temporary Access by UTP Exchanges to Certain Nasdaq Stock Market Systems**

November 8, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 7, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Nasdaq. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested

persons and to approve the proposed rule change on an accelerated basis.

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

Nasdaq proposes to make available to the UTP Exchanges on a limited basis the Nasdaq Workstation II ("NWII"), the NWII Applications Programming Interface ("NWII/API"), and the Computer-to-Computer Interface ("CTCI") for the submission of quotations and trade reports of Nasdaq-listed securities. Temporary access shall be granted to these systems until: (1) 120 days after the technical specifications for the upgraded UTP Line have been made available to the UTP Exchanges; (2) 60 days after the upgraded UTP Line has been made available to the UTP Exchanges for testing; and (3) 30 days after the upgraded UTP Line has been made available to the UTP Exchanges for entry of actual quotations and trade reports. Below is the text of the proposed rule change. Proposed new language is in italics.

#### *4799. Temporary UTP Exchange Access*

##### *a. Definitions.*

*(i) The term "Automated Confirmation Transaction" or "ACT" shall mean the Nasdaq proprietary service by which trades in Nasdaq-listed securities are reported to Nasdaq for comparison, risk management, and clearing purposes and for dissemination to the tape.*

*(ii) The term "Computer-to-Computer Interface" or "CTCI" shall mean a method by which Nasdaq subscribers can enter orders to designated Nasdaq execution systems, as well as ACT trade reports, from their computer systems to Nasdaq's proprietary computer systems without using a NWII or NWII/API.*

*(iii) The term "Nasdaq Workstation II" or "NWII" shall mean the primary presentation device consisting of hardware and software offered by Nasdaq for trading Nasdaq stocks.*

*(iv) The term "Nasdaq Workstation II/ Application Programming Interface" or "NWII/API" shall mean the method by which Nasdaq subscribers create customized software, consistent with Nasdaq technical specifications, that allows their computer systems to interact with Nasdaq's proprietary systems in place of NWII presentation devices.*

*(v) The term "UTP Exchange" shall mean any registered national securities exchange that has unlisted trading privileges in Nasdaq National Market securities pursuant to the Joint Self-Regulatory Organization Plan Governing*

<sup>8</sup> See Letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated October 8, 2001.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

the Collection, Consolidation and Dissemination Of Quotation and Transaction Information for Exchange-Listed Nasdaq/National Market System Securities and for Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis ("Nasdaq UTP Plan").

(vi) The term "UTP Line" shall mean the facilities described in the Nasdaq UTP Plan for the submission of quotations and trade reports for Nasdaq-listed securities by UTP Exchanges. Nasdaq is upgrading the UTP Line to a TCP/IP protocol pursuant to the vote of the Operating Committee of the Nasdaq UTP Plan.

(b) Each UTP Exchange shall have temporary access to the following Nasdaq proprietary services, provided it meets the conditions set forth in paragraph (c) below:

(i) NWII and NWII/API for the submission of quotations in Nasdaq securities, and also for reporting into ACT trades in Nasdaq-listed securities that are effected through the facilities of a UTP Exchange; and

(ii) CTCI for reporting into ACT trades in Nasdaq-listed securities that are effected through the facilities of a UTP Exchange

(c) A UTP Exchange that chooses to access Nasdaq proprietary services pursuant to this rule, shall first execute an agreement with Nasdaq governing the terms and conditions of such usage.

(d) Duration of Temporary Access Pursuant to Paragraph (b):

(i) Nasdaq shall make the technical specifications for the upgraded UTP Line available 120 days prior to terminating temporary access;

(ii) Nasdaq shall make the upgraded UTP Line available for testing by UTP Exchanges 60 days prior to terminating temporary access; and

(iii) Nasdaq shall make the upgraded UTP Line available for entry of actual quotations and trade reports by UTP Exchanges 30 days prior to terminating temporary access.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

Nasdaq occupies dual roles within the national market system: it operates an independent securities market and also serves as an exclusive securities information processor ("ESIP") pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Exchange-Listed Nasdaq/National Market System Securities and for Nasdaq/National Market System Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("OTC/UTP Plan"). As an ESIP, Nasdaq is obligated to provide to all exchange members of the OTC/UTP Plan ("UTP Exchanges") access to the facilities enumerated in the OTC/UTP Plan. However, subject only to SEC approval, Nasdaq believes that it is entitled to condition the manner in which it may voluntarily make its proprietary systems available to UTP Exchanges that choose to use them.<sup>3</sup>

Because several UTP Exchanges plan to begin contemporaneously trading Nasdaq stocks, and at the request of the staff of the Commission, Nasdaq has decided to grant UTP Exchanges temporary access to Nasdaq proprietary services that will provide them with access to the ESIP. As described in more detail below, the proposed pilot would make available the NWII, the NWII/API, and the CTCI for the submission of quotations and trade reports of Nasdaq-listed securities. Temporary access shall be granted to these systems until: (1) 120 days after the technical specification for the upgraded UTP Line has been made available to the UTP Exchanges; (2) 60 days after the upgraded UTP Line has been made available to the UTP Exchanges for testing; and (3) 30 days after the upgraded UTP Line has been made available to the UTP Exchanges for entry of actual quotations and trade reports. Each UTP Exchange that chooses to

<sup>3</sup> Nasdaq has permitted UTP Exchanges to participate in the Nasdaq National Market Execution System ("SuperSOES") on a voluntary basis and has filed rules defining the manner in which those exchanges may use this system. Nasdaq has filed a rule proposal for public comment to make SuperSOES the exclusively Nasdaq proprietary execution system available for UTP Exchanges to quote and trade Nasdaq securities on Nasdaq. See File No. SR-NASD-2001-69. See also Securities Exchange Act Release No. 45047 (November 8, 2001) which permits SuperSOES to trade through a UTP Exchange's quote that is at the inside if that exchange does not participate in SuperSOES.

access Nasdaq proprietary services pursuant to this rule shall first execute an agreement with Nasdaq governing the terms and conditions of such usage.

#### Background

*Nasdaq's Dual Roles.* As a market, Nasdaq builds and operates systems that enable its members to execute and report trades in Nasdaq-listed and over-the-counter securities, consistent with section 15A of the Act. Among the systems that provide the core functionality of the Nasdaq market are its quotation display device, the NWII/API,<sup>4</sup> its execution system—SuperSOES and SelectNet—and its trade reporting system, ACT, which is accessed through the CTCI. The NWII/API, SuperSOES, SelectNet, and ACT/CTCI are Nasdaq proprietary systems.

*Processor/ESIP.* As an ESIP under section 11A of the Act, Nasdaq operates pursuant to a national market system plan, the OTC/UTP Plan, for processing quotes and trades in Nasdaq National Market stocks by Nasdaq and UTP Exchanges ("OTC/UTP Plan Participants"). Specifically, as the ESIP for the OTC/UTP Plan, Nasdaq operates facilities to collect, consolidate, and disseminate quotations and last sale reports of all markets quoting and trading Nasdaq-listed securities.

The OTC/UTP Plan states that UTP Exchanges shall submit quote and trade reports in eligible securities to the ESIP through a dedicated line ("UTP Line"). The UTP Line is the only OTC/UTP Plan-sponsored means for submitting trade reports and quotes in Nasdaq securities to the ESIP. All other means for submitting quote and trade information is through Nasdaq proprietary systems.

*Unprecedented Expansion of UTP Trading.* From 1986 until 1999, only the Chicago Stock Exchange ("CHX") traded Nasdaq-listed securities pursuant to the OTC/UTP Plan, and, even then, only on a very limited scale. During that period CHX interacted with Nasdaq pursuant to the OTC/UTP Plan by entering quotes and trade reports via the UTP Line. In the last twenty-four months, the Nasdaq landscape has been transformed. In late 1999 and early 2000, trading volumes in Nasdaq securities exploded, significantly increasing the allure of UTP trading. As a result, five exchanges—the Cincinnati Stock Exchange, the Philadelphia Stock Exchange, the Pacific Exchange, the American Stock Exchange, and the

<sup>4</sup> Nasdaq offers two proprietary routes of entry into its proprietary systems: the API and the CTCI. Both interfaces exist as part of Nasdaq's proprietary Enterprise Wide Network II, a network provided through an extensive contract with MCI WorldCom.

Boston Stock Exchange—have sought to begin UTP trading.

*TCP/IP Upgrade to UTP Interface.*

This unprecedented influx of new entrants in to the OTC/UTP Plan has exceeded the capacity on the UTP Line to provide access to the ESIP. The UTP Line is a bi-synchronous electronic transmission vehicle. The UTP interface was established in the late 1980's as a stand-alone circuit to accommodate the anticipated message traffic from the Midwest Stock Exchange into the ESIP. All quote updates and trade reports are transmitted to a Tandem system, which then transfers the messages to the appropriate ESIP facility for transmission of the data over the consolidated market data feeds. The UTP Line was migrated to a national network infrastructure in 1992 based on requirements from CHX. Until 2001, the UTP Operating Committee had not made any formal requests to upgrade the UTP interface.

In June 2001, the UTP Operating Committee voted to upgrade the current UTP Line (which is a 19.2–56KB bi-synch protocol) to a TCP/IP protocol using a robust MCI/WorldCom network that scales from 56 KB to “T1” in bandwidth. The TCP/IP upgrade is scheduled for production at the end of January 2002 and will greatly expand the capacity available to provide access to the ESIP through OTC/UTP Plan facilities.

*Rule Proposal*

Given the current capacity limitations on the UTP Line, Nasdaq has decided to give UTP Exchanges short-term, temporary access to ACT and the NWII/API, until the TCP/IP upgrade to the UTP Line is complete. Until the TCP/IP interface is available for the submission of quote and trade information to the ESIP, Nasdaq will temporarily allow UTP Exchanges to use the following interfaces:

(i) NWII/API for the submission of quote updates and trade reports—applies to UTP Exchanges that wish to submit quotes and trade reports, and/or participate in SuperSOES/SelectNet.

(ii) CTCI for the submission of trade reports—applies to UTP Exchanges that wish only to submit trade reports.<sup>5</sup> These systems will be available only until the TCP/IP upgrade is complete, and Nasdaq will terminate access to these systems (NWII, NWII/API, and CTCI) according to the schedule described in proposed NASD Rule 4799(d). Thereafter, UTP Exchanges will

be required to report their floor trades via the TCP/IP.

Existing NASD rules also permit UTP Exchanges to use SuperSOES and SelectNet to access the Nasdaq market. UTP Exchanges that choose to use these Nasdaq execution systems must access those systems via the NWII or NWII/API interface. In that case, the UTP Exchange may temporarily use the NWII or NWII/API to report trades executed on the floor or through the facilities of that UTP Exchange. NWII/API will be available to report such trades only until the TCP/IP upgrade is complete, at which time the UTP Exchange will be required to report such trades via the UTP Line.

As with trades executed through SuperSOES and SelectNet, trades reported to the ESIP through the NWII, NWII/API or CTCI interface will be appended with the Nasdaq market center ID. That is, the UTP Exchange's floor or facility trades submitted via NWII, NWII/API or CTCI will not carry the market center of execution, as set forth in the OTC/UTP Plan and as required under SEC rule 11Ac1–2, the “Vendor Display Rule.”<sup>6</sup> Trades submitted through the TCP/IP interface will carry the entering market center's ID for transmission over the appropriate ESIP.

A UTP Exchange that plans to use NWII, NWII/API or CTCI as a temporary alternative to the UTP Line will be required to execute a contract with Nasdaq governing the terms and conditions of usage. Nasdaq will make these contracts available to the UTP Exchanges at their request following approval of the pilot rule.

**2. Statutory Basis**

Nasdaq believes that the proposed rule change is consistent with section 15A(b)(6) of the Act, which requires, among other things, that the NASD rules be designed to facilitate transactions in securities, 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. In particular, Nasdaq believes that permitting UTP Exchanges temporary access to Nasdaq proprietary systems removes a temporary obstacle to the trading of Nasdaq-listed securities. Temporary access will be available until upgraded facilities are available pursuant to the OTC/UTP Plan.

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

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

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

Nasdaq has neither solicited nor received written comments on the proposed rule change.

**III. Solicitation of Comments**

Interested 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, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–81 and should be submitted by December 7, 2001.

**IV. Commission's Findings and Order Accelerated Approval of Proposed Rule Change**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, the requirements of sections 11A and 15A of the Act.<sup>7</sup> Specifically, the Commission finds that the proposal is consistent with sections 11A(a)(1)(C) and 15A(b)(6) of the Act.<sup>8</sup> In section 11A(a)(1)(C) Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets

<sup>5</sup> CTCI is only coded for trade reporting and for order-entry in SuperSOES/SelectNet. CTCI functionality does not permit users to submit quotes or receive SuperSOES/SelectNet executions/orders.

<sup>6</sup> See Exemption Letter to Jeffrey T. Brown, Chairman, OTC/UTP Operating Committee, from Belinda Blaine, Associate Director, SEC (November 8, 2001).

<sup>7</sup> 15 U.S.C. 78k–1 and 15 U.S.C. 78o–3.

<sup>8</sup> 15 U.S.C. 78k–1(a)(1)(C) and 15 U.S.C. 78o–3(b)(6).

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

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

Pursuant to section 19(b)(2) of the Act,<sup>10</sup> the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** so that UTP Exchanges will be able to trade Nasdaq securities as soon as they are capable of doing so.

## V. Conclusion

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

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

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

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

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

November 6, 2001.

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

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

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

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

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

\* \* \* \* \*

### ¶ 3597 Withdrawal of Approval of Underlying Securities

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

(b) No change.

Commentary:

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

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

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

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