

(4) Requests For Information <sup>2</sup>

Request for information (Failure to timely provide)	First occa- sion	Second occa- sion	Third occa- sion	Fourth occa- sion
Financial Statements:				
Audited Financial Statements for Member or Parent .....	*	\$300	\$600	\$1,500
Monthly and/or Quarterly Regulatory Filings .....	*	300	600	1,500
Monthly and/or Quarterly Financial Statements .....	*	300	600	1,500
Proforma Financial Statements .....	*	300	600	1,500
Any Financial Computations, Consolidating Worksheets or Internal Statements, Upon Special Request .....	*	300	600	1,500
Risk Questionnaires/Profiles.				
Questionnaires .....	*	150	300	750
Profiles .....	*	150	300	750
Risk Management Policies and Procedures .....	*	150	300	750
Disaster Recovery Procedures .....	*	150	300	750

\*First occasions result in a warning letter issued to the Member. Warning Letters for first occasion violations will be discontinued one year after implementation of this schedule, at which time each violation will be subject to imposition of a fine.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46389; File No. SR-NSCC-2002-05]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Amend Clearing Fund Requirements and Letters of Credit Collateralization

August 21, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 16, 2002, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on July 25, 2002, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The purpose of the proposed rule change is to increase the minimum amount of cash that must be deposited by members, except for Mutual Fund/Insurance Services Members, to satisfy

clearing fund requirements and to limit the amount of a deposit that may be collateralized with letters of credit.

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

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

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

Under NSCC's current rules, each member, except for Mutual Fund/Insurance Services Members, is required to maintain a minimum contribution to the clearing fund of \$10,000. The first \$10,000 of a member's contribution must be in cash unless all or a part of the member's contribution is collateralized with letters of credit, in which case the greater of \$50,000 or ten percent of the member's contribution up to a maximum of \$1,000,000 is required to be in cash. On a peak settlement day, if members only deposit the minimum cash required at any given time, NSCC

might only be assured of a limited amount of cash thereby creating the possibility of a liquidity risk at NSCC. Furthermore, because NSCC expects an increase in members' reliance on the Collateral Management System, NSCC also expects an increase in members' requesting the return of excess cash.<sup>3</sup>

To assure NSCC of more cash to meet liquidity needs, NSCC proposes to modify Procedure XV (Clearing Fund Formula and Other Matters) of its Rules and Procedures to require that the first 40% of a member's clearing fund contribution must be in cash unless the member's clearing fund requirement is \$10,000 or less in which case the entire contribution must be in cash.<sup>4</sup> NSCC also proposes to amend Rule 4 (Clearing Fund) of its Rules and Procedures to reduce from 70% to 25% the percentage of members' required deposit to the clearing fund that may be collateralized with letters of credit.

Based on NSCC's current calculations, the proposed change in the percentage of cash that must be deposited to the clearing fund will impact approximately 48 member firms. The proposed change reducing the permitted use of letters of credit will affect 21 of the approximately 33 member firms that post such letters. NSCC intends to implement these clearing fund changes no earlier than 30 days after the Commission approves the proposed rule change. Mutual Fund/Insurance Services Members' cash contribution to and letters of credit requirements for the clearing fund will remain unchanged.

<sup>2</sup> Fines to be levied for offenses within a moving twelve-month period beginning with the first occasion.

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by the NSCC.

<sup>3</sup> The Collateral Management System ("CMS") provides automated access to information on members' clearing fund, margin, and other deposits at NSCC and at other participating clearing entities.

CMS allows participants to more efficiently manage their various clearing fund and margin deposits by providing electronic access to consolidated data regarding the underlying collateral held at multiple clearing agencies and allows participating clearing entities the ability to view common members' clearing fund and margin deposits at other clearing entities. See Securities Exchange Act Release Nos. 36091 (August 10, 1995), 60 FR 42931 (August 17, 1995) [SR-NSCC-95-06] (order approving the

establishment of CMS); 40740 (December 3, 1998), 63 FR 67962 (December 9, 1998) [SR-NSCC-98-10] (order approving modification to CMS).

<sup>4</sup> The current version of Procedure XV (Version 1) is being revised by NSCC and the new version (Version 2) will be applicable to members on a rolling basis. The rule change proposes to amend clearing fund procedures in Procedure XV.A.I.(a) in Version 1 and Procedure XV.II.(A) of Version 2.

NSCC believes that the proposed rule filing is consistent with section 17A of the Act because it will permit NSCC to have adequate liquidity resources to assure the safeguarding of funds securities for which it is responsible.

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

NSCC does not believe that the proposed rule change will have an impact on or impose a 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 relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments it receives.

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

Within thirty-five 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 ninety 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 self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

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

**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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such

filing also will be available for inspection and copying at the principal office of the NSCC. All submissions should refer to File No. SR-NSCC-2002-05 and should be submitted by September 17, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-46382; File No. SR-PCX-2002-41]**

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. To Amend the Original Listing Criteria for Underlying Securities in PCX Rule 3.6**

August 20, 2002.

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 July 25, 2002, the Pacific Stock Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 6, 2002, the Exchange filed an amendment to the proposed rule change.<sup>3</sup> As amended, the proposed rule change is effective upon filing with the Commission, pursuant to Section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend PCX Rule 3.6 in order to provide alternative original listing criteria for individual

equity options that, but for the requirement that the underlying security be at least \$7.50, meet the criteria for listings in PCX Rule 3.6.

The text of the proposed rule change appears below. New text is in italics; deletions are in brackets.

\* \* \* \* \*

**Rule 3.6. OPTIONS**

Rule 3.6. The underlying securities of option contracts traded on the Exchange shall be approved for Exchange transactions by the Board of Governors following the recommendation of the Options Listing Committee. In approving underlying securities, both the Options Listing Committee and the Board shall give due regard to, and the Board shall promulgate guidelines relative to, the following factors:

(a) Underlying securities approved for Exchange transactions shall have, in the absence of exceptional circumstances, the following characteristics:

(1) A minimum of 7,000,000 shares shall be owned by persons other than those required to report their stock holdings under Section 16(a) of the Securities Exchange Act of 1934;

(2) A minimum of 2,000 shareholders;

(3) Trading volume (in all markets which the stock is traded) of at least 2,400,000 shares in the preceding twelve months;

(4) *Either (i) the [The] market price per share of the underlying security will [shall] have been at least \$7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported<sup>6</sup> in any market in which the underlying security traded on each of the subject days; or (ii)(a) the underlying security meets the guidelines for continued listing in Rule 3.7; (b) options on such underlying security are traded on at least one other registered national securities exchange; and (c) the average daily trading volume for such options over the last three (3) calendar months preceding the date of selection has been at least 5,000 contracts; and*

(5) The issuer is in compliance with any applicable requirements of the Securities Exchange Act of 1934.

\* \* \* \* \*

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

<sup>5</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. Shriver, Senior Attorney, Regulatory Policy, PCX, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, faxed August 6, 2002 ("Amendment No. 1"). Amendment No. 1 corrects a typographical error in the rule text by replacing the word "recorded" with the word "reported."

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> See Amendment No. 1, *supra* note 3.