	1	2	3	4	5
Current ROP	○	○	○	○	○

Comments:

Questions related to the efficacy of the overall Reactor Oversight Process (ROP) (As appropriate, please provide specific examples and suggestions for improvement.)

(9) Are the ROP oversight activities predictable (*i.e.*, controlled by the process) and reasonably objective (*i.e.*, based on supported facts, rather than relying on subjective judgement)?

	1	2	3	4	5
Initial ROP Implementation	○	○	○	○	○
Current ROP	○	○	○	○	○

Comments:

(10) Is the ROP risk-informed, in that the NRC's actions are graduated on the basis of increased significance?

	1	2	3	4	5
Initial ROP Implementation	○	○	○	○	○
Current ROP	○	○	○	○	○

Comments:

(11) Is the ROP understandable and are the processes, procedures and products clear and written in plain English?

	1	2	3	4	5
Initial ROP Implementation	○	○	○	○	○
Current ROP	○	○	○	○	○

Comments:

(12) Does the ROP provide adequate regulatory assurance when combined with other NRC regulatory processes that plants are being operated and maintained safely?

	1	2	3	4	5
Initial ROP Implementation	○	○	○	○	○
Current ROP	○	○	○	○	○

Comments:

(13) Does the ROP improve the efficiency, effectiveness, and realism of the regulatory process?

	1	2	3	4	5
Initial ROP Implementation	○	○	○	○	○
Current ROP	○	○	○	○	○

Comments:

(14) Does the ROP ensure openness in the regulatory process?

	1	2	3	4	5
Initial ROP Implementation	○	○	○	○	○
Current ROP	○	○	○	○	○

Comments:

(15) Has the public been afforded adequate opportunity to participate in the ROP and to provide inputs and comments?

	1	2	3	4	5
Initial ROP Implementation	○	○	○	○	○
Current ROP	○	○	○	○	○

Comments:

(16) Has the NRC been responsive to public inputs and comments on the ROP?

	1	2	3	4	5
Initial ROP Implementation	○	○	○	○	○
Current ROP	○	○	○	○	○

Comments:

(17) Has the NRC implemented the ROP as defined by program documents?

	1	2	3	4	5
Initial ROP Implementation	○	○	○	○	○
Current ROP	○	○	○	○	○

Comments:

(18) Does the ROP reduce unnecessary regulatory burden on licensees?

	1	2	3	4	5
Initial ROP Implementation	○	○	○	○	○
Current ROP	○	○	○	○	○

Comments:

(19) Does the ROP minimize unintended consequences?

	1	2	3	4	5
Initial ROP Implementation	○	○	○	○	○
Current ROP	○	○	○	○	○

Comments:

(20) Please provide any additional information or comments related to the Reactor Oversight Process.

Dated at Rockville, Maryland, this 25th day of October 2004.

For the U.S. Nuclear Regulatory Commission .

Stuart A. Richards,

Office of Nuclear Reactor Regulation, Division of Inspection Program Management, Inspection Program Branch.

[FR Doc. 04–24304 Filed 10–29–04; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Comment Request for Review of a Revised Information Collection: OPM Online Form 1417

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for clearance of a revised information collection. Online OPM Form 1417, Combined Federal Campaign Results Form, is used to collect information from the 320 local CFC's around the country to verify campaign results. Revisions to the form clarify OPM's request for budgeted campaign costs and provide the ability to create a printer friendly copy of the report.

We estimate 320 Online OPM Forms 1417 are completed annually. Each form takes approximately 20 minutes to complete. The annual estimated burden is 107 hours.

Comments are particularly invited on: Whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the appropriate use of technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, Fax (202) 418–3251 or E-mail to *mbtoomey@opm.gov.* Please be sure to include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Curtis Rumbaugh, CFC Operations Manager, Office of CFC Operations, U.S. Office of Personnel Management, 1900 E Street, NW., Room 5450, Washington, DC 20415.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–24337 Filed 10–29–04; 8:45 am]

BILLING CODE 6325–46–U

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26643; 812–12953]

PacifiCare of Arizona, Inc., *et al.*; Notice of Application and Commission Statement

October 25, 2004.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: (1) Notice of application for an order under sections 3(b)(2) and 45(a) of the Investment Company Act of 1940 (the ''Act'') and (2) a Commission statement that the Commission is considering clarifying the primary business test under sections 3(b)(1) and (2) of the Act with respect to health maintenance organizations and similar entities that provide managed health care services (collectively, ''HMOs'').

APPLICANTS: PacifiCare of Arizona, Inc., PacifiCare of California, PacifiCare of Colorado, Inc., PacifiCare of Nevada,

Inc., PacifiCare of Oregon, Inc., PacifiCare of Texas, Inc. and PacifiCare of Washington, Inc. (the ''PacifiCare HMOs'').

SUMMARY OF APPLICATION AND COMMISSION STATEMENT: Applicants seek orders under section 3(b)(2) of the Act declaring them to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities.[1] Applicants are in the business of offering managed care and other health insurance products. Applicants also seek an order under section 45(a) of the Act granting confidential treatment with respect to certain financial and other information. The Commission also is issuing a statement that it is considering clarifying the primary business test under sections 3(b)(1) and (2) of the Act with respect to HMOs (*see* Commission Statement *infra*).

FILING DATES: The application was filed on March 31, 2003, and amended on May 23, 2003, September 15, 2003, January 21, 2004, May 17, 2004, August 18, 2004, September 9, 2004 and September 22, 2004.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 19, 2004, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549–0609. Applicants, c/o Barbara L. Borden, Esq. and Frederick T. Muto, Esq., Cooley Godward LLP, 4401 Eastgate Mall, San Diego, CA 92121.

FOR FURTHER INFORMATION CONTACT: Marc R. Ponchione, Senior Counsel, at (202) 942–7927, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC, 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each of the PacifiCare HMOs is a wholly-owned subsidiary of PacifiCare Health Plan Administrators, Inc. (''PHPA''), an Indiana corporation formed in 1981. PHPA is a direct wholly-owned subsidiary of PacifiCare Health Systems, Inc. (''PacifiCare''), a Delaware corporation formed in 1996.[2] PacifiCare offers managed care and other health insurance products through the PacifiCare HMOs and its other subsidiaries to employer groups and Medicare beneficiaries in the United States and Guam. Each of the PacifiCare HMOs operates managed care plans that develop health care provider networks by entering into contracts with hospitals, physicians and other health care professionals to deliver health care cost-effectively. Each of the PacifiCare HMOs' managed care plans generally provides or arranges for the provision of health care services to subscribers or enrollees, or pays for or reimburses part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees. Applicants state that the PacifiCare HMOs serve approximately 3.0 million HMO members.

2. Applicants state that each of the PacifiCare HMOs maintains a large portfolio of marketable securities and a cash position as part of its management of its primary health care operations. Applicants state that the PacifiCare HMOs historically have contracted with hospitals and physicians on a prepaid, capitated fixed-fee per member per-month basis, regardless of the services provided to each member, but have recently experienced a shift to ''risk-retention contracts'' under which they now bear a substantial amount of the direct risk that health care costs of the subscribers or enrollees of their health care products will differ from the prepaid or periodic charges paid by or on behalf of such (''underwriting risk''). Under the risk-retention contracts model, each PacifiCare HMO maintains a larger investment portfolio primarily because each PacifiCare HMO assumes underwriting risk that its per patient member costs may exceed its per member premiums that it sets in advance each year. Applicants state that each of the PacifiCare HMOs also maintains its portfolio to satisfy state regulatory net worth requirements.

3. Applicants state that the PacifiCare HMOs' profitability declined recently because of health care cost inflation, a lack of corresponding increases in Medicare reimbursement rates and because they did not fully anticipate the shift to risk-retention contracts in recent years when they made pricing and underwriting decisions for their products. At times during recent years, this decreased profitability caused a reduction in income from operations and an increased percentage of income attributable to the investment portfolios of the PacifiCare HMOs.

4. Applicants state that each of the PacifiCare HMOs is licensed as a HMO or similar entity in the state in which it operates and is regulated by the insurance commissioner or similar official of that state.[3] Applicants also state that the PacifiCare HMOs are required by law, regulation and governmental policy to meet minimum statutory net worth requirements that generally mandate a diverse portfolio and prohibit exclusive investment in government securities. Applicants further state that each PacifiCare HMO must file financial information and annual reports with state regulators and is subject to audits and/or examination by state regulatory agencies on a regular basis.

Applicants' Legal Analysis

1. Section 3(a)(1)(A) of the Act defines the term ''investment company'' to include an issuer that is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities. Section 3(a)(1)(C) of the Act further defines an investment company as an issuer that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40 percent of the value of the issuer's total

[1] On September 23, 2004, a temporary order was issued pursuant to section 3(b)(2) of the Act exempting applicants from all the provisions of the Act until the Commission takes final action on the application or until November 22, 2004, if earlier. Investment Company Act Release No. 26618 (September 23, 2004). Applicants also received temporary orders on May 28, 2003 (Investment Company Act Release No. 26060), September 29, 2003 (Investment Company Act Release No. 26194), January 23, 2004 (Investment Company Act Release No. 26339), and May 21, 2004 (Investment Company Act Release No. 26449).

[2] PacifiCare was the successor to a California corporation formed in 1983 that was reincorporated as a Delaware corporation in 1985.

[3] PacifiCare of California, PacifiCare of Colorado, Inc., PacifiCare of Nevada, Inc., and PacifiCare of Texas, Inc. are licensed as HMOs. PacifiCare of Arizona, Inc. and PacifiCare of Washington, Inc. are licensed as health care services organizations. PacifiCare of Oregon, Inc. is licensed as a health care service plan.

assets (exclusive of government securities and cash items) on an unconsolidated basis. Under section 3(a)(2) of the Act, investment securities include all securities except U.S. Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which (a) are not investment companies, and (b) are not relying on the exclusions from the definitions of investment company in section 3(c)(1) or 3(c)(7) of the Act.

2. Applicants state that none of the PacifiCare HMOs has ever held itself out as an investment company and that none of the PacifiCare HMOs believes that it is an investment company as defined in section 3(a)(1)(A) of the Act. Applicants state that more than 40 percent of the total unconsolidated assets of each of PacifiCare of Arizona, Inc., PacifiCare of Colorado, Inc., PacifiCare of Oregon, Inc., PacifiCare of Nevada, Inc., PacifiCare of Texas, Inc., and PacifiCare of Washington, Inc. consist of investment securities as defined in section 3(a)(2). Accordingly, each of these PacifiCare HMOs may be deemed an investment company within the meaning of section 3(a)(1)(C) of the Act.[4]

3. Rule 3a–1 provides an exemption from the definition of investment company if no more than 45 percent of a company's total assets consist of, and not more than 45 percent of its net income over the last four quarters is derived from, securities other than Government securities and securities of majority-owned subsidiaries and companies primarily controlled by it. Applicants state that none of the PacifiCare HMOs currently are able to rely on rule 3a–1 because investment securities comprise a large percentage of their total assets. In recent years, some of the PacifiCare HMOs also would not have been able to rely on rule 3a–1 because of operating losses.

4. Section 3(b)(2) of the Act provides that, notwithstanding section 3(a)(1)(C), the Commission may issue an order declaring an issuer to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities directly, through majority-owned subsidiaries, or controlled companies conducting similar types of businesses. Applicants request orders under section 3(b)(2) of the Act declaring that each of the PacifiCare HMOs is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore is not an investment company as defined in the Act. Applicants submit that each of the PacifiCare HMOs meets the requirements of section 3(b)(2) because it is primarily engaged in the health care service business, and not in the business of investing, reinvesting, owning, holding or trading in securities, and its business operations are analogous to those of insurance companies.

5. In determining whether an issuer is ''primarily engaged'' in a non-investment company business under section 3(b)(2), the Commission considers the following factors: (a) the company's historical development, (b) its public representations of policy, (c) the activities of its officers and directors, (d) the nature of its present assets (the ''Asset Factor''), and (e) the sources of its present income (the ''Income Factor'').[5]

a. Historical Development

Applicants state that each PacifiCare HMO was formed for the purpose of providing health care services and that each has provided such services since inception. Applicants also state that each of the PacifiCare HMOs has engaged in the pursuit of providing health care services to the exclusion of other activities and that each intends to continue to engage in the business of providing health care services.

b. Public Representations of Policy

Applicants state that PacifiCare's periodic reports describing the business of the PacifiCare HMOs focus on improving net income from health care services operations and have never emphasized the possibility of significant appreciation from investment securities as a material factor in PacifiCare's or the PacifiCare HMOs' future growth. Applicants also state that the PacifiCare HMOs have never held themselves out as investment companies within the meaning of the Act and are unaware of any public representations that would indicate that any of the PacifiCare HMOs are in any business other than the health care services business. Applicants assert that press releases issued by PacifiCare and the PacifiCare HMOs concern events regarding the PacifiCare HMOs' operations and the development of new products and services and that public statements by PacifiCare and the PacifiCare HMOs emphasize PacifiCare's mission to create long-term stockholder value as a leading health and consumer services company.

c. Activities of Officers and Directors

Applicants state that members of the boards of directors and the officers of each of the PacifiCare HMOs generally have extensive experience in the management and oversight of health care services provider organizations and focus almost exclusively on the management of their respective managed care plans and the further development of their respective health care provider networks. Applicants also state that other than adopting an investment policy and receiving periodic reports, the PacifiCare HMOs' officers and directors have minimal involvement with their respective PacifiCare HMO's investment securities and typically spend substantially all of their time on operating activities. Applicants further state that only the CFO and/or treasurer or assistant treasurer of each of the PacifiCare HMOs spends any time on cash and securities management. Applicants represent that management of PacifiCare's investments involves the equivalent of nine full-time employees, or 0.1% of a total of approximately 8,000 PacifiCare employees. Applicants state that the other employees of the PacifiCare HMOs are involved in activities in connection with the day-to-day operations and support of a health care services provider organization, including provider and hospital contract management, claims processing, medical bills review, member enrollment, accounting, customer services, data entry and other activities.

d. Nature of Assets

Applicants state that each of the PacifiCare HMO's operations as a health services company do not require substantial investments in property, plant, equipment or other tangible assets. Further, each of the PacifiCare HMOs maintains a large investment securities position because of statutory net worth or regulatory capital requirements, the need to manage the risk that the health care costs it underwrites will exceed premiums, and working capital requirements. Excluding PacifiCare of California, more than 40 percent of each of the PacifiCare HMO's unconsolidated assets consist of investment securities and, in some

[4] Applicants state that PacifiCare of California does not currently meet the definition of an investment company under section 3(a)(1)(C). Applicants further state that PacifiCare of California also needs to maintain a substantial investment portfolio. Applicants assert that if any adverse development results in any asset impairments, goodwill impairments or other reduction in PacifiCare of California's total assets, its investment securities as a percentage of its total assets could exceed 40 percent. Applicants also state that the operating results of PacifiCare of California during the past four fiscal quarters have fluctuated widely. Applicants believe that it is more cost-effective for PacifiCare of California to seek an order in conjunction with the other PacifiCare HMOs.

[5] Tonopah Mining Company of Nevada, 26 SEC 426, 427 (1947) (''Tonopah'').

cases, investment securities constitute a large majority of total unconsolidated assets. Each PacifiCare HMO has adopted an investment policy that is designed to result in (1) each PacifiCare HMO holding predominantly high quality instruments; (2) capital preservation; (3) maintenance of sufficient liquidity to meet operating cash requirements; (4) outperforming certain benchmarks; (5) centralizing fiduciary control of all investment securities; and (6) adhering to state and federal regulations. None of the PacifiCare HMOs invests or trades in securities for short-term speculative purposes.

e. Sources of Income

Applicants state that each of the PacifiCare HMO's income from operations fluctuated widely during the past several years due to the greater than expected increase in risk-retention contracts and unanticipated health care cost increases. Applicants state that less than 45% of each PacifiCare HMO's total income for the last four fiscal quarters combined was derived from investment securities. For the four fiscal quarters ending on December 2002, however, most of the PacifiCare HMOs recorded a net operating loss. Applicants state that net investment income will continue to comprise a significant portion of the PacifiCare HMOs' income as they adapt to the changing health services market and because they use their investment securities to manage the risks they underwrite. Applicants believe that their sources of revenue are more representative of their activities as operating companies than their sources of income. Applicants assert that each of the PacifiCare HMO's income from investments constitutes only a small portion of each PacifiCare HMO's gross revenue. Applicants state that for each PacifiCare HMO, revenues from health care operations represent approximately 99 percent of each PacifiCare HMO's gross revenue, while revenues from investments constitute the remaining one percent. Each of the PacifiCare HMOs expects that in the future the percentage of its total revenue derived from health care operations will continue to be substantial and the percentage of its revenue from investments will continue to be minimal.

6. Section 3(c)(3) of the Act excludes insurance companies from the definition of investment company. Applicants believe, however, that none of the PacifiCare HMOs would be considered an insurance company within the meaning of the Act because none of the PacifiCare HMOs is organized as a traditional indemnity insurance company and the PacifiCare HMOs primarily offer HMO products that are not regulated as insurance products under state insurance laws. Applicants submit that managed care companies, which developed after enactment of the Act and far more recently than insurance companies, are subject to similar regulatory schemes. Applicants believe that each of the PacifiCare HMO's operations and use of investment portfolio are substantially analogous to those of insurance companies. Applicants state that, similar to insurance companies, the PacifiCare HMOs manage the underwriting risk of excess health care costs in part through returns in their investment portfolios, are regulated under state law, and are required to maintain statutory net worth and comply with state investment regulations.

7. The PacifiCare HMOs thus assert that they qualify for an order under section 3(b)(2) of the Act.

Section 45(a) of the Act

1. Section 45(a) provides that information contained in any application filed with the Commission under the Act shall be made available to the public, unless the Commission finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors. Each of the PacifiCare HMOs requests an order under section 45(a) of the Act granting confidential treatment to information submitted in Appendix 7 to the application containing financial and other information about the PacifiCare HMOs, PacifiCare and PHPA.

2. The PacifiCare HMOs submit that the information disclosed in the application is sufficient to fully apprise any interested member of the public of the basis for the requested relief. Applicants state that from the presentation in the Application, the public can see the general nature of certain of the PacifiCare HMO's assets.

3. Applicants believe that public disclosure of certain financial and other information about the PacifiCare HMOs, PacifiCare and PHPA would cause the PacifiCare HMOs and PacifiCare competitive harm. Applicants state that they do not normally disclose specific financial information about the PacifiCare HMOs, the precise make-up of their consolidated investment portfolios and their internal investment policies. Applicants also state that their competitors would benefit from access to such information and neither PacifiCare nor the PacifiCare HMOs has access to similar information about its competitors. Applicants further state that disclosure of certain financial information regarding the PacifiCare HMOs may confuse investors because the limited publicly available financial information concerning the PacifiCare HMOs is prepared for the purpose of complying with state regulations and in some cases is not calculated in accordance with GAAP, and therefore it may be different than the financial information set forth in the application. For these reasons, applicants believe that public disclosure of the information in Appendix 7 is neither necessary nor appropriate in the public interest or for the protection of investors.

4. The Freedom of Information Act generally provides that all information provided to or generated by the government should be made available to the general public, with certain exceptions set forth in the statute. One of those exceptions is for ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' Each of the PacifiCare HMOs believes that the information with respect to which applicants request confidential treatment falls within the exception described, and is thus eligible for protection under the Freedom of Information Act.[6]

Commission Statement

It does not appear that the circumstances that have led the PacifiCare HMOs to seek orders pursuant to section 3(b)(2) of the Act are unique. The Commission thus is considering clarifying the primary business test under sections 3(b)(1) and 3(b)(2) of the Act with respect to HMOs in the context of the order that would be issued to the PacifiCare HMOs.[7] In place of the Asset Factor, the Commission is focusing on an HMO's bearing a substantial amount of underwriting risk, using its investment securities consistent with its business, and being licensed and supervised by a state. In connection with the Income Factor, the Commission is focusing on clarifying that an HMO may consider the sources of its present revenue so long as it derives substantially all of its total revenues from the health care operations.

[6] Applicants understand that any relief granted pursuant to section 45(a) will not be dispositive in connection with any request the Commission might receive pursuant to the Freedom of Information Act.

[7] *See, e.g.*, ICOS Corp., Investment Company Act Release No. 19334 (Mar. 16, 1993).

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–2918 Filed 10–29–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

U.S. Canadian Minerals, Inc.; Order of Suspension of Trading

October 28, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of U.S. Canadian Minerals, Inc. (OTC Bulletin Board symbol ''USCA''), a Nevada corporation. Questions have been raised about the accuracy of publicly disseminated information concerning, among other things, U.S. Canadian Minerals' financing and mining activities and the value of U.S. Canadian Minerals' purported assets.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EDT, October 28, 2004, through 11:59 p.m. EST, on November 10, 2004.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–24411 Filed 10–28–04; 12:00 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50587; SR–Amex–2004–63]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 by the American Stock Exchange LLC Relating to Minimum Size Guarantees for Linkage Orders

October 25, 2004.

I. Introduction

On August 3, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange''), filed with the Securities and Exchange Commission (''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 modify the definitions of Firm Customer Quote Size (''FCQS'') and Firm Principal Quote Size (''FPQS'') contained in the Amex rules by changing certain minimum size guarantees for Linkage Orders to accommodate the ''natural size'' of quotations.[3] On September 10, 2004, the Amex submitted Amendment No. 1 to the proposed rule change.[4] Notice of the Amex's proposed rule change, as amended, was published in the **Federal Register** on September 23, 2004.[5]

No comments were received on the proposed rule change. This order approves the proposed rule change, as amended.

II. Description of the Proposals

The purpose of the proposed rule change is to amend the definitions of FCQS and FPQS provided in Amex Rule 940(b) to conform them to the definitions provided in the Linkage Plan, as amended by Joint Amendment No. 13.[6] While the proposed rule change would maintain a general requirement in Amex Rule 940(b) that the FCQS and FPQS be at least 10 contracts, that requirement would not apply if, pursuant to its rules, the Exchange were disseminating a quotation of fewer than 10 contracts. In that case, the Amex could establish a FCQS or FPQS equal to its disseminated size, or ''natural size.''

Under the proposed rule change, as with Linkage orders today, if an order is of a size eligible for automatic execution, the Amex (as the receiving options exchange) must provide an automatic execution of the Linkage order. If this is not the case (for example, the Amex's automatic execution system is not engaged), the Exchange may allow the order to drop to manual handling. However, the Amex still must provide a manual execution for at least the FCQS or FPQS, as appropriate (in this case, the size of its disseminated quotation of less than 10 contracts).

III. Discussion

After careful review, 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.[7] In particular, the Commission finds that the proposal, as amended, is consistent with the provisions of Section 6(b)(5) of the Act,[8] which requires, among other things, that a national securities exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and to 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 notes that the Amex adopted the current definitions of FCQS and FPQS, which impose a ''10-up'' requirement, at a time when it had rules requiring that the minimum size disseminated with a quotation be for at least 10 contracts. Consequently, if the Amex received a customer limit order for fewer than 10 contracts, the Exchange would disseminate the price of the customer limit order with a size of 10 contracts and the specialist or the trading crowd would be responsible to make up the difference. Since implementation of the Linkage Plan, the Amex has amended Exchange Rule 958A to permit the dissemination of the ''natural size'' of customer limit orders that are of a size of less than 10 contracts.[9] The Commission believes that approval of the proposed rule change will permit Amex to conform its rules relating to Linkage orders to Exchange rules that apply to non-Linkage orders and will allow the Amex to disseminate a customer limit order's ''natural size,'' which should provide greater transparency to investors and the marketplace, and better reflect the true state of liquidity in the marketplace.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the

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

[2] 17 CFR 240.19b–4.

[3] The Exchange's rule filing is intended to conform Exchange rules to an amendment to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'') filed by the Amex and the other participants of the Linkage Plan and recently approved by the Commission (''Joint Amendment No. 13''). *See* Securities Exchange Act Release No. 50562 (October 19, 2004) (File No. 4–429).

[4] *See* Letter from Jeffery P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 9, 2004 (''Amendment No. 1''). In Amendment No. 1, the Amex amended the proposed rule text to reflect a technical change.

[5] Securities Exchange Act Release No. 50394 (September 16, 2004), 69 FR 57110 (SR–Amex–2004–63).

[6] *See* Joint Amendment No. 13, *supra note* 3.

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

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Securities Exchange Act Release No. 48957 (December 18, 2003), 68 FR 75294 (December 30, 2003) (SR–Amex–2003–24).

[10] 15 U.S.C. 78s(b)(2).