

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 the file number SR-NASD-94-54 and should be submitted by May 18, 1995.

## V. Conclusion

For the reasons stated above, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD, in particular, Section 15A(b)(6). In addition, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> the Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after publication of Amendments No. 1 and 2 in the **Federal Register**. These amendments provide that the NASD will apply initial listing and maintenance criteria consistent with the application of these criteria by the options exchanges for determining whether a security qualifies for standardized options trading. The Commission finds that no new regulatory issues are raised by these amendments and notes that prior to them, the proposed rule change was published in the **Federal Register** for the full statutory period and no comments were received.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-94-54 be, and hereby is, approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>25</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35625; International Series Release No. 804; File No. SR-NASD-94-55]

## Self-Regulatory Organizations; National Association of Securities Dealers; Order Approving a Proposed Rule Change Relating to the Access of West Canada Clearing Corporation and Its Members to the Automated Confirmation Transaction Service

April 19, 1995.

On October 12, 1994, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-NASD-94-55) under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> to allow access by West Canada Clearing Corporation ("West Canada") and its members to the NASD's automated confirmation transaction service ("ACT"). Notice of the proposal was published in the **Federal Register** on January 27, 1995.<sup>2</sup> Sixteen comment letters were received that supported the proposal.<sup>3</sup> For the reasons discussed below, the Commission is approving the proposed rule change.

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> Securities Exchange Act Release No. 35257 (January 20, 1995), 60 FR 5446.

<sup>3</sup> Letters from M. Dryhurst, Cage Manager, Levesque Beaubien Geoffrion Inc., to Secretary, Commission (February 8, 1995); Charles J. Dunlap, C.G.A., Chief Financial Officer, Haywood Securities Inc., to Secretary, Commission (February 7, 1995); Donna M. Kenny, Back Office Manager, Global Securities, to Secretary, Commission (February 9, 1995); D. Foreman, Manager, Clearing, Odlum Brown, to Secretary, Commission (February 9, 1995); B.D. Harwood, Vice Chairman, Canaccord, to Secretary, Commission (February 16, 1995); Gerald H. Powers, Senior Vice President, Cantella & Co., Inc., to Secretary, Commission (February 16, 1995); David R. Smith, Chief Financial Officer, McDermid St. Lawrence Chisholm Ltd., to Secretary, Commission (February 14, 1995); Phyllis Stevenson, Manager, Operations, Meridian Securities International Ltd., to Secretary, Commission (February 10, 1995); Steve McKee, Registered Representative, Golden Capital Securities Ltd., to Secretary, Commission (February 14, 1995); Tony Chan, Vice President, Golden Capital Securities Ltd., to Secretary, Commission (February 14, 1995); Jeff Rutledge, Registered Representative, Golden Capital Securities Ltd., to Secretary, Commission (February 14, 1995); Gus Wahlroth, Registered Representative, Golden Capital Securities Ltd., to Secretary, Commission (February 14, 1995); Jack Finkelstein, Registered Representative, Golden Capital Securities Ltd., to Secretary, Commission (February 14, 1995); Randy Shaw, Registered Representative, Golden Capital Securities Ltd., to Secretary, Commission (February 14, 1995); Rita Gatto, Registered Representative, Golden Capital Securities Ltd., to Secretary, Commission (February 14, 1995); Marie Martin, Vice President and Operations Manager, Midland Walywn Capital Inc., to Secretary, Commission (February 22, 1995). The comment letters are discussed in Section B below.

## I. Description of the Proposal

### A. Description

The NASD is amending its rule regarding ACT to allow West Canada, a nonmember of the NASD, and members of West Canada who are not members of the NASD to access this service. The NASD also is amending the ACT rule to reflect that NASD members functioning as market makers in over-the-counter equity securities are also classified as ACT participants.

The NASD created and implemented the ACT system in response to problems experienced in the wake of the October 1987 market break and at the urging of the Commission to consider accelerating efforts to generate same day compared trades.<sup>4</sup> ACT has three primary features: (1) Trade match processing (*i.e.*, the comparison of trade information and the submission of locked-in trades for regular way settlement to clearing agencies on a trade date or next day ["T+1"] basis);<sup>5</sup> (2) trade reporting for transactions in securities that are subject to real time trade reporting requirements; and (3) risk management features that provide firms with a centralized, automated environment for assessing market exposure during and after the trading day and that permit clearing firms to monitor and respond to the ongoing trading activities of their correspondents.<sup>6</sup>

<sup>4</sup> For a description of ACT, refer to Securities Exchange Act Release Nos. 27229 (September 8, 1989), 54 FR 38484 [File No. SR-NASD-89-25] (order partially approving proposed rule change to permit ACT to be used by self-clearing firms) and 28583 (October 26, 1990), 55 FR 46120 [File No. SR-NASD-89-25] (order approving remainder of File SR-NASD-89-25 to permit ACT to be used by introducing and correspondent broker-dealers).

<sup>5</sup> ACT uses three methods to lock-in trades: (1) Trade-by-trade match, whereby both sides of the trade are reported to ACT and matched; (2) trade acceptance, whereby one side of the trade is reported to ACT and accepted by the contra-side; and (3) aggregate volume match, whereby ACT performs a batch-type comparison at the end of each day that aggregates previously unmatched trade reports to effect a match. (For example, two identical trade reports for 300 and 400 shares of the same security may be matched with a 700 share trade report.)

<sup>6</sup> Among others, ACT has the following risk management capabilities. First, ACT can compute the dollar value of each trade report entered thereby allowing member firms to assess their market exposure during the trading day. Second, clearing firms can establish daily gross dollar thresholds for each correspondent's trading activity. If a correspondent reaches or exceeds the threshold, the clearing firm is so notified. Third, ACT alerts clearing firms when a correspondent reaches 70% or 100% of its daily gross dollar threshold. Fourth, ACT has a single trade limit that provides clearing firms with a 15 minute review period prior to becoming obligated to clear a trade of \$1,000,000 or more executed by one of its correspondents. Fifth, ACT has a super cap limit set at two times the gross dollar thresholds for purchases and sales but in no

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<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</sup> 17 CFR 200.30-3(a)(12) (1994).

Since its implementation, ACT has functioned as an effective and efficient vehicle to compress the trade comparison cycle thereby facilitating the prompt and accurate clearance and settlement of securities transactions and enabling NASD members to know their positions and market exposure before trading commences the next day. As a facility of the Nasdaq Stock Market operated by the Nasdaq Stock Market, Inc. ("NSMI") subsidiary of the NASD, access to the ACT system is limited to NASD members.

Providing West Canada access to ACT has been structured so that the primary parties to the arrangement are West Canada and NSMI, the NASD subsidiary that owns and operates ACT. Rather than negotiating separate contracts with each individual organization, the NASD believes that it is more efficient for NSMI to negotiate with the exchange, market, or clearing entity to which the non-NASD member belongs, in this case West Canada. Accordingly, under the rule change, West Canada operates as a service bureau to input information into ACT on behalf of West Canada members. Individual West Canada members will not be able to obtain access to ACT unless there is first an overriding, umbrella-type agreement reached between NSMI and West Canada. Thus, whenever NASD members transact with West Canada members in ACT eligible securities, they will be able to use ACT just as they do now for comparing regular-way trades with other NASD members.

Under the rule change a nonmember clearing organization will not be given access to ACT unless it: (1) Is a clearing agency registered under the Act; (2) maintains membership in a registered clearing agency; or (3) maintains an effective clearing arrangement with a registered clearing agency. West Canada has an effective clearing arrangement with the Midwest Clearing Corporation ("MCC") and thus satisfies this requirement.<sup>7</sup> New section (b)(5)(B) of

event less than \$1 million that provides clearing firms with a 15 minute review period prior to becoming obligated to clear a trade of \$200,000 or more executed by one of its correspondents once the limit is surpassed.

<sup>7</sup>In January 1983, MCC, Midwest Securities Trust Company ("MSTC"), the Vancouver Stock Exchange, and the Vancouver Stock Exchange Service Corporation ("VSESC"), (now known as West Canada Clearing Corporation ["WCCC"]) ("VSESC/WCCC") created the American and Canadian Connection for Efficient Securities Settlements ("ACCESS"). Through ACCESS, over-the-counter securities transactions between the U.S. and Canadian broker-dealers in both U.S. and Canadian securities are compared, cleared, and settled. Trades between U.S. and Canadian broker-dealers involving securities listed on U.S. securities exchanges, Canadian securities exchanges, or the

the ACT Rules provides that West Canada must execute a Non-member Clearing Organization ACT Participant Application Agreement. This agreement requires West Canada to abide by the ACT rules and regulations and will ensure that West Canada members' trades processed through ACT will be accepted for clearance and settlement by West Canada. The agreement also addresses NSMI concerns over nonpayment of service charges, the financial exposure and liabilities of the parties, and methods of redress should West Canada or a West Canada member fail to comply with the relevant NASD rules and regulations. In addition, new Section (b)(5)(B)(6) of the ACT Rules provides that West Canada will not be able to input information into ACT on behalf of a West Canada member unless such member also enters into a Non-Member ACT Access Participant Application Agreement with NSMI. In the case of a clearing broker, this agreement provides that the member will accept and will settle each trade that ACT identifies as having been effected by such member of any of its correspondents on the regularly scheduled settlement date. In the case of an order entry firm, the firm must agree to accept and settle each trade that it has effected or, if settlement is to be made through a clearing member, guarantee the acceptance and settlement of each ACT-identified trade by the clearing member on the regularly scheduled settlement date.

Separately, the proposal also amends the ACT Rules to expand the term "Participant" to include NASD member firms that function as market makers in over-the-counter ("OTC") equity securities that are eligible for clearing via the National Securities Clearing Corporation's ("NSCC") facilities.<sup>8</sup> The

National Association of Securities Dealers Automated Quotation ("NASDAQ") System are eligible for clearance and settlement through ACCESS. To establish ACCESS, VSESC/WCCC became an MCC/MSTC participant, and opened separate sponsored MCC/MSTC accounts for Canadian broker-dealers that were participants of VSESC. As an MCC/MSTC member, VSESC/WCCC is liable as principal (i.e., guarantees) all trades that it submits including all trades in its sponsored accounts. Some safeguards on ACCESS activity include, contributions by VSESC/WCCC to MCC/MSTC's participant fund based on VSESC/WCCC's total activity, and a cash reserve of over 250,000 Canadian dollars maintained by VSESC/WCCC to be used to satisfy the obligations of any VSESC/WCCC participant that may become insolvent. In addition, VSESC/WCCC guarantees all VSESC/WCCC liabilities to MCC/MSTC. Letter from Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission, to Michael Wise, Associate Counsel, MCC/MSTC (September 12, 1985).

<sup>8</sup>Securities Exchange Act Release No. 30415 (February 26, 1992), 57 FR 7829 [File No. SR-

instant modification will clarify that ACT participant status encompasses NASD members that function as market makers in such securities via the OTC Bulletin Board service or another interdealer quotation system.<sup>9</sup>

### B. Comments

The Commission received sixteen comment letters supporting approval of the filing.<sup>10</sup> The commenters believe that allowing West Canada and its participants to submit trade input to ACT for comparison will improve the timeliness of trade confirmation which is essential to meeting the June 7, 1995 three business day settlement cycle.<sup>11</sup>

### II. Discussion

The rule change stems from a request from West Canada to NASD for access to ACT for trade comparison purposes only.<sup>12</sup> Prior to this rule change, when an NASD member effected a transaction with a West Canada member, the transaction typically was compared, cleared, and settled in the following manner. The NASD member entered the trade into ACT with the West Canada member designated as the contra-party. Because the West Canada member was not an ACT participant, ACT responded to the NASD member "contra-side not ready." ACT then reported the trade for trade reporting purposes and transmitted the trade to NSCC as a one-side trade for trade comparison. The West Canada member submitted the trade information to West Canada that in turn sent the trade to MCC. MCC then transmitted the trade report to NSCC by 2:00 a.m. on T+1 for comparison. NSCC then compared the trade reports, and assuming there was a match, NSCC submitted the West Canada member's side of the transaction to MCC for clearance and settlement; the NASD

NASD-92-5] (order approving OTC Equity Securities as ACT eligible securities).

<sup>9</sup>Under Schedule D to the NASD By-Laws, Part XII, Section 1(d) defines "OTC Market Maker" to mean any NASD member that holds itself out as being a market maker in any OTC Equity Security by entering proprietary quotations or indications of interest in an inter-dealer quotation system.

<sup>10</sup>Supra note 3.

<sup>11</sup>On October 6, 1993, the Commission adopted Rule 15c6-1 under the Act, which establishes three business days after the trade date instead of five business days as the standard settlement time frame for most broker-dealer transactions. Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891 (release adopting Rule 15c6-1). On November 16, 1994, the Commission changed the effective date of Rule 15c6-1 from June 1, 1995, to June 7, 1995. Securities Exchange Act Release No. 34952 (November 9, 1994), 59 FR 59137.

<sup>12</sup>The present filing solely addresses the access of West Canada to ACT. Other proposals concerning nonmember access to ACT, if any, will be raised in separate rule filings submitted pursuant to Section 19 of this Act.

member's side of the transaction was retained by NSCC for clearance and settlement. If there was a discrepancy concerning the terms of the transaction, the trade reconciliation process involved the two clearing corporations and the two parties to the transaction and might last until three days following the trade date. Although the NASD believes that the facilities of NSCC and MCC have been used to compare trades between NASD and West Canada members adequately, the NASD believes the trade comparison procedure for these trades would be streamlined and made more efficient through the use of ACT.

The NASD does not believe that granting West Canada and West Canada members access to ACT will jeopardize the integrity of ACT or any other market facility operated by NSMI. In this regard, before West Canada or any of its members are granted access to ACT, these entities must agree to be bound by the terms of the revised ACT Participant Application Agreements, which establish the terms and conditions under which West Canada and its members will receive access to ACT. The revised Agreements will provide an adequate and sufficient surrogate for NASD membership which otherwise would provide the jurisdictional nexus to ensure compliance with applicable NASD rules and regulations. Initial and continuing access to ACT by nonmembers will be specifically conditioned upon adherence to the terms and conditions of these agreements. West Canada and West Canada members also will be required to maintain the physical security of the equipment used to input trades into ACT. Based on these factors, the NASD believes that granting West Canada and West Canada members access to ACT will not compromise the integrity or operation of Act.

The Commission believes that the proposed rule change is consistent with Section 15A(b)(6)<sup>13</sup> of the Act which requires that the rules of a national securities association be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to 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. The Commission believes the proposal fosters cooperation and coordination with persons engaged in clearing and settling securities transactions by helping to

eliminate the inefficiencies inherent in the practice of submitting two-sided transaction reports to two separate clearing corporations. The proposal should help streamline and improve the process by which trades between NASD and West Canada members are compared. In addition, by compressing the time-period in which open trades are left uncompleted, market participants will be better able to access and evaluate their market exposure thereby contributing to fair and orderly markets and the protection of investors and the public interest. Moreover, ACT generally achieves locked-in trades within minutes of an execution thus resulting in faster and more efficient trade reconciliation, confirmation and increased efficiency of back office operations which the Commission believes is necessary for compliance with Rule 15c6-1 mandating settlement on T+3.<sup>14</sup>

### III. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act and particularly with Section 15A(b)(6) of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NASD-94-55) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-10296 Filed 4-26-95; 8:45 am]

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[Release No. 34-35628; File No. SR-PSE-94-31]

## Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 to Proposed Rule Change Relating to the Listing and Trading of Small Corporate Offering Registration ("SCOR") Securities on the Exchange

April 19, 1995.

### I. Introduction

On December 15, 1994, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change to permit the Exchange to list and trade Small Corporate Offering Registration ("SCOR") securities. On April 12, 1995, the Exchange submitted Amendment No. 1 to the proposal.<sup>3</sup>

The proposed rule change was published for comment in Securities Exchange Act Release No. 35140 (December 22, 1994), 60 FR 159 (January 3, 1995). No comments were received on the proposal.<sup>4</sup> This order approves the PSE's SCOR listing on a three year pilot basis.<sup>5</sup>

### II. Description

The SCOR listing would be a new tier of listed securities that would not qualify for listing on the PSE under either its Tier I or Tier II listing criteria.<sup>6</sup> Under the SCOR designation, issuers may list any single class of common or preferred stock<sup>7</sup> that was issued pursuant to either Regulation A or Rule 504 under the Securities Act of 1933 ("Securities Act").<sup>8</sup> The listing of

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1994).

<sup>3</sup> See letter from Michael Pierson, PSE, to Katherine Simmons, SEC, dated April 12, 1995 ("PSE Letter"). The Amendment clarified certain aspects of the SCOR program, see *infra* notes 12, 16, and 26, and made non-substantive changes to the SCOR Rules. Notice of the Amendment was therefore unnecessary.

<sup>4</sup> The PSE originally proposed to list and trade SCOR securities in 1992. That proposal was published for public comment in Securities Exchange Act Release No. 32514 (June 25, 1993), 58 FR 35496 (July 1, 1993) (File No. SR-PSE-92-42). The Commission received several comment letters regarding the proposal, and subsequently published amendments to the proposal for public comment in Securities Exchange Act Release No. 34328 (July 7, 1994), 59 FR 35776 (July 13, 1994). The Exchange withdrew File No. SR-PSE-92-42 on November 22, 1994, and submitted the instant filing that includes modifications to the proposal in response to comments from the public and from Commission staff.

<sup>5</sup> The PSE will evaluate the SCOR listing program at least on an annual basis to determine whether this new marketplace has achieved its policy objectives, which the Exchange states are to facilitate capital formation for small businesses and to provide public market liquidity for the securities of these small businesses.

<sup>6</sup> The Commission approved the PSE's two-tiered listing criteria for its regular listings in Securities Exchange Act Release No. 34429 (July 22, 1994), 59 FR 50950 (August 1, 1994).

<sup>7</sup> Once a class of SCOR securities has been accepted for listing on the Exchange, all securities of that class will be listed and traded on the Exchange as SCOR securities, except those securities of the class that are subject to restrictions that make them ineligible for trading on the Exchange.

<sup>8</sup> Under Regulation A, public offerings of up to \$5 million in a twelve-month period are exempt from registration under the Securities Act. See 17 CFR 230.251 to 230.263 (1994). Rule 504 of Regulation D provides an exemption from registration for limited offerings and sales of securities not exceeding \$1,000,000. See 17 CFR 230.504 (1994).

<sup>13</sup> 15 U.S.C. 78o-3(b)(6) (1988).

<sup>14</sup> *Supra* note 11.

<sup>15</sup> 17 CFR 200.30-3(a)(12) (1994).