

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)¹³ 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+3.¹⁴

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.¹⁵

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")¹ and rule 19b-4 thereunder,² 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.³

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.⁴ This order approves the PSE's SCOR listing on a three year pilot basis.⁵

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.⁶ Under the SCOR designation, issuers may list any single class of common or preferred stock⁷ that was issued pursuant to either Regulation A or Rule 504 under the Securities Act of 1933 ("Securities Act").⁸ The listing of

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ 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.

⁴ 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.

⁵ 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.

⁶ 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).

⁷ 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.

⁸ 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).

¹³ 15 U.S.C. 78o-3(b)(6) (1988).

¹⁴ *Supra* note 11.

¹⁵ 17 CFR 200.30-3(a)(12) (1994).

securities under the SCOR designation will not provide issuers with the exemption from state securities registration requirements accorded to exchange-listed securities by most states.⁹ Furthermore, SCOR securities will not be eligible for marginability and must be paid for in full.¹⁰

A. Initial Listing Standards

The qualification process for SCOR applicants will be the same as the process in place for other PSE-listed equity issuers. Applications for listing will be reviewed by the Exchange's Listing Department, which works directly with the Equity Listing Committee. The Equity Listing Committee is comprised of floor members, "upstairs" members, and member firm representatives.

The initial listing requirements for common and preferred stock¹¹ must be met at the time an issuer applies for listing.¹² The Exchange may accept applications to list a SCOR offering if the securities have been registered at the state level,¹³ and if there are at least 150,000 publicly held shares and at least 250 public beneficial holders of the class of securities. In addition, issuers must have total net tangible assets of at least \$500,000 and total net worth of at least \$750,000. The last offering price in the class of security for which the issuer

is applying must have been at least \$5 per share.¹⁴

In addition to the quantitative listing requirements, when reviewing an application for listing, the Exchange will consider other factors such as (1) a company's management plan outlining the development of its business for a period of at least 24 months,¹⁵ (2) the background and past conduct of officers, directors, principal shareholders, and key employees of the company, (3) the adequacy of the company's resources to conduct its business,¹⁶ and (4) any material changes in the financial condition of the company or other events that could have an impact upon the value of the security to be listed. In addition, the Exchange will consider all other available information that may be relevant to its review of listing eligibility.¹⁷

SCOR issuers will be required to comply with the corporate governance requirements and disclosure policies applicable to all securities listed on the Exchange.¹⁸ The corporate governance provisions include rules concerning conflicts of interest, quorum, shareholder approval, annual meetings, and solicitation of proxies and consents. The corporate disclosure policies provide guidance to companies in making appropriate public disclosure and include information regarding

consultation with the PSE Listings Department, internal handling of confidential corporate matters, and relationships between company officials and others.¹⁹

B. Maintenance Standards

The SCOR maintenance standards require that there are at least 100,000 publicly held shares with a market value of at least \$500,000, at least 200 public beneficial holders, and a last sale price of at least \$1 per share. In addition, the issuer must maintain total net tangible assets for at least \$250,000 and total net worth of at least \$500,000. A company with a deficiency in either market value of public float or market price will be subject to delistings procedures should the deficiency exist either for a majority of business days of any three-month period, or for any period of ten consecutive business days.²⁰ If there is a deficiency in any other quantitative standard, the Exchange will immediately suspend dealings in the security and subject the company to delisting proceedings.

SCOR securities also will be subject to suspension and/or withdrawal from listing and registration as a listed issue if the Exchange finds that the listed company fails to comply with the Exchange's listing policies or agreements.²¹ Furthermore, an issuer of SCOR securities must take appropriate steps to ensure that no such securities are sold on its behalf in reliance upon the exemption from state securities registration that is otherwise available to companies listed on the Exchange. If an issuer fails to take such steps, the Exchange will immediately suspend

⁹The PSE Rule states that SCOR securities "shall not be considered to be 'listed' or 'approved for listing upon notice of issuance' for purposes of any exemption from filing for issuer or non-issuer transactions under the securities laws or regulations of any state or other jurisdiction of the United States." See PSE Rule 3.2(t), Commentary .03.

¹⁰The rule change amends the PSE's Maintenance Margin Rule to prove that:

Rule 2.16(b). The margin which must be maintained in margin accounts of customers, whether members, allied members, member firms or non-members, shall be as follows:

* * *

(5) In the case of securities listed pursuant to Rule 3.2(t) [SCOR securities], 100% of the market value, in cash, of each security held "long" in the account.

¹¹In formulating the listing requirements for SCOR securities, the Exchange consulted with the Small Business Capital Formation and Small Business Sales Practices Committees of the North American Securities Administrators Association ("NASAA"), the California Department of Corporations, and leaders from the small business community.

¹²The Exchange will not grant "conditional" approvals, i.e., approvals conditioned on the satisfaction of the listing criteria sometime in the future. See PSE Letter, *supra* note 3.

¹³Issuers must register the securities to be listed at the state level using either the state Form U-7 (or the equivalent registration form to which a regulatory review is applied), or a coordinated state filing with the federal Form 1-A offering statement. Once an issuer's class of common or preferred stock has been approved for SCOR listing, the securities must be registered under Section 12(b) of the Act.

¹⁴The Exchange will consider the offering price of individual separate SCOR offerings in a class of securities to help determine whether the value of the SCOR securities to be listed is at least \$5 per share. The Exchange will consider the circumstances of SCOR offerings so that issuers will not be able to effect "token" offerings in order to satisfy the \$5 requirement. See also PSE Rule 3.2(t)(6)(iv) (stating that the exchange will consider whether there have been material changes in the financial condition of the company or other events that could have a significant adverse impact upon the value of the SCOR securities to be listed).

¹⁵The management plan must demonstrate that the product, service, or technology is sufficiently developed and that there is a reasonable expectation of future earnings from its business. The listing of companies that have done blank check offerings will not be permitted.

¹⁶The PSE will not list any company with an outstanding "going concern" opinion from its independent auditor. See PSE Letter, *supra* note 3. See also PSE Rule 3.5(s) (Exchange considers delisting a security upon the issuance of an independent public accountant's disclaimer opinion on financial statements).

¹⁷The Exchange generally will not list a company if the business in which it is engaged is not anticipated to produce profits within a reasonable period of time, if the business operations depend upon the development of a product or system that will not be completed prior to listing, or if preliminary objectives upon which the profit-making ability of the business depends have not been achieved.

¹⁸See PSE Rule 3.3. SCOR securities are subject to all of the corporate governance requirements contained in PSE Rule 3.3 except the independent directors/audit committee requirement of Rule 3.3(b).

¹⁹The PSE's proposed fee schedule for SCOR securities was published in Securities Exchange Act Release No. 35395 (February 17, 1995), 60 FR 10626 (February 27, 1995).

²⁰In each instance, for purposes of the maintenance standards, the market price and the market value of public float will be calculated by using the last sale of the trading day. Should no transactions be effected in the security on a given trading day, the prevailing closing bid price will be used in determining the market value of public float and the last sale price of a security. In the event that there is not a bid price readily available, the Exchange will rely on other recognized established securities markets in which the issue is traded to determine the market value of public float and the last share price.

²¹Other factors the Exchange will consider include, among others, the issuance of an independent public accountant's disclaimer opinion on financial statements required to be certified and losses which are so substantial that, in the opinion of the Exchange, it appears questionable as to whether a company will be able to continue operations. In addition, the Exchange would examine a company that has depleted, sold or otherwise disposed of its principal operating assets, or substantially discontinued the business that it conducted at the time it was listed, or that has been authorized to liquidate its assets. See PSE Rule 3.5(s).

dealings in the security and subject the company to delisting proceedings. Whenever the Exchange staff determines that a security should be removed from the list, the issuer will be given an opportunity to present to the Equity Listing Committee any reasons why the security should not be delisted. A decision by the Equity Listing Committee to delist a security may be appealed to a Board committee or a committee appointed by the Board of Governors for such purpose.²²

C. Trading and Transaction Reporting

The Exchange will allocate SCOR securities to Exchange specialists for auction market trading. All transactions in SCOR securities will be reported on a real-time basis, and will be identified by a ".SC" suffix to the ticker symbol. All of the PSE's rules and equity surveillance procedures will be applicable to transactions in SCOR securities.

III. Discussion

A. Introduction

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 exchange and, in particular, the requirements of Sections 6 and 11A.²³ Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest. Section 11A generally promotes the development of a national market system for securities to assure economically efficient execution of securities transaction; fair competition among brokers and dealers, among exchange markets and markets other than exchange markets; the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities; the practicability of brokers executing investors' orders in the best market; and an opportunity for investors' orders to be executed without the participation of a dealer.

B. SCOR Marketplace

In general, the Commission believes the PSE's SCOR listing program should provide benefits to investors as well as small companies listed under the

program. The SCOR listing standards will provide small companies who would not otherwise be eligible for exchange trading with an opportunity to list securities on a national securities exchange for the first time. The Commission believes that the availability of an exchange listing as an alternative to solely over-the-counter ("OTC") trading will provide an additional trading mechanism that could increase capital committed to trading SCOR securities. In addition, the availability of the SCOR listing on the PSE will enhance SCOR issuer access to the U.S. capital markets.

The Commission believes investors in small companies also will benefit from exchange trading of SCOR securities. Each SCOR security traded on the PSE will be handled by an Exchange specialist who is required to commit capital to maintain fair and orderly markets. Furthermore, trading of SCOR securities on the Exchange will be subject to the PSE's trading and surveillance rules. The Commission believes exchange trading with appropriate market surveillance should improve the quality of market making in SCOR securities. In addition, transactions in SCOR securities will be broadcast over the Consolidated Tape System ("CTS") and the Consolidated Quote System ("CQS") Network B as local issues.²⁴ The Commission believes this real-time reporting and wide dissemination of quotations and transactions in SCOR securities should result in more efficient and fair markets for the securities. Finally, because exchange-trading of SCOR securities requires the companies to register under Section 12(b) of the Act and to comply with the disclosure requirements of the federal securities laws, listing may provide investors with greater access to information about SCOR issuers.

The Commission recognizes, however, that the listing standards for SCOR issuers are significantly lower than those for regular PSE-listed issuers and that the markets for SCOR securities normally may not be as liquid and deep as those for regular PSE-listed securities. The Commission therefore has considered carefully the PSE's proposal, and for the reasons stated below, believes the SCOR proposal satisfies the requirements of the Act.

C. SCOR Listing Standards

In general, the Commission believes the development and enforcement of

adequate standards governing the initial and continued listing of securities on an exchange is necessary to ensure that only *bona fide* companies with sufficient public float, investor base, and trading interest to support a fair and orderly auction market will be listed. Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market.²⁵ Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity. For the reasons set forth below, the Commission believes that the proposed rule change will provide the PSE with appropriate standards to determine which securities warrant listing under the Exchange's new SCOR designation.

The Commission believes that the initial and maintenance criteria for SCOR issuers, as described above, are consistent with Sections 6(b)(5) and 11A of the Act in that these criteria should help to ensure the maintenance of fair and orderly markets for SCOR securities, as well as enhance benefits and protections for investors who trade in these securities. Specifically, the numerical listing and maintenance criteria include minimum requirements for public float and outstanding shares. While these are lower than the regular PSE listing standards, they are high enough to ensure that some minimum level of public interest and liquidity will be available in SCOR securities. Although these lower standards might not be sufficient for regular listings, they are acceptable for SCOR securities given the benefits noted above that the listing of such securities would produce (in particular, the increased information disclosure).

The Commission believes the quantitative SCOR listing standards are adequate to ensure that fair and orderly markets can be maintained. This conclusion is reinforced by the PSE's decision not to accept applications from issuers until they meet the minimum numerical listing criteria.²⁶ The

²⁵ See, e.g., In re Silver Shield Mining and Milling Company, Securities Exchange Act Release No. 6214 (March 18, 1960) ("use of the facilities of a national securities exchange is a privilege involving important responsibilities under the Exchange Act"); In re Consolidated Virginia Mining Co., Securities Exchange Act Release No. 6192 (February 26, 1960) (same).

²⁶ In addition, a SCOR-listed issuer that becomes eligible for trading on the Exchange under its Tier I or Tier II criteria may "graduate" to the main lists.

²² If a security is delisted, the Exchange must submit an application to the Commission to strike the security from listing and registration. A copy of such application will be provided to the issuer in accordance with Section 12 of the Act. See 15 U.S.C. 78l(d) (1988).

²³ 15 U.S.C. §§ 78f and 78k-1 (1988).

²⁴ SCOR securities will be identified by a ".SC" suffix to the ticker symbol so that members, public investors, and others can distinguish SCOR securities from other securities traded on the Exchange.

Commission believes that making satisfaction of the numerical listing criteria mandatory before the Exchange considers whether an issuer is appropriate for exchange trading should help safeguard the integrity of the exchange market and the securities listed thereon.

In addition to the quantitative standards, the Exchange considers other qualitative factors such as an issuer's management plan, the background of officers and directors, and the adequacy of the company's resources. The Commission believes that these factors, combined with other Exchange rules regarding corporate governance and disclosure policies, will help to ensure that only companies with sufficient business plans and resources will have access to the PSE's public market.

The Commission believes that the PSE's proposal for SCOR listings will provide it with the necessary flexibility to determine whether a SCOR issuer is appropriate for exchange trading,²⁷ irrespective of whether it meets the minimum quantitative listing criteria. Thus, the Commission believes that the new listing and maintenance standards strike the appropriate balance between protecting investors and providing a marketplace for small issuers satisfying the disclosure requirements under the federal securities laws.

D. Margin

As discussed above, the PSE is amending Exchange Rule 2.16 to require that SCOR-listed securities be subject to a 100% maintenance margin requirement. The Commission agrees with the maintenance margin approach proposed by the PSE. The SCOR program is intended to be a new marketplace that attracts issuers that might otherwise trade OTC. It is logical that the maintenance margin treatment for OTC securities would apply to SCOR issuers, rather than the treatment accorded regular PSE companies.²⁸

E. State Law Concerns

The Commission believes that the safeguards the PSE has established should make clear to PSE members and

However, companies on the Exchange's main lists may not move down to the SCOR listing program. See PSE Letter, *supra* note 3.

²⁷ PSE Rule 3.2(t)(6) states: "Notwithstanding that a company meets the prescribed listing requirements, the Exchange retains the discretion to refuse listing to a company where it believes it is in the public interest to do so."

²⁸ Non-MNS OTC securities are not marginable unless they are included in the Federal Reserve Board's OTC Margin List. The PSE will require 100% margin on SCOR securities whether or not they are included on the Federal Reserve Board's OTC Margin List.

SCOR issuers listed under the new program that the offer and sale of SCOR securities are subject to state registration and rules. The PSE proposal would prohibit SCOR issuers from using the exemption from registration requirements that the securities laws of some states currently make available to other PSE-listed companies. To accomplish this, the PSE included in its rules that SCOR issuers would not be able to take advantage of existing exemptions in state securities registration requirements accorded to regular PSE-listed securities. In addition, the SCOR rules state that the Exchange will delist any company that fails to take appropriate steps to ensure that no SCOR-listed securities are sold on its behalf in reliance upon the exemption from state securities registration that is otherwise available to companies listed on the Exchange.

F. Review Procedures

The Commission believes the Exchange has proposed adequate procedures to screen applications for SCOR listing. The Exchange's Listing Department staff initially will review applications to confirm that all quantitative listing criteria have been met and evaluate issuers according to the qualitative standards discussed above. The staff will reject applications that fail to meet the quantitative standards. The staff also has discretion to reject applications that have qualitative deficiencies. Applications not rejected by the staff are submitted to the Equity Listing Committee for evaluation. The Equity Listing Committee must approve all applications before new SCOR listings may be accepted by the Exchange.

G. Pilot

Finally, the Commission believes it is appropriate to approve the SCOR program on a three-year pilot basis. This pilot will provide the Exchange, SCOR issuers, and investors with sufficient time to gain experience with the program. In addition, during the pilot, the PSE should monitor and evaluate the SCOR program so that the Commission can assess the benefits of the SCOR listing. The PSE should file a report with the Commission if they determine to request an extension of the pilot or seek permanent approval. The report should contain information on the number of SCOR listing applications accepted and rejected, the SCOR securities that have been delisted and the reasons therefore, the number of SCOR securities that have moved to the PSE's regular market or another market, and quantitative data on the trading

history of SCOR securities (including average price per share and trading volume).

IV. Conclusion

For the reasons stated above, the Commission believes the rule change is consistent with the Act and, therefore, has determined to approve it on a three-year pilot basis. The rule change establishes quantitative and qualitative listing criteria for SCOR securities that provide for the protection of investors and the public interest. Furthermore, the SCOR listing program should provide benefits to investors and small companies by providing for the exchange-trading of SCOR securities, which should result in added liquidity, price discovery, and regulatory oversight.

The Commission does not believe that the rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,²⁹ that the proposed rule change (SR-PSE-94-31) is approved on a pilot basis through April 19, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁰

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-10297 Filed 4-26-95; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 2193]

Shipping Coordinating Committee; Subcommittee for the Prevention of Marine Pollution; Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on May 19, 1994, from 9:30 am to 12 noon in Room 6103 of U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of this meeting is to seek input from the public to assist development of the U.S. position regarding the application of the precautionary approach to the International Maritime Organization's (IMO) work.

At the 35th Session of the Marine Environmental Protection Committee (MEPC) of IMO in March, 1994, a Correspondence Group was established

²⁹ 15 U.S.C. 78s(b)(2) (1988).

³⁰ 17 CFR 200.30-3(a)(12) (1994).