

42), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³³

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36372; File No. SR-DTC-94-10]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Withdrawal of a Proposed Rule Change Regarding the Establishment of a Fee Schedule for Certain Inter-Depository Deliveries

October 16, 1995.

On July 7, 1994, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ a proposed rule change to establish a fee schedule for certain inter-depository deliveries. Notice of the proposed rule change was published in the Federal Register on August 9, 1994.² DTC subsequently requested and the Commission granted two extensions of the period for public comment on the proposed rule change.³

On October 11, 1995, DTC withdrew the proposed rule change.⁴

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36370; File No. SR-PSE-95-11]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Number of Trading Posts That May Be Included as Part of Each Market Maker's Primary Appointment Zone

October 13, 1995.

I. Introduction

On April 7, 1995, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to 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 proposal to increase the number of trading posts that may be included as part of each market maker's primary appointment zone. The proposed rule change was published for comment in the Federal Register on June 16, 1995.³ No comments were received on the proposed rule change.

II. Description of the Proposal

PSE Rule 6.35 currently requires each options market maker to select and maintain a primary appointment zone consisting of one or two trading posts.⁴ Pursuant to Rule 6.35, Commentary .03, at least 75% of the trading activity of each market maker (measured in terms of contract volume per quarter) must be in classes of option contracts to which such market maker's primary appointment zone extends. In addition, under the short sale rule applicable to stocks traded in the Nasdaq market, the options market maker exemption to that rule is limited to stocks underlying options in which a market maker holds an appointment.⁵

The Exchange proposal seeks to amend Rule 6.35 in two respects. First,

the maximum number of trading posts that could be included as part of each primary appointment zone would be increased from two to six. Second, the Options Appointment Committee could allow a market maker to exceed the six trading post maximum if special circumstances were to exist.⁶

III. Discussion

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 Section 6(b)(5) of the Act⁷ that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.

The Commission believes that increasing from two to six the maximum number of contiguous trading posts that may comprise an options market maker's primary appointment zone is a reasonable measure designed by the Exchange to help ensure adequate market maker participation in each class of options traded on the Exchange. The Exchange has stated that the effect of increasing the trading post maximum will be to increase the maximum number of issues a market maker could have within his or her primary appointment zone. Accordingly, out of a total of 366 options issues at PSE, the change potentially could result in increases from 58 to 98 in appointed issues, representing an increase from 16% to 27% of the total number of issues traded on the Exchange.⁸

The Commission believes that the PSE's proposal will benefit the market and investors by increasing the potential number of options classes to which the obligations of a market maker will apply.⁹ Although the Commission

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ See Securities Exchange Act Release No. 35836 (June 9, 1995), 60 FR 31751.

⁴ PSE Rule 6.35 requires multiple posts to be contiguous, except under special circumstances.

⁵ The NASD short sale rule prohibits broker-dealers from effecting short sales for themselves or their customers at or below the "bid" when the current "inside" or best price is below the previous inside bid. See NASD Rules of Fair Practice, Art. III, § 48. The PSE's market maker exemption to the short sale rule allows options market makers to hedge options positions in their primary appointment zone by buying or selling (including selling short) shares of underlying stocks or underlying component stocks contained in stock indexes. Such an "exempt hedge transaction" is defined by the Exchange as a short sale effected to hedge, and which in fact serves to hedge, an existing offsetting options position or an offsetting options position that was created in one or more transactions contemporaneous with the short sale. See PSE Rule 4.19.

⁶ See Discussion below

⁷ 15 U.S.C. 78f(b)(5) (1988).

⁸ See Facsimile from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Francois Mazur, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated September 12, 1995. In comparison, out of a total of 644 classes of options at the CBOE, there are a maximum of 241 classes of options in which a CBOE market maker may hold an appointment, representing 37% of the total number of options classes traded at the CBOE. Securities Exchange Act Release No. 35629 (April 19, 1995), 60 FR 20542.

⁹ For example, PSE Rule 6.37 requires generally that a market maker's transactions constitute a course of dealing reasonably calculated to contribute to the maintenance of a fair and orderly market. Specific requirements include engaging in dealings for the market maker's own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a

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³³ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. § 78s(b)(1) (1988).

² Securities Exchange Act Release No. 34480 (August 2, 1994), 59 FR 40630.

³ Securities Exchange Act Release Nos. 34594 (August 25, 1994), 59 FR 45317 [File No. SR-DTC-94-10] (order extending comment period until September 30, 1994); and 34828 (October 12, 1994), 59 FR 52849 [File No. SR-DTC-94-10] (order extending comment period until November 15, 1994).

⁴ Letter from Richard B. Nesson, Executive Vice President and General Counsel, DTC, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission, (October 11, 1995).

⁵ 17 CFR 200.30-3(a)(12) (1994).

recognizes that the proposal could result in increasing a market maker's appointed options classes, the PSE is under an obligation to ensure that adequate market making capabilities and obligations will continue to exist in such classes. In this regard, the Commission expects the PSE to assess whether market makers have adequate capital to fulfill their continual market making obligations under PSE Rule 6.37 in all their appointed classes. Further, the in-person and general trading requirements applicable to market makers under PSE Rule 6.37¹⁰ should continue to ensure that market making is adequate in all appointed classes.¹¹

The Commission also believes that there may be circumstances in which it would be appropriate for the Options Appointment Committee to allow a market maker to exceed the six trading post maximum. Before allowing a market maker to exceed the six trading post maximum, however, the Commission expects the Options Appointment Committee to make a specific finding that special circumstances exist. In determining the existence of special circumstances, the Options Appointment Committee should identify the need to expand the trading post maximum, and consider, among other things, whether there continues to exist sufficient liquidity in that market maker's existing appointments, and whether that market maker will continue to have adequate capital to fulfill his or her market

temporary disparity between the supply of and demand for a particular option contract, or a temporary distortion of the price relationship between option contracts of the same class. Other requirements include maintaining certain minimum bid/ask differentials, and providing for maximum allowable bid and offer changes. The Commission notes that increasing the number of trading posts that may comprise a market maker's primary appointment zone does not in any way lessen a market maker's obligation to make a market.

PSE Rule 6.35 will continue to require that a market maker's primary appointment zone consist of contiguous posts, unless special circumstances exist and the Options Appointment Committee appoints non-contiguous posts.

¹⁰ PSE Rule 6.37, Commentary .07 generally requires that at least 60% of a market maker's transactions be executed by the market maker in-person, while present on the options trading floor, and provides sanctions for failing to meet this requirement. Moreover, PSE Rule 6.32, Commentary .02 allows market makers to elect to receive market maker treatment for off-floor opening transactions if the market maker, in addition to satisfying all of the other existing obligations imposed on market makers, executes at least 80% of his or her total transactions for any calendar quarter in-person and not through the use of orders. See Securities Exchange Act Releases No. 34338 (July 8, 1994), 59 FR 35965.

¹¹ The Commission notes that any further changes to this rule may warrant the development of additional standards to ensure adequate market making performance.

making obligations. Moreover, the Commission expects that any expansion in the trading post maximum would be temporary as market needs warrant.¹²

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-PSE-95-11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36369; File No. SR-Phlx-95-22]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1, 2, 3, 4 and 5 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing and Trading of Options on the Phlx Super Cap Index

October 13, 1995.

I. Introduction

On April 10, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed a proposed rule change with 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 to provide for the listing and trading of index options on the Phlx Super Cap Index ("Super Cap Index" or "Index").

Notice of the proposal was published for comment and appeared in the Federal Register on May 16, 1995.³ On June 23, 1995, the Phlx submitted to the Commission Amendment No. 1 to its proposed rule change.⁴ On July 24,

¹² The Commission understands that the Options Floor Trading Committee will examine the appropriateness of any further changes to this rule in the near future. Telephone Conversation between Michael, D. Pierson, Senior Attorney, Market Regulation, PSE, and Francois Mazur, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on October 12, 1995.

¹³ 15 U.S.C. 78s(b)(2) (1988).

¹⁴ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 35699 (May 10, 1995), 60 FR 26065.

⁴ The Phlx submitted Amendment No. 1 to its proposed rule change to replace Walmart with Philip Morris as one of the component issues of the Super Cap Index. The Phlx also proposes to set a

new starting value of 350 as of May 31, 1995. Finally, the Phlx proposes to list LEAPs on the Super Cap Index pursuant to Phlx Rule 1101A(b)(iii). See Letter from Michele Weisbaum, Associate General Counsel, Phlx, to John Ayanian, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Market Regulation"), Commission, dated June 23, 1995 ("Amendment No. 1").

⁵ The Phlx submitted Amendment No. 2 to its proposed rule change to withdraw the proposed amendment to Phlx Rule 1006A. See Letter from Michele Weisbaum, Associate General Counsel, Phlx, to John Ayanian, Attorney, OMS, Market Regulation, Commission, dated July 24, 1995 ("Amendment No. 2").

⁶ The Phlx submitted Amendment No. 3 to its proposed rule change to indicate that at all times, the 5 components of the Index must be options eligible. Therefore, the Index will be composed of the top 5 options eligible common stocks of U.S. Companies, measured by capitalization traded on the NYSE. The Phlx also indicated that it will evaluate the Index on a semi-annual basis to ensure that it is an accurate representation of the intended market character of the Index. If any components would need to be removed pursuant to these requirements, the Exchange will immediately notify the staff of the Division of Market Regulation and will file a new Rule 19b-4 submission if so determined by the Division staff prior to opening any new series of options. Additionally, the Exchange proposes to immediately replace any component that drops out of the top 10 highest capitalized stocks on the NYSE, without waiting for the next semi-annual review. The Exchange also proposes to notify the Division staff if, at any time, any one component issue represents 50% or more of the Index. See Letter from Michele Weisbaum, Associate General Counsel, Phlx, to John Ayanian, Attorney, OMS, Market Regulation, Commission, dated August 7, 1995 ("Amendment No. 3").

⁷ The Phlx submitted Amendment No. 4 to its proposed rule change to indicate that pursuant to proposed amendment to Phlx Rule 1047A, the opening rotation for Super Cap Index options may be held after underlying securities representing 75% of the current index value of all the securities underlying the index have opened for trading on the primary market. See Letter from Michele Weisbaum, Associate General Counsel, Phlx, to John Ayanian, Attorney, OMS, Market Regulation, Commission, dated October 12, 1995 ("Amendment No. 4").

Additionally, the Phlx submitted Amendment No. 5 to its proposed rule change to delete the reference to the Super Cap Index in proposed amended Phlx Rule 1101A, Commentary .01. The Phlx represents that it will include the proper reference to the Super Cap Index when it files proposal SR-Phlx-95-37 with the Commission. Specifically, the Phlx will propose to amend Phlx Rule 1101A, Commentary .01 to indicate that transactions may be effected until 4:15 p.m. each business day through the last trading day (ordinarily a Thursday) prior to expiration for Super Cap Index options, as well as other a.m. settled index options. The Exchange further represents that it will issue a circular to Phlx members disclosing this information. See Letter from Michele Weisbaum, Associate General Counsel, Phlx, to John Ayanian, Attorney, OMS, Market Regulation, Commission, dated October 12, 1995 ("Amendment No. 5").