

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.

[FR Doc. 95-26003 Filed 10-19-95; 8:45 am]

BILLING CODE 8010-01-M

[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.

[FR Doc. 95-26002 Filed 10-19-95; 8:45 am]

BILLING CODE 8010-01-M

[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).