

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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File Number SR-CBOE-95-51 and should be submitted by January 19, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁸ that the proposed rule change (SR-CBOE-95-51), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁹

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36622; File No. SR-PSE-95-27]

Self-Regulatory Organizations; Pacific Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change Relating to the Amendment of Its Minor Rule Plan To Include Certain Rules on Financial Reporting and Cooperation in Exchange Investigations and the Establishment of a Charge for the Late Filing of Periodic FOCUS Reports

December 21, 1995.

On October 17, 1995, the Pacific Stock Exchange, Incorporated ("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 proposed rule change to amend its Minor Rule Plan to include certain rules on financial reporting and cooperation in Exchange investigations and to establish an administrative charge for the late filing of quarterly FOCUS Reports.

The proposed rule change was published for comment in Securities Exchange Act Release No. 36474 (November 9, 1995), 60 FR 57611

(November 16, 1995). No comments were received on the proposal.

The Exchange's Minor Rule Plan ("MRP"), set forth in PSE Rule 10.13, provides that the Exchange may impose a fine not to exceed \$5,000 on any member, member organization, or person associated with a member or member organization, for any violation of an Exchange rule that has been deemed to be minor in nature and approved by the Commission for inclusion in the MRP. PSE Rule 10.13, subsections (h)-(j), sets forth the specific Exchange rules deemed to be minor in nature.

The Exchange is proposing to add the following provision to the MRP as PSE Rule 10.13(j)(5): "Failure to file a financial report or financial information in the type, form, manner and time prescribed by the Exchange. (Rule 2.12(a))."³ The Exchange is also proposing to amend its Recommended Fine Schedule for rules listed in the MRP to establish the following recommended fines for violations of PSE Rule 2.12(a): \$100 for a first-time violation; \$250 for a second-time violation; and \$500 for a third-time violation.⁴

The Exchange is also proposing to add the following provision to the MRP as PSE Rule 10.13(j)(6): "Delaying, impeding or failing to cooperate in an Exchange investigation. (Rule 10.2(b))." The Exchange is also proposing to amend its Recommended Fine Schedule for rules listed in the MRP to establish the following recommended fines for violations of PSE Rule 10.2(b): \$100 for a first-time violation; \$250 for a second-time violation; and \$500 for a third-time violation.

In addition, the Exchange is proposing to amend PSE Rule 2.12(b)(1) to establish an administrative charge for member organizations that are late in filing their periodic FOCUS Reports

³ PSE Rule 2.12(a) states: "Every member organization which is not a member of another national securities exchange or registered national securities association which is the Designated Examining Authority for that member organization shall file with the Exchange answers to Financial Questionnaires, Reports of Income and Expenses and additional financial information in the type, form, manner and time prescribed by the Exchange."

The Exchange stated that Rule 2.12(a) does not encompass the filing with the Exchange of either periodic or annual FOCUS Reports required by SEC Rules 17a-5 or 17a-10. Telephone conversation between Michael D. Pierson, Senior Attorney, PSE, and Jon Kroeper, Attorney, SEC, on December 19, 1995.

⁴ For a discussion of the Exchange's Recommended Fine Schedule, see Securities Exchange Act Release No. 34322 (July 6, 1994), 59 FR 35958 (July 14, 1994).

with the Exchange.⁵ The proposed rule change would add a reference to Rule 17a-5 to the text of PSE Rule 2.12(b)(1), making the late filing of periodic FOCUS Reports subject to the same "late charge" schedule that currently applies to the late filing of annual FOCUS Reports required by Rule 17a-10 under the Act.⁶

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, with the requirements of Section 6(b).⁷ In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements 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, and with the Section 6(b)(6) requirement that the rules of an exchange provide that its members be appropriately disciplined for violations of an exchange's rules and the Act.

Specifically, the Commission believes that adding the above-listed provisions to the Exchange's MRP is consistent with Sections 6(b)(5) and 6(b)(6) in that the purpose of the Exchange's MRP is to provide for a response to a violation of Exchange rules when a meaningful sanction is needed, but when initiation of a formal disciplinary proceeding pursuant to PSE Rule 10.3⁸ is not suitable because such a proceeding would be more costly and time-consuming than would be warranted

⁵ The Exchange's Plan filed pursuant to Rule 17a-5(a)(4) under the Act requires PSE member organizations that are not exempt from Rule 15c3-1 under the Act ("Net Capital Rule") to file periodic FOCUS Reports with the Exchange if the PSE is their designated examining authority ("DEA"). See 17 CFR 240.17a-5(a)(4); Securities Exchange Act Release No. 11935 (December 17, 1975), 40 FR 59706 (December 30, 1975) (order approving the PSE's Plan pursuant to Rule 17a-5). In 1993, the SEC approved certain changes to the Net Capital Rule, including the elimination of an exemption for certain equity exchange specialists, effective as of April 1, 1994. See Securities Exchange Act Release No. 32737 (August 11, 1993), 58 FR 43555 (August 17, 1993). Consequently, as of April 1, 1994, a number of Exchange specialists became obligated to file FOCUS reports with the Exchange. Prior to April 1994, no PSE member organizations were required to file such reports with the Exchange.

⁶ 17 CFR 240.17a-10. The current "late charge" schedule found in PSE Rule 2.12(b)(1) is as follows: 1-30 days later—\$200; 31-60 days late—\$400; 61-90 days late—\$800. Any failure to file an annual FOCUS Report longer than 90 days is referred to the Ethics and Business Conduct Committee for appropriate disciplinary action.

⁷ 15 U.S.C. 78f(b).

⁸ PSE Rule 10.3 governs the initiation of formal disciplinary proceedings by the Exchange for violations within the disciplinary jurisdiction of the Exchange

³⁸ 15 U.S.C. 78s(b)(2).

³⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

given the nature of the violation.⁹ PSE Rule 10.13 provides for an appropriate response to minor violations of certain Exchange rules while preserving the due process rights of the party accused through specified required procedures.¹⁰

Moreover, the Commission finds that violations of the provisions being added to the MRP are objective and technical in nature, and easily verifiable, thereby lending themselves to the use of expedited proceedings. Noncompliance with the provisions may be determined objectively and adjudicated quickly without the complicated factual and interpretive inquiries associated with more sophisticated Exchange disciplinary proceedings. If, however, the Exchange determines that a violation of one of these rules is not minor in nature, the Exchange retains the discretion to initiate full disciplinary proceedings in accordance with Exchange Rule 10.3.

The Commission also believes that the establishment of an administrative charge for the late filing of periodic FOCUS Reports is consistent with Section 6(b)(1) of the Act in that it will enhance the Exchange's ability to enforce compliance with Rule 17a-5 under the Act and the rules of the Exchange by providing the PSE with a standardized response to such instances and members with a clear incentive to file their periodic FOCUS Reports on a timely basis.

Finally, the Commission finds that, consistent with Section 6(b)(6), the imposition of both the recommended fines for the above-listed additions to the MRP and an administrative charge for the late filing of periodic FOCUS Reports should result in appropriate discipline of members, in a manner that is proportionate to the nature of such violations. The Commission, however, expects the PSE to bring full disciplinary proceedings in appropriate cases involving the additions to the MRP and the late filing of periodic FOCUS Reports (e.g., in cases where the violation is egregious or where there is a history or pattern of repeated violations).

⁹ The inclusion of a rule in an exchange's minor rule plan should not be interpreted to mean that it is not an important rule. On the contrary, the Commission recognizes that the inclusion of minor violations of particular rules under a minor rule violation plan may make the exchange's disciplinary system more efficient in prosecuting more egregious and/or repeated violations of these rules, thereby furthering its mandates to protect investors and the public interest.

¹⁰ The MRP permits any person to contest the Exchange's imposition of a fine through submission of a written answer, at which time the matter will become a formal disciplinary proceeding.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-PSE-95-27) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36629; International Series Release No. 909; File No. SR-NYSE-95-29]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1 and 2 Relating to the Specifications and Content Outline for the Canadian Module of the General Securities Registered Representative Examination (Series 37 and Series 38)

December 21, 1995.

I. Introduction

On September 18, 1995, the New York Stock Exchange, Inc. ("NYSE" 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 adopt a Canadian module of the General Securities Registered Representative Examination.

The proposed rule change was published for comment in the Federal Register on October 23, 1995.³ No comments were received on the proposal. Amendment No. 1⁴ was filed on November 2, 1995. Amendment No. 2⁵ was filed on December 19, 1995. This order approves the proposal, including Amendments No. 1 and 2 on an accelerated basis.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 36378 (Oct. 16, 1995), 60 FR 54401.

⁴ Amendment No. 1 confirmed that the Exchange has procedures in place that ensure the module remains current in view of industry changes in the United States as well as Canada, and it assigned separate series numbers to the two examinations contained in the module. See Letter dated November 1, 1995, from James E. Buck, Senior Vice President and Secretary, NYSE, to Glen Barrentine, Team Leader, SEC.

⁵ Amendment No. 2 broadened the scope of the module slightly by adding some subtopics to it. See letter dated December 15, 1995, from James E. Buck, Senior Vice President and Secretary, NYSE, to Glen Barrentine, Team Leader, SEC.

II. Description of the Proposal

Presently, registered representatives who are already qualified to conduct business in Canada and who wish to sell securities in the United States must qualify as registered representatives in the U.S. by successfully completing the General Securities Registered Representative Examination (Series 7). In an effort to reduce redundant qualification requirements, the Exchange has developed a Canadian module of the Series 7 which consists of two examinations, the Series 37 and the Series 38. As a subset of the Series 7, these examinations cover subject matter that is not covered, or is not covered in sufficient detail, on the Canadian qualification examinations. The Series 37 is for Canadian registered representatives who hold the additional Canadian license to sell options. This examination contains only 45 questions because it excludes questions pertaining to options. All other Canadian registered representatives must pass the Series 38. This is a 90 question examination that includes questions concerning options.

To become registered with the Exchange, qualified Canadian registered representatives in good standing with the Canadian securities authorities would be required to obtain a passing score on one of the two examinations contained in the Canadian module. Canadian representatives seeking to sell municipal securities, however, would be required to pass either the standard Series 7 or a combination of the applicable Canadian module examination and the Series 52 (Municipal Securities Representative Examination).

III. Discussion

After careful review, 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, with the requirements of Section 6(b)(5) and Section 6(c)(3)(B).⁶

The Commission believes the proposal is consistent with Section 6(b)(5)⁷ because it is designed to perfect the mechanism of a free and open market. The Canadian module of the series 7 reduces duplicative qualification requirements and, at the same time, allows the Exchange to ensure that the Canadian representatives wishing to become registered with the Exchange are fully qualified. In addition, U.S. representatives currently receive substantially reciprocal

⁶ 15 U.S.C. 78f(b)(5) and 78f(c)(3)(B).

⁷ 15 U.S.C. 78f(b)(5).