with the efforts of several states that are in the forefront of the small business movement, will clearly benefit both the investing public as well as small companies seeking access to capital markets. The Exchange also believes the expanded use of the Form U-7 in Regulation A offerings will encourage a more effective and simplified system of raising capital. The collective efforts of federal and state agencies to streamline the registration process for small corporate offerings is especially important because the institutional venture capital industry has substantially abandoned the financing of small start-up companies, leaving them the private offering market as the only remaining source of capital. Therefore, the development of the SCOR program has made corporate offerings more flexible and less costly to small companies, without compromising investor protection.

Initial and Continued Listing Requirements

The Exchange has in place a regulatory program that will ensure close scrutiny of any company applying to list its common stock and/or preferred stock under the SCOR program. The listing qualification process for SCOR applicants will be the same as the process in place for other PSE-listed equity issuers. The merit review process is coordinated by the Exchange's Listings Department, which works directly with the Equity Listing Committee. This Committee, which is comprised of floor members, "upstairs" members and member firm representatives, has substantial collective experience in the evaluation of companies for possible listing on the Exchange.

The Exchange's proposed SCOR marketplace is limited to the listing of one class of common stock and preferred stock. To ensure a minimum level of financial performance by issuers under the SCOR program, the Exchange has developed a single set of initial and maintenance listing requirements that will apply to both common stock and preferred stock. In formulating the listing requirements set forth below, the Exchange consulted extensively with committees of NASAA,4 the California Department of Corporations, and leaders from the small business community. The Exchange believes that the proposal satisfactorily addresses the mutual

concerns of these individuals and organizations.

Under the proposal, at the time of application and formal request for listing, the issuer must meet all of the following listing requirements. First, the SCOR offering in the class of security for which the issuer is applying for listing must be at least \$5 per share, and constitute at least 150,000 publicly held shares with a minimum public distribution of 250 beneficial holders.⁵ Second, the company must have total net tangible assets of at least \$500,000 and total net worth of at least \$750,000. Third, the issuer must have specific corporate governance policies that comply with PSE Rule 3.3.⁶ Fourth, the issuer must provide the Exchange with audited financial statements that are required to be included in the issuer's Exchange Act registration statement. Fifth, the company must demonstrate that the product, service, or technology is sufficiently developed and that there is a reasonable expectation of future earnings from its business. Finally, the issuer must have registered the securities of the class 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.

In addition, under the proposal, once an issuer's class of security has been approved for listing under the SCOR program, the following requirements must also be met. First, the issuer's class of common stock and/or preferred stock must be registered under section 12(b) of the Exchange Act (before it may be treaded on the Exchange). Second, the issuer must comply with the Exchange's listing policies and agreements, as well as the reporting and disclosure requirements of the Exchange Act. Third, in listing additional shares of the same class of common stock or preferred stock, the issuer must meet the applicable federal securities laws and state registration requirements. Finally, an issuer listed under the SCOR program must comply with the

Exchange's listing maintenance requirements set forth in Rule 3.5(r).

Trading Environment and Transaction Reporting

The Exchange intends to allocate common stock and preferred stock listed under the SCOR program to a Specialist for auction market trading. Any transactions in such securities would be reported on a real-time basis. Transactions in SCOR securities would be identified by a special suffix to the ticker symbol so that members, public investors and others can distinguish these securities from other securities traded on the Exchange. Finally, all of the Exchange's rules and equity surveillance procedures would be applicable to transactions in SCOR securities.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.⁷

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings whether the proposed rule change should be disapproved.

⁴ The Exchange discussed its proposal with the Small Business Capital Formation and the Small Business Sales Practices committees of NASAA.

⁵The term "public beneficial holder" means a beneficial holder who, with respect to the issuer, is not a director or officer or member of the immediate family thereof or an affiliate or associate thereof, and whose ownership of an equity security is less than 5% of the total number of shares issued and outstanding.

⁶PSE Rule 3.3 contains corporate governance requirements regarding conflicts of interest, independent directors/audit committee, quorum, shareholder approval, annual meetings, solicitation of proxies and consents, and common and preferred stock voting rights. SCOR issues are subject to all of these corporate governance requirements except for the independent directors/audit committee requirement in Rule 3.3(b).

⁷For a discussion of the comments received on the previous PSE SCOR listing proposal *see* Securities Exchange Release No. 34328, *supra* note 1