

interest by expediting and making more efficient the process by which members receive and execute orders on the floor of the Exchange.

The Commission also believes that the NYSE's Plan to phase in the wireless technology is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers. Before implementing Phase II of the NYSE Plan, each of the vendors of the pilot programs must describe its procedures for selecting the 25 participants that will participate in its program. These procedures must provide a fair and non-discriminatory environment and must comply with the Exchange's selection requirements. For example, each vendor must demonstrate to the Exchange that it is willing and able to offer any member who wishes to use that vendor's system the opportunity to participate in the vendor's pilot program, subject to (i) The capacity constraints of the vendor's system, (ii) reasonable lead-time that the vendor may need to bring new users on-line and (iii) the NYSE Plan limit of 25 participants per pilot program. Each vendor is required, among other things, to offer its service in a reasonable manner that does not give the vendor (if it is also a member), or a member that is a sponsor or affiliate of the vendor, an unfair advantage over other Exchange members. In addition, the Exchange will prohibit a vendor from providing its pilot program to any member that primarily trades¹¹ in one stock unless and until (i) The vendor is prepared to provide its service to all members who primarily trade in the same stock and who desire to participate in the pilot program or (ii) the Exchange otherwise permits. Moreover, the Exchange will develop procedures for selecting its own pilot program participants on the same basis. The Commission believes that these procedures and limitations will result in a fair implementation of the NYSE Plan.

Finally, the Commission believes that the proposed interpretation to Rule 117, under which the transmission of an order that is received by means of an authorized hand-held device will be deemed to constitute a "written order" for purposes of Rule 117, in general, protects investors and the public interest. The proposed interpretation provides that an order received through a hand-held device will be considered a "written order" only if it meets the

specified requirements, concerning the information to be maintained about the order. The Commission believes the proposed interpretation to Rule 117 will provide a more efficient means of communicating orders on the floor at the same time it requires the same information that is currently available for orders processed manually.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NYSE-95-22) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36158; File No. SR-PSE-95-16]

Self-Regulatory Organizations; Pacific Stock Exchange Incorporated; Order Granting Approval To Proposed Rule Change and Amendment No. 1 To Proposed Rule Change Relating to Violations of the Intermarket Trading System Rules

August 25, 1995.

On June 8, 1995, the Pacific Stock Exchange Incorporated ("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 ("the Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its Minor Rule Violation Plan ("MRP")³ to include violations of the Intermarket Trading System ("ITS") rules. On June 26, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.⁴

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 U.S.C. 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ Rule 19d-1(c)(2) under the Act, 17 CFR 240.19d-1(c)(2), authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. The PSE's Plan was approved by the Commission in Securities Exchange Act Release No. 22654 (Nov. 21, 1985), 50 FR 48853 (Nov. 27, 1985).

⁴ See letter from Michael Pierson, Senior Attorney, PSE, to Jennifer S. Choi, Attorney, SEC, dated June 23, 1995. Amendment No. 1 withdrew the proposed changes to the Equity Floor Procedure Advice 2-B because these changes have been approved already by the Commission. See Securities Exchange Act Release No. 34760 (Sept.

The proposed rule change and Amendment No. 1 were published for comment in Securities Exchange Act Release No. 35959 (July 12, 1995), 60 FR 36849 (July 18, 1995). No comments were received on the proposal.

The Exchange's 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. Rule 10.13 includes a list of rule violations that are eligible for the expedited disciplinary procedure under the MRP and that may be the subject of fines in accordance with the Recommended Fine Schedule.

The Exchange proposes to amend its MRP by adding the following provision to the MRP as Rule 10.13(i)(9): "Failure to follow the provisions of the rules and regulations governing the use of the Intermarket Trading System (ITS) (PSE Rules 5.20-5.23)." The Exchange is also proposing to amend its Recommended Fine Schedule to establish the following recommended fines (on a running two-year basis) for violations of the ITS rules and regulations: \$500 for a first-time violation; \$1,000 for a second-time violation; and \$2,000 for a third-time violation.⁵

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).⁶ 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 an exchange's ability to effectively enforce compliance by its members and member organizations with the Commission and Exchange rules is central to its self-regulatory functions. The inclusion of a rule in an exchange's

30, 1994), 59 FR 50950 (Oct. 6, 1994) (approving File No. SR-PSE-94-13).

⁵ 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).

⁶ 15 U.S.C. 78f(b) (1988 & Supp. v 1993).

¹¹ The Exchange deems a member to "primarily trade in one stock" if more than 50 percent of either his trades or share volume occur in that stock. The Exchange will base determinations of percentages of trades and share volumes on, among other things, the Exchange's audit trail data.