

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,<sup>38</sup> 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.<sup>39</sup>

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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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))."<sup>3</sup> 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.<sup>4</sup>

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

<sup>3</sup> 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.

<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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).<sup>7</sup> 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 10.3<sup>8</sup> is not suitable because such a proceeding would be more costly and time-consuming than would be warranted

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 15 U.S.C. 78f(b).

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

<sup>38</sup> 15 U.S.C. 78s(b)(2).

<sup>39</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.