

The Commission finds good cause for approving the Amendments prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Specifically, the Amendments clarify issues related to foreign securities, public float and suspension of trading of component securities. In addition, the Amendments establish maintenance criteria and provide that the CBOE will monitor the Index, and will notify Commission staff in the event that certain Index component levels fall below these designated thresholds. The Commission believes that these monitoring provisions ensure that the Index continues to be comprised of highly capitalized, actively traded securities. In addition, the maintenance criteria will ensure that the Index does not become dominated by one or a few securities. Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to find that good cause exists to approve the Amendments to the proposal on an accelerated basis.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the Amendments. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-96-43 and should be submitted by October 16, 1996.

### IV. Conclusion

For the reasons discussed above, the Commission finds that the amended proposal is consistent with the Act, and, in particular, Section 6 of the Act.

*It therefore is ordered*, pursuant to Section 19(b)(2) of the Act,<sup>43</sup> that the

proposed rule change (SR-CBOE-96-43), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>44</sup>

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[Release No. 34-37695; File No. SR-PSE-96-19]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto by the Pacific Stock Exchange, Inc., Relating to Firm Quotes, Automatic Executions and Orders That May Be Placed in the Options Public Limit Order Book

September 17, 1996.

On June 14, 1996, the Pacific Exchange, Inc. ("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 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify its rules on firm quotes,<sup>3</sup> automatic executions and orders that may be placed in the Options Public Limit Order Book ("Book") in order to clarify the scope of these rules. The Exchange also proposed to modify its Minor Rule Plan and Recommended Fine Schedule relating to violations of these rules. On June 26, 1996, the Exchange filed Amendment No. 1 to the proposal.<sup>4</sup> Notice of the proposed rule change and Amendment No. 1 was published for comment and appeared in the Federal Register on July 19, 1996.<sup>5</sup> No comment letters were received on the proposal. On August 28, 1996, the PSE filed Amendment No. 2 to the proposed rule change.<sup>6</sup> This order approves the PSE proposal as amended.

<sup>44</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.

<sup>3</sup> As a result of Amendment No. 2, no changes are proposed to PSE's firm quote rule (Rule 6.86). The Recommended Fine Schedule pursuant to Rule 10.13, however, is proposed to be revised for violations of Rule 6.86. See note 6, *infra*.

<sup>4</sup> In Amendment No. 1, the Exchange corrects a technical error in the number of items in the Minor Rule Plan (PSE Rule 10.13) and Recommended Fine Schedule. See letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, to James T. McHale, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated June 26, 1996 ("Amendment No. 1").

<sup>5</sup> See Securities Exchange Act Release No. 37434 (July 12, 1996), 61 FR 37785 (July 19, 1996).

<sup>6</sup> In Amendment No. 2 the Exchange withdraws that portion of the filing which would have defined "broker-dealer" to include "foreign broker-dealers"

### I. Description of the Proposal

The Exchange is proposing to amend PSE Rule 6.87 to provide that only non-broker-dealer customer orders are eligible for execution on the Exchange's Automatic Execution System ("Auto-Ex"). This change codifies a long-standing policy of the Exchange to that effect.

The Exchange is also proposing to amend PSE Rule 6.52(a). Rule 6.52(a) currently provides that no member shall place, or permit to be placed, an order with an Order Book Official for an account in which such member or his organization, any other member or member organization, or any non-member broker-dealer has an interest. The Exchange is proposing to replace that provision with one stating that only non-broker-dealer customer orders may be placed with an Order Book Official pursuant to Rule 6.52(a).

The Exchange is also proposing to amend its Minor Rule Plan so that it includes the following rule violation: "Entry of broker/dealer order for execution on Auto-Ex system. (Rule 6.87(a))." The Exchange believes that violations of Rule 6.87(a) are easily verifiable and, therefore, are appropriate for inclusion in the Minor Rule Plan.

The Exchange is also proposing to modify its Recommended Fine Schedule under the Minor Rule plan as follows: First, the current recommended fine for a member who fails to honor a guaranteed market as required by Rule 6.86(a) is \$250 for a first violation, \$500 for a second violation and \$750 for a third violation. The Exchange is proposing to increase these fines to \$500, \$1,500 and \$3,000 for a first, second or third-time violation, respectively.<sup>7</sup>

Second, the recommended fine for a member who fails to identify an order as for a broker-dealer is currently \$250 for a first violation, \$500 for a second violation and \$750 for a third violation. The Exchange is proposing to raise these fines to \$500, \$1,500 and \$3,000 for first, second and third-time violations, respectively.

Third, the Exchange is proposing to establish fines of \$500, \$1,500 and \$300

for purposes of Rule 6.86 and 6.87. The Exchange also included a technical amendment to Rule 10.13 ("Minor Rule Plan") and the Recommended Fine Schedule pursuant thereto. See Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, to James T. McHale, Attorney, OMS, Division, Commission, dated August 27, 1996 ("Amendment No. 2").

<sup>7</sup> Fines for multiple violations of Options Floor Decorum and Minor Trading Rules are calculated on a running two-year basis. For a discussion of the Exchange's Recommended Fine Schedule, see Securities Exchange Act Release No. 34322 (July 6, 1994), 50 FR 35958 (July 14, 1994).

<sup>43</sup> 15 U.S.C. § 78s(b)(2).

for first, second and third-time violations of the restriction against entering broker-dealer orders for execution on the Auto-Ex system.

## II. Discussion

The Commission finds that the proposed rule changes are 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 Sections 6(b)(5) and 6(b)(6)<sup>8</sup> in that they are designed to facilitate transactions in securities, promote just and equitable principles of trade, protect investors and the public interest, and provide for the appropriate disciplining of the PSE's members. Specifically, the Commission finds that limiting execution of options orders through Auto-Ex to non-broker-dealer customers is appropriate and consistent with the Act. Automatic execution systems such as Auto-Ex were developed, in part, to aid public customers by providing nearly instantaneous execution of small orders at a guaranteed price.<sup>9</sup> The rule change codifies PSE's existing policy regarding those market participants that may utilize Auto-Ex and is consistent with the policies of several of the other optional markets, which currently limit the availability of their respective automatic execution systems to non-broker-dealer customer orders.<sup>10</sup>

With regard to the change to Rule 6.52(a) the Commission finds that this is also consistent with the Act. The Exchange has represented that the change is merely to conform the language in Rule 6.52(a) with that of Rule 6.86(a) and proposed Rule 6.87(a). The Commission finds that the change in the language of the rule makes no substantive change with regard to the determination of those orders that may be placed with an Order Book Official, and should help to avoid confusion concerning the applicability of the Rule.

Additionally, the Commission believes that including violations of Rule 6.87(a) in the Exchange's Minor Rule Plan ("MRP") is consistent with the Act. The Commission has previously found that the Exchange's MRP provides fair procedures for appropriately disciplining members and member

organizations for minor rule violations that warrant a sanction more severe than a warning or cautionary letter, but for which a full disciplinary proceeding would be unsuitable because such a proceeding would be costly and time-consuming in view of the minor nature of the violation.<sup>11</sup> The Commission believes that violations of Rule 6.87(a) are objective and easily verifiable, thereby lending themselves to the use of expedited proceedings.

Specifically, the entering of a broker-dealer order on Auto-Ex may be determined objectively and adjudicated quickly without complicated factual and interpretive inquiries.<sup>12</sup>

Finally, the Commission believes that the proposed changes to the Recommended Fine Schedule are consistent with the Act. The fine level increases will enhance the Exchange's ability to enforce compliance with its rules through the appropriate discipline of members and member organizations in a manner that is proportionate to the minor nature of such violations. Further, the Exchange has represented that its membership will be informed of the amended Recommended Fine Schedule via a Rule Adoption Notice.<sup>13</sup>

The Commission finds good cause for approving Amendment No. 2 to the proposal prior to the thirtieth day after the date of publication of the notices of filing thereof in the Federal Register. Specifically, Amendment No. 2 withdraws that portion of the filing which would have defined "broker-dealer" to include "foreign broker-dealers" for purposes of Rules 6.86 and 6.87. The term "foreign broker-dealers" was not defined in the original proposal. Deletion of the term is therefore appropriate, absent objective standards necessary to ensure the fair enforcement of the affected rules. Therefore, by eliminating a potential ambiguity in the Rules 6.86 and 6.87, Amendment No. 2 strengthens the proposal. The other change made by Amendment No. 2 is technical and non-substantive in nature. Based on the above, the Commission finds good cause for approving Amendment No. 2 to the proposed rule change on an accelerated basis and believes that the proposal, as amended,

is consistent with Sections 6(b)(5), 6(b)(6), and 19(b)(2)<sup>14</sup> of the Act.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule 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 in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to the File No. SR-PSE-96-19 and should be submitted by October 16, 1996.

*It therefore is ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-PSE-96-19) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-37694; File No. SR-Phlx-95-19]

## Self-Regulatory Organizations; Notice of Filing of Amendments No. 2, 3, and 4 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing and Trading of DIVS, OWLS and RISKS

September 17, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on May 8, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III

<sup>8</sup> 15 U.S.C. 78f(b) (5) and (6).

<sup>9</sup> See Securities Exchange Act Release No. 25995 (August 15, 1988), 53 FR 31781 (August 19, 1988) (order approving changes to the Chicago Board Options Exchange's ("CBOE") Retail Automatic Execution System).

<sup>10</sup> See e.g. CBOE Rule 6.8, and Securities Exchange Act Release No. 37429 (July 12, 1986) (order approving proposed rule change by the American Stock Exchange, Inc. relating to "unbundling" of Auto-Ex orders).

<sup>11</sup> See Securities Exchange Act Release No. 32510 (June 24, 1993), 58 FR 35491 (July 1, 1993).

<sup>12</sup> If the Exchange determines that a violation of Rule 6.87(a) is not minor in nature, the Exchange retains the discretion to initiate full disciplinary proceedings in accordance with PSE Rule 10.3. Indeed, the Commission fully expects the PSE to bring full disciplinary proceedings in appropriate cases.

<sup>13</sup> Telephone conversation between Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, and James T. McHale, Attorney, OMS, Division, Commission, on September 5, 1996.

<sup>14</sup> 15 U.S.C. 78s(b)(2).

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

<sup>16</sup> 17 CFR 200.30-3(a)(12).