

Accordingly, the NASD is proposing to extend its short sale rule until October 1, 1997, to afford the NASD the opportunity to conduct further analysis of the impact of the Rule.¹⁵

The NASD believes the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. Specifically, the NASD believes that extending the pilot period for the short sale rule will enhance the quality of studies analyzing the effectiveness of the Rule and help to ensure that future regulatory action taken with respect to the Rule is based on a greater knowledge and understanding of the Rule.

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

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The NASD believes the primary market maker qualification standards are designed in a manner to permit market makers of all sizes to qualify as primary market makers. Moreover, it is important to note that market makers that do not meet the standards are still permitted to remain registered market makers in the Nasdaq system. In addition, without a

short sale rule for the Nasdaq market, Nasdaq would be adversely impacted in its ability to compete for listings with exchange markets.

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

Comments were neither solicited nor received.

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

The NASD requests that the Commission find good cause pursuant to Section 19(b)(2) of the Act¹⁶ for approving the proposed rule change prior to the 30th day after publication in the Federal Register.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposal to extend the short sale rule through October 1, 1997 is consistent with the Act and the rules and regulations promulgated thereunder. Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6)¹⁷ which requires that the NASD rules be designed, among other things, to facilitate securities transactions and to protect investors and the public interest.

The Commission approved the NASD short sale rule in 1994, on a pilot basis. The purpose of the pilot was to demonstrate that the rule accomplished its intended purpose and did not impose unnecessary costs on market participants. In July 1996, the NASD submitted an economic report on the pilot. While the Short Sale Study provides some data on the pilot, the Commission believes that the NASD needs to produce additional and more precise data to justify permanent adoption of the rule.¹⁸ Hence the Commission is extending the short sale rule to provide the NASD with ample time to collect significantly more data and to determine if the Rule in its current form is appropriate. The data will aid the NASD and the Commission in determining the benefits and costs of the short sale rule pursuant to Section 15A(b)(6). The Commission finds good cause to approve the extension of the short sale rule pilot prior to the 30th day

after the date of publication of the notice of filing because accelerated approval will avoid disrupting the market while the NASD and the Commission consider the supplemental data that will be collected during the extension.

V. Solicitation of Comments

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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR-NASD-96-41, and should be submitted by November 29, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NASD-96-41) be, and hereby is, approved on an accelerated basis through October 1, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-28759 Filed 11-7-96; 8:45 am]

BILLING CODE 8010-01-M

Letter from Robert E. Aber, Vice President and General Counsel, to Katherine England, Assistant Director, National Market Systems and Over-the-Counter, Commission (October 29, 1996). The Commission received one comment letter in regard to the NASD's proposal to adopt the short sale rule on a permanent basis. Letter from Daniel Parker Odell, Assistant Secretary, New York Stock Exchange, Inc., to Jonathan G. Katz, Secretary, Commission (September 6, 1996). The Commission will consider that letter in connection with any subsequent NASD proposal for permanent adoption of the short sale rule.

¹⁵ Specifically, the Commission has requested that the NASD (1) require exempt market makers to begin reporting short sales, and (2) provide the Commission with a report examining the data collected with regard to this requirement including the number of short sales by exempt market makers and their potential effect on the purposes of the Rule. In this connection, at its meeting in November 1996, the Board of Directors of The Nasdaq Stock Market, Inc. will be considering whether to amend NASD Rule 6301(d)(6) to require market makers exempt from the Rule to mark their Automated Confirmation Transaction Service ("ACT") reports to denote when they have relied on the market maker exemption.

¹⁶ 15 U.S.C. § 78s(b)(2).

¹⁷ 15 U.S.C. § 78o-3(b)(6).

¹⁸ Among other matters, the NASD needs to collect short sale information from exempt market makers and provide a report to the Commission, as well as measure more precisely the rule's effect on short sale activity.

[Release No. 34-37913; File No. SR-PSE-96-33]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Automated System Access Privilege Annual Membership Fee

November 1, 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 September 6, 1996, the Pacific Stock Exchange, Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission")

¹⁹ 17 CFR 200.30-3(a)(12) (1996).

the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.¹ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend its Schedule of Fees and Charges for Exchange Services by replacing the \$4,000 annual flat fee for Automated System Access Privilege ("ASAP") memberships with an ASAP annual fee based on a calculation of 20% of the average price of PSE membership sales in the three months immediately preceding the activation of ASAP membership or the annual renewal date of ASAP membership. Under the proposal, the minimum annual ASAP membership fee will be \$4,000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PSE proposes to amend its Schedule of Fees and Charges for Exchange Services by replacing the

\$4,000 annual flat fee for ASAP memberships with an ASAP annual fee based on a calculation of 20% of the average price of PSE membership sales in the three months immediately preceding the activation of ASAP membership or the annual renewal date of ASAP membership. Under the proposal, the minimum annual ASAP membership fee will be \$4,000. The ASAP membership fee is a non-refundable, non-transferable fee. However, if the ASAP member becomes a regular member of the Exchange, the ASAP membership fee paid for the current year shall be subject to a rebate prorated to the date of the approval as a full member.² The PSE believes that basing the ASAP membership fee on the recent membership seat sales will provide a correlation between the fees for the ASAP membership program and the fees for leased memberships. Accordingly, the PSE believes that the proposed fee provides a more equitable distribution of fees and charges among PSE members.

The PSE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(4), in particular, in that the proposal provides for the equitable allocation of reasonable charges among the Exchange's members and other persons using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PSE 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.

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

Because the foregoing rule change establishes or changes a due fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears

to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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 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 above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 29, 1996.

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

Jonathan G. Katz,
Secretary.

[FR Doc. 96-28698 Filed 11-7-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37897; File No. SR-PSE-96-32]

Self-Regulatory Organizations; the Pacific Stock Exchange Incorporated; Order Granting Approval to Proposed Rule Change Relating to Its Rules on Telephone Solicitations

October 30, 1996.

On August 27, 1996, 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 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt new Rule 9.20(b) and to add a commentary thereunder with respect to

¹ The PSE has been charging the Automated System Access Privilege ("ASAP") membership fee noticed in this filing since 1994. According to the Exchange, the PSE's Board of Governors approved the current ASAP membership fee in March 1994 and the Exchange inadvertently failed to submit the ASAP membership fee change to the Commission. See Letter from Rosemary A. MacGuinness, Senior Counsel, PSE, to Anthony P. Pecora, Attorney, Division of Market Regulation ("Division"), Commission, dated June 7, 1996. Proposed fee changes must be submitted to the Commission and are effective upon filing with the Commission pursuant to Section 19(b)(3)(A) under the Act. Accordingly, the PSE's current ASAP membership fee became effective pursuant to Section 19(b)(3)(A) under the Act on September 6, 1996. The ASAP renewal fee as of October 1996 is \$28,188. See Letter from Rosemary A. MacGuinness, Senior Counsel, PSE, to Yvonne Fraticelli, Attorney, Division, Commission, dated October 15, 1996.

² See PSE Rule 1.14(d)(5), which also authorizes the PSE's Board of Governors to amend the fee at its discretion.

¹ 15 U.S.C. § 78s(b)(1).

² 17 CFR 240.19b-4.