

fraudulent and manipulative acts and practices, in promoting just and equitable principles of trade, in protecting investors and the public interest, and in appropriately disciplining members for violations of its rules, the rules and regulations of the Commission, and the rules of the MSRB.

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

The NASD does not believe that the proposed rule change will result in 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 were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it 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 such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

**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, 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 NASD. All submissions should refer to the file

number in the caption above and should be submitted by April 29, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-38462; File No. SR-PSE-96-45]

**Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to the Exchange's Lead Market Maker Options Book Pilot Program**

April 1, 1997.

**I. Introduction**

On December 10, 1996, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with 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 proposal to expand the scope of its Lead Market Maker ("LMM") Book Pilot Program to allow additional LMMs to participate and to allow a greater number of option issues to be eligible under the program. The proposal was published for comment in the **Federal Register** on February 19, 1997.<sup>3</sup> No comments were received on the proposal. This order approves the Exchange's proposal.

**II. Description of the Proposal**

On October 11, 1996, the Commission approved an Exchange proposal to adopt a one-year pilot program under which some LMMs are permitted to manage the options public limit order book ("Book") in certain designated issues.<sup>4</sup> Under the pilot, the approved LMMs manage the Book function, take responsibility for trading disputes and errors, set rates for Book execution, and pay the Exchange a fee for systems and services.<sup>5</sup> The program allows LMMs to

have greater control over their operations on the Exchange floor by allowing them, among other things, to set their own rates for execution services provided to customers.

Under the pilot as approved by the Commission, the program is limited to no more than three LMMs and no more than forty option symbols in total,<sup>6</sup> during a one-year pilot phase. The PSE is proposing to expand the scope of the program to allow additional LMMs to participate, and to allow a greater number of option issues to be eligible under the Program. Specifically, the Exchange proposed an expansion of the Book Pilot Program to allow for up to nine LMMs and up to 150 options symbols.

The LMMs who participate during the pilot phase are selected by the Options Floor Trading Committee based on certain designated factors.<sup>7</sup> Approved LMMs must maintain "minimum net capital," as provided in Rule 15c3-1 under the Act,<sup>8</sup> and also must maintain a cash or liquid asset position of at least \$500,000, plus \$25,000 for each issue over five issues for which they perform the function of an OBO. Only multiply-traded option issues are eligible during the pilot phase.

**III. Discussion**

After careful consideration, the Commission finds that the Exchange's proposal to expand the Book Pilot Program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange in that the proposal is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and Section 6(b)(5),<sup>10</sup> in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable

6.59. In that regard, the Exchange will allow the LMM to utilize Exchange personnel to assist the LMM in performing the OBO function, and the Exchange will charge the LMM a reasonable fee for such use of Exchange personnel. If the program is made permanent, LMMs would be responsible for hiring and maintaining their own employees, but the Exchange would provide employees to assist LMMs when necessary due to market conditions. In all cases, however, employees working in the Book operation will be subject to all rules, policies, and procedures established by the Exchange. With regard to their duties as market makers, LMMs would be required to perform all obligations provided in Rules 6.35 through 6.40 and 6.82.

<sup>6</sup> Each option issue typically has only one symbol associated with it, unless LEAPs are traded on that issue, in which case there usually would be two additional symbols related to the issue, or unless a contract adjustment is necessary due, for example, to a merger or stock split, in which case one additional symbol usually would be added.

<sup>7</sup> See Pilot Approval Order, *supra* note 4.

<sup>8</sup> 17 CFR 240.15c3-1.

<sup>9</sup> 15 U.S.C. § 78f(b).

<sup>10</sup> 15 U.S.C. § 78f(b)(5).

<sup>1</sup> 15 U.S.C. § 78s(b)(1).

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

<sup>3</sup> Securities Exchange Act Release No. 38273 (February 12, 1997), 62 FR 7489.

<sup>4</sup> See Securities Exchange Act Release No. 37810 (October 11, 1996), 61 FR 54481 ("Pilot Approval Order").

<sup>5</sup> More specifically, under the rule changes approved by the Commission, LMMs may perform all functions of the Order Book Official ("OBO") in designated issues pursuant to Rules 6.51 through

principles of trade, and to protect investors and the public interest.<sup>11</sup> Allowing the PSE to appoint up to six additional LMMs to the Book Pilot Program and increasing the number of options symbols available to the program by 110 constitutes a reasonable and limited expansion of the Book Pilot Program. The expansion should provide the Exchange with sufficient experience administering the pilot in order to better determine whether the Book Pilot Program should be made permanent upon its scheduled expiration on October 31, 1997.<sup>12</sup>

As noted in the Pilot Approval Order, before the Book Pilot Program can be approved on a permanent basis, or further extended, the Exchange must provide the Commission, within 6 months prior to its expiration, with a report on the operation of the Book Pilot Program. Specifically, the PSE must submit an updated pilot program report by April 1997 that addresses: (1) Whether there have been any complaints regarding the operation of the pilot; (2) whether the PSE has taken any disciplinary or performance action against any member due to the operation of the pilot; (3) whether the PSE has reassigned any options issues traded pursuant to the pilot; and (4) the impact of the pilot on the bid/ask spreads, depth and continuity in PSE options markets.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (File No. SR-PSE-96-45), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Environmental Impact Statement: San Mateo County, California

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent to supplement a final environmental impact statement.

**SUMMARY:** The FHWA is issuing this notice to advise the public that a supplement to a final environmental impact statement will be prepared for a proposed highway project in San Mateo County, California.

**FOR FURTHER INFORMATION CONTACT:** John R. Schultz, Chief, District Operations-North, Federal Highway Administration, 980 Ninth Street, Suite 400, Sacramento, California 95814-2724; Telephone: (916) 498-5041.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare a supplement to the final environmental impact statement (EIS) on a proposal to improve State Route (SR) 1 in San Mateo County, California. The original final EIS for the improvements (FHWA-CA-EIS-83-14-F) was approved on April 16, 1986. The project study limits of alternatives considered in the final EIS extended from Half Moon Bay Airport, between Moss Beach and El Granada, on the south to Linda Mar Boulevard in Pacifica on the north, a distance of approximately 11.3 km (7 miles).

The preferred alternative, identified in the final EIS and selected in the Record of Decision signed on May 30, 1986, is known as the Martini Creek alignment alternative. From the southern end, this alternative begins north of the southern project study limit on SR 1, 0.2 km (0.1 mile) north of Montara near the Chart House Restaurant. From there it swings inland, crosses Martini Creek, curves seaward (west) and then northeasterly, proceeds over the San Pedro Mountain saddle and down into the City of Pacifica where it rejoins SR 1 at Linda Mar Boulevard. The proposed project is a two-land, controlled access facility; however, since the entire project on both sides of the summit exceeds six percent, the project design includes an uphill slow vehicle lane in each direction. The proposed project is approximately 7.2 km (4.5 miles) in length.

Litigation regarding the project was commenced in U.S. District Court in the Northern District of California in June

1986 (Sierra Club, et al. v. United States Department of Transportation, et al., Civ. No. 86-3384 DLJ). The project has been enjoined since September 1986, prior to the commencement of any construction. Ultimately, the District Court found that the final EIS was inadequate only in its discussion and analysis of noise impacts and required a re-analysis of those impacts, as set forth in the Court's Orders of April 3, 1989, and April 2, 1990. Thereafter, in 1995, FHWA and Caltrans prepared a limited supplemental EIS for the purpose of addressing the noise impact analysis deficiencies in the final EIS, as determined in the litigation.

Based on public comments received, the August 10, 1995 Record of Decision regarding the supplemental EIS included a commitment by the FHWA to address the issue of a tunnel alternative in the reevaluation of the 1986 final EIS. A tunnel alternative was considered earlier in the project development process, but has been withdrawn from active consideration prior to the issuance of the draft EIS that was the basis for the 1986 final EIS. The reevaluation was to be undertaken since major steps to advance the project had not occurred within three years after the approval of the final EIS. 23 CFR 771.129(b). The intent of the reevaluation of the final EIS was to determine whether or not new information or circumstances relevant to environmental concerns and bearing on the proposed project or its impacts would result in significant environmental impacts not evaluated in the final EIS. 23 CFR 771.130(a)(2).

In response to requests from local agencies and the public, Caltrans hired an independent consulting firm to conduct a tunnel feasibility study. Based upon the results of the tunnel feasibility report issued in October 1996, and the updated cost estimates for the revised highway bypass alternative (now \$117 million), FHWA and Caltrans have determined that a tunnel alternative is a reasonable alternative for the proposed project that should be fully evaluated in the environmental process. Therefore, a second supplement to the 1986 final EIS will be prepared and will include an analysis of both the updated Martini Creek bypass alternative and a tunnel alternative. Since the purpose of a reevaluation is to determine whether or not the original EIS remains valid, FHWA's decision to prepare a full supplemental EIS (as compared with the 1995 supplemental EIS which was of limited scope) means that a reevaluation of the 1986 final EIS is no longer necessary.

<sup>11</sup> In approving the rule change, the Commission has considered the proposed rule changes' impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

<sup>12</sup> The PSE has represented that it has experienced no operational problems and received no complaints regarding the operation of the Book Pilot Program. Telephone conversation between Janet W. Russell-Hunter, Special Counsel, Office of Market Supervision, Division of Market Regulation, SEC, and Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, April 1, 1997.

<sup>13</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>14</sup> 17 CFR 200.30-3(a)(12).