

agreements contain an option exercisable by the issuer to extend the agreement for an additional year at either the same fee or at some other fee established at the time the initial engagement was entered.<sup>30</sup> A.G. Edwards believes that exercising the option of the existing engagement does not constitute a "new" financial advisory agreement and therefore, should not be subject to rule G-37/G-38 reporting requirements.<sup>31</sup> The Board does not believe that the exercise of an option by an issuer to extend a financial advisory agreement, with such an option contained in the agreement, constitutes a "new" agreement; therefore, there is not reporting requirement for the exercise of this option.<sup>32</sup> The Commission agrees that an exercised option that was contained in the initial agreement to engage a financial advisor would not constitute a "new" agreement, because the issuer is required to file a report on whenever the deal is completed, option period notwithstanding.

#### IV. Discussion

The Commission believes the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder. Specifically, the Commission believes that approval of the proposed rule change is consistent with Section 15B(b)(2)(C) <sup>33</sup> of the Act. By amending rule G-37, the rule change removes impediments to the mechanism of a free and open market in municipal securities because (i) it no longer applies to persons and contributions that do not implicate the concern that rule G-37 was intended to address; (ii) it clarifies that the rule is intended to apply to contributions to any elected officials if that official's office gives the official the ability to influence the awarding of municipal securities business to an issuer; and (iii) clarifies the scope of activity subject to the rule. The amendment to rule G-8 protects investors and is in the public interest in that it facilitates enforcement of rule G-37.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> October 22 Letter, p. 2.

<sup>33</sup> Section 15B(b)(2)(C) requires the Commission to determine that the Board's rules are 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 municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

In revising the definitions of "municipal finance professional" and "executive officer," the MSRB has provided definitive criteria for dealers to use in determining whether they are subject to the rule's reporting requirements. In so doing, the MSRB has eliminated some of the uncertainty associated with rule G-37 compliance issues. Exempting those persons and contributions that are no longer affected by the rule should enhance efficiency in reporting and recording, because dealers no longer have to make assumptions in determining to whom the rule applies.

In amending the definition of "official of an issuer," the Board has addressed situations in which an elected official may appoint someone to an issuer position. This amendment acknowledges the fact that political influence and alliances can affect the selection process. In clarifying its intent that a person who can directly or indirectly influence hiring decisions be included in the definition, the Board has attempted to ensure fairness in the selection process by removing politics from the equation.

In revising the definition of "municipal securities business," the Board is clarifying which dealers would be subject to the ban and in what situations. According to some dealers, rule G-37(g)(vii) was unclear as to whether "on other than a competitive bid basis" applied to the selection of a financial advisor or to the services provided by the financial advisor. The Board has determined that the definition includes financial advisory services when the dealer is chosen as financial advisor on a negotiated basis and therefore, the ban on business provision under rule G-37 would apply.

In adding the requirement to rule G-8 that dealers maintain copies of Forms G-37/G-38 along with receipts of mailing the same, the Board has improved disclosure in the markets by making these records readily accessible for review. Also, the benefits of this requirement outweigh any burdens that additional recordkeeping may impose, because tangible evidence will now be available to resolve disputes and to monitor compliance.

#### V. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 15B(b)(2)(C).

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>34</sup> that the

proposed rule change (SR-MSRB-96-07) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>35</sup>

Margaret H. McFarland,  
*Deputy Secretary.*

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[Release No. 34-37920; File No. SR-PSE-96-41]

November 4, 1996.

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to the Closing Time for Trading of Equity Options**

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 October 25, 1996, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 Pacific Stock Exchange Incorporated ("PSE" or "Exchange") is proposing to amend its rules to change its closing time for options trading from 1:10 p.m. Pacific Time<sup>1</sup> to 1:02 p.m. for equity options. The Exchange is also proposing to change certain related rules on closing rotations and the submission of exercise notices for index options.

#### **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 III below. The self-regulatory organization has prepared summaries, set forth in

<sup>35</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> All times referred to in this filing are Pacific Time.

<sup>34</sup> 15 U.S.C. 78s(b)(2) (1988).

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*

1. Purpose

PSE Rule 4.2, Commentary .01 currently provides that the Board of Governors has resolved that transactions may be effected on the Options Floor of the Exchange until 1:10 p.m. for equity options and until 1:15 p.m. for index options each business day, at which time no further transactions may be made. The Exchange is proposing to change the 1:10 p.m. closing time for equity options to 1:02 p.m.

The Exchange is proposing this modification so that the closing time for options trading will be closer to the closing time for trading in the securities underlying those options. The extended trading session for options initially was intended to ensure that options traders would be able to respond to the tape "runoff" in the equity markets—i.e., prints of stock trades that occurred just before the closing bell, but that were not reported over the tape until several minutes after the close of trading. If such a trade resulted in a closing price that was materially different from the price at which the stock had been trading previously, the extended options trading session allowed options traders the opportunity to bring their options quotes into line with the closing price in the underlying security. However, because of improvements to the processing of transactions at the equity markets, there is no longer any significant tape runoff.

PSE Rule 6.64, Commentary .01(b) currently provides that transactions may be effected in a class of options after 1:10 p.m. if they occur during a trading rotation. The rule states that such a trading rotation may be employed in connection with the opening or reopening of trading in the underlying security after 12:30 p.m. or due to the declaration of a "fast market" pursuant to Options Floor Procedure Advice G-9. The Rule further provides that the decision to employ a trading rotation after 12:30 p.m. shall be publicly announced on the trading floor prior to the commencement of such rotation, and that no more than one trading rotation may be commenced after 1:10 p.m. Further, the Rule states that if a trading rotation is in progress and Floor Officials determine that a final trading rotation is needed to assure a fair and orderly close, the rotation in progress shall be halted and a final rotation

begun as promptly as possible after 1:10 p.m. Finally, the Rules states that any trading rotation conducted after 1:10 p.m. may not begin until ten minutes after news of such rotation is disseminated. The Exchange is proposing to change all references to 1:10 p.m. in this Commentary to 1:02 p.m.

PSE Rule 7.15 currently specifies a cut-off time of 1:20 p.m. or a time designated to be five minutes after the close, for preparing or submitting either a memorandum to exercise or an "exercise advice" for the exercise of index option contracts. The Exchange is proposing to eliminate the references to 1:20 p.m. so that under the amended rule such memoranda and advices will have to be submitted no later than five minutes after the close of index option trading.<sup>2</sup>

Finally, the Exchange is proposing to change two references to "San Francisco time" in Rule 6.64, Commentary .01(b) to "Pacific Time" in order to make that rule consistent with other Exchange rules.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade.

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

The Exchange 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*

No written comments were solicited or received with respect to the proposed rule change.

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

<sup>2</sup> The Exchange is not proposing to change the related rule on equity options, PSE Rule 6.24, which provides for an exercise cut-off time of 2:30 p.m. PT.

organization consents, the Commission will:

(A) By order approved 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, 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-PSE-96-41 and should be submitted by December 5, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

Margaret H. McFarland,  
Deputy Secretary.

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**SMALL BUSINESS ADMINISTRATION**

**[Declaration of Disaster Loan Area #2895]**

**Virginia; Declaration of Disaster Loan Area; Amendment #5**

In accordance with a notice from the Federal Emergency Management Agency, dated October 31, 1996, the above-numbered Declaration is hereby amended to include the Independent City of Hampton in the Commonwealth of Virginia as a disaster area due to damages caused by Hurricane Fran and associated severe storm conditions, including high winds, tornadoes, wind driven rain, and river and flash flooding from September 5 through September 23, 1996.

Any counties contiguous to the above-named city and not listed herein have been previously declared.

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