

done in the dissemination of OTC Bulletin Board information in 1991.³

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

The Nasdaq Stock Market does not believe that the proposed rule change will impose any inappropriate burden on competition.

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 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 the 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 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 NASD. All submissions should refer to File No. SR-NASD-97-17 and should be submitted by April 16, 1997.

³ See Securities Exchange Act Release No. 29616 (August 27, 1991), 56 FR 43826 (September 4, 1991).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Jonathan G. Katz,
Secretary.

[FR Doc. 97-7642 Filed 3-25-97; 8:45 am]

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[Release No. 34-38420; International Series Release No. 1066; File No. SR-PSE-96-46]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto by the Pacific Stock Exchange, Inc. Relating to Foreign Broker/Dealers

March 19, 1997.

On December 16, 1996, the Pacific Stock 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"),¹ and Rule 19b-4 thereunder,² a proposed rule change to modify its rules to specify that the term "broker/dealer," as used in PSE Rules 6.52(a), 6.86 and 6.87, includes foreign broker/dealers. The PSE also proposed to adopt a definition of the term "foreign broker/dealer." Notice of the proposed rule change was published for comment and appeared in the **Federal Register** on January 30, 1997.³ No comment letters were received on the proposal. On March 12, 1997, the Exchange filed amendment No. 1 to the proposed rule change.⁴ This order approves the PSE proposal, as amended.

I. Description of the Proposal

PSE Rules 6.52(a), 6.86 and 6.87, relating to option transactions only, currently distinguish between orders for broker/dealers and orders for non-broker/dealers. Under these rules, only non-broker/dealer customer orders are eligible to be placed on the public limit order book,⁵ to be entered for automatic

execution,⁶ or are eligible for a guaranteed minimum execution of 20 contracts on the floor of the Exchange.⁷

The purpose of the proposed rule change is to clarify the meaning of the term "broker/dealer," as used in Rules 6.52(a), 6.86 and 6.87, by specifying that it includes foreign broker/dealers. The Exchange is also proposing to adopt the following definition of "foreign broker/dealers," which would be applicable to PSE Rules 6.52(a), 6.86 and 6.87:

Foreign Broker/Dealer: The term "foreign broker/dealer"

means any person or entity that is registered, authorized or licensed by a foreign governmental agency or foreign regulatory organization (or should be so registered, authorized or licensed) to perform the function of a broker or dealer in securities, or both. The terms "broker" and "dealer" mean the same as set out in Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, provided that a "broker" or "dealer" may be a bank.⁸

In light of the current globalization of the securities markets, the Exchange believes that the subject rules should be applied consistently. In this regard, PSE asserts that an exchange specialist (or functional equivalent) in Canada or Mexico, for example, should be subject to the same rules applicable to trading on the PSE as an exchange specialist in the United States, and should not have a competitive advantage over United States broker/dealers.⁹

an Order Book Official pursuant to this Rule." Cf. SEC Rule 11Ac1-4(a)(6) (equity "customer limit orders" that must be displayed pursuant to Rule 11Ac1-4 include those that are "not for the account of either a broker or dealer") (effective January 20, 1997).

⁶ Rule 6.87(a) provides: "Only non-broker/dealer customer orders are eligible for execution on the Exchange's Automatic Execution System ("Auto-Ex")."

⁷ Rule 6.86(a) provides: "Each trading crowd is required to provide a depth of twenty (20) option contracts for all non-broker/dealer customer orders, at the bid/offer that is displayed as the disseminated market quote at the time such orders are announced or displayed at the trading post designated for trading the subject option class."

⁸ Sections 3(a)(4) and 3(a)(5) of the Act provide:

(4) The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank.

(5) The term "dealer" means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.

⁹ The Commission notes that a non-broker/dealer customer executing a trade through a foreign broker/dealer would be treated as a public customer for purposes of PSE Rules 6.52(a), 6.86 and 6.87, as revised. Telephone conversation between Michael D. Pierson, Senior Attorney, Regulation Policy, PSE, and James T. McHale, Attorney, OMS, Division, Commission, on March 3, 1997.

⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 38203 (January 24, 1997), 62 FR 4564 (January 30, 1997).

⁴ In amendment No. 1 the Exchange revises the definition of "foreign broker/dealer" to include those persons or entities which are required to be registered, authorized or licensed by a foreign governmental agency or foreign regulatory organization, even if they are not so registered, authorized or licensed. See letter from Michael D. Pierson, Senior Attorney, Regulation Policy, PSE, to James T. McHale, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated March 11, 1997 ("Amendment No. 1").

⁵ Rule 6.52(a) provides in part that "[o]nly non-broker/dealer customer orders may be placed with

The Exchange believes that the proposed definition is sufficiently specific to ensure fair enforcement of the affected rules.¹⁰ The PSE asserts that it will be able to verify whether a person or entity is registered, authorized or licensed by a foreign governmental agency or a foreign regulatory organization to perform the specified functions of a broker/dealer. The PSE notes that, as a member of the Intermarket Surveillance Group ("ISG"),¹¹ the Exchange may promptly obtain from ISG members and affiliates information on the accounts of persons or entities entering orders for execution on the PSE, including whether such orders have been entered for the account of a broker or dealer. The Exchange may also obtain such information from foreign exchanges or foreign regulatory authorities with whom the Exchange has an effective surveillance sharing agreement or from a foreign exchange or regulatory authority that is subject to a memorandum of understanding with the Commission that would require those entities to provide such information to the Exchange upon request.

Based upon its review of the applicable regulatory structures of various foreign jurisdictions, the Exchange believes that the proposed definition is sufficiently specific to cover the foreign equivalents of U.S. brokers and dealers. These foreign jurisdictions include, but are not limited to, the following: Australia, Canada, the Czech Republic, France, Germany, Hong Kong, Hungary, Japan, Luxembourg, Mexico, the Netherlands, Poland, South Africa, South Korea, the Slovak Republic, Switzerland, and the United Kingdom.¹²

The Exchange also believes that the proposed definition of "foreign broker/dealer" contains objective criteria for its application and is narrower in scope than the definition of "foreign broker or dealer" specified in SEC Rule 15a-6(b)(3).¹³ In addition, the Exchange

notes the proposed definition is substantially similar in form and substance to SEC Rule 17a-7(c) (definition of nonresident brokers and dealers) and Exchange Act Sections 3(a)(50) (definition of foreign securities authority) and 3(a)(52) (definition of foreign financial regulatory authority).

II. Discussion

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, the requirements of Section 6(b)(5)¹⁴ in that it is designed to facilitate transactions in securities, promote just and equitable principles of trade, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers. Additionally, the PSE's proposal is consistent with Section 11A(a)(1)(c)(ii) of the Act¹⁵ because it will promote fair competition among brokers and dealers.

Specifically, with regard to PSE Rule 6.87, the Commission notes that it has previously determined that limiting execution of options orders through Auto-Ex to non-broker/dealer customer orders is appropriate and consistent with the Act, because automatic execution systems were developed, in part, to aid public customers by providing nearly instantaneous execution of small orders at a guaranteed price.¹⁶ Although the originally adopted rule and related Commission order did not specifically address or define the term "non-broker/dealer," it is consistent with the purpose of the rule to treat foreign broker/dealers in a manner similar to U.S. broker/dealers. Therefore, the amendment to Rule 6.87 properly clarifies that all broker/dealers, whether U.S. registered or foreign, are prohibited from utilizing Auto-Ex for execution of their own trades.

With regard to Rule 6.86, PSE's "firm quote" or "20-up" rule, the Commission finds that the amendment similarly serves to clarify which market participants are entitled to a guaranteed

execution of 20 option contracts. The Commission believes that it is reasonable and consistent with the purpose of Rule 6.86 to not require PSE market makers to provide a guaranteed minimum level of liquidity to broker/dealer option orders, regardless of whether the broker/dealer is registered in the United States or is a foreign broker/dealer. Limiting the 20 contract minimum to non-broker/dealers also furthers the purposes of the Act by helping to ensure that market makers' volume guarantees will not be exhausted by competitors to the detriment of public customers.¹⁷ Similarly, the Commission also believes that interpreting "broker/dealer" to include foreign broker/dealers in determining which orders may be placed with an Order Book Official pursuant to Rule 6.52, is reasonable and consistent with the Act. Prohibiting the entry of limit orders by broker/dealers, whether U.S. registered or foreign, is consistent with the purpose of Rule 6.52 to provide bona fide public customers only with the benefits of the Exchange's customer limit order book, including certain enhanced order priority.¹⁸

Finally, the Commission believes that the PSE's proposed definition of foreign broker/dealer provides an objective and verifiable standard that is capable of fair enforcement.¹⁹ Specifically, the Exchange's Options Surveillance staff should be able to confirm relatively quickly whether a person or entity is registered, authorized or licensed by a foreign governmental agency or foreign regulatory organization to perform the functions of a broker or dealer as defined in the Act. Moreover, the Exchange has represented that an attorney in their Compliance Department will review the determination made by the Options Surveillance staff.²⁰

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 1

¹⁰ See Securities Exchange Act Release No. 37695 (September 17, 1996), 61 FR 50366 (September 25, 1996) (order approving SR-PSE-96-19).

¹¹ ISG was created in February 1981 to design, develop and implement a coordinated intermarket surveillance system among securities markets in the United States. On July 14, 1983, the exchanges participating in the ISG entered into an agreement to coordinate more effectively surveillance and investigative information sharing agreements in stock and options markets. In 1989, with the active participation of the SEC and Commodity Futures Trading Commission, the ISG created an "affiliate" category for futures exchanges and non-U.S. self-regulatory organizations. Currently, the ISG is comprised of nine members and 13 affiliates.

¹² See generally H. Bloomenthal & S. Wolff, *International Capital Markets and Securities Regulation* (1996).

¹³ SEC Rule 15a-6(b)(3) provides: the term "foreign broker or dealer" shall mean any non-U.S.

resident person (including any U.S. person engaged in business as a broker or dealer entirely outside the United States, except as otherwise permitted by this rule) that is not an office or branch of, or a natural person associated with, a registered broker or dealer, whose securities activities, if conducted in the United States, would be described by the definition of "broker" or "dealer" in sections 3(a)(4) or 3(a)(5) of the Act.

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78k-1(a)(1)(c)(ii).

¹⁶ See Securities Exchange Act Release No. 37695 (September 17, 1996), 61 FR 50366 (September 25, 1996). (order approving SR-PSE-96-19).

¹⁷ See Securities Exchange Act Release Nos. 34891 (October 25, 1994), 59 FR 54653 (November 1, 1994); and 34400 (July 19, 1994), 59 FR 38011 (July 26, 1994).

¹⁸ See PSE Rule 6.75, "Priority of Bids and Offers."

¹⁹ The discussion and analysis in this approval order is intended only to address the PSE's proposed definition of foreign broker/dealer. It is not intended to address the meaning of foreign broker/dealer under the statutes, rules and regulations of the federal securities laws.

²⁰ Telephone conversation between Michael D. Pierson, Senior Attorney, Regulation Policy, PSE, and James T. McHale, Attorney, OMS, Division, Commission, on March 5, 1997.

revises the PSE's definition of "foreign broker/dealer" to include those persons or entities which are required to be registered, authorized or licensed by a foreign governmental agency or foreign regulatory organization even if they are not so registered, authorized or licensed.²¹ The Commission finds that Amendment No. 1 strengthens the proposal by including within the Exchange's definition those individuals or entities performing the function of a broker or dealer, but not complying with foreign regulatory requirements to become registered, authorized, or licensed. Essentially, the amendment attempts to avoid a potential loophole under the original proposal whereby a party could assert that it was technically a public customer because it was not formally registered as a foreign broker/dealer, even though it performs broker/dealer functions and is required to be approved for such activity. The Commission believes that the amendment properly provides that an individual or entity attempting to avoid the registration, authorization, or licensing process of a foreign regulator is not deemed a public customer on the Exchange. The Commission also notes that no comments were received on the original PSE proposal, which was subject to the full 21-day comment period. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. 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. Copies of such filing with also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-96-46 and should be submitted by April 16, 1997.

For the foregoing reasons, the Commission finds that the PSE's proposal, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-PSE-96-46) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Jonathan G. Katz,

Secretary.

[FR Doc. 97-7643 Filed 3-25-97; 8:45 am]

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UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of promulgation of temporary, "emergency" guideline amendments increasing penalties for alien smuggling, fraudulent use of government-issued documents, and involuntary servitude, peonage, and slave trade offenses and a proposal to re-promulgate these amendments as permanent amendments.

SUMMARY: The Sentencing Commission hereby gives notice of the following actions: (1) Pursuant to its authority under sections 203, 211, and 218 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the Commission is promulgating temporary, emergency amendments to §§ 2L1.1, 2L2.1, 2L2.2, and 2H4.1 and accompanying commentary; and (2) pursuant to section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994(a) and (p)), the Commission further proposes to re-promulgate these amendments as permanent, non-emergency amendments.

DATES: The Commission has specified an effective date of May 1, 1997, for the emergency amendments increasing the penalties for offenses involving alien smuggling (§ 2L1.1), immigration document fraud (§§ 2L2.1, 2L2.2), and involuntary servitude, peonage, and slave trade (§ 2H4.1).

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273-4590.

Authority. 28 U.S.C. 994 (a), (o), (p), (x).

Richard P. Conaboy,
Chairman.

Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary

Emergency Amendment—Alien Smuggling

1. Amendment: Section 2L1.1(a)(1) is amended by deleting "20" and inserting in lieu thereof "23".

Section 2L1.1(a)(2) is amended by deleting "9" and inserting in lieu thereof "12".

Section 2L1.1(b) is amended by deleting subdivision (1) in its entirety and inserting the following in lieu thereof:

"(1) If (A) the defendant committed the offense other than for profit, or the offense involved the smuggling, transporting, or harboring only of the defendant's spouse or child (or both the defendant's spouse and child), and (B) the base offense level is determined under subsection (a)(2), decrease by 3 levels."

Section 2L1.1(b)(2) is amended in the column captioned "Increase in Level" by deleting "2" and inserting in lieu thereof "3"; by deleting "4" and inserting in lieu thereof "6"; and by deleting "6" and inserting in lieu thereof "9".

Section 2L1.1 is amended by deleting (b)(3) in its entirety and by inserting the following in lieu thereof:

"(3) If the defendant committed any part of the instant offense after sustaining (A) a conviction for a felony immigration and naturalization offense, increase by 2 levels; or (B) two (or more) convictions for felony immigration and naturalization offenses, each such conviction arising out of a separate prosecution, increase by 4 levels."

Section 2L1.1(b) is amended by inserting the following additional subdivisions:

"(4) (Apply the greatest):

(A) If a firearm was discharged, increase by 6 levels, but if the resulting offense level is less than level 22, increase to level 22.

(B) If a dangerous weapon (including a firearm) was brandished or otherwise used, increase by 4 levels, but if the resulting offense level is less than level 20, increase to level 20.

(C) If a dangerous weapon (including a firearm) was possessed, increase by 2 levels, but if the resulting offense level is less than level 18, increase to level 18.

(5) If the offense involved intentionally or recklessly creating a substantial risk of death or serious bodily injury to another person, increase

²¹ See note 4, *supra*.

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).