

conclusion is based, in large part, on the Exchange's one-day review of limit orders against which orders were stopped pursuant to this pilot program. As part of this review, which focused on three of the ten stocks receiving the greatest number of stops, the NYSE determined how often such book orders were executed at their limit price by the close of the day's trading. In addition to aggregated data, the Exchange provided a detailed breakdown of the disposition of each order.

The Commission has historically been concerned that book orders get bypassed when stock is stopped, especially in a minimum variation market.¹⁵ Based on the NYSE's prior experience, the Commission did not have sufficient grounds to conclude that this long-standing concern had been alleviated. The Commission acknowledges, however, that the fourth monitoring report proves new information on this aspect of the pilot program. As a result, the Commission finds that additional time is necessary for the Commission to review such information and to ensure that Rule 116.30, as amended, does not harm public customers with limit orders on the specialist's book.

Finally, the NYSE report describes its compliance efforts (e.g., automated surveillance, review of Floor Official records, information memos, continuing education). The Commission believes that these programs provide specialists with adequate notice of their responsibilities. Similarly, the Exchange has sufficient means to determine whether a specialist complied with the amendments' order size and aggregate share thresholds and, if not, whether Floor Official approval was obtained for larger parameters. The Commission would expect the NYSE to take appropriate action in response to any instance of specialist non-compliance with the pilot procedures. In considering permanent approval of the amendments to Rule 116.30, the Commission would place great weight on the Exchange's record in compliance matters.

During the pilot extension, the Commission requests that the Exchange continue to monitor the effects of stopping stock in a minimum variation market and to provide additional

if a substantial imbalance exists on the opposite side of the market. See *supra*, notes 9-13 and accompanying text. In those circumstances, the stock would probably trade away from the large imbalance, resulting in execution of orders on the book.

¹⁵ See, e.g., SEC. Report of the Special Study of the Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. Pt. 2 (1963).

information where appropriate. Moreover, if the Exchange determines to request permanent approval of the pilot program or an extension thereof beyond July 21, 1995, the NYSE should submit to the Commission a proposed rule change by April 1, 1995.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.¹⁶

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-NYSE-95-02) is approved for a four month period ending on July 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35313; File No. SR-PCC-94-01]

Self-Regulatory Organizations; Pacific Clearing Corporation; Notice of Filing of a Proposed Rule Change Amending Certain Provisions of the PCC's Rules, Participant Agreement, and Clearing Fund Agreement

February 1, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 28, 1994, the Pacific Clearing Corporation ("PCC") 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 primarily by PCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹⁶ No comments were received in connection with the proposed rule change which implemented these procedures. See 1991 Approval Order, *supra*, note 1.

¹⁷ 15 U.S.C. 78s(b)(2) (1988).

¹⁸ 17 CFR 200.30-3(a)(12) (1991).

¹ 15 U.S.C. 78s(b)(1) (1988).

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

PCC proposes to correct certain typographical errors in its rules and to clarify certain provisions regarding post capital in its standard participant agreement and clearing fund agreement.

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

In its filing with the Commission, PCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCC 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 primary purpose of PCC's proposed rule change is to correct typographical errors to certain provisions of PCC's rules and to clarify certain provisions of its standard participant agreement and clearing fund agreement relating to specialist post capital.

Specifically, PCC proposes to correct typographical errors to the Table of Contents; PCC Rule 1.2(f), defining the term "long position"; PCC Rules 2.1(c) and 2.1(d), addressing membership qualifications and approval; and PCC Rule 9.3(c)(iii) addressing specialist post termination procedures. In addition, PCC proposes to amend PCC Rule 5.2 to clarify that any reductions to excess post capital or a member's clearing fund deposit cannot be made for amounts that would reduce the member's post capital or clearing fund deposit below the minimum requirement.

With respect to the participant agreement, PCC proposes to amend certain paragraphs relating to post capital. Paragraph 3.1(e)(iii) will be amended to clarify that it refers to the monitoring of post capital rather than net capital as it currently states. Paragraph 4.5 of the participant agreement will be amended so that post capital is distinguished from net capital. Net capital, which is specified by PSE Rule 2.1 and Rule 15c3-1 of the Act, remains constant for a firm regardless of the number of specialist posts it operates. In contrast, post capital varies because it represents the amount of capital required to be maintained by a firm based on the number of specialists

posts it operates. Paragraph 4.9 of the participant agreement is to be modified to clarify that reductions to excess post capital and to the clearing fund deposit cannot be made in amounts that would reduce these sums below their respective minimum requirements. Paragraph 4.9 of the participant agreement also is being modified to clarify that losses on a trial balance are due on the fifteenth day of the month following the month for which the trial balance was issued.

Similarly, with regard to the clearing fund agreement, PCC proposes to clarify that the minimum contribution, as defined in paragraph 5 of the clearing fund agreement, made by a member firm backing a specialist post will be applied towards meeting the post capital requirement. Currently, the clearing fund agreement states that contributions are to be credited towards the net capital requirement.

PCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to PCC. The technical corrections to PCC's rules will clarify PCC's rules thereby advancing the prompt and accurate clearance and settlement securities transactions. In addition, the clarifications regarding specialist post capital and net capital will assist PCC in safeguarding the securities and funds which are in PCC's custody or control or for which PCC is responsible.

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

PCC believes that no burden will be placed on competition as a result of the proposed rule change.

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

Statements were neither solicited nor received.

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

Within thirty-five 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 ninety 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 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 PCC. All submissions should refer to File No. SR-PCC-94-01 and should be submitted by February 28, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.²

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35299; File No. SR-PTC-95-07]

Self-Regulatory Organizations; Participants Trust Company; Order Approving on an Accelerated Basis a Proposed Rule Change Establishing a Daily Penalty Fee Applicable to Late Funding of Shortfalls in Participants' Mandatory Deposits to the Participants Fund

January 31, 1995.

On December 14, 1994, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-PTC-94-07) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ The proposed rule change establishes a daily penalty fee applicable to late funding of shortfalls

in participants' mandatory deposits to the participants fund. On December 16, 1994, PTC filed Amendment No. 1 to the proposed rule change.² On January 5, 1995, PTC filed Amendment No. 2 to the proposed rule change.³ The Commission published notice of the proposed rule change in the **Federal Register** on January 9, 1995.⁴ No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

I. Description

Pursuant to Rule 2 of Article V of PTC's rules, PTC maintains a participants fund to secure obligations of participants and limited purpose participants to PTC and to provide PTC with an additional source of cash collateral to meet its temporary financing needs. Each participant is required to maintain a mandatory deposit in the participants fund which is calculated as a percentage of its average gross debits over the previous month's three major settlement days. The mandatory deposit is subject to a minimum of \$1 million and a maximum of \$10 million. A limited purpose participant is required to maintain a lower mandatory deposit because of the limited nature of its activity in the depository. At least \$150 thousand of the mandatory deposit must be made in cash. The remainder may be made in cash or United States Treasury obligations with a remaining maturity of one year or less.

The adequacy of each participant's mandatory deposit is evaluated monthly based on the prior month's activity. Participants are notified of any shortfall and required to fund the deficiency within five business days. The securities portion of the mandatory deposit is marked-to-market weekly, and participants are required to fund any deficiency in this portion within two business days.

² Amendment No. 1 modified the filing by providing that it be considered pursuant to Section 19(b)(2) of the Act rather than pursuant to Section 19(b)(3)(A) of the Act and by eliminating text inadvertently placed in the proposed rule change as originally filed. Letter from Carol A. Jameson, Assistant Vice President and Assistant Counsel, PTC, to Jonathan G. Katz, Secretary, Commission (December 15, 1994).

³ Amendment No. 2 modified the filing by requesting accelerated approval of the proposed rule change and by clarifying the right of a participant to appeal the imposition of the penalty fee pursuant to PTC's rules. Letter from Carol A. Jameson, Assistant Vice President and Assistant Counsel, PTC, to Jonathan G. Katz, Secretary, Commission (January 3, 1995).

⁴ Securities Exchange Act Release No. 35182 (December 30, 1994), 60 FR 2416.

² 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).