

the future that are materially similar to the Front Load Contracts and the Back Load Contracts all charges and expenses will be identical to, or lower than, the corresponding charges and expenses for the Front Load Contracts and the Back Load Contracts, respectively, as described in the application.<sup>2</sup>

13. The mortality risk borne by Northwestern under both versions of the Contracts arises from its obligation to make annuity payments regardless of how long an annuitant may live. The mortality risk is the risk that annuitants will live longer than Northwestern's actuarial projections indicate, resulting in higher than expected annuity payments.

14. The expense risk borne by Northwestern under the Contracts is the risk that the charges for administering the Contracts, which are guaranteed for the life of each Contract, may be insufficient to cover the actual costs of issuing and administering the Contracts.

15. The mortality and expense risk is higher for the Back Load Contracts than for the Front Load Contracts for several reasons. Collection of a significant front end load inherently reduces the risk that charges will fall short of corresponding expenses since receipt of deferred loads is far less certain. The Front Load Contracts require a minimum initial purchase payment of \$10,000, compared with \$25, \$100 or \$3,500 for Back Load Contracts. The economies of scale associated with larger units reduce the expense risk. Northwestern asserts that an additional mortality risk for the Back Load Contract exists because the withdrawal charge does not apply upon the death of the annuitant.

#### **Applicants' Legal Analysis and Conditions**

1. Applicants request an exemption from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent any relief is necessary to permit the deduction from Account B of the mortality and expense risk charges under the Contracts. Applicants request that the order also permit the deduction of the mortality and expense risk charges described herein from the assets of Account B pursuant to other contracts offered in the future through Account B, to the extent that such contracts are materially similar to the Contracts.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates

unless the proceeds of all payments are deposited with a qualified trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

3. Applicants submit that their request for an order that applies to materially similar contracts offered in the future by Account B is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity contract market by eliminating the need for Northwestern to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. Investors would not receive any benefit or additional protection by requiring Northwestern to seek repeatedly exemptive relief regarding the same issues addressed in the application.

4. Applicants represent that they have reviewed publicly available information regarding the aggregate level of the mortality and expense risk charges under variable annuity contracts comparable to the Front Load Contracts and the Back Load Contracts currently being offered in the insurance industry taking into consideration such factors as current charge levels, the manner in which charges are imposed, the presence of expense and annuity rate guarantees and the markets in which the Contracts will be offered. Based upon this review, Applicants represent that the mortality and expense risk charges under the Contracts are within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation. Similarly, prior to making available any materially similar contracts through Account B, Applicants will represent that the mortality and expense risk charges under any such contracts will be within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying such representation.

5. Applicants represent that Account B will invest only in underlying funds which undertake, in the event they should adopt a plan under Rule 12b-1 under the 1940 Act to finance distribution expenses, to have a board of

directors or trustees, a majority of whom are not interested persons as defined under Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

6. Applicants do not expect the front-end sales load or contingent deferred sales load imposed under the Contracts will necessarily cover the expected costs of distributing the Contracts. Any shortfall will be made up from Northwestern's general assets which will include amounts derived from the mortality and expense risk charges. Northwestern has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Contracts will benefit Account B and the Contract owners. Northwestern will keep and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

#### **Conclusion**

Applicants assert that for the reasons and upon the facts set forth above, the requested exemption from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts, or under materially similar contracts offered in the future by Account B, meets the standards in Section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-5814 Filed 3-8-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35436; File No. SR-PSE-95-01]

#### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Buy-Write Options Unitary Derivatives ("BOUNDS")**

March 2, 1995.

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 February 6, 1995, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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

<sup>2</sup>Applicants represent that they will amend the application during the Notice Period to reflect the representations in this paragraph.

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, pursuant to Rule 19b-4 under the Act, proposes to amend its rules to permit trading in Buy-Write Options Unitary Derivatives ("BOUNDS").<sup>1</sup> As described in more detail below, BOUNDS are long term options which the PSE believes have the same economic characteristics as a covered call writing strategy.

The text of the proposed rule change is available at the Office of the Secretary, PSE and at the Commission.

### **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 statutory 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 section (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 Exchange is proposing to list for trading BOUNDS. The Options Clearing Corporation ("OCC") will be the issuer of all BOUNDS traded on the Exchange. As with all OCC issued options, BOUNDS will be created when an opening buy and an opening sell order are executed. The execution of such orders will increase the open interest in BOUNDS. Except as described herein, BOUNDS will be subject to the rules governing standardized options.

The Exchange anticipates listing BOUNDS with respect to those underlying securities that have listed LEAPs. The criteria for stocks underlying BOUNDS will be the same as the criteria for stocks underlying LEAPs.

It is anticipated that the sum of the market prices of a LEAP and a BOUND on the same underlying stock with the same expiration and exercise price will closely approximate the market price for the underlying stock. If the combined

price of the LEAP and BOUND diverge from that of the underlying common stock, there will be an arbitrage opportunity which, when executed, should bring the price relationships back into line.

BOUNDS will have the same strike prices and expiration dates as their respective LEAPs except that the Exchange will list only a strike price that is at or very close to the price of the underlying stock at the time of listing, or that is below the price of the stock at that time. For example, at the time of initial listing, the strike prices for a BOUND with the underlying stock trading at \$50 per share, would be set at \$40 and \$50. The Exchange would not list a BOUND with a strike price of \$60 in this example.

The Exchange anticipates that it will list new complementary LEAPs and BOUNDS on the same underlying securities annually, or at more frequent intervals, depending on market demand. The Exchange has the current authority to list LEAPs with up to 39 months until expiration and, therefore, seeks to introduce BOUNDS with up to the same 39 month duration.

BOUNDS will offer essentially the same economic characteristics as covered calls with the added benefits that BOUNDS can be traded in a single transaction and are not subject to early exercise. BOUND holders will profit from appreciation in the underlying stock's price up to the strike price and will receive payments equivalent to any cash dividends declared on the underlying stock. On the ex-dividend date for the underlying stock, OCC will debit all accounts with short positions in BOUNDS and credit all accounts with long positions in BOUNDS with an amount equal to the cash dividend on the underlying stock.

Like regular options, BOUNDS will trade in standardized contract units of 100 shares of underlying stock per BOUND so that at expiration, BOUND holders will receive 100 shares of the underlying stock for each BOUND contract held if, on the last day of trading, the underlying stock closes at or below the strike price. However, if at expiration the underlying stock closes above the strike price, the BOUND contract holder will receive a payment equal to 100 times the BOUND's strike price for each BOUND contract held. BOUND writers will be required to deliver either 100 shares of the underlying stock for each BOUND contract or the strike price multiplied by 100 at expiration, depending on the price of the underlying stock at that time. This settlement design is similar to the economic result that accrues to an

investor who has purchased a covered call (*i.e.*, long stock, short call) and held that position to the expiration of the call option.

For example, if the XYZ BOUND has a strike price of \$50 and XYZ stock closes at \$50 or less at expiration, the holder of the XYZ BOUND contract will receive 100 shares of XYZ stock. This is the same result as if the call option in a buy-write position had expired out of the money; *i.e.*, the option would expire worthless and the writer would retain the underlying stock. If XYZ closes above \$50 per share, then the holder of an XYZ BOUND will receive \$5,000 in cash (100 times the \$50 strike price). This mimics the economic result to the covered call writer when the call expires in the money, *i.e.*, the writer would receive an amount equal to 100 shares times the strike price and would forfeit any appreciation above that price.

The settlement mechanism for the BOUNDS will operate in conjunction with that of LEAP calls. For example, if at expiration the underlying stock closes at or below the strike price, the LEAP call will expire worthless, and the holder of a BOUND contract will receive 100 shares of stock from the short BOUND. If, on the other hand, the LEAP call is in the money at expiration, the holder of the LEAP call is entitled to 100 shares of stock from a short LEAP upon payment of the strike price, and the holder of a BOUND contract is entitled to the cash equivalent of the strike price times 100 from the short BOUND. An investor long both a LEAP and a BOUND, where XYZ closes above the \$50 strike price at expiration, would be entitled to receive \$5,000 in cash from the short BOUND and, upon exercise of the LEAP, would be obligated to pay \$5,000 to receive 100 shares of XYZ stock.

The Exchange believes the settlement of the LEAP and BOUND at expiration are equally well harmonized from the perspective of the writer. For example, an investor long the underlying stock, and who writes both a LEAP and a BOUND, will be obligated to deliver the stock to the long LEAP call if the underlying stock closes above the strike price, and will receive in return payment of the strike price times 100, which amount will then be delivered to the long BOUND. Accordingly, the Exchange believes a covered writer's position is effectively closed upon the delivery of the underlying stock. If a writer of both instruments has deposited cash or securities other than the underlying stock as margin for a short LEAP call and BOUND, then the writer delivers 100 shares of stock (purchased on the open market) to the long LEAP

<sup>1</sup> The PSE notes that BOUNDS is a service mark of The American Stock Exchange, Inc.

call upon payment of the strike price times 100. The writer of the BOUND then delivers the cash value of 100 times the strike price to the holder of the long BOUND.

It should be noted that LEAPs are American-style options whereas BOUNDS are European-style.<sup>2</sup> The Exchange believes that it would be inappropriate for the BOUND holder to have an American-style exercise right since the BOUND will tend to trade at a discount to the stock and strike price.

#### Sales Practices

BOUNDS will be subject to the Exchange's sales practice and suitability rules applicable to standardized options set forth in Rule 9.

#### Adjustments

BOUNDS will be subject to adjustments for corporate and other actions in accordance with the rules of OCC.

#### Position Limits

BOUNDS will be subject to the position limits for equity options set forth in Exchange Rule 6.8. In addition, BOUNDS will be aggregated with other equity options on the same underlying stock for purposes of calculating position limits. According to the Exchange, since a BOUND to holder is a bullish position (i.e., the equivalent of a short put position where the strike price has been prepaid), the Exchange proposes that long BOUNDS be aggregated with long call and short put positions in the related equity options. Similarly, since the Exchange believes the BOUND, from the perspective of the seller, is a "bearish" position (i.e., it is the equivalent of a long put position where the strike price has been prepaid), it proposes to aggregate short BOUNDS with short call and long put positions in the related equity options.

#### Customer Margin

The Exchange proposes to apply options margin treatment to BOUNDS as follows:

1. *Long BOUND Positions:* Full payment required at the time of purchase. As described more fully below, however, there will be a credit for long BOUNDS in BOUND spread positions.

2. *Short BOUND Positions:* The BOUND seller receives full value of the BOUND at the time of the initial sale and receives no further payment when the contract is settled either by payment

of the strike price or delivery of the underlying stock. Short BOUND positions, therefore, will be margined in an amount equal to the current market price of the BOUND plus an amount equal to an "add-on" used to margin short call options times the market value of the BOUND. Since the maximum obligation of the seller of a BOUND cannot exceed the strike price, however, the amount of margin will never exceed the strike value. For example:

A. Assume a stock price of \$50, an exercise price of \$50, a margin add-on percent of 20% and the BOUND trading at \$40. In this case, the short seller would have to pay \$48 to margin the position, i.e., \$40 BOUND price plus 20% of \$40.

B. Assume a stock price of \$40, an exercise price of \$50, a margin add-on percent of 20% and the BOUND trading at \$35. In this case, the margin would be \$42, i.e., \$35 BOUND price plus 20% of \$35.

3. *Covered Positions:* Short BOUND positions offset by the equivalent number of shares of the underlying stock will not require any additional margin since the seller's obligation to the buyer will, in all cases, be covered by the position in the underlying stock. Further, since the sum of the prices of a LEAP and a BOUND will be approximately equal to the price of the underlying stock, a long stock position is cover for both a short BOUND and a short LEAP position.

#### 4. Spread Positions

i. *Same Expiration—Different Strike Prices:* There will be no margin requirement for BOUND positions which are long the higher strike price and short the lower strike price since the long BOUND more than covers the obligation of the short side of the position. For positions short the higher strike price and long the lower strike, a customer will be required to post the difference between the strike prices.

ii. *Different Expiration-Same Strike Price:* No margin will be required for positions long the nearest expiration and short the longer expiration since the value of the long BOUND will cover the obligation on the short leg of the position. Positions that are short the near expiration and long the distant expiration will require full margin on the short position less 80% of the market value of the long position.

iii. *Different Expiration-Different Strike Prices:* There will be no margin required for positions that are long the near expiration and short the distant expiration when the strike price on the near expiration is higher than the strike on the distant expiration. For positions which are long the near expiration and

short the distant expiration where the strike price on the near expiration is lower than the strike on the distant contract, the margin will be the difference in the strike between the near term and distant strikes. For positions which are short the near expiration and long the distant expiration, full margin will be required on the short position less 80% of the market value of the long position.

The Exchange 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)(5), in particular, in that it is 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and the national market system.

#### 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 were neither solicited nor 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 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.,

<sup>2</sup> A European-style option may only be exercised during a limited period of time before the option expires. An American-style option may be exercised at any time prior to its expiration.

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 Section, 450 Fifth Street NW., Washington, DC. 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 March 30, 1995.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-5704 Filed 3-8-95; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

### Privacy Act System of Records

**AGENCY:** Small Business Administration.

**ACTION:** Notice of Amendment to the Agency's Privacy Act System of Records.

**SUMMARY:** The Small Business Administration (SBA) is amending the Agency's Privacy Act System of Records SBA 145, Temporary Disaster Employees. This System is being amended to expand the categories of individuals covered.

**DATES:** This amendment is effective on March 9, 1995.

**FOR FURTHER INFORMATION CONTACT:** Bernard Kulik, Associate Administrator for Disaster Assistance, U.S. Small Business Administration, 8th floor, 409 3rd Street, SW, Washington, DC 20416; 202-205-6734.

**SBA 145**

**SYSTEM NAME:**

Former and Current Disaster Employees—SBA 145.

**SYSTEM LOCATION:**

Office of Disaster Assistance, Central Office, See Appendix A for location.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Employees who have been previously employed within the Office of Disaster Assistance and some current employees.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Former employees within the Office of Disaster Assistance and some current employees. These records contain name, address, telephone number where person can be reached, SSN, Disaster Area where employed, series and grade, job title, dates of employment and reason for termination, name and job title of supervisor, and summary of supervisor's evaluation. Also included is information, if any, concerning violations of the Agency's Standards of Conduct (13 CFR Part 105) and information, if any, concerning official investigations and disciplinary actions taken with regard to the employee. Special skills and bilingual capabilities are also included.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, 15 U.S.C. 834(b)(6), 44 U.S.C. 101.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

The records will be used by Disaster Area Directors and personnel officers assigned to each Disaster Area to verify previous SBA disaster assistance employment history when a former employee is considered for reemployment and to locate current or former employees with special skills or language capabilities needed in special situations.

Disclosures may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosures may be made to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the

records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components

is a party to litigation or has an interest in such litigation, and the use of such records by the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

These records will be maintained in card files and in a computer database.

**RETRIEVABILITY:**

These records will be filed alphabetically by the individual's last name.

**SAFEGUARDS:**

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosures.

**RETENTION AND DISPOSAL:**

Destroy when no longer necessary.

**SYSTEMS MANAGER(S) AND ADDRESS:**

Privacy Act Officer and Associate Administrator for Disaster Assistance, Central Office. See Appendix A for address.

**NOTIFICATION PROCEDURES:**

An individual may inquire as to whether the system contains a record pertaining to him or her by addressing a request in person or in writing to the manager(s) listed above.

**RECORDS ACCESS PROCEDURE:**

In response to a request by an individual to determine whether the

<sup>3</sup> 17 CFR 200.30-3(a)(12) (1994).