deadlines in the case of flexibly structured equity options. Such departures are not currently anticipated and adequate prior notice will be given to all clearing members.

OCC believes the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because the proposal provides for the prompt and accurate clearance and settlement of transactions in flexibly structured equity options and because it provides for the safeguarding of related securities and funds. OCC believes the proposed rule change meets such requirements by establishing a framework in which existing, reliable OCC systems, rules, and procedures are extended to the processing of flexibly structured equity options. Finally, OCC believes the proposed rule change will foster cooperation with persons, including OCC clearing members, engaged in the clearance and settlement of securities transactions and will thereby promote the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

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

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been 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 OCC 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, 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 also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–96–03 and should be submitted by July 16, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–16062 Filed 6–24–96; 8:45 am]

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[Release No. 34–37326; File No. SR–PSE–96–13]

Self-Regulatory Organizations; Pacific Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change Relating to Restrictions on Equity Allocations (10% Rule)

June 19, 1996.

On April 10, 1996, the Pacific Stock Exchange, Incorporated (''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 codify a policy that any specialist whose score on a quarterly specialist performance evaluation ranks in the bottom 10% of specialist on his or her trading floor shall not be eligible for allocations of securities, absent mitigating circumstances, until such ranking rises above the bottom 10%.

The proposed rule change was published for comment in Securities Exchange Act Release No. 37142 (April 24, 1996), 61 FR 19328 (May 1, 1996). No comments were received on the proposal.

The Exchange's specialist evaluation program is governed by PSE Rule 5.37. Subsection (a) of that Rule provides that the Equity Allocation Committee (''EAC'') shall evaluate all registered specialists on a quarterly basis. Those evaluations result in overall ratings of specialists that are based upon three separate measures of performance, as specified in the Rule.[3] Subsection (b) provides that any registered specialists who is in the bottom 10% of all registered specialists on that specialist's trading floor,[4] as determined by the overall evaluation scores in any one quarterly evaluation, shall be requested to meet with the EAC (or a panel appointed by the EAC) on an informal basis.[5] If a specialist is in the bottom 10% during any two out of four consecutive quarterly evaluations, the specialist is requested to appear a second time before the EAC to explain his or her performance.[6]

If the EAC finds in its second informal meeting with a specialist that there are no mitigating circumstances that would demonstrate substantial improvement of or reasonable justification for the specialist's most recent evaluation score, the EAC will make a determination that the specialist's performance is below acceptable levels, and notify the specialist of his or her right to a hearing on such determination.[7] The EAC may take a number of actions against a registered specialist found to perform below acceptable levels, including limitation, suspension or termination of the specialist's registration as a specialist, or reallocation of his or her stocks.

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[12] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The three measures of performance currently utilized by the PSE are: (1) National Market System Quote Performance, accounting for 45% of the overall score, measures the percentage of times in a given quarter that a specialist's bid and/or offer is equal to or greater than the best bid or offer in the consolidated quote system for each dually-traded security; (2) the Specialist Evaluation Questionnaire Survey, also accounting for 45% of the overall score, is composed of questions designed to evaluate a specialist's market-making performance and is to be completed only by floor brokers who regularly trade with a specialists; and (3) SCOREX Limit Order Acceptance Performance, which accounts for the final 10% of the overall score, measures the percentage of P/COAST (formerly SCOREX) limit orders accepted by a specialist. *See* Securities Exchange Act Release No. 28843 (February 1, 1991), 56 FR 5040 (February 7, 1991) (File No. SR–PSE–87–19) for a more complete description of each of these measures of performance.

[4] The PSE maintains two equity trading floors, one in Los Angeles and one in San Francisco. *See* PSE Rule 4.1(g).

[5] *See* PSE Rules 5.37(b)–(e).

[6] *SEE* Rules 5.37(g)–(i). The EAC also has the authority to bypass the second informal proceeding and commence formal reallocation proceedings after a specialist's second quarter of substandard performance in a rolling twelve-month period. *See* PSE Rule 5.37.

[7] For a description of the procedures followed in such proceedings, see PSE Rules 5.37(j)–(s).

The Exchange is now proposing to adopt a rule providing that any registered specialist who fails into the bottom 10% of all registered specialists on his trading floor as determined by the overall evaluation scores received by each specialist in any one quarterly evaluation shall not be eligible for new allocations until such ranking rises above the bottom 10%.[8] However, the proposal also provides that the EAC may make exceptions if there are sufficient mitigating circumstances.[9]

At the PSE's specialist evaluation results and overall rankings are reported in the quarter following the quarter of the evaluation, *e.g.*, the results of the fourth quarter of 1995 are reported in the first quarter of 1996. Accordingly, a specialist who was in the bottom 10% for the fourth quarter of 1995 will not be eligible for new allocations of stocks until, at the earliest, the second quarter of 1996, when the results from the first quarter of 1996 are reported.

The Exchange believes that the restriction on new allocations is an effective tool in encouraging specialists to improve their performance, and thereby to improve their evaluation scores.[10]

The Commission finds that the PSE's proposal to codify its policy that a specialist whose quarterly evaluation score falls in the bottom 10% of registered specialists on his or her trading floor shall not be eligible for any allocations of stock until such specialist is no longer in the bottom 10% is consistent with the requirements of Sections 6 and 11 of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with the Section 6(b)(5)[11] requirement that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Further, the Commission finds that the proposal is consistent with Section 11(b) of the Act[12] and Rule 11b–1 thereunder[13] which allow national securities exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets and to remove impediments to and perfect the mechanism of a national market system. For the reasons set forth below, the Commission believes that the proposal should encourage improved specialist performance, consistent with the protection of investors and the public interest.

Specialists play a crucial role in providing stability, liquidity, and continuity to the trading of stocks. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules promulgated thereunder, is the maintenance of fair and orderly markets in their designated securities.[14] To ensure that specialists fulfill these obligations, the Commission has encouraged the Exchange to have an effective program for evaluating specialists' performance. In this regard, the Commission believes that stocks should be allocated to those specialists who are performing the best. Such stock allocation policies encourage specialists to strive for optimal market making performance.

At present, the only incentive to improved specialist performance found in the PSE specialist performance evaluation program that is applicable beginning with a specialist's first quarter of ranking in the bottom 10% is the restriction on acting as an alternate specialist while the specialist remains ranked in the bottom 10%.[15] The proposed rule change will add another such incentive to the PSE rules by codifying an existing policy of the Exchange that restricts specialists whose ranking falls in the bottom 10% of specialists on his or her floor from eligibility for any allocations (*i.e.*, allocations of new issues, reallocations of existing issues, or swapping of issues with other specialists) until such specialist is no longer in the bottom 10%.

The Commission believes that the codification of this policy into the PSE rules will be an effective and appropriate means by which to encourage improved specialist performance. As a specialist's profitability is directly related to the stocks he or she is allocated, the possibility of a restriction on allocations will provide a strong incentive to PSE specialists to remain out of the bottom 10%. This should translate into improved market making performance by specialists, thereby benefitting investors. Moreover, the imposition of the restriction on allocations to specialists in the bottom 10% should increase the likelihood that stocks are allocated to specialists who will make the best markets.

Finally, the Commission notes that the EAC retains the ability to allow specialists whose scores are in the bottom 10% in any quarterly evaluation to continue receiving allocations if it finds that sufficient ''mitigating circumstances'' are present. While the Exchange has represented that relief from the restriction by mitigation is the exception[16] and the Commission recognizes the need for the EAC to retain the discretion to refrain from imposing this restriction in appropriate instances, the Commission expects that findings by the EAC that ''mitigating circumstances'' are present will not become routine, but will remain the exception and be made only when appropriately warranted.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–PSE–96–13) is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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[8] The PSE has represented that the restriction applies to both initial allocations and allocations available as a result of subsequent reallocations. Furthermore, it also would apply in situations where two specialists desire to ''swap'' issues with each other . *See* Letter from Michael Pierson, Senior Attorney, PSE, to John Kroeper, Attorney, SEC, dated June 7, 1996 (''PSE Letter'').

[9] In the PSE Letter the Exchange gave the following, non-definitive, examples of ''mitigating circumstances'' that have been accepted by the EAC in the past two years: i) extensive systems problems existed that clearly were beyond the specialist's control; ii) a specialist was able to show that, of the trades covered in a specialist evaluation, the percentage of trades involving interaction with a broker was very low, and undue weight therefore was placed on the Questionnaire Survey; iii) a specialist's financial backer withdrew mid-quarter, having a negative impact on the specialist's performance during that quarter; and iv) the specialist's overall score on the quarterly evaluation (as opposed to the specialist's ranking) was above 80%. The Exchange further represented that based on past EAC decisions, relief by mitigation is the exception, not the rule. *See* PSE Letter, *supra* note 8.

[10] *Cf.* Securities Exchange Act Release NO. 31539 (November 30, 1992), 57 FR 57851 (December 7, 1992) (File No. SR–PSE–92–32). This order approved, among other things, the addition of Commentary .03 to PSE Rule 5.36(d), which precludes a specialist whose specialist ranking falls in the bottom 10% of his or her Floor from acting as an alternate specialist until his or her ranking raises above the bottom 10%, unless the EAC determines otherwise.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78k(b).

[13] 17 CFR 240.11b–1.

[14] Rule 11b–1, 17 CFR 240.11b–1; PSE Rules 5.29(f).

[15] *See* PSE Rule 5.36(d), Commentary .03. As discussed previously, under PSE Rule 5.37 the exchange has the ability to take more significant action against any specialist who is ranked in the bottom 10% in any two out of four consecutive evaluations. *See* PSE Rule 5.37(j).

[16] *See* PSE Letter, *supra* note 8.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).