Applicants to deduct from premium payments received in connection with the Policies an amount that is reasonable in relation to Ameritas's increased federal tax burden created by its receipt of such premium payments. The deduction would not be treated as sales load.

3. Section 2(a)(35) of the 1940 Act defines ''sales load'' as the difference between the price of a security offered to the public and that portion of the proceeds from its sale which is received and invested or held by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

4. Section 27(c)(2) of the 1940 Act prohibits a registered investment company or a depositor or underwriter for such company from making any deduction from purchase payments made under periodic payment plan certificates other than a deduction for sales load.

5. Rule 6e-3(T)(b)(13)(iii), among other things, provides relief from Section 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of certain charges other than sales load, including ''[t]he deduction of premium or other taxes imposed by any state or other governmental entity.'' Applicants represent that the requested exemption is necessary if they are to rely on certain provisions of Rule 6e-3(T)(b)(13).

6. Rule 6e-3(T)(c)(4) defines ''sales load'' during a contract period as the excess of any payments made during that period over certain specified charges and adjustments, including ''[a] deduction for and approximately equal to state premium taxes.'' Applicants submit that the proposed DAC tax charge is akin to a state premium tax charge and, therefore, should be treated as other than sales load for purposes of the 1940 Act and the rules thereunder.

7. Applicants acknowledge that the proposed DAC tax charge does not fall squarely into any of the itemized categories of charges or adjustments set forth in Rule 6e-3(T)(c)(4); a literal reading of that rule arguably does not exclude such a ''tax burden charge'' from sales load. Applicants maintain, however, that there is no public policy reason why a tax burden charge designed to cover the expense of federal taxes should be treated as sales load. Applicants also assert that nothing in the administrative history of Rule 6e-3(T) suggests that the SEC intended to treat tax charges as sales load.

8. Applicants assert that the public policy that underlies Rule 6e-3(T)(b)(13)(i), like that which underlies Sections 27(a)(1) and 27(h)(1), is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants submit that the treatment of a tax burden charge attributable to the receipt of purchase payments as sales load would in no way further this legislative purpose because such a charge has no relation to the payment of sales commissions or other distribution expenses. Applicants further submit that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of sales load in Rule 6e-3(T)(c)(4).

9. Applicants assert that the genesis of Rule 6e-3(T)(c)(4) supports this analysis. In this regard, Applicants note that Section 2(a)(35) of the 1940 Act provides a scale against which the percent limits of Sections 27(a)(1) and 27(h)(1) thereof may be measured. Applicants submit that the intent of the SEC in adopting Rule 6e-3(T)(c)(4) was to tailor the general terms of Section 2(a)(35) top flexible premium variable life insurance contracts in order, among other things, to facilitate verification by the SEC of compliance with the sales load limits set forth in Rule 6e-3(T)(b)(13)(i). Applicants submit that Rule 6e-3(T)(c)(4) does not depart, in principal, from Section 2(a)(35).

10. Applicants further assert that Section 2(a)(35) excludes from the definition of sales load under the 1940 Act deductions from premiums for ''issue taxes.'' Applicants submit that, by extension, the exclusion from ''sales load'' (as defined in Rule 6e-3(T)) of charges to cover an insurer's expenses attributable to its federal tax obligations is consistent with the protection of investors and the purposes intended by the policies and provisions of the 1940 Act.

11. Applicants also submit that the reference in Section 2(a)(35) to administrative expenses or fees that are ''not properly chargeable to sales or promotional activities'' suggests that the only deductions intended to fall within the definition of sales load are those that are properly chargeable to such activities. Because the proposed DAC tax charge will be used to compensate Ameritas for its increased federal tax burden attributable to the receipt of premiums, and such deductions are not properly chargeable to sales or promotional activities, Applicants assert that the language of Section 2(a)(35) is another indication that not treating such deductions as sales load is consistent with the purposes intended by the policies of the 1940 Act.

Condition for Relief

1. Applicants agree to comply with the following conditions for relief.

a. Ameritas will monitor the reasonableness of the 1.00 percent proposed DAC tax charge.

b. The registration statement for the Policies under which the 1.00 percent charge is deducted will: (i) disclose the charge; (ii) explain the purpose of the charge; and (iii) state that the charge is reasonable in relation to Ameritas's increased federal tax burden resulting from the application of Section 848 of the Code.

c. The registration statement for the Policies under which the 1.00 percent charge is deducted will contain as an exhibit an actuarial opinion as to: (i) the reasonableness of the charge in relation to Ameritas's increased federal tax burden resulting from the application of Section 848 of the Code; (iii) the reasonableness of the targeted rate of return that is used in calculating such charge; and (iii) the appropriateness of the factors taken into account by Ameritas in determining such targeted rate of return.

Conclusion

For the reasons summarized above, Applicants represent that the requested relief from Section 27(c)(2) of the 1940 Act and Rule 6e-3(T)(c)(4)(v) thereunder is necessary or appropriate in the public interest and otherwise meets the standards of Section 6(c) of the 1940 Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–17521 Filed 7–17–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35959; File No. SR–PSE–95–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Violations of the Intermarket Trading System Rules

July 12, 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 June 8, 1995, 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. On June 26, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[1] 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 Exchange is proposing to amend its Minor Rule Plan so that it includes violations of the Intermarket Trading System (''ITS'') rules, which are set forth in PSE Rules 5.20–5.23. The text of the proposed rule change is as follows [new text is italicized]:

¶ 6133 Minor Rule Plan

Rule 10.13(a)–(h)—No change.

(i) Minor Rule Plan: Equity Floor Decorum and Minor Trading Rule Violations

(i)(1)–(i)(8)—No change.

(i)(9) Failure to follow the provisions of the rules and regulations governing the use of the Intermarket Trading System (ITS) (Rules 5.20–5.23)

* * * * *

Minor Rule Plan

Recommended Fine Schedule

(Pursuant to Rule 10.13(f))

Rule 10.13(i)

Equity Floor Decorum and Minor Trading Rule Violations

	1st violation	2nd violation	3rd violation
1–8—No change.			
9—Failure to follow the provisions of the rules and regulations governing the use of the Intermarket Trading System (ITS) (Rules 5.20–5.23)	$500	$1,000	$2,000

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 IV below. The self-regulatory organization 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

1. Purpose

The Exchange's Minor Rule Plan (''MRP''),[2] set forth in PSE Rule 10.13, provides that the Exchange may impose a fine not to exceed $5,000 on any member, member organization, or person associated with a member or member organization, for any violation of an Exchange rule that has been deemed to be minor in nature and approved by the Commission for inclusion in the MRP. Rule 10.13, subsections (h)–(j), set forth the specific Exchange rules deemed to be minor in nature.

The Exchange is proposing to add the following provision to the MRP as Rule 10.13(i)(9): ''Failure to follow the provisions of the rules and regulations governing the use of the Intermarket Trading System (ITS) (PSE Rules 5.20–5.23).'' The Exchange is also proposing to amend its Recommended Fine Schedule to establish the following recommended fines (on a running two-year basis) for violations of the ITS rules and regulations: $500 for a first-time violation; $1,000 for a second-time violation; and $2,000 for a third-time violation.[3]

The Exchange believes that the ITS rules proposed to be added to the MRP are either objective or technical in nature and are easily verifiable, thereby lending themselves to the use of expedited proceedings. The Exchange further believes that violations of the ITS rules may require sanctions more severe than a warning or cautionary letter, but that full disciplinary proceedings (pursuant to Rule 10.3) would, in general, be unsuitable because they would be costly and time consuming in view of the minor nature of the violations. Nevertheless, the Exchange notes that if a violation of an ITS rule is particularly egregious or if the individual situation warrants such action, the Exchange may proceed with formal disciplinary action pursuant to Rule 10.3, rather than with the MRP procedures under Rule 10.13. The Exchange further notes that the Commission has recommended that the Exchange add ITS violations to the PSE Minor Rule Plan.[4] Finally, the Exchange notes that the addition of the ITS rules to the MRP would be consistent with the rules of the New York Stock Exchange.[5]

2. *Statutory Basis*

The proposed rule change is consistent with Section 6(b) of the Act, in general, and Sections 6(b)(5) and 6(b)(6), in particular, in that it is designed to promote just and equitable principles of trade, to protect investors and the public interest, and to provide that members of the Exchange are appropriately disciplined for violations of Exchange rules.

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

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

[1] *See* letter from Michael Pierson, Senior Attorney, PSE, to Jennifer S. Choi, Attorney, SEC, dated June 23, 1995. Amendment No. 1 withdraws the proposed changes to the Equity Floor Procedure Advice 2–B because these changes have been approved already by the Commission. *See* Securities Exchange Act Release No. 34760 (Sept. 30, 1994), 59 FR 50950 (Oct. 6, 1994) (approving File No. SR–PSE–94–13).

[2] The MRP was initially approved by the Commission in 1985. *See* Securities Exchange Act Release No. 22654 (Nov. 21, 1985), 50 FR 48853 (Nov. 27, 1985). Since 1985, the MRP has been amended several times. *See, e.g.,* Securities Exchange Act Release No. 34322 (July 6, 1994), 59 FR 35958 (July 14, 1994).

[3] For a discussion of the Exchange's Recommended Fine Schedule, *see* Securities Exchange Act Release No. 34322 (July 6, 1994), 59 FR 35958 (July 14, 1994).

[4] *See* Inspection Report on the Operation of the Intermarket Trading System 3 (Nov. 18, 1994).

[5] *See* NYSE Rule 476A (Supplementary Material).

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

No written comments were either solicited or received.

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 other 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 NW., 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 at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. 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–95–16 and should be submitted by August 8, 1995.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–17581 Filed 7–17–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35957; International Series Release No. 827 File No. SR–Phlx–95–44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Enhanced Specialist Participation in 3D Foreign Currency Options

July 12, 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 July 3, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Exchange. 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 Phlx proposes to amend Exchange Rule 1014(h) and Floor Procedure Advice (''Advice'') B–7 (Time Priority of Bids/Offers in Foreign Currency Options) regarding the enhanced parity participation for the specialist (''Enhanced Split'') in the dollar denominated delivery (''3D'') cash-spot deutsche mark foreign currency option (''FCO'') contract.[1] Specifically, the Exchange proposes to correct certain language pertaining to the Enhanced Split contained in Rule 1014(h) and to incorporate the procedures applicable to the Enhanced Split, as amended, into advice B–7. In addition, violations of the Enhanced Split would become subject to fines administered pursuant to the Exchange's minor rule violation enforcement and reporting plan.[2]

The Enhanced Split provisions in Rule 1014 currently provide that for all orders in excess of 500 contracts, the 3D FCO specialist is entitled to receive 50% of the first 500 contracts in any trade in which the 3D FCO specialist and one or more crowd participants are on parity, with the remaining 50% of the first 500 contracts allocated on a pro rata basis among the other crowd participants on parity. All contracts in excess of the first 500 contracts are split pro rata among the 3D FCO specialist and the other crowd participants on parity.

The Exchange represents that Rule 1014(h) was intended to apply to all 3D FCO orders, not just those in excess of 500 contracts.[3] Accordingly, the Exchange proposes to amend Rule 1014(h) to clarify that the Enhanced Split is activated by parity situations where parties compete to fill orders of any size, rather than the current language that states that the Enhanced Split only applies where the ''trade involves 500 or more contracts.''

In addition to amending Rule 1014(h), the Exchange also proposes to amend Advice B–7 to incorporate the provisions applicable to the 3D FCO Enhanced Split, as amended, and to make violations of the Enhanced Split subject to fines administered pursuant to the Exchange's Minor Rule Plan.[4]

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

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

In its filing with the Commission, the Phlx 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. The Exchange 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

In 1994, the Commission approved the Enhanced Split for the 3D FCO specialist.[5] The Exchange represents that the approved language in Rule 1014(h) erroneously limits the provision to situations where more than 500

[1] 3D FCOs are cash-settled, European-style, cash-spot FCO contracts on the German mark that were originally approved to trade in one-week and two-week expirations. *See* Securities Exchange Act Release No. 33732 (March 8, 1994), 59 FR 52337 (March 15, 1994). The Exchange subsequently obtained Commission approval to also list 3D FCOs with longer-term expirations. *See* Securities Exchange Act Release No. 35756 (May 24, 1995), 60 FR 28638 (June 1, 1995).

[2] The Minor Rule Plan, codified in Phlx Rule 970, contains floor procedure advices with accompanying fine schedules. Rule 19d–1(c)(2) under the Act authorized national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting and Rule 19d–1(c)(1) under the Act required prompt filing with the Commission of any final disciplinary actions. Minor Rule Plan violations not exceeding $2,500, however, are deemed not final, thereby permitting periodic, as opposed to immediate reporting.

[3] *See* Securities Exchange Act Release No. 35177 (December 29, 1994), 60 FR 2419 (January 9, 1995) (''Exchange Act Release No. 35177'').

[4] *See supra* note 2.

[5] *See* Exchange Act Release No. 35177, *supra* note 3.