

securities under the SCOR designation will not provide issuers with the exemption from state securities registration requirements accorded to exchange-listed securities by most states.<sup>9</sup> Furthermore, SCOR securities will not be eligible for marginability and must be paid for in full.<sup>10</sup>

#### A. Initial Listing Standards

The qualification process for SCOR applicants will be the same as the process in place for other PSE-listed equity issuers. Applications for listing will be reviewed by the Exchange's Listing Department, which works directly with the Equity Listing Committee. The Equity Listing Committee is comprised of floor members, "upstairs" members, and member firm representatives.

The initial listing requirements for common and preferred stock<sup>11</sup> must be met at the time an issuer applies for listing.<sup>12</sup> The Exchange may accept applications to list a SCOR offering if the securities have been registered at the state level,<sup>13</sup> and if there are at least 150,000 publicly held shares and at least 250 public beneficial holders of the class of securities. In addition, issuers must have total net tangible assets of at least \$500,000 and total net worth of at least \$750,000. The last offering price in the class of security for which the issuer

<sup>9</sup>The PSE Rule states that SCOR securities "shall not be considered to be 'listed' or 'approved for listing upon notice of issuance' for purposes of any exemption from filing for issuer or non-issuer transactions under the securities laws or regulations of any state or other jurisdiction of the United States." See PSE Rule 3.2(t), Commentary .03.

<sup>10</sup>The rule change amends the PSE's Maintenance Margin Rule to prove that:

Rule 2.16(b). The margin which must be maintained in margin accounts of customers, whether members, allied members, member firms or non-members, shall be as follows:

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(5) In the case of securities listed pursuant to Rule 3.2(t) [SCOR securities], 100% of the market value, in cash, of each security held "long" in the account.

<sup>11</sup>In formulating the listing requirements for SCOR securities, the Exchange consulted with the Small Business Capital Formation and Small Business Sales Practices Committees of the North American Securities Administrators Association ("NASAA"), the California Department of Corporations, and leaders from the small business community.

<sup>12</sup>The Exchange will not grant "conditional" approvals, i.e., approvals conditioned on the satisfaction of the listing criteria sometime in the future. See PSE Letter, *supra* note 3.

<sup>13</sup>Issuers must register the securities to be listed at the state level using either the state Form U-7 (or the equivalent registration form to which a regulatory review is applied), or a coordinated state filing with the federal Form 1-A offering statement. Once an issuer's class of common or preferred stock has been approved for SCOR listing, the securities must be registered under Section 12(b) of the Act.

is applying must have been at least \$5 per share.<sup>14</sup>

In addition to the quantitative listing requirements, when reviewing an application for listing, the Exchange will consider other factors such as (1) a company's management plan outlining the development of its business for a period of at least 24 months,<sup>15</sup> (2) the background and past conduct of officers, directors, principal shareholders, and key employees of the company, (3) the adequacy of the company's resources to conduct its business,<sup>16</sup> and (4) any material changes in the financial condition of the company or other events that could have an impact upon the value of the security to be listed. In addition, the Exchange will consider all other available information that may be relevant to its review of listing eligibility.<sup>17</sup>

SCOR issuers will be required to comply with the corporate governance requirements and disclosure policies applicable to all securities listed on the Exchange.<sup>18</sup> The corporate governance provisions include rules concerning conflicts of interest, quorum, shareholder approval, annual meetings, and solicitation of proxies and consents. The corporate disclosure policies provide guidance to companies in making appropriate public disclosure and include information regarding

<sup>14</sup>The Exchange will consider the offering price of individual separate SCOR offerings in a class of securities to help determine whether the value of the SCOR securities to be listed is at least \$5 per share. The Exchange will consider the circumstances of SCOR offerings so that issuers will not be able to effect "token" offerings in order to satisfy the \$5 requirement. See also PSE Rule 3.2(t)(6)(iv) (stating that the exchange will consider whether there have been material changes in the financial condition of the company or other events that could have a significant adverse impact upon the value of the SCOR securities to be listed).

<sup>15</sup>The management plan must demonstrate that the product, service, or technology is sufficiently developed and that there is a reasonable expectation of future earnings from its business. The listing of companies that have done blank check offerings will not be permitted.

<sup>16</sup>The PSE will not list any company with an outstanding "going concern" opinion from its independent auditor. See PSE Letter, *supra* note 3. See also PSE Rule 3.5(s) (Exchange considers delisting a security upon the issuance of an independent public accountant's disclaimer opinion on financial statements).

<sup>17</sup>The Exchange generally will not list a company if the business in which it is engaged is not anticipated to produce profits within a reasonable period of time, if the business operations depend upon the development of a product or system that will not be completed prior to listing, or if preliminary objectives upon which the profit-making ability of the business depends have not been achieved.

<sup>18</sup>See PSE Rule 3.3. SCOR securities are subject to all of the corporate governance requirements contained in PSE Rule 3.3 except the independent directors/audit committee requirement of Rule 3.3(b).

consultation with the PSE Listings Department, internal handling of confidential corporate matters, and relationships between company officials and others.<sup>19</sup>

#### B. Maintenance Standards

The SCOR maintenance standards require that there are at least 100,000 publicly held shares with a market value of at least \$500,000, at least 200 public beneficial holders, and a last sale price of at least \$1 per share. In addition, the issuer must maintain total net tangible assets for at least \$250,000 and total net worth of at least \$500,000. A company with a deficiency in either market value of public float or market price will be subject to delistings procedures should the deficiency exist either for a majority of business days of any three-month period, or for any period of ten consecutive business days.<sup>20</sup> If there is a deficiency in any other quantitative standard, the Exchange will immediately suspend dealings in the security and subject the company to delisting proceedings.

SCOR securities also will be subject to suspension and/or withdrawal from listing and registration as a listed issue if the Exchange finds that the listed company fails to comply with the Exchange's listing policies or agreements.<sup>21</sup> Furthermore, an issuer of SCOR securities must take appropriate steps to ensure that no such securities are sold on its behalf in reliance upon the exemption from state securities registration that is otherwise available to companies listed on the Exchange. If an issuer fails to take such steps, the Exchange will immediately suspend

<sup>19</sup>The PSE's proposed fee schedule for SCOR securities was published in Securities Exchange Act Release No. 35395 (February 17, 1995), 60 FR 10626 (February 27, 1995).

<sup>20</sup>In each instance, for purposes of the maintenance standards, the market price and the market value of public float will be calculated by using the last sale of the trading day. Should no transactions be effected in the security on a given trading day, the prevailing closing bid price will be used in determining the market value of public float and the last sale price of a security. In the event that there is not a bid price readily available, the Exchange will rely on other recognized established securities markets in which the issue is traded to determine the market value of public float and the last share price.

<sup>21</sup>Other factors the Exchange will consider include, among others, the issuance of an independent public accountant's disclaimer opinion on financial statements required to be certified and losses which are so substantial that, in the opinion of the Exchange, it appears questionable as to whether a company will be able to continue operations. In addition, the Exchange would examine a company that has depleted, sold or otherwise disposed of its principal operating assets, or substantially discontinued the business that it conducted at the time it was listed, or that has been authorized to liquidate its assets. See PSE Rule 3.5(s).