ATTACHMENT D.—STATUS OF FY 1998 DEFERRALS—AS OF MAY 1, 1998

[Amounts in thousands of dollars]

Agency/bureau/account	Amounts transmitted			Date of message	Releases (−)		Congressional action	Cumulative adjustments	Amount deferred as of 5–1–98
	Deferral No.	Original request	Subsequent change (+)		Cumulative OMB/agency	Congressionally required			
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance:									
Economic support fund and International Fund for Ireland.	D98–1	2,330,098	....	2–3–98	1,317,684	....	....	328	1,012,742
International military education and training.	D98–2	43,300	....	2–3–98	41,900	....	....	....	1,400
Foreign military financing program.	D98–3	1,483,903	....	2–3–98	160,253	....	....	....	1,323,650
Foreign military financing loan program.	D98–4	60,000	....	2–3–98	....	....	....	....	60,000
Foreign military financing direct loan financing account.	D98–5	657,000	....	2–3–98	....	....	....	....	657,000
Agency for International Development:									
International disaster assistance, Executive.	D98–6	135,697	....	2–3–98	20,250	....	....	....	115,447
DEPARTMENT OF STATE									
Other:									
United States emergency refugee and migration assistance fund.	D98–7	115,640	....	2–3–98	....	....	....	....	115,640
SOCIAL SECURITY ADMINISTRATION									
Limitation on administrative expenses.	D98–8	7,369	....	2–3–98	....	....	....	....	7,369
Total, Deferrals		4,833,007	0	....	1,540,087	....	....	328	3,293,248

[FR Doc. 98–13339 Filed 5–19–98; 8:45 am]

BILLING CODE 3110–01–M

PENSION BENEFIT GUARANTY CORPORATION

Approval of Special Withdrawal Liability Rules; International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of approval.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC''), pursuant to section 4203(f) of the Employee Retirement Income Security Act of 1974, as amended, has granted a request on behalf of the International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan for approval of a plan amendment modifying special withdrawal liability rules, which rules were approved by PBGC on January 30, 1984 (See Approval of Special Withdrawal Liability Rules (''Notice of Approval''), 49 FR 6043 (February 16, 1984)). A Notice of Pendency of the Request for Approval was published on February 3, 1998 (63 FR 5573) (''Notice of Pendency''). The effect of this notice is to advise the public of the decision on the request.

ADDRESSES: The request for approval and PBGC's response to the request are available for public inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, at PBGC's Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20005–4026.

FOR FURTHER INFORMATION CONTACT: Gennice D. Brickhouse, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; Telephone 202–326–4020 (For TTY and TDD, call the Federal relay service at 1–800–877–8339 and ask to be connected to 202–326–4020).

SUPPLEMENTARY INFORMATION:

Background

Under section 4203(f) of the Employee Retirement Income Security Act of 1974 (''ERISA'') as amended, PBGC may prescribe regulations under which plans in industries other than the construction or entertainment industries may be amended to provide for special withdrawal liability rules similar to the rules prescribed in section 4203 (b) and (c) of ERISA for the construction and entertainment industries. Section 4203(f)(2) of ERISA provides that such regulations shall permit the use of special withdrawal liability rules only in industries (or portions thereof) in which PBGC determines that the characteristics that would make use of such rules appropriate are clearly shown, and that in each instance, the use of such rules will not pose a significant risk to the insurance system under Title IV of ERISA. Section 4208(e)(3) of ERISA provides that PBGC shall prescribe by regulation a procedure by which a plan may by amendment adopt special partial withdrawal liability rules upon a finding by PBGC that the adoption of such rules are consistent with the purposes of Title IV of ERISA.

PBGC's regulation, Extension of Special Withdrawal Liability Rules (29 CFR part 4203), prescribes procedures whereby a multiemployer plan may, pursuant to sections 4203(f) and 4208(e)(3) of ERISA, request PBGC to approve a plan amendment that establishes special complete or partial withdrawal liability rules. Under 29 CFR 4203.3(a), a complete withdrawal rule adopted pursuant to part 4203 must be similar to the rules for the construction and entertainment industries described in section 4203 (b) and (c) of ERISA. A partial withdrawal liability rule adopted pursuant to part 4203 must be consistent with the complete withdrawal rule adopted by the plan. Pursuant to 29 CFR 4203.3(b), a plan amendment adopted pursuant to part 4203 may cover an entire industry or industries, or may be limited to a segment of an industry, and may apply to cessations of the obligation to contribute that occurred prior to the adoption of the amendment.

Each request for approval of a plan amendment establishing special withdrawal liability rules must contain the information specified in 29 CFR 4203.4(d). In acting on such a request, 29 CFR 4203.5(a) provides that PBGC shall approve a plan amendment establishing special withdrawal liability rules if PBGC determines that the plan amendment—

(1) Will apply only to an industry that has characteristics that would make use of the special withdrawal rules appropriate; and

(2) Will not pose a significant risk to the insurance system.

In making these determinations, PBGC will conduct a comprehensive analysis of the request, the actuarial data submitted and other relevant information relating to the industry and the plan. 29 CFR 4203.4. Under 29 CFR 4203.4(d)(7), the plan must provide information on the effects of withdrawals on the plan's contribution base, as well as information sufficient to demonstrate the existence of industry characteristics that would indicate that withdrawals in the industry do not typically have an adverse effect on the plan's contribution base.

Finally, 29 CFR 4203.5(b) requires PBGC to publish a notice of the pendency of a request for approval of a plan amendment containing all the information required under 29 CFR 4203.4(d) in the **Federal Register**, and to provide interested parties with an opportunity to comment on the request.

Request

On February 3, 1998 (63 FR 5573), PBGC published a notice soliciting public comment on a request on behalf of the International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan (''Plan'') for approval of a modification to a plan amendment providing for special withdrawal liability rules, which rules were approved by PBGC on January 30, 1984 (Notice of Approval, 49 FR 6043 (1984)), pursuant to section 4203(f) of ERISA and 29 CFR part 4203. The comment period ended on March 20, 1998. One comment was received in opposition to the request. After the close of the comment period, PBGC received a response to the comment and additional information supporting the response.

The Plan is a multiemployer plan, with 114 employers contributing in 1996, maintained pursuant to collective bargaining agreements between the International Longshoremen's & Warehousemen's Union (''ILWU'') and the Pacific Maritime Association (''PMA''). The Plan, which is located in San Francisco, covers the loading and unloading of all dry cargo for ocean-going vessels arriving at or departing from ports along the Pacific coast of the United States, including all ports in the states of California, Oregon and Washington. The only cargoes not covered by the Plan are petroleum products and other liquid cargoes and certain cargoes handled by inland boatmen.

The PMA is an employer association whose principal business is to negotiate and administer maritime labor agreements with ILWU. The PMA is composed of stevedore companies and terminal operators as well as American and foreign flag vessel carriers who regularly operate from Pacific coast ports.

As of June 30, 1996, the Plan covered 8,185 active workers, was paying benefits to 9,049 pensioners and survivors, and had 87 inactive participants (or survivors) with vested entitlements. For the Plan Year ending June 30, 1996, the Plan received $99.7 million in contributions, and paid $95 million in benefits and $1.9 million in operating expenses. As of June 30, 1996, Plan assets were more than 13 times total Plan disbursements during the July 1, 1995–June 30, 1996 Plan Year. As of June 30, 1997, the market value of Plan assets was approximately $1.631 billion and the present value of vested liabilities was approximately $1.640 billion.

Plan benefit levels are set in negotiations between the PMA and the ILWU. Contribution rates to the Plan, which are on the basis of either hours worked, shipping tonnage or a combination of the two, are determined annually, solely by the PMA. Since December 24, 1983, the hours worked contribution rate has provided 100 percent of the contributions to the Plan.

The total number of contributing employers has remained relatively stable since 1971. There were 110 contributors in 1972, 107 in 1979, and 114 in 1996. Forty-two percent of the 1996 contributors were not contributors in 1979, and nearly 40 percent of the 1979 contributors were no longer contributing by 1996.

According to the request, over the past four decades the west coast shipping industry has grown steadily, and it looks forward to increased growth in the future. Total dry cargo at all covered ports amounted to 29 million tons in calendar year 1960, 114 million tons in 1980, 182 millions tons in 1990 and 216 million tons in 1996. Because of dramatic productivity gains, this increased shipping activity did not result in increased hours worked. For a time, the industry did not require new workers to replace those retiring from the work force. This accounts for the current high ratio of retirees to active employees covered by the Plan. However, the gains in productivity and the consequent drop in unit labor costs did make it possible to increase wages, contribution rates and total contributions during a period in which the utilization of labor decreased.

It now appears that productively gains alone can no longer keep pace with the increase in shipping activity. Covered hours worked have remained relatively consistent with prior periods from less than 16 million in 1975 to more than 18 million in 1980. However, with the recent growth in trade, covered hours worked have increased from fewer than

15.6 million in 1993 to over 18 million in 1996.

As part of the request, copies of six of the Plan's most recent actuarial valuation reports were submitted. Plan costs for funding purposes are determined on the entry age normal, level dollar method. Benefits are subject to collective bargaining, and contributions are allocated among contributing employers on the basis of the ERISA minimum funding requirements.

The reports show that during the 6-year period spanned by the reports (7/1/91–6/30/97), the Plan population was relatively stable. During that period, the number of retirees decreased 1.8 percent, while the number of active participants decreased 3.4 percent. However, during this same period, tonnage handled increased nearly 20 percent. And, as of the end of the June 30, 1996 Plan Year, annual contributions had increased from $71.1 million to $99.7 million, and Plan assets had risen from $747 million to $1.329 billion.

There were three benefit increases under the Plan during the period covered by the reports. The first, effective July 1, 1992, increased the unfunded actuarial accrued liability by $49 million. The second increase, effective July 1, 1993, increased the unfunded actuarial accrued liability by $501 million. Finally, the third increase, effective July 1, 1996, increased the unfunded actuarial accrued liability by $52 million to approximately $534 million. The Plan's monthly accrual rate for each year of service went from $37 to $70. PBGC notes that the Plan's benefit level exceeds the maximum benefit guaranteed by PBGC under section 4022A(c) of ERISA, which is $16.25 per month per year of service. The monthly maximum benefit payable under the Plan increased from $1,295 to $2,450.

From 1991–1995, contributions increased at a faster rate than benefit payouts. In 1991, benefit payouts were 97% of contributions, and in 1995, they were 95% of contributions.

A summary of the six actuarial valuations is set forth below.

SUMMARY OF ACTUARIAL VALUATION RESULTS [1]

	Valuation date					
	7/1/96	7/1/95	7/1/94	7/1/93	7/1/92	7/1/91
Number of active participants	8,185	7,856	7,682	8,141	8,339	8,469
Number of retired participants	9,049	9,236	9,244	8,979	9,132	9,214
Monthly benefit accrual rate	70	69	69	69	39	37
Maximum monthly benefit	2,450	2,415	2,415	2,415	1,365	1,295
Contributions (000)	N/A	99,696	99,023	87,316	74,139	71,074
Benefits (000)	N/A	94,963	92,437	85,293	71,321	68,848
Market value assets (000)	1,329,082	1,143,335	957,661	950,030	835,063	746,993
Net minimum funding charges w/o credit balance (000)	79,154	85,787	81,247	80,034	47,307	43,987
Normal cost, including operating expenses (000)	20,527	19,180	17,831	18,529	12,821	12,334
Unfunded accrued liability (assets at market value) (000)	534,416	637,646	710,802	664,096	341,037	360,009
Unfunded liability—vested benefits (assets at market value) (000)	354,821	462,132	530,092	476,168	N/A	N/A
Valuation interest rate	6.5	6.5	6.5	6.5	6.5	6.5

[1] Taken from actuarial reports submitted with request.

Approved Special Rules

The complete text of the relevant provisions of the Plan document, the ILWU–PMA Pension Agreement (''Pension Agreement''), containing the approved special withdrawal liability rules is set forth in the Notice of Approval, 49 FR 6043 (1984). Interested persons may obtain a copy of that notice by contacting PBGC. Following is a summary of the special withdrawal liability rules in effect and the text of the approved modification to those rules.

Under the special rules, a complete withdrawal occurs if an employer who makes contributions to the Plan for longshore work permanently ceases to have an obligation to make contributions to the Plan, and: (1) Continues to perform work of the type for which contributions to the Plan are currently or were previously required at any Pacific Coast port in the United States, (2) resumes such work at any time during the Plan Year in which the contribution obligation ceased through the end of the fifth succeeding Plan Year without renewing the contribution obligation, (3) sells or otherwise transfers a substantial portion of its business or assets to another person that performs longshore work without having an obligation to make contributions to the Plan under the collective bargaining agreements under which the Plan is maintained, or (4) ceases to have an obligation to contribute in connection with the withdrawal of every employer from the Plan or substantially all of the employers within the meaning of section 4219(c)(1)(D) of ERISA. A partial withdrawal occurs if an employer incurs a partial withdrawal within the meaning of section 4205 of ERISA and, in addition, at any time from the date of the partial withdrawal through the succeeding five Plan Years: (1) Performs work of the type for which contributions to the Plan are currently or were previously required at any Pacific Coast port in the United States without having an obligation to contribute to the Plan for such work, or (2) sells or otherwise transfers a substantial portion of its business or assets to another person that performs longshore work without having an obligation to make contributions to the Plan under the collective bargaining agreements under which the Plan is maintained.

The amendment adopting the special withdrawal liability rules also added funding requirements to the Agreement. Paragraph 4.042(c) of the Pension Agreement requires a ''Special Contribution Amount'' and specifies the funding goals that the Plan must meet for Plan Years beginning July 1, 1984:

''(i) The 'Special Contribution Amount' shall be the level annual amount which, on the basis of a Certified Actuarial Projection, the Plan Actuary certifies will, when added to the amounts otherwise required by law (determined without regard to any credit balance in the funding standard account) * * *, be sufficient to make the Funding Percentage as of the Applicable Funding Goal Date at least equal to the Applicable Funding Goal.''

''(ii) The term 'Funding Percentage' shall mean for any Plan Year, the percentage derived by dividing the market value of the assets of the Pension Fund by the present value of the nonforfeitable benefits within the meaning of ERISA section 4213(c)(A), both values to be as determined in the Certified Actuarial Projection as of the end of such Plan Year.''

''(iii) For the first through the fifth Plan Years commencing on or after July 1, 1984, the term 'Applicable Funding Goal' for each such Plan Year shall mean 50 percent (50%), and the ''Applicable Funding Goal Date'' for each such Plan Year shall mean the last day of the tenth such Plan Year; for each succeeding Plan Year, the term 'Applicable Funding Goal' shall mean the percentage set forth in the Accelerated Funding Schedule for the Plan Year commencing four years after the end of the Plan Year in question, and the ''Applicable Funding Goal Date'' for each such Plan Year shall mean the last day of the Plan Year commencing four years after the end of the Plan Year in question.''

''(iv) The 'Accelerated Funding Schedule' shall be the following schedule:

Plan year	Percent
10	50
11	53
12	56
13	59
14	62
15	65
16	68
17	71
18	74
19	77
20 and over	80

''(v) The 'Certified Actuarial Projection' shall be a projection, which is prepared as of each actuarial valuation date so as to derive the Funding Percentage on the Applicable Funding Goal Date, by using the actuarial assumptions and methods utilized in the December 31, 1982 Actuarial Valuation of the Plan and the then current assets and census data, which projection shall be certified to in each Plan Year by the Plan actuary. This projection shall be on the basis of (1) the benefit levels in effect during the Plan Year for which the projection is made and (2) the Contributions required for such Plan Year * * * together with any Special Contribution Amounts. When the Applicable Funding Goal is met for the twentieth or subsequent Plan Year, the Special Contribution Amount may be limited to the amount necessary to maintain such Applicable Funding Goal for each subsequent Plan Year.''

Notice of Approval, 49 FR 6043, 6046 (1984).

An additional funding requirement is contained in paragraph 4.011 of the Pension Agreement. That provision requires that: ''Notwithstanding any other provision of this Plan, the Contributions for each Plan Year shall be not less than the total administrative costs and benefits to be paid by the Trustee during the Plan Year.'' Notice of Approval, 49 FR 6043, 6045 (1984).

Modification to Special Rules

On July 21, 1997, the bargaining parties (ILWU and PMA) adopted an amendment to the approved special withdrawal liability rules, which amendment eliminates the requirement under paragraph 4.011 of the Pension Agreement that contributions for each Plan Year shall be at least equal to benefits and administrative costs paid in the year. In lieu of that requirement, the parties signed a Letter of Understanding on July 21, 1997, whereby the parties agree that:

> [S]hould the Funding Percentage for the ILWU–PMA Pension Plan (as defined in paragraph 4.042(c)(ii) of the Plan) fall below eighty-five percent (85%) as of the beginning of a particular Plan Year, the Contributions in the following Plan Year shall not be less than the lesser of (a) the total administrative costs and benefits to be paid by the Trustees during said following Plan Year or (b) the amount required to increase the Funding Percentage for said following Plan Year to eighty-five percent (85%).

Because the requirement that contributions be no less than administrative costs and benefits paid in a given year is no longer specifically set out in the Pension Agreement, PBGC indicated in the February 3, 1998 Notice of Pendency that if PBGC should approve the amendment modifying the Plan's special withdrawal liability rules such approval would be under the following condition:

> The Plan's special withdrawal liability rules will be void as of the first day of the Plan Year following a Plan Year for which the Plan is not at least eighty-five percent (85%) funded, and during said following Plan Year the Contributions are less than the least of (a) total administrative cost and benefits for said following Plan Year or (b) the amount required to increase the Funding Percentage to eighty-five percent (85%) for said following Plan Year or (c) the maximum tax-deductible contribution to the Plan.

The Plan agreed that it would certify to this condition annually.

No other changes were proposed to the Plan's special withdrawal liability rules.

Decision

To approve a request for an amendment modifying special withdrawal liability rules, PBGC must make two independent determinations, as provided in section 4203(f) of ERISA and 29 CFR 4203.4(a). First, on the basis of a clear showing by the plan, PBGC must determine that the amendment will apply to an industry that has characteristics that would make use of the special rules appropriate. Second, PBGC must determine that the plan amendment will not pose a significant risk to the insurance system. PBGC's discussion on each of those issues follows.

a. Appropriateness

The basic consideration in determining the appropriateness of special withdrawal liability rules is the effect of cessations of contributions by employers on the plan's contribution base. Various characteristics may be indicative of an industry in which cessations typically do not weaken the contribution base. In determining whether an industry has the characteristics that would make an amendment to special rules appropriate, an important line of inquiry is the extent to which the particular industry possesses those characteristics that led Congress to adopt special rules for the construction and entertainment industries. An industry that is similar in terms of those characteristics is generally appropriate for rules similar to the construction and entertainment rules.

The appropriate characteristics include, but are not necessarily limited to, the mobility of the employees, the intermittent nature of the employment, the project-by-project nature of the work, extreme fluctuations in the level of an employer's covered work under the plan, the existence of a consistent pattern of entry and withdrawal by employers, and the local nature of the work performed.

In approving the Plan's request for an amendment providing for special withdrawal liability rules on February 16, 1984, PBGC determined that the industry covered by the Plan clearly evidenced characteristics similar to those of the construction industry, the most important of which was the local nature of the work. The characteristics of the west coast longshore industry that supported approval of special withdrawal liability rules in 1984 continue to apply to the industry today. Specifically, work covered under the Plan is dependent on the comings and goings of ocean-going vessels at west coast ports. Workers are employed by a covered stevedoring company, generally on a daily basis through a dispatch hall system, to work pursuant to contracts with vessel operators. The work must be performed at the port of embarkation or debarkation. Thus, so long as west coast shipping continues, the work performed will continue to be covered by the Plan.

In addition, an employer in this industry cannot withdraw from the Plan while continuing to perform longshore work at Pacific ports, because longshore work along the entire west coast for all ocean-going dry cargo work is covered under collective bargaining agreements that require contributions to the Plan. Because the entire coast is one bargaining unit, and all ports through which ocean-going dry cargo is shipped are completely organized by the ILWU, it is not possible for such cargo to be loaded or unloaded at any point on the coast without contributions being paid to the Plan. Thus, as a practical matter, it is not realistic to expect noncontributory, covered work. Nonetheless, if a former contributing employer were to compete against the Plan's other employers in this way, thereby diminishing the Plan's contribution base, withdrawal liability would be imposed.

Because of the local nature of the work and the requirement that contributions be made to the Plan for all longshore work done on the Pacific coast, the comings and goings of employers do not have an adverse effect on the Plan's contribution base, which is dependent upon the vitality of the west coast shipping industry as a whole, and not upon the continued existence of any particular employers. For these reasons, the covered industry evidences characteristics that indicate that cessations by employers typically do not have a weakening effect on the Plan's contribution base. Thus, PBGC has concluded that the Pacific coast longshore industry continues to evidence characteristics that make the use of special withdrawal liability rules appropriate.

The only comment received in response to the notice questioned the validity of the Plan amendment that is the subject of the request (''Amendment''). Specifically, since the Amendment was not executed and submitted by the Plan's Board of Trustees, the comment questioned whether the Amendment was properly executed and submitted to PBGC. The response to the comment asserts that the process of adopting the Amendment is a settlor function left to the collective bargaining parties, ILWU and PMA. Section 7.02 of the Pension Agreement provides that ''[t]he (ILWU) and (PMA) by their mutual agreement in writing may at any time amend, modify, or delete any provisions of the [ILWU–PMA Pension] Agreement.'' Nothing in the Pension Agreement or the collective bargaining agreement between ILWU and PMA indicates that the Plan's Board of Trustees has the authority to amend the Pension Agreement. The document effecting the Amendment clearly shows that representatives of ILWU and PMA executed it. Thus, based on the Pension Agreement and the executed Amendment, PBGC agrees that the Amendment was properly executed by the appropriate parties, ILWU and PMA.

The comment also questioned whether the Plan's request for approval of the Amendment was properly submitted to PBGC pursuant to PBGC regulation. Pursuant to 29 CFR 4203.4(b), a request for PBGC's approval of a plan amendment must be submitted by the plan sponsor or a duly authorized representative acting on behalf of the plan sponsor. The comment asserts that any request should have been submitted by the Plan sponsor, the Board of Trustees, not PMA or a representative of PMA. Further, the comment asserts that the current Board of Trustees did not approve the request or give PMA the authority to engage a representative to act on behalf of the Board of Trustees in preparing and submitting the request to PBGC. The response to the comment asserts that the Plan's previous Board of Trustees authorized PMA to engage a representative to submit the request on behalf of the Plan. Also, a Plan fiduciary submitted information in support of the position that PMA had the previous Board of Trustees' authorization to proceed with the submission of the request. No information was provided supporting the position that the Plan's previous Board of Trustees failed to authorize PMA to prepare and submit the request. Consequently, PBGC disagrees with the comment and believes that the request was properly submitted for approval by a duly authorized representative of the Plan sponsor.

b. Risk to the Insurance System

In addition to determining that the special withdrawal liability rules are appropriate to this case, PBGC must find that their use will not pose a significant risk to the insurance program.

Copies of the Plan's actuarial reports for the 6-year period (7/1/91–6/30/97) were submitted with the request. The most recent of those reports indicates an unfunded actuarial accrued liability of $534 million, an unfunded liability for vested benefits of $355 million, and assets of $1.329 billion. In the 6-year period, the Plan's unfunded accrued liability increased from $360 million to $534 million, and the monthly accrual rate went from $37 to $70 per month per year of service. These changes increased the monthly maximum benefit from $1,295 to $2,450. The $70 monthly accrual rate exceeds the maximum monthly accrual rate guaranteed by PBGC under section 4022A of ERISA, which is $16.25, or 23.2 percent of the Plan's accrual rate. On the other hand, from 1991–1995, contributions increased at a faster rate than benefit payouts. In 1991, benefit payouts were 97% of contributions, and in 1995, they were 95% of contributions.

In addition to the information already mentioned, the actuarial reports show a stable Plan population, an increase in annual contributions ($71.1 million to $99.7 million), and an increase in Plan assets ($747 million to $1.329 billion). Plan income has also consistently exceeded benefit payouts. The Plan and the covered industry have unique characteristics that suggest that the Plan's contribution base is likely to remain stable. Contributions to the Plan are made with respect to all west coast dry cargo. The industry has had significant growth over the past decades and that growth is expected to continue. The Plan's continuation is dependent only on the continued activity in the west coast shipping industry as a whole. Consequently, the Plan's contribution base is secure and the departure of one employer from the Plan is not likely to have an adverse effect on the contribution base so long as the level of shipping does not decline.

The request states that the main reason that the Plan requests an amendment modifying its special withdrawal liability rules is that the Plan is approaching the point where contributions would no longer be deductible due to ERISA's full funding limit. This has occurred because the Plan's funded status has significantly improved since approval of the amendment establishing special withdrawal liability rules in 1984. The 1984 amendment required that the Plan meet specific funding objectives that were designed to improve the Plan's financial condition. In order for the special rules to apply, the Plan had to meet the objectives each year. At the time that PBGC approved the 1984 amendment establishing the rules, PBGC believed that ''meeting these objectives (would) place the Plan on a sound long-term financial basis.'' The 1984 amendment established a funding objective of fifty percent (50%) in 1984, increasing to eighty percent (80%) in 2004. Every year since the 1984 amendment, the Plan has more than met the funding objectives. Under the proposed Amendment, the Plan's funding goal objective is increased from a projected eighty percent (80%) in 2004 to eighty-five percent (85%) henceforth. If the Amendment is approved, the Plan has agreed that in any Plan Year in which the Plan's modified funding objectives are not met, the special withdrawal liability rules will be void.

The comment raised concerns relating to the potential for increased risk to the insurance system if the proposed Amendment is approved. According to the comment, ''[b]y eliminating the requirement that contributions for each Plan Year be at least equal to benefits and administrative costs, the proposed Plan Amendment would slow the Plan's progress towards a fully funded status while increasing the insurance risk on the (PBGC).'' The comment states that the Plan's actuarial projections show that the Plan's full funding limit will not be reached for at least another two years and possibly longer, and that the projections show a gradual decline in contributions, not a sudden drop.

In addressing the comment PBGC has considered the actuarial information provided with the request and the response to the comment. The evidence indicates that the west coast shipping industry covered by the Plan has shown steady growth over the past decades, and the growth is projected to continue. The evidence also indicates that as a result of the steady growth in the industry, the Plan's contribution base has been stable and secure. Due to the nature of the industry, departures of individual employers would not pose a risk to the Plan or the PBGC insurance system. In approving the Plan's special withdrawal liability rules in 1984, PBGC found that meeting the associated funding objectives would place the Plan on a ''sound long-term financial basis.'' Those objectives have been met earlier than projected. The proposed modification to the Plan's special withdrawal liability rules is conditioned on the Plan meeting at least the same funding objectives. Therefore, PBGC has concluded that the proposed modification will not pose a significant risk to the insurance system.

Based on the facts of this case and the representations and statements made in connection with the request for approval, PBGC has determined that the Plan Amendment modifying special withdrawal liability rules (1) will apply only to an industry that has characteristics that would make the use of special withdrawal liability rules appropriate, and (2) will not pose a significant risk to the insurance system. Therefore, PBGC hereby grants the Plan's request for approval of a plan amendment modifying special withdrawal liability rules, as set forth herein. PBGC grants approval under the condition that such approval will expire, and the Plan's special withdrawal liability rules will be void as of the first day of the Plan Year following a Plan Year for which the Plan is not at least eighty-five percent (85%) funded, and during said following Plan Year the Contributions are less than the least of (a) total administrative cost and benefits for said following Plan Year or (b) the amount required to increase the Funding Percentage to eighty-five percent (85%) for said following Plan Year or (c) the maximum tax-deductible contribution to the Plan. The Plan has agreed to certify to these conditions annually. Should the Plan wish to again amend these rules at any time, PBGC approval of the amendment will be required.

Issued at Washington, DC, on this 14th day of May 1998.

David Strauss,

Executive Director.

[FR Doc. 98–13435 Filed 5–19–98; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39987]; File No. SR–CBOE–98–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Nominees of Member Organizations

May 12, 1998.

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 May 5, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' 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 CBOE. 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 CBOE proposes to revise CBOE Rule 3.8, ''Nominees,'' to clarify that a nominee trading for his/her own account pursuant to CBOE Rule 3.8(a)(4)(C) may trade as an independent market maker and/or an independent floor broker.[1] The CBOE also proposes to replace a reference in CBOE Rule 3.8(a)(4)(C) to the CBOE's Market Surveillance Department with a reference to the Exchange.

The text of the proposed rule change is available at the Office of the Secretary, CBOE, 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 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

CBOE Rule 3.8(a)(4)(B) provides that a nominee of a member organization may perform floor functions only on behalf of the member organization for which he or she is authorized. However, CBOE Rule 3.8(a)(4)(C) sets forth an exception to this requirement. Specifically, CBOE 3.8(a)(4)(C) provides that, notwithstanding the provisions of CBOE Rule 3.8(a)(4)(B), a nominee may trade for his/her own account provided that the following three requirements are satisfied: (i) the nominee is a registered broker-dealer; (ii) the nominee has the prior written approval of the nominee's member organization to trade for his/her own account; and (iii) the nominee has the prior written approval of the Exchange's Market Surveillance Department to trade for his/her own account. CBOE Rule 3.8(a)(4)(C) also provides that the approval of the nominee's member organization and of the CBOE's Market Surveillance Department must be filed with the CBOE's Membership Department.

In addition, CBOE Rule 3.8(a)(2) requires a nominee's member organization to guaranty all obligations arising out of the nominee's representation of the member organization, including transactions for the nominee's own account as authorized pursuant to CBOE Rule 3.8(a)(4)(C).

The purpose of the proposal is to clarify that authorization of a nominee

[1] A member who wishes to act as a market maker and as a floor broker on the same business day is subject to the restrictions of CBOE Rule 8.8, ''Restrictions on Acting as a Market-Maker and a Floor Broker.''