

maintain separate corporate relations departments and disclose whether the existing clerical support of the combined units will be maintained or increased. Additionally, the rule now describes the type of information the QMOC considers in determining whether the public interest factor has been met. Finally, the proposal adopts factors the MPC must consider when assessing the impact of the proposed combination upon specialist performance and market quality with respect to the subject securities.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ Specifically, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the Act,⁹ which requires among other things, that the rules of the Exchange be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is a reasonable modification of the Policy. The Commission does not believe that consolidations among specialist units are inherently harmful, and believes that in certain situations they can be beneficial, particularly for those units with limited capital. At the same time, the Commission recognizes that undue concentration may have negative effects on market quality by, among other things, hampering competition among specialists and reducing incentives for specialists to provide better markets.

The Commission believes that the modifications are reasonably designed to result in approval of proposed combinations that will not have an adverse impact on market quality or result in undue concentration. Although the Commission recognizes that the Policy, as amended, could result in prohibiting a combination from

occurring, the Commission believes the factors for consideration in reviewing the impact of concentration are related to legitimate market quality issues that the NYSE should be permitted to weigh. The proposal should also benefit specialist units, as well as the MPC, because it sets forth the specific factors the MPC must consider when reviewing specialist combinations. The Commission also notes that the MPC denials must be in writing, and must be communicated to the specialist. This will ensure that the basis for any denial is provided to the specialist unit.

The Commission believes that the proposal does not impose any unnecessary or inappropriate burden on competition under Section 6(b)(8) of the Act,¹⁰ in that it establishes review procedures to prevent potential under capitalization of specialist units that could hinder market quality. Accordingly, any potential burden on competition resulting from the proposal is justified as necessary and appropriate under the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the amended proposed rule change (SR-NYSE-2002-41) be, and hereby is, approved.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-11589 Filed 5-8-03; 8:45 am]
BILLING CODE 8010-01-U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47795; File No. SR-PCX-2002-25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Elimination of the Lead Market Maker Concentration Level of 15% of the Issues Traded on the Exchange's Options Floor

May 5, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 22, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange"), filed with the Securities

and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On April 29, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.³ 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 eliminate the concentration limit for the number of issues that a Lead Market Maker ("LMM") on the Exchange may be allocated. Below is the text of the proposed rule change. Proposed new language is *italicized*. Proposed deletions are in [brackets].

* * * * *

Pacific Exchange, Inc. Rules of the Board of Governors

* * * * *

Rule 6.82 (a)-(d)—No change.

(e) Allocation:

(1) *Allocation.* The allocation of option issues to LMMs [shall] *will* be effected by the Options Allocation Committee. The Options Allocation Committee [shall] *will* select that candidate who appears best able to perform the function of an LMM in the designated option issue. Factors to be considered for selection include, but are not limited to, the following: experience with trading the option issue; adequacy of capital; willingness to promote the Exchange as a marketplace; operational capacity; support personnel; history of adherence to Exchange rules and securities laws; trading crowd evaluations made pursuant to [OFPA B-13] *Rule 6.100*; and any other criteria specified in this Rule. *The Options Allocation Committee will also consider the number and quality of issues that have been allocated, reallocated or transferred to a Lead Market Maker.*

(2) *Transfer of Issues.* Issues allocated to an LMM may not be transferred to another firm or between nominees without the express approval of the Options Allocation Committee.

[(3) *Concentration of Issues.* In the absence of extraordinary circumstances, as determined by the Options Allocation Committee, no LMM may be allocated more than fifteen percent (15%) of the

⁸ In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(8).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Mai Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated April 28, 2003.