

upon the rules that the Commission ultimately approves in File No. SR-PCX-2002-01, and not the existing Price Adjustment rules.³² The Exchange further represents that it will not implement PCX Plus before File No. SR-PCX-2002-10 has been approved by the Commission.

F. System Phase-In and Applicability of Rules

In response to the request of Commission staff, PCX proposes to amend proposed PCX Rule 6.90(b) to clarify the application of trading rules in option issues traded on PCX Plus during the phase-in period. During the phase-in period, PCX would have two sets of trading rules in operation, each applying to a different set of option issues traded on the Exchange. Accordingly, PCX estimates that the rules applicable to PCX Plus would be implemented gradually on an issue-by-issue basis beginning on December 15, 2003, and would become completely operative and applicable to all options issues by June 30, 2004. At that time, the rules relating to PCX Plus would supercede existing rules that are inapplicable to the new trading environment.³³ The PCX represents that the purpose of the gradual rollout schedule is to give PCX and its members the opportunity to observe and gain experience with the new system and to give PCX the opportunity to make any adjustments and changes to the system (in consultation with and approval by the Commission), if and when necessary.

G. Prevention of the Misuse of Material, Non-Public Information

In Amendment No. 2, PCX represents that PCX Rule 2.6(e) (Prevention of the Misuse of Material, Non-Public Information) would apply to members trading on PCX Plus. PCX believes that PCX Rule 2.6(e) would require a PCX Market Maker to maintain information barriers (that are reasonably designed to prevent the misuse of material, non-public information by such member) with any affiliates that may act as a specialist or market maker in any security underlying the options for which the PCX member acts as a Market Maker.

H. Maximum Order Size Eligibility

As discussed in the Notice of the Proposal, proposed PCX Rule 6.76

provides that the maximum size of an inbound order (the "Maximum Order Size") that may be eligible for execution on PCX Plus will be established by the LMM in the issue, subject to the approval of two Floor Officials, whose approval must be further ratified by the Options Floor Trading Committee. In Amendment No. 2, the Exchange proposes to modify this provision to require approval of the LMM's initial determination of the Maximum Order Size by the Options Floor Trading Committee. In addition, the Exchange proposed to add the following text: "Any request by the LMM for changes to the Maximum Order Size must be accompanied by a verified statement indicating the business reason for the change and the estimated duration of such change. Such requests must be approved by two Floor Officials, whose approval must be further ratified by the Options Floor Trading Committee." Furthermore, in Amendment No. 2, PCX proposes to add language to proposed PCX Rule 6.76 to prohibit a LMM from requesting changes to the Maximum Order Size in order to manipulate the operation of PCX Plus or for any anti-competitive purposes.

The Exchange believes that the proposed amendment to proposed PCX Rule 6.76 addresses the competitive concerns raised by the Commission staff and is consistent with the terms and spirit of the Commission's Order.³⁴

I. Linkage Plan

The Commission staff requested the Exchange to clarify the application of the definition of "Eligible Market Maker," as that term is used in the Linkage Plan³⁵ and in PCX Rule 6.92. In this regard, for purposes of the Linkage Plan, PCX represents in Amendment No. 2 that a PCX Market Maker would be considered an Eligible Market Maker if the PCX Market Maker is logged on to the PCX Plus system and provides continuous two-sided quotations (or, in the case of a SMM, the size of its quotation) through an electronic interface to the PCX Plus System.

J. Quoting Obligations of SMMs and FMMs

The quoting obligations of SMMs and FMMs are set forth in proposed PCX Rule 6.37(g)(3) and (4), respectively. In Amendment No. 2, the Exchange

proposes to modify these proposed rules to clarify that when the aforementioned Market Makers are present in the trading crowd, they would be required to provide quotations on PCX Plus through an electronic interface with the Exchange, but would be permitted to also provide quotations by public outcry. In addition, whenever a Floor Broker represents an order in the trading crowd and calls for a market in a particular options series, each SMM and FMM present at the trading post would be obligated to vocalize a two-sided, legal-width market (pursuant to PCX Rule 6.37(b)(1)).

The Exchange believes that this proposed amendment to proposed PCX Rule 6.37 will ensure that SMMs and FMMs meet their affirmative obligations and be entitled to receive special margin treatment by assisting the LMM in maintaining a fair and orderly market.

K. Suspension of the PCX Plus System

In the Notice of the Proposal, proposed PCX Rule 6.90(g) included provisions regarding the suspension of the PCX Plus system in the event of any disruption or malfunction in the use or operation of system, as well as any other unusual market conditions not involving a system malfunction. In Amendment No. 2, the Exchange proposes to amend proposed PCX Rule 6.90(g) as follows:

First, the Exchange proposes to eliminate that portion of the text in proposed Rule 6.90(g)(1) that refers to the declaration of a "fast market" by two Floor Officials. The Exchange believes that the deleted phrase "declare a fast market" is inapplicable given its market structure and trading system. The PCX Plus system enables Market Makers to set parameters establishing the amount of their quotation size that would be available for execution against inbound interest, with the system automatically executing such orders according to these parameters. Consequently, when a system disruption or malfunction occurs but the Exchange is able to process and disseminate quotes accurately, any orders received by the Exchange would be routed to Floor Broker Hand Held Terminals for representation in the trading crowd. In such circumstances, Market Maker bids and offers would continue to be firm pursuant to PCX Rule 6.86 and SEC Rule 11Ac1-1 under the Act. Regular trading procedures would be resumed by the Exchange when two Floor Officials determine that the disruption or malfunction is corrected.

Second, the Exchange proposes to add language to proposed PCX Rule 6.90(g)(1) to clarify that those orders

³² Telephone call between Deborah Flynn, Assistant Director, Division, Commission, and Kathryn Beck, Senior Vice President, General Counsel, and Corporate Secretary, PCX on April 14, 2003.

³³ See proposed PCX Rule 6.90(b).

³⁴ See Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Act, Making Findings and Imposing Remedial Sanctions ("Settlement Order"). Securities Exchange Act Release No. 43268 (September 11, 2000) (File No. 3-10282).

³⁵ See Linkage Plan, *supra* note 10, section 2(7) (definition of "Eligible Market Maker").