

that are routed to Floor Broker Hand Held Terminals for manual representation during a system disruption or malfunction would be executed pursuant to the order execution and priority principles set forth in proposed PCX Rule 6.76(d).

Finally, the Exchange proposes to eliminate proposed PCX Rule 6.90(g)(2), which relates to other unusual market conditions not involving a system malfunction, because it is superfluous. The Exchange believes that under any circumstance where a fair and orderly market cannot be maintained, the trading halt guidelines set forth in current PCX Rule 6.65 will be followed. Trading may be resumed whenever two Floor Officials determine that a fair and orderly market may be maintained. The Exchange also proposes to make a conforming change to PCX Rule 6.28(c)(6) by eliminating that portion of the text that refers to the suspension of the PCX Plus system during fast markets and unusual market conditions, as this provision is no longer applicable.

L. Applicability of Automated System Access Privileges ("ASAP") Memberships

ASAP Memberships are governed by current PCX Rule 1.14, which allows certain qualified broker-dealers ("ASAP Members") electronic access to the Exchange's automated options trading system, Pacific Options Exchange Trading System ("POETS"), as well as any other systems approved by the PCX's Board of Governors. In Amendment No. 2, PCX represents that an ASAP Membership cannot be utilized: (1) To effect trades via PCX Plus, or (2) by a member to act as a RMM.

M. Miscellaneous Changes

Finally, in Amendment No. 2, the PCX proposes the following technical and miscellaneous changes:

1. *PCX Rule 6.52*—The Exchange proposes to change the text of proposed PCX Rule 6.52(a) to clarify that, for those option issues designated for trading on PCX Plus, limit orders for the accounts of public customers, broker-dealers, and Market Makers, and Quotes with Size of Market Makers will be eligible for placement in the Consolidated Book. In option issues not designated for trading on PCX Plus, the Exchange proposes to retain the provisions contained in current PCX Rule 6.52(a) and (c),³⁶ which would be renumbered as subsections (b) and (d),

respectively (current PCX Rule 6.52(b) would be renumbered as subsection (c)).

2. *Proposed PCX Rule 6.76(b)(2)(B)*—The Exchange also proposes to change the text in proposed PCX Rule 6.76(b)(2)(B) to clarify that the provisions in paragraph (B) would apply to a Firm or Non-Member Market Maker order that was entered one minute or more before the inbound order.

3. *Proposed PCX Rule 6.90(e)*—Proposed PCX Rule 6.90(e) sets forth the practices that would be prohibited on PCX Plus. The Exchange represents that the requirements of this rule would apply only to members and member organizations that have direct electronic access to PCX Plus and are responsible for the execution and settlement of any resulting trades.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 2 and 3 to the proposed rule change, including whether Amendments No. 2 and 3 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-2002-36 and should be submitted by June 9, 2003.

V. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b) of the Act.³⁷ Specifically, the Commission finds that approval of the proposed rule change, as amended, is consistent with

section 6(b)(5) of the Act³⁸ in that it is designed to facilitate transactions in securities; 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 a national market system; and in general, to protect investors and the public interest.

A. Obligations of Market Makers

The PCX Plus proposal contemplates four types of Maker Makers: LMMs, RMMs, FMMs, and SMMs. LMMs are required to provide continuous two-sided quotes that meet certain spread parameters throughout the trading day in each of their appointed issues. LMMs must enter their quotations through an automated quotation system, but may also provide quotations by public outcry.

RMMs enter quotations from off-floor locations through an electronic interface with the Exchange.³⁹ Further, because PCX Rule 6.37(h)(1) states that all rules applicable to market makers apply to RMMs unless otherwise provided, PCX Rule 6.37(a)–(c) would apply to RMMs.⁴⁰ In addition, RMMs are required to provide continuous two-sided quotations that meet certain quote spread parameters in each of their appointed issues 60% of the time that the Exchange is open for options trading, and may not enter two-sided quotes in options issues that are not included in the RMMs primary appointment. RMMs could, however, enter single-sided quotes and multiple orders to buy and sell the same option series in issues outside their primary appointment.

FMMs would be physically located in the trading crowd, and like RMMs,

³⁸ 15 U.S.C. 78f(b)(5).

³⁹ The Commission notes that, in Amendment No. 2, PCX represented that an ASAP Membership, governed by PCX Rule 1.14, cannot be used to effect trades via PCX Plus, or to act as a RMM. See Amendment No. 2, *supra* note 7.

⁴⁰ PCX Rule 6.37(a) states that transactions of a market maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. PCX Rule 6.37(b) states, among other things, that a market maker is expected to engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there is a lack of price continuity, a temporary disparity between the supply of and demand for a particular option contract, or a temporary distortion of the price relationships between option contracts of the same class. PCX Rule 6.37(c) sets forth the requirements for trading by a market maker in options classes to which the market maker is not appointed.

³⁶ Current PCX Rule 6.52(c) describes the circumstances and procedures to be followed by Floor Brokers for the entry, cancellation and changes of orders held by the Order Book Official.

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