

to qualify FLS Clerks pursuant to the new interpretation of Rule 35. The Series 21 examination will help ensure that FLS Clerks have the basic knowledge, skills, and abilities necessary to perform their duties, which include assisting Floor Specialists.

The Series 21 examination is a 90-minute test consisting of 65 questions. The examination covers such topics as preparing for the market opening, operating the display book, preparing for the market close, and generating trade reports. The requirement to take and pass the Series 21 examination to qualify as an FLS Clerk will apply to both current and prospective FLS Clerks. All candidates must pass the Series 21 examination before functioning as an unsupervised FLS Clerk, *i.e.*, functioning without the specialized supervision required during the training period.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules regulation thereunder applicable to a national securities exchange.⁴ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(c)(3)(B) of the Act,⁵ which provides that the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience, and competence as are prescribed by the rules of the Exchange. The Commission finds that the subject matter included in the Series 21 Examination and the content outline by the Exchange is consistent with Section 6(c)(3)(B) because it provides the Exchange with an appropriate means for measuring an FLS Clerk's ability and qualifications. The Series 21 Examination and content outline covers such topics as preparing for the market opening, operating the display book, preparing for the market close, and generating trade reports. Requiring all current and future FLS to pass the Series 21 Examination will help ensure that they are adequately trained and qualified to perform their duties competently.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the

proposed rule change (SR-NYSE-99-20) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41699; File No. SR-PCX-99-15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Market Maker Surcharges

August 3, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),¹ notice is hereby given that on June 1, 1999, 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 PCX. On June 25, 1999, and July 16, 1999, the PCX filed with the Commission Amendment Nos. 1 and 2, respectively, to the proposed rule change.² The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend its rules to adopt a one-year pilot program under which the Exchange will impose a fee on Market Makers for contracts traded by Market Makers in particular option issues. The fee will be used to reduce order book execution charges on the PCX. Below is the text of the proposed rule change. Proposed new language is in *italic*.

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¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

³ In Amendment No. 1, the Exchange removed a provision that permitted the Options Floor Trading Committee ("OFTC") to delegate responsibility and corrected a typographical error. See letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Michael A. Walinskas, Associate Director, Division of Market Regulation ("Division"), Commission, dated June 24, 1999 ("Amendment No. 1"). In Amendment No. 2, the Exchange corrected a typographical error. See letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Michael A. Walinskas, Associate Director, Division, Commission dated July 15, 1999 ("Amendment No. 2").

RULE 16.1

RATES AND CHARGES

Market Maker Surcharge for Customer Rate Reduction

Rule 16.1(a) Definitions

(1) *Resident Market Maker.* A Resident Market Maker in a particular issue of options is a Market Maker who transacted at least 80% of his or her market maker contracts in option issues traded in the trading crowd where the particular option issue is traded in the prior calendar month.

(2) *Standard OBO Rate.* The Standard OBO Rate is any rate for Order Book Official ("OBO") floor brokerage established by the Exchange for the particular equity option issue traded on the Exchange Floor, other than pursuant to this Rule.

(3) *Standard Market Maker Fees.* Standard Market Maker Fees are the total market maker fees established by the Exchange for the particular option issue other than any fees implemented pursuant to this Rule.

(4) *Market Maker Surcharge.* The Market Maker Surcharge is the amount of the fee, not to exceed 25 cents per contract, that the Exchange may impose on Market Makers for a particular issue of option pursuant to this Rule that is in addition to the Standard Market Maker Fees for the option issue.

(b) Generally.

(1) The Options Floor Trading Committee ("OFTC") may impose a Market Maker Surcharge for transactions in a particular issue of options, which Surcharge will be imposed on a per contract basis for every contract traded by every Market Maker, whether in-person or by order, in that option issue during the period for which the Market Maker Surcharge is in effect.

(2) In imposing the fee, the OFTC will consider the vote of the Resident Market Makers for a particular option issue, as described in paragraph (d) of this Rule. In addition, the OFTC will consider the views of any Market Maker in favor of or opposed to the recommended Surcharge or in favor of some other Surcharge amount. The OFTC will provide notice of its meeting schedule for the consideration of the Market Maker Surcharge and the deadline for the submission of other materials for its consideration. The OFTC will determine the manner in which it will review the submitted materials and whether it will allow personal appearances before the OFTC. A decision of the OFTC may be appealed to the Exchange's Board of Appeals Committee pursuant to Rule 11; however, the Surcharge will be

⁴ In approving the proposed rule change, the Commission also has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(c)(3)(B).

⁶ 15 U.S.C. 78s(b)(2).

effective until the matter has completed the Exchange's review process. The OFTC through authority delegated by the Board of Governors will submit a rule filing pursuant to Section 19(b)(3) of the Exchange Act before the implementation of any new Surcharge or any change in the Surcharge or change in the OBO rate made pursuant to this Rule.

(3) The Market Maker Surcharge will be used to reimburse the Exchange to the extent the OFTC reduces the OBO brokerage rate applicable to the particular option issue below the standard OBO Rate pursuant to paragraph (g) of this Rule. Any amount remaining after the Exchange has been reimbursed will be refunded to each Market Maker who paid the Surcharge in that issue (on a pro rata basis). The Market Maker Surcharge generally will be assessed after the end of the month in which transactions on which the Market Maker Surcharge was based occurred.

(c) Time Period. The Market maker Surcharge generally will be instituted for a minimum period of one month.

(d) Vote to Recommend a Market Maker Surcharge Amount.

(1) Any Resident Market Maker may recommend a Market Maker Surcharge amount by the Friday prior to the vote or by any other time and date required by the OFTC. The vote of the Resident Market Makers to recommend the Surcharge will take place at the trading post where the applicable option issue is traded on the Tuesday of expiration week for equity options, or on any other day selected by the OFTC. The OFTC must provide 24 hour notice of the time and date of the vote to the trading crowd if the vote is to be held at a different time or on a different day. The OFTC will determine how the vote will be conducted. Any Resident Market Maker personally present at the trading post when the vote is conducted may vote on the amount of the Surcharge to be recommended. The Order Book Official at the particular trading post will conduct the vote.

(2) Each Resident Market Maker's vote will be weighted equally.

(3) Any Surcharge amount that receives a majority of the votes cast will be the Surcharge recommended to the OFTC. If any Surcharge amount does not receive a majority on the first ballot, the OBO may conduct subsequent ballots with the proposed Surcharges received the most votes or may solicit Resident Market Makers for other proposed Surcharge amounts.

(c) Option Issues. The OFTC may specify those option issues on which a Surcharge may be assessed pursuant to

paragraph (b) of this rule. In no event may the OFTC permit a Surcharge to be assessed on an issue that is not also listed for trading on at least one other options exchange. In addition, the Surcharge may not be assessed for an option issue that has been allocated to a Lead Market Maker.

(f) Book Brokerage Rates. The OFTC may reduce the Exchange's OBO Rate for a particular option issue below the Standard OBO Rate upon a recommendation of the Resident Market Makers pursuant to the terms of the vote in paragraph (d). In determining to reduce the OBO brokerage rate, the OFTC will consider not only the vote of the Resident Market makers, but also the views of any other Floor Broker or Market Maker who submits views to the OFTC pursuant to the published schedule for such submissions. Notice of the hearing, governance of the hearing, and all appeal rights will be the same as those set forth in paragraph (b)(ii) of this Rule. If the OFTC determines to reduce the OBO brokerage rate below the Standard OBO Rate, the Exchange will make the appropriate filing as required by the Exchange Act. To the extent the OFTC reduces the OBO brokerage rate below the Standard OBO Rate, any Market Maker Surcharge will be used to reimburse the Exchange for the difference pursuant to paragraph (b)(iii). If the Exchange determines on its own initiative, otherwise than pursuant to this Rule, to lower the Standard OBO Rate for a particular equity option issue, the Market Maker Surcharge will not be used to reimburse the Exchange for such reduction.

(g) Pilot Program. This Rule will be in effect as a pilot program until one year from [date of SEC approval of this Rule.]

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX 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. PCX has prepared summaries, set for in Sections A, B, and C below, of the most significant aspect of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background. Many options traded on the PCX are traded in crowds where the quotes are established by competing Market Makers.³ In the PCX's competing market maker crowds, the agency function is performed by OBOs, who are PCX employees, and Floor Brokers. An OBO maintains the limit order book in reach option issue. Only non-broker/dealer customer orders may be placed with an OBO.⁴ Orders that cannot be placed with an OBO must be manually represented in the trading crowd. Other exchanges, such as the American Stock Exchange and Philadelphia Stock Exchange, have a specialist system whereby specialists can serve both the agency and principal functions. At the Chicago Board Options Exchange ("CBOE"), certain issues are traded by Designated Primary Market Makers ("DPMs"), who can also serve both functions.⁵

As a result of the differences between competing market maker crowds and specialist and DPM systems, the OBO's rates at the PCX compete with rates charged by specialists and DPMs at other exchanges with respect to orders that can be placed with an OBO. The Exchange notes that specialists and DPMs can reduce their book execution rates to attract order flow and can offset such reductions through revenue they earn from the principal part of their business. Because the PCX's non-LMMs (who cannot represent agency orders) lack the flexibility over pricing enjoyed by specialists and DPMs at other exchanges, the PCX developed the current proposal to allow the PCX and its member firms to better compete with other exchanges in order book rates.

General Description of the Proposal. The Exchange is proposing a new PCX Rule 16.1 that would allow the

³ Other options on the PCX are traded in a Lead Market Maker ("LMM") system. The LMM functions in approved option issues as a market and, for those LMMs participating in the LMM Book Program, in the place of the Order Book Official ("OBO"). See PCX Rule 6.82; Securities Exchange Act Release No. 40548 (October 14, 1998) 63 FR 56283 (October 21, 1998). This proposal will apply to option issues traded by market maker trading crowds, but will not apply to issues traded by LMMs.

⁴ See PCX Rule 6.52(a).

⁵ The proposal is similar to a recent CBOE rule change. See Securities Exchange Act Release No. 41121 (February 26, 1999) 64 FR 11523 (March 9, 1999). At the CBOE, like the PCX, some, but not all option issues are traded by market maker trading crowds (and are not traded under the DPM or LMM system).

Exchange to impose a fee on Market Makers ("Surcharge") for contracts traded by Market Makers in a particular option issue. This fee, not to exceed \$0.25 per contract,⁶ will be collected by the Exchange and will be used to reimburse the Exchange to the extent the OBO brokerage rate is reduced if such reduction is based upon a recommendation of the Resident Market Makers.⁷ Any remaining amount of the Surcharge collected shall then be refunded to each Market Maker who paid the Surcharge (on a pro rata basis). The proposed Surcharge would allow the PCX to compete with other exchanges based on the respective fee each exchange charges a firm to execute an order on the limit order book.

How the Surcharge Will be Determined. Under proposed PCX Rule 16.1, the OFTC,⁸ under authority delegated to it by the PCX's Board of Governors, will determine the issues option for which the Surcharge would be assessed as well as what that Surcharge, if any, will be.⁹ Any Resident Market Maker can recommend a Surcharge amount. All Residents Market Makers then vote on the recommended amounts of the Surcharge, with each person having an equal vote. Any amount that receives a majority of the votes is the Surcharge amount that is recommended to the OFTC, which then decides the actual Surcharge. In reaching its decision, the OFTC must consider the vote of the Resident Market Makers and the views of any Market Maker in favor of or opposed to the recommended

Surcharge.¹⁰ The OFTC is not bound, however, to follow the Resident Market Makers' recommendation. The OFTC is free to impose a different Surcharge than the one recommended or to impose no Surcharge at all. Any Market Maker may appeal the decision of the OFTC to the Exchange's Appeals committee pursuant to PCX Rule 11.7. The Surcharge will remain in effect until the appeal has been decided.

Once the OFTC determines to implement a Surcharge and change the OBO fee, it will file a rule proposal with the Commission pursuant to Section 19(b)(3)(A) under the Act. After determining to impose or amend a Surcharge, the OFTC will notify the PCX Board of Governors at the meeting following the determination. Any Surcharge to be paid by the Market Makers would be in effect for at least one month to avoid disrupting normal Exchange billings and accounting procedures.

2. Statutory Basis

The PCX believes the proposed rule change is consistent with Section 6(b)¹¹ of the Act, in general, and furthers the objectives of Section 6(b)(5)¹² in particular, because it is designed to facilitate transactions in securities, perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes

its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of PCX. All submissions should refer to File No. SR-PCX-99-15 and should be submitted by September 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

Notice of Sale of Commercial Loans

AGENCY: Small Business Administration.

ACTION: Notice of Sale of Commercial Loans-Loan Sale #1.

SUMMARY: This notice announces the Small Business Administration's ("SBA") intention to sell approximately 4,000 secured and unsecured commercial loans (the "Loans") in a sealed bid auction. The total unpaid principal balance of the Loans to be sold in Loan Sale #1 is approximately \$350 million (US). Some of the Loans were previously guaranteed by SBA under various sections of the Small Business

⁶ Bids and offers in options series trading below \$3 are expressed in sixteenths of a dollar, i.e., \$0.0625. Because standard option contracts have a multiplier of 100 (i.e., they represent interest in 100 shares of the underlying security), the value of the minimum spread between any option contract listed on the Exchange would be \$6.25 (\$0.0625 times 100). Options priced over \$3 have a minimum spread of one eighth of a dollar (12.50 value for the minimum spread). Thus, the 25-cent cap on the Surcharge will ensure that it remains far below the minimum quote increment for options trade on the PCX.

⁷ The proposed defines a "Resident Market Maker" as someone who transacted at least 80% of his or her market maker contracts in option issues traded in the trading crowd in the prior calendar month. If the Exchange decides on its own initiative to reduce the OBO rate for a particular option issue, then the Surcharge would not be used to reimburse the Exchange.

⁸ Generally, the OFTC consists of 14 members who trade on the Options Floor. OFTC members that would be impacted by the Surcharge would be required to recuse themselves from that vote.

⁹ The proposal is limited, however, to option issues that are multiply traded, and does not include LMM option issues. As of May 28, 1999, approximately 800 standard equity options are traded on the PCX, and of those, approximately 100 would be eligible for participation in this pilot program.

¹⁰ The OFTC must give notice of its meeting schedule for the consideration of the Surcharge and the deadline for the submission of other materials for its consideration.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ 17 CFR 200.30-3(a)(12).