(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, as amended, is 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 the filing will also be available for inspection and copying at the principal offices of the Amex. All submissions should refer to File No. SR–Amex–2002–55 and should be submitted by December 9, 2002.

V. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, relating to the establishment of the pilot is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with the requirements under section 6(b)(5) of the Act [12] that the rules of an exchange be designed to promote just and equitable principles of trade, 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.[13] Specifically, the Commission believes that the proposed rule change will provide greater transparency to the Exchange's listing process for closed-end funds.

The Commission finds good cause for approving the pilot prior to the 30th day after publication in the **Federal Register**. The Amex has represented that it desires to promptly implement the proposed rule change and that accelerated approval will enable the Exchange to more quickly accommodate the listing of closed-end funds.[14] The Commission believes that accelerated approval on a five-month basis will permit the Exchange to continue listing funds and accommodate the desire of fund families to list groups of closed-end funds on one marketplace without undue delay.[15] Accordingly, the Commission finds it appropriate and consistent with sections 6(b)(5) and 19(b)(2) of the Act [16] to approve the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] the proposed rule change, as amended, (File No. SR–Amex–2002–55) is approved on a pilot basis until April 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29169 Filed 11–15–02; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78f(b)(5).

[13] In approving this pilot, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] *See* amendment no. 1, *supra* note 3.

[15] Approval of the five-month pilot period should not be interpreted as suggesting that the Commission is predisposed to approving the proposal on a permanent basis.

[16] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46803; File No. SR–PCX–2002–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Exchange's New Trading Platform for Options, PCX Plus

November 8, 2002.

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 June 27, 2002, the Pacific Exchange, Inc. (''PCX'' 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 PCX. On November 6, 2002, the PCX filed amendment no. 1 to the proposed rule change.[3] 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 proposes to adopt new rules for the implementation of its new trading platform for options, PCX Plus. The PCX's proposal includes new rules on priority and allocations of orders, rule changes to permit options Market Makers to conduct their trading activities from locations away from the trading floor, and proposed system changes to accommodate new order handling procedures and automated trade processing.

The text of the proposed rule change is available at the Office of the Secretary, PCX, at the Commission, and on the Commission's website.

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 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. The PCX 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

1. Purpose

a. Introduction

The Exchange's new trading platform for options, PCX Plus, has been designed to enhance the PCX's current marketplace in several respects. The Exchange believes that this new hybrid model combines the best features of traditional floor-based markets and new electronic trading systems, while preserving a single marketplace with a single book. It allows PCX members to trade as Market Makers from locations away from the trading floor. It replaces the PCX's current priority rules with new ones that the Exchange believes would provide greater incentives for Market Makers to quote aggressively, with tighter markets and greater

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces the PCX's original rule 19b–4 filing in its entirety.

liquidity. PCX Plus expands upon the Exchange's current trading rules by permitting the entry of eligible orders of all account types into the Exchange's Consolidated Book. The Exchange believes that the new trading platform would greatly enhance the PCX's options market by accommodating independent quotations from numerous market participants. Also, the Exchange represents that PCX Plus provides intermarket price protection and would operate in a manner consistent with the Options Intermarket Linkage Plan.[4]

The Exchange believes that the proposed new PCX Plus rules would foster aggressive quote competition and would reward market participants who improve PCX quotes with deep and liquid markets. Under the proposal, orders would be allocated to Market Makers on a ''size *pro rata*'' basis. The Exchange believes that this formula would reward larger-sized bids and offers with greater participation in trades. In addition, the Exchange believes that the proposal would grant significant trade participation rights to market participants who are first to improve the PCX quote. Under this proposed rule change, a member who improves the quote and stands alone at that price for three seconds would receive First Improved Quote (''FIQ'') status. Those with FIQ status would be guaranteed, at least, the greater of: (1) 40% of the next order(s) to buy or sell the same series (for a minimum of 20 contracts), or (2) the total size that it would receive pursuant to a size pro rata allocation. Market Makers must establish the best bid or offer (''BBO'') or quote at the BBO to participate in automated trades. As the Exchange phases in PCX Plus, the current Auto-Ex allocation methodology, involving Market Makers participating on a rotating ''wheel,'' would be phased out and replaced with a new model in which each PCX Market Maker's trading interest would be independently generated and continuously represented in the Consolidated Book.

Under the proposal, member firms would be able to effect crossing transactions on the Exchange in two different ways—either manually on the trading floor or electronically through PCX Plus. The Exchange represents that these proposed rules are designed to assure that no one market participant receives a disproportionate share of a transaction in relation to other market participants who are bidding or offering at the same price. The Exchange represents that the proposed rules are also designed to assure that market participants who display significant trading interest ''up front'' are rewarded with participation in the trade.

The proposed new structure would involve four types of Market Makers on the Exchange:[5]

(1) Lead Market Makers (''LMMs'') would continue to provide two-sided markets throughout the trading day, while conducting their trading activities on the trading floor of the Exchange;[6]

(2) The Exchange would permit Remote Market Makers (''RMMs'') to enter quotes and effect trades from off-site locations. RMMs would be permitted to select their appointed issues;

(3) Floor Market Makers (''FMMs''), who are registered Market Makers with basic obligations on the Options Floor, would continue to trade as they do today and would supply independently generated Quotes with Size;[7] and

(4) The Exchange would permit members to act as Supplemental Market Makers (''SMMs''), who would be provided with tools that allow them to add liquidity at the same price that is then being disseminated by the LMM.

The Exchange believes that the aggregation of quotes from Market Makers on and off the trading floor would result in greater liquidity and narrower bid-ask spreads for all market participants. The Exchange also notes that the proposed changes to its rules are non-discriminatory in that they would permit all Market Makers to submit their quotations via their own proprietary auto-quoting devices if they choose to do so.

The Exchange believes that the proposed new PCX Plus rules are designed to assure fair trade allocation among market participants. LMMs would be eligible to receive up to 40% in guaranteed participation on trades occurring at their disseminated markets. Members would also be entitled to receive up to 40% trade participation if they maintain FIQ status. Although members may receive more than 40% participation by virtue of a pro rata allocation, no member would be eligible to receive more than 40% participation as a guarantee by rule. The proposal is also designed to assure that firms interacting with their customers' orders would receive no more than a 40% share of such orders before the orders are exposed to further competition. Finally, no member would be allocated option contracts in excess of their expressed trading interest.

The Exchange represents that PCX Plus has been designed so that available trading interest on the Exchange can be aggregated by price and size, both of which would be displayed promptly. Currently, only orders for the accounts of Public Customers are eligible to be represented in the PCX order book. Under the proposal, orders for all account types '' including Public Customer, Firm, Market Maker and Non-Member Market Maker—may be represented in the Consolidated Book, along with Quotes with Size of PCX Market Makers (which would be entered for handling as if they were orders). Public Customer orders displayed at the best price would continue to receive first priority on the Exchange.[8]

Market and marketable limit orders routed electronically to PCX Plus would receive immediate executions against bids and offers in the Consolidated Book, unless a specified condition applies, in which case the order (or a portion of it) would be routed to a Floor Broker Hand Held Terminal for execution. The order execution rules and automated processes set forth in proposed PCX rule 6.76 are designed to place limitations on the internalization of order flow while providing added opportunities for competition. The Exchange believes that the proposed order execution rules and automated processes would enhance market efficiency and fairness by offering incentives to all market participants who provide liquidity on the Exchange.

The proposal also establishes new procedures for Market Makers' trading interest that interact electronically with orders in the Consolidated Book. In such situations, a Market Maker who initiates a transaction would be limited

[4] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (order approving Options Intermarket Linkage Plan submitted by American Stock Exchange LLC, Chicago Board Options Exchange, Inc. and International Securities Exchange LLC); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000) (order approving the PCX as participant in Options Intermarket Linkage Plan); and 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (order approving Philadelphia Stock Exchange, Inc. as participant in Options Intermarket Linkage Plan).

[5] *See* proposed PCX rule 6.32(a) (definition of ''Market Maker'').

[6] LMMs will also be responsible for performing certain functions under the Options Intermarket Linkage Plan. *See supra* note 4.

[7] *See* proposed PCX rule 6.1(b)(33) (which defines ''Quote with Size'' as a quotation to buy or sell a specific number of option contracts at a specific price that a Market Maker has entered into PCX Plus through an electronic interface).

[8] Under the proposal, inbound orders are allocated based on the following priority sequence: Public Customer orders have first priority to trade against such orders; quotes with FIQ status have second priority (subject to a 40% cap); the portion of the order subject to LMM guaranteed participation will be allocated next; followed by any trading interest for the accounts of non-Public Customers. *See* proposed PCX rule 6.76(a).

to 40% of the available customer contracts at the execution price or the Market Maker's size pro rata share, whichever amount is greater. The Market Maker would then be eligible to trade the remaining option contracts at the execution price once other Crowd Participants [9] have had an opportunity to participate.

While the proposal is intended to further automate options trading on the Exchange, the Exchange represents that the proposed new system would continue to facilitate open outcry trading as currently practiced today, particularly for large transactions and executions of complex orders and contingency orders. When an order is entered by phone or re-routed to a Hand Held Terminal for execution, a Floor Broker would represent it at the appropriate trading post and would afford priority first to Public Customer interest in the Consolidated Book, then to bids or offers in the trading crowd, and finally to any Firm or Market Maker interest in the Consolidated Book.[10]

The Exchange proposes to phase in the use of PCX Plus in particular issues, while simultaneously phasing out the current Auto-Ex ''wheel'' functionality. During the phase-in period, the Exchange represents that it would have two sets of trading rules in operation, each applying to a different set of option issues traded on the Exchange.

The PCX believes that the proposed rule change would promote efficiency by reducing the costs associated with transactions on the Exchange, and would promote liquidity and competition on the Exchange by permitting Market Makers to independently make markets either on or off of the PCX's physical trading floor. By allowing PCX Market Makers to conduct their activities off the Options Floor, while retaining the availability of on-floor market making, the Exchange believes that the proposal would permit PCX Market Makers to choose the most efficient and cost-effective way to conduct their businesses. The Exchange believes that the proposal is also designed to assure that the Exchange would attract greater liquidity and improved pricing, thereby making the PCX a more competitive market for all investors.

[9] *See* proposed PCX rule 6.1(b)(38) (which defines ''Crowd Participants'' as the Market Makers appointed to an option issue under rule 6.35, and any Floor Brokers actively representing orders at the best bid or offer on the Exchange for a particular option series.)

[10] *See* proposed PCX rule 6.76(d).

b. Summary of Proposed Change to PCX's Rules

i. PCX Rule 4. General Rules

The Exchange proposes to modify its general rules in PCX rule 4 as follows:

Proposed PCX Rule 4.2—RMMs trading from a location off the Options Floor are subject to the same prohibitions against trading prior to the official opening of the PCX for options trading.

Proposed PCX Rule 4.2, Commentary .01—This proposed rule change permits RMMs to effect transactions through the facilities of the Exchange until 1:02 p.m. (PST) for equity options and until 1:15 p.m. (PST) for index options on each business day.

ii. PCX Rule 6.1. Applicability, Definitions and References

In connection with the implementation of PCX Plus, the Exchange proposes to adopt the following definitions:

Proposed PCX Rule 6.1(b)(33)—The term ''Quote with Size'' means a quotation to buy or sell a specific number of option contracts at a specific price that a Market Maker has entered into PCX Plus through an electronic interface.

Proposed PCX Rule 6.1(b)(35)—The term ''Non-Member Market Maker'' includes, but is not limited to, specialists, designated primary market makers, lead market makers, market makers, registered options traders, primary market makers, and competitive market makers registered on an exchange other than the PCX.

Proposed PCX Rule 6.1(b)(36)—The term ''Firm'' means a broker-dealer that is not registered as a dealer-specialist or market maker on a registered national securities exchange or association.

Proposed PCX Rule 6.1(b)(37)—The term ''Consolidated Book'' means the Exchange's electronic book of limit orders for the accounts of Public Customers and broker-dealers, and Quotes with Size. The Exchange represents that all orders and Quotes with Size that are entered into the Consolidated Book would be ranked and maintained in accordance with the rules of priority as provided in proposed PCX rule 6.76.

Proposed PCX Rule 6.1(b)(38)—The term ''Crowd Participants,'' means the Market Makers appointed to an option issue under PCX Rule 6.35, and any Floor Brokers actively representing orders at the best bid or offer on the Exchange for a particular option series.

Proposed PCX Rule 6.1(c)(2)—For purposes of the PCX rules, the term ''Market Maker'' includes LMMs, RMMs, SMMs, and FMMs, unless the context otherwise indicates.

iii. Fast Markets and Unusual Conditions

Proposed PCX Rule 6.28(c)(6)—This proposed rule change provides that the PCX Plus execution mechanism as set forth in proposed PCX rule 6.76(b) may be suspended for a period of time not to exceed 5 minutes because of an influx of orders or other unusual market conditions.

iv. Market Makers

Proposed PCX Rule 6.32(a)—The proposed rule change specifies that an RMM whose transactions are executed through the facilities of the Exchange would be deemed to be a ''Market Maker'' for all purposes under the Act and the rules and regulations thereunder.

PCX Market Makers would be one of the following types: LMM, RMM, SMM, or a FMM. Each type of Market Maker is defined in the following subsections:

Proposed PCX Rule 6.32(a)(1)—An LMM is a registered Market Maker who makes transactions as a dealer-specialist while on the Floor of the Exchange and who meets the qualification requirements of PCX rule 6.82(b).

Proposed PCX Rule 6.32(a)(2)—An RMM is an individual who is registered with the Exchange for the purpose of making transactions as dealer-specialist from a location off the Floor of the Exchange. An RMM may also execute transactions while on the Floor of the Exchange. Transactions of an RMM that are executed through the facilities of the Exchange are deemed to be Market Maker transactions for purposes of PCX rule 6.32.

Proposed PCX Rule 6.32(a)(3)—An SMM is a registered Market Maker who makes transactions as a dealer-specialist while on the Floor of the Exchange and who provides quotations:

(A) Manually, by public outcry; or

(B) Automatically, through an electronic interface device at the LMM's prevailing bid or offering price, with a size to be designated by the SMM.

Proposed PCX Rule 6.32(a)(4)—A FMM is a registered Market Maker who makes transactions as a dealer-specialist while on the Floor of the Exchange and provides quotations:

(A) Manually, by public outcry; or

(B) Automatically through a proprietary auto quoting device.

Proposed PCX Rule 6.32(b)—This proposed rule change provides that those transactions initiated by RMMs through the facilities of the Exchange, as well as those initiated on the Options Floor, would count as Market Maker transactions and be entitled to special margin treatment, pursuant to the net capital requirements of rule 15c3–1 under the Act and Regulation T of the Board of Governors of the Federal Reserve system.[11]

Proposed PCX Rule 6.32(c)—RMMs may enter opening orders from off the Options Floor for execution by a Floor Broker and receive special margin treatment for them as long as the entry of such orders is consistent with the RMM's duty to maintain fair and orderly markets, and such orders are entered for the purpose of hedging, reducing the risk of, or rebalancing open positions of the RMM.

Proposed PCX Rule 6.34, Commentary .01—This proposed rule change clarifies that a Floor Broker, unless otherwise prohibited in this PCX rule or PCX rules 6.38 or 6.52(a),[12] may enter an order for its proprietary account in the Consolidated Book for the purpose of liquidating a position resulting from a bona fide error made in the course of its floor brokerage business.

v. Appointment of Market Makers

Proposed PCX Rule 6.35(g)(1)—Each RMM must select a primary appointment comprising a maximum number of option issues per seat. RMMs may select from among any option issues traded on the Exchange for inclusion in their primary appointments, which must be approved by the Options Allocation Committee (''OAC''). In considering the approval of the appointment of an RMM in each security, the OAC would consider:

(A) The financial resources available to the RMM;

(B) The RMM's experience, expertise and past performance in making markets, including the RMM's performance in other securities;

(C) The RMM's operational capability; and

(D) The maintenance and enhancement of competition among Market Makers in each security in which they are appointed.

Proposed PCX Rule 6.35(g)(2)—Except as provided in proposed PCX rule 6.35(h), the following rules apply to the primary appointments of RMMs:

(A) RMMs with a single seat may have up to eight option issues within their primary appointments.

(B) RMMs with two seats may have up to 18 option issues within their primary appointments.

(C) RMMs with three seats may have up to 30 option issues within their primary appointments.

(D) RMMs with four seats may have up to 44 option issues within their primary appointments.

(E) RMMs with five seats may have up to 60 option issues within their primary appointments.

(F) RMMs with six seats may have up to 78 option issues within their primary appointments.

(G) RMMs with seven seats may have up to 98 option issues within their primary appointment zones.

(H) RMMs with eight seats may have up to 120 option issues within their primary appointments.

The Options Floor Trading Committee would determine uniform limits on the number of issues applicable to RMMs with more than eight seats.

Proposed PCX Rule 6.35(g)(3)—RMMs may change the option issues that are included in their primary appointments, subject to the approval of the OAC. Such requests must be made in a form and manner prescribed by the Exchange. In considering whether to approve an RMM's request to change their primary appointments, the OAC would consider the factors set forth in proposed PCX rule 6.35(g)(1).

Proposed PCX Rule 6.35(g)(4)—RMMs may withdraw from trading an option issue that is within their primary appointments by providing the Exchange with a three-business day written notice of such withdrawal. RMMs who fail to give advance written notice of withdrawal to the Exchange may be subject to formal disciplinary action pursuant to PCX rule 10. Subsequent to withdrawal, the RMM may not be re-appointed as an RMM in that option issue for a period of one full calendar quarter.

Proposed PCX Rule 6.35(g)(5)—This proposed rule change provides that the Exchange may suspend or terminate any appointment of an RMM in one or more option issues whenever, in the Exchange's judgment, the interests of maintaining a fair and orderly market are best served by such action.

Proposed PCX Rule 6.35(g)(6)—An RMM may seek review of any action taken by the Exchange pursuant to subsection (g), including the denial of the appointment for, or the termination or suspension of, an RMM's appointment in an option issue or issues, in accordance with PCX rule 10 or 11, as applicable.

Proposed PCX Rule 6.35(h)—This proposed rule change provides that a Member Firm acting as an LMM firm may trade up to four issues as an RMM. These four issues are not required to be located at posts that are contiguous with the existing primary appointments of the Member Firm's individual Members. The LMM may enter quotations electronically in such issues from a location away from the trading post.

vi. Letters of Guarantee

Proposed PCX Rule 6.36(a)—This proposed rule change provides that RMMs must have a Letter of Guarantee that has been issued for such members by a Clearing Member and approved by the Options Clearing Corporation and the Exchange in order to effect transactions through the facilities of the Exchange. This requirement is the same for all other types of Market Makers effecting transactions on the Options Floor.

vii. Quoting Obligations of Market Makers

Proposed PCX Rule 6.37, Commentary .07—Former PCX rule 6.37, Commentary .07 is being renumbered as new proposed PCX rule 6.37(d).

Proposed PCX Rule 6.37(g)(1)—This proposed rule change sets forth the quoting obligations of LMMs. Specifically, LMMs must provide continuous two-sided quotations that meet the legal quote width requirements of PCX rule 6.37(b) throughout the trading day in each of their appointed issues. LMMs must also specify a size for each of their quotations applicable to:

(A) Orders for Public Customers; and

(B) Orders and Quotes with Size for broker-dealers.

LMMs must enter their quotations through an electronic interface with the Exchange, but may also provide quotations by public outcry.

Proposed PCX Rule 6.37(g)(2)—This proposed rule change sets forth a requirement that RMMs must provide continuous two-sided quotations in each issue in which they are appointed during 60% of all times during which the Exchange is open for options trading. Such quotations must meet the legal width requirements of PCX rule 6.37(b). In addition, RMMs must specify a size for each of their quotations applicable to:

(A) Orders for Public Customers; and

(B) Orders and Quotes with Size for broker-dealers.

These obligations would apply to all of the RMM's appointed issues

[11] This proposed rule change also provides that transactions entered from off the Options Floor, except those executed for the account of an RMM and those that are permissible under proposed PCX rule 6.32(c), must be placed in the Market Maker's investment account and be subject to applicable customer margin.

[12] Pursuant to PCX rule 6.52(a), the Exchange will determine, on an issue-by-issue basis, the account types of orders that will be placed in the Consolidated Book. Such orders may include limit orders for the accounts of Public Customers, broker-dealers or Market Makers.

collectively, rather than on an issue-by-issue basis. Compliance with these obligations would be determined on a per-calendar-quarter basis. RMMs must enter all of their quotations through an electronic interface with the Exchange. Finally, the public outcry requirements of PCX rule 6.73 do not apply to RMMs.

Proposed PCX Rule 6.37(g)(3)—SMMs must provide the sizes of their quotations through an electronic interface with the Exchange, but may also provide quotations by public outcry.

Proposed PCX Rule 6.37(g)(4)—This proposed rule change provides that FMMs must provide quotations in accordance with PCX rule 6.37 (which sets forth basic obligations of Market Makers) and may enter such quotations by public outcry or through an electronic interface with the Exchange.

viii. Obligations of RMMs

Proposed PCX Rule 6.37(h)(1)—This proposed rule change indicates that all PCX rules applicable to Market Makers would also apply to RMMs unless otherwise provided or unless the context clearly indicates otherwise. The following PCX rules do not apply to RMMs who are not present on the Options Floor: PCX rule 6.2(b)–(f) and (h) (Admission to and Conduct on the Options Trading Floor); PCX rule 6.35(a) (Appointment of Market Makers); PCX rule 6.37(d) and Commentaries .03 and .05 (Obligations of Market Makers); PCX rule 6.53, Commentary .01 (Issuing a Call for Market Makers); PCX rule 6.66 (Order Identification); PCX rule 6.73 (Manner of Bidding and Offering); PCX rule 6.74 (Bid and Offers in Relation to Units of Trading); and PCX rule 6.100 (Evaluation of Options Trading Crowd Performance).

Proposed PCX Rule 6.37(h)(2)—This proposed rule change provides that, for the purposes of the following rules, RMMs are deemed not to be members of the trading crowd: PCX rule 6.8, Commentary .08(c)(2) (the firm facilitation exemption procedures relating to position limits); PCX rule 6.47(a)–(f) (Crossing Orders and Stock/Option Orders); and PCX rule 6.66 (trading crowd participants to whom order identification information must be provided).

Proposed PCX Rule 6.37(h)(3)—Under this proposed rule change, each RMM must meet its quoting obligations as set forth in proposed PCX rule 6.37(g). Failure to comply with the 60% quoting requirement may result in a fine pursuant to PCX rule 10.13; however, if aggravating circumstances are present, formal disciplinary action may be taken pursuant to PCX rule 10.4. The Exchange may consider exceptions to this quoting requirement based on demonstrated legal or regulatory requirements or other mitigating circumstances (*e.g.*, excused leaves of absence, personal emergencies, or equipment problems).

Proposed PCX Rule 6.37(h)(4)—This proposed new rule provides that an RMM may be called upon by an Exchange official designated by the Board of Governors to submit a single quote or maintain continuous quotes in one or more series of an option issue to which the RMM is appointed whenever, in the judgment of such official, it is necessary to do so in the interest of maintaining fair and orderly markets.

Proposed PCX Rule 6.37(h)(5)—Under this proposed rule change, RMMs must trade at least 75% of their average daily trading volume per quarter in issues included in their primary appointments pursuant to proposed PCX rule 6.35(g). RMMs may trade up to 25% of their quarterly contract volume in option issues that are not included within their primary appointments.

Proposed PCX Rule 6.37(h)(6)—If the Exchange finds any failure by an RMM to engage in a course of dealings as specified in subsections (3)–(5) of this PCX rule, such RMM would be subject to disciplinary action or suspension or revocation of registration by the Exchange in one or more of the option issues in which the RMM holds a primary appointment. Nothing in this proposed rule change would limit any other power of the Board of Governors under the Constitution, rules, or procedures of the Exchange with respect to the registration of an RMM or with respect to any violation by an RMM of the provisions of this PCX rule.

Proposed PCX Rule 6.37(h)(7)—This proposed rule change establishes procedures for evaluating the performance of RMMs. Under the proposal, the OAC would periodically conduct an evaluation of RMMs to determine whether they have fulfilled performance standards relating to, among other things, quality of markets, competition among Market Makers, observance of ethical standards, and administrative factors. The OAC would consider any relevant information including, but not limited to, the results of an RMM evaluation, trading data, an RMM's regulatory history and such other factors and data as may be pertinent in the circumstances.

If the OAC finds any failure by an RMM to meet minimum performance standards, the OAC would be permitted to take the following actions, after written notice and after opportunity for hearing pursuant to PCX rule 11: (i) Restriction of appointments to additional option issues in the RMM's primary appointment; (ii) suspension, termination, or restriction of an appointment in one or more option issues; or (iii) suspension, termination, or restriction of the RMM's registration in general.

Pursuant to the proposal, if an RMM's appointment in an option issue or issues has been terminated pursuant to this subsection (7) of this PCX rule, the RMM may not be re-appointed as an RMM in that option issue or issues for a period not to exceed six months.

Proposed PCX Rule 6.37, Commentary .03—This proposed rule change clarifies that the obligations set forth in PCX rule 6.37 (regarding the removal of bids and offers) do not apply to RMMs. Under the proposed rule change, when a Market Maker, other than an RMM, displays a market on the screen that is the best market in that crowd, the Market Maker is obligated to ensure that the Market Maker's market is removed from the screen when the Market Maker leaves the crowd.

P*roposed PCX Rule 6.37, Commentary .07(a)*—An RMM would be permitted to request a leave of absence when he or she seeks to withdraw temporarily from entering quotations into the PCX Plus system for periods in excess of two weeks.

Proposed PCX Rule 6.37, Commentary .07(c)—This proposed rule change provides that RMMs, while on leave, may not enter opening transactions in Exchange listed options, in their Market Maker accounts, through the use of Floor Brokers, except as provided in proposed PCX rule 6.32(c).

viii. Restrictions on Acting as Market Maker and Floor Broker

Proposed PCX Rule 6.38(a)(1)—This proposed rule change clarifies that the restrictions set forth in subsection (b) of PCX rule 6.38 (relating to members acting as both Market Maker and Floor Broker) do not apply to LMMs who are performing the functions of Floor Brokers pursuant to PCX rule 6.82(h)(3).

Proposed PCX Rule 6.38(a)(2)—This proposed rule change provides that RMMs, trading from a location off the Floor of the Exchange, are not eligible to perform the functions of the Floor Brokers.

ix. Consolidated Book

The Exchange represents that, in PCX Plus, the Consolidated Book would be opened up to accept not only customer orders, but also broker-dealer orders, Market Maker orders and Market Maker Quotes with Size. All orders and Quotes with Size at the best price would be aggregated and disseminated via the Options Price Reporting Authority (''OPRA'').

Proposed PCX Rule 6.52(a)—This proposed rule change states that the Exchange would determine, on an issue-by-issue basis, the account types of orders that would be placed in the Consolidated Book. Such orders may include limit orders for the accounts of Public Customers, broker-dealers or Market Makers. In addition, Quotes with Size of Market Makers would be permitted to be included in the Consolidated Book. There would be no limit to the size of orders or quotes that may be entered into the Consolidated Book. The Exchange would determine whether any or all types of contingency orders (as defined in PCX rule 6.62(c)) would be eligible to be included in the Consolidated Book.[13] The Exchange, with the approval of the Options Floor Trading Committee, would determine the types of contingency orders that would be eligible for entry into the Consolidated Book and would periodically issue bulletins to notify its Members which contingency orders would be permitted.

Proposed PCX Rule 6.52(c)—Members submitting orders or Quotes with Size to the Order Book Official for execution or for entry into the Consolidated Book would be required to comply with such procedures and format requirements as may be prescribed by the Exchange.[14]

Proposed PCX Rule 6.57—The Exchange proposes to renumber current PCX rule 6.57 as PCX rule 6.57(b), and to apply it to option issues not traded under PCX Plus during the phase-in period (proposed PCX rule 6.57(a) is an explanatory preface). During the phase-in period, proposed new PCX rule 6.57(c) would apply to those issues traded on PCX Plus, and would require that all Crowd Participants be able to access at the same time the same information in regard to orders and Quotes with Size placed through PCX Plus.

x. Automated Opening Rotations

The Exchange currently conducts Automated Opening Rotations (''AORs'') pursuant to PCX Rule 6.64(c). Under this PCX rule, only Public Customer orders are eligible to participate in AORs. If a broker-dealer order is eligible to trade at the opening, the applicable series is opened manually, pursuant to PCX rule 6.64(b). The Exchange now proposes to expand the account types of orders eligible for participation in an AOR to include orders for the accounts of broker-dealers and Quotes with Size.[15] Accordingly, the Exchange proposes to phase in its new proposed PCX rule 6.64(d) on Enhanced Automated Opening Rotations (which would accommodate broker-dealer orders) while simultaneously phasing out the existing AOR process pursuant to PCX rule 6.64(c).

Proposed PCX Rule 6.64(c)—This proposed rule change states that the Exchange would designate option issues that are eligible for automated opening rotations pursuant to this PCX rule and proposed PCX rule 6.64(d) (''Enhanced Automated Opening Rotations''). If an option series has not been designated as eligible for AOR pursuant to proposed PCX rule 6.64(d), and if that series is not opened automatically pursuant to PCX rule 6.64(c), then that series would be opened manually pursuant to PCX rule 6.64(b).

Proposed PCX Rule 6.64(d)—This proposed rule change sets forth the manner in which AOR would operate in those options issues designated for trading in PCX Plus.

Proposed PCX Rule 6.64(d)(1)—''Establishing a Market for the Opening Rotation.'' This proposed rule change sets forth the method for establishing a market for the opening rotation. Prior to the opening rotation in a particular option series, the Order Book Official would determine whether there are any manual orders being represented in the trading crowd to be executed during the opening rotation and would designate the option series in which there are such orders for manual opening. In doing so, the Order Book Official would call for bids and offers from the trading crowd once the underlying security has opened. The trading crowd may determine that the bids and offers then being displayed on the overhead screens are accurate, or alternatively, may modify those bids and offers by public outcry.

Proposed PCX Rule 6.64(d)(2)—''Designating Series that are Not Eligible for the Automated Opening Rotation.'' Under this proposed rule change, the Order Book Official must identify, prior to the opening, all option series that are not eligible for the AOR and that would be opened manually. The Exchange would provide Crowd Participants with notice of those options series that would be opened manually. The series that are not eligible for the AOR include:

(A) Series for which there are no market or marketable limit orders in PCX Plus.

(B) Series for which there are one or more manual orders being represented in the trading crowd that are likely to be executed during the opening rotation, as determined by an Order Book Official.

(C) Series for which one or more members of the trading crowd has reasonably requested that a manual opening rotation be conducted. Two Floor Officials may deny member requests for manual opening rotations in the absence of reasonable justification for doing so.

(D) Series in which the ''imbalance threshold'' has been exceeded. Prior to the opening, the Order Book Official, in conjunction with the LMM in the issue, would set for each option issue a number of contracts that constitutes an imbalance threshold, *i.e.*, a specific number of option contracts to buy in excess of the number of contracts to sell or a specific number of contracts to sell in excess of the number of contracts to buy. The Exchange represents that PCX Plus would not automatically open any series with an imbalance exceeding the threshold for that issue.

Proposed PCX Rule 6.64(d)(3)—This proposed rule change states that series eligible for AOR would be opened automatically based on the following principles and procedures. First, PCX Plus would verify that a Quote with Size has been received from the LMM before a series is eligible for AOR. Second, PCX Plus would determine a single price at which a particular option series would be opened, as provided in Commentary .01 to this PCX rule. Third, orders in the PCX Plus system would maintain priority over Market Maker bids and offers that are not being represented in the Consolidated Book as Quotes with Size. Orders in the PCX Plus system would be matched up with one another, based on the priority rules as set forth in proposed PCX rule 6.76(a); provided, however, that: (i) Market Maker Quotes with Size would have priority over orders for Firms, Market Makers, and Non-Member Market Makers during the AOR, and (ii) orders for the accounts of Firms, Market Makers, and Non-Member Market Makers would be executed based on price/time priority. Finally, following the opening, any unexecuted

[13] The Exchange proposes to delete current PCX rule 6.52(a), which addresses the account types of orders eligible for acceptance and entry into the Order Book. Under the current PCX rule, only non-broker-dealer customer orders may be placed with an Order Book Official.

[14] The Exchange proposes to delete current PCX rule 6.52(c), which 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.

[15] The Exchange represents that the Commission has previously expressed a view that the Exchange should modify AOR to accommodate broker-dealer orders in the automated opening process. *See* Securities Exchange Act Release No. 41970 (September 30, 1999), 64 FR 54713 (October 7, 1999). The Exchange believes this proposed rule change is responsive to the Commission's concern.

contracts would be represented as bids and offers on the Exchange.

Proposed PCX Rule 6.64(d)(4)—This proposed rule change states that contingency orders would not be entitled to participate in the AOR.

xi. Manner of Bidding and Offering

Proposed PCX Rule 6.73—This proposed rule change provides that to be effective, a bid or offer must either be represented electronically in the Consolidated Book or be made by public outcry at the trading post where the option is traded. This PCX rule previously stated that to be effective, a bid or offer must be made by public outcry at the trading post where the option is traded.

xii. Priority Rules

The Exchange's priority rules for options trading are currently set forth in PCX rule 6.75. Proposed rule 6.75(h) has been renumbered from former rule 6.76 and does not apply to PCX Plus Executions. Once PCX Plus has been completely phased-in, the PCX intends to submit a filing to delete this provision, along with the remainder of rule 6.75, as it would no longer be necessary.

Proposed PCX Rule 6.75(d)—This proposed rule change clarifies that PCX rules 6.75(a)–(c), relating to priority, would only apply in connection with manual opening rotations.

Proposed PCX Rule 6.76—This proposed rule change sets forth the priority and allocation procedures of orders and Quotes with Size for option issues designated to be traded in PCX Plus. The proposed rule change also provides that the maximum size of an inbound order that may be eligible for execution on PCX Plus (the ''Maximum Order Size'') pursuant to proposed PCX rule 6.76(b) below would be established by the LMM in the issue, subject to the approval of two Floor Officials,[16] whose approval must be further ratified by the Options Floor Trading Committee.

Proposed PCX Rule 6.76(a)(1)—This proposed rule change states that the highest bid has priority over all other bids; and the lowest offer has priority over all other offers.

Proposed PCX Rule 6.76(a)(2)—This proposed rule change states that multiple bids or offers at the same price are afforded priority based on account type and other principles, as set forth below:

(A) *Public Customer Orders.* First, bids and offers in the Consolidated Book for Public Customer accounts would have priority over other bids or offers at the same price.

If there is more than one highest bid for a Public Customer account or more than one lowest offer for a Public Customer account, then such bids or offers, respectively, would be ranked based on time priority.

(B) *FIQ Status.* Next, orders and Quotes with Size in the Consolidated Book with FIQ status, as provided in proposed PCX rule 6.76(a)(3), would have second priority over bids or offers at the same price, but only for up to 40% of the order against which the orders or Quotes with Size that have FIQ status would be executed.

(C) *LMM Guaranteed Participation.* Bids and offers in the Consolidated Book for the account of the LMM would have third priority if the LMM is eligible to receive guaranteed participation on such bid or offer pursuant to PCX rule 6.82. LMMs would not receive any portion of an inbound order if their bids or offers were not at the trade price. The LMM's guaranteed participation would be expressed as a percentage of the remaining quantity after all Public Customer orders and quotes with FIQ status (to the extent of their 40% participation), if any, have first been executed. The LMM would not be allocated a number of contracts greater than the size of the LMM's bid or offer. If the LMM receives guaranteed participation on a trade and there are contracts remaining to be executed, the remaining portion of the LMM's bid or offer would be permitted to participate in the ''size pro rata'' allocation, as provided in proposed PCX rule 6.76(a)(4).

(D) *Non-Customer Orders and Quotes with Size.* Orders and Quotes with Size in the Consolidated Book for the accounts of non-customers (including Firms and Market Makers) would have last priority. If there is more than one highest bid or more than one lowest offer in the Consolidated Book for the account of a non-customer, then such bids or offers would be afforded priority on a ''size pro rata'' basis, as provided in proposed PCX rule 6.76(a)(4).

xiii. FIQ Status

The Exchange believes that PCX Plus is designed to reward market participants for quoting at the best price with size. The Exchange further believes that PCX Plus encourages quote competition in the Exchange's marketplace at all times—not just upon the entry of an order into the PCX market. Accordingly, the Exchange proposes to adopt new PCX rule 6.76(a)(3), which directly rewards market participants for improving the PCX quote by allocating to them a significant portion of inbound orders.

Proposed PCX Rule 6.76(a)(3)(A)—This proposed rule change states that a non-customer order[17] or Quote with Size that improves the best bid or offer on the Exchange and that is disseminated via OPRA would have ''FIQ status'' with respect to other bids or offers at the same price, unless it has been matched or further improved within three seconds. If it were matched within three seconds, then no FIQ status would apply to that order or quote. If it is improved, then the order or Quote with Size that improved the previous price would have priority and would itself receive FIQ status. If a market participant increases the size of a quote with FIQ status, the additional quantity would not be afforded FIQ status. If a market participant decreases the size of a quote with FIQ status, that revised quote would retain FIQ status. For purposes of this PCX rule, orders and Quotes with Size may be matched or improved only through an electronic interface device.

Proposed PCX Rule 6.76(a)(3)(B)—This proposed rule change sets forth the order allocation process for participants with FIQ status, as follows.

(i) Once the available Public Customer interest in the Consolidated Book has been filled, an order or Quote with Size that has FIQ status would be entitled to trade against the greater of:

(a) 40% of the next inbound electronic order or orders to buy or sell the same series; or

(b) The total size to which the order or Quote with Size with FIQ status would receive pursuant to a size pro rata allocation.

The 40% allocation would be applied to the quantity remaining after all Public Customer orders have first been executed. In addition, an order or Quote with Size with FIQ status would not be allocated a number of contracts greater than the size of the bid or offer with FIQ status.

(ii) An order or Quote with Size would continue to maintain FIQ status until either:

(a) The entire commitment size has been filled by the execution of a single inbound order;

(b) A portion of the commitment size has been filled by the execution of a single inbound order and the number of contracts executed based on the

[16] *See* Securities Exchange Act Release No. 45930 (May 15, 2002), 67 FR 36281 (May 23, 2002) (order approving file no. SR–PCX–2001–13).

[17] The Exchange represents that, under the proposed priority rules, customer orders would always have priority and precedence over non-customer orders and Quotes with Size at the same price. The Exchange further represents that FIQ status would not apply to customer orders.

applicable allocation method as set forth in subsection (B)(i) of proposed PCX rule is at least 20 contracts (*e.g.*, FIQ status for 100 contracts would no longer apply once a Market Maker has been allocated 40 contracts based on an allocation of 40% of a single 100-contract order); or

(c) A portion of the commitment size has been filled by the execution of multiple inbound orders and the aggregate number of contracts allocated as a result of such executions equals or exceeds 20 contracts (*e.g.*, FIQ status for 100 contracts would no longer apply once a Market Maker has been allocated a total of 24 contracts based on three subsequent allocations of 8 contracts, each of which are based on allocations of 40% of 20 contracts).

Proposed PCX Rule 6.76(a)(3)(C)—An LMM's Quote with Size with FIQ status would be entitled to an allocation representing the greater of: (i) The number of contracts to which the LMM would be entitled as guaranteed participation pursuant to subsection (a)(2)(C) of proposed PCX rule 6.76; or (ii) the number of contracts to which the LMM would be entitled for having FIQ status.

Proposed PCX Rule 6.76(a)(3)(D)—This proposed rule change states that if a non-customer order or Quote with Size has FIQ status but a Public Customer order on the same side of the market is later entered with a price matching that non-customer's order or Quote with Size, the Public Customer order would gain priority over the non-customer's order or Quote with Size. In such circumstances, inbound orders would be allocated as follows: (i) The customer order would first be executed up to its designated size; and (ii) the non-customer order or Quote with Size with FIQ status would then be eligible to participate in the balance of the order.

xiv. Size Pro Rata Allocation

The Exchange believes that another incentive for market participants to show their best prices and deepest markets at all times is the ''size *pro rata*'' allocation method. Under this method, the greater the size of a member's market, the greater the share of an order that the member would be allocated. This proposed rule change explains the manner in which orders are allocated pursuant to this formula. This proposed rule change would apply to issues traded under PCX Plus. Issues not traded under PCX Plus and orders allocated manually in the trading crowd would be subject to PCX rule 6.75, which PCX intends to delete once PCX Plus is rolled out for all issues.

Proposed PCX Rule 6.76(a)(4)(A)—This proposed rule change sets forth the formula for orders that are subject to allocation on a ''size *pro rata*'' basis:

$$\frac{\text{(Size of Order to be Allocated)}}{\text{(Aggregated Quote Size)}} \times \text{(Participant's Quote Size)} = \text{Size } \textit{Pro Rata} \text{ Allocation}$$

Under this formula, a participant's size pro rata allocation would be calculated as follows: The size of the order to be allocated is divided by the aggregated quote size. That result is then multiplied by the participant's quote size and the resulting number is the size pro rata allocation.

For example, if there are 200 contracts to be allocated among three Market Makers quoting with the following sizes:

MM1	100
MM2	200
MM3	500
Aggregated Quote Size	800

MM1 receives (200/800) × (100) = 25 contracts

MM2 receives (200/800) × (200) = 50 contracts

MM3 receives (200/800) × (500) = 125 contracts

Proposed PCX Rule 6.76(a)(4)(B)—This proposed rule change provides that the *pro rata* share allocated to each participant in the pool would be rounded down to a whole number, if applicable. If there are residual contracts to be filled after the *pro rata* calculation has been completed, such contracts would be allocated, with no more than one contract per participant, in the following sequence:

(i) The participant in the pool who has the largest fractional amount (based on the pro rata calculation) would receive the first contract, and each successive contract (if any) would be allocated to each subsequent participant who has the next largest fractional share.

(ii) If the last residual contracts are to be allocated between two or more participants having the same fractional amount, then the participant with the largest initial quote size in the *pro rata* pool would be allocated the next contract. Each successive contract (if any) would be allocated in the same manner.

(iii) If the last residual contracts are to be allocated between two or more participants with the same fractional amount and initial quote size, then the participant with the first time priority in the *pro rata* pool would be allocated the next contract. Each successive contract (if any) would be allocated in the same manner.

xv. PCX Plus Executions

The PCX's POETS system currently executes incoming orders automatically in two ways. First, if an inbound order is a market or marketable limit order and there is an order in the PCX order book to trade at the same price, the two orders would execute against each other. Second, if there were no order with priority in the PCX order book at the appropriate price (or there is an insufficient number of contracts at that price), then the incoming order (or a portion of it) would execute against the accounts of Market Makers who are logged onto the Auto-Ex ''wheel.'' [18] Under the proposal, the Auto-Ex ''wheel'' would be phased out so that under PCX Plus, an incoming order would be instantaneously matched against trading interest in the Consolidated Book.

Proposed PCX Rule 6.76(b)—This proposed rule change addresses situations in which orders or Quotes with Size are executed through PCX Plus.

Proposed PCX Rule 6.76(b)(1)—This proposed rule change states that an inbound order that is marketable would be immediately executed against bids and offers in the Consolidated Book unless one of the following conditions applies:

(A) The size of the inbound order exceeds the Maximum Order Size established pursuant to rule 6.76; or

(B) The inbound order is for the account of a Firm or Non-Member Market Maker and more than 50% of the aggregate trading interest in the Consolidated Book at the execution price is for the account (or accounts) of Public Customers.

If the conditions specified in subsections (A) or (B) apply, the order

[18] *See* Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 (January 24, 2002) (order approving POETS system); *see also* Securities Exchange Act Release No. 44847 (September 24, 2001), 66 FR 50237 (October 2, 2001) (order granting accelerated approval to PCX's Auto-Ex Incentive Program).

would be represented in the trading crowd pursuant to proposed PCX rule 6.76(d).

Proposed PCX Rule 6.76(b)(2)—The Exchange proposes to eliminate some of the Exchange's current system limitations regarding the automatic execution of incoming customer orders. Currently, if an incoming customer order cannot be filled in its entirety because of the maximum automatic execution size threshold, then the entire inbound order is routed to a Floor Broker Hand Held Terminal for representation in the trading crowd. The proposed rule change provides for partial electronic execution of an order before routing to a Floor Broker Hand Held Terminal or to the new Consolidated Book, as applicable. This proposed rule change provides that an inbound order would be either fully or partially executed based on the following procedures:

(A) If more than 40% of the size in the Consolidated Book is comprised of a single Firm or Non-Member Market Maker order at the price at which the inbound order would trade, and such Firm or Non-Member Market Maker order was entered less than one minute before the inbound order the inbound order would be processed as follows:

(i) The inbound order would first be matched against all available Public Customer interest in the Consolidated Book;

(ii) The inbound order, if not entirely filled, would then satisfy any available interest based on FIQ status and LMM guaranteed participation pursuant to proposed PCX rule 6.76(a);

(iii) The inbound order, if not entirely filled, would then match, on a size *pro rata* basis, with the interest of the Market Makers, Firms and Non-Member Market Makers in the Consolidated Book; provided that the size *pro rata* share interest of each individual Firm and each Non-Member Market Maker would be limited to 40% of the size of the remaining inbound order; and

(iv) The balance of the order, if any, would then be routed to a Floor Broker Hand Held Terminal.

(B) If the same conditions set forth in subsection (b)(2)(A) apply but the Firm or Non-Member Market Maker order was entered more than one minute before the inbound order, then:

(i) The inbound order would first be matched against all available Public Customer interest in the Consolidated Book;

(ii) The inbound order, if not entirely filled, would then satisfy any available interest based on FIQ status and LMM guaranteed participation pursuant to proposed PCX rule 6.76(a);

(iii) The inbound order, if not entirely filled, would then match, on a size *pro rata* basis, with the interest of the Market Makers, Firms and Non-Member Market Makers in the Consolidated Book; provided that the size *pro rata* share interest of each individual Firm and each Non-Member Market Maker would be limited to 40% of the size of the remaining inbound order;

(iv) The inbound order, if not entirely filled, would then match, on a size *pro rata* basis, with all other remaining volume in the Consolidated Book of Firms and Non-Member Market Makers who were previously limited to 40%; and

(v) The balance of the order, if any, would then be either:

(a) Routed to a Floor Broker Hand Held Terminal in the case where the order locks or crosses the national best bid or offer (''NBBO''); or

(b) Executed at the next available price level based on split-price execution.

If neither of the conditions specified in subsection (a) or (b) apply, and the order is no longer marketable, then such order would be represented in the Consolidated Book.

xvi. Split-Price Executions

Proposed PCX Rule 6.76(b)(3)—This proposed rule change governs the manner in which inbound electronic orders would be subject to split-price executions. An inbound electronic order would receive an execution at multiple prices if there were some, but insufficient, trading interest at a price and the remainder of the order can be filled at one (or more) other prices based on available trading interest in the Consolidated Book. Orders would not be executed at a price that trades through another market. The balance of the order, if any, would be represented in the Consolidated Book, provided that if such order locks or crosses the NBBO, then the order would be routed to a Floor Broker Hand Held Terminal. Proposed subsection (b)(3) of PCX rule 6.76 would not apply to orders that are executed pursuant to proposed PCX rule 6.769(b)(2)(A) or Quotes with Size that are executed pursuant to proposed PCX rule 6.76(b)(4).[19]

xvii. Electronic Book Execution

Currently, a Member on the Options Floor may trade against orders in the Consolidated Book by vocalizing a bid or offer and consummating a transaction with the Order Book Official.[20] Under the proposal, Members would be permitted to execute trades electronically with orders in the Consolidated Book as provided in proposed PCX rule 6.76(b)(4).

Proposed PCX Rule 6.76(b)(4)—This proposed rule change addresses situations in which Market Makers interact electronically with orders in the Consolidated Book. When a Quote with Size initiates a trade with the Consolidated Book (the ''initiating Quote with Size''), an Electronic Book Execution would occur as follows:

(A) The initiating Quote with Size would immediately execute against the Consolidated Book if the percentage of the transaction involving Public Customer interest (as represented in the Consolidated Book) would comprise no more than 40% of the transaction (*e.g.*, if the initiating Quote with Size is for 20 contracts and the size in the Consolidated Book at the execution price is 50 contracts, six contracts of which are the Public Customer interest ($6 \div 20 = 30\%$), then the initiating Quote with Size for 20 contracts would be executed in full)).

(B) If the initiating Quote with Size would effect a transaction against the Consolidated Book and the percentage of the transaction involving Public Customer interest would comprise more than 40% of the transaction, then the initiating Quote with Size would be processed as follows:

(i) The Market Maker's initiating Quote with Size would receive an execution comprising the greater of:

(a) 40% of the Public Customer interest in the Consolidated Book at that price; or

(b) The total size to which the inbound initiating Quote with Size would receive pursuant to a size *pro rata* allocation.

(ii) The balance of the Consolidated Book at that price would be displayed for three seconds (via a System Alert Message—SAM) to all Crowd Participants.

(iii) The balance of the Public Customer interest in the Consolidated Book would then be allocated on size *pro rata* basis to all Crowd Participants, if any, who have entered bids or offers to trade at the execution price within the three seconds provided.

(iv) After the Public Customer interest has been allocated, the initiating Quote with Size would match against all remaining interest in the Consolidated Book. If the initiating Quote with Size

[19] Proposed PCX rule 6.76(b)(3) is applicable to order execution and describes how individual orders will interact with the Consolidated Book at multiple price levels. Proposed PCX rule 6.76(b)(4) describes how Quotes with Size interact at different price levels based on a size *pro rata* allocation after trading at the initial price.

[20] *See generally* PCX rules 6.51—6.58.

does not fill the Consolidated Book, then all Crowd Participants would be matched on a size *pro rata* basis with the remaining interest in the Consolidated Book at that price.

(v) If the remaining Quotes with Size are executable at the next price level, they would be matched against the Consolidated Book on a size *pro rata* basis.

xviii. NBBO Step-Up

The Exchange currently uses NBBO Step-Up functionality in designated option issues pursuant to PCX rule 6.87(i). PCX rule 6.87(i) permits members on the Auto-Ex system who are quoting at a price inferior to the NBBO, to step-up to the NBBO price in executing incoming orders. This proposal would modify this feature as set forth below. PCX rule 6.87(i) would continue to apply to orders in issues not designated for PCX Plus (during the phase-in period).

Proposed PCX Rule 6.76(b)(5)(A)—This proposed rule change states that the LMM in an issue may Step-Up and execute inbound orders at the NBBO price when the NBBO is better than the PCX's disseminated quote. Subject to the approval of two Floor Officials,[21] the LMM would have sole discretion to determine whether the NBBO Step-Up feature:

(i) Would be engaged or disengaged;

(ii) Would be set to execute inbound orders when the NBBO is crossed or locked; and

(iii) Would be set to execute inbound orders at prices that are one or more trading increments better than the LMM's best bid or offer.

Proposed PCX Rule 6.76(b)(5)(B)—Under this proposed rule change, LMMs using the NBBO Step-Up feature may, at their discretion, disseminate Quotes with Size at the NBBO price when the NBBO price is better than the LMM's own disseminated price. If the LMM chooses to do so, then quotes at the NBBO would be disseminated via OPRA on the LMM's behalf. Such quotes would include the aggregate quotation size of the LMM and any SMMs who choose to participate in the NBBO Step-Up feature. LMMs may not use the NBBO Step-Up feature to match quotations of other PCX participants who are quoting at the NBBO. Accordingly, if another PCX participant enters an order or Quote with Size at the NBBO, then the LMM's original quote would prevail and the LMM's NBBO Step-Up quote would be removed from the PCX Plus system. The Exchange proposes to surveil for quoting abuses by its Members.

Proposed PCX Rule 6.76(b)(5)(C)—This proposed rule change states that inbound orders executed based on NBBO Step-Up would be allocated to SMMs who choose to participate in the NBBO Step-Up feature and the LMM on a size pro rata basis.

xviv. Crossing Orders

Under proposed PCX rule 6.76(c), PCX Plus would permit the execution of a ''Cross Order'', which is defined as two orders with instructions to match the identified buy-side with the identified sell-side at a specified price (''Cross Price''). The proposed rule establishes a crossing mechanism that automates the process that occurs on the Options Floor currently by which a Floor Broker may facilitate orders or cross two orders, regardless of size, via public outcry. The Exchange believes that this new mechanism, in conjunction with the order execution algorithm as described earlier, would foster competition and enhance market efficiency and fairness by offering incentives to all market participants that provide liquidity. The Exchange believes that the proposed crossing mechanism strikes a balance between allowing members to interact with their customer orders that they bring to the market, and providing Market Makers and other market participants with a fair opportunity and incentive to compete on an equal basis with such orders brought to the Exchange. The process in which a Cross Order is matched for execution is described below.

Proposed PCX Rule 6.76(c)(1)—For purposes of proposed PCX rule 6.76(c), the following terms would have the meanings specified below:

(A) ''Cross Order'' means two orders with instructions to match the identified buy-side with the identified sell-side at the Cross Price.

(B) ''Facilitation Order'' means an order as defined in PCX rule 6.47(b).

(C) ''PCX Broker'' means a Member, Member Organization or Associated Person who enters orders as agent for accounts other than for Market Makers.

(D) ''Exposed Order'' means the buy or sell side of a Cross Order that has been designated by a PCX Broker as the side to be exposed to the market and that is eligible for execution against all trading interest. Public Customer orders would always be deemed to be the Exposed Order in a Cross Order. In the case of a Cross Order involving a non-customer on both the buy side and sell side, the PCX Broker must designate one side of the Cross Order as the Exposed Order.

(E) ''Shadow Order'' means an order that is submitted by a PCX Broker to buy or sell a stated number of contracts at a specified price and that is to be executed in whole or in part against an Exposed Order. Any unexecuted portion of a Shadow Order would be canceled.

Proposed PCX Rule 6.76(c)(2)—This proposed rule change sets forth the steps involved in the Crossing Mechanism, as follows:

(A) A PCX Broker would be required to enter into PCX Plus the terms of each Cross Order to be executed electronically on the Exchange. The required terms include the terms of the order for a Public Customer or a broker-dealer and the proposed Facilitation Order (or two orders to be crossed neither one of which is a Facilitation Order (''non-facilitation cross'')), the proposed crossing price, the quantity of the order that the PCX Broker is willing to facilitate (in case of a facilitation cross), and an indication of which order is the Exposed Order. If the proposed Cross Price were outside the BBO at the time of order entry, PCX Plus would reject the Cross Order.

(B) After accepting the Cross Order, PCX Plus would execute the Cross Order in the following sequence.

(i) If the Cross Price is between the BBO:

(a) PCX Plus would immediately display the Exposed Order's price and quantity for 30 seconds. During the 30-second exposure period, there would be no indication that the order is part of an impending cross. PCX Plus places the Shadow Order on hold and such order is not visible except to the PCX Broker that entered the Cross Order.

(b) As long as the Exposed Order is the highest priority order at the best price, other Members and Member Organizations may trade against the Exposed Order during the exposure period. If at any time during the exposure period, the Exposed Order were entirely filled, PCX Plus would cancel the remaining quantity of the Shadow Order and send the PCX Broker a message that the crossing transaction has been completed.

(c) At the end of the exposure period, if the Exposed Order has not been entirely filled, but it is at the best price and has the highest priority, then PCX Plus would execute the remainder of the order against the Shadow Order. PCX Plus would then cancel the remainder of the Shadow Order and send the crossing firm a message that the crossing transaction has been completed.

[21] A proposed rule change to current PCX rule 6.87(i) to grant two Floor Officials, rather than the Options Floor Trading Committee, the supervisory authority over the NBBO Step-Up feature is pending Commission approval. *See* file no. SR–PCX–2002–09.

(d) At the end of the exposure period, if the Exposed Order has quantity remaining and it is not the highest priority order at the market, then PCX Plus would automatically cancel the remainder of the Exposed Order and the Shadow Order and would send the PCX Broker a message that the crossing transaction has been completed.

(ii) If the Cross Price is at the BBO:

(a) The Exposed Order would be matched at the displayed price against all pre-existing trading interest in the Consolidated Book with priority in accordance with proposed rule 6.76(a).

(b) The remainder of the Exposed Order, if any, would be exposed at the limit price for 30 seconds. As long as the Exposed Order has the highest priority at the best price, other Members and Member Organization may trade against the Exposed Order during the 30-second exposure period. If at any time during the exposure period, the Exposed Order were entirely filled, PCX Plus would cancel the remaining quantity of the Shadow Order and send the PCX Broker a message that the crossing transaction has been completed.

(c) At the end of the exposure period, if the Exposed Order has not been entirely filled, but it is at the best price and has the highest priority, then PCX Plus would execute the remainder of the order against the Shadow Order. PCX Plus would then cancel the remainder of the Shadow Order and send the crossing firm a message that the crossing transaction has been completed.

(d) At the end of the exposure period, if the Exposed Order has quantity remaining and it is not the highest priority order at the market, then PCX Plus would automatically cancel the remainder of the Exposed Order and the Shadow Order and would send the PCX Broker a message that the crossing transaction has been completed.

Proposed PCX Rule 6.76(c)(3)—This proposed rule change sets forth certain prohibited conduct related to Crossing Orders. The proposed rule change, as described below, is designed to place limitations on the internalization of order flow and to provide added opportunities for competition. Under the proposed rule change, it would be a violation of proposed PCX rule 6.76(c) for a PCX Broker to be a party to any arrangement designed to circumvent this PCX rule by providing an opportunity for a customer or a broker-dealer to execute against agency orders handled by the PCX Broker immediately upon their entry into PCX Plus.

In addition, PCX Brokers would not be permitted to execute as principal orders they represent as agent unless: (i) Agency orders are first exposed on the Exchange for at least 30 seconds; (ii) the PCX Broker utilizes the Crossing Mechanism pursuant to proposed PCX rule 6.76(c)(2); or (iii) the PCX Broker executes the orders pursuant to PCX rule 6.47.

xx. Orders Executed Manually

The Exchange represents that, to effectively combine the benefits of open outcry trading with those of PCX Plus, it has defined specific priority rules for handling manual executions in the trading crowd.

Proposed PCX Rule 6.76(d)(1)—This proposed rule change provides that Floor Brokers manually representing orders in the trading crowd must comply with the order execution and priority principles set forth in PCX rule 6.75 and, in addition, with the following provisions establishing priority for bids and offers by account type:

(A) Public Customer orders in the Consolidated Book have first priority. Multiple customer orders at the same price are ranked based on time priority.

(B) Bids and offers of the members of the trading crowd have second priority. These bids and offers include those made by Market Makers and Floor Brokers (on behalf of customer and broker-dealer orders they are representing).

(C) Bids and Offers of broker-dealers (including Quotes with Size and orders of Market Makers) in the Consolidated Book have last priority. Multiple bids and offers of broker-dealers would be executed on a size pro rata basis pursuant to proposed PCX rule 6.76(a).

Proposed PCX Rule 6.76(d)(1), Commentary .01—This proposed commentary states that the provisions of proposed PCX rule 6.90 would apply to transactions automatically executed pursuant to proposed PCX rule 6.76(b).

xxi. Cabinet Trades

The Exchange's rules for cabinet trading are currently set forth in PCX rule 6.80. The Exchange proposes to retain this PCX rule (renumbered as proposed PCX rule 6.80(b)) and to apply it to issues not traded under PCX Plus during the phase-in period. During that time, proposed PCX rule 6.80(c) would govern cabinet trading applicable to all issues traded on PCX Plus.

Proposed PCX Rule 6.80(a)—This proposed rule change states that the Exchange would designate option issues that are eligible for cabinet trading pursuant to this PCX rule. If an option issue has not been designated as eligible for cabinet trading on PCX Plus, the provisions of proposed PCX rule 6.80(b) would apply. If an option issue has been designated as eligible for cabinet trading on PCX Plus, then the provisions of subsection (c) would apply.

Proposed PCX Rule 6.80(b)—This proposed rule change sets forth the manner in which cabinet trading would be conducted in option issues not traded on PCX Plus during the phase-in period. Except for minor changes in terminology and references, the proposed rule is substantially the same as the existing rule.

Proposed PCX Rule 6.80(c)—The following provisions of proposed subsection (c) would apply to option issues designated for cabinet trading on PCX Plus:

(1) Cabinet trading under the following terms and conditions would be available in each series of option contracts open for trading on the Exchange.

(2) Trading shall be conducted in accordance with other Exchange Rules except as otherwise provided herein.

(3) Limit orders at a price of $1 per option contract must be placed on the Exchange in such form and manner as may be prescribed by the Exchange.

(4) Orders for cabinet trading may be placed for the accounts of Public Customers, Firms, and Market Makers, with priority based upon the sequence in which such orders are placed on the Exchange.

(5) Market Makers shall not be subject to the requirements of rule 6.37 for orders placed pursuant to this PCX Rule.

(6) Members submitting opening orders priced at $1 per option contract must comply with the order entry procedures and format requirements as may be prescribed by the Exchange. Opening orders priced at $1 per option contract may be placed on the Exchange for execution only to the extent that the order book in cabinet trades contains unexecuted contract closing orders with which the opening orders immediately may be matched.

xxii. Clarification of LMM Definition

Proposed PCX Rule 6.82(a)(1)—This proposed rule change defines LMM and provides that RMMs are not eligible to act as LMMs from a location off the trading floor.

xxiii. Firm Quote Rule

Proposed PCX Rule 6.86(a)(2)—This proposed rule change clarifies the application of the Exchange's Firm Quote rule for option issues traded on PCX Plus. Specifically, LMMs and any registered Market Makers who are quoting at the disseminated bid or offering price and who are constituting the trading crowd in such option series would collectively be the Responsible Broker or Dealer to the extent of the sizes of their respective bids and offers. For option issues not designated for trading on PCX Plus, the LMM and any registered Market Makers constituting the trading crowd in a particular option series would collectively be the Responsible Broker or Dealer to the extent of the aggregate quotation size specified.

xxiv. PCX Plus

The Exchange represents that proposed new PCX Rule 6.90, which describes the operational requirements of PCX Plus,[22] is substantially similar to current PCX rule 6.87 relating to the Exchange's Auto-Ex system, except for:

(1) Stylistic and minor conforming word changes made to reflect the new market structure; and

(2) The omission of rules relating to Eligible Orders, Order Entry Firm Registration, Market Maker Requirements and Eligibility, Market Maker Restrictions on Redirecting Auto-Ex Trades, Price Adjustments, the Auto-Ex Incentive Program, the Auto-Ex Book functions, and the Auto-Ex Between-the Quotes (current PCX rules 6.87(a), 6.87(c)(1), 6.87(e), 6.87(f), 6.87(g), 6.87(k), 6.87(l), and 6.87(m), respectively) [23] because these provisions are not applicable to PCX Plus.

As stated earlier, during the phase-in period, the Exchange would designate option issues that are eligible for trading on PCX Plus. If an option issue has not been designated as eligible for execution on PCX Plus pursuant to this PCX rule, the provisions of PCX rule 6.87 would continue to apply.

The following provisions of PCX rule 6.87 are being incorporated into proposed PCX rule 6.90:

Proposed PCX Rule 6.90(c)—PCX proposes to adopt the following definitions from current PCX rule 6.87(a).

(1) The term "User" means any person or broker-dealer that obtains electronic access to PCX Plus through an Order Entry Firm.

(2) The term "Order Entry Firm" means a member organization of the Exchange that is able to route orders to the Exchange.

Proposed PCX Rule 6.90(d)—This proposed rule change, which sets forth the obligations of Order Entry Firms regarding the proper use of PCX Plus, has been adapted from current PCX rule 6.87(c). Order Entry Firms would be required to: comply with all applicable PCX options trading rules and procedures; provide written notice to all Users regarding the proper use of PCX Plus; and maintain adequate procedures and controls that would permit the Order Entry Firm to effectively monitor and supervise the entry of electronic orders by all Users.

Proposed PCX Rule 6.90(e)—This proposed rule change has been adapted from current PCX rule 6.87(d) and codifies what practices are prohibited on PCX Plus. Except for minor changes in terminology, the proposed rule is substantially similar to the existing rule.

Proposed PCX Rule 6.90(g)—Proposed PCX rule 6.90(g) includes 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. This proposed rule change has been adapted from current PCX rule 6.87(h). Under this proposed rule change, if a PCX Plus system disruption or malfunction occurs but the Exchange is able to process and disseminate quotes accurately, then any orders received by the Exchange would be routed to Floor Broker Hand Held Terminals for representation in the trading crowd. Regular trading procedures would be resumed by the Exchange when two Floor Officials determine that the disruption or malfunction is corrected. If there are other unusual market conditions not involving a PCX Plus system disruption or malfunction, two Floor Officials may suspend the PCX Plus system in accordance with PCX rule 6.28. Whenever such action is taken, any orders received by the Exchange would be routed to Floor Broker Hand Held Terminals for representation in the trading crowd.

Proposed PCX Rule 6.90(h)—Under this proposed rule change, the Options Floor Trading Committee may designate, for an option issue, that an order would default for manual representation in the trading crowd if the NBBO is crossed or locked. Proposed PCX rule 6.90(h) has been adapted from current PCX rule 6.87(j).

xv. PCX Rule 10—Minor Rule Plan

The Exchange proposes to amend PCX rule 10.13 to include violations of proposed PCX rule 6.37(g)(2) in the Minor Rule Plan. Proposed new PCX rule 6.37(g)(2) requires that each RMM provide continuous two-sided quotations in each issue in which they are appointed during 60% of all times during which the Exchange is open for options trading. This obligation would apply to all of the RMM's appointed issues collectively, rather than on an issue-by-issue basis. Compliance with this obligation would be determined on a per-calendar-quarter basis. The Exchange believes that the proposed fine schedule is consistent with the fines established for violations by a Market Maker involving the 75% primary appointment zone requirement and the 60% in-person trading requirement.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[24] in general, and furthers the objectives of section 6(b)(5) of the Act,[25] in particular, 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.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 days of the date of 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

[22] PCX Plus is defined in proposed PCX rule 6.90(a) as the Exchange's electronic order delivery, execution and reporting system for designated option issues through which orders and Quotes with Size of members are consolidated for execution and/or display. This trading system includes the electronic communications network that enables registered Market Makers to enter orders/Quotes with Size and execute transactions from remote locations or the Trading Floor.

[23] The manner in which orders will be subject to split-price executions in PCX Plus are set forth in proposed PCX rule 6.76(b)(3), which have been adapted from current PCX rule 6.87(p).

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PCX consents, the Commission will:

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

(A) 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, as amended, is 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 December 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–29170 Filed 11–15–02; 8:45 am]

BILLING CODE 8010–01–P

[26] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital SBIC VII, L.P. (''ZSCVII''), 101 Main Street, 17th Floor, Cambridge, Massachusetts 02142, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2002)). ZSCVII proposes to provide equity financing to NetKey, Inc. (''NetKey''), 32 Park Drive East, Branford, Connecticut 06405. The financing is contemplated for product development, sales and marketing, and working capital.

The financing is brought within the purview of Section 107.730(a)(1) of the Regulations because Zero Stage Capital VI, L.P., an Associate of ZSCVII, currently owns greater than 10 percent of NetKey, and therefore NetKey is considered an Associate of ZSCVII as defined in Section 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: November 12, 2002.

Jeffrey D. Pierson,

Associate Administrator for Investment.

[FR Doc. 02–29164 Filed 11–15–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital SBIC VII, L.P. (''ZSCVII''), 101 Main Street, 17th Floor, Cambridge, Massachusetts 02142, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2002)). ZSCVII proposes to provide equity financing to First Service Networks, Inc. (''FSN''), 849 International Drive, Linthicum, Maryland 21090. The financing is contemplated for product development and working capital.

The financing is brought within the purview of Section 107.730(a)(1) of the Regulations because Zero Stage Capital VI, L.P., an Associate of ZSCVII, currently owns greater than 10 percent of FSN, and therefore FSN is considered an Associate of ZSCVII as defined in Section 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: November 12, 2002.

Jeffrey D. Pierson,

Associate Administrator for Investment.

[FR Doc. 02–29165 Filed 11–15–02; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3459]

State of Texas (Amendment #1)

In accordance with a notice received from the Federal Emergency Management Agency, dated November 8, 2002, the above numbered declaration is hereby amended to include Aransas, Hardin, Harris, Jefferson, Orange and San Patricio Counties in the State of Texas as disaster areas due to damages caused by severe storms, tornadoes, and flooding occurring on October 24, 2002, and continuing.

In addition, applications for economic injury loans from small businesses located in Bee, Brazoria, Calhoun, Chambers, Fort Bend, Galveston, Jasper, Liberty, Live Oak, Montgomery, Newton, Polk, Refugio, Tyler and Waller Counties in Texas; and Calcasieu and Cameron Parishes in Louisiana may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary county have been previously declared.

The economic injury number assigned to Louisiana is 9S5100.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is January 6, 2003, and for economic injury the deadline is August 5, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 12, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–29167 Filed 11–15–02; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Small Business Investment Companies; Increase in Maximum Leverage Ceiling

13 CFR 107.1150(a) sets forth the maximum amount of Leverage (as defined in 13 CFR 107.50) that a Small Business Investment Company may have outstanding at any time. The maximum Leverage amounts are