

reports. The proposed rule change would clarify that these types of independently-prepared research reports would not have to be filed with the Department. The Department intends to interpret the term "independent" in (G)(i) of the proposed rule change in a manner similar to the use of that term in NASD Rule IM-2210-3 regarding rankings.

Under the proposed rule change, these research reports would continue to be subject to the Department's spot-check procedures. Moreover, the proposed rule change would impose certain conditions designed to ensure that the opinions in the research reports are objective, that the presentation is balanced, and that investors have access to regular updates of the reports. In particular, the proposed rule change would impose several requirements derived from an analogous SEC rule, Rule 139, which provides a safe harbor from the definition of "offer for sale" and "offer to sell" in the Securities Act of 1933.

Thus, under the proposed rule change, a published article that analyzes only a few funds or that is not regularly updated in the normal course of business would have to be filed with the Department if it is to be distributed or made generally available to customers or the public. Moreover, while a member could distribute an independently-prepared research report concerning a particular fund without filing the report with the Department, if the member alters the report in any material way, then the member would have to file it with the Department if it is to be distributed or made generally available to customers or the public.

NASD Regulation believes that the proposed rule change would not raise significant investor protection concerns. In its filing and review program, the Department rarely has found significant issues with the types of research reports that would be expected by the proposed rule change. Moreover, to ensure that investors are adequately protected, the proposed rule change would except these types of research reports only from the filing requirements, and not the content requirements of applicable NASD rules. Under the proposed rule change, these research reports would continue to be subject to the content requirements of Rule 2210 as well as Conduct Rule 2110 (requiring that a member "observe high standards of commercial honor and just and equitable principles of trade"); Rule 2120 (prohibiting use of manipulative, deceptive or other fraudulent devices); and IM-2310-2 (requiring fair dealing with customers, including an avoidance

of fraud violations). In addition, Conduct Rule 2210 would continue to require that these research reports be approved prior to use by a registered principal of the member.

The proposed rule change would apply to independently-prepared research reports that are contained in software or that are electronically communicated, as well as those on paper.

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)² of the Act, which require that the Association adopt and amend its rules to promote just and equitable principles of trade, and generally provide for the protection of investors and the public interest in that the proposed rule change allows the dissemination of certain research reports, subject to the content requirements of the NASD Conduct Rules.

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

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

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

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

² 15 U.S.C. 78o-3.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. 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 NASD. All submissions should refer to the file number in the caption above and should be submitted by July 6, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-15781 Filed 6-12-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40070; File No. SR-PCX-98-19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Capital Requirements and Guaranteed Participation of Lead Market Makers

June 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 16, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, and amended such proposed rule change on June 4, 1998,² as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² Amendment No. 1 clarified the text of the proposed rule change. See letter from Michael D. Pierson, Senior Attorney, to Heidi Pilpel, Special Counsel, Division of Market Regulations, SEC (June 4, 1998).

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

PCX is proposing to modify its capital requirements for Lead Market Makers ("LMMs") on the Exchange and to clarify the procedures applicable to LMMs' guaranteed participation. The text of the proposed rule change is attached as Exhibit A.

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

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set 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. *LMM Capital.* PCX Rule 6.82(c)(11) currently provides that each LMM on the Exchange must maintain a cash or liquid asset position in the amount of \$100,000 or in an amount sufficient to assume a position of twenty trading units of the security underlying the option the LMM has been allocated, whichever amount is greater.³ The term "trading unit" means, in the case of stocks, 100 shares.⁴ Therefore, LMMs are currently required to maintain a cash or liquid asset position in the amount of \$100,000 or in an amount sufficient to assume a position of 2000 shares of stock in each option issue allocated to the LMM.

The Exchange is proposing to eliminate the current LMM capital requirement and to replace it with another one providing that each LMM must maintain a cash or liquid asset position of at least \$350,000, plus \$25,000 for each issue over eight issues that have been allocated to the LMM.⁵

Under the proposal, PCX Rule 6.82(c)(11) will continue to provide that in the event that two or more LMMs are associated with each other and deal for the same LMM account, the LMM capital requirement will apply to such LMMs collectively, rather than to each LMM individually.⁶

The Exchange believes that the current LMM capital requirement, which generally fluctuates as the price of the underlying stock fluctuates, is unduly complicated and difficult to calculate, both for the Exchange and for individual LMMs. In that regard, the Exchange notes that the Commission's net capital rule also establishes fixed dollar amounts applicable to broker-dealers. In addition, the Exchange believes that all of its LMMs should have cash or liquid asset positions of at least \$350,000 and the current minimum amount of \$100,000 is insufficient.

b. *Guaranteed Participation.* PCX Rule 6.82(d)(2) currently provides that LMMs are guaranteed 50% participation in transactions occurring on their disseminated bids or offers in their allocated issues. But the LMM's guaranteed participation may be reduced from 50% to 40% in a multiply-traded issue, and may be reduced from 50% to 25% in a non-multiply traded issue, if trading in the issues reaches certain levels (and other events occur). The applicable trading volume requirement, for both multiply-traded and non-multiply traded issues, is an average daily trading volume of 3,000 contracts at the Exchange for three consecutive months. The Exchange believes that the current formulation of this provision is ambiguous and therefore is proposing to clarify it by replacing the words "for three consecutive months" with the words "during any three-calendar-month period (measured on a 'rolling' three-calendar-month basis)."⁷

The Exchange is also proposing to adopt Rule 6.82(d)(2)(C) to specify the circumstances under which an LMM may return to receiving a guaranteed 50% participation after having had it reduced to 40% or to 25%. Specifically, the proposal states that "[i]f the Options Allocation Committee has reduced an

LMM's guaranteed participation in an issue pursuant to subsections (A) or (B) . . . and average daily trading volume in an issue falls below 3,000 contracts at the Exchange during any three-calendar-month period (measured on a 'rolling' three-calendar-month basis), the Options Allocation Committee will evaluate the LMM's performance in that issue and, based on that evaluation, may raise the LMM's guaranteed participation in that issue from 40% to 50% (in a multiply-traded issue) or from 25% to 50% (in a non-multiply traded issue)." The purpose of this proposal is to codify the Exchange's existing policy on when an LMM's guaranteed participation may return to 50%.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)⁸ of the Act, in general, and furthers the objectives of Section 6(b)(5),⁹ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

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

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

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

The Exchange has neither solicited nor received comments on 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 longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

³ Cf. CBOE Rule 8.80, Interp. and Policy .02. The Commission notes that PCX rules governing LMMs, including PCX Rule 6.82, apply strictly to options trading.

⁴ See PCX Rule 5.3(a).

⁵ As with the current rule, the proposed rule would not apply to issues traded by an LMM in connection with the Exchange's LMM Book Pilot Program, as provided in PCX Rule 6.82(h). The current capital requirement for LMMs trading such issues is a cash or liquid asset position of at least \$500,000 plus \$25,000 for each issue over 5 issues

for which they perform the function of an Order Book Official. See PCX Rule 6.82, Comm. 04. LMMs who are participating in the LMM Book Pilot Program are also required to maintain "minimum net capital" as provided in SEC Rule 15c3-1. *Id.*

⁶ Cf. CBOE Rule 8.80, Interp. and Policy .02.

⁷ Thus, for example, if trading volume in an issue reached an average of 2,000 contracts per day in the first month, 4,000 per day in the second month, and 4,000 per day in the third month, the condition would have been met under the proposed formulation, but not under the current formulation.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 79f(b)(5).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submissions, 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 persons, 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-98-19 and should be submitted by July 6, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

Exhibit A

Test of the Proposed Rule Change¹

LEAD MARKET MAKERS

¶ 15181 Lead Market Makers

Rule 6.82(a)-(b)—No change.

(c) Obligations of Lead Market Makers

Each LMM *must* [shall] meet the following obligations:

(1)-(10)—No change.

(11) Maintain a cash or liquid asset position [in the amount] of at least \$350,000, plus \$25,000 for each issue over 8 issues that have been allocated to the LMM. [\$100,000 or in an amount sufficient to assume a position of twenty (20) trading units of the security underlying the option the LMM has been allocated, whichever amount is greater.] In the event that two or more LMMs are associated with each other and deal for the same LMM account, this requirement *will* [shall] apply to such LMMs collectively, rather than to each LMM individually;

(12)-(13)—No change.

(d) Rights of Lead Market Makers:

(1)—No change.

(2) *Guaranteed Participation*—No change.

(A) *Multiply-traded Issues*. If the average daily trading volume in a multiply-traded issue reaches 3,000 contracts at the Exchange during any three-calendar-month period (measured on a rolling three-calendar-month basis), [for three consecutive months] and if:

(i) in the case of an issue traded by two options exchanges, the Exchange's *monthly* share of the total multi-exchange customer trading volume in an issue drops from above 70% to below 70%; or

(ii) in the case of an issue traded by three or more options exchanges, the Exchange's *monthly* share of the total multi-exchange customer trading volume in the issue drops from above 45% to below 45%; the Options Allocation Committee *will* [shall] evaluate the LMM's performance in that issue and, based on that evaluation, may reduce the LMM's guaranteed participation in that issue from 50% to 40%.

(B) *Non-multiply-traded Issues*. If the average daily trading volume in a non-multiply-traded issue reaches 3,000 contracts at the Exchange during any three-calendar-month period (measured on a "rolling" three-calendar-month basis) [for three consecutive months,] the Options Allocation Committee *will* [shall] evaluate the LMM's performance in that issue and, based on that evaluation, may reduce the LMM's guaranteed participation in that issue from 50% to 25%.

(C) *Return to Previous Levels of Guaranteed Participation*. If the Options Allocation Committee has reduced an LMM's guaranteed participation in an issue pursuant to subsections (A) or (B) above, and average daily trading volume in the issue falls below 3,000 contracts at the Exchange during any three-calendar-month period (measured on a "rolling" three calendar month basis), the Options Allocation Committee *will* evaluate the LMM's performance in that issue and, based on that evaluation, may raise the LMM's guaranteed participation in that issue from 40% to 50% (in a multiply-traded issue) or from 25% to 50% (in a non-multiply-traded issue).

(e)-(g)—No change.

Commentary: .01-.04—No change.

[FR Doc. 98-15824 Filed 6-12-98; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending June 5, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST-98-3898.

Date Filed: June 2, 1998.

Parties: Members of the International Air Transport Association.

Subject: PTC31 S/CIRC PAC 0047 dated May 29, 1998 Expedited South Pacific Resos 002L (r1) & 015v (r2) Tables—PTC31 S/CIRC Fares 0016 dated May 29, 1998 Intended effective date: expedited July 1, 1998.

Docket Number: OST-98-3929.

Date Filed: June 5, 1998.

Parties: Members of the International Air Transport Association.

Subject: PTC31 Telex Mail Vote 938, Las Vegas-Japan fares r1-10, Correction—Telex TE651, Voting Result—Telex TE654, Intended effective date: July 1, 1998.

Docket Number: OST-98-3930.

Date Filed: June 5, 1998.

Parties: Members of the International Air Transport Association.

Subject: CSC/Reso/001 Dated April 1, 1998, Book of adopted Resos/RPs r1-9, Minutes—CSC/Minutes/002 dated May 12, 1998, Intended effective date: October 1, 1998.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98-15847 Filed 6-12-98; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending June 5, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST-98-3895.

Date Filed: June 1, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 29, 1998.

Description: Application of Reliant Airlines, Inc. pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing Reliant to conduct interstate charter air transportation of property and mail between points in the United States beginning on or about September 1, 1998.

Docket Number: OST-98-3896.

Date Filed: June 1, 1998.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 29, 1998.

Description: Application of Reliant Airlines, Inc. pursuant to 49 U.S.C. Section 41102 and Subpart Q of the

¹⁰ 17 CFR 200.30-3(a)(12).

¹ New text is italicized, deleted test is bracketed.