

widen the collars to 2% and 1% could result in increased program trading that may contribute to higher levels of market volatility.²¹ Nevertheless, the Commission questions whether Rule 80As current restrictions on certain types of intermarket program trading strategies are an appropriate means to address overall volatility. Indeed, the Commission notes that last year the Working Group suggested that Rule 80A had become outdated and recommended that the NYSE at least significantly increase Rule 80A's trigger levels.²²

Although the Commission is approving the Exchange's current proposal, it continues to question whether the restrictions on index arbitrage that are retained in the revised Rule 80A are appropriate. The markets have changed significantly over the past decade. For example, the NYSE has substantially increased its system capacity so that it can handle five times the trading volumes experienced in October 1987. Moreover, the variety of derivative products has grown, as has the array of derivative-related equity trading strategies. It may make little sense to single out index arbitrage, which ensures that markets are aligned economically, from all other types of program trading. Indeed, the restrictions on index arbitrage may tend to disconnect the securities and futures markets and impose unnecessary costs on market participants.²³

Accordingly, although the Commission believes that the Exchange's proposal meets the statutory standards for approval and that it represents an improvement over the previous set of trading restrictions contained in Rule 80A, the Commission recommends that the Exchange periodically evaluate the continuing need for Rule 80A's restrictions on index arbitrage.

C. The Rule's Definition of Index Arbitrage

In its proposal, the Exchange defines index arbitrage in Supplementary Material .40 to Rule 80A to include some forms of "basis trading."²⁴ As

discussed above, the Broker-Dealers were critical of the proposed revision to the definition of index arbitrage. In particular, the Broker-Dealers indicated that the inclusion of basis trading in the revised definition of index arbitrage would be inappropriate and could apply to activities that are not typically associated with index arbitrage and not reasonably implied by the language of Rule 80A.²⁵

The Commission agrees with the Broker-Dealers that care needs to be exercised by the NYSE in its interpretation of the proposed definition of index arbitrage so that the collar restrictions are not applied to activities that are not typically associated with index arbitrage and not reasonably implied by the language of Rule 80A. The Commission also agrees with the Broker-Dealers that a basis trade would be subject to Rule 80A only if the trade otherwise satisfies all of the conditions of the definition of index arbitrage contained in Supplementary Material .40.²⁶

The Commission understands that the NYSE regulatory staff has been diligent in working with program trading firms over the past few years to clarify which types of intermarket trading strategies are subject to the collar provisions of Rule 80A and the Commission urges the Exchange to continue these efforts. In the long term, the Commission believes that the best resolution of the definitional issues raised by the Broker-Dealer would be to have the Exchange reassess the overall rationale for Rule 80A's restrictions on selected intermarket trading strategies.

V. Conclusion

For the foregoing reasons, the Commission finds that the amendments to NYSE Rule 80A are consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSE-98-45) is approved.

of a basket or group of stocks in conjunction with the purchase or sale, or intended purchase or sale, of one or more derivative index products in an attempt to profit by the price difference between the basket or group of stocks and the derivative index products. The inclusion of some forms of basis trading for the application of the index arbitrage limitations of Rule 80A was reflected in the NYSE Information Memorandum 92-23 (August 28, 1992) ("1992 Memo").

²⁵ Broker-Dealer Letter at 1-2, supra note 4.

²⁶ *Id.* at 3.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41051; File No. SR-PCX-98-41]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Its Remote Trading Access Program for Specialists

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 September 4, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change and file an amendment thereto on January 21, 1999,³ 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.

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

The Exchange is proposing to adopt a Remote Trading Access Program for Specialists ("Program") under which Registered PCX Specialists will be permitted to conduct their regular trading activities from off the Trading Floor, at a remote location. Below is the text of the proposed rule, which is entirely new.

* * * * *

Remote Trading Access Program

Rule 5.38(a). The Remote Trading Access Program allows Registered PCX Specialists to conduct their regular trading activities from off the Trading Floor, at remote locations, subject to the approval of the Equity Floor Trading Committee. Specialists participating

²⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter, dated January 20, 1999, from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX to S. Kevin An, Special Counsel, Division of Market Regulation, Commission ("Amendment No. 1"). Among other things, Amendment No. 1 made several technical corrections and also explained how the Exchange will conduct surveillance of Remote Specialists. The substance of Amendment No. 1 is incorporated into this Notice.

²¹ Neuberger Letter at 1, supra note 4.

²² This position was reflected in a joint letter issued by the Working Group to Richard Grasso, NYSE Chairman and Chief Executive Officer, dated May 7, 1998 ("Working Group Joint Letter"), as well as in the Working Group Staff Report on Circuit Breakers, issued on August 18, 1998 ("Working Group Staff Report"), at 21.

²³ See Working Group Staff Report at 21.

²⁴ The proposed Supplementary Material .40 states that, for purposes of Rule 80A, "index arbitrage" means a trading strategy in which pricing is based on discrepancies between a "basket" or group of stocks and the derivative index product (*i.e.*, a basis trade) involving the purchase or sale

in the program ("Remote Specialists") will be linked to the Trading Floors via a telecommunications network using private lines.

(b) Unless otherwise specified, all of the PCX Rules and provisions of the PCX Constitution will apply to the activities of Remote Specialists. In particular, Remote Specialists must meet all of the obligations of Registered Specialists pursuant to PCX Rule 5 and the Equity Floor Procedure Advices, provided that the following rules will not apply to Remote Specialists: EFPA 1-A, EFPA 1-B and EFPA 1-C. In addition, Remote Specialists will not be required to make their markets known in an audible tone pursuant to Rules 5.5(a) and 5.30(a).

(c) Trading Floor Definition. For purposes of Rules 4.2, 5.1(e), 5.1(f), 5.6(d), 5.6(e), 5.8(a), 5.8(c), 5.8(e), 5.8(k), 5.10, 5.11(c), 5.12(b), 5.13(g), 5.13(h), 5.14(a), 5.14(b), 5.16(a), 5.20 Com. .01-.02, 5.21(a)(1), 5.23(a), 5.25(a), 5.29(d), 5.29(f), 5.29(g), 5.30(b), 5.30(c), 5.30(d), 5.31(a)-(b), 5.33(c), 5.51(b), 5.51(n), 5.51(o), 5.53(a)-(b), 5.53(e) and 5.53(g), the terms "floor" and "trading floor" will include both the physical trading floors in San Francisco and Los Angeles, as well as the electronic facilities of the Exchange at remote locations.

(d) Approval Process. Only Specialists who are registered with the Exchange pursuant to Rule 5.27 will be eligible to participate in the Program. The Equity Floor Trading Committee ("EFTC") will select from among the applicants and will determine which candidates are best suited to participate in the Program. In making its selections, the EFTC will consider the following factors: (1) past experience of the applicant, including the length of time that the applicant has served as a Specialist on the Exchange or on another exchange, and the nature of the applicant's activities as a Specialist on the Exchange or on another exchange; (2) recent specialist performance ratings of the applicant (including all available evaluation scores for the last eight quarters); (3) the applicant's disciplinary history; and (4) any other relevant factors that the EFTC may consider.

(e) Evaluation Process. Remote Specialists will be evaluated pursuant to Rule 5.37.

(f) Pilot Program. The Remote Trading Access Program will be implemented in three phases. In Phase I, four Specialists (two in San Francisco and two in Los Angeles) will conduct their regular trading activities at locations off the Trading Floor itself but in close proximity within the building—for example, in a room adjacent to the Trading Floor. Unless it is necessary, these specialists will not engage in face-to-face interactions with other floor members during this phase, so that the Exchange may identify and correct any problems that may arise. Phase I will last for approximately one month. In Phase II, which will last up to six months, the Exchange will permit up to twenty Specialists to conduct their trading activities from locations away from the Exchange's premises. These locations may include a home or an office. In Phase III, the Exchange will permit an unlimited expansion of the Program.

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 Exchange 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 Exchange 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

(a) Purpose.

The PCX currently has two Equities Trading Floors, one in San Francisco and one in Los Angeles. There are generally two Specialists continuously making markets during trading hours in each equity security traded on the Exchange. Implementation of the Program will be the first step of an expansion of the Exchange's two-floor system, to permit electronic trading from multiple locations both on and off the Trading Floors. Having operated two Equities Trading Floors since 1957, the Exchange is well experienced in coordinating market quotations for multiple specialists, in executing trades on behalf of parties located in different cities, and in providing administrative support from one city to members located in another city.

Under the Program, the Exchange will establish a telecommunications network using private lines to link the Remote Specialists to the Trading Floors. Remote Specialists will have the same access to the Exchange's trading system ("P/COAST") as Specialists located on the Trading Floors. Remote Specialists will also have access to the Intermarket Trading System ("ITS") via the Regional Computer Interface ("RCI") feature of P/COAST. In addition, Remote Specialists will routinely communicate with Exchange staff and persons on the Trading Floors by telephone, e-mail and facsimile.

The Exchange believes that the rule change would significantly expand the structure on which equities trading is based on the Exchange. Accordingly, the Exchange is proposing to expand the meaning of the term "trading floor," as used in certain of the Rules on Equities trading, so that it will include both the Trading Floors and the electronic facilities of the Exchange at remote

locations. For example, Rule 5.1(e), which currently provides that non-members "shall not consummate transactions on the trading floor," would be expanded to prohibit non-members from consummating transactions either on the Trading Floor or through the electronic facilities of the Exchange.

1. Implementation: The Exchange is proposing to implement the Program in three phases. In Phase I, four Specialists (two in San Francisco and two in Los Angeles) will conduct their regular trading activities at locations off the Trading Floor itself but in close proximity within the building, for example, in a room adjacent to the Trading Floor. Unless it is necessary, these Specialists will not engage in face-to-face interactions with other floor members during this phase, so that the Exchange may identify and correct any problems that may arise. Phase I will last for approximately one month. In Phase II, which will last up to six months, the Exchange will permit up to twenty Specialists to conduct their trading activities from locations away from the Exchange's premises. These locations may include a home or an office. Finally, in Phase III, the Exchange will permit an unlimited expansion of the Program.

2. Selection Process: Only Specialists who are registered with the Exchange pursuant to Rule 5.27 will be eligible to participate in the Program. The Equity Floor Trading Committee ("EFTC") will select from among the applicants and will determine which candidates are best suited to participate in the Program. In making its selections, the EFTC will consider the following factors: (a) Past experience of the applicant, including the length of time that the applicant has served as a Specialist on the Exchange or on another exchange, and the nature of the applicant's activities as a Specialist on the Exchange or on another exchange; (b) recent specialist performance ratings of the applicant (including all available evaluation scores for the last eight quarters); (c) the applicant's disciplinary history; and (d) any other relevant factors that the EFTC may consider.

3. Order Execution: It is anticipated that the vast majority of orders executed by a Remote Specialist will be orders entered electronically through the Exchange's Member Firm Interface ("MFI") or through Floor Input.⁴ Remote Specialists will execute orders in the same manner as Registered

⁴ However, a relatively small number of orders will continue to require interaction between a Floor Broker and all of the Specialists in the issue.

Specialists. All orders entered through the MFI or Floor Input will be entered into the Exchange's Consolidated Limited Order Book ("CLOB"), which will ensure that they are afforded priority pursuant to Exchange Rules. Incoming market and marketable limit orders are immediately executed against orders in the CLOB based on price and time priority. However, before any market or marketable limit order is executed, P/COAST will display it for 15 seconds on the terminal of the Specialist who is representing it, so that he or she will have an opportunity to improve the execution price. Incoming orders other than market and marketable limit orders will be maintained in the CLOB, but will be represented by the Specialist designated to receive them. If a Specialist manually executes a limit order that does not have priority, P/COAST will generate a message that a priority violation has been committed so that the Specialist can take corrective action immediately. In addition, the Exchange's Surveillance Department will receive a report of the priority violation.

4. Remote Specialist Obligations:

Except as otherwise provided, Remote Specialist will be required to meet all of the obligations of a PCX Registered Specialist, including the following:

- Remote Specialist will be required to make continuous two-sided markets during regular trading hours.
- They must engage in a course of dealings for their own accounts to assist in the maintenance, insofar as reasonably practicable, of a fair and orderly market on the Exchange, and must engage, to a reasonable degree under the existing circumstances, in dealings for their own accounts in round-lots when lack of price continuity or lack of depth in the round-lot market or temporary disparity between supply and demand in either the round-lot or the odd-lot market exists or is reasonable to be anticipated. (Rule 5.29(f))
- They will be responsible for the execution of all orders that they have accepted. (Rule 5.29(f))

• They will be required to remain within the immediate vicinity of their P/COAST terminals commencing 30 minutes before the opening and throughout the trading day.⁵

⁵The Exchange notes that Remote Specialists who choose not to remain within the immediate vicinity of their P/COAST terminals will be subjecting themselves to significant market risk as a result of executions against incoming orders and other orders in the CLOB. They will also be subject themselves to poor performance ratings pursuant to PCX Rule 5.37 if they fail to keep their markets current.

- They may be required to remain one or more clerks at their remote locations. (Rule 5.28(e))

- They will be required to prepare trading tickets or other appropriate records relating to orders. (Rules 5.13(c), 5.28(b) and 5.29(a))

- They will perform their obligations as odd-lot dealers in securities pursuant to Rule 5.34.

- The performance of Remote Specialists will be evaluated pursuant to PCX Rule 5.37 and they will be subject to all procedures and restrictions that may be based on their overall evaluation ratings.

- They will be required to meet the same capital requirements and net capital requirements as Registered Specialists. These include the requirements set forth in PCX Rule 2.2(a) and SEC Rule 15c3-1.

- They will be subject to all rules, policies and procedures governing the ITS. (Rules 5.20-5.23)

5. Exemptions from PCX Rules: Remote Specialists are exempt from complying with the following Rules that otherwise apply to Specialists located on the Trading Floors:

- They will be required to vocalize bids or offers. (Rule 5.5(a) and 5.30(a))
- They will not be subject to the applicable rules on floor decorum, floor conduct, badges, and visitors. (EFPA 1-A through 1-C).

6. Technical Support: The Exchange will provide Remote Specialists with hardware and software maintenance and support through a third party vendor. The vendor will provide routine service and repairs of the Remote Specialists' equipment. PCX staff will also provide informational support either over the telephone or by e-mail.

7. P/COAST Service Center: The P/COAST Service Center will provide support in answering status inquiries from member firms, Specialist and floor brokers, enters trading corrections; entering "exception" orders that would otherwise be defaulted from the MFI (e.g., order with special settlements and orders for non-multiply-listed stocks); and general assistance during fast markets.

8. ITS Staff Support: Remote Specialists will receive the same ITS Staff support as Registered Specialists. Exchange staff will provide support by telephone, fax or e-mail, including; responding to complaints and facilitating problem resolution (e.g., where trade-throughs are alleged); responding to general inquiries; performing ITS trade corrections; coordinating with Securities Industry Automation Corporation in response to system problems; processing trading

halt requests and instructions; and providing general support for P/COAST ITS functions.

9. PCX Surveillance: The Exchange believes that its current surveillance procedures and automated reports already cover the vast majority of remote trading surveillance issues, including priority violations, frontrunning, and other rule violations. Exchange staff will communicate telephonically with the Remote Specialist during the course of the trading day to conduct routine surveillance activities or to convey ruling of Floor Officials or the EFTC affecting the Remote Specialist. With regard to surveillance to assure that remote specialists will be present throughout the trading day, the Exchange believes that this can be conducted partly by confirming that the Remote Specialist is maintaining two-sided markets.

The Exchange also expects to develop a report to identify instances in which a Remote Specialist fails to input quotes, and to conduct "spot" checks by calling or visiting Remote Specialists at their locations.

10. Communications with Floor Officials: Remote Specialists will communicate by telephone with Floor Officials in particular rulings.

11. Post Cashiering: The Post Cashiering Department will maintain telephonic and other communication with the Remote Specialist to verify money settlement; to activate specialist lines of credit; to initiate or re-transmit "buy-ins" for failed trades; to address issues regarding specialist post capital requirements; and otherwise to resolve question and problem on back office functions of trade clearance and settlement.

12. PCX Administrative Information—Bulletins and Reports: The Exchange will install an electronic mechanism to distribute routine reports, bulletins and memoranda that are distributed by PCX staff. Prior to the opening, and in some cases during the trading day, the Exchange will disseminate the following reports to the Remote Specialists: the Trade Blotter, Security Ledgers, Bulletins, MIS Reports, SPE Reports, and other documents. Other PCX bulletins and memoranda, as well as business and personal mail, will be forwarded to the Remote Specialists as appropriate.

13. Disaster Recovery/Contingency: As noted previously in the section on "Technical Support," third party vendors will provide Remote Specialists with routine service and repairs of hardware and software. In addition, the remote operation will have a

configuration that includes backup capabilities and on-site resources in the event of local system or telecommunication problem or disaster. However, if a Remote Specialist's service is interrupted and cannot be promptly restored, PCX staff will either re-route the Remote Specialist's order flow to a Specialist who is affiliated with the Remote Specialist or will provide sufficient support and assistance to ensure that the Remote Specialist is adequately informed of the status of market and marketable limit orders that are active, so that the Remote Specialist can provide directions for their handling.

(b) *Basis.*

The Exchange believes the proposed rule change is consistent with Section 6(b) ⁶ of the Act, in general, and furthers the objectives of Section 6(b)(5),⁷ in particular, in that it is designed to perfect the mechanisms of a free and open market, to promote just and equitable principles of trade, to facilitate transactions in securities, and in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with Section 11A(a)(1)(B) of the Act, which states that new data processing and communications techniques create the opportunity for more efficient and effective market operations.

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

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

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

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

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

Within 35 days of the 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 proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of 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 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-98-41 and should be submitted by March 12, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

[License No. 05/05-0237]

Bayview Capital Partners, L.P.; Notice of Issuance of a Small Business Investment Company License

On June 19, 1998, an application was filed by Bayview Capital Partners, L.P., at 641 East Lake Street, Suite 230, Wayzata, MN 55391, the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA

issued License No. 05/05-0237 on December 31, 1998, to Bayview Capital Partners, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 11, 1999.

Don A. Christensen,

Associate Administrator For Investment.

[FR Doc. 99-4046 Filed 2-18-99; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[License No. 01/71-0373]

Caduceus Capital Health Ventures, L.P.; Notice of Issuance of a Small Business Investment Company License

On April 21, 1998, an application was filed by Caduceus Capital Health Ventures, L.P. at 101 Arch Street, Suite 1950, Boston, MA 02110 with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/71-0373 on December 18, 1998, to Caduceus Capital Health Ventures, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 11, 1999.

Don A. Christensen,

Associate Administrator For Investment.

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SMALL BUSINESS ADMINISTRATION

[License No. 04/04-0275]

Capital International SBIC, L.P.; Notice of Issuance of a Small Business Investment Company License

On July 10, 1998, an application was filed by Capital International SBIC, L.P., at One S.E. Third Avenue—22nd Floor, Miami, FL 33131, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 17 CFR 200.30-3(a)(12).