

Rule 906, if the Exchange determines that material news is disclosed between 4:00 p.m. and 5:00 p.m., such as news about a corporate development, the Exchange will cancel orders received in Crossing Session 1 and will preclude the entry of any subsequent orders. However, in the circumstances outlined above, it is the Exchange's view that a good faith negotiation tied to establishing the closing price should not be affected by a subsequent event which "halts" trading.

Therefore, the Exchange proposes to amend NYSE Rules 903 and 906 to permit trades for the account of a specialist and a member, member organization or a non-member to be executed immediately when entered into Crossing Session 1, not at 5:00 p.m., regardless of whether the Exchange has determined that all other Crossing Session 1 orders be canceled and precluded from entry. In addition, the Exchange proposes to require a specialist to obtain Floor Official approval for the entry of his or her order into Crossing Session 1 if such order is not to be at the risk of the market, *i.e.*, it will be executed immediately and will not be precluded from entry because of a trading "halt." The Exchange believes this requirement will help to insure that orders which are intended to offset the specialist's participation at the close have been reflected when the closing price was established. Other coupled orders would continue to be executed at 5:00 p.m., subject to the stock not being withdrawn from Crossing Session 1. The Exchange believes that retaining this provision for other coupled orders is appropriate for the protection of investors who may not be aware of the corporate development.

Under the proposal, total executed volume for coupled orders which are executed either immediately upon entry or at 5:00 p.m. will be reported to the tape as a single print, and will continue to be reported as "sold."

Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission finds the proposal is consistent with Section 6(b)(5) of the Act,⁶ which requires that an Exchange promulgate rules that are designed to promote just and equitable principles of

trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange's proposed amendment to NYSE Rule 902 should allow a specialist to increase his or her participation at the close in anticipation of trading with a member or member organization in Crossing Session 1, thereby resulting in a more orderly close during periods of extraordinary volatility.

The Exchange also proposes to amend NYSE Rules 903 and 906 to permit trades for the account of a specialist and a member, member organization or a non-member to be executed immediately when entered into Crossing Session 1, rather than at 5:00 p.m. The amendment will allow such trades to be executed immediately when entered into Crossing Session 1, regardless of whether the Exchange has determined that all other Crossing Session 1 orders in a particular security be canceled and precluded from entry. The proposal also will require a specialist to obtain Floor Official approval for the entry of his or her order into Crossing Session 1 if such order is not to be executed immediately and will not be precluded from entry because of a trading "halt." The Exchange has represented that this amendment is based on the premise that a specialist involved in a good faith renegotiation tied to establishing the closing price should not have his or her trades remain unexecuted if a subsequent event "halts" trading in the security.

The Commission finds that the Exchange's proposed amendments to NYSE Rules 903 and 906 should help to insure that orders which are intended to offset a specialist's participation at the close have been reflected when the closing price was established, resulting in a more orderly close. Such provisions are consistent with Section 6(b)(5),⁷ which requires the rules of an Exchange be designed 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.

The Commission further finds that retaining the provision requiring other coupled orders to continue to be executed at 5:00 p.m., subject to the stock not being withdrawn from Crossing Session 1, as appropriate under Section 6(b)(5) of the Act,⁸ which requires an Exchange's rules be designed to protect investors and the public interest. An investor, after having

entered an order into Crossing Session 1, may be unaware of a corporate development which could have substantial impact on the price of a security. Retaining the provision which requires other coupled orders to be executed at the close of Crossing Session 1 will help to ensure that investors who are unaware of corporate news will be adequately protected, should the corporate news have an unfavorable impact on the price of the stock.⁹

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NYSE-99-31) is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42767; File No. SR-PCX-99-07]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to Its Competing Specialist Program

I. Introduction

On March 1, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to implement a competing specialist program. The

⁵ The Commission, in granting approval, notes that Floor Officials should carefully review specialist requests to enter these types of trades into Crossing Session 1. In particular, Floor Officials should consider the frequency with which particular specialists request to use this rule, and whether there have been any instances or prior problems associated with a particular specialist's use of this rule. For example, Floor Officials should consider whether there have been occasions in which there were significant discrepancies between the execution price contemplated by a member firm and the price actually received as a result of the Crossing Session 1 transaction.

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

⁸ 15 U.S.C. 78s(b)(1).

⁹ 17 CFR 240.19b-4.

⁵ In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ *Id.*

⁸ *Id.*

Exchange amended the proposed rule on April 22, 1999.³

The Commission published notice of the proposed rule change in the **Federal Register** on April 30, 1999.⁴ The Commission received nine comments. The Exchange filed a second amendment on May 8, 2000.⁵ For the reasons discussed below, the Commission is approving the proposed rule change as amended.

II. Description of the Proposal

The Exchange proposes to implement a competing specialist program to allow multiple specialists to make markets in equity securities traded on the Exchange. Currently, two specialists continuously make markets in most equity securities traded on the Exchange. The proposal would allow one or more competing specialists to make markets in a security, in addition to the existing "regular specialists."⁶ Like regular specialists, competing specialists in a security will be required to make a two-sided market and will be subject to the rights and responsibilities of regular specialists, subject to certain exceptions discussed below. By allowing additional specialists to make markets in the most actively traded stocks, the Exchange expects that its competing specialist proposal will attract additional order flow to the Exchange. The Exchange also believes that a competing specialist program will result in greater competition, tighter bid-ask spreads, and greater depth and liquidity on the PCX.

³ See Letter from Michael Pierson, Director, Regulatory Policy, PCX, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation ("Division"), Commission, dated April 22, 1999 ("Amendment No. 1"). Amendment No. 1 made numerous technical and descriptive changes to the filing.

⁴ Securities Exchange Act Release No. 41327 (April 22, 1999), 64 FR 23370 (April 30, 1999) ("Notice").

⁵ See Letter from Michael Pierson, Director, Regulatory Policy, PCX, to Belinda Blaine, Associate Director, Division, Commission, dated May 8, 2000 ("Amendment No. 2"). Amendment No. 2 made technical changes to reflect PCX's recent restructuring of its equity trading system and rules, discussed recent technology upgrades relevant to this filing, and made clarifying changes to certain rules.

⁶ Under the proposal, a "regular specialist" is a specialist registered with the PCX in a security, other than a competing specialist in that security. Although PCX rules do not specify a minimum number of regular specialists in a security, as a practical matter there must be at least one regular specialist in a security because regular specialists have certain duties not shared by competing specialists.

A. PCX's Current Order Routing Procedures

Currently, the P/COAST trading system⁷ typically sends incoming orders to a particular specialist based on arrangements that the specialist has made with the firm that sent the order to the exchange. If a firm has not designated a particular specialist to receive the order, the Exchange sends the order to one of the two regular specialists on an alternating basis.⁸ A specialist may execute market orders it receives against the specialist's own account, unless the Exchange's Consolidated Limit Order Book ("CLOB") contains a limit order that is priced at the National Best Bid or Offer ("NBBO").⁹ If the CLOB contains a limit order priced at the NBBO, and a specialist receives a market or marketable limit order that would match against the order that has priority on the CLOB, the specialist typically must execute the incoming order against the CLOB order, unless the specialist retains the order by executing the order against its own account at a price better than the order that has priority on the CLOB.¹⁰ Other than requiring a specialist to give priority to CLOB orders, the existing system permits a specialist to execute its designated order flow at the NBBO or better whether or not the specialist's quoted bid or offer was priced at the NBBO when it received the order.

B. Proposed Order Routing Procedures

Under the Exchange's competing specialist proposal, if one specialist disseminates a bid or offer at the NBBO that has time priority on the Exchange, and another specialist (a "contra specialist") in that security receives a market or marketable limit order that would match against the first specialist's bid or offer, then the specialist with time priority at the

⁷ P/COAST, the "Pacific Computerized Order Access System," is the Exchange's communication, order routing, and execution system for equity securities. See Rule 7.70.

⁸ Firms may also send orders to floor brokers for representation on the exchange. Currently, floor brokers are not required to enter orders they receive into the P/COAST system, and they can direct orders they represent to either specialist post handling that security.

⁹ The Exchange has proposed changing several rules to reflect its implementation of the CLOB. See Securities Exchange Act Release No. 41304 (April 16, 1999), 64 FR 22888 (April 28, 1999).

¹⁰ Under certain limited circumstances, a specialist can execute an order against its own account even if a same-priced or better-priced order is on the CLOB. For example, because an all-or-none order in the CLOB that is priced at or better than the NBBO cannot execute against an incoming market order that is smaller than the all-or-none order, a specialist may execute the market order against its own account.

NBBO would have the right to execute the incoming market or marketable limit order, unless the specialist that receives the order executes the entire order at a price better than the NBBO. If multiple specialists are quoting at the NBBO, then each of those specialists' quotes must be filled in time priority sequence before a specialist without time priority can execute an order against its own account at the NBBO, unless the specialist who receives the order provides price improvement. As today, a specialist could not execute an order against its own account at the NBBO until eligible orders in the CLOB priced at the NBBO are filled. The priority provisions would apply to trading in all securities that have more than one specialist on the PCX, including all securities in which two regular specialists make a market, whether or not one or more competing specialists also trades the security.

To implement these changes, PCX proposes to modify Rule 7.19(e)(1), which governs priority of bids and offers.¹¹ The rule currently provides, among other things, that bids and offers that are made first at a particular price are entitled to priority, and that a member may maintain priority by giving the order to a specialist. The existing language reflects a time when floor brokers played a more active role on the Exchange than is currently the case. The proposed rule change would add language stating that specialist bids and offers must always yield to agency orders represented at the same price, unless otherwise excepted by the rules of the "Corporation," meaning PCX Equities, Inc.¹² The Exchange states that the exception refers to odd lot orders, orders that provide for settlement other than in three days (non-regular way) and conditional orders (such as all-or-

¹¹ In the Notice, Rule 7.19(c)(1) was identified as Rule 5.8(c). PCX renumbered its equity trading rules as part of a restructuring plan that the Commission recently approved. See Securities Exchange Act Release No. 42759 (May 5, 2000).

¹² Under the PCX equities trading restructuring plan, the Exchange is delegating the responsibility to operate PCX's equities trading system to PCX Equities, Inc. Rule 1.1(f) of the revised rules states that the term "Corporation" means PCX Equities, Inc.

Amendment No. 2 modified the language of several rules published in the Notice to replace references to the "Exchange" with references to the "Corporation."

Under the restructuring plan, firms that trade equities on PCX now may hold Equity Trading Privileges ("ETP") or Automated System Access Privileges. Accordingly, Amendment No. 2 also replaced references to "member" or "firm" with references to "ETP Holder" or "ETP Firm."

none orders, stop orders and market-on-close orders).¹³

The Exchange also proposes to add new Rule 7.19(c)(2), governing priority among specialists. The rule would provide that if two or more specialists are quoting at the NBBO and there are no agency orders being represented at that price, the earliest specialist bid or offer at that price will have time priority and be eligible for an execution first up to its specified size.¹⁴ If no specialists are quoting at the NBBO, a specialist representing an order may execute that order at the NBBO or better.¹⁵

In addition, the Exchange proposes to change other rules to describe how the P/COAST system will route orders in the competing specialist environment. An addition to Rule 7.70(a),¹⁶ which generally describes P/COAST, states that the Corporation will route orders to a specialist in accordance with arrangements that the customer has made with that specialist. Absent such arrangements, the Corporation will alternate orders between the two regular specialists.¹⁷ The Exchange also proposes to add new Rule 7.70(h)¹⁸ to explain that the P/COAST system will provide that specialists who are quoting with time priority at the NBBO will have the right to execute incoming orders at the NBBO, up to the size of their quote. A specialist designated to receive an order, however, could retain the order even if the specialist's quote did not have priority at the NBBO, if the specialist improve the price.¹⁹ The Exchange estimates that it will

¹³ The proposed rule change would also remove a reference to individual floors. The filing further proposes eliminating a reference to the "specialist's book" that is inconsistent with the Exchange's use of a CLOB.

¹⁴ But see Rule 7.70, discussed below.

¹⁵ Proposed Commentary .02 to these rules defines the term "NBBO" as the national best bid or offer made by an Intermarket Trading System ("ITS") participant. As set forth in the Notice, proposed Commentary .03 to these rule provided for specialists to manually intervene with orders to assure that the priority rules would be maintained, until the Exchange reprogrammed the P/COAST system to implement the priority rules. Amendment No. 2 eliminated proposed Commentary .03, which is now unnecessary.

¹⁶ In the Notice, Rule 7.70(a) was identified as Rule 5.25(a).

¹⁷ But see note 36.

¹⁸ In the Notice, Rule 7.70(h) was identified as Rule 5.25(h).

¹⁹ Amendment No. 2 clarified Rule 7.70(a) by stating that non-designated orders would alternate among the two regular specialists. The amendment also changed proposed Rule 7.70(h) to eliminate an outdated reference to specialists interacting with orders by using electronic orders or by vocalizing bids and offers, to eliminate the inference that a specialist who has time priority at the NBBO could retain priority when increasing the size of its quote, to make a clarifying change, and to eliminate language suggesting that the rule described a "future modification" of P/COAST.

implement this change to P/COAST by September 29, 2000.²⁰

C. Other Provisions of the Competing Specialist Program

The Exchange proposes to describe the competing specialist program by replacing the existing text of Rule 7.30(a)²¹ with new language. Specifically, proposed Rule 7.30(a)(1) would provide that only registered specialists may act as competing specialists. Similarly, proposed Rule 7.30(a)(3) would provide that all applicant competing specialists must be registered as ETP Holders or ETP Firms with the Corporation, must meet capital requirements set forth in the Commission's and the Corporation's rules, must conform to all other performance requirements and standards set forth in the rules of the Corporation, and are subject to all the rules and policies applicable to a regular specialist, unless otherwise indicated. The Commission notes that applicable rules include, among other things, Rule 7.24(a), which makes a specialist responsible for the execution of all orders that he has accepted. Proposed Rule 7.30(a)(3) also would provide that applicants who control, are controlled by, or are under common control with another person engaged in a securities or related business must have and maintain appropriate information barriers as approved by a self-regulatory organization.

Proposed Rule 7.30(a)(2) would provide that applications for registration as a competing specialist must be directed to the Corporation in writing and must list in order of preference the issue(s) in which the applicant intends to compete.²² The Corporation would consider several factors when reviewing an application: financial capability; adequacy of staffing; performance evaluations; whether the allocation would increase competition in the issue and/or increase order flow to the Corporation; and any objections of the regular specialists in the issue.²³

²⁰ See Amendment No. 2. The Exchange further states that it will not permit specialists to act as competing specialists until the Exchange has implemented this systems change.

²¹ In the Notice, Rule 7.30(a) was identified as Rule 5.35(a).

²² As proposed in the Notice, several portions of Rule 7.30(a) (identified as Rule 5.35(a) in the Notice) would have delegated certain responsibilities regarding competing specialists to the Exchange's Equity Floor Trading Committee ("EFTC"). Amendment 2 replaced reference to the EFTC with references to the "Corporation." Amendment No. 2 also replaced references to the Exchange's Board of Governors with references to the Corporation's Board of Directors.

²³ In Amendment No. 2, the Exchange added language to Rule 7.30(a)(2) stating that the denial of

Proposed Rule 7.30(a)(4) also states that applicant organizations must demonstrate to the Corporation that they have adequate staffing.

Proposed Rule 7.30(a)(5) would provide that order flow not specifically designated for a competing specialist must be routed to a regular specialist, but that an ETP Firm affiliated with a specialist in an issue must designate all PCX order flow in that issue to that specialist.²⁴ Commentary .01 to proposed Rule 7.30(a) explains that this is designated to prevent ETP Firms affiliated with a specialist from routing non-profitable orders to another (unaffiliated) specialist when market conditions are unfavorable.²⁵

Proposed Rule 7.30(a)(6) would provide that if a firm wishes to withdraw from acting as a competing specialist in a security, it must notify the Corporation at least three business days prior to the desired effective date of such withdrawal, except when notice is not practicable. Also, proposed Rule 7.30(a)(7) would provide that any competing specialist that withdraws its registration in an issue will be barred from applying to compete in that same issue for a period of 90 days following the effective date of withdrawal.

Proposed Rule 7.30(a)(8) would provide that competing specialists must cooperate with the regular specialists regarding openings and reopenings to ensure that they are unitary.²⁶

Proposed Rule 7.30(a)(9) would require that if a competing specialist receives a limit order that is not immediately executable, the competing specialist must enter the order into the CLOB and execute it according to the Corporation's rules on time priority.

an application to register as a competing specialist may be appealed pursuant to Rule 10.14(a), which provides a right of appeal if the Corporation denies an application to serve as a specialist.

²⁴ As originally published in the Notice, proposed Rule 7.30(a)(5) (identified as Rule 5.35(a)(5) in the Notice) and Commentary .01 only applied to firms affiliated with competing specialists. Amendment No. 2 modified the proposal to also encompass firms affiliated with regular specialists.

²⁵ As discussed above, however, Rule 7.19(c)(2), would provide that if another specialist is quoting at the NBBO and clearly has established priority on the PCX, then that specialist would have priority to fill the order.

²⁶ Competing specialists who wish to use ITS to send preopening indications of interest to the primary market in a security must send those preopening indications through a regular specialist who is an ITS Coordinator. During trading hours, competing specialists at times will be able to send outbound ITS commitments and execute incoming ITS commitments independently and without the need for a regular specialist to clear the activity; at other times an ITS Coordinator will need to be involved. See Securities Exchange Act Release No. 42708 (April 20, 2000), 65 FR 25780 (May 3, 2000). The Exchange states that competing specialists will not be permitted to act as an ITS Coordinator.

This rule reiterates certain of the order routing principles discussed above, and clarifies that they apply to competing specialists as well as regular specialists. Commentary .02 to proposed Rule 7.30(a) further states that incoming orders are first executed against any matching limit orders on the Corporation, that all market and marketable limit orders are exposed to a specialist for possible price improvement before execution, and that specialists may execute their designated order flow unless there is a matching limit order eligible for execution on the Corporation, or another specialist has a bid or offer with time priority at the NBBO.

Proposed Rule 7.30(a)(10) would provide that all suspensions of trading must be coordinated through a regular specialist. The exchange is also codifying the role of competing specialists in trading halts in an amendment to Rule 7.46(b).²⁷ Rule 7.46(b)(1) currently provides, in part, that when the flow of orders in a security traded on both floors does not allow either specialist to maintain an orderly market in such security, either specialist may suspend trading, and the specialist who suspends trading must notify the specialist on the other floor who shall also suspend trading. Rule 7.46(b)(2) contains similar provisions for securities traded only on one floor. The Exchange is proposing to amend both rules to require notification of all specialists trading the security. The Exchange also is proposing to add a commentary to the rule stating that competing specialists in an issue may not suspend trading, and that all suspensions of trading must be coordinated through a regular specialist. Finally, the Exchange proposes to extend its rules on circuit breakers, codified in Rule 7.47(a)-(b), to competing specialists.

The Exchange is also proposing to add Rule 7.30(a)(11), which would provide that the registration of any competing specialist may be suspended or terminated by the Corporation upon a determination of any substantial or continued failure by that competing specialist to engage in dealing in accordance with the bylaws, rules and procedures of the Corporation.²⁸

Under proposed Rule 7.30(a)(12), the Corporation will establish an effective date for competition to commence, but the Corporation will limit competition during the initial phase as follows: (a)

²⁷ In the Notice, Rule 7.46(b) was identified as Rule 5.31(b).

²⁸ Amendment No. 2 revised a reference to the constitution and rules of the Exchange.

any registered specialist may apply to become a competing specialist in a number of issues, not to exceed ten, that has been previously established for the program by the Board of Directors; (b) the Board of Directors will determine the total number of competing specialists permitted on the Corporation; and (c) the Corporation will conduct a quarterly review of each competing specialist, and in conducting such reviews, the Corporation may consider, among other things, the five factors that it considers when reviewing an application for registration as a competing specialist.²⁹

Proposed Rule 7.30(a)(13) would provide that once the program has operated for one year, the Corporation will evaluate it and make a recommendation to the Board of Directors as to whether to continue the program or to modify its terms.³⁰

III. Summary of Comments

The Commission received nine comment letters, all of which were from individuals associated with PCX firms, and all of which were favorable.³¹ The commenters stated that the proposal would encourage quote competition, improve execution speed and quality, improve customer service, and provide

²⁹ The purpose of these reviews is to assure that the new program will be operated appropriately, particularly in its early phase, so that any problems can be identified and corrected.

³⁰ In the Notice, the Exchange proposed deleting older rules for competing specialists, which were codified as Rules 5.35(a)-(i). The Exchange had not applied those rules since approximately 1977. The Exchange recently deleted those rules as part of its equity trading rule restructuring.

³¹ See Letters from: Harvey Cloyd, President, Harvey Cloyd & Co., dated April 27, 1999; Daniel Turner, President, Rubicon Securities, Inc., dated April 27, 1999; David Hultman, Vice President, D.A. Davidson & Co., dated May 6, 1999 ("Hultman/Davidson letter"); Thomas Stephenson, received May 14, 1999; Walter Reinsdorf, D.A. Davidson & Co., dated May 20, 1999 ("Reinsdorf/Davidson letter"); Arnold Staloff, President, Bloom Staloff, dated May 28, 1999; Ronald Melville, Ronald E. Melville, Inc., dated May 25, 1999; Dennis LoPresti, Senior Vice President, Wedbush Morgan Securities, dated May 26, 1999; and David Gale, President, Delta Dividend Group, Inc., dated June 16, 1999.

Four of the letters were virtually identical, stating that the proposal would encourage quote competition without interfering with specialists' efforts to achieve price improvement, would result in faster executions due to increased liquidity, and would allow the PCX to keep pressure on the primary market. See Wedbush Morgan letter, Melville letter, Bloom Staloff letter, Reinsdorf/Davidson letter. Other commenters emphasized that the proposal would promote the quality of executions. See Delta letter, Stephenson letter. Other commenters said that the proposal would allow specialists to provide improved service to customers and add depth to the national market system. See Hultman/Davidson letter, Rubicon letter, Cloyd letter.

additional competition to the primary market.

IV. Discussion

After having carefully reviewed the proposal, the Commission finds that the proposed rule change is consistent with the requirements of Sections 6(b)(5) and 11A of the Act.³² Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to reflect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.³³ Section 11A of the Act promotes, among other things, the development of a national market system for securities to assure economically efficient execution of securities transactions, and fair competition among brokers and dealers, among exchange markets, and markets other than exchange markets.³⁴

The Commission finds that the proposal is consistent with those sections of the Act. The proposal has the potential to enhance competition and increase liquidity by permitting multiple specialists to compete for order flow on the Exchange, which may lead to enhanced opportunities for price improvement and improved services for customers.

In 1996, the Commission granted permanent approval to the Boston Stock Exchange's ("BSE's") competing specialist program.³⁵ The BSE's program is similar to the PCX's proposal in that both programs permit multiple specialists to make markets in a security, and both programs restrict a specialist's ability to execute its designated order flow if customer orders have priority on the exchange's consolidated limit order book or if other specialists are quoting with time priority at the NBBO. The Commission approved the BSE competing specialist program on the grounds that the BSE's program was designed to improve market making and increase liquidity and competition on BSE's trading floor. The Commission also recognized that although the BSE program had the potential to increase internalization of orders, it was not necessarily inconsistent with a broker-dealer's duty to seek best execution of customer limit orders. The Commission emphasized, however, that broker-dealers could not

³² In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³³ 15 U.S.C. 78f(b)(5).

³⁴ 15 U.S.C. 78k-1.

³⁵ Securities Exchange Act Release No. 37045 (March 29, 1996), 61 FR 15318 (April 5, 1996).

automatically route their order flow to an affiliated BSE specialist without engaging in a regular and rigorous evaluation of execution quality.

The Commission similarly finds that the PCX proposal has the potential to enhance competition consistent with Sections 6(b)(5) and 11A of the Act. Permitting additional specialists to make markets in each stock on the PCX could potentially bring increased liquidity to the Exchange and could allow additional customer limit orders to benefit from the protections provided by the CLOB. Moreover, the PCX proposal's order routing provisions should give specialists an incentive to improve their quotations by providing that a specialist quoting with time priority at the NBBO would execute incoming orders unless the designated specialist retains the order by providing price improvement.³⁶ Finally, allowing additional specialists to make markets on the PCX should also promote competition among PCX specialists in the rates of price improvement they provide, and in the quality of their limit order execution guarantees and other services.

The Commission reiterates that while an automated order routing environment is not necessarily inconsistent with the achievement of best execution, broker-dealers choosing where to automatically route orders must assess periodically the quality of competing markets to assure that order flow is directed to markets providing the most advantageous terms for their customers' orders. Thus, a broker-dealer may not simply employ default order routing to an affiliated PCX specialist without undertaking such an evaluation on an ongoing basis. A broker-dealer sending orders to the PCX must satisfy itself that its routing decision is consistent with its best execution obligations, irrespective of the firm's desire to internalize order flow through an affiliated PCX specialist. To reach this conclusion, the broker-dealer must rigorously and regularly examine the executions likely to be obtained for

³⁶ The Commission finds that it is generally appropriate for the Exchange to route non-designated orders to a regular specialist, given that regular specialists have market making responsibilities not shared by the competing specialists. That provision is subject to the requirement that a specialist quoting with time priority at the NBBO has a right to execute incoming orders, regardless of which specialist was designated to receive the order, absent price improvement.

The Commission notes that the Exchange has committed to implement systems changes, within eighteen months of the Commission's approval of this program, so that incoming orders will be automatically routed to the specialist with time priority at the NBBO.

customer orders in the different markets trading the security, in addition to any other relevant considerations in routing customer orders.³⁷

Several other proposed rule changes govern the operations and responsibilities of competing specialists. The Commission finds that those proposed rules would promote fair and orderly markets by providing that competing specialists meet all requirements applicable to specialists on the exchange, that competing specialists follow all rules applicable to regular specialists (with certain exceptions), that competing specialists maintain barriers against the disclosure of information to affiliates, and that they cooperate with regular specialists during openings, suspensions, and reopenings of trading.

The remaining proposed rule changes govern the qualifications and selection of competing specialists and the implementation of the competing specialist program. The Commission finds that those proposed rule changes set forth reasonable requirements that will permit the Exchange to implement the program in a fair and efficient manner. The proposed rule changes would permit the Exchange to evaluate applications to serve as competing specialist using factors that are relevant and appropriate (e.g., financial capability, adequacy of staffing, and performance evaluations) to the question of whether an applicant is capable of making a market in a stock and whether adding specialists to a stock will benefit the public.³⁸ The proposed rules should also promote specialist continuity and minimize disruptions to the PCX market by restricting a firm's ability to repeatedly start and cease making markets as a competing specialist in a security. The proposed rules set forth a phase-in plan that should help the Exchange implement the competing specialist program with a minimum of disruption to existing operations.

The Commission believes it is consistent with the Act to allow the PCX to implement its competing specialist

³⁷ The Commission recognizes that the proposed competing specialist program has the potential to increase internalization. The Commission will monitor the impact of the competing specialist program as part of its ongoing review of market fragmentation. See Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000).

³⁸ The Commission expects that the Exchange will consider all permissible factors in assessing applicants and will not be unduly influenced by objections of the regular specialist in the issue. Indeed, the Exchange may not reject an application to be a competing specialist solely because of the objections of the regular specialist in the issue.

program on a permanent basis. Nevertheless, Commission approval of the PCX's competing specialist program is not a determination by the Commission that mere default routing by a firm to its affiliated competing specialist is consistent with a firm's best execution obligations. As noted above, a broker-dealer associated with a competing specialist must still ensure that its order routing decisions are consistent with its best execution obligations and assess periodically the quality of competing markets to assure that order flow is directed to markets providing the most advantageous terms for its customers' orders.

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 2 renumbered several rules, made necessary technical changes to reflect the recent approved restructuring of PCX's equities trading, and clarified aspects of the proposed amendments to the Exchange's priority rules. The amendment eliminated a proposed commentary to the priority rules that provided for specialists to manually intervene with orders, because the commentary is unnecessary in light of P/COAST improvements that the Exchange is implementing. The amendment modified proposed competing specialist rules to state that all firms affiliated with specialists must send their PCX orders to that specialist (not just firms affiliated with competing specialists). The amendment also clarified that firms whose applications to serve as competing specialists are denied would have the right of appeal. Finally, Amendment No. 2 sets forth the Exchange's commitment to reprogram the P/COAST system within eighteen months of the competing specialist program's approval, so that the P/COAST system would route incoming orders directly to a specialist who is quoting at the NBBO with time priority. Those modifications were clarifying in nature and did not change the substance of the Exchange's proposal, as it was published in the Notice.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether it 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 Exchange. All submissions should refer to File No. SR-PCX-99-07 and should be submitted by June 6, 2000.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change SR-PCX-99-07, including Amendment No. 2, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-12272 Filed 5-15-00; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

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

Notice is hereby given that TD Origen Fund, L.P. ("TD Origen"), 150 Washington Avenue, Suite 201, Santa Fe, New Mexico 87501, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), TD Javelin Capital Fund, LP ("TD Javelin"), 2850 Cahaba Road, Suite 240, Birmingham, Alabama 35223, a Federal Licensee under the Act, TD Javelin Capital Fund II, LP ("TD Javelin II"), 2850 Cahaba Road, Suite 240, Birmingham, Alabama 35223, a Federal Licensee under the Act, and TD Lighthouse Capital Fund, LP ("TD Lighthouse", and together with TD Javelin, TD Javelin II, and TD Origen, the "Funds"), 303 Detroit Street, Suite 301, Ann Arbor, Michigan 48104, an applicant for a Federal license under the Act, in connection with the financing of a small concern, are seeking 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 (2000)). The Funds propose to provide

equity financing to TransMolecular, Inc. ("TMI"), 2850 Cahaba Road, Suite 240, Birmingham, Alabama 35223. The financing is contemplated for product development and working capital.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because TD Javelin, an Associate of the Funds, currently owns greater than 10 percent of TMI and therefore TMI is considered an Associate of each of the Funds as defined in Sec. 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: April 26, 2000.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 00-12185 Filed 5-15-00; 8:45 am]

BILLING CODE 8025-01-U

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Emergency Consideration Request

In compliance with Public Law 104-13, the Paperwork Reduction Act of 1995, the Social Security Administration (SSA) is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is requesting emergency consideration from OMB by 06/02/2000 of the information collection listed below.

1. Annual Earning Test-Direct Mail Follow-up Program Notices-0960-0369. In 1997, as part of the initiative to reinvent government, SSA began to use the information reported on W-2's and self-employment tax returns to adjust benefits under the earnings test rather than have beneficiaries make a separate report, which often showed the same information. As a result, beneficiaries under full retirement age (FRA) complete forms SSA-L9778-SM-SUP, SSA-L9779-SM-SUP and SSA-L9781-SM (the "Midyear Mailer" forms) under this information collection.

With the passage of the Senior Citizen Freedom to Work Act of 2000, the annual earnings test (AET) at FRA was eliminated. As a result, SSA designed 2 new Midyear Mailer forms, the SSA-L9784-SM and the SSA-L9785-SM, to request an earnings estimate in the year of FRA for the period prior to the month of FRA. Social Security benefits may be

adjusted based on the information provided and this information is needed to comply with the recent change to the law. Consequently, the Midyear Mailer program has become an even more important tool in helping SSA to ensure that Social Security payments are correct. Respondents are beneficiaries who must update their current year estimate of earnings, give SSA an estimate of earnings for the following year and an earnings estimate (in the year of FRA) for the period prior to the month of FRA.

Number of Respondents: 315,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 52,500 hours.

You can obtain a copy of the collection instruments and/or OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965-4145, or by writing to him. Written comments and recommendations regarding the information collection should be submitted to the SSA Reports Clearance Officer and to the OMB Desk Officer at the addresses at the end of this document. Comments and recommendations should be received before June 2, 2000.

(OMB Address)

Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503.

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1-A-21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

Dated: May 9, 2000.

Frederick W. Brickenkamp,

Reports Clearance Officer.

[FR Doc. 00-12323 Filed 5-15-00; 8:45 am]

BILLING CODE 4190-29-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25-XX, Sustained Engine Imbalance

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular (AC) 25-XX and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which provides methods acceptable to

³⁹ See 17 CFR 200.30-3(a)(12).