

by placing 18 service delivery platforms ("SDPs") on each T1 circuit.<sup>4</sup>

The proposed rule change was published for comment in the **Federal Register** on October 28, 2002.<sup>5</sup> The Commission received no comments on the proposal.

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 association.<sup>6</sup> The Commission finds specifically that the proposed rule change promotes the objectives of Section 15A(b)(6) of the Act,<sup>7</sup> which requires, among other things, that the rules of the association be designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, because the increased efficiency of Nasdaq's T1 circuits, which will expand the available capacity of Nasdaq's Enterprise Wide Network II ("EWN II") should enhance Nasdaq's ability to keep pace with future growth in trading volumes.

In addition, the Commission finds that the proposed rule change is consistent with Section 15A(b)(5) of the Act<sup>8</sup> which requires that the rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

The Commission notes that this fee applies to members and non-members equally.<sup>9</sup>

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (File No. SR-NASD-2002-121) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**BILLING CODE 8010-01-P**

<sup>4</sup> Currently, the Additional Circuit/SDP Charge only applies if a subscriber does not place 6 SDPs on each T1 circuit.

<sup>5</sup> See Securities Exchange Act Release No. 46696 (October 21, 2002), 67 FR 65821 (October 28, 2002) (SR-NASD-2002-121).

<sup>6</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

<sup>9</sup> See *supra* note 3.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46947; File No. SR-PCX-2002-55]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Regarding Market Maker Quoting Obligations

December 4, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 7, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. On November 8, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to adopt PCX rules 6.37(a)(5) and 6.37(c)(4), and amend commentary .05 to PCX rule 6.37 to require options market makers to vocalize a legal-width, two-sided market for a minimum of 10 contracts whenever a floor broker enters a trading crowd and calls for a market in an option series that is one of the 120 most actively traded equity options.<sup>4</sup>

The text of the proposed rule change appears below. New text is in italics.

\* \* \* \* \*

#### Text of the Proposed Rule Change

*Pacific Exchange, Inc.; Rules of the Board of Governors*

¶4935 Obligations of Market Makers

Rule 6.37(a)—No change.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Steven B. Matlin, Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 7, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the proposed rule change by: (i) Changing the quotation minimum from 20 contracts to 10 contracts; (ii) adding an exception for market makers where a transaction occurs as a result of being assigned contracts by the order book official; (iii) making technical corrections to the rule text; and (iv) offering a basis for requesting accelerated effectiveness for the proposal.

<sup>4</sup> Subject to the conditions set forth in proposed PCX rule 6.37(b)(5)(A)-(D).

(b) Appointment as a Primary Market Maker.—No change.

(1)-(4)—No change.

(5) *Whenever a Floor Broker enters a trading crowd and calls for a market in a particular option series, each Market Maker present at the trading post will be obligated to vocalize a two-sided, legal-width market (pursuant to rule 6.37(b)(1)) for a minimum of 10 contracts. This obligation only applies to:*

(A) *Market Makers who have executed a transaction in the issue, but not those who have been assigned contracts by the Order Book Official pursuant to Commentary .05, on the day of the Floor Broker's call for a market or on the previous business day;*

(B) *Option issues that are ranked in the 120 most actively traded equity options based on the total number of contracts traded nationally as reported by the Options Clearing Corporation. For each current month, the Exchange's determination of whether an equity option ranks in the top 120 most active issues will be based on volume statistics for the one month of trading activity that occurred two months prior to the current month;*

(C) *Non-broker-dealer orders; and*  
(D) *Series not designated as LEAPS (pursuant to rule 6.4).*

(c) In Classes of Option Contracts Other Than Those to Which Appointed.—No change.

(1)-(3)—No change.

(4) *Whenever a Floor Broker enters a trading crowd and calls for a market in a particular option series, each Market Maker present at the trading post will be obligated to vocalize a two-sided, legal-width market (pursuant to rule 6.37(b)(1)) for a minimum of 10 contracts. This obligation only applies to:*

(A) *Market Makers who have executed a transaction in the issue, but not those who have been assigned contracts by the Order Book Official pursuant to Commentary .05, on the day of the Floor Broker's call for a market or on the previous business day;*

(B) *Option issues that are ranked in the 120 most actively traded equity options based on the total number of contracts traded nationally for a specified month based on volume as reported by the Options Clearing Corporation. For each current month, the Exchange's determination of whether an equity option ranks in the top 120 most active issues will be based on volume statistics for the one month of trading activity that occurred two months prior to the current month;*

(C) *Non-broker-dealer orders; and*

(D) Series not designated as LEAPS (pursuant to rule 6.4).

(d)–(f)—No Change.

#### Commentary .01–.04—No Change.

Commentary .05—Whenever a Floor Broker enters a trading crowd and calls for a market in any class and series at that post, each Market Maker present at the post where the option is traded is obligated, at a minimum, to make a market for one contract *except as provided for in rule 6.37(b)(5) and rule 6.37(c)(4)*, at the established price. In addition, the Options Floor Trading Committee may determine that Market Makers in trading crowds shall increase the depth of their markets as set forth in Options Floor Procedure Advice B–12. In the event a Floor Broker is unable to satisfy his order from bids and offers given in the crowd, the Order Book Official may assign one contract to every Market Maker present within the primary zone to assist the Floor Broker in satisfying his order. If a Market Maker at the post either bids lower or offers higher than the established market, such Market Maker shall be obligated to trade one contract at the price quoted by the Market Maker.

\* \* \* \* \*

## 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, as amended, 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 III 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

#### 1. Purpose

The Exchange proposes to modify PCX rule 6.37 to provide that, subject to certain conditions, whenever a floor broker enters a trading crowd and calls for a market, certain market makers present at the trading post will be obligated to vocalize a two-sided, legal-width market for a minimum of 10 contracts. This obligation would apply to: (a) Market makers who have executed a transaction in the issue, but not those who have been assigned contracts by the Order Book Official

pursuant to PCX rule 6.37, commentary .05, on either the day of the floor broker's call for a market or on the previous business day;<sup>5</sup> (b) option issues that are ranked in the top 120 most actively traded equity options; (c) non-broker dealer orders; and (d) series not designated as LEAPS.<sup>6</sup> The proposed rule change would apply to market makers regardless of whether the issue is included in their primary appointment zones.

The Exchange would determine whether an equity option ranks in the top 120 most active, nationally-traded issues, based on volume statistics reported by the Options Clearing Corporation.<sup>7</sup> The list of designated issues will be based on volume statistics for trading activity that occurred two months prior to the current month. For example, February's list of top 120 issues will be based on December's volume, March's list of top 120 issues will be based on January's volume, and so forth. Thereafter, the Exchange will continue to designate the top 120 issues based on a two-month lag time. The Exchange intends to notify its Members of the issues that are designated to be in the top 120 via a regulatory bulletin that will be published at the beginning of each month.

The Exchange represents that the proposed rule change is intended to enhance the quoting obligations of Exchange market makers. Currently, when floor brokers enter a trading crowd and request a market, market makers are only required to make a market for one contract.<sup>8</sup> The Exchange believes that the proposed rule change will also provide greater depth and liquidity to the marketplace, and will therefore benefit the public.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest.

<sup>5</sup> See Amendment No. 1.

<sup>6</sup> See PCX rule 6.4.

<sup>7</sup> The Exchange notes that it intends to use the same procedure for designating the top 120 activity traded issues that it currently uses in designating such issues for purposes of its "shortfall fee." See Securities Exchange Act Release No. 45351 (January 29, 2002), 67 FR 5631 (February 6, 2002) (SR–PCX–2001–51).

<sup>8</sup> See PCX rule 6.37, commentary .05.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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

PCX does not believe that the proposed rule change, as amended, would 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, as amended, 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 Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended; 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, as amended, is consistent with the Act. Specifically, the Commission solicits comments on whether the proposal would have a detrimental effect on competition and liquidity on the Exchange. The Commission notes that the proposal to increase the quote size obligations for Top 120 options would apply to all market makers that have executed a trade on the same or previous day that a floor broker requests a market in a particular Top 120 option. The Commission understands that PCX market makers have continuous market making obligations in those options for which they have a primary appointment.<sup>11</sup> In addition, the Commission understands that PCX market makers are permitted to make markets in option issues that are outside of their primary appointment.<sup>12</sup> Accordingly, the Commission questions whether the proposal to increase market makers' quote size obligations would discourage some market makers from executing transactions in option issues

<sup>11</sup> See PCX rule 6.37(b). See also PCX rule 6.35.

<sup>12</sup> See PCX rule 6.37(c).

that are outside of their primary appointment.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR-PCX-2002-55 and should be submitted by January 3, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02-31401 Filed 12-12-02; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-279 (Sub-No. 4X)]

#### Canadian National Railway Company— Discontinuance of Trackage Rights Exemption—in Niagara County, NY

Canadian National Railway Company (CN) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to discontinue trackage rights over a 0.15-mile portion of trackage owned by Canada Southern Railway Company (CSR) from a point on the international railway bridge at Niagara Falls, milepost 0.15, to a point where the trackage joins the CSX Transportation, Inc. trackage, milepost 0.0, in Niagara County, NY.<sup>1</sup> The line traverses United States Postal Service Zip Code 14305.

CN has certified that: (1) No local traffic has moved over the line for at

least 2 years; (2) any potential overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 14, 2003, unless stayed pending reconsideration. Petitions to stay and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>2</sup> must be filed by December 23, 2002. Petitions to reopen<sup>3</sup> must be filed by January 2, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to CN's representative: Michael J. Barron, Jr., Counsel for Canadian National Railway Company, Canadian National/Illinois Central, 455 North Cityfront Plaza Drive, Chicago, IL 60611-5317.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

<sup>2</sup> Each OFA must be accompanied by the filing fee, which currently is set at \$1,100. See 49 CFR 1002.2(f)(25).

<sup>3</sup> Because this is a discontinuance proceeding, trail use/rail banking and public use conditions are not appropriate. This proceeding is exempt from environmental and historic reporting requirements. CN only intends to discontinue service over the line. Because CN's discontinuance of trackage rights will merely result in the cessation of service over the line, and CN has not sought abandonment authority, this proceeding is exempt from the reporting requirements listed above and no environmental documentation will be prepared. See 49 CFR 1105.6(c)(6) and 1105.8(a) and (b). Because CSR is seeking abandonment authority with respect to this line in STB Docket No. AB-584 (Sub-No. 1X), see *supra* note 1, environmental issues related to abandonment will be addressed in that proceeding.

Decided: December 5, 2002.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 02-31459 Filed 12-12-02; 8:45 am]

BILLING CODE 4915-00-P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34266]

#### Martin Marietta Materials, Inc.— Continuance in Control Exemption— Alamo North Texas Railroad Corporation

Martin Marietta Materials, Inc. (MMM), a noncarrier, has filed a verified notice of exemption to continue in control of Alamo North Texas Railroad Corporation (Alamo North) upon Alamo North's becoming a Class III railroad.<sup>1</sup>

The transaction was scheduled to be consummated on or after November 20, 2002, the effective date of the exemption (7 days after the notice was filed).

At the time this notice was filed, MMM indirectly controlled two railroads, Fredonia Valley Railroad, Inc., operating in Kentucky, and Alamo Gulf Coast Railroad Co., operating in Texas.

MMM states that: (i) The railroads do not connect with each other or any railroad in their corporate family; (ii) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval of requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for the labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of

<sup>1</sup> See *Alamo North Texas Railroad Corporation—Construction and Operation Exemption—Wise County, TX*, STB Finance Docket No. 34002 (STB served Sept. 3, 2002 and Nov. 16, 2001).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> CN notes that the 0.15-mile trackage rights sought to be discontinued are overhead rights over trackage owned by CSR, for which CSR is seeking abandonment authority in *Canada Southern Railway Company—Abandonment Exemption—in Niagara County, NY*, STB Docket No. AB-584 (Sub-No. 1X) (STB served Oct. 22, 2002).