

RBO-00-24
November 8, 2000

PCX OPTIONS

TO: All Options Floor Members

FROM: Department of Regulatory Policy

SUBJECT: LMM Conflict of Issues Guidelines (“CIG”)

The Exchange has developed and the Options Allocation Committee (“OAC”) has adopted Guidelines to clarify Exchange policy that an LMM cannot be allocated an issue if it also acts as a Specialist in the issue on another Exchange.

I. Issue

The recent formation of business/financial relationships involving LMMs has resulted in the possibility that LMMs, or their affiliates, could operate as a “Specialist” (LMM, DPM or Specialist) in the same issues on different Exchanges. The Exchange believes that this practice would run counter to the obligations that that have been established for LMMs.

LMMs have committed to maintaining or increasing PCX market share in the issues assigned to them.^P A similar commitment is required at other Exchanges. If an LMM is trading the same issue, as specialist on two or more Exchanges, these commitments conflict with each other.

II. Conflict of Issues Guidelines

The Exchange and the OAC have established the following guidelines to clarify existing policy:

Prohibitions

- LMMs may not be a Specialist, in the same issue, on the PCX and another Exchange.
- LMMs may not be allocated the same issue allocated to a direct or indirect affiliate that is also a Specialist on another Exchange.

^P RBO 00-08 May 10, 2000.

- An LMM and any entity, that is also a Specialist, in which the LMM has a controlling interest, cannot be allocated the same issue on the PCX and another Exchange.

Process – LMMs seeking to enter into financial/business relationships must use due diligence to discover any potential conflicts. If an LMM would fall within one of the categories listed above, then the LMM must:

- Within twenty-four hours, in writing, inform Committee Administration (Jesamin Yip, x7848) of the conflicts and how the LMM will seek to resolve them.
- The LMM must plan to either
 - Transfer (pursuant to Transfer of Issue Guidelines) the issue that is in conflict to another LMM or
 - Request that the issue be posted for reallocation.
- The OAC may, at its discretion, allow the backup LMM to trade the issue while the issue is being transferred or reallocate the issue.
- **The LMM may not under any circumstances continue to trade the issue that is in conflict once the financial/business relationship becomes effective.**

III. PCX Rules and Federal Rules

- PCX Rule 1.1(a) defines an “affiliate” as a person that directly, or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with the person specified.
- PCX Rule 1.1(e) defines “control” to mean the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise. A person shall be presumed to control another person if such person:
 - (1) is a director, general partner or officer exercising executive responsibility (or having similar status or functions);
 - (2) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities;
 - (3) is entitled to receive 25% or more of the net profits; or
 - (4) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital of the other person.

Any person who does not so own voting securities, participate in profits or

function as a director, general partner or principal executive officer of another person, shall be presumed not to control such other person. Any presumption may be rebutted by evidence, but shall continue until a determination to the contrary has been made by the Exchange.

- PCX Rule 1.1(o) defines “person” to be a natural person, corporation, partnership, limited liability company, association, joint stock company, trustee or a trust fund, or any organized group of persons whether incorporated or not.
- The Securities Act of 1933 Rule 405 defines “control” “controlling” “controlled by” and “under common control” to mean the possession of direct or indirect, power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract, or otherwise.