believes that these restrictions will minimize the possibility that trading in such issuances will adversely impact the market for the security to which it is linked.

The Commission notes that other existing ELDS listing requirements relating to the protection of investors will continue to apply. Among other things, these rules set forth issuer standards as well as minimum market capitalization and trading volume requirements that must be met prior to listing an ELDS.[16]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. In particular, the Exchange's proposal is substantively similar to proposals submitted by the other options exchanges and recently approved by the Commission,[17] and presents no new regulatory issues. Further, these proposal were published for comment, and no comments were received. Accordingly, the Commission believes it is consistent with section 6(b)(5) of the Act to approve the proposal on an accelerated basis.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission believes that in light of the requirements set forth in the 20% Test + Daily Trading Volume Standard, the provisions contained in footnote one to section 703.21 in the NYSE Listed Company Manual, as described above, should no longer be required. Accordingly, the Commission believes it is consistent with section 6(b)(5) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–NYSE–96–12 and should be submitted by August 1, 1996.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (File No. SR–NYSE–96–12), as amended, is approved on an accelerated basis.

Jonathan G. Katz,

Secretary.

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the U.S. market is significant enough to accommodate ELDS trading.

[16] The Exchange's initial listing standards require, among other things, that the linked stock underlying the Exchange-listed ELDS either: (i) has a minimum market capitalization of $3 billion and during the 12 months preceding listing is shown to have traded at least 2.5 million shares, (ii) has a minimum market capitalization of $1.5 billion and during the 12 months preceding listing is shown to have traded at least 10 million shares; or (iii) has a minimum market capitalization of $500 million and during the 12 months preceding listing is shown to have traded at least 15 million shares. *See* Securities Exchange Act Release No. 36993 (March 20, 1996), 61 FR 13557 (March 27, 1996).

[17] *See* Structured Notes Approval Orders, *supra* note 12.

[18] 15 U.S.C. 78s(b)(2).

[Release No. 34–37395; File No. SR–OCC–96–01]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to Choice of Law Provisions in Connection With Amendments to Articles 8 and 9 of the Uniform Commercial Code

July 2, 1996.

On January 16, 1996, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–OCC–96–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the Federal Register on March 25, 1996.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description of the Proposal

In 1994, The American Law Institute and the National Conference of Commissioners on Uniform State Laws promulgated amendments to Articles 8 and 9 of the UCC (''1994 amendments''). To a significant degree, the 1994 amendments were adopted in response to the views of the Commission and others that the shortcomings in the provisions of the 1977 version of Articles 8 and 9 of the UCC contributed to the liquidity problems associated with the October 1987 stock market decline. The 1994 amendments were intended to reduce legal uncertainty and to facilitate the transfer of ownership of and creation of security interests in securities as well as other financial assets and investment property, including futures and futures options, through a set of rules designed to apply to the modern securities and futures holding systems.

Illinois recently adopted the 1994 amendments. Accordingly, the rule change amends OCC's by-laws, rules, and interpretations to take advantage of the benefits associated with the application of the 1994 amendments to govern most options transactions involving OCC. Previously, OCC's by-laws and rules contained choice of law provisions that selected Delaware as the governing law.[3] OCC originally adopted the Delaware choice of law provisions to reinforce the provisions of the 1977 version of the UCC under which OCC options were deemed uncertificated securities. Under the conflict of laws rules in the 1977 version of the UCC, the law of the jurisdiction of incorporation of the issuer of uncertificated securities governs the perfection of security interests therein.

Under the 1994 amendments, OCC will function as a ''securities intermediary'' rather than an issuer of uncertificated securities. Under the new choice of law provisions in the 1994 amendments, the applicable law will be the law of the securities intermediary's jurisdiction, which may be selected by agreement between the securities intermediary and the entitlement holder (*i.e.*, OCC and its clearing members). In absence of a contrary agreement, OCC believes that Illinois law will apply because under the choice of law rules found in the 1994 amendments, Illinois would be deemed the securities intermediary's jurisdiction.

As discussed above, OCC's present choice of law rules were adopted solely to reinforce the choice of law provisions of the 1977 version of the UCC. However, in light of Illinois' adoption of

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 36983 (March 18, 1996), 61 FR 12124.

[3] Although the 1994 amendments have been adopted in Illinois, they have not been adopted in many other jurisdictions, including Delaware, the state of OCC's incorporation.

the 1994 amendments, the rule change will replace those provisions with Illinois choice of law provisions and makes certain other changes intended to link the terminology of OCC's by-laws and rules with the terminology of the 1994 amendments.

Notwithstanding the adoption of the Illinois choice of law provisions, situations can arise in which the 1977 version of the UCC will be applicable. This could occur if UCC issues develop in a jurisdiction that has not yet adopted the 1994 amendments and if a tribunal in that jurisdiction applies its own choice of law rules. The choice of law provisions in the 1977 version of the UCC are mandatory and cannot be altered by agreement. Therefore, OCC's new choice of law rules would likely be unenforceable and therefore Delaware law would be controlling. Because this possibility exists, OCC will retain the provisions in its by-laws and rules that were deemed necessary or desirable to manage instances when Delaware law is applied to options transactions.[4]

To accommodate Illinois' adoption of the 1994 amendments, OCC has made the following specific changes in its by-laws and rules. The terms ''lien'' and ''pledge'' are now defined in Article I, Section 1 of OCC's by-laws to make it clear that these terms refer to a security interest within the meaning of the 1994 amendments.[5] Section 1–201(37) of the UCC defines ''security interest'' broadly but without reference to such common law concepts as lien and pledge, which are subsumed within the amended definition of security interest.

The definition of ''rules'' set forth in Article 1, Section 1 now makes it clear that for purposes of Articles 8 and 9 the term ''rules of a clearing agency'' as applied to OCC will mean anything deemed to be a rule of a clearing agency under the Act. This is because Section 8–111 of the 1994 amendments in effect provides that a rule adopted by a clearing corporation supersedes contrary provisions of the UCC.

The basic choice of law provision applicable to option holders and writers with respect to cleared securities set forth in Article VI, Section 9(c)(1) of OCC's by-laws now contains statements indicating how revised Articles 8 and 9 will apply to OCC and its clearing members with regard to ownership of and security interests in cleared securities. These statements are not intended to alter the substantive operation of Articles 8 and 9 but are intended merely to provide a guide to proper interpretation of Articles 8 and 9. However, because UCC Section 8–111 permits OCC to supersede provisions of the UCC with its own rules, Section 9(c)(1) now deems all cleared securities to be financial assets without regard to whether a particular cleared security constitutes a similar obligation to an option. Determination of whether a cleared security is a similar obligation to an option is required under the definition of financial asset set forth in Section 8–102 of the 1994 amendments. Subparagraph 2 of Section 9(c), which essentially is the prior OCC choice of law provision, will remain in place to cover situations where the 1977 version of the UCC is applicable.

OCC Rule 610(g), which involves the use of depository receipts and electronic confirmations in connection with specific or bulk deposits made to OCC in lieu margin payments, no longer requires that in certain circumstances a depository must acknowledge that securities transfers or pledges were effected through book-entry.[6] This requirement arose because in order to effect a securities pledge and the corresponding perfection of a security interest therein or to deposit securities in favor of OCC, the 1977 version of Article 8 required that the pledgor or depositor ''transfer'' the security to the pledgee (*i.e.*, OCC). In order to effect this transfer, Section 8–313 of the 1977 version of the UCC required an acknowledgement by the securities depository if the securities were delivered by book-entry. Under the 1994 amendments, a transfer pursuant to Section 8–313 is no longer required to effect a securities deposit or pledge.[7] Under Sections 8–106 and 9–115 of the 1994 amendments, a securities deposit or pledge with the corresponding perfection of a security interest therein is effected once the transferee or pledgee (*i.e.*, OCC) obtains control over the securities. Therefore, depository acknowledgement no longer is required in connection with securities deposits or pledges in favor of OCC involving book-entry delivery of securities.

Finally, OCC Rule 614(m) concerning OCC's obligations to pledgees under OCC's pledge program is revised to make clear that certain provisions of this rule which relate to the 1977 version of Articles 8 and 9 will apply only if the 1977 version of the UCC is otherwise applicable.

II. Discussion

Section 17A(b)(3)(F) of the Act[8] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes the proposed rule change is consistent with OCC's obligations under the Act because it should help to reduce the legal uncertainty associated with the creation of ownership and security interests in options and other securities under Articles 8 and 9 of the UCC. Furthermore, the rule change should help to ensure that OCC's by-laws, rules, and interpretations reflect the concepts embodied in the 1994 amendments.

The evolution of modern securities and futures processing and holding systems have in some respects made obsolete previous versions of the UCC.[9] In certain instances, application of prior versions of the UCC in the options context has led to some industry confusion and in at least one instance required OCC to file a proposed rule change to assure the proper legal interpretation of certain conflicts of laws issues arising in options transactions.[10] The provisions of the

[4] OCC's by-laws and rules previously contained interpretations to alert clearing members and others that Delaware law will not always govern notwithstanding the choice of law provisions. These interpretations have been adapted to reflect the choice of law change from Delaware law to Illinois law in OCC's by-laws. The effect of this change will be to alert clearing members and others that now Illinois law, instead of Delaware law, may not always govern despite the choice of law provisions contained in OCC's by-laws.

[5] Even though the likelihood of misinterpretation on this point may be remote, the addition of these definitions is prudent because the terms lien and pledge no longer appear in the provisions of UCC Articles 8 and 9 under the 1994 amendments that are applicable to OCC.

[6] OCC originally proposed to amend Rule 610(g) in a prior proposed rule filing (File No. SR–OCC–95–17). Subsequently, OCC proposed that Rule 610(g) be amended in the proposed rule change associated with this order. Because approval of SR–OCC–95–17 is still pending with the Commission, the amendments to Rule 610(g) are approved pursuant to this order, and OCC will amend SR–OCC–95–17 to reflect that the changes made to this rule have been approved by this order.

[7] In fact, the entire concept of a transfer requirement in connection with a securities pledge or deposit previously embodied in Section 8–313 of the 1977 version of the UCC has been removed from the 1994 amendments.

[8] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[9] U.C.C. Article 8 (1994 Revision) prefatory note (1995).

[10] Under the pre-1997 UCC, OCC believed that options could be deemed general intangibles which would require the law of the jurisdiction of the debtor's location to govern the creation and perfection of security interests. Under the 1977 amendments to the UCC, options were deemed uncertificated securities in which case the law of the jurisdiction of the issuer's organization would govern. In an attempt to correct the renvoi issue caused by the omission of transitional provisions in the 1977 amendments to the UCC, OCC revised its rules and bylaws to designate Delaware law (OCC's state of incorporation), including its conflict of laws rules, to apply to the creation and perfection of security interests in connection with options transactions to the full extent possible. Securities Exchange Act Release No. 20521 (December 30,

1994 amendments provide a solution to many of these problems.

Specifically, the rule change should expedite the eligibility process for OCC clearing members seeking to participate in cross-margining by expediting the creation and perfection of security interests associated with such cross-margining.[11] Although the Commission notes that the 1994 amendments may not apply to options transactions in all circumstances because certain states have yet to adopt these provisions, in situations where the 1994 amendments do apply, the 1994 amendments should provide a safer and more appropriate framework, given the special characteristics of options, for the transferring, pledging, and holding of such securities and for such securities deposited at OCC for margin and clearing fund purposes.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A 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 (File No. SR–OCC–96–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

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BILLING CODE 8010–01–M

1983), 49 FR 968 [File No. SR–OCC–83–20] (ordering approving proposed rule change).

[11] Currently, there is a two to three week delay before OCC members that also are members of the Chicago Mercantile Exchange (''CME'') or the Kansas City Board of Trade (''KCBOT'') (''joint members'') are eligible to participate in the cross-margining arrangements OCC has with CME and KCBOT. Prior to participation in these cross-margining arrangements, OCC requires that security interests be created and perfected in securities held by the joint member prior to such member's eligibility as a cross-margining participant. Under the 1977 version of the UCC, one way to perfect a security interest in securities requires the filing of the appropriate financing statements. Filing of the appropriate financing statements and confirmation thereof typically can take from two to three weeks. However, under the 1994 amendments, OCC believes that financing statements no longer will be necessary for perfection purposes. As a result, joint members can become cross-margining participants in a matter of days instead of weeks. Telephone conversation between Michael G. Vitek, Staff Counsel, OCC, and Mark Steffensen, Attorney, Division of Market Regulation, Commission (February 12, 1996).

[12] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–37402; File No. SR–PTC–96–03]

Self-Regulatory Organizations; The Participants Trust Company; Notice of Filing of Proposed Rule Change Relating to the Intraday Return of Participants' Prefunding Payments

July 2, 1996.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 3, 1996, the Participants Trust Company (''PTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–PTC–96–03) as described in Items I, II, and III below, which Items have been prepared primarily by PTC. 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 proposed rule change will amend Article V, Rule 2, Section 5 of PTC's rules and will establish initial procedures to permit the intraday return of participants' prefunding payments.

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

In its filing with the Commission, PTC 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. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend Article V, Rule 2, Section 5 of PTC's rules and to establish initial procedures to enable PTC to implement a program to permit the intraday return of participants' prefunding payments received early in the day that are no longer needed to support transaction processing at PTC. Currently, prefunding must be applied to that day's settlement or withdrawn on the next business day or thereafter. The proposed program is intended to make these funds available to participants intraday to enable them to reduce daylight overdraft exposures or to ease liquidity pressures in other financial markets thereby promoting the more efficient functioning of the financial markets in general.

''Optional deposits,'' which include prefunding, are defined in PTC's rules as ''a participant's voluntary deposits to the participants fund with respect to any master account pursuant to Section 3 of Rule 2 of Article V.'' Article V, Rule 2, Section 3 states that participants may elect or be required to make optional deposits to the participants fund to (i) provide supplemental processing collateral to increase a participant's net free equity (''NFE''); (ii) prefund a debit balance in a participant's account; or (iii) permit free retransfers of securities from a transfer account.

PTC believes that the return to its participants of prefunding payments which are no longer needed to support transaction processing will increase the amount of funds available to participants during the day. PTC also believes that by providing its participants with the opportunity to manage their overall funding requirements, participant liquidity will be enhanced and costs will be reduced.

In many circumstances, the amounts returned to participants under the proposed program could be required to fund PTC net debits later in the day. Participants will be required to make such payments to PTC which otherwise could have been covered by the prefunding payments. However, PTC believes that the benefits derived from providing participants with increased intraday liquidity outweigh PTC's advantage in retaining the prefunding after the situation requiring such deposit has been remedied.

PTC proposes to implement the intraday return of prefunding payments to participants as a pilot program with initial procedures that will be incorporated into PTC's Participant's Operating Guide upon approval of the proposed rule change.[3] The initial procedures will provide that (i) all prefunding return transactions will be subject to PTC's standard credit controls (*i.e.*, prefunding may be returned only if the participant will be within its NFE and net debit monitoring level

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by PTC.

[3] Upon implementation of the program, PTC plans to evaluate the initial procedures on a quarterly basis and will make changes to such procedures as necessary based upon PTC's experience with the program. PTC will be required to file with the Commission a proposed rule change prior to any change or modification of the initial procedures.