

disclosures and implementation of specific procedures and controls.

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

The Exchange believes that the proposal does not 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

Comments were neither solicited nor received.

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

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File Number SR-NYSE-

97-25 and should be submitted by November 3, 1997.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39203; File No. SR-OCC-97-14]

Self-Regulatory Organizations; The Option Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to a Cross-Margining Agreement With the Board of Trade Clearing Corporation

October 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on August 18, 1997, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

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

The proposed rule change will allow OCC to amend the cross-margining agreement between OCC and the Board of Trade Clearing Corporation ("BOTCC") and to amend the agreements that are required to be executed by participating clearing members and market professionals participating in the cross-margining programs established by the cross-margining agreement.

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

In its filing with the Commission, OCC 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. OCC 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 filing is to revise the amended and restated cross-margining agreement between OCC and BOTCC ("Agreement").³ OCC and BOTCC have executed an amendment to the Agreement to revise the Agreement.⁴ Specifically, OCC proposed to amend Exhibit A to the Agreement to update the list of contracts eligible of OCC/BOTCC cross-margining. OCC also proposes to amend the agreements governing the cross-margin accounts of clearing members and market professionals that participate in OCC/BOTCC cross-margining. The changes to those agreements essentially will conform them to the comparable form of the agreements used in the cross-margining program among OCC, the Chicago Mercantile Exchange ("CME") and the Commodity Clearing Corporation ("CCC").⁵

The following forms of agreements are required to be executed by clearing members and market professionals participating in the cross-margining program established by the Agreement: (1) Proprietary cross-margin account agreement and security agreement for a joint clearing member; (2) proprietary cross-margin account agreement and security agreement for affiliated clearing members; (3) non-proprietary cross-margin account agreement and security agreement for a joint clearing member; (4) non-proprietary cross-margin account agreement and security agreement for affiliated clearing members; (5) subordination agreement for cross-margining for a joint clearing member; and (6) subordination agreement for cross-margining for

² The Commission has modified the text of the summaries prepared by OCC.

³ For a description of the existing agreement, refer to Securities Exchange Act Release No. 29888 (October 31, 1991), 56 FR 56680 [File No. SR-OCC-91-07] (order approving establishment of cross-margining program between OCC and BOTCC) and Securities Exchange Act Release No. 32681 (July 27, 1993), 58 FR 41302 [File No. SR-OCC-92-24] (order approving expansion of cross-margining program between OCC and BOTCC to include non-proprietary positions).

⁴ A copy of the amendment has been submitted with the proposed rule change and is available for inspection and copying at the Commission's Public Reference Room or at the principal office of OCC.

⁵ For a description of the cross-margining agreement among OCC, CME, and CCC, refer to Securities Exchange Act Release No. 38584 (May 8, 1997), 62 FR 26602 [File No. SR-OCC-97-04] (order granting accelerated approval to proposed rule change).

¹ 15 U.S.C. 78s(b)(1).

affiliated clearing members.⁶ Each of these agreements is based on the comparable existing agreement used in the current OCC/BOTCC cross-margining program, and each of the agreements has been modified as necessary to reflect changes that have been made to the cross-margining program among OCC, CME, and CCC.

With respect to the proprietary cross-margin account agreement and security agreement for a joint clearing member, section 2 will be revised to make clear that margin deposited with respect to the cross-margined proprietary accounts ("proprietary X-M accounts") is security for all of the obligations of the joint clearing member whether or not such obligations arise from the proprietary X-M accounts. Section 5 will be amended to make clear that OCC and BOTCC have a joint lien on and security interest in the proprietary X-M accounts. Section 5 also will be updated to comply with recent revisions to Article 8 and Article 9 of the Uniform Commercial Code. Section 5 will be changed by making explicit that OCC and BOTCC have a right of setoff against collateral held with respect to the proprietary X-M accounts. Section 5 will be amended to reflect that the prohibition against the joint clearing member granting any lien on or security interest in such collateral without the written consent of OCC and BOTCC shall not apply to any interest of the joint clearing member in the collateral which is subordinate to that of OCC and BOTCC. OCC has informed the Commission that no other substantive changes have been made to the proprietary cross-margin account agreement and security agreement for a joint clearing member.

With respect to the proprietary cross-margin account agreement and security agreement for affiliated clearing members, section 2 will be amended to make the affiliated clearing members jointly and severally liable to OCC and BOTCC for any obligation arising from the proprietary X-M accounts. Section 2 also will be revised to make clear that neither of the affiliated clearing members is obligated to make any contribution to the clearing or guarantee fund of a clearing organization (*i.e.*, OCC or BOTCC) of which such clearing member is not itself a member. Section 3 will be revised to make clear that margin deposited with respect to the proprietary X-M accounts is security for all of the obligations of the affiliated

clearing members whether or not such obligations arise from the proprietary X-M accounts. Section 6 will be amended to make clear that OCC and BOTCC have a joint lien on and security interest in the proprietary X-M accounts by adding a specific reference to the accounts. Section 6 also will be updated to comply with recent revisions to Article 8 and Article 9 of the Uniform Commercial Code. Section 6 will be changed by making explicit that OCC and BOTCC have a right of setoff against collateral held with respect to the proprietary X-M accounts. Section 6 also will be amended to reflect that the prohibition against a clearing member granting any lien on or security interest in such collateral without the written consent of OCC and BOTCC shall not apply to any interest of the clearing member in the collateral which is subordinate to that of OCC and BOTCC. OCC has informed the Commission that no other substantive changes have been made to the proprietary cross-margin account agreement and security agreement for affiliated clearing members.

With respect to the non-proprietary cross-margin account agreement and security agreement for a joint clearing member, section 3 will be amended to provide for the selection of a designated clearing organization ("DCO") (*i.e.*, either OCC or BOTCC) by a joint clearing member that does not maintain any proprietary X-M accounts. Section 5 will be amended to make clear that OCC and BOTCC have a joint lien on and security interest in the cross-margined non-proprietary accounts ("non-proprietary X-M accounts"). Section 5 also will be updated to comply with recent revisions to Article 8 and Article 9 of the Uniform Commercial Code. In addition, section 5 will be changed by making explicit that OCC and BOTCC have a right of setoff against collateral held with respect to the non-proprietary X-M accounts. OCC has informed the Commission that no other substantive changes have been made to the non-proprietary cross-margin account agreement and security agreement for a joint clearing member.

With respect to the non-proprietary cross-margin account agreement and security agreement for affiliated clearing members, section 2 will be changed to make affiliated clearing members jointly and severally liable to OCC and BOTCC for any obligation arising from the non-proprietary X-M accounts. Section 2 also will be changed to provide that neither of the affiliated clearing member is obligated to make any contribution to the clearing or guarantee fund of a clearing organization (*i.e.*, OCC or

BOTCC) of which such clearing member is not itself a member. Section 4 will be amended to provide for the selection of a DCO by affiliated clearing members that do not maintain proprietary X-M accounts. Section 6 will be amended to make clear that OCC and BOTCC have a joint lien on and security interest in the non-proprietary X-M accounts. Section 6 also will be amended to comply with recent revisions to Article 8 and Article 9 of the Uniform Commercial Code. In addition, section 6 will be changed by making explicit that OCC and BOTCC have a right of setoff against collateral held with respect to the non-proprietary X-M accounts. OCC has informed the Commission that no other substantive changes have been made to the non-proprietary cross-margin account agreement and security agreement for affiliated clearing members.

With respect to each of the subordination agreement for cross-margining for a joint clearing member and the subordination agreement for cross-margining for affiliated clearing members ("market professionals agreements"), section 1 will be changed to include a representation that the member executing the agreement is a member or a firm owning a membership on the Chicago Board of Trade. Section 4 of each of the market professionals agreements will be amended to include the liquidation provisions found in Appendix B of Part 190 of the regulations of the Commodity Futures Trading Commission ("CFTC")⁷ and to provide that claims against a clearing member will be subordinated to all other customers as provided in subchapter III of Chapter 7 of the U.S. Bankruptcy Code.⁸ The current market professionals agreements used for OCC/BOTCC cross-margining do not follow the liquidation distribution scheme of Appendix B of Part 190 of the CFTC's regulations. Section 5 of the market professionals agreements will be amended to make clear that OCC and BOTCC have a joint lien on and security interest in the non-proprietary X-M accounts. Section 5 also will be amended to make explicit that the member has granted to OCC and BOTCC a right of setoff against collateral held with respect to the non-proprietary X-M accounts of the clearing member. A new section 7 will be added to each of the market professional agreements to provide that an executed copy of each such agreement is to be filed with OCC and BOTCC and that an executed market professionals agreement cannot

⁶ Copies of the agreements have been submitted with the proposed rule change and are available for inspection and copying at the Commission's Public Reference Room or at the principal office of OCC.

⁷ 17 CFR 190, App. B.

⁸ 11 U.S.C. 741, *et seq.*

be modified without the approval of the clearing organization. These changes are intended for the protection of OCC and BOTCC. OCC has informed the Commission that all other changes to the market professionals agreements are either stylistic or nonsubstantive in nature.

OCC believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Act because cross-margining enhances the safety of the clearing system while providing lower clearing margin costs to participants.

(B) Self-Regulatory Organization's Statement on Burden of Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

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

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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

Section 17A(b)(3)(F) of the Act⁹ requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody and control of the clearing agency or for which it is responsible. Section 17A(a)(2)(A)(ii) of the Act¹⁰ directs the Commission to use its authority under the Act to facilitate the establishment of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options. The Commission believes that the proposed rule change is consistent with these requirements under the Act.

Similar to other cross-margining arrangements to which OCC is a party, the current proposal links and coordinates the clearance and settlement facilities of OCC and BOTCC with respect to shared management of risks associated with the clearing members' intermarket portfolios and with respect to information sharing regarding the financial condition of participating joint and affiliated members. The Commission views cross-margining arrangements as a significant risk reduction method because they provide a means whereby individual clearing organizations do not have to

manage independently the risk associated with some components (*i.e.*, the futures or options component) of a clearing member's total portfolio. Therefore, cross-margining programs serve to help OCC assure the safeguarding of securities and funds and to facilitate the establishment of linked or coordinated facilities for the clearance and settlement of futures and options, transactions in securities.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of the filing because the proposed changes to the OCC/BOTCC cross-margining program are based on the OCC/CME/CCC cross-margining program, which the Commission has previously approved. In addition, the Commission does not expect to receive any adverse comments on the proposed rule change.

IV. Solicitation of Comments

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, DC 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, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-97-14 and should be submitted by November 4, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (File No. SR-OCC-97-14) be and hereby is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39188; File No. SR-PCX-97-35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc., Relating to the Listing and Trading of Portfolio Depositary Receipts

October 2, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and rule 19b-4 thereunder,² notice is hereby given that on August 25, 1997, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 PCX proposes to adopt new rules relating to the listing and trading of Portfolio Depositary Receipts ("PDRs").

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 adopt new Rule 8.300 to accommodate the trading

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 15 U.S.C. 78q-1(a)(2)(A)(ii).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.