In early January, NASD makes available on-line a Final Renewal Statement that reflects the final status of agent and firm registrations and/or Notice Filings as of December 31 of the previous year. Any adjustments in fees owed as a result of registration terminations or approvals subsequent to the Preliminary Renewal Statement are made in this final, reconciled statement on Web CRD. NASD issues a credit/refund to members that paid an amount greater than the final amount based on their Preliminary Renewal Statements. NASD assesses additional fees if a member paid less than the final reconciled amount.

Notwithstanding NASD's efforts to obtain timely payments of renewal fees, a significant percentage of NASD members miss the payment deadline each year, prompting NASD staff to expend additional time and resources to collect these fees after the renewal deadline has passed. NASD staff expends considerable effort to contact delinquent members to prevent them from failing to renew with the jurisdictions with which they are registered. This annual effort is in addition to, and detracts from, NASD's efforts to serve its members in the normal course of business.

NASD is therefore proposing that a late renewal fee be established and assessed against any NASD member that has not paid its renewal fees by the published deadline. NASD believes that such a fee would serve a two-fold purpose. It would provide members with an additional incentive to meet the renewals payment deadline, and it also would cover the costs of NASD collection activities (*i.e.*, the time and resources expended in contacting and collecting fees from NASD members that miss the deadline). The purpose of the proposed fee is not to generate significant net revenue, and it should not do so. Ideally, establishment of the late fee will encourage members to pay their renewal fees by the stated deadline and eliminate a significant number of late payments.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of sections 15A(b)(5) and 15A(b)(6) of the Act,[4] which require, among other things, the equitable allocation of reasonable dues, fees, and other charges among members and other persons using any facility or system that NASD operates or controls, and that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed late renewal fee will encourage NASD members to pay their yearly renewal fees on a timely basis, since failure to do so could cause them to become ineligible to do business in jurisdictions where they are registered, effective the first business day of the new year. Reducing the number of members that do not timely pay their renewal fees will also reduce the time spent by NASD in collection efforts, thereby freeing NASD staff to serve NASD members in the normal course of business.

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

NASD does not believe that the proposed rule change will result in 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 were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii)[5] of the Act and Rule 19b–4(f)(2) thereunder[6] as establishing or changing a due, fee, or other charge paid solely by members of the NASD. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 NASD. All submissions should refer to File No. SR–NASD–2002–100 and should be submitted by October 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–23311 Filed 9–12–02; 8:45 am]

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[4] 15 U.S.C. 78*o*–3(b)(5) and 15 U.S.C. 78*o*–3(b)(6).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46469; File No. SR–OCC–2002–02]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Providing Clearing Services to Options Exchanges That Are Not Stockholders

September 6, 2002.

I. Introduction

On January 25, 2002, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–OCC–2002–02) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On July 9, 2002, OCC amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on July 31, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The proposed rule change amends OCC by-laws and rules so that OCC can provide clearing services to new options exchanges without having those exchanges become stockholders of OCC. Under OCC's existing by-laws, any new

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

[2] Securities Exchange Act Release No. 46257 (July 25, 2002), 67 FR 49729.

options market desiring to clear options transactions through OCC is required to purchase common stock in OCC and to execute the Stockholders Agreement to which the existing stockholder exchanges are parties. Management of OCC has concluded that the practice of issuing new equity to each market for which OCC provides clearing services is no longer either necessary or appropriate. Indeed, the practice has already been abandoned with respect to providing clearing services to markets trading only security futures or commodity futures.[3] OCC will now be able to clear options transactions for new options exchanges on a similar basis. OCC believes that there is no more reason to permit or require new options exchanges to become OCC stockholders than to permit or require those other markets to do so.

Exchange ownership of clearing organizations is not required under section 17A of the Act or under any other provision of the federal securities laws. State law at one time made such ownership necessary. Article VIII of the Uniform Commercial Code (''UCC''), as in effect in Illinois prior to the 1973 amendment, defined a ''clearing corporation'' as ''a corporation all of the capital stock of which is held by or for a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934.'' [4] The UCC as now in effect in all U.S. jurisdictions no longer defines ''clearing organization'' in terms of ownership, and therefore, the UCC is no longer a constraint in determining the ownership of OCC.

Not only is there no continuing need to have new markets seeking clearing services become stockholders, there are a number of reasons not to do so. First, increasing the number of stockholders could adversely affect OCC's ability to pursue new business opportunities. Stock ownership gives the existing participant exchanges the right to a representative on OCC's board of directors and veto rights over certain significant transactions (*e.g.*, a merger) or amendments to certain provisions of the constituent documents (*e.g.*, Article VII of the by-laws regarding exchange qualifications).[5] The participant exchanges have divergent and sometimes conflicting interests, and this will only become more prevalent as the number and types of options exchanges proliferates. Expanding the number of stockholders with veto rights increases the likelihood that a single stockholder might block action that is in the best interests of OCC and its other stockholders. Second, continuing to add stockholders could soon result in substantial increases in the size of the OCC board. After the number of exchange directors reaches seven, each addition of an exchange director would require the addition of another member director in order to maintain the allocation between member directors and exchange directors called for under OCC's constituent documents. Ultimately, the OCC board could reach an unwieldy size. Finally, issuing additional common stock for each new market would continually dilute the interests of the existing participant exchanges.

OCC is creating a new category of ''non-equity exchange'' to which markets that desire options clearing services from OCC will be admitted. In lieu of purchasing common stock of OCC, new participant exchanges will be required to enter into a Noteholders Agreement and to purchase a promissory note from OCC in the principal amount of $1 million, which was the amount specified in Article VII, Section 2 of the by-laws as the maximum purchase price for additional equity required to be purchased by a new equity exchange. Instead of the equity interest received by such equity exchanges, non-equity exchanges will receive promissory notes bearing an interest rate return on their investments as described below.

Non-equity exchanges will be subject to admission requirements identical to those imposed on the current participant exchanges that hold equity. Among other things, new participant exchanges must be registered under the Act, must be in compliance with the rules promulgated thereunder by the Commission, and must furnish information to OCC concerning such things as the exchange's operations, management, rules and membership.

OCC will provide clearing services to non-equity exchanges on the same basis that it provides services to the equity exchanges. Non-equity exchanges will become parties to the existing Restated Participant Exchange Agreement in the same way that new participant exchanges have done in the past. No modification to the agreement is necessary because it does not address matters relating to an exchange's role as stockholder, which are confined to the Stockholders Agreement.

The rights of the existing participant exchanges as stockholders, including their rights to representation on OCC's board and their veto rights, have been preserved in Article VIIA, ''Equity Exchanges.'' Although non-equity exchanges will not have representation on OCC's board, their members that are clearing members of OCC will be ''participants'' in OCC within the meaning of section 17A(b)(3)(C) of the Act and will be entitled under that provision to ''fair representation * * * in the selection of (OCC's) directors and administration of its affairs.'' Fair representation will be assured because participants that are members of non-equity exchanges will participate in the selection of OCC's member directors on the same basis as members of the equity exchanges.[6]

The Noteholders Agreement in this rule filing contains restrictions on the transfer of promissory notes issued to non-equity exchanges and provides for the repurchase of the notes by OCC under certain circumstances parallel to the provisions applicable to the repurchase by OCC of its stock.[7] These provisions are designed to ensure that the promissory notes remain in the hands of participant exchanges of OCC and to give withdrawing exchanges the right to ''put'' the notes back to OCC. The promissory notes will bear interest at a rate determined by reference to provisions of the Internal Revenue

[3] Article XII of the by-laws permits OCC to clear ''security futures'' for ''security futures exchanges'' without issuing equity to such exchanges and permits OCC to provide clearing services for other futures products on the same basis (Securities Exchange Act Release Nos. 44434 (June 15, 2001), 66 FR 33283 [File No. SR–OCC–2001–05] and 45946 (May 16, 2002), 67 FR 36056 [File No. SR–OCC–2001–16]).

[4] The 1973 amendment identified certain other entities that could be owners of a clearing corporation while retaining securities exchanges or associations among the permitted owners.

[5] Holders of OCC Class A common stock have the right, by majority vote, to elect member directors of OCC. Holders of Class B common stock vote on the election of the management director and exchange directors of OCC. In addition, the votes of Class B common stock holders are required to amend OCC's certificate of incorporation, to adopt an agreement of merger or consolidation of OCC with or into any other corporation, to authorize or consent to the sale, lease, or exchange of all or substantially all of the property and assets of OCC, to authorize or consent to the dissolution of OCC, to receive dividends, and to receive assets upon partial or final liquidation or dissolution of OCC. All OCC Class A and Class B common stock is owned by its current participant options exchanges.

[6] OCC has represented to the Commission that OCC management will (1) provide non-equity exchanges with the opportunity to make presentations to the OCC board or the appropriate board committee upon request and (2) will promptly pass on to non-equity exchanges any information that management considers to be of competitive significance to such exchanges disclosed to exchange directors at or in connection with any meeting or action of the OCC board or any board committee. Letter from William H. Navin, Executive Vice President, General Counsel, and Secretary, OCC (July 8, 2002).

[7] The Noteholders Agreement is attached as Exhibit I to OCC's filing.

Code.[8] The interest rate will be reset annually. Interest will be payable annually in arrears on the promissory note's anniversary date. If a promissory note is repurchased by OCC in less than six years from the date of the initial sale of the note, the purchase price of the note will be the principal amount plus any accrued and unpaid interest less a reduction based on the length of time since initial sale.[9] After six years, there would be no reduction, and a promissory note would be redeemable at its aggregate principal amount plus any accrued and unpaid interest. Under the terms of Section VIII of the Noteholders Agreement, OCC's obligations to a noteholder are subordinated to the claims of all other creditors of OCC except that the obligation to repurchase a note from any noteholder ranks *pari passu* with OCC's obligations to repurchase notes from any other noteholders and to repurchase its common stock from any stockholder. The provisions of the Noteholders Agreement are generally parallel to corresponding provisions of the Stockholders Agreement.

III. Discussion

Section 19(b)(2) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[10] The Commission believes that by allowing OCC to amend its by-laws and rules so that they limit the number of OCC's stockholders and in turn the size of OCC's board, OCC will be better able to continue to work to remove impediments to and perfect the mechanism of the national clearance and settlement system. Accordingly, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F).

Sections 17A(b)(3)(C) and (I) of the Act require that the rules of a clearing agency assure fair representation of its shareholders and participants in the selection of its directors and administration of its affairs and that the rules of a clearing agency do not impose any burden on competition that is not necessary or appropriate in furtherance of the Act.[11] The fact that members of non-equity exchanges that are also members of OCC will participate in the selection of OCC member directors should help to assure fair representation of all OCC's members. OCC's representations to the Commission that OCC's management will provide non-equity exchanges with the opportunity to make presentations to the OCC board and will promptly pass on to non-equity exchanges any information disclosed at or in connection with OCC board meetings that management considers to be of competitive significance should help to ensure that no burden on competition that is not necessary or appropriate in furtherance of the Act will occur.[12] Therefore, the Commission also finds that OCC's rule change is consistent with the requirements of Section 17A(b)(3)(C) and (I).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change 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 applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2002–02) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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[8] The interest rate for the promissory notes will be equal to the short-term applicable federal rate for purposes of Section 1274(d) of the Internal Revenue Code of 1986.

[9] The amount of the reduction, which is set forth in the Noteholders Agreement, would be $300,000 if the note is purchased by OCC within two years of its original sell date, $240,000 if more than two years but less than three years, $180,000 if more than three years but less than four years, $120,000 if more than four years but less than five years, and $60,000 if more than five years but less than six years.

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 15 U.S.C. 78q–1(b)(3)(C) and (I).

[12] *Id.*

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46468; File No. SR–PCX–2002–44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Regarding Anti-Money Laundering Compliance Programs

September 6, 2002.

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 July 29, 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 August 29, 2002, the PCX amended the proposed rule change.[3] The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6)[5] thereunder, which renders the proposal effective upon filing with the Commission. 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 PCX proposes to adopt PCX Rule 4.25, ''Anti-Money Laundering Compliance Program,'' in order to require each options Member or Member Organization to develop and implement an anti-money laundering compliance program consistent with applicable provisions of the Bank Secrecy Act (''BSA'') and the Regulations thereunder. In addition, the PCX, through its wholly owned subsidiary, PCX Equities, Inc. (''PCXE'' or ''Corporation'') proposes to adopt PCXE Rule 6.17, ''Anti-Money

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

[2] 17 CFR 240.19b–4.

[3] *See* undated letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission (''Amendment No. 1''). In Amendment No. 1, the PCX requested that the Commission consider the proposed rule change pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. 15 U.S.C. 78s(b)(3)(A), 17 CFR 240.19b–4(f)(6). The Commission considers the original filing to have satisfied the 5-day pre-filing notice requirement. The PCX asked the Commission to waive the 30-day operative delay. The Commission corrected a typographical error in the proposed rule language without requiring the PCX to file an amendment.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).