

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50466; File No. SR-OCC-2004-11]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Yield-Based Treasury Options

September 29, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on June 8, 2004, The Options Clearing Corporation ("OCC") 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 primarily by OCC. 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 would update two sections of OCC's By-Laws pertaining to yield-based Treasury options. The proposed changes would conform those sections to the corresponding By-Law provisions governing index options.

#### 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.<sup>2</sup>

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

Article XVI, Section 3(c) of OCC's By-Laws currently provides OCC with the authority to adjust outstanding options in a class of yield-based Treasury options in the event that an exchange decreases the multiplier. The proposed changes to Section 3(c) would simply provide for the possibility that an exchange might increase rather than decrease the multiplier and would grant OCC the flexibility to adjust any outstanding options accordingly. The proposed rule change is similar to a previously approved OCC rule change pertaining to the adjustment of index option contracts.<sup>3</sup>

Article XVI, Section 4 of OCC's By-Laws currently provides OCC with the authority to fix the exercise settlement amount for exercised yield-based Treasury option contracts "in accordance with the best information available as to the correct settlement value of the underlying yield" if OCC determines that the settlement value of the underlying yield is unreported or otherwise unavailable for purposes of calculating the settlement amount for exercised contracts. Until recently, the Chicago Board Options Exchange ("CBOE"), on which yield-based Treasury options are traded, had a rule setting forth a specific method for determining the settlement value of the yield in the event the reporting authority failed to supply a settlement value. The CBOE rule setting forth that method, a random poll of a minimum of ten primary government bond dealers, was eliminated on December 2, 2003, when the Commission accepted for immediate effectiveness a CBOE rule filing deleting it. In that filing, CBOE adopted a provision stating that the settlement value would be determined in accordance with OCC's By-Laws and Rules.<sup>4</sup>

The repeal of the CBOE rule prompted OCC to review its own rules governing the setting of exercise settlement values for yield-based Treasury options. OCC now proposes to amend Article XVI, Section 4 to give OCC substantially the same discretion in fixing exercise settlement values for yield-based Treasury options as it has under Article XVII, Section 4 governing index

options.<sup>5</sup> As noted in the order approving OCC's rule change for index options, OCC's authority to fix exercise settlement values in unusual market conditions should be sufficiently broad to ensure that such values are consistent with the settlement values established for related products in other markets whenever that result is deemed to be in the best interest of investors.<sup>6</sup> While Article VI, Section 4(a)(2) as currently drafted is also broad, OCC believes that its authority should be expressed in language parallel to other By-Laws provisions that expressly acknowledge that a settlement price may be fixed based either on the last reported price before a market disruption or the next reported price following the disruption or by some other method.

As with index options, under Revised Article XVI, Section 4(a)(2) the settlement value of yield-based Treasury options would be fixed by an adjustment panel consisting of representatives of the exchange or exchanges on which the affected series of options is traded. Additionally, under Section 4(a)(3), in the event the adjustment panel delays fixing a settlement value beyond the expiration date of the affected series, the normal exercise by exception procedures would not apply. Instead, options that are in the money by one dollar or more would be deemed to have been irrevocably exercised prior to the expiration time.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act, as amended, because it is designed to promote the prompt and accurate clearance and settlement of securities transactions, foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, remove impediments to the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest. The proposed changes promote these objectives by providing OCC with flexibility in responding to unanticipated events.

<sup>5</sup> A draft supplement to the Options Disclosure Document ("ODD") that describes the substance of the By-Laws changes proposed herein will be filed with the Commission pursuant to Rule 9b-1 under the Act. Implementation of this rule change will be coordinated with the distribution of the related ODD supplement.

<sup>6</sup> Securities Exchange Act Release No. 47418 (February 27, 2003), 68 FR 11439 (March 10, 2003) [File No. SR-OCC-2002-09].

<sup>3</sup> Securities Exchange Act Release No. 44184 (April 16, 2001), 66 FR 20342 (April 20, 2001) [File No. SR-OCC-99-12].

<sup>4</sup> Securities Exchange Act Release No. 48865 (December 2, 2003), 68 FR 68676 (December 9, 2003) [File No. SR-CBOE-2003-48].

<sup>24</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The Commission has modified parts of these statements.

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

Within thirty five 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 ninety 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 the proposed rule change or
- (b) institute proceedings to determine whether the proposed rule change should be disapproved.

**VI. 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. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2004-11 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. All submissions should refer to File Number SR-OCC-2004-11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 and on OCC's Web site at <http://www.optionsclearing.com>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2004-11 and should be submitted on or before October 26, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50470; File No. SR-PCX-2004-88]

**Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Schedule of Fees and Charges for Exchange Services by Increasing its Broker Dealer Surcharge**

September 29, 2004.

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 September 23, 2004, 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 PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

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

PCX proposes to amend its Schedule of Fees and Charges For Exchange Services in order to increase the Broker Dealer Surcharge by \$.05 to \$.25 per contract. The text of the proposed rule change is available at the Office of the Secretary, PCX, and at the Commission.

**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 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. PCX 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 purpose of this proposed rule change is to increase the Broker Dealer Surcharge by \$.05 per contract from \$.20 to \$.25 per contract. PCX states that the rate increase is necessary to help narrow the gap in trading costs between PCX market makers and Broker Dealers as well as to help offset the costs associated with trading system enhancements that will allow for higher levels of transparency to Broker Dealers accessing the PCX markets.

**2. Statutory Basis**

The proposed rule change is consistent with Section 6(b) of the Act,<sup>3</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>4</sup> in particular, in that it provides for the equitable allocation of dues, fees and other charges among its Options Trading Permit Holders and other persons using its facilities for the purpose of trading option contracts.

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

PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(4).