

37) is hereby approved on an accelerated basis.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-29120 Filed 10-29-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40595; File No. SR-OCC-98-08]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Stock Fund Options

October 23, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 22, 1998, The Options Clearing Corp. ("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 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

Under the proposed rule change, OCC will amend its rules and by-laws which govern options on publicly traded interests in unit investment trusts, investment companies, or similar entities holding portfolios or baskets of common stocks.

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 change is to modify OCC's rules and by-laws governing the issuance, clearance, and settlement of options on publicly traded interests in unit investment trusts, investment companies, or similar entities holding portfolios or baskets of common stocks.³ Specifically, the proposed rule change will introduce a defined term "stock fund shares" to cover such publicly traded interests and a defined term "stock fund option" to cover the options thereon and will substitute these defined terms where appropriate in the by-laws and rules. For example, the proposed rule change will abbreviate Interpretation and Policy .01 under Section 9 of Article VI of the by-laws through the use of the newly defined term stock fund option.

In addition, the proposed rule change will provide for adjustments to the terms of stock fund options for distributions of capital gains with respect to the underlying stock fund shares. The proposed rule change will add Interpretation and Policy .08 to Section 11 of Article VI of the by-laws to reflect that the terms of stock fund options will be adjusted for all capital gains distributions, regardless of size, by the issuer of the underlying stock fund shares.

OCC believes that the proposed rule change is consistent with Section 17A of the Act⁴ because the proposed changes will promote the prompt and accurate clearance and settlement of transactions in stock fund options.

(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

Section 17A(b)(3)(F) of the Act⁵ requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with this obligation because the amendments should make it clear that stock fund options are stock option contracts for all purposes under OCC's rules and by-laws. Furthermore, the rule change should promote the prompt and accurate clearance and settlement of stock fund options by providing for adjustments to the terms of stock fund options for capital gains distributions with respect to the underlying stock fund shares.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Pursuant to File No. OCC-97-02, OCC amended its rules to provide for the clearance and settlement of stock fund options as proposed for trading by the American Stock Exchange ("AMEX").⁶ The changes proposed in this rule filing will make technical changes that will facilitate the clearance and settlement of AMEX's product which is scheduled to begin trading in November, 1998.

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, N.W., 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, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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

³ The Commission approved OCC's issuance, clearance, and settlement of such options in Securities Exchange Act Release No. 40132 (June 25, 1998), 63 FR 36467 [File No. SR-OCC-97-02].

⁴ 15 U.S.C. 78q-1.

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ *Supra*, note 3.

refer to File No. SR-OCC-98-08 and should be submitted by November 20, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (File No. SR-OCC-98-08) be and hereby is approved.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-29118 Filed 10-29-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40598; File No. SR-PCX-97-48]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to Proposed Rule Change Relating to Market Maker Participation in the Pacific Exchange's Automatic Execution System for Options ("Auto-Ex")

October 23, 1998.

I. Introduction

On December 18, 1997, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change which amended its rules relating to market maker participation in the Exchange's automatic execution system for options ("Auto-Ex"). On February 27, 1998, the Exchange submitted Amendment No. 1 to the proposed rule change.³

A notice of the proposed rule change appeared in the **Federal Register** on March 10, 1998.⁴ The Commission received no comment letters addressing the proposed rule change. On October 7, 1998, the Exchange submitted

Amendment No. 2 to the proposed rule change.⁵ This order approves the proposed rule change. Also, Amendment No. 2 is approved on an accelerated basis.

II. Description of the Proposal

Rules 6.87, 10.13, and 10.14 pertain to the Exchange's market maker eligibility standards for participation in the Auto-Ex system. PCX has proposed that a provision addressing joint accounts be added to Rule 6.87(d)(1) stating that participants in a joint account may log onto Auto-Ex in a trading crowd outside of their primary appointment zones, but only if they are substituting for another participant in the same joint account, where participation in Auto-Ex trades at such station would have been appropriate for the substituted party, and they have obtained the approval of two Floor Officials.⁶ Moreover, the Exchange is proposing to clarify this rule by stating that market makers who have not been assigned a primary appointment zone may not participate on the Auto-Ex system, and further, that all Auto-Ex transactions will count toward a market maker's in person and primary appointment zone requirements.

Rule 6.87(d)(3), as proposed, will require that, unless exempted by two Floor Officials, market makers may log onto Auto-Ex only in person and may continue on the system only so long as they are present in that trading crowd. Moreover, absent an exemption from the foregoing limitation, market makers may not remain on Auto-Ex, and must log off when they have left the trading crowd, unless the departure is for a brief interval (*i.e.*, no longer than 15 minutes, under normal circumstances).⁷

⁵ See letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Mignon McLemore, Attorney, SEC, dated October 6, 1998 ("Amendment No. 2"). In Amendment No. 2, PCX: deletes a proposal made in the initial rule submission that would have removed rule language stating that a market maker logged onto Auto-Ex but who leaves the trading crowd is responsible for trades allocated to him during his absence; provides PCX with the authority to log a market maker off Auto-Ex if he has left the trading crowd for more than a brief interval; and makes certain minor clarifications regarding the operation of the proposal.

⁶ Floor Officials may exercise their discretion in determining whether one market maker may substitute for another. Substitution is usually only allowed when a market maker is on vacation or out sick. However, there may be cases when the market maker being substituted for may actually be on the floor but not in the joint account crowd. Telephone call between Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX and Mignon McLemore, Attorney, SEC, August 24, 1998.

⁷ Compare Securities Exchange Act Rel. No. 38881 (July 28, 1997), 62 FR 41987 (August 4, 1997). The Philadelphia Stock Exchange, Inc. amended Advice F-24 to state that Registered

Proposed Rule 6.87(d)(4) will eliminate language which currently states that if a market maker logs onto Auto-Ex during Expiration Week, then he is required to remain on the system for the duration of that Expiration Week. When the Auto-Ex rule was initially adopted, there was some concern that there might be inadequate market maker participation on Auto-Ex during Expiration Week. Based on several years' experience, the Exchange now believes that there is no lack of market maker participation on the Options Floor that justifies a need for the Expiration Week requirement. If there is inadequate Auto-Ex participation in a particular options issue,⁸ however, Floor Officials have the authority to require market makers to log onto Auto-Ex.⁹

There are two limited situations, however, in which participation in the Auto-Ex system is mandatory—both are proposed to be codified in the rule. Under section (d)(4) of Rule 6.87, a market maker who has logged onto Auto-Ex at any time during a trading day must participate on the Auto-Ex system in that option issue whenever present in that trading crowd during that trading day. Under subsection (d)(5), market makers may not log off the Auto-Ex wheel during the first ten minutes of a "fast market"¹⁰ that has been declared in an issue traded "on that wheel,"¹¹ in the absence of an exemption from two Floor Officials.

PCX proposes that subsection (e) of Rule 6.87 be amended by adding a provision specifically prohibiting market makers from "directed trading"¹² of option contracts resulting

Options Traders must sign-off the Wheel when leaving the Wheel assignment area for more than a brief interval, which means five minutes or less, or in matters of a dispute, the amount of time it takes to call in a Floor Official and inform him of the issue at hand. Compare CBOE Rules 24.16(c)(iii) (stating that any member of the joint account that has been logged onto RAES must log off whenever he leaves the SPX trading crowd for other than a brief interval) and 24.17(a)(iv) (stating that an individual member who is logged onto RAES must log off whenever he leaves the trading crowd).

⁸ In PCX Rules 6.87(d)(1), (2), (4), and (6) the term "issue" or "option issue" is used instead of or replaces the term "class." The Exchange believes that "class" does not encompass all options of the underlying stock. Thus, for purposes of this proposal, the term "issue" or "option issue" refers to all types of option contracts (puts and calls) of the same class of options covering the same underlying security. See Amendment No. 2, note 5 *supra*.

⁹ PCX Rule 6.87(d)(6).

¹⁰ PCX Rule 6.28.

¹¹ See note 33 *infra*.

¹² "Directed trading" is a violation of Rule 6.73 ("Manner of Bidding and Offering"), which provides in part: "All bids and offers shall be

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⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Mignon McLemore, Attorney, SEC, dated February 26, 1998 ("Amendment No. 1"). In Amendment No. 1, PCX explains the disciplinary procedure under both the Minor Rule Plan ("MRP") and the Summary Sanction Procedure ("SSP") and how "the wheel" rotation operates.

⁴ Securities Exchange Act Rel. No. 39707 (March 3, 1998), 63 FR 11700.