

affirmation services as requested by the Exchange or the Commission staff.

.09 "Auditor's Report" shall mean a written report which is prepared by competent, independent, external audit personnel in accordance with the standards of the American Institute of Certified Public Accountants and the Information Systems Audit and Control Association and which (i) verifies the certifications contained in .08(B) above; (ii) contains a risk analysis of all aspects of the entity's information technology systems including, without limitation, computer operations, telecommunications, data security, systems development, capacity planning and testing, and contingency planning and testing; and (iii) contains the written response of the entity's management to the information provided pursuant to (i) and (ii) above.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41486; SR-OCC-99-01]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Acceptance of Letters of Credit for Margin Purposes

June 7, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on January 22, 1999, 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 from interested persons on the proposed rule change.

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

The proposed rule change will modify OCC's rules with respect to letters of credit accepted for margin purposes.

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 proposed rule change will conform OCC's Rule 604(c) to the terms of the Uniform Letter of Credit ("ULC") created by the Unified Clearing Group ("UCG"). The UCG is an organization composed of all major securities and futures clearing organizations and depositories in the United States.³ The ULC was developed to foster uniformity among the various U.S. securities and futures clearing organizations with respect to the acceptable terms of letters of credit that are deposited as margin.⁴ All UCG member that accept letters of credit as margin are expected to use the ULC and to convert to the ULC during calendar year 1999.

Under the terms of the ULC, clearing corporations can continue to present a demand for payment by hand delivery and/or SWIFT message.⁵ The ULC also permits a demand for payment by facsimile transmission. However, unlike the current letters of credit accepted by OCC, the ULC does not permit a demand by tested telex.

The rule change proposes to make several amendments to Rule 604(c). First, it will require the issuing bank to make payment against the letter of credit within sixty minutes of presentment for payment if the demand is made by a preset cutoff time on a business day, which OCC specifies in its rules as 3:00 p.m. Central Time. Demands submitted to the bank after the cut-off time or on a day when the bank is closed must be honored within sixty minutes of the opening of business on

the next business day. Certain exceptions will be made in the case of foreign currency letters of credit.

Second, the rule change will permit OCC flexibility in specifying acceptable expiration dates for letters of credit. Currently OCC requires that a letter expire no later than the first day of the next calendar quarter but is considering permitting letters of credit to be issued with expiration dates more than one calendar quarter in the future. In order to simplify recordkeeping, OCC presently anticipates that it will continue to require the replacement of outstanding letters of credit with newly issued letters of credit on an annual basis.

Third, the rule change will eliminate provisions that permit a clearing member to issue instructions to OCC that restrict a previously unrestricted letter of credit or a portion thereof to serve as margin only for the clearing member's customers' accounts. These provisions have generally not been used, and clearing members who need to restrict letters of credit to the customers' accounts for regulatory compliance purposes may do so by placing such restriction on the letter itself. OCC believes that a restriction on the face of the letter will provide better notice of the restriction and should reduce the likelihood of confusion over which letters are intended to be restricted and which are not.

Finally, the proposed rule deletes the final sentence of Rule 604(c), which allows members to deposit letters of credit denominated in any foreign currency that is a trading currency, because it is unnecessary in light of other provisions proposed for Rule 604 that specify letters of credit may be denominated in any currency approved by OCC for that purpose.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because, among other things, it will promote the prompt and accurate clearance and settlement of transactions in securities by requiring issuing banks to make payment against letters of credit within sixty minutes of a demand for payment rather than by the close of the third banking day following presentation of a demand for payment as is presently the case.

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

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

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

³ The members of the UCG include the Boston Stock Exchange Clearing Corporation, The Depository Trust Company, Government Securities Clearing Corporation, MBS Clearing Corporation, National Securities Clearing Corporation, OCC, Board of Trade Clearing Corporation, Chicago Mercantile Exchange, Clearing Corporation of New York, Kansas City Board of Trade, Minneapolis Grain Exchange, New York Mercantile Exchange, Emerging Markets Clearing Corporation, and Clearing Corporation for Options and Securities.

⁴ In developing the ULC, UCG consulted with several letter of credit issuing banks and the National Standby Letter of Credit Committee of the International Financial Service Association (formerly known as the U.S. Council on International Banking). In addition, various regulatory agencies, including the staffs of the Securities and Exchange Commission, the Commodity Futures Trading Commission, and Board of Governors of the Federal Reserve System attended the UCG meetings where the ULC was discussed.

⁵ SWIFT messages are secured, electronic transmissions.

¹ 15 U.S.C. 78s(b)(1).

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

No comments on the proposed rule change were solicited or received. OCC will notify the Commission of any written comments it receives.

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.

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. 20549-0609. 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 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 refer to File No. SR-OCC-99-01 and should be submitted by July 6, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41487; File No. SR-PCX-98-35]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding the Confirmation and Affirmation of Securities Transactions

June 7, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 30, 1998, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission") and on November 16, 1998, and May 28, 1999, amended the proposed rule change as described in Items I and II below, which items have been prepared primarily by PCX. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

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

The proposed rule change will permit PCX members to use the facilities of a qualified vendor or an entity that has obtained an exemption from registration as a clearing agency for the electronic confirmation and affirmation of depository eligible transactions.²

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

The PCX is proposing to amend Rule 9.12 to allow qualified vendors of electronic trade confirmation ("FTC") services that are not registered clearing agencies to provide electronic trade

confirmation/affirmation services for institutional trades. The rule is also being amended to allow entities that have obtained exemptions from clearing agency registration specifically so that they can offer confirmation/affirmation services to provide such services for institutional trade.

Rule 9.12 was originally adopted to protect broker-dealers from problems relating to financial exposure associated with inaccurate and filed institutional transactions. Financial exposure results from institutional customers that settle their trades on a receipt versus payment ("RVP") or delivery versus payment ("DVP") basis. This permits them to delay payment for securities until the securities are delivered to their custodian and to delay delivery of securities until payment is received. Additional financial exposure results when the broker-dealer sells or purchases securities on behalf of an institutional customer from another broker-dealer. In such a situation the broker-dealer is subject to financial exposure until the institution's custodian delivers securities or makes payment that the broker-dealer will use to cover its trade with the other broker-dealer. If there is a delay in settlement with the institution or the institution refuses to recognize and settle the trade, the broker-dealer is still obligated to settle its trade with the other broker-dealer.

Certain vendors of ETC services have requested that they be allowed to provide confirmation/affirmation services for institutional trades even though they are not registered clearing agencies. PCX is proposing to amend Rule 9.12 so that either a clearing agency³ or a qualified vendor may provide electronic confirmation and affirmation of all depository eligible transactions to be settled on an RVP/DVP basis. In order to become a qualified vendor under the rule change, an ETC vendor will be required to certify to its customers that:

(1) With respect to its electronic trade confirmation/affirmation system, it has a capacity requirements, evaluation, and monitoring process that allows it to formulate current and anticipated estimated capacity requirements;

(2) Its electronic trade confirmation/affirmation system has sufficient capacity to process the specified volume of data that it reasonably anticipates to be entered into its

³ For purposes of Rule 9.12, clearing agency means a clearing agency as defined in Section 3(a)(23) of the Act that is registered with the Commission or that has obtained from the Commission an exemption from registration granted specifically to allow the clearing agency to provide confirmation/affirmation services.

¹ 15 U.S.C. 78s(b)(1).

² The text of the amendments is attached as Exhibit A to this notice.

⁶ 17 CFR 200.30-3(a)(12).