

members use the same assignment date as OCC. As a result, when a holder exercises a call on the day before an ex-dividend date in order to capture the dividend, the writer who is assigned the exercise may see an assignment date the same as the ex-dividend date. The writer's broker may then have to explain that the writer is required to give up the dividend to the exercising holder because the exercise occurred before the ex-dividend date even though the assignment did not. While the language of this filing reflects OCC's current business of clearing and settling exchange traded options, the filing and the change to OCC's by-laws and rules extend to assignments from national securities exchanges, national securities associations, futures merchants, security futures markets, and international markets for which OCC clears and settles transactions.⁴ Dating assignments on the same date as the related exercise will lessen the potential for this kind of confusion.

Other nonsubstantive changes are made to Rule 803 for the purposes of updating obsolete language. In addition, a conforming change is made to Rule 402, which pertains to supplemental reports of matched trades.

OCC believes that the proposed rule change is consistent with Section 17A of the Act because it eliminates a potential source for investor confusion.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.⁵ OCC's current procedure for dating assignments is a potential source of confusion. By changing OCC's assignment dating procedure to provide that assignments will be dated and effective on the same date that the related exercise notice is accepted by OCC, the proposed rule change should eliminate the potential for confusion and therefore is consistent with OCC's section 17A obligation to promote the prompt and accurate clearance and settlement of securities transactions.

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(b)(3)(F) 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-2002-15) be, and hereby is, approved.

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. 34-46734; File No. SR-OCC-2002-18]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Matched Trade Reporting

October 28, 2002.

I. Introduction

On July 30, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR-OCC-2002-18 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on August 23, 2002.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The rule change modifies OCC's by-laws and rules to accommodate the transition to near real-time reporting of matched trade information by the options exchanges.³ In addition, OCC's rules are modified to reflect that OCC may make available to clearing members updated position and exercise information; however, such information is provisional until final processing.

Each option exchange currently compares the trade information submitted by purchasing and selling members with respect to each transaction effected on that exchange. A

compared transaction reflects that the parties to the trade have agreed on the terms of the trade. After the completion of its comparison processing, an exchange transmits to OCC a cumulative report of all matched trades effected or reconciled on that exchange on that particular trading day.⁴ A compared or "matched" trade reported to OCC also contains information required by OCC, including, for example, the identity of the purchasing and selling clearing members, the accounts in which each side of the transaction was effected, the exercise prices, the expiration date, and the number of options contracts.⁵ Each night, OCC processes the cumulative report of matched trades submitted by each option exchange, as well as exercise notices submitted by clearing members and accepted by OCC, and updates the clearing members' positions for the next trading day.

In connection with systems modification, OCC is amending its by-laws and rules so that it will accept and process matched trades reported by the exchanges on a near real-time basis. After receipt of a matched trade, OCC will process the matched trade information and make available updated position information for clearing member review throughout the trading day. However, a matched trade reported by a particular exchange might not always be complete or accurate for a variety of reasons. A clearing member may need to modify or append additional information after the matched trade has been sent to OCC. For example, a clearing member may need to reflect that a transaction was either to open or close a position. In such cases, the reporting exchange will instruct OCC to disregard a previously reported matched trade and will report new matched trade information to replace the original transaction. No replacement matched trade information will be reported by an exchange if the previously reported matched trade was to be disregarded altogether. Because an exchange may instruct OCC to disregard a previously submitted matched trade,

⁴ While OCC receives periodic matched trade transmissions for each option exchange during a business day, it currently uses the cumulative matched trade transmission made by each exchange for position processing and does not use intraday transmissions for position processing. OCC anticipates that the option exchanges will gradually transition to reporting of matched trades on a near real-time basis. Until all exchanges have transitioned to near real-time matched trade reporting during the business day, OCC's systems will accept and process cumulative batch transmissions, intermittent batch transmissions, and near real-time matched trade reporting.

⁵ See Article VI, Section 7 of OCC's By-Laws and OCC Rule 401 for a description of the information required by OCC.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 46378 (August 19, 2002), 67 FR 54688.

³ While the language of this filing reflects OCC's current business of clearing and settling exchange traded options, the filing and the change to OCC's by-laws and rules extend to matching trade information from national securities exchanges, national securities associations, futures merchants, security futures markets, and international markets for which OCC clears and settles transactions.

⁴ OCC Rules 912 and 913(e).

⁵ 15 U.S.C. 78q-1(b)(3)(F).

OCC is amending Article VI, section 7 of its By-Laws to reflect that, in accordance with such an instruction, the previously reported matched trade will be deemed null and void and will be given no effect under OCC's by-laws and rules. In addition, section 7 is amended to reflect that OCC will not be liable to any writer, holder, buyer, or seller in acting on an exchange's instruction to disregard a previously submitted trade. Article VII, section 7 of the By Laws and Rules 401 and 402 also are amended to eliminate references to the receipt of a report of matched trades. Instead, these provisions will reference the reporting of matching trade information by an exchange. Other by-law and rule provisions that describe the receipt of a report of matched trades are similarly revised.⁶

Rule 501, which governs position reporting by OCC to its clearing members, is amended to reflect that position information updated during a business day is provisional and informational in nature and that only clearing members' daily position reports can be relied upon as definitely reflecting their final positions. Daily position reports are made available to clearing members each morning and reflect matched trades reported the previous business day.

Rule 801, which relates to exercises of options, also is amended to reflect that exercise information provided throughout a business day is provisional and informational only. Exercises accepted by OCC will be definitely reflected in delivery advices and exercise and assignment reports. Such advices or reports are also made available each morning and reflect exercises from the previous business day.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.⁷ By moving towards accepting and processing matched trades and exercises on a near real-time basis, OCC will be able to make available to its clearing members information on their positions, exercises, and assignments in a more timely manner. As a result, OCC will be fulfilling its section 17A obligation to promote the prompt and accurate clearance and settlement of securities

transactions and thereby meets the requirements of section 17A(b)(3)(F).

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-2002-18) be, and hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46722; File No. SR-OCC-2002-13]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Clearing Agreement

October 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 24, 2002, 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 consists of the "Amended and Restated Agreement for Clearing and Settling Security Futures and Futures and Futures Options on Broad-Based Indexes" between OCC and Nasdaq Liffe Markets, LLC ("NqLX").

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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

OCC is preparing to clear security futures for a number of markets. One such market is NqLX. Amendment No. 2 to SR-OCC-2001-07 included the "Agreement for Clearing and Settlement Services" dated August 29, 2001, ("Original Agreement") between OCC and NqLX (under its former name, Nasdaq LIFFE, LLC). The Commission approved that rule filing, as amended, on August 20, 2001.³

As generally noted in Amendment No. 2 to SR-OCC-2001-07, OCC anticipated that it would file with the Commission the agreements it enters into with markets for the clearance of security futures when negotiated. OCC has recently executed an amendment and restatement of the Original Agreement with NqLX, which is the subject of this filing. The primary motivation for amending and restating the Original Agreement was to expand the range of contracts to be cleared and settled by OCC under that agreement to include futures on broad-based stock indexes and options on such futures.⁴ Thus, the parties have added sections on the selection of underlying interests for broad-based stock index futures and options on such futures and have changed numerous occurrences of "security futures" to "Cleared Contracts," a term that encompasses security futures and also futures on broad-based stock indexes and options on such futures. Certain minor

² The Commission has modified parts of these statements.

³ Securities Exchange Act Release No. 44727 (August 20, 2001), 66 FR 45351.

⁴ OCC was registered as a "derivatives clearing organization" under the Commodity Exchange Act by order of the Commodity Futures Trading Commission (December 10, 2001). The Commission previously approved OCC's rule filing to clear futures and futures options on broad-based stock indexes. Securities Exchange Act Release No. 45946 (May 16, 2002), 67 FR 36056 (SR-OCC-2001-16).

⁶ In addition, the term settlement time, as defined in Section 1.S. of Articles XV, XX, and XXIII is being modified to reflect OCC's receipt of matching trade information as opposed to a matched trade report.

⁷ 15 U.S.C. 78q-1(b)(3)(F).