

common shareholders have also approved the item: (vi) a majority of the independent directors of the issuer's board of directors have approved the item; and (vii) adequate disclosure of proportional voting has been provided.

The proposed rule change will insert a new Rule 452.12 into the Exchange's Rules of Board of Governors as well as an identical Paragraph 402.08(C) into the Exchange's Listed Company Manual.² These provisions will allow member firms to vote on non-routine items for auction rate preferred securities only, enabling corporate issuers, as well as shareholders, to obtain approval of matters overwhelmingly supported by those investors who do vote.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act³ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The proposed rule change does not impose 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the

²The proposed rule change also renumbers existing Exchange Rules 452.12 through 452.16 without change to Rules 452.13 through 452.17 and Listed Company Manual Paragraphs 402.08(C) through (G) without change to 402.08(D) through (H).

³15 U.S.C. 78f(b)(5).

Commission may designate up to 90 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-96-02 and should be submitted by March 5, 1996.

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

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36818; File No. SR-OCC-95-14]

Self-Regulatory Organization; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to the Processing of Late Exercise Requests for Eligible Option Contracts

February 7, 1996.

On September 15, 1995, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-OCC-95-14) pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 ("Act").¹ On December 19, 1995, OCC filed an amendment to the proposed rule change to clarify certain language in the proposal.² Notice of the proposal was published in the Federal Register on December 27, 1995.³ No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description of the Proposal

The proposed rule change amends OCC Rule 801(e) regarding late exercises by changing the cut-off times for filing a late exercise notice and by eliminating any references to trading volume. The proposed rule change also modifies OCC Rule 801(a) to provide expressly for the submission of exercise notices through electronic means.

OCC Rule 801(e) currently permits OCC clearing members to file, revoke, or modify exercise notices after the 7:00 p.m. (all time references are Central Time unless stated otherwise) deadline for the purpose of correcting bona fide errors. Once a late instruction is accepted, Rule 801(e) requires the clearing member submitting an instruction to pay a late filing fee and explain in writing the error that caused the late submission of the instruction. The filing fees for late instructions are imposed using a graduated fee schedule with variable cut-off times to reflect the fact that the earlier that a late exercise notice is submitted the easier and less costly it is for OCC to process the request.⁴

OCC clearing members have requested that OCC provide them with data from nightly processing earlier on the night of processing. Presently, Rule 801(e) requires OCC to wait until 10:00 p.m. to begin critical processing even if it has received all necessary data from exchanges⁵ and clearing members

¹ 15 U.S.C. § 78s(b)(1) (1988).

² Letter from Michael G. Vitek, OCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (December 19, 1995).

³ Securities Exchange Act Release No. 36607 (December 20, 1995), 60 FR 67007.

⁴ For a detailed description of OCC's procedures for processing late option exercise notices on non-expiring option contracts, and earlier amendments to the late exercise fee schedule cut-off times, refer to Securities Exchange Act Release Nos. 29390 (July 1, 1991), 56 FR 31454 [File No. SR-OCC-90-3] (order approving procedures for processing late exercise notices) and 33247 (November 24, 1993), 58 FR 63419 [SR-OCC-93-2] (order approving changes to OCC's late exercise fee schedule cut-off times).

⁵ The term "exchange" is defined in Article I, Section E(4) of OCC's by-laws as a national securities exchange or a national securities association that has qualified for participation in OCC pursuant to the provision of Article VII of OCC's by-laws.

earlier in the night. Due to the many technical improvements implemented by the exchanges in recent years, the exchanges now send daily trading data to OCC much earlier. Thus, there are many nights when OCC could begin critical processing by 9:00 p.m. To accommodate the requests by clearing members for earlier data distribution, OCC has decided to advance the late exercise cut-off times by one hour and to eliminate the volume conditions affecting the cut-off times.

The volume conditions were initially incorporated into Rule 801(e) to ensure that clearing members had adequate time to reconcile their records with exchange trade comparison reports. Since that time, the exchanges have continued to improve their systems and operations in the trade matching process, particularly with respect to intraday trade matching. These technological improvements have enabled the exchanges to send daily trade data to OCC and its clearing members much earlier in the day. Accordingly, OCC is eliminating any references to volume in the revised Rule 801(e). OCC does not believe removing the volume considerations will have any negative affect on its clearing members.

The proposed rule change also amends OCC's late exercise fee schedule. The time at which a \$500 fee will be imposed is being changed from between 7:00 p.m. to 9:00 p.m. to between 7:00 p.m. to 8:00 p.m. The late exercise cut-off time associated with a \$2000 fee will be changed from between 9:01 p.m. and the start of critical processing to between 8:01 p.m. and the start of critical processing.

In addition to the changes described above, Rule 801(a) is being revised to provide expressly for the submission of exercise instructions through electronic means.

II. Discussion

Section 17A(b)(3)(F)⁶ of the Act requires that the rules of a clearing agency be designed to facilitate the prompt and accurate clearance and settlement of securities transactions. The Commission believes OCC's proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) because the proposal advances the late exercise cut-off times by one hour without regard to volume restrictions. This should allow clearing members to obtain earlier data distribution from OCC thus promoting the prompt and accurate clearance and settlement of securities transactions.

Because the exchanges' improvements to their intraday trade matching processes enable them to send daily trade comparison reports to clearing members much earlier in the day, the Commission believes that clearing members should continue to have adequate time to reconcile their records with exchange trade comparison reports and should not be negatively effected by the removal of volume restrictions or the earlier cut-off times for late exercise notices. These changes also should enable OCC to begin its critical processing earlier in the evening and, in turn, provide earlier distribution of data from nightly processing to its clearing members thus facilitating the prompt and accurate clearance and settlement of securities transactions consistent with Section 17A of the Act.

III. 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 Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-95-14) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36819; File No. SR-OCC-95-12]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Amending the Agreements Governing Non-Proprietary Cross-Margining Accounts of Market Professionals in Cross-Margining Programs

February 7, 1996.

On August 15, 1995, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-OCC-95-12) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ On September 12, 1995, and on October 11, 1995, OCC filed amendments to the proposed rule change to include, in addition to

proposed changes to the agreements governing non-proprietary cross-margining ("XM") accounts in the XM program among OCC, The Intermarket Clearing Corporation ("ICC"), and the Chicago Mercantile Exchange ("CME"), proposed changes to the agreements governing non-proprietary XM accounts in the XM program between OCC and ICC and in the XM program between OCC and the Kansas City Board of Trade Clearing Corporation ("KCC"), respectively.² On January 11, 1996, OCC filed an amendment to the proposed rule change to correct minor typographical errors in two of the agreements that are the subject of the proposed rule change.³ Notice of the proposal was published in the Federal Register on December 11, 1995.⁴ No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description of the Proposal

OCC is amending the agreements governing non-proprietary XM accounts of market professionals in the OCC/ICC/CME XM program, in the OCC/ICC XM program, and in the OCC/KCC XM program in order to make the agreements correspond with the revised distributional scheme adopted by the Commodity Futures Trading Commission ("CFTC") in the new appendix to the CFTC's bankruptcy rules.⁵ The proposed rule change also conforms the terms of the agreements governing the proprietary and non-proprietary XM accounts in the OCC/KCC XM program with the terms of the agreements used in the OCC/ICC/CME XM program and in the OCC/ICC XM program.

The Commission and the CFTC approved non-proprietary cross-margining in November 1991.⁶ As part

² Letters from Jean M. Cawley, OCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation ("Division"), Commission (September 11, 1995, and October 10, 1995).

³ Letter from Jean M. Cawley, OCC, to Jerry W. Carpenter, Assistant Director, Division, Commission (January 8, 1996).

⁴ Securities Exchange Act Release No. 36551, (December 4, 1995), 60 FR 63558.

⁵ The CFTC's distributional requirements are set forth in Appendix B to Part 190 of the CFTC's General Regulations, 17 CFR 190. The CFTC's distributional framework was adopted in April 1994. 59 FR 17468 (April 13, 1994).

⁶ Securities Exchange Act Release Nos. 29991 (November 26, 1991), 56 FR 61458 (order approving OCC/CME non-proprietary XM program); 56 FR 61404 (CFTC 1991) (order approving OCC/CME non-proprietary XM program); 30041 (December 5, 1991) 56 FR 64824 [File Nos. SR-OCC-90-04 and SR-ICC-90-03] (order approving OCC/ICC non-proprietary, market professional cross-margin program); and 56 FR 61406 (CFTC 1991) (order approving OCC/ICC non-proprietary cross-margin

⁶ 15 U.S.C. § 78q-1(b)(3)(F) (1988).

⁷ 17 CFR 200.20-3(a)(12) (1995).

¹ 15 U.S.C. § 78s(b)(1) (1988).