

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not have the effect of limiting access to or availability of any Exchange order entry or trading system, the NYSE PRIME program has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(e)(5) thereunder.<sup>10</sup> At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**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, 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 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-97-24 and should be submitted by September 19, 1997.

**V. Commission Statement**

As a general matter, price improvement occurs when a customer

order is executed at a price that is superior to the best contra-side bid or ask quote prevailing among the markets and market centers trading the security at the time the order was received and executed. Moreover, the Commission has noted that it also is possible for a customer order to receive negative price "improvement," or price disimprovement, instead of price improvement.<sup>11</sup> Price disimprovement occurs when an order is executed at a price that is inferior to the best contra-side bid or ask quote prevailing among the markets and market makers trading the security at the time the order was received and executed.

The Commission previously has noted the importance of the opportunity for price improvement as a factor in best execution, particularly with regard to broker-dealers routing orders for automatic execution. In the Order Handling Rules Adopting Release, the Commission stated that where material differences exist between the price improvement opportunities offered by markets or market makers, these differences must be taken into account by the broker-dealer. The Commission made clear that in evaluating price improvement opportunities, a broker-dealer must consider, among other things, both the amount of price improvement and price disimprovement present in each market.<sup>12</sup> More recently, the Commission's Preferencing Study analyzed the amount of price improvement and disimprovement on the NYSE and the regional exchanges. The Preferencing Study found that a significant amount of price disimprovement occurred on each exchange.<sup>13</sup>

Therefore, a program such as NYSE Prime, which only provides price improvement numbers, should not be used as the basis for best execution evaluations. NYSE Prime provides some information to firms on a transaction by transaction basis. To be useful for best execution evaluations, however, any price improvement information disseminated also should reflect the amount of price disimprovement that

<sup>11</sup> See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (File No. S7-30-95) ("Order Handling Rules Adopting Release"); SEC, Report on the Practice of Preferencing ("Preferencing Study") (April 11, 1997) at Part V.D.

<sup>12</sup> Order Handling Rules Adopting Release at n.357.

<sup>13</sup> Compare Preferencing Study Tables V-8A to C with Tables V-9A to C. Of course, the Preferencing Study analyzed price improvement and disimprovement in the aggregate. In evaluating execution quality across markets, it is important that broker-dealers consider that execution quality may vary for different types of orders and securities. See Preferencing Study at nn. 313 and 314.

occurs on that market. Accordingly, a market providing price improvement statistics on an aggregate basis should indicate the amount of price disimprovement as well as the amount of price improvement.

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

*Margaret H. McFarland,*

**Deputy Secretary.**

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-38954; File No. SR-OCC-97-08]

**Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Create a New Office of Management Vice Chairman and To Change the Title of Vice Chairman to Member Vice Chairman**

August 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 9, 1997, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on May 12, 1997, amended 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.

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

The purpose of the proposed rule change is to amend OCC's by-laws to create a new office of Management Vice Chairman and to change the title of Vice Chairman to Member Vice Chairman.

**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),

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4.

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*

The proposed rule change will amend Article IV, Section 1 to clarify that the existing Vice Chairman is elected by the Board of Directors from among OCC's Member Directors<sup>3</sup> and will be renamed the Member Vice Chairman. Article IV, Section I will also be amended to create the position of Management Vice Chairman which will be elected at the discretion of the Board of Directors, but the board will not be required to fill this position. Only OCC staff members will be eligible to serve as the Management Vice Chairman, and any person serving in this office shall not be eligible to serve concurrently in any other OCC office.

Article IV, Section 7 will be amended to provide for the duties and responsibilities of the Management Vice Chairman and to clarify the duties and responsibilities of the Member Vice Chairman. The duties of the Management Vice Chairman will include assuming all of the Chairman's responsibilities in the absence or disability of the Chairman, including presiding over meetings of the Board of Directors and the shareholders. The Member Vice Chairman will preside at such meetings and assume all of the Chairman's responsibilities only in the absence of the Chairman and Management Vice Chairman. The Member Vice Chairman will remain the chair of any committee responsible for evaluating the performance of OCC or the compensation of OCC's officers.

The proposed rule change also will amend Article III, Section 15(e) to add the office of Management Vice Chairman to the list of officers who may be granted emergency powers and who may be empowered to act on behalf of any other officer who is unable to fulfill any emergency powers granted to such office. Accordingly, the Management Vice Chairman position will add another person to OCC's line of succession, which should reduce the risk that OCC would be without qualified leadership. OCC believes it is important that a clear line of succession

<sup>2</sup>The Commission has modified the text of the summaries prepared by OCC.

<sup>3</sup>To distinguish the title of the current Vice Chairman from the staff position of Management Vice Chairman, the modifier "Member" has been added to the office's title. Conforming changes have also been made to several other sections of OCC's by-laws to reflect addition of the modifier "Member" to the office's title.

be established and be as routine and trouble-free as possible. The addition of the office of Management Vice Chairman is intended to accomplish this goal. In addition, a conforming amendment to Article IV, Section 8 will be made to clarify that the President's duty to act in the place of the Chairman will arise only in the absence of the Chairman, the Management Vice Chairman, and the Member Vice Chairman.

Finally, a technical correction to Article IV, Section 1 is proposed. This section currently requires that the Board of Directors elect a senior management officer of OCC to be in charge of each OCC office that is (i) responsible for 20% or more of the volume of exchange transactions cleared through OCC or (ii) located in the same city as an exchange on which 20% or more of the volume of the exchange's transactions are cleared through OCC. OCC proposes to delete this provision because it believes that it is no longer necessary due to advances in systems design. OCC represents that the relevant exchanges are aware of this proposed change and concur with it.

OCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because adding the position of Management Vice Chairman should strengthen the line of succession in the absence of the Chairman of the Board and will ease any transition from an existing Chairman of the Board to his or her successor.

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

OCC does not believe that the proposed rule change will 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 OCC consents, the Commission will:

(A) By order approve such 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 submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, 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 Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR-OCC-97-08 and should be submitted by September 19, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-38955; File No. SR-PCX-97-12]

**Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change Modifying Rules on Disclosure of Financial Arrangements of Members and Notice of Filing and Order Granting Accelerated Approval of Amendment Thereto**

August 20, 1997.

**I. Introduction**

On April 23, 1997, the Pacific Exchange, Inc. ("PCX" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the

<sup>4</sup> 17 CFR 200.30-3(a)(12) (1995).