

conference to resolve discovery disputes and other preliminary matters under NYSE Rule 619.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁵ and, in particular, the requirements of Section 6 and the rules and regulations thereunder.⁶ Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. In particular, the Commission believes that the proposed rule change will continue to help ensure that NYSE members, member organizations, and the public have a fair and impartial forum for the resolution of their disputes.

Mediation is a method of dispute resolution where a mediator attempts to facilitate a settlement of the dispute. The Commission believes that it is reasonable and consistent with the Act to extend mediation to more cases because it may result in savings of time and money for a greater number of parties. The Commission notes that the Exchange is amending and extending this pilot program based on its evaluation of the effectiveness of the current pilot program. The Exchange represents that lowering the threshold to claims of \$250,000 or more and including cases involving public customers may lead to more and earlier settlements. In addition, the Exchange represents that early settlements reduce costs and increase party satisfaction.

The Commission believes that it is consistent with the Act to require an administrative conference between the parties and the arbitrators in cases where the amount of the claim is \$250,000 or more, to expedite the arbitration process and reduce costs of the arbitration. An administrative conference early in the process will allow the arbitrators to intervene to establish discovery schedules, resolve discovery disputes and other preliminary matters, and to attempt to narrow the issues in dispute and avoid costly contests over procedural matters. The Commission believes that reducing

the threshold for administrative conferences from \$500,000 to \$250,000 should provide these benefits to a greater number of claims. Further, the procedural amendments to the pilot program should expedite the process for conducting administrative conferences.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-NYSE-00-39) is approved. The mediation program, NYSE Rule 638, and the administrative conference rule, NYSE Rule 639, are each approved on a two-year pilot basis through December 30, 2002.

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. 34-43782; File No. SR-OCC-00-04]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Definition of Marking Price and Closing Price

December 29, 2000.

Pursuant to section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act") notice is hereby given that on May 2, 2000, 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 would amend OCC's price determination rules by conforming the definition of "marking price" to the definition of "closing price." The rule change would also revise both definitions to clarify that OCC will normally determine underlying stock prices based on the last reported sale price during regular business hours.

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 conform the definition of "marking price" in OCC Rule 601 to the definition of "closing price" in OCC Rule 805. The rule change would also revise both definitions to clarify that OCC will normally determine underlying stock prices based on the last reported sale price during regular business hours.

Background

OCC Rule 805(j) defines the term "closing price" for purposes of OCC's exercise by exception procedure. Under this procedure, unless a clearing member specifically instructs OCC to the contrary, expiring equity options in the clearing member's accounts are exercised without any affirmative action by the clearing member if the "closing price" of the underlying stock exceeds (in the case of a call) or is less than (in the case of a put) the strike price of the option by a specified interval. That interval is three-quarters of a point in a customer's account and one-quarter of a point in any other clearing member account.³

Before February 1999, Rule 805(j) defined "closing price" to mean the closing price of an underlying stock "on its primary market." In recognition of the increasing fragmentation of the equity markets, the rule was amended in February 1999 to refer instead to the last reported sale price "on such national securities exchange or other domestic securities market as [OCC] shall determine."⁴ Thus, the rule change gave OCC the discretion to designate the market whose closing price will serve as the benchmark in order to avoid

⁵ In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f.

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

³ See OCC Rule 805(d)(2).

⁴ Securities Exchange Act Release No. 41089 (February 23, 1999), 64 FR 10051 (March 1, 1999).

potential disputes as to a stock's primary market.

Rule 601 specifies the procedure for margining short positions in equity options. Open short positions are margined based on prices or quotes for the option itself. Assigned short positions, however, are margined based on the difference between the strike price of the option and the "marking price" of the underlying stock.⁵ Unlike the definition of "closing price" in Rule 805(j), the definition of "marking price" in Rule 601(b)(6) still refers to the closing price of an underlying stock on its "primary market."

Discussion

1. *Conforming Rule 601(b)(6) to Rule 805(j).* OCC believes that the definition of "marking price" in Rule 601(b)(6) and the definition of "closing price" in Rule 805(j) should not be materially different. According to OCC, the two prices are normally determined in the same manner and therefore should be defined in the same way. Therefore, OCC proposes that the Rule 601 definition of "marking price" conform to Rule 805 because the same concerns that led OCC to replace the term "primary market" in Rule 805 apply equally in the context of Rule 601.

2. *Regular Trading Hours.* OCC believes that with the growth of after-hours trading, questions might arise concerning the time that the "last reported sale price" of an underlying stock should be determined for purposes of fixing both the Rule 805 closing price and the rule 601 marking price. OCC therefore proposes that Rule 805(j) and 601(b)(6) be amended to refer to the last reported sale price "during regular trading hours (as determined by the Corporation [OCC]) * * *." This amendment would allow OCC to avoid potential disputes by (i) eliminating any basis for arguing that the closing price or the marking price should be determined based on after-hours trading and (ii) giving OCC discretion to determine when "regular trading hours" end.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act⁶ because it promotes the prompt and accurate clearance and settlement of equity and index options.

⁵ Assigned short positions are margined at OCC from the assignment date through the exercise settlement date (E+3).

⁶ 15 U.S.C. 78q-1.

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

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, 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, NW, Washington, DC 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, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to file number SR-OCC-00-04 and should be submitted by January 30, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43779; File No. SR-PCX-99-44]

Self-Regulatory Organizations; Pacific Exchange Inc.; Order Approving Proposed Rule Change Relating to PCX Rule 6, Options Trading, Trading Practices and Procedures

December 28, 2000.

I. Introduction

On October 29, 1999, 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 to amend some of its options trading rules. On January 7, 2000, the PCX submitted Amendment No. 1 to the proposed rule change.³ On May 25, 2000, the PCX submitted Amendment No. 2 to the proposed rule change.⁴ The proposed rule change, as amended by Amendment Nos. 1 and 2, was published in the **Federal Register** on August 23, 2000.⁵ On December 22, 2000, the Exchange submitted Amendment No. 3 to the proposed rule change.⁶ The Commission did not receive any comments on the proposed rule change. This order approves the proposal, as amended.

⁷ 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 Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), SEC, dated January 6, 2000 ("Amendment No. 1").

⁴ See letter from Robert P. Pacileo, Senior Attorney, Regulatory Policy, PCX, to Jack Drogin, Assistant Director, Division, SEC, dated May 24, 2000 ("Amendment No. 2").

⁵ Securities Exchange Act Release No. 43149 (August 11, 2000), 65 FR 51392.

⁶ See letter from Peter D. Bloom, Director, Regulatory Projects, Regulatory Policy, PCX, to Kelly Riley, Division, SEC, dated December 20, 2000 ("Amendment No. 3"). In Amendment No. 3, the Exchange made non-substantive reference changes to proposed PCX Rules 6.51, 6.64 and 6.65 to reflect other amendments made to the rules. Because the changes in Amendment No. 3 were non-substantive, notice is not required.