

which it is a member, including suitability rules.<sup>21</sup> The circular will also address members' responsibility to deliver a prospectus to all investors purchasing the ETF, as well as highlight the characteristics of the ETF, including that ETF shares are only redeemable in Creation Unit size aggregation.<sup>22</sup>

### C. Dissemination of the Fund Portfolio Information

The Commission believes that since Amex is disseminating an estimate of the Value ("Values") of a share for the various ETFs, investors will be provided with timely and useful information concerning the value of the ETFs, on a per Fund basis. The Commission notes that the information is disseminated through facilities of the CTA and reflects the currently available information concerning the value of the assets comprising the deposit securities. The information is disseminated every fifteen seconds during the hours of 9:30 a.m. to 4 p.m. Eastern Standard Time and will be available to all investors, irrespective of where the transaction is executed.<sup>23</sup> In addition, because the value is expected to closely track the applicable ETF, the Commission believes the Values will provide investors with adequate information to determine the intra-day value of a given ETF.

### D. Surveillance

The Commission notes that NYSE has submitted surveillance procedures for the ETFs and believes that those procedures are adequate to address concerns associated with the listing and trading of such securities, including any concerns associated with specialists purchasing and redeeming Creation Units. The Exchange has represented that its surveillance procedures should allow it to identify situations where specialists purchase or redeem Creation Units to ensure compliance with NYSE Rule 460.10, which requires that such purchases or redemptions facilitate the maintenance of a fair and orderly market in the subject security.

<sup>21</sup> Telephone conversation between Janet M. Kissane, Office of General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on August 2, 2002.

<sup>22</sup> The Commission notes that the information circular should also discuss exemptive relief granted by the Commission from certain rules under the Act. The applicable rules are: Rule 10a-1, Rule 10b-10; Rule 14e-5; Rule 10b-17; Rule 11d1-2; Rules 15c1-5 and 15c1-6; and Rules 101 and 102 of Regulation M under the Exchange Act.

<sup>23</sup> Telephone conversation between Janet M. Kissane, Office of General Counsel, NYSE, and Florence E. Harmon, Senior Special Counsel, Division, Commission, on August 2, 2002.

### E. Specialists

The Commission finds that it is consistent with the Act to allow a specialist registered in a security issued by an Investment Company to purchase or redeem the listed security from the issuer as appropriate to facilitate the maintenance of a fair and orderly market in that security. The Commission believes that such market activities should enhance liquidity in such security and facilitate a specialist's market making responsibilities. In addition, because the specialist only will be able to purchase and redeem ETF shares on the same terms and conditions as any other investor (and only at the NAV), and Creation transactions must occur through the distributor and not directly with the issuer, the Commission believes that concerns regarding potential abuse are minimized. As noted above, the Exchange's surveillance procedures also should ensure that such purchases are only for the purpose of maintaining fair and orderly markets, and not for any other improper or speculative purposes. Finally, the Commission notes that its approval of this aspect of the Exchange's rule proposal does not address any other requirements or obligations under the Federal securities laws that may be applicable.<sup>24</sup>

After careful review, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act.<sup>25</sup> The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Exchange. Accordingly, the Commission finds that the listing of the ETFs on a UTP basis is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act,<sup>26</sup> to approve the proposal on the accelerated basis. The Commission further finds that

<sup>24</sup> The Commission notes that with respect to the ETFs, broker-dealers and other persons are cautioned in the prospectus and/or the ETF's Statement of Additional Information that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act of 1933.

<sup>25</sup> 15 U.S.C. 78s(b)(2).

<sup>26</sup> 15 U.S.C. 78f(b)(5).

accelerated approval will enable the Exchange to accommodate the timetable for trading ETFs on the Exchange.

### 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. 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 Room.

Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number SR-NYSE-2002-28 and should be submitted by August 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>27</sup>

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

[FR Doc. 02-20179 Filed 8-8-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46312; File No. SR-OCC-2002-06]

### Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Adjustment Procedures for Security Futures

August 5, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 12, 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

<sup>27</sup> 17 CFR 200.30-3(a)(12).

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

Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change would amend OCC's adjustment procedures for stock futures to provide for adjusting stock futures contracts to compensate for special cash dividends and for rights distributions that expire in the money during the life of the futures contract.<sup>2</sup>

### **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 these statements.<sup>3</sup>

#### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The proposed rule change would amend OCC's adjustment procedures for stock futures to provide for adjusting stock futures contracts to compensate for special cash dividends and for rights distributions that expire in the money during the life of the futures contract. Security futures markets and certain firms interested in trading stock futures have expressed to OCC their belief that in order for stock futures to be successful they must replicate a position in the underlying stock as closely as possible. This means that, among other things, if an unanticipated corporate event (*i.e.*, an event that cannot be discounted in futures prices) materially affects the value of an underlying stock, the terms of futures contracts on that stock should be adjusted to compensate for the event. There are two types of corporate events that cause particular concern from this perspective: (1) special (*i.e.*, non-recurrent) cash dividends and (2) rights distributions. OCC does not, as a general rule, adjust options for cash dividends unless the amount of the dividend exceeds 10 percent of the value of the underlying

stock. If the holder of a call option wants to capture a dividend below that threshold, he can do so by exercising although at the cost of losing the remaining time value of his option. The holder of a long stock future would not have that ability. Recurrent cash dividends are not regarded as a problem because they can be anticipated and discounted in futures settlement prices. But there is no economical way for holders of long stock futures positions to ensure themselves the benefit of unscheduled dividends.

Similarly, if the issuer of an underlying stock declares a rights distribution and the rights will expire before the options do, the holder of a call option can capture the value of the rights by exercising the option before the rights expire. In contrast, the holder of a long stock future would have no way of obtaining the benefit of a rights distribution if the rights expire before the future does.

OCC's rules currently specify adjustment procedures for stock futures that generally parallel the adjustment rules for options. These procedures do not take into account the economic differences between options and futures discussed above. The security futures markets and firms interested in trading stock futures believe strongly that OCC's adjustment provisions should accommodate these differences.<sup>4</sup>

The proposed rule change is intended to address that concern. OCC's by-laws presently provide that, as a general rule, outstanding stock futures contracts will not be adjusted to compensate for ordinary cash dividends. A cash dividend is deemed "ordinary" if the amount does not exceed 10 percent of the value of the underlying stock on the declaration date. The proposed rule change would amend the by-laws to provide that in the case of stock futures, a cash dividend would be deemed "ordinary" if OCC determined that it was declared pursuant to a policy or practice of paying such dividends on a quarterly or other regular basis regardless of the size of the cash dividend.<sup>5</sup> This change recognizes that market pricing mechanisms can

compensate for anticipated cash dividends. Because the market cannot anticipate and price for special dividends, the proposed rule change would provide for adjustments to outstanding stock futures when a company pays a special (*i.e.*, non-recurring) cash dividend without regard to size. This would be done through a one-time adjustment in the futures settlement price that has the effect of causing the short to pass the value of the dividend to the long.

OCC's by-laws currently provide that outstanding stock futures will not be adjusted to compensate for rights distributions where the rights expire before the maturity date of the future. Under the proposed rule change, if rights would expire before they were to be delivered under a stock futures contract, then the futures would be adjusted through a one-time adjustment in the futures settlement price in an amount equal to the value of the rights as determined by OCC. OCC's good-faith determination of value would be conclusive and binding on investors.

Interpretation .11, which applies only to certain types of adjustments, is being deleted because OCC has concluded that it is likely to be more confusing than useful.

The proposed rule change is consistent with the requirements of section 17A of the Act<sup>6</sup> and the rules and regulations thereunder applicable to OCC because it promotes the prompt and accurate clearance and settlement of securities transactions, fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general protects investors and the public interest.

#### *(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 relating to the proposed rule change have not yet been solicited or received. OCC will notify the Commission of any written comments received by OCC.

<sup>2</sup> Article I of OCC's By-Laws defines "stock future" as "a security future for which the underlying security is an equity security."

<sup>3</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>4</sup> Although this would cause the adjustment procedures for stock futures to diverge from those applicable to equity options, the consensus among prospective markets and market participants appears to be that it is more important to avoid discontinuity between stock futures and the underlying stocks than between futures and options.

<sup>5</sup> Quarterly stock dividends would also be deemed "ordinary" regardless of size. Stock futures contracts would ordinarily be adjusted for other stock distributions, even if recurrent (*e.g.*, annual), to avoid creating an unnecessary discontinuity with equity options.

<sup>6</sup> 15 U.S.C. 78q-1.

### 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 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 also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-2002-06 and should be submitted by August 30, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-20181 Filed 8-8-02; 8:45 am]

**BILLING CODE 8010-01-P**

### DEPARTMENT OF STATE

[Public Notice 4094]

#### Office of the Coordinator for Counterterrorism; Designation of Foreign Terrorist Organizations

**AGENCY:** Department of State.

**ACTION:** Designation of foreign terrorist organizations.

Pursuant to section 219 of the Immigration and Nationality Act ("INA"), as added by the Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104-132, § 302, 110 Stat. 1214, 1248 (1996), and amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208, 110 Stat. 3009 (1996), the Secretary of State hereby designates, effective August 9, 2002, the following organization as foreign terrorist organizations:

The Communist Party of the Philippines, also known as the CPP, also known as the New People's Army, also known as the NPA.

Dated: August 2, 2002.

**Timothy Egert,**

*Federal Register Liaison, Department of State.*

[FR Doc. 02-20242 Filed 8-8-02; 5:00 pm]

**BILLING CODE 4710-10-P**

### DEPARTMENT OF TRANSPORTATION

#### Office of the Secretary

#### Aviation Proceedings, Agreements Filed During the Week Ending July 26, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST-2002-12909.

*Date Filed:* July 22, 2002.

*Parties:* Members of the International Air Transport Association.

*Subject:* CAC/30/Meet/008/02 dated July 5, 2002 r-1 to r-8; Minutes—CAC/30/Meet/006/02 dated May 28, 2002; Intended effective date: October 1, 2002.

*Docket Number:* OST-2002-12920.

*Date Filed:* July 23, 2002.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC12 USA-EUR 0138 dated 25 June 2002, North Atlantic-USA-Europe (except between Austria, Czech Republic, France, Germany, Italy, Netherlands, Scandinavia) r1-r20; PTC12 USA-EUR 0140 dated 28 June 2002, Technical Correction; PTC12

USA-EUR 0143 dated 16 June 2002, Technical Correction; PTC12 USA-EUR 0139 dated 25 June 2002, North Atlantic-USA-Austria, Czech Republic, France, Germany, Italy, Netherlands, Scandinavia r21-r41, Minutes—PTC12 USA-EUR 0142 dated 16 July 2002, Tables—PTC12 USA-EUR FARES 0070 dated 28 June 2002, Intended effective date: 1 November 2002.

*Docket Number:* OST-2002-12921.

*Date Filed:* July 23, 2002.

*Parties:* Members of the International Air Transport Association.

*Subject:* CSC/24/Meet/006/2002 dated June 21, 2002, Finally Adopted Resolutions r1-r2, Minutes—CSC/24/Meet/007/2002 dated June 21, 2002, Intended effective date: 1 October 2002.

*Docket Number:* OST-2002-12934.

*Date Filed:* July 25, 2002.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC12 USA-EUR Fares 0071 dated 19 July 2002, Resolution 015h-USA Add-on Amounts between USA and UK, Intended effective date: 1 October 2002.

**Dorothy Y. Beard,**

*Federal Register Liaison.*

[FR Doc. 02-20250 Filed 8-8-02; 8:45 am]

**BILLING CODE 4910-62-P**

### DEPARTMENT OF TRANSPORTATION

#### Office of the Secretary

#### Aviation Proceedings, Agreements Filed During the Week Ending July 19, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST-2002-12830.

*Date Filed:* July 15, 2002.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC12 USA-EUR 0141 dated 16 July 2002, Mail Vote 225—Resolution 010x r1-r4, TC12 USA-Europe (except Austria, Czech Republic, France, Germany, Iceland, Italy, Netherlands, Scandinavia), Special Passenger Amending Resolution from Spain to USA, Intended effective date: 1 November 2002/1 March 2003.

*Docket Number:* OST-2002-12861.

*Date Filed:* July 17, 2002.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC2 EUR-ME 0141 dated 12 July 2002, TC2 Europe-Middle East

<sup>7</sup> 17 CFR 200.30-3(a)(12).