securities to be purchased. As noted above, section 6(c) provides that the Commission may exempt any person, security or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Because the Funds operate pursuant to rule 23c–3 under the Act, Applicants request relief under sections 6(c) and 23(c) from rule 23c–3 to permit them to impose EWCs on shares of the Funds submitted for repurchase that have been held for less than a specified period.

4. Applicants believe that the requested relief meets the standards of sections 6(c) and 23(c)(3). Rule 6c–10 under the Act permit open-end investment companies to impose CDSCs, subject to certain conditions. Applicants state that EWCs are functionally similar to CDSCs imposed by open-end investment companies under rule 6c–10. Applicants state that EWCs may be necessary for the Distributor to recover distribution costs. Applicants will comply with rule 6c–10 as if that rule applied to closed-end investment companies. The Funds also will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSCs. Applicants further state that the Funds will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act.

Asset-Based Distribution Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3, under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to permit the Funds to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 6c–10, 11a–3, 12b–1, 17d–3, 18f–3, and 22d–1 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the NASD Conduct Rule, as amended from time to time.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 03–24453 Filed 9–26–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48507; File No. SR–CBOE–2003–27]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Representation of Orders by Floor Brokers

September 22, 2003.

On July 27, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''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 CBOE Rule 6.45A to permit floor brokers to represent as agent orders from unaffiliated broker-dealers. The **Federal Register** published the proposed rule change for comment on August 19, 2003.[3] The Commission received no comments on the proposal.

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 exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] and believes that the proposed rules should expand access to the CBOE's electronic book in a manner that is consistent with Section 11(a) of the Act.[7] Therefore, the Commission finds the proposed rule change is 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.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–2003–27), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24504 Filed 9–26–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48520; File No. SR–OCC–2002–10]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Market-Maker Account Agreements

September 22, 2003.

I. Introduction

On May 21, 2002, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') and on October 18, 2002, amended proposed rule change SR–OCC–2002–10 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 April 24, 2003.[2] No comment letters were received. For the reasons discussed below, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 49826 (August 12, 2003), 68 FR 49826.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k(a).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 47691, (April 17, 2003), 68 FR 20207 (April 24, 2003) [File No. SR–OCC–2002–10].

Commission is granting approval of the proposed rule change.

II. Description

The purpose of the rule change is to amend Article VI, Section 3 of OCC's By-Laws and Chapter XI, Rule 1105 of OCC's Rules to eliminate the requirement that a clearing member must obtain a specified form of account agreement from each market-maker for whom it carries an account and must submit the agreement to OCC for approval. OCC believes that such submissions to OCC are no longer necessary to perfect its security interest in clearing members' market-maker accounts under the Uniform Commercial Code (''UCC'') and are administratively burdensome for OCC and its clearing members.

The rule change also adds two new interpretive statements to Article VI, Section 3. Interpretation .02 clarifies the application to OCC clearing accounts of certain UCC amendments to Article 8 and to Article 9. Interpretation .03 clarifies that OCC's lien on positions in clearing member accounts extends to short security futures positions, as well as all other assets, and that OCC's lien secures clearing member obligations on long security futures positions, as well as all other obligations arising from the applicable account or accounts.

1. Background

Article VI, Section 3, of OCC's By-Laws specifies the types of clearing accounts that a clearing member may have at OCC, including accounts in which a clearing member may carry positions of market professionals such as options market-makers, JBO participants,[3] and stock specialists (referred to collectively herein as ''market-makers'' and ''market-maker accounts''). Clearing members that maintain market-maker accounts at OCC must, according to the current provisions of Article VI, Section 3, obtain and submit to OCC for approval certain agreements from each market-maker whose funds and positions are included in such market-maker accounts. The principal reason for requiring the filing of these agreements with OCC was to ensure that OCC's security interest in and setoff rights against long option positions and assets deposited as margin in market-maker accounts would be protected under the UCC as it existed prior to the 1994 UCC amendments in the event of a clearing member insolvency.

OCC currently requires that a clearing member file with OCC a specified form of account agreement, executed by the clearing member and each market-maker included in the account, containing the required consents for the applicable type of market-maker account.[4] Having to submit each of the agreements to OCC for OCC review is cumbersome and imposes administrative burdens on both clearing members and OCC staff. Moreover, OCC believes that there may be potential for confusion in the legal relationships established through these documents. Although the agreements are not intended to create contractual privity between OCC and the market-maker, OCC believes it might be possible to misinterpret the agreements as doing so.

2. Proposed Changes

Because of the UCC amendments in 1994, OCC believes it is no longer necessary to require clearing members to file market-maker account agreements with OCC in order to protect OCC's security interest in and setoff rights against funds and positions in market-maker accounts.[5] The UCC amendments established new rules specifically tailored to govern the ''indirect holding system'' for securities and certain other investment property.[6] Under these rules, OCC may obtain an automatically perfected, first-priority security interest in assets in market-maker accounts through provisions in OCC's By-Laws or Rules. No grant of a security interest from the market-maker to OCC is required.

Under the UCC amendments, OCC and its clearing members are ''securities intermediaries,''[7] and an OCC-issued option is a ''financial asset.''[8] A person acquires a ''security entitlement''[9] and becomes an ''entitlement holder''[10] when a securities intermediary credits a financial asset to that person's account.[11] OCC's clearing members acquire a security entitlement against OCC when OCC credits positions to their accounts. The clearing members' customers (including market-makers) acquire security entitlements against the clearing member with respect to positions carried for those customers on the books of the clearing member.

In order for OCC to acquire a perfected security interest in clearing members' security entitlements, OCC must obtain ''control'' over the entitlements or the ''securities account'' in which they are held.[12] UCC 8–106(e) provides that the securities intermediary has control ''[i]f an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary.''

OCC's revised by-law and rule will state that the clearing member (*i.e.*, the entitlement holder) agrees and represents that it has obtained the agreement of each market-maker whose positions and transactions are included in the account and that OCC (*i.e.*, the securities intermediary) has a lien on long positions and margin in each market-maker account. Consequently, OCC will have a security interest perfected by control of the security entitlements in each market-maker account whether or not it has obtained a signed agreement from each market-maker. Furthermore, OCC's security interest has priority over any competing interests. ''A security interest in a security entitlement or a securities account[13] granted to the debtor's own

[3] Under Article I, Section 1 of OCC's By-Laws, a ''JBO participant'' is a registered broker-dealer that ''(i) maintains a joint back office arrangement with a clearing member pursuant to the requirements of Regulation T promulgated by the Board of Governors of the Federal Reserve System; (ii) meets the requirements applicable to JBO participants as specified in exchange rules; and (iii) consents to having his exchange transactions cleared and positions carried in a JBO participants account.'' Unless the context requires otherwise, a JBO participant is a market-maker for purposes of OCC's By-Laws and all of OCC's Rules except for Chapter IV.

[4] While the content of the agreements may vary by type of market-maker account, all agreements specify OCC's right to a lien on all assets in the account, the right to carry positions ''net,'' and the right to close out positions. Market-makers whose assets are carried at OCC in combined accounts with other market-makers are required to consent to the commingling of their positions with the positions of other market-makers. Because OCC's lien on all assets in a combined market-makers' account covers any obligation arising from the commingled account, assets attributable to one market-maker may be used by OCC to offset obligations of the clearing member that are attributable to the activity of a different market-maker.

[5] OCC did not propose to eliminate the requirement that clearing members file market-maker account agreements with OCC immediately after the adoption of the UCC amendments because that requirement was not inconsistent with the UCC amendments and because the UCC amendments were not immediately adopted in all U.S. jurisdictions. Because OCC is expecting an increase in market-maker account openings as a result of security futures trading, it is now a business priority for OCC to eliminate the requirement in order to relieve administrative burdens for both OCC and its clearing members.

[6] Part 5 of Article 8 of the UCC describes the core of the package of rights of a person who holds a security through a securities intermediary.

[7] UCC 8–102(a)(14).

[8] UCC 8–102(a)(9)(ii) and 8–103(e).

[9] UCC 8–102(a)(17).

[10] UCC 8–102(a)(7).

[11] UCC 8–501(b)(1).

[12] UCC 9–314(a) and 9–106(a).

[13] UCC 8–501(a) defines ''securities account'' to mean ''an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.'' UCC 9–102(a)(14) defines ''commodity account'' as an account

Continued

securities intermediary has priority over any security interest granted by the debtor to another secured party.'' [14]

Because it remains the case that as between a clearing member and its customers (including market-makers), the clearing member has a duty to obtain each customer's consent before subjecting the customer's securities to a security interest or taking certain other actions potentially affecting the customer's interests,[15] the rule continues to require clearing members to obtain specified agreements from market-makers and to require them to represent to OCC that such agreements have in fact been obtained. Those clearing members that choose to continue to use an existing form of market-maker account agreement will be permitted to do so, but OCC will also permit the agreements required under Article VI, Section 3 of its By-Laws to be incorporated into a clearing member's own forms of account agreements to the extent that the clearing member chooses to do so.

OCC also will add two new items to the Interpretations and Policies to Article VI, Section 3. The first sentence of new Interpretation .02 sets forth a representation and warranty from each clearing member that it has obtained the agreement of each person for whom a transaction is effected in any account of the clearing member established and maintained pursuant to the provisions of Section 3, including the granting of a security interest in the account to OCC, and that the inclusion of the person's transactions and positions in such account is in compliance with the laws, regulations, and rules applicable to the clearing member.

This representation will apply to not only market-maker accounts and JBO participant accounts but also to firm accounts, pledge accounts, securities customer accounts, cross margining accounts, and segregated futures accounts that are provided for under paragraphs (a) and (d) through (g) of Section 3. While OCC has never required that a specific form of agreement be obtained by clearing members from persons whose transactions are included in these other types of accounts, Commission Rule 15c3–3, Rule 8c–1, Rule 15c2–1, and the Commission's hypothecation rules, as well as certain state laws, where applicable, require that certain consents and agreements be obtained.[16]

The second sentence of new Interpretation .02 is intended to make clear that the rights of OCC, including its security interest, in any account of the clearing member with OCC are enforceable in accordance with their terms even if the clearing member fails in its obligations to obtain the required consents or agreements from its customers. This is consistent with the provisions of UCC Article 8, under which OCC's security interest is protected.[17]

The first sentence of new Interpretation 03 will clarify that pursuant to Article VI, Section 3 of OCC's By-Laws, OCC's lien extends to all assets in account which are ''investment property'' as defined under Article 9 of the UCC,[18] including long and short positions in security futures and any other asset in the account. This interpretation is consistent with OCC's long-standing interpretation of Section 3 of Article VI.

The second sentence of Interpretation .03 more broadly clarifies that OCC's lien acts as security for all obligations of the clearing member to OCC with respect to separate or combined market-maker accounts, customer accounts, or segregated futures accounts. OCC's lien secures the clearing member's obligation with respect to long security futures positions in the account. Long security futures positions, unlike long options which are always an asset, may be a liability if the market has moved against those positions since the last mark-to-market payment. In order to avoid any confusion caused by reference to short positions but not to long positions, Interpretation .03 clarifies that obligations to OCC with respect to all exchange transactions should be read broadly to encompass, where applicable, obligations arising from long or short positions, obligations to make payments or delivery under cleared contracts, and obligations with respect to fees and charges associated with such transactions.

Changes to Rule 1105(b) are made to conform that rule to Article VI, Section 3. Rather than refer to the market-maker account agreement, the rule will now refer to the provisions in Article VI, Section 3 of the By-Laws which are applicable to the market-maker account.

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 and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[19] The rule change permits OCC to eliminate the requirement that a clearing member must obtain a specified form of account agreement from each market-maker for whom it carries an account and submit those agreements to OCC for approval because UCC amendments in conjunction with requirements under federal and state law make the requirement redundant and unnecessary. OCC's rule change does not substantively alter the rights or obligations of OCC clearing members or their customers but rather streamlines the process by which OCC perfects its security interest in clearing members' market-maker accounts under the UCC. Accordingly, the Commission finds the rule change is consistent with section 17A of the Act.

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

maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.'' Accounts established under Section 3 of OCC's By-Laws would ordinarily be ''securities accounts,'' but certain accounts might be construed as commodity accounts or as both securities accounts and commodity account given that OCC may clear commodity contracts and security futures as well as security options. In any case, the Article 9 rules governing perfection and priority of security interests in commodity accounts and assets contained therein are substantively identical to those governing securities accounts and assets therein because all are included in the UCC 9–102(a)(49) definition of ''investment property'' to which those rules apply. To the extent that an account is a ''commodity account,'' OCC will fall within the definition of a ''commodity intermediary'' under UCC 9–102(a)(17).

[14] UCC 9–328(3).

[15] See UCC 8–504(b), which states that a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain on behalf of an entitlement holder except as otherwise agreed by the entitlement holder.

[16] For example, consent to the commingling of a customer's securities with the securities of another customer must be obtained. Such consents are normally included in the account documentation obtained by broker-dealers from their customers and are the responsibility of the broker-dealers.

[17] UCC 8–503(e) provides that an action based on an entitlement holder's property interest with respect to a financial asset held for its account by a securities intermediary, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of the financial asset or an interest therein (which would include lien holders) who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations to maintain the property for the entitlement holder. *See, also,* UCC 8–511(b), which provides that a claim of a creditor (*i.e.*, OCC) of a securities intermediary (*i.e.*, the failed clearing member) that is perfected by control has priority over the claims of the securities intermediary's entitlement holders.

[18] UCC 9–102(a)(49) defines ''investment property'' to mean a ''security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.''

[19] 15 U.S.C. 78q–1(b)(3)(F).

particular with the requirements of section 17A(b)(3)(F) 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–2002–10) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–24452 Filed 9–26–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48522; File No. SR–PCX–2003–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Making Housekeeping Changes to Its Options Trading Rules

September 23, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 8, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') 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 by the PCX. On September 10, 2003, the PCX filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The PCX proposes to amend its rules to clarify existing provisions, eliminate superfluous provisions, re-number the rules where appropriate in order to coincide with PCX Plus, and otherwise bring the rules up-to-date.

The text of the proposed rule change is available at the Office of the Secretary, PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX 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. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 7, 1999, the Exchange filed with the Commission a proposed rule change, SR–PCX–99–13,[4] to modify its rules pertaining to Market Makers and Lead Market Makers (''LMMs''). The PCX represents that the purpose of that rule change was to clarify existing provisions, eliminate superfluous provisions, and otherwise bring its rules up-to-date. The Exchange withdrew this filing on April 9, 2002, with the intention to re-file after its PCX Plus proposal was approved.[5] The Exchange proposes to re-file this proposed rule change with additional housekeeping changes as a result of the Commission's approval of PCX Plus.

The Exchange proposes to make the following changes to the text of PCX Rule 6 (''Options Trading—Rules Principally Applicable to Trading of Options Contracts'') with regard to Market Makers and LMMs:

First, the Exchange proposes to amend PCX Rule 6.28(b)(5) with respect to Fast Markets and Unusual Market Conditions. Under the proposed rule change, the reference to PCX Rule 6.37(f) will be corrected to reflect the correct rule number, which is PCX Rule 6.37, Commentary .05. This is a technical error that the Exchange wishes to correct at this time.

Second, the Exchange proposes to amend PCX Rule 6.32(e) to clarify that the section is only applicable with regard to Market Maker orders entered from off the floor that are not entitled to special margin treatment pursuant to the previous subsections. The Exchange believes that the proposed rule amendment will clarify any possible confusion in the rule.

Third, the PCX proposes changes to PCX Rules 6.35 and 6.38(a) regarding the procedures for selection of Market Maker primary appointment zones, so that in all cases, Market Makers would be required to select a primary zone prior to the expiration of a 60-day grace period. Currently, PCX Rule 6.35 requires that the PCX's Options Allocation Committee assign Market Makers with a primary appointment zone. However, it does not expressly require that Market Makers apply for such appointments. It only states that a Market Maker's refusal to accept a primary appointment zone may be deemed a sufficient cause for termination or suspension of a Market Maker's registration. This change should clarify any confusion as to a Market Maker's requirement for choosing a primary appointment zone. The Exchange also proposes to make PCX Rule 6.38 consistent with the changes to PCX Rule 6.35 by replacing the phrase ''shall be given'' a primary appointment zone with the phrase ''must obtain'' a primary appointment zone.

Fourth, the Exchange proposes to move the current text in Commentary .03 to PCX Rule 6.35(f), leaving Commentary .03 as reserved. The PCX believes it is more appropriate to have this text in the rule as opposed to the commentary.

Fifth, PCX proposes to add a provision on FLEX Option to PCX Rule 6.36 in order to conform its Letters of Guarantee rule to its Letters of Authorization rule, as stated in PCX Rule 6.45. The Exchange believes the change would clarify any confusion with respect to letters of guarantee and letters of authorization.

Sixth, the Exchange proposes to eliminate OFPA B–4, Subject: Market Maker Trading on the PSE Equity Floors, as the reference to equity floors is no longer applicable to PCX.

Seventh, the PCX proposes to change PCX Rule 6.82 by replacing references to ''alternate LMMs'' and ''substitute LMMs'' with references to ''interim LMMs'' and ''back-up LMMs,'' respectively. The Exchange believes the new references better define the intended role of the LMMs in these circumstances. The Exchange also proposes to amend PCX Rule 6.82(c)(3) in order to clarify the LMM's obligation to generate and update its quotations.

Eighth, the Exchange proposes to clarify that, under PCX Rule 6.84(g), a Market Maker trading for a joint account must have a primary appointment, but

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces the PCX's original Rule 19b–4 filing in its entirety.

[4] *See* Securities Exchange Act Release No. 42035 (October 19, 1999), 64 FR 57681 (October 26, 1999) (notice of filing of File No. SR–PCX–99–13).

[5] *See* Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (order approving PCX Plus, a new electronic platform for options trading).