

company-related information that they receive through NYSEnet, the Exchange believes that it would be enhancing the value of the service that it provides to its listed companies. In light of the listing fees that those companies pay to the Exchange, the Exchange believes that it would be reasonable for the Exchange to bear the fees involved, as it does in the case of the CTA fees described above.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>9</sup> in particular, in that Section 6(b)(4) requires that the exchange's rules provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

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

The Exchange believes that the proposed fee change would not impose any burden on competition that is not necessary or appropriate in the 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 regarding the 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

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> At any time within 60

days of the filing of the proposed 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.<sup>12</sup>

The Exchange has requested that the Commission waive the 30-day operative delay to allow the Exchange to distribute the expanded NYSEnet information to listed companies as soon as possible. The Exchange represents that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. The Exchange notes that the proposed rule change merely notes that specified services are being provided to listed companies for no additional fee beyond those that they already pay in annual listing fees to the Exchange.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to provide NYSE-listed companies with the expanded NYSEnet information and thereby enhance the value of services that the NYSE provides to its listed companies.<sup>13</sup>

## 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. Comments may be submitted by any of the following methods:

### *Electronic comments:*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an E-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2004-25 on the subject line.

### *Paper comments:*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

<sup>12</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 1, 2004, the date on which the NYSE filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>13</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-NYSE-2004-25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2004-25 and should be submitted on or before July 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 04-13356 Filed 6-14-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49834; File No. SR-OCC-2004-06]

### **Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Index Option Expiration Date Exercise Procedures**

June 8, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 19, 2004, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>8</sup> 15 U.S.C. 78(f).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). The Commission notes that the Exchange provided written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

change 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 parties.

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

OCC is seeking to amend its Rule 1804, which governs expiration date exercise procedures for index options.

### **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>2</sup>

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

The purpose of this rule change is to modify OCC's Rule 1804, which governs expiration date exercise procedures for index options, to enable OCC to clear and settle European-style options on various volatility indexes ("VIX Options") proposed to be listed by the Chicago Board Options Exchange ("CBOE") that will expire on Wednesdays rather than on Saturdays. OCC is also amending Rule 1804 to simplify its structure.

CBOE's rule filing with respect to VIX Options provide that VIX Options will expire on Wednesdays.<sup>3</sup> However, as currently drafted, OCC Rule 1804 contemplates that only quarterly index options ("QIX Options") and flexibly structured index options ("Flex Options") will expire on a business day. This proposed rule change would accommodate VIX Options by amending Rule 1804 to remove descriptions of the day of the week on which certain options expire and make clear that all index options other than Flex Options have the same expiration date exercise procedure regardless of their expiration date.

OCC Rule 1804(b) governs QIX Options "expiring on a business day." Rule 1804(b) was adopted in April 1993.<sup>4</sup> At that time, OCC ran both a preliminary and a final report for clearing members to use in exercise-by-exception ("ex-by-ex") processing with respect to all options except for European-style treasury options that expired on a business day. Under OCC Rule 806, clearing members received only one expiration exercise report for European-style treasury options with business day expirations because OCC was not able to process both a preliminary and a final expiration exercise report on a business day. Because QIX Options also expire on a business day, Rule 1804(b) was adopted to state that QIX Options would be settled pursuant to the single expiration exercise report procedures set forth in OCC Rule 806, as modified by Rule 1804(b).

In 1995, OCC revised its expiration date exercise procedures to do away with the preliminary and final expiration exercise reports and instead to provide only one expiration exercise report for all expiring options.<sup>5</sup> As part of that change, OCC eliminated Rule 806, as it was no longer necessary to provide separately for a single expiration report for certain options expiring on a business day because all options were to have a single expiration exercise report. With the move from two expiration exercise reports to one, Rule 1804(b) became the same in substance to Rule 1804(a).

The changes OCC now proposes to Rule 1804 would eliminate the redundancies in that rule and eliminate references to Saturday versus business day expirations. Current Rule 1804(a) is eliminated as redundant because revised Rules 1804(b) and (c) clearly establish the ex-by-ex thresholds for index options. It is unnecessary to retain the definition of the term "closing price" in Rule 1804(a)(2) with respect to index options because revised Rule 1804(a)(1) relies instead on the term "exercise settlement amount." Exercise settlement amount is defined in Article XVII of OCC's By-Laws. Furthermore, the procedures that may be followed by OCC in the event of the unavailability of an index value are being eliminated from current Rule 1804(a)(2) because they are set forth in more detail in Article XVII, Section 4 of the By-Laws, which is cross-referenced in new

Interpretation and Policy .02. Existing Rule 1804(c), which provides for "true" automatic exercise (*i.e.*, no exception procedure) for Flex Options is retained without substantive modification. Finally, simplifying and conforming changes are being made in Rule 801 and the Interpretations and Policies to Rule 1804.

The proposed changes to OCC's By-Laws and Rules are consistent with the purposes and requirements of section 17A of the Act<sup>6</sup> and the rules and regulations thereunder applicable to OCC because they are designed to promote the prompt and accurate clearance and settlement of securities transactions, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments and to perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect 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 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**

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(4)<sup>8</sup> thereunder because the proposed rule effects a change in an existing service of OCC that does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which OCC is responsible and does not significantly affect the respective rights or obligations of OCC or persons using the service. OCC currently uses the same expiration date procedures for options that expire on business days and on Saturdays. This proposed rule change merely clarifies this point, eliminates certain redundancies in Rule 1804, and removes language stating that only QIX

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

<sup>3</sup> Securities Exchange Act Release No. 49563 (April 14, 2004), 69 FR 21589 (File No. SR-CBOE-2003-40).

<sup>4</sup> Securities Exchange Act Release No. 32244 (April 29, 1993), 58 FR 27005 (File No. SR-CBOE-92-27).

<sup>5</sup> Securities Exchange Act Release No. 36385 (October 24, 1995), 60 FR 54557 (File No. SR-OCC-95-10).

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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(4).

Options and FLEX Options expire on a business day. The proposed rule change does not substantively affect the manner in which OCC safeguards funds or securities or the rights and obligations of its clearing members. At any time within sixty 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, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic comments:*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2004-06 on the subject line.

*Paper comments:*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-OCC-2004-06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 and on OCC's Web site at <http://www.optionsclearing.com>. All comments received will be posted without change; the Commission does not edit personal identifying

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2004-06 and should be submitted on or before July 6, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-13414 Filed 6-14-04; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49818; File No. SR-PCX-2004-39]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. To Extend a Pilot Program Under Which It Lists Options on Selected Stocks Trading Below \$20 at One-Point Intervals Until August 4, 2004

June 4, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 3, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by PCX. PCX filed Amendment No. 1 to the proposal on June 4, 2004.<sup>3</sup> 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

PCX proposes to extend its pilot program under which it lists options on selected stocks trading below \$20 at \$1 strike price intervals ("\$1 Pilot Program") until August 4, 2004. The text of the proposed rule change is available at the Office of the Secretary, PCX, and the Commission.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Steven B. Matlin, Senior Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 3, 2004 ("Amendment No. 1"). In Amendment No. 1, PCX replaced in its entirety the proposed rule text it attached as Exhibit A to its initial Form 19b-4.

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

In its filing with the Commission, 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. 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

The purpose of this proposal is to extend PCX's \$1 Pilot Program until August 4, 2004. The current \$1 Pilot Program expires on June 5, 2004. PCX states that its member firms have expressed a continued interest in listing additional strike prices on low priced stocks so that they can provide their customers with greater flexibility in their investment choices. For this reason, PCX proposes to extend the \$1 Pilot Program. PCX notes that all of the issues eligible to be included in the \$1 Pilot Program, the procedures for adding \$1 strike intervals, the procedures for phasing out \$2.50 strike price intervals, the prohibition against listing long-term options (also known as "LEAPS") in equity option classes at \$1 strike price intervals, the procedures for adding expiration months and the procedures for deleting \$1 strike intervals will all remain the same.<sup>4</sup>

###### 2. Statutory Basis

PCX believes that the continuation of \$1 strike prices will stimulate customer

<sup>4</sup> The Commission approved the \$1 Pilot Program on June 17, 2003. See Securities Exchange Act Release No. 48045 (June 17, 2003); 68 FR 37549 (June 24, 2003) ("Pilot Program Approval Order"). Consistent with the Pilot Program Approval Order, PCX represents that it will file a report with the Commission which shall include: (1) Data and written analysis on the open interest and trading volume for options (at all strike intervals) selected for the \$1 Pilot Program; (2) delisted option series (for all strike price intervals) selected for the \$1 Pilot Program; (3) an assessment of the appropriateness of the \$1 strike price intervals for the options the PCX selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the PCX's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the PCX addressed them; (6) any complaints that the PCX received during the operation of the \$1 Pilot Program and how the PCX addressed them; and (7) any additional information that would help assess the operation of the \$1 Pilot Program.