

which it was filed, and the MSRB provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</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>14</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-MSRB-2005-06 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-MSRB-2005-06. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. 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-MSRB-2005-06 and should be submitted on or before May 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51521; File No. SR-OCC-2004-17]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Calculating Net Capital Under OCC Rule 307

April 11, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 27, 2004, 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 Rule 307 by adopting Interpretation and Policy .01 ("IP .01") thereunder that would require clearing members that could otherwise take advantage of Commission Rule 15c3-1(a)(6) under the Act to include the risk-based haircuts associated with proprietary securities positions in determining their compliance with OCC's minimum net capital requirements.

#### 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.<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 proposed rule change is to add IP .01 to OCC Rule 307. Rule 307 requires a clearing member to compute its "net capital," "aggregate indebtedness," and "debt-equity total" in accordance with Commission Rule 15c3-1 under the Act for purposes of OCC Rules.<sup>3</sup> The proposed rule change would require clearing members that could otherwise take advantage of Commission Rule 15c3-1(a)(6) to deduct the risk-based haircuts associated with proprietary securities positions in determining their compliance with OCC's minimum net capital requirements.<sup>4</sup> Although the exemption in Rule 15c3-1(a)(6) from the securities haircuts in Rule 15c3-1(c)(2)(vi) and Appendix A under Rule 15c3-1 ensures from a systemic standpoint that capital exists to support open positions, it does not ensure that capital is maintained in the entity to which OCC has credit exposure. As a result, OCC is exposed to the volatility of the positions relative to the clearing member's net income without any reserve against net capital. OCC believes that the exemption in Rule

<sup>2</sup> The Commission has modified parts of these statements.

<sup>3</sup> OCC Rule 307 provides that a clearing member that is registered as a futures commission merchant and is not otherwise required to calculate net capital in accordance with Rule 15c3-1 may instead calculate net capital as required under the rules of the Commodity Futures Trading Commission.

<sup>4</sup> Rule 15c3-1 requires that every broker or dealer maintain net capital no less than the minimum net capital as set forth by the rule. Paragraph (c) of the rule defines net capital as the net worth of a broker or dealer, adjusted by among other things, securities haircuts that are set forth in paragraph (c)(vi) and appendix A of the rule. Paragraph (a)(6) allows market makers, specialists, and certain other dealers to elect to apply paragraph (a)(6)(iii) in lieu of paragraph (c)(vi) or Appendix A under Rule 15c3-1. In general, paragraph (a)(6)(iii) requires that a dealer maintain a liquidating equity with respect to securities positions in his market maker or specialist account at least equal to 25 percent of the market value of the long positions and 30 percent of the market value of the short positions.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

15c3-1(a)(6) gives those clearing members added leverage enabling them to expand positions to several times their net capital.

In order to provide an adjustment period for those clearing members that may be affected by IP .01, IP .01 will not take effect until July 27, 2005, for firms that are clearing members at the time when it becomes effective.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act, as amended, because it is designed to help assure the safeguarding of securities and funds which are in the custody or control of OCC or for which OCC is responsible.

#### *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 the self-regulatory organization consents, the Commission will:

- (a) By order approve the proposed rule change or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **VI. 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-2004-17 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-2004-17. 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 [www.optionsclearing.com](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-2004-17 and should be submitted on or before May 9, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51519; File No. SR-PCX-2005-37]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Adjusting the Implementation Date of Previously Adopted PCXE Listing Fees for Exchange-Traded Funds and Closed-End Funds**

April 11, 2005.

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 March 29, 2005, 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 PCX. The Exchange filed this proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(3) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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**

PCX, through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE"), is proposing to adjust the implementation date of previously adopted PCXE listing fees for Exchange-Traded Funds ("ETFs") and Closed-End Funds ("CEFs") to April 1, 2005.

#### **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.

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(3).

<sup>5</sup> 17 CFR 200.30-3(a)(12).