

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was developed through discussions with PSA acting on behalf of its members and with several participants. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

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 DTC 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. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR-DTC-97-07 and should be submitted by September 15, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38948; File No. SR-OCC-97-05]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Early Warning Notices

August 19, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, notice is hereby given that on May 15, 1997, 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 from interested persons on the proposed rule change.

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

The purpose of the proposed rule change is to revise OCC's Rule 303 to expand the circumstances under which a clearing member is to provide OCC with early warning notices.

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 revise OCC's Rule 303 to expand the circumstances under which a clearing member is to provide OCC with early warning notices. Currently,

Rule 303 requires a clearing member to provide OCC with an early warning notice if it experiences certain enumerated financial difficulties or if it has provided any notice required pursuant to Commission Rule 15c3-1(e)(1)(iv).³ Specifically, Rule 303 would be expanded to explicitly provide that a clearing member must immediately notify an officer of OCC of any notice that such clearing member gives, is required to give, or receives from any regulatory organization regarding any financial difficulty affecting the clearing member or of any failure by the clearing member to be in compliance with the financial responsibility rules or capital requirements of any regulatory organization. As proposed, Rule 303 would require the clearing member to promptly confirm such notice in writing. In addition, the lead-in language of (b) and (c) of Rule 303 (as relettered) will be revised to conform to the requirement in new paragraph 303(a) that an officer of OCC be notified by telephone of any notice described in the paragraph.

The term "regulatory organization" will be defined in proposed Interpretations and Policies .01 to mean (i) the Commission and any other federal or state regulatory agency having jurisdiction over the clearing member including the Commodity Futures Trading Commission ("CFTC") in the case of a clearing member which is subject to the jurisdiction of the CFTC; (ii) any self-regulatory organization as defined in Section 3(a) of Act⁴ of which the clearing member is a member or participant; (iii) any clearing organization, as defined in Regulation Section 1.3(d) under the Commodity Exchange Act,⁵ board of trade, contract market, and registered futures association of which the clearing member is a member or participant; and (iv) in the case of a non-U.S. clearing member, any non-U.S. regulatory agency or instrumentality or independent organization or exchange having jurisdiction over the non-U.S. clearing member or of which the non-U.S. clearing member is a member or participant.

OCC believes that these amendments will enhance the effectiveness of its financial surveillance program by providing OCC with material information, some of which it currently

³ 17 CFR 240.15c3-1(e)(1)(iv). Rule 15c3-1(e) requires broker-dealers to provide written notice to the Commission in connection with certain transactions involving a significant withdrawal of equity capital.

⁴ 15 U.S.C. 78c(a).

⁵ 17 CFR 1.3(d).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by OCC.

⁶ 17 CFR 200.30-3(a)(12).

does not receive, concerning a clearing member's financial condition. For example, many of OCC's clearing members are also registered as futures commission merchants ("FCMs") under the Commodity Exchange Act and as such are subject to the financial reporting requirements of the CFTC and the early warning notice requirements of commodity self-regulatory organizations. Because of differences in the early warning notice criteria used by the commodity regulatory organizations and those of securities regulatory organizations, events triggering early warning notice requirements for an FCM (e.g., net capital below a specified percentage of segregated funds) would not necessarily create an early warning notice requirement for a registered broker-dealer. Consequently, under OCC's current rules, a situation could occur that would require a clearing member to give early warning notice to its commodity regulatory authority but would not require notice to be given to OCC. Accordingly, requiring a clearing member to provide OCC with early warning notices which it is required to provide to any other regulatory organization should assist OCC in assessing the ongoing creditworthiness of its clearing members.

OCC believes that there is potential overlap between the requirements of new Rule 303(a) and existing Rule 303(c) (as relettered), such that a non-U.S. clearing member might be required to notify OCC of a notice from a non-U.S. regulatory agency pursuant to both paragraphs.⁶ However, OCC believes that the overlap should not impose an inappropriate burden on non-U.S. clearing members because the requirement to notify OCC of an event can be satisfied by the same notice to OCC even if the requirement arises under both paragraphs.

OCC believes the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act⁷ in that it strengthens OCC's rules relating to financial surveillance and financial responsibility which are designed, in general, to protect OCC, clearing members, and the investing public.

⁶ Existing paragraph (c) of Rule 303 (as relettered) currently provides that an exempt non-U.S. clearing member must notify OCC promptly of any violation on its part of the rules or regulations of its non-U.S. regulatory agency or any notice received from such agency that alleges a violation of such rules or regulations, informs the non-U.S. clearing member that it may violate such rules or regulations, or informs the non-U.S. clearing member that it has triggered any provision relating to early warning notices contained in such rules or regulations.

⁷ 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 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-97-05 and should be submitted by September 15, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

⁸ 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38945; File No. SR-PCX-97-27]

Order Approving Proposed Rule Change

August 18, 1997.

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Exchange, Inc. Relating to The Addition of a Public Governor to its Board of Governors and Permitting an Additional Public Governor to Serve on the Executive Committee.

On June 27, 1997, the Pacific Exchange ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² to add a public governor to its Board of Governors and to permit an additional public governor to serve on the Executive Committee of the Exchange. The Commission published notice of the proposed rule change in the **Federal Register** on July 16, 1997.³ This order approves the proposed rule change.

I. Description of the Proposal

PCX is amending Sections 1(a) and 6 of Article II and Section 2(a) of Article III of its Constitution so that an additional individual from the public sector may serve on the Board of Governors and to permit an additional public governor to serve on the Executive Committee for the Exchange. This proposed rule change will result in the PCX Board having seven public governors on its twenty-two person Board. Also, the Executive Committee, comprised of six governors, will now have two public governors versus the current single public governor. In addition, the proposed rule change contains an alteration to the text of Section 2(a), establishing gender neutral language for that provision.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 38821 (July 8, 1997), 62 FR 38180.