

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. Please include File Number SR-Phlx-2009-37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2009-37. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-Phlx-2009-37 and should be submitted on or before May 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9-10447 Filed 5-5-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59845; File No. SR-OCC-2009-08]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Stock as Margin

April 29, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ notice is hereby given that on April 14, 2009, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange 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 and to grant accelerated approval of the proposed rule change.

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

The proposed rule change will revise OCC's eligibility requirements for the deposit of stocks as margin.

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.

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

OCC is proposing to amend its rules to facilitate the deposit of common

stocks as margin collateral by: (1) Reducing the minimum price for stocks from \$10 to \$3 and (2) eliminating the 10% concentration test for certain Exchange-Traded Funds ("ETFs").

1. Minimum Price Test

Prior to this rule change, OCC Rule 604(b)(4) required that all stocks ("Valued Securities") including common and preferred stocks, submitted as margin collateral had to have a market value greater than \$10 per share. The dramatic fall in equity prices over the last several months has led to a significant increase in the number of stocks that are priced below \$10. Approximately one year ago, eleven stocks in the S&P 500 were priced below \$10. As of April 13, 2009, sixty-six stocks were priced below \$10. Although OCC's \$10 minimum price requirement for stock collateral was intended to exclude stocks that might be volatile, illiquid, close to delisting, *etc.*, it did so at the expense of excluding many stocks that if looked at individually would be deemed appropriate for margin collateral purposes.

Under this filing, OCC will reduce the minimum market value for stocks from \$10 to \$3. OCC has performed an analysis of the impact of reducing the minimum share price for common stock and has concluded that such a change can be implemented for both option and non-option securities without materially increasing risk to OCC. OCC states that its approach to valuing Valued Securities is conservative because the current 30% haircut is high relative to the haircuts that will be applied upon implementation of its Collateral in Margins project.² Moreover, OCC has examined the member accounts that hold the most volatile Valued Securities and found no instance where the amount of such holdings in any particular account was excessive. OCC nevertheless intends to closely monitor any account with a large amount of

² Securities Exchange Act Release No. 58158 (July 15, 2008), 73 FR 42646 (July 15, 2008). Under the Collateral in Margins filing, OCC will be updating its margin requirement methodology and risk management system known as "STANS" to more accurately measure the risk in clearing members' accounts. Some of the changes include providing OCC with greater flexibility to determine the amount of replacement collateral when securities deposited as margin are withdrawn and eliminating certain concentration limits and minimum share prices.

OCC expects to fully implement the new Collateral in Margins methodology in the second quarter of 2010. In order to address current market conditions, OCC is proposing changes now to reduce the impact of the minimum price requirement and the 10% concentration test, both of which will be eliminated altogether for options securities when Collateral in Margins is implemented.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

deposited Valued Securities that would be subject to a high haircut (*i.e.*, greater than 40%) under STANS. Preferred stocks, which will not be included in the Collateral in Margin program, will remain subject to a minimum share price of greater than \$10.

2. ETF Concentration Test

OCC Rule 604(b)(4) provides that "equity and debt issues of any one issuer shall not be valued at an amount in excess of 10% of the margin requirement in the account for which such securities are deposited." The main purpose of the concentration test is to protect OCC from undue exposure where a single security deposited as collateral by a member suffers a sudden and extreme fall in value or becomes illiquid. Under the concentration test, a clearing member that wants to satisfy its OCC margin requirement solely with Valued Securities must submit a portfolio that contains at least ten separate securities. The concentration test was developed before the advent of ETFs representing an ownership interest in large numbers of securities such as those based on the S&P 500, Nasdaq 100, and Russell 2000.

OCC states that it has analyzed such assets from a risk perspective and has concluded that they should be accepted as margin without regard to the concentration limits but subject to certain conditions. First, the assets acceptable for this purpose should be limited to liquid, broad-based equity index ETFs. Secondly, the applicable STANS margin interval for each deposited ETF exempted from the 10% concentration test must be less than or equal to 30%.

Because this interim proposal for limiting the applicability of the 10% concentration test is narrower than the corresponding change in the Collateral in Margins rule change, and OCC will thereafter remove it from the rule book.

OCC states that the proposed changes to OCC's rules are consistent with the purposes and requirements of Section 17A of the Act³ because they are designed to promote the accurate and efficient clearance and settlement of transactions in securities and to safeguard assets within OCC's custody or control. The changes accomplish this purpose by facilitating the expanded use of Valued Securities as margin collateral

while implementing certain limitations and monitoring procedures designed to limit risk. The proposed rule change is not inconsistent with the existing rules of OCC including any rules proposed to be amended.

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

OCC does not believe that the proposed rule change will impose any burden on competition.

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

OCC has not solicited or received written comments with respect to the proposed rule change. OCC will notify the Commission of any comments it receives.

III. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

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 registered clearing agency and, in particular, the requirements of Section 17A of the Act.⁴ Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,⁵ which requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds that are in the custody or control of the clearing agency or for which it is responsible. Although OCC is reducing the minimum share price for stocks eligible to be deposited as margin, the Commission is satisfied with OCC's analysis that such reduction is accompanied by sufficient risk-management controls to protect OCC from the risks associated with including such lower-priced stocks in members' margin accounts. The Commission also finds that allowing certain ETFs and other fund shares to be deposited as margin collateral that otherwise could not be deposited because of OCC's concentration restriction should not pose undue risks because such funds are broad based and highly liquid. Therefore, the proposed rule change should not adversely impact OCC's ability to continue to assure that the securities and funds in its custody or control or for which it is responsible are properly safeguarded.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁶ for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission believes that accelerating approval of this proposal should benefit OCC's members and investors by permitting OCC to update its margin requirements without undue delay and in a manner that will expand the securities that members may deposit as margin collateral while it implements the Collateral in Margin project without compromising OCC's ability to safeguard the funds and securities in its custody or control.

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 rulecomment@sec.gov. Please include File No. SR-OCC-2009-08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-OCC-2009-08. 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, 100 F Street, NE., Washington, DC 20549, on official business days

⁴ 15 U.S.C. 78-1.

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ 15 U.S.C. 78s(b)(2).

³ 15 U.S.C. 78-1.

between the hours of 10:00 a.m. to 3:00 p.m. Copies of such filing also will be available for inspection and copying at OCC's principal office and on OCC's Web site at http://www.theocc.com/publications/rules/proposed_changes/proposed_changes.jsp. 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 No. OCC-2009-08 and should be submitted on or before May 27, 2009.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act ⁷ that the proposed rule change (SR-OCC-2009-08) be, and it hereby is, approved on an accelerated basis.⁸

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁹

Elizabeth M. Murphy,
Secretary.

[FR Doc. E9-10448 Filed 5-5-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59835; File No. SR-NYSEArca-2009-30]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Adoption of Listing Standards for Managed Trust Securities and the Listing and Trading of Shares of the iShares® Diversified Alternatives Trust

April 28, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act") ¹ and Rule 19b-4 thereunder,² notice is hereby given that, on April 9, 2009, NYSE Arca, Inc. ("NYSE Arca" 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 Exchange. On April 24, 2009, the Exchange filed Amendment No. 1 to the proposed rule change. 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 Exchange, through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities" or "Corporation"), proposes new NYSE Arca Equities Rule 8.700 ("Managed Trust Securities"). The Exchange also proposes to list and trade shares ("Shares") of the iShares® Diversified Alternatives Trust ("Trust") pursuant to this rule. The Exchange also proposes to amend NYSE Arca Equities Rule 7.34 and its Listing Fees to add references to proposed NYSE Arca Equities Rule 8.700. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at the Commission's Public Reference Room.³

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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes new NYSE Arca Equities Rule 8.700 for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges ("UTP") of Managed Trust Securities issued by a trust that is a commodity pool as defined in the Commodity Exchange Act ("CEA") and regulations thereunder, and that is managed by a commodity pool operator ("CPO") registered with the Commodity Futures Trading Commission ("CFTC") and registered under the Securities Act of 1933, as amended. The trust would hold long and/or short positions in

exchange traded futures and/or currency forward contracts as selected by the trust's advisor consistent with the trust's objectives, which would only include exchange traded futures contracts involving commodities, currencies, stock indices, fixed income indices, interest rates and sovereign, private and mortgage or asset backed debt instruments as disclosed in the trust's prospectus, as such may be amended from time to time. In addition, such shares would be issuable and redeemable continuously in specified aggregate amounts at net asset value ("NAV").⁴ The Exchange also proposes to amend NYSE Arca Equities Rule 7.34 (Trading Sessions) to reference securities described in proposed Rule 8.700 in Rule 7.34(a)(3)(A) relating to hours of the Exchange's Core Trading Session, in Rule 7.34(a)(4)(A) relating to trading halts for trading pursuant to UTP during the Exchange's Opening Session, and in Rule 7.34(a)(5) relating to trading halts when the NAV and/or "Disclosed Portfolio" is not being disseminated to all market participants at the same time.⁵ In addition, the Exchange proposes to amend its listing fees by incorporating the securities described in proposed Rule 8.700 in the term "Derivative Securities Products."

Pursuant to this proposed rule change, the Exchange proposes to list and trade the Shares of the Trust. The

⁴ The Commission has previously approved NYSE Arca Equities rules to list and trade products based on or related to commodities. See Securities Exchange Act Release No. 57838 (May 20, 2008), 73 FR 30649 (May 28, 2008) (SR-NYSEArca-2008-09) (approving new NYSE Arca Equities Rule 8.204 "Commodity Futures Trust Shares" for to list and trade the AirShares EU Carbon Allowances Fund); Securities Exchange Act Release No. 54025 (June 21, 2006), 71 FR 36856 (June 28, 2006) (SR-NYSEArca-2006-12) (approving new NYSE Arca Equities Rule 8.203 "Commodity-Indexed Trust Shares" for trading pursuant to UTP the iShares GSCI Commodity-Indexed Trust); Securities Exchange Act Release No. 51067 (January 21, 2005), 70 FR 3952 (January 27, 2005) (SR-PCX-2004-132) (approving new NYSE Arca Equities Rule 8.201 "Commodity-Based Trust Shares" for trading pursuant to UTP the iShares COMEX Gold Trust); Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR-NYSEArca-2007-43) (approving listing of shares of iShares COMEX Gold Trust pursuant to NYSE Arca Equities Rule 8.201); Securities Exchange Act Release No. 53875 (May 25, 2006), 71 FR 32164 (June 2, 2006) (SR-NYSEArca-2006-11) (approving new NYSE Arca Equities Rule 8.300 "Partnership Shares" for trading pursuant to UTP the United States Oil Fund, LP); Securities Exchange Act Release No. 53736 (April 27, 2006), 71 FR 26582 (May 5, 2006) (SR-PCX-2006-22) (approving new Commentary .02 to NYSE Arca Equities Rule 8.200 "Investment Shares" for trading pursuant to UTP the DB Commodity Index Tracking Fund); Securities Exchange Act Release No. 58162 (July 15, 2008), 73 FR 42391 (July 21, 2008) (SR-NYSEArca-2008-73) (approving new NYSE Arca Equities Rule 8.200 "Trust Issued Receipts").

⁵ See Exchange Confirmation, *supra* note 3.

⁷ 15 U.S.C. 78s(b)(2).

⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ E-mail from Sudhir Bhattacharyya, Vice President—Legal, NYSE Euronext, to Edward Y. Cho, Special Counsel, Division of Trading and Markets, Commission, dated April 21, 2009 ("Exchange Confirmation").