

OCC is amending Article VI, section 7 of its By-Laws to reflect that, in accordance with such an instruction, the previously reported matched trade will be deemed null and void and will be given no effect under OCC's by-laws and rules. In addition, section 7 is amended to reflect that OCC will not be liable to any writer, holder, buyer, or seller in acting on an exchange's instruction to disregard a previously submitted trade. Article VII, section 7 of the By Laws and Rules 401 and 402 also are amended to eliminate references to the receipt of a report of matched trades. Instead, these provisions will reference the reporting of matching trade information by an exchange. Other by-law and rule provisions that describe the receipt of a report of matched trades are similarly revised.<sup>6</sup>

Rule 501, which governs position reporting by OCC to its clearing members, is amended to reflect that position information updated during a business day is provisional and informational in nature and that only clearing members' daily position reports can be relied upon as definitely reflecting their final positions. Daily position reports are made available to clearing members each morning and reflect matched trades reported the previous business day.

Rule 801, which relates to exercises of options, also is amended to reflect that exercise information provided throughout a business day is provisional and informational only. Exercises accepted by OCC will be definitely reflected in delivery advices and exercise and assignment reports. Such advices or reports are also made available each morning and reflect exercises from the previous business day.

### 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.<sup>7</sup> By moving towards accepting and processing matched trades and exercises on a near real-time basis, OCC will be able to make available to its clearing members information on their positions, exercises, and assignments in a more timely manner. As a result, OCC will be fulfilling its section 17A obligation to promote the prompt and accurate clearance and settlement of securities

transactions and thereby meets the requirements of section 17A(b)(3)(F).

### 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 particular with the requirements of section 17A of the Act and the rules and regulations thereunder applicable.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-2002-18) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46722; File No. SR-OCC-2002-13]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Clearing Agreement

October 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on June 24, 2002, 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 consists of the "Amended and Restated Agreement for Clearing and Settling Security Futures and Futures and Futures Options on Broad-Based Indexes" between OCC and Nasdaq Liffe Markets, LLC ("NqLX").

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

#### 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

OCC is preparing to clear security futures for a number of markets. One such market is NqLX. Amendment No. 2 to SR-OCC-2001-07 included the "Agreement for Clearing and Settlement Services" dated August 29, 2001, ("Original Agreement") between OCC and NqLX (under its former name, Nasdaq LIFFE, LLC). The Commission approved that rule filing, as amended, on August 20, 2001.<sup>3</sup>

As generally noted in Amendment No. 2 to SR-OCC-2001-07, OCC anticipated that it would file with the Commission the agreements it enters into with markets for the clearance of security futures when negotiated. OCC has recently executed an amendment and restatement of the Original Agreement with NqLX, which is the subject of this filing. The primary motivation for amending and restating the Original Agreement was to expand the range of contracts to be cleared and settled by OCC under that agreement to include futures on broad-based stock indexes and options on such futures.<sup>4</sup> Thus, the parties have added sections on the selection of underlying interests for broad-based stock index futures and options on such futures and have changed numerous occurrences of "security futures" to "Cleared Contracts," a term that encompasses security futures and also futures on broad-based stock indexes and options on such futures. Certain minor

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

<sup>3</sup> Securities Exchange Act Release No. 44727 (August 20, 2001), 66 FR 45351.

<sup>4</sup> OCC was registered as a "derivatives clearing organization" under the Commodity Exchange Act by order of the Commodity Futures Trading Commission (December 10, 2001). The Commission previously approved OCC's rule filing to clear futures and futures options on broad-based stock indexes. Securities Exchange Act Release No. 45946 (May 16, 2002), 67 FR 36056 (SR-OCC-2001-16).

<sup>6</sup> In addition, the term settlement time, as defined in Section 1.S. of Articles XV, XX, and XXIII is being modified to reflect OCC's receipt of matching trade information as opposed to a matched trade report.

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

adjustments in other terms have been made to bring the agreement into line with clearing and settlement agreements that OCC has entered into with other exchanges after it entered into the Original Agreement.

OCC believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Securities Exchange Act of 1934, as amended, because it will foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

*(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 pursuant to section 19(b)(3)(A)(iii) of the Act<sup>5</sup> and Rule 19b-4(f)(4)<sup>6</sup> thereunder because it effects a change in an existing service of OCC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within sixty 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.

### 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. Persons making written submissions should file six copies thereof with the

Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR-OCC-2002-13 and should be submitted by November 25, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46728; File No. SR-PCX-2002-65]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

October 25, 2002.

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 September 27, 2002, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which the PCX has prepared. 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 PCX is proposing to amend its Schedule of Fees and Charges with

respect to the following fees for options: broker-dealer and market maker transaction charges, the continued listings fee, and the shortfall fee. The text of the proposed rule change is below. New text is italicized; deleted text is in brackets.

#### SCHEDULE OF FEES AND CHARGES FOR EXCHANGE SERVICES [PCX Options: Trade-Related Charges]

Transactions:	
Customer .....	\$0.00 per contract side.
PCX Market Maker ...	\$0.21 per contract side.
Non-PCX Option Market Makers.	\$0.26 per contract side.
Firm .....	\$0.10 per contract side for customer facilitation.
Broker/Dealer .....	[\$0.19] \$0.21 per contract side.
PCX Options: Floor and Market Maker Fees:	
Continued Listings Fee.	Difference between \$500 and average monthly revenue for issues with less than \$500 in volume based charges (average monthly revenue based on trailing 3 months). <i>The fee will be capped at \$15,000 per month per LLM firm.</i>
Shortfall Fee .....	\$.35 per contract on shortfall volume *

\* Only applies to the top 120 options. Shortfall volume is the difference between 12% of the total national market share in an option issue for one month and the percentage executed by the LMM. *For the purpose of this calculation, the national market share of any equity option industry volume will be capped at 2.9 million contracts per day.*

\* \* \* \* \*

#### 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 had 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 those statements.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 217 CFR 240.19b-4.