

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51291; File No. SR-OCC-2005-01]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Revise its Cross-Margining Agreement With The Clearing Corporation

March 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on February 1, 2005, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule 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

The proposed rule change would revise the Amended and Restated Cross-Margining Agreement between OCC and The Clearing Corporation ("CCorp") ("X-M Agreement"), formerly known as Board of Trade Clearing Corporation, that governs the OCC-CCorp cross-margin program as well as the agreements governing the participation of clearing members and market professionals therein.

#### 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 proposed rule change revises the "X-M Agreement."<sup>3</sup> Specifically, OCC and CCorp have executed an amendment that revises the X-M Agreement to: (1) Reflect CCorp's change in name and address along with OCC's change in address; (2) modify the description of the contract markets for which CCorp provides clearance and settlement services and, as a result thereof, make a conforming change to the definition of the term "market professional"; (3) as permitted under OCC Rule 705, add Government-Sponsored Enterprise (GSE) debt securities as an eligible form of initial margin and make conforming changes to various provisions in the X-M Agreement; (4) eliminate common stock as an eligible form of initial margin as clearing members have never deposited such collateral in the cross-margin program; (5) subject to OCC Rule 705, permit the clearing organizations to agree to use the valuation rate of one or the other clearing organizations in valuing Government and GSE debt securities;<sup>4</sup> (6) update certain contact information; and (7) update Exhibit A, which contains the list of contracts eligible under the OCC-CCorp cross-margining program.

In addition, OCC and CCorp have amended the agreements governing the cross-margining accounts of clearing members and market professionals that participate in the OCC-CCorp cross-margining program. The amendments to these agreements: (1) Reflect CCorp's change in name; (2) reflect the revised definition of the term "market professional"; (3) make other non-

substantive, technical changes;<sup>5</sup> and (4) eliminate the requirement that clearing members and market professionals furnish the clearing organizations with financing statements relating to positions, collateral and property maintained with respect to accounts subject to cross-margining. The adoption by all 50 states of the 1999 revisions to Articles 8 and 9 of the Uniform Commercial Code has rendered the financing statement requirement obsolete.

The proposed change is consistent with Section 17A of the Act<sup>6</sup> and the rules and regulations thereunder applicable to OCC because it updates agreements used in connection with a longstanding cross-margining program that provides lower clearing margins to clearing members while enhancing the safety of the clearing system. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

#### (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 does not significantly affect the respective rights or obligations of the clearing agency or persons using the service and does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible. 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

<sup>5</sup> Such changes include, for example, describing firms as "participants" in CCorp rather than as "clearing members."

<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).

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

<sup>3</sup> For a description of the existing agreement, see Release No. 34-39203 (October 3, 1997), 62 FR 53371, [File No. SR-OCC-97-14] (order approving amendments to the cross-margining agreements and the forms of agreements governing the cross-margin accounts of clearing members and market professionals that participate in OCC/CCorp cross-margining); Release No. 34-32681 (July 27, 1993), 58 FR 41302 [File No. SR-OCC-92-24] (order approving expansion of cross-margining program between OCC and CCorp to include non-proprietary positions); and Release No. 34-29888 (October 31, 1991), 56 FR 56680 [File No. SR-OCC-91-07] (order approving establishment of cross-margining program between OCC and CCorp).

<sup>4</sup> The amendment to the X-M Agreement provides OCC with the flexibility to agree with CCorp to apply the valuation rates of one or the other clearing organization in the event Rule 705 is amended accordingly.

<sup>21</sup> 17 CFR 200.30-3(a)(12).

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

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-2005-01 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-2005-01. 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-2005-01 and should be submitted on or before March 29, 2005.

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51281; File No. SR-PCX-2005-21]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Deletion of Certain Obsolete or Unnecessary Rules

March 1, 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 February 9, 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 and II below, which items have been prepared by the PCX. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> 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 rules to delete certain rules, or portions thereof, which have been determined as obsolete or unnecessary. The text of the proposed rule change is available on the PCX's Web site at <http://www.pacificex.com>, at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

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

<sup>5</sup> The PCX asked the Commission to waive the 30-day operative delay and the five-day pre-filing notice requirement. See Rule 19b-4(f)(6)(iii).

#### 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 received on the proposed rule change. The text of these 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 aspects of such statements.

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

###### 1. Purpose

On December 9, 2003, the Exchange responded to a request by the Commission's Office of Compliance Inspections and Examinations for section 19(g) obligation compliance under the Act.<sup>6</sup> As part of its compliance, the Exchange performed a complete review of the PCX rules, as well as the surveillance procedures thereof, and found a number of rules that are obsolete or superfluous in the current market structure. Thus, the Exchange proposes to delete these inapplicable rules, or portions thereof, at this time. The proposed rules, or portions thereof, to be deleted are:

- PCX Rule 4.1, Commentary .02—This commentary relates to trading in gold and silver bullion. This commentary is obsolete because the Exchange no longer trades gold and silver bullion.
- PCX Rule 6.91—This rule sets forth the pilot program for the Intermarket Linkage Program. This rule is no longer necessary as the permanent Intermarket Linkage Program (PCX Rules 6.92-6.96) has been implemented.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of section 6(b)(5),<sup>8</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and

<sup>6</sup> 15 U.S.C. 78s(g).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).