

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51390; File No. SR-OCC-2005-02]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Establishment of a Money-Only Settlement Service

March 17, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on March 2, 2005, 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 establishes a money-only settlement service for OCC clearing members.

#### 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

Clearing members have asked OCC to provide a facility that effects transfers of

daily money differences and claims between clearing members.<sup>3</sup> These money differences may result from such things as, among other things, transfers of accounts and commission billing for trade execution. Clearing members presently settle these differences through invoices and checks sent through the U.S. mail or by messenger deliveries. However, clearing members have advised OCC that items sent by either of these means are frequently lost, misdelivered, or delayed and ultimately are written off as uncollectible.

In response to these requests, OCC has determined to add a money-only settlement service that would be available for clearing member use through OCC's ENCORE system. This service, which will only be available for money differences arising from transactions cleared by OCC, will be governed by proposed new Rule 504.<sup>4</sup> Clearing members desiring to settle an open money item with another clearing member will initiate an instruction on any business day through the ENCORE system. OCC will specify a time by which instructions will have to be approved. If the clearing member receiving the instruction does not approve it by the deadline, the instruction will be deemed null and void and will be deleted from the system. If the instruction is approved,<sup>5</sup> OCC, as agent, would draft a paying clearing member's designated bank account at a time to be specified by OCC. OCC will similarly specify a time by which OCC, as agent, will pay to the collecting clearing member the amount specified in the instruction. Initially, OCC intends to effect money-only settlement on the business day after an instruction is approved. In the future, however, OCC may effect money-only settlement on the same business day that an instruction is approved. OCC will notify its clearing members before implementing a change with respect to settlement times.

OCC will withhold money-only settlement amounts owed to any clearing member if the clearing member has any unsatisfied payment obligation

<sup>3</sup> In making their request, clearing members advised OCC that other securities clearing agencies, including The Depository Trust Company ("DTC") and National Securities Clearing Corporation ("NSCC"), offer a comparable service to their participants. See DTC Rule 9(A), Transactions in Securities and Money Payments and NSCC Rule 41, Funds Only Settlement Service.

<sup>4</sup> Proposed Rule 504 is based on Rule 503 pursuant to which OCC, as agent, effects premium settlements between banks or depositories and clearing members with respect to their escrow depository receipt activity under Rule 613.

<sup>5</sup> Approval of an instruction by a clearing member will be detailed in an audit trail created and maintained by OCC.

to OCC. Any amounts withheld will be used to reduce the unpaid obligation.

In drafting a paying clearing member's bank account or in making payment to a collecting clearing member in connection with money-only settlement transactions, OCC may combine multiple transactions for which the clearing member is obligated to make payment or is entitled to receive payments. However, OCC will neither net money-only settlement amounts payable by a clearing member with any amounts payable to the clearing member by OCC with respect to any account maintained by the clearing member with OCC nor will OCC net money-only settlement amounts payable to a clearing member with amounts payable by the clearing member to OCC. Money-only settlement amounts will appear as a separate line item on a settlement report made available to clearing members on each business day.<sup>6</sup>

The money differences to be processed through the money-only settlement system are between clearing members, and OCC will accordingly only act as agent for each clearing member in facilitating their settlement. OCC will not guarantee money-only settlements and will not be obligated to make a money-only settlement payment unless it has collected the amount of the payment from the paying clearing member. If a clearing member is suspended by OCC pursuant to Chapter XI of the Rules, any pending instructions of such clearing member will be deemed null and void to the extent that the suspended clearing member is a paying clearing member.<sup>7</sup> OCC does not believe that the money-only settlement service will adversely affect its capacity to settle transactions in cleared securities because its cash settlement system has more than sufficient capacity to handle the anticipated daily volume of money-only settlements.

OCC believes that the proposed rule change is consistent with Section 17A of the Act because money-only settlement service will provide a more efficient means for clearing members to settle money differences relating to transactions or positions in cleared contracts, thereby improving the likelihood that these amounts will be collected by clearing members. The proposed rule change is not inconsistent with the existing rules of OCC,

<sup>6</sup> This report is made available to Clearing Members via OCC's on-line report inquiry service.

<sup>7</sup> OCC's determination not to guarantee money-only settlement items is consistent with NSCC Rule 41, Section 10.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

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 pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and Rule 19b-4(f)(6)<sup>9</sup> thereunder because it effects a change that (i) does not significantly affect the protection of investors or the public interest, (ii) does not impose any significant burden on competition, and (iii) by its terms, does not become operative for 30 days after the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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. 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-2005-02 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-2005-02. 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-2005-02 and should be submitted on or before April 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51398; File No. SR-PCX-2005-10]

**Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Requiring Electronic Filing of Form U4 and Form U5 by OTP Holders and OTP Firms Through the CRD**

March 18, 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 January 31, 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 Exchange. On February 28, 2005, the Exchange filed Amendment No. 1 to the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposed rule change, as amended, on an accelerated basis.

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

The PCX proposes to amend PCX Rules 2.4, 2.17 and 2.23 to support the implementation of an electronic registration process. The text of the proposed rule change is available on the PCX's Web site <http://www.pacificex.com>, at the PCX's Office of the Secretary, and at the Commission's Public Reference Room.

**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 Exchange 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 III 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

The current PCX procedures require Option Trading Permit ("OTP") applicants to submit the Uniform Application for Securities Industry Registration or Transfer ("Form U4") to the Exchange when they are requesting approval to become an OTP Holder or OTP Firm and the Uniform Termination Notice for Securities Industry Registration ("Form U5") when they wish to terminate an OTP.<sup>3</sup> These forms

<sup>3</sup> In Amendment No. 1 the Exchange stated that these requirements are contained in the current PCX Rules. The word "Rules" is replaced by the word "procedures" pursuant to the telephone conversation between Steven Matlin, Senior

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</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.