

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

### 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>16</sup> and Rule 19b-4(f)(6)<sup>17</sup> thereunder because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which the proposed rule change was filed, or such shorter time as the Commission may designate. At any time within 60 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.<sup>18</sup>

The Exchange has requested that the Commission waive the pre-filing notice requirement. The Commission has determined to waive the five-day pre-filing notice requirement, given that the Exchange filed the original proposed rule change on October 8, 2002.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-2002-47 and should be submitted by December 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

Margaret H. McFarland,

Deputy Secretary.

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46858A; File No. SR-NYSE-2002-36]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. to Adopt Amendments to Exchange Rule 342 ("Offices—Approval, Supervision and Control") and its Interpretation, Rule 401 ("Business Conduct"), Rule 408 ("Discretionary Power in Customers' Accounts"), and Rule 410 ("Records of Orders")

November 27, 2002.

#### Correction

In Release No. 34-46858, issued on November 20, 2002, a portion of the rule text for New York Stock Exchange rule 401 was noticed incorrectly. The corrected text appears below. Additions are in italics; deletions are in brackets.

\* \* \* \* \*

#### Business Conduct

Rule 401.(a)-(b) no change.

*The policies and procedures required under (b)(1), (b)(2), and (b)(3) above must include a means/method of customer confirmation, notification, or follow-up that can be documented.*

\* \* \* \* \*

<sup>19</sup> 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>1</sup>

Margaret H. McFarland,

Deputy Secretary.

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46914; File No. SR-OCC-2002-22]

#### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Clear and Settle Options on Nonequity Fund Shares

November 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), as amended,<sup>1</sup> notice is hereby given that on September 27, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on October 18, 2002, amended the proposed rule change as described in items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

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

The proposed rule change will amend OCC's by-laws and rules to accommodate the clearance and settlement of options on nonequity fund shares (*i.e.*, shares representing interests in entities holding portfolios or baskets of nonequity securities).

#### 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)

<sup>1</sup> 17 CFR 200.30-3(a)(12).

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

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

<sup>18</sup> For purposes of calculating the 30-day delayed operative date and the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on November 1, 2002, when Amendment No. 1 was filed.

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 immediate purpose of the proposed rule change amends article I, VI and XII of OCC's by-laws and chapters VI and XVIII of its rules to accommodate the introduction of options on "iShares." iShares represent interests in an investment company holding portfolios of government securities, corporate debt securities, or government and corporate debt securities. OCC currently issues and clears options on interests in various entities holding portfolios of equity securities (including iShares' equity-based funds). OCC's Rules define such options and their underlying interests as "stock fund options" and "stock fund shares," respectively. To accommodate options on iShares representing interests in an entity holding portfolios of debt securities and to accommodate the possibility that exchanges may in the future list options on interests in other entities holding non-equity securities (or a combination of equity and non-equity), the proposed rule change will replace the terms "stock fund options" and "stock fund shares" with the terms "fund options" and "fund shares" and will eliminate any reference to "stock" or "equity" within the definitions.<sup>3</sup>

OCC will interpret the term "fund shares" broadly, as it did the term "stock fund shares," to include not only interests in registered investment companies but also interests in unregistered trusts (e.g., HOLDRs) and in other investment vehicles holding portfolios of securities. Accordingly, to reflect this broad interpretation the proposed rule change will substitute the term "trusts" for "unit investment trusts" in the definition of "fund share." Conforming changes will be made throughout OCC's By-laws and Rules to incorporate the new definitions.

OCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act,<sup>4</sup> as amended, and the rules and regulations thereunder applicable to

OCC because it promotes the prompt and accurate clearance and settlement of securities transactions, fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, protects investors and the public interest.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change will have any impact, or 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**

Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder, requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>5</sup> The Commission finds that the proposed rule change is consistent with this obligation because by allowing OCC to clear and settle options on nonequity fund shares, market participants trading these products will obtain the efficiencies and safeguards provided by OCC, a registered clearing agency.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. Both the American Stock Exchange ("Amex") and the Chicago Board Options Exchange ("CBOE") have informed OCC that they intend to begin trading options on iShares debt-based funds upon the Commission's approval of this proposed rule change and of a related supplement to the Options Disclosure Document. Accordingly, the Commission finds that there is good cause to approve the rule change prior to the thirtieth day after publication of the notice of filing because by so approving OCC will be able to immediately commence clearing and settling nonequity fund options

when Amex and CBOE commence trading them.

**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 also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-2002-22 and should be submitted by December 26, 2002.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-2002-22) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46902; File No. SR-PCX-2002-63]

**Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Pacific Exchange, Inc., To Amend Its Clearly Erroneous Policy**

November 25, 2002.

On September 23, 2002, the Pacific Exchange, Inc. ("PCX"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4

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

<sup>3</sup> Because the term "fund share" is now being defined to include a broad class of securities, OCC will separately amend Filing No. SR-OCC-2002-04, which proposes to expand the forms of margin collateral accepted by OCC to include money market fund shares, to eliminate the few instances in which the same term is used to refer narrowly to money market fund shares.

<sup>4</sup> 15 U.S.C. 78q-1.

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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