

were from industry participants, and one was from DTC in response to the other four comment letters. While all of the four industry commenters generally supported the proposal, two raised issues or sought clarification about the proposal.

The comment letters submitted by JP Morgan and Edward Jones both expressed their support for the: (1) Extension of the deadline for reporting on payment detail, (2) creation of the conforming and non-conforming securities classifications, (3) creation of the exception processing fee for non-conforming securities, and (4) evaluation and publication of paying agent performance.

The comment letter written on behalf of the Association of Global Custodians expressed its support for the: (1) Creation of the conforming and non-conforming securities classifications and (2) evaluation and publication of paying agent performance. Although the commenter expressed support for the extension of the deadline for reporting payment detail, the commenter stated that DTC should monitor paying agent performance to determine if the reporting of payment detail trends toward last-minute reporting or if the extended deadline does not correlate with a reduced incidence of errors and adjustments. Although the commenter expressed support for the creation of the exception processing fee for non-conforming securities, it suggested that the aggregate net amount of the exception processing fee should be rebated to participants based on their transactions in non-conforming securities only rather than to participants based on their transactions in all Structured Securities.

The comment letter written on behalf of the Securities Industry and Financial Markets Association expressed support for the: (1) Extension of the deadline for reporting on payment detail and (2) evaluation and publication of paying agent performance. Although the commenter expressed support for the creation of the conforming and non-conforming securities classifications, it requested guidance on the criteria to be used to determine whether a Structured Security is non-conforming, whether an issue's classification can be changed, and when the classification determination will be required to be submitted to DTC. The commenter questioned whether it was appropriate to require the underwriter to sign the classification attestation rather than allowing the underwriter to rely on the paying agent's attestation.

While the Securities Industry and Financial Markets Association

expressed support for the creation of the exception processing fee, it questioned whether the underwriter is the appropriate party to pay the fee. It stated its belief that the costs created by late and erroneous submissions from conforming issues should not be borne by non-conforming issue underwriters. The commenter also suggested that the aggregate net amount of the exception processing fee should be rebated to participants based on their transactions in non-conforming securities only rather than to participants based on their transactions in all Structured Securities.

In its comment letter, DTC stated that the criteria for categorizing an issue as "non-conforming" would consist of a general good-faith expectation, based on information available at the time, as to whether it is anticipated that DTC's deadlines for submission of rate information will be met. It also stated that both the paying agent and the underwriter will be responsible to sign the classification attestation and that imposing the exception processing fee on the underwriter is equitable and consistent with DTC's general practice. Finally, the commenter confirmed that while it will allocate exception processing fee revenue pro rata to DTC participants for whom DTC processed any Structured Securities, it will review the policy toward the end of 2008 to determine whether future allocations should be directed to participants based only on their transactions in non-conforming securities.

IV. Discussion

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. In particular, the Commission believes the proposal is consistent with the requirements of Section 17A(b)(3)(F),¹¹ which, among other things, requires that the rules of a clearing agency are designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission finds that by enabling more Structured Securities to be DTC-eligible and by helping to make the reporting of information about Structured Securities more accurate and timely, the proposed rule change, which should make the communication of payment rate information on Structured Securities quicker and more efficient, is consistent with this statutory obligation.

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act¹² and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹³ that the proposed rule change (File No. SR-DTC-2007-11), as modified by Amendment No. 1, be, and hereby is, approved.¹⁴

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57543; File No. SR-OCC-2008-03]

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

March 20, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on January 29, 2008, 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. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act² and Rule 19b-4(f)(4)³ thereunder so that the proposal was effective upon filing with the Commission. 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 amends Article VI, Clearance of Exchange

¹² 15 U.S.C. 78q-1.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A)(iii).

³ 17 CFR 240.19b-4(f)(4).

Transactions, Section 24, Cross-Margining With Participating CCOs, paragraph (c) of OCC's By-Laws so that additional OCC-cleared products may be more easily added in the future by amending only the relevant Cross-Margining Agreement and not the By-Law provision.

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.⁴

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

Existing cross-margining programs between OCC and certain other commodity clearing organizations (each a "CCO") permit positions in index futures and options on such futures cleared by the CCO to be cleared in a special proprietary or non-proprietary cross-margining account ("X-M Account") at the CCO which is paired with a corresponding X-M account (proprietary or non-proprietary, as the case may be) at OCC in which securities options are cleared. A non-proprietary X-M account is limited to options market-makers and other "market professionals." The non-proprietary cross-margining accounts are treated as futures customer accounts in that they are carried subject to the segregation provisions of Section 4d of the Commodity Exchange Act rather than as securities accounts subject to the Commission's Rule 15c3-3 and other customer protection rules under the Act. Paired X-M Accounts may be established by a "joint clearing member" of OCC and the CCO or by a "pair of affiliated clearing members," one of which is a clearing member of OCC and the other of which is a clearing member of the CCO. The paired X-M Accounts are treated for margin purposes as if they were a single account, making it possible to margin the paired X-M Accounts based on the net risk of the potentially offsetting positions within them.

⁴ The Commission has modified parts of these statements.

In referring to the types of cleared contracts that may be carried in an X-M Account at OCC, paragraph (c) of Section 24 of Article VI of OCC's By-Laws presently refers only to options. The purpose of the proposed rule change is to expand this reference to include security futures, as defined in the Act and in the CEA, on exchange-traded funds ("ETFs") based on broad-based securities indices and any other cleared contract, as defined in OCC's By-Laws, that has been approved for cross-margining by OCC's Board of Directors.⁵ The precise types of contracts that can be included in X-M Accounts in any particular cross-margining program are identified in a Cross-Margining Agreement between OCC and the CCO. The existing cross-margining programs are limited to index options and OCC-cleared options on ETFs and index futures cleared by a CCO. The immediate reason for expanding the types of cleared products that may be included in X-M Accounts at OCC is to permit security futures on ETFs based on broad-based securities indices to be included.⁶ However, OCC has determined to amend Article VI, Section 24(c) to make it as broad as possible so that additional OCC-cleared products may be added in the future by amending only the relevant Cross-Margining Agreement and not this By-Law provision.

The inclusion of security futures in cross-margining is not novel. Under Article VI, Section 25 of the By-Laws, OCC's own internal cross-margining program for non-proprietary accounts already includes OCC-cleared security futures along with all other cleared securities that may be cross-margined against any OCC-cleared futures products that are cleared by OCC in its capacity as a derivatives clearing organization regulated by the CFTC.

⁵ "Cleared contract" is defined in Article I of OCC's By-Laws to mean "a cleared security or a commodity future or futures option that is cleared by the Corporation." The term "cleared security" is defined as "an option contract (other than a futures option), a security future or a BOUND." In effect, therefore, the term "cleared contract" includes any derivative contract cleared by OCC.

⁶ The Chicago Mercantile Exchange Inc. ("CME") also clears security futures contracts, which are reported to OCC under the terms of the Associated Clearinghouse Agreement between the organizations. Securities Exchange Act Release No. 46653 (October 11, 2002), 67 FR 64689 (October 21, 2002) (File No. SR-OCC-2002-07). Under the terms of the OCC-CME cross-margining agreement, such CME-cleared security futures are eligible contracts for purposes of cross-margining. However, OCC will not treat security futures on broad-based indices as eligible contracts until the CFTC issues an order providing relief from certain provisions of Section 4d(a) of the Commodity Exchange Act to permit the inclusion of such contracts as eligible contracts for purposes the OCC-CME cross-margining program.

Unlike the other cross-margining accounts, the internal cross-margining accounts are not limited to index options, index futures, and OCC-cleared ETF options. OCC has broad authority to designate any cleared contract as eligible for these accounts provided the contract has sufficient price correlation with other eligible contracts to provide significant risk reduction when positions are on opposite sides of the market. As a result, no rule change is needed to allow OCC to include futures on ETFs in these accounts. Moreover, cross-margining of all OCC-cleared securities with OCC-cleared futures and futures options occurs automatically in the firm account and other proprietary accounts because OCC's By-Laws permit any OCC-cleared contract to be carried in these accounts.

The proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because it enhances the utility of existing cross-margining programs by permitting the inclusion of products that did not exist at the time the cross-margining programs were established. Cross-margining enhances the safety of the clearing system while providing lower clearing margin costs to participants. Therefore, expanding the positions that may be included in X-M Accounts is beneficial to the clearing system and its participants. The proposed rule change is not inconsistent with the other 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 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 Act⁷ and Rule 19b-4(f)(4)⁸ promulgated thereunder because the proposal effects a change in an existing service of OCC that (A) does not adversely affect the safeguarding of securities or funds in the custody or

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(4).

control of OCC or for which it is responsible and (B) 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 could summarily abrogate such rule change if it appears to the Commission that such action was 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. Please include File Number SR-OCC-2008-03 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-OCC-2008-03. 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 between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC. 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-2008-03 and should be submitted on or before April 17, 2008.

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

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57547; File No. SR-OCC-2008-05]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Flexibly Structured Foreign Currency Options

March 21, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 13, 2008, 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. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act² and Rule 19b-4(f)(1)³ thereunder so that the proposal was effective upon filing with the Commission. 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 would modify OCC's description of its pro rata assignment procedure to eliminate the reference to the procedure's application to exercises of physical delivery, flexibly structured Foreign Currency Options ("FCOs").

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s-1(b)(3)(A)(i).

³ 17 CFR 240.19b-4(f)(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.⁴

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

OCC's pro rata assignment procedure is applied to options on the S&P 100 Index as well as to flexibly structured and cross-rate FCOs settled by physical delivery.⁵ However, the Philadelphia Stock Exchange, Inc. ("Phlx") has delisted all such FCOs and open interest in all such contracts has expired. Accordingly, OCC proposes to modify the description of its pro rata assignment procedure to eliminate the reference to its application to exercises of physical delivery, flexibly structured FCOs. While Phlx has proposed to trade flexibly structured FCOs that are settled in cash, exercises for these FCOs are to be assigned in accordance with OCC's standard assignment procedures.⁶ The modified description of the pro rata assignment procedure is set forth in Exhibit 5 to File No. SR-OCC-2008-05.⁷

The proposed change is consistent with Section 17A of the Act because it promotes the prompt and accurate clearance and settlement of securities transactions, and fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions by updating the description of OCC's pro rata assignment procedure. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

⁴ The Commission has modified parts of these statements.

⁵ See Securities Exchange Act Release Nos. 56845 (November 27, 2007), 72 FR 67991 (December 3, 2007) (File No. SR-OCC-2007-014), 48908 (December 11, 2003), 68 FR 74689 (December 24, 2003) (File No. SR-OCC-2003-05), and 38165 (January 14, 1997), 62 FR 3070 (January 21, 1997) (File No. SR-OCC-96-19).

⁶ See Securities Exchange Act Release No. 57265 (February 4, 2008), 73 FR 7622 (February 8, 2007) (File No. SR-Phlx-2007-68).

⁷ SR-OCC-2008-05 can be found on OCC's Web site at http://www.optionsclearing.com/publications/rules/proposed_changes/sr_occ_08_05.pdf.