

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42863; File No. SR-NYSE-99-30]

Self-Regulatory Organizations; New York Stock Exchange Inc., Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 Relating to NYSE's Procedures for Delisting a Security and Related Issuer Appeals

May 30, 2000.

I. Introduction

On June 23, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its procedures for delisting a security and the accompanying appeals process available to the issuer. The Exchange submitted Amendment No. 1 to its proposal on December 27, 1999,³ Amendment No. 2 on March 9, 2000,⁴ and Amendment No. 3 on March 26, 2000.⁵

The proposed rule change, as amended, was published for comment in the **Federal Register** on April 20, 2000.⁶ No comments were received on the proposal. This order approves the proposal, as amended.

II. Description of the Proposal

The Exchange is proposing to modify the Exchange's procedures for delisting a security and related issuer appeals. The Exchange proposes to amend its process by changing the composition of the Committee for Review of the Exchange's Board of Directors, which hears delisting appeals by issuers, to consist of its Public Directors and one of its Industry Directors and by allowing the Committee to meet by telephone without seeking the permission of the Chairman of the Board.

The Exchange also proposes to issue a press release disclosing the status of a company that the Exchange has

determined should be removed from the list, along with the rationale for that determination. In addition, the Exchange is proposing to append an identifier suffix to the ticker symbols of securities that have been determined by Exchange staff to warrant suspension and delisting. The Exchange would also append an identifier suffix during a transition by a listing company that falls below the continued listing criteria to another market.

Finally, in a change that the Exchange believes will address both timing and the anomaly of hearing an issuer's listing appeal *after* the suspension in trading, the appeal would also generally stay the suspension of trading. Reviews would be conducted on the next monthly review day, which is at least 25 business days from the date the issuer's request for review is filed with the Exchange.

Specifically, with regard to the changes to the appeal process and the implementation of a press release requirement, the Exchange proposes to amend its Listed Company Manual ("Manual") and NYSE Rule 499 as follows:

1. Implement a press release process triggered by a staff decision to suspend and delist security;

2. Clarify that a request for appeal would stay the suspension unless the staff determines that a stay is contrary to the interest of the public and investors;

3. Specify that issuers can request to appear before the Committee for Review and that the Committee may grant or deny such request, provided that an explicit rationale for a denial is provided;

4. Shorten the time periods relating to the appeal process such that (a) the issuer must notify the Exchange of its intent to appeal within ten business days of receiving notice that the Exchange staff has determined that its security should be delisted and (b) written submissions must be served within seventeen business days from the date the issuer received notice of its right to a review; and

5. Clarify that counterparty service is the responsibility of each party (not the Exchange's Office of the General Counsel) and that such service must be made in the same manner as service on the Office of the General Counsel.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

securities exchange.⁷ Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)⁸ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general, to protect investors and the public.

The Commission believes that the proposal strikes a reasonable balance between the Exchange's obligation to protect investors and their confidence in the market, with its parallel obligation to perfect the mechanism of a free and open market, by providing investors with notice when a company is being considered for delisting by the Exchange by issuing a press release and appending a suffix to the security. The Commission believes that some investors may consider the NYSE's intent to delist a security from the Exchange an important factor in their investment decision. The proposed rule change allows investors to consider this factor while continuing to allow the securities to be traded on the Exchange pending the listed company's appeal.

The Commission also believes that the proposal provides fair procedures for issuers, while giving the Exchange the ability to delist an issuer that has failed to meet the Exchange's standards for continued listing. The Commission believes that the proposed appeals process is fair to issuers because it would allow companies to appeal suspension decisions, require written denials for oral appeals, and generally allow companies to trade on the NYSE pending their appeal. The Commission believes this process should ensure that the issuer's concerns are heard, yet eliminate unreasonable delays between the time that a company is identified as not meeting the continued listing requirements and the suspension of its securities from trading.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NYSE-99-30) is approved, as amended.

⁷ In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(2).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 21, 1999 ("Amendment No. 1").

⁴ See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division, Commission, dated March 7, 2000 ("Amendment No. 2").

⁵ See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Belinda Blaine, Associate Director, Division, Commission, dated March 23, 2000 ("Amendment No. 3").

⁶ Securities Exchange Act Release No. 42689 (April 13, 2000), 65 FR 21230.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42884; File No. SR-OCC-99-16]

Self Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to Exercises by Put Holders During a Shortage of the Underlying Security

June 1, 2000.

On November 2, 1999, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-OCC-99-16) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on March 29, 2000.² On April 10, 2000, OCC filed an amendment to the proposed rule change.³ No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

OCC is amending Article VI, Section 19 of its By-laws to eliminate OCC's authority to prohibit exercises by put holders that would be unable to deliver the underlying security due to a shortage of the underlying security. In lieu thereof, the amended By-laws give OCC the right to suspend settlement until it can determine whether the unavailability of the underlying stock will extend past the option expiration date and upon making that determination to take the appropriate action under Article VI, Section 19(b) or (c). Thus, the rule change allows OCC to protect the benefit of the put holder's bargain and to treat puts and calls equally when there is a shortage of the underlying securities.

A similar change will be made to Article XV, Section 3 and Article XX, Section 3 with respect to dollar-denominated and cross-rate foreign currency options by deleting Article XV, Section 3 (b)(2) and Article XX, Section 3(b)(2). The deletions will conform the treatment of foreign currency puts to the treatment of equity puts by eliminating OCC's authority to prohibit exercises by put holders who would be unable to deliver the underlying interest. OCC already has the authority to fix cash settlement prices for foreign currency puts in appropriate circumstances.

Finally, Article XXIV, Section 5 of OCC's By-laws, which relates to buy-write options unitary derivatives (BOUNDS),⁴ has been amended to conform OCC's treatment of BOUNDS put holders in shortage situations with its treatment of equity and foreign currency options holders in similar situations.

II. Discussion

Section 17A(b)(3)(F)⁵ of the Act requires that the rules of a clearing agency not be designed to permit unfair discrimination among participants in the use of the clearing agency. The Commission finds that OCC's rule change is consistent with OCC's obligation under the Act because it amends OCC's rules so that put and call holders are treated similarly when there is a shortage of the underlying security.

III. Conclusion

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

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-99-16) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42861; File No. SR-PCX-99-45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to House-Keeping Amendments to Rules on Floor Brokers

May 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rules 19b-4 thereunder,² notice is hereby given that on November 5, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. Additionally, on March 23, 2000, the Exchange filed with the Commission Amendment No. 1 to the proposal.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is proposing to modify its options Floor Broker rules by renumbering certain Options Floor Procedure Advices ("OFPAs"), clarifying existing provisions, eliminating superfluous provisions, and incorporating current policies and procedures into the text of Rule 6. The text of the proposed rule change is available at the PCX and at the Commission.

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 IV below. The Exchange has prepared summaries, set

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 42563 (Mar. 22, 2000), 65 FR 16679.

³ OCC amended its proposed rule change to extend the proposed change to cover foreign currency options and cross-rate foreign currency options. Because the amendment made no substantive changes to OCC's proposal other than to include additional option products OCC clears, republication of notice was not required.

⁴ See Securities Exchange Act Release No. 37603 (Aug. 26, 1996) 61 FR 46500 (Sept. 3, 1996), for amendments to OCC's By-laws and Rules to provide for the issuance, clearance, and settlement of BOUNDS.

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Robert P. Pacileo, Senior Attorney, Regulatory Policy, PCX, to Nancy Sanow, Senior Special Counsel, Division of Market Regulations, SEC, dated March 22, 2000. The Amendment corrects several typographical errors and clarifies the wording of the proposed rule change.