

20549–0609. All submissions should refer to File Number SR–NYSE–2004–40. 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 NYSE. 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–NYSE–2004–40 and should be submitted on or before August 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50120; File No. SR–OCC–2004–09]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Eligible Securities for OCC's Stock/Loan Hedge Program

July 29, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 1, 2004, 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 purpose of the proposed rule change is to amend the eligibility requirements for securities that may be the subject of stock loan/borrow transactions cleared through OCC's Stock Loan/Hedge Program ("Hedge Program").

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.²

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

In 2002 OCC proposed an additional eligibility criterion for equity securities that may be loaned in the Hedge Program. Specifically, OCC proposed that a loaned security be an underlying security for options unless (1) the loan was accepted by OCC prior to the implementation of the new requirement or (2) the security was deliverable upon the exercise of an outstanding option.³ OCC's intention in adding this requirement was to more closely align the Hedge Program with its intended objective of recognizing intermarket hedges between a clearing member's equity and options positions.

OCC, with the Commission's consent, deferred implementing this new standard pending completion of system enhancements by DTC and Loanet which would permit DTC and Loanet to confirm that the securities loaned in a transaction meet OCC's criteria in order to confirm that the transaction was

² The Commission has modified parts of these statements.

³ The existing criteria required that a security loaned in the Hedge Program be an equity security eligible for deposit at DTC and that OCC had not terminated all loans with respect to that security. These requirements are still in effect.

eligible for clearance at OCC.⁴ These system enhancements have been scheduled for implementation in June 2004.

During the deferment period, OCC took the opportunity to reassess its eligibility criteria as approved by the Commission, and OCC determined that the criteria would preclude the lending of shares of certain exchange-traded funds ("ETFs"). There are a number of ETFs that track indexes underlying OCC-issued options but that are not themselves underlying securities for options. These ETFs are often used as hedges against the related index options. Without a change in the eligibility criteria, OCC would have to disqualify such ETFs from being loaned in the Hedge Program. OCC believes that excluding such ETFs would be inconsistent with the purpose of the Hedge Program, which is to give recognition to intermarket hedges between equity and options positions.⁵ Accordingly, OCC is making this technical change to its securities eligibility criteria to permit loans of an ETF that tracks an index underlying an outstanding index option whether or not the ETF itself is an underlying security for options.

OCC believes that the proposed changes to its rules are consistent with the purpose and requirements of Section 17A of the Securities and Exchange Act of 1934, because it is designed to promote the prompt and accurate clearance and settlement of securities transactions, foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, remove impediments to the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions, and assure the safeguarding of securities and funds in the custody or control of OCC.

(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.

⁴ Loanet is a service bureau used by broker dealers, including OCC clearing members, involved in stock loan transactions. Clearing members, either on their own or through Loanet, enter into stock loan transactions via DTC systems and through use of a special code designate the stock loan transactions as eligible for clearance at OCC.

⁵ Five such ETFs account for nearly \$673 million in loans outstanding in the Hedge Program as of May 2004.

¹⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

(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 has 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 Act⁶ and Rule 19b-4(f)(4)⁷ 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 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 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.

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-2004-09 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-2004-09. 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 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-2004-09 and should be submitted on or before August 26, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50126; File No. SR-PCX-2004-45]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 To Amend the PCX Sanctioning Guidelines To Enforce Compliance With the Exchange's FOCUS Reports Filing Requirements

July 30, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 17, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") 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 by the PCX. The Exchange filed an amendment to the proposed rule change

on July 1, 2004.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The PCX proposes to amend the PCX sanctioning guidelines in order to effectively enforce compliance with the Exchange's Financial and Operational Combined Uniform Single ("FOCUS") Reports filing requirements. The text of the proposed rule change is below. Proposed new language is in italics.

Rule 10.16

Pacific Exchange Sanctioning Guidelines

(a)-(e)—No change.

(f) *Specific Sanctioning Guidelines for Recordkeeping and Financial Requirements Rules.*

(1) *Financial Reports "PCX Rule 4.11(b)(1).*

(A) *Principal Considerations in Determining Sanctions.*

(i) *See list of Principal Considerations applicable to all violations as set forth in PCX Rule 10.16(d).*

(B) *Monetary Sanctions.*

(i) *First Disciplinary Action Fine of \$1,000 to \$5,000.*

(ii) *Second Disciplinary Action Fine of \$2,000 to \$10,000.*

(iii) *Subsequent Disciplinary Action Fine of \$3,000 to \$50,000.*

(iv) *To determine if an action is the first disciplinary action, consider disciplinary actions with respect to violative conduct that occurred within the two years prior to the misconduct at issue. As indicated in the General Principles, as set forth in PCX Rule 10.16(b), recent acts of similar misconduct may be considered to be aggravating factors.*

(C) *Suspension, Expulsion, or Other Sanctions. For the first disciplinary action, consider a letter of caution to the named party. In egregious cases, consider suspending the named party with respect to any or all activities or functions for up to two years. In particularly egregious cases involving a pattern of misconduct, consider expelling the OTP Holder or OTP Firm, withdrawing approval of the responsible approved person, and/or permanently barring a named party from employment or association with any OTP Holder or OTP Firm.*

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⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

⁷ 17 CFR 240.19b-4(f)(4).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The July 1, 2004 amendment ("Amendment No. 1") replaced the original filing in its entirety.