

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-2005-05 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-2005-05. 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-2005-05 and should be submitted on or before May 17, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51584; File No. SR-OCC-2005-04]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Procedures With Respect to Deposits of Cash or Securities With an Escrow Bank for Short Positions in Stock Option or Index Option Contracts

April 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 1, 2005, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change 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 rule change from interested parties.

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

The rule change modifies OCC's procedures with respect to deposits of cash or securities with an escrow bank for short positions in stock option or index option contracts.

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 these statements.²

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by OCC.

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

OCC Rule 613 sets out procedures governing escrow deposits. Rule 613(f) currently provides that OCC will send to each clearing member by 9 a.m. Central Time on the first business day following each expiration date a list of each expired short position carried by that clearing member that was covered by an escrow deposit. By a prescribed deadline that same day, the clearing member is required to identify to OCC each short position on the list to which it has allocated an exercise notice. Based upon the information supplied by clearing members, by 9 a.m. Central Time the next business day OCC makes available to escrow banks and clearing members a final list of expired short positions covered by escrow deposits and indicates whether an exercise notice has been allocated to each such short position.

Rule 613(g) provides that OCC will release escrow deposits on its own initiative at 12 noon Central Time on the second business day following the expiration date with three exceptions. First, the release of an escrow deposit will be delayed if OCC is unable to produce the final list of expired short positions covered by escrow deposits within the time frame specified in its rules. Second, the release may be deferred if a clearing member carrying an expired short position covered by an escrow deposit fails to meet its margin or premium settlement obligations to OCC on the business day that the deposit would have been released. Third, if the final list shows that an exercise notice was allocated to an expired short position, the escrow deposit will not be released until 12 noon Central Time on the first business day after the exercise settlement date and can be delayed even further if National Securities Clearing Corporation ("NSCC") notifies OCC that the clearing member has not met its settlement obligations. In that event, the deposit will not be released until the first business day after OCC receives confirmation that it has no further obligations to NSCC with respect to the short position or if OCC has directed that settlement be made other than through NSCC, until OCC receives confirmation that the settlement has been made.

The processing of escrow deposits at expiration will be substantially simplified under ENCORE Release 4.5. OCC's report of expired positions covered by escrow deposits, the clearing

member's identification of exercises allocated to those positions, and OCC's final list of expired short positions covered by an escrow deposit will all be eliminated. Instead, OCC will automatically release index option escrow deposits at 6 p.m. Central Time on the exercise settlement date, provided that the clearing member has met its settlement obligations in the account in which the escrow deposit is held. OCC will automatically release equity option escrow deposits at 6 p.m. on the business day after the exercise settlement date, provided that release may be delayed if NSCC notifies OCC that the clearing member has not met its settlement obligations. In that event, as under the existing rule, a deposit will not be released until OCC receives confirmation that it has no further obligations to NSCC with respect to the short position covered by the deposit. If OCC directs that settlement be made other than through NSCC, the deposit will not be released until OCC receives confirmation that settlement had been made. Clearing members or escrow banks still will be permitted to withdraw escrow deposits prior to the scheduled release time if the clearing member maintains sufficient margin with OCC after making the withdrawal.

OCC's Proposed Rule Changes

In connection with the simplification of the escrow deposit system resulting from the installation of ENCORE Release 4.5, OCC is deleting Rule 613(f), which describes the various reports relating to expired short positions covered by escrow deposits. In addition, OCC is amending current Rule 613(g), which is redesignated as Rule 613(f), to change the time OCC will release equity option escrow deposits on its own initiative and to eliminate references to the final list of expired short positions covered by an escrow deposit provided for by current Rule 613(f). OCC is amending Rule 613(j) to delete references to the list of expired short positions covered by an escrow deposit, redesignating it as 613(i), and revising the reference to current Rule 613(i), which is being redesignated as Rule 613(h). Rule 613(k) is redesignated as Rule 613(j).

With respect to index option deposits, OCC is adding a new Rule 1801(h) to provide that index option deposits will be released by OCC on its own initiative at 6 p.m. Central Time on the exercise settlement date so long as the clearing member has fully complied with its settlement obligations in the account in which the escrow deposit is held. The remaining subparagraphs of Rule 1801 are redesignated but are otherwise unchanged.

Amended and Restated On-Line Escrow Deposit Agreement

Finally, OCC is amending the Amended and Restated On-Line Escrow Deposit Agreement entered into between it and banks participating in its escrow deposit program to reflect the procedural changes to the escrow deposit program described above.

OCC believes the rule change is consistent with Section 17A of the Act³, as amended because it more closely aligns the procedures for the processing of releases of escrow deposits for expired short positions with the processing of releases of specific deposits and thereby improves the consistency and efficiency of such processing for OCC, clearing members, and custodian banks. The rule change is not inconsistent with the existing rules of OCC, 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 will have an 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

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act⁴ and Rule 19b-4(f)⁵ thereunder because it does not significantly affect the respective rights or obligations of the clearing agency or persons using the service and does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible. 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.

³ 15 U.S.C. 78q-1.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f).

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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-2005-04 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-2005-04. 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 filings 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-2005-04 and should be submitted on or before May 17, 2005.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. E5-1972 Filed 4-25-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51576; File No. SR-PCX-2005-35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the SizeQuote Mechanism for the Execution of Large-Sized Orders in Open Outcry

April 19, 2005.

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 April 7, 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. The PCX filed the proposal pursuant to section 19(b)(3)(A) under the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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 Exchange proposes to add PCX Rule 6.47(g) to adopt, on a pilot basis through February 15, 2006, a SizeQuote Mechanism for the execution of large-sized orders in open outcry. The text of the proposed rule change is below. Proposed new language is in *italics*.

Rules of the Pacific Exchange, Inc.

Rule 6

Rule 6.47(a)-(f)—No Change.

Rule 6.47(g)—Open Outcry

"SizeQuote" Mechanism.

(i) *SizeQuotes Generally. The SizeQuote Mechanism is a process by*

which a Floor Broker ("FB") may execute and facilitate large-sized orders in open outcry. Floor brokers must be willing to facilitate the entire size of the order for which they request SizeQuotes (the "SizeQuote Order"). The Exchange shall determine the classes in which the SizeQuote Mechanism will apply. The SizeQuote Mechanism will operate as a pilot program which expires February 15, 2006.

(A) *Eligible Order Size: The Exchange shall establish the eligible order size however such size shall not be less than 250 contracts.*

(B) *Trading Crowd: The term "Trading Crowd" shall be as defined in PCX Rule 6.1(b)(30) and for purposes of this rule only shall also include any Floor Broker who is present at the trading post.*

(C) *Public Customer Priority: Public customer orders in the Consolidated Book have priority to trade with a SizeQuote Order over any member of the Trading Crowd providing a SizeQuote response at the same price as the order in the Consolidated Book.*

(D) *LMM Participation Rights: The LMM participation entitlement shall not apply to SizeQuote transactions.*

(E) *FBs may not execute a SizeQuote Order at a price inferior to the national best bid or offer ("NBBO"). Unless a SizeQuote request is properly canceled in accordance with paragraph (iv), an FB is obligated to execute the entire SizeQuote Order at a price that is not inferior to the NBBO in situations where there are no SizeQuote responses received or where such responses are inferior to the NBBO.*

(ii) *SizeQuote Procedure: Upon request from an FB for a SizeQuote, members of the Trading Crowd may respond with indications of the price and size at which they would be willing to trade with a SizeQuote Order. After the conclusion of time during which interested Trading Crowd members have been given the opportunity to provide their indications, the FB must execute the SizeQuote Order with the members of the Trading Crowd and/or with a firm facilitation order in accordance with the following procedures:*

(A) *Executing the Order at the Trading Crowd's Best Price: Members of the Trading Crowd that provide SizeQuote responses at the highest bid or lowest offer ("best price") have priority to trade with the SizeQuote Order at that best price. Allocation of the order among members of the Trading Crowd shall be pro rata, up to the size of each member's SizeQuote response. The FB must trade at the best price any contracts remaining in the original SizeQuote Order that were not*

executed by the members of the Trading Crowd providing SizeQuote responses.

(B) *Executing the Order at a Price that Improves upon the Trading Crowd's Price by One Minimum Increment: Members of the Trading Crowd that provide SizeQuote responses at the best price ("Eligible Trading Crowd Members") have priority to trade with the SizeQuote Order at a price equal to one trading increment better than the best price ("improved best price"). Allocation of the order among Eligible Trading Crowd Members at the improved best price shall be pro rata, up to the size of each eligible Trading Crowd Member's SizeQuote response. The FB must trade at the improved best price any contracts remaining in the original SizeQuote Order that were not executed by Eligible Trading Crowd Members.*

(C) *Trading at a Price that Improves upon the Trading Crowd's Price by more than One Minimum Increment: An FB may execute the entire SizeQuote Order at a price two trading increments better than the best price communicated by the Trading Crowd members in their responses to the SizeQuote request.*

(iii) *Definition of Trading Increments: Permissible trading increments are \$0.05 for options quoted below \$3.00 and \$0.10 for all others. In classes in which bid-ask relief is granted pursuant to Rule 6.37(b)(1)(F), the permissible trading increments shall also increase by the corresponding amount. For example, if a series trading above \$3.00 has double-width bid-ask relief, the permissible trading increment for purposes of this rule shall be \$0.20.*

(iv) *It will be a violation of the FB's duty of best execution to its customer if it were to cancel a SizeQuote Order to avoid execution of the order at a better price. The availability of the SizeQuote Mechanism does not alter an FB's best execution duty to get the best price for its customer. A SizeQuote request can be canceled prior to the receipt by the FB of responses to the SizeQuote request. Once the FB receives a response to the SizeQuote request, if he/she were to cancel the order and then subsequently attempt to execute the order at an inferior price to the previous SizeQuote response, there would be a presumption that the FB did so to avoid execution of its customer order in whole or in part by the others at the better price.*

* * * * *

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The PCX has asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii).