

prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

Under the minor rule violation provisions of Exchange Rule 17.50, the CBOE currently processes position limit violations not exceeding \$5,000 for any one trade date as summary fines. Exchange members whose fine for any one trade date does not exceed that threshold are summarily fined, including instances when consecutive trade dates violations occurred and significant fine amounts accumulated. If Exchange members wish to contest the summary fine(s), they are restricted to the contested fine procedures in the minor rule violation plan which permit either holding a hearing or presenting a written submission before the Business Conduct Committee ("Committee").

Based upon past experience with contested position limit summary fine matters, as well as an internal regulatory focus study, the Exchange proposes a new procedure so that members with significant position limit violations meeting certain criteria will be afforded an opportunity within the minor rule violation plan process to present one settlement offer before the Committee. Members with significant position limit summary fines do not presently have access to the settlement resolution process available to respondents under Exchange Rule 17.2 et seq. for regular disciplinary matters pending before the Committee, including making offers of settlement without admitting or denying the violations and personal appearances. Some members who proceeded to a contested fine hearing admitted that the violations occurred, and used the hearing forum solely to request that the fines be reduced or removed.

The CBOE proposes to add language to Interpretation and Policy .01 under Exchange Rule 17.50 to define what levels of position limit summary fines will trigger access to the new settlement procedure. In general, the CBOE will treat (a) position limit violations resulting in any one-day fine in excess of \$2,500, or (b) position limit violations resulting in an aggregate fine in excess of \$10,000 and involving five or more consecutive trade dates, as appropriate for an offer of settlement opportunity before the Committee.

The CBOE proposes to make the new settlement procedure available only with respect to position limit summary fines until the CBOE can further review

the effects on the minor rule violation plan process. In this regard, the CBOE notes that it has not experienced significant accumulations of fines by members for minor rule violations under Exchange Rule 17.50 other than position limit violations.

By providing an interim step to allow for settlement of position limit summary fines, the proposed rule change is expected to increase the efficiency of the minor rule violation plan process by saving the time and expense of both members and Exchange staff in preparing for summary fine hearings. According to the CBOE, the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act in that it is designed to refine and enhance the Exchange's minor rule violation plan as applied to position limit violations, thereby removing impediments to a free and open market and protecting investors and the public interest.

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

The self-regulatory organization does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-96-57 and should be submitted by November 1, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

Margaret H. McFarland,  
*Deputy Secretary.*

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[Release No. 34-37786; File No. SR-NYSE-96-21]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Entry of Limit-at-the-Close Orders**

October 4, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 31, 1996, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change and on October 2, 1996, filed Amendment No. 1 to the proposed rule change,<sup>1</sup> as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit

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

<sup>1</sup> See letter and Form 19b-4 from James E. Buck, Senior Vice President and Secretary, NYSE, to Ivette Lopez, Assistant Director, Division of Market Regulation, SEC, dated September 27, 1996. Amendment No. 1 expands the purpose section of the filing to provide a more detailed explanation of the reasons the Exchange is seeking to permit limit-at-the-close ("LOC") orders to be entered in any stock at any time during the trading day up to 3:40 p.m. on expiration days and 3:50 p.m. on non-expiration days. Thereafter, as with market-on-close ("MOC") orders, LOC orders could be entered only to offset published imbalances. This proposed revision of the LOC pilot would subject LOC orders to the same type of order entry and cancellation restrictions currently imposed on MOC orders.

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 permit limit-at-the-close ("LOC") orders to be entered in any stock at any time during the trading day up to 3:40 p.m. on expiration days, and 3:50 p.m. on non-expiration days.

### 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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

A LOC order is one that is entered for execution at the closing price, provided that the closing price is at or within the limit specified. LOC orders are executed behind conventional limit orders at the same price and behind market-on-close ("MOC")<sup>2</sup> orders. The Exchange had originally proposed to amend its policy regarding LOC order entry along with its request to extend the LOC pilot for one year.<sup>3</sup> At the request of Commission staff, the Exchange is hereby filing its proposal to amend its LOC order entry policy as a separate rule change to allow for a full notice and comment period. The Exchange proposes to amend its policy regarding LOCs to permit their entry at any time during the trading day up to 3:40 p.m. on expiration days, and 3:50 p.m. on non-expiration days. Thereafter, as with MOC orders, LOCs could be entered only to offset published imbalances.

Currently, LOC orders may be entered only to offset published imbalances of MOC orders. MOC imbalances of 50,000 shares or more must be published on the

tape in the so-called "pilot" stocks<sup>4</sup> and in stocks being added to and dropped from an index and may be published in any other stock with the approval of a Floor Official as soon as practicable after 3:40 p.m. on expiration days<sup>5</sup> and as soon as practicable after 3:50 p.m. on non-expiration days. LOC orders must be entered between 3:40 and 3:55 p.m. on expiration days and between 3:50 and 3:55 p.m. on non-expiration days. On expiration days, LOC orders may not be cancelled after 3:40 p.m., except for legitimate errors. On non-expiration days, LOC orders may not be cancelled after 3:55 p.m., except for legitimate errors.

LOCs were expanded from five stocks to all stocks in June 1995 in the hope that this would stimulate use of this order type. LOCs have been approved by the SEC on a pilot basis.<sup>6</sup> To date, the use of LOCs have remained limited. LOCs are restricted by time of entry and by the fact that they must offset published MOC imbalances. It appears that the narrow order entry window, along with the requirement that LOCs offset published MOC imbalances, makes the opportunities for their entry too limited to justify for many member firms the programming necessary to support their use.

The expansion of the LOC pilot to allow such orders to be entered throughout the day (up until the cut-off time) would allow investors the possibility of using LOC orders as another investment strategy. This could attract additional LOC orders, thereby increasing liquidity and potentially reducing volatility at the close. In that regard, the Exchange believes that it is appropriate to amend its LOC pilot as described above to encourage the entry of LOC orders.

The Exchange believes that the LOC order type may prove to be a useful means to help address the prospect of excess market volatility that may be

<sup>4</sup>The term "pilot stocks" refers to the Expiration Friday pilot stocks plus any additional QIX Expiration Day pilot stocks. Specifically, the Expiration Friday pilot stocks consist of the 50 most highly capitalized Standard & Poors ("S&P") 500 stocks and any component stocks of the Major Market Index ("MMI") not included therein. The QIX Expiration Day pilot stocks consist of the 50 most highly capitalized S&P 500 stocks, any component stocks of the MMI not included therein and the 10 highest weighted S&P Midcap 400 stocks.

<sup>5</sup>The term "expiration days" refers to both (1) the trading day, usually the third Friday of the month, when some stock index options, stock index futures and options on stock index futures expire or settle concurrently ("Expiration Fridays") and (2) the trading day on which end of calendar quarter index options expire ("QIX Expiration Days").

<sup>6</sup>The pilot program for LOC orders expires on July 31, 1997. See Securities Exchange Act Release No. 37507, *supra* note 2.

associated with an imbalance of MOC orders at the close.

##### 2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed rule change perfects the mechanism of a free and open market by providing investors with the ability to use LOC orders as a vehicle for managing risk at the close.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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

<sup>2</sup>An MOC order is a market order to be executed in its entirety at the closing price on the Exchange. See NYSE Rule 13.

<sup>3</sup>See Securities Exchange Act Release No. 37507 (July 31, 1996) (File No. SR-NYSE-96-18 and Amendment No. 1 thereto).

provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-96-21 and should be submitted by November 1, 1996.

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

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 34-37792; File No. SR-OCC-96-11]

**Self-Regulatory Organization; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Membership Standards**

October 7, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 30, 1996, 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 proposed rule change will amend OCC's by-laws and rules regarding OCC's initial membership standards and the ongoing duties of clearing members.

**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.<sup>2</sup>

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

The principal purpose of the proposed rule change is to amend certain initial membership standards and certain ongoing duties of clearing members. OCC has a three tiered system of safeguards against a clearing member failure or default, and this system is reviewed each year. The initial membership standards and ongoing duties comprise the system's first tier of safeguards. The other two tiers are margin requirements and clearing fund deposits. OCC's membership standards are designed to assure OCC of an applicant's initial creditworthiness, operational capability and experience, and competence to clear option transactions.

OCC is proposing to make several enhancements to its initial membership standards and ongoing duties of clearing members. The proposed changes and the purposes thereof are described below.

**1. Article V, Section 1 of the By-Laws**

A number of changes are being proposed to the Interpretations and Policies ("Interpretations") under Article V, Section 1 of OCC's by-laws. Interpretation 2 will be amended to add clause d, which will provide that the Membership/Margin Committee ("Committee") of the Board of Directors ("Board") will not recommend approval of an application for clearing membership unless the applicant's Designated Examining Authority ("DEA") has stated that it has no objections to the application for clearing membership. If requested in writing by the applicant, the Committee will be permitted to waive the requirement in exceptional cases and where good cause is shown. Under OCC's current membership review procedures, an applicant's DEA is contacted for information regarding the applicant and is requested to provide advice or any objections with respect to the applicant's ability to self-clear option transactions. OCC believes that input from an applicant's DEA provides critical information regarding the firm's compliance with all applicable requirements with respect to the maintenance of books and records as well as the firm's ability operationally and financially to self-clear. The proposed addition of clause d to Interpretation 2 will codify OCC's existing procedures.

Interpretation 3 will be amended to require that if an applicant elects to use

an associated person to satisfy the applicable requirements of clauses a through c thereof the designated associate person must be a full time employee of the applicant.<sup>3</sup> The purpose of the requirements contained in clauses a through c is to ensure that an applicant has at least one person with sufficient competence and experience to supervise the preparation of financial reports and the back office operations of the applicant. Interpretation 3 also will be amended to require that the key operations employees required to have attended applicable OCC operations readiness review sessions and successfully completed any applicable OCC operational and financial examinations for operations employees be full time employees and attend all such review sessions. OCC believes that the preparation of financial reports and the proper operation of back office responsibilities are such critical functions that it is appropriate that there be full time supervision of these functions.

Interpretation 4 will be amended to eliminate the ability of an applicant for clearing membership to enter into a facilities management arrangement with a non-clearing member. There are no current limitations on who might act as a non-clearing member facilities manager, and OCC is limited in its ability to obtain financial and other information relating to the creditworthiness and operational capability of such a non-clearing member facilities manager. As a result, OCC believes it is prudent to permit only OCC clearing members to act as facilities managers for applicants because OCC has existing systems in place to monitor their creditworthiness and operational capabilities. Although OCC currently has two clearing members that use the same non-clearing member facilities manager, OCC believes that each of these clearing members will be able to enter into a facilities management arrangement with a clearing member.

Interpretation 5 will be added to authorize the Committee to recommend

<sup>3</sup> Clauses a through c require that an applicant that is a registered broker-dealer must be registered as a "Limited Principal—Financial Operations" with the National Association of Securities Dealers; an applicant that is applying for clearing membership as an exempt Canadian clearing member must be registered as a principal/director/officer and as a designated registered options principal with the Investment Dealers Association of Canada; and an applicant that is a non-U.S. securities firm must have completed any applicable OCC financial and operational examination for employees who are responsible for supervising the preparation of applicant's financial reports.

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> These statements have been modified by the Commission.