of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on June 17, 1999.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change permits OCC clearing members to pledge long positions in non-proprietary cross margin accounts through OCC's pledge program. In addition, the rule change updates OCC's rules to reflect the way that the pledge program currently operates.

OCC designed its market maker pledge program to allow its clearing members to finance their positions by permitting them to pledge excess long market maker options as collateral to obtain loans from banks or from other clearing members.[3] Current eligible account types include, among others, a combined market-makers' account and a separate market-maker's account.

The rule change amends OCC rule 614 to add non-proprietary cross margin accounts to the list of accounts that are eligible for the pledge program.[4] The rule change also revises Rule 614 to reflect the current operation of the pledge program because some of the practices described in the rule are no longer used. For example, OCC's system does not ''transfer'' pledged cleared securities into a separate ''pledge account'' as suggested by the rules. Rather, OCC identifies within the ''primary'' account those long positions in a cleared security that a clearing member has instructed OCC that it desires to pledge. In addition, certain instructions and reports are not submitted or distributed in hard copy form but are electronically inputted or disseminated through OCC's C/MACS system. (Hard copy forms are used as acceptable backups should C/MACS be unavailable.) As a result, the rule change eliminates references to ''transfers,'' ''Transfer Day,'' ''Primary Accounts,'' and certain ''forms,'' and substitutes where appropriate terms like ''identifying'' cleared securities to be pledged. ''Activity Day,'' ''Eligible Account,'' ''pledged and unpledged cleared securities,'' and ''instructions.'' The rule change further amends Rule 614 to reflect that clearing member designations among pledgees can be carried out electronically or through use of the pledgee designation form.

The rule change eliminates references to lock box distribution of reports. Clearing members receive OCC reports electronically through C/MACS, and other pledges receive reports by electronic format from OCC or have other arrangements with OCC for purposes of receiving reports. Under the rule change, report distribution will be accomplished in accordance with procedure agreed to between OCC and each pledge.

Finally, under the rule change OCC is changing the time at which the release of a pledged cleared security is effective. Previously, Rule 614 provided that the release was deemed to be effective as of 9:00 a.m. (central time) on the transfer day and that all rights of a pledgee as to such released cleared security were terminated at that time. However, this effective time comes after OCC nightly processing is completed. During nightly processing, the long positions in cleared securities are released from pledge, included in marginable positions, and used to offset short positions as described in Rules 601 and 602. Pledgee banks have the understanding that when they execute the instructions to release pledged positions, they release their rights in the long positions and take appropriate measures to ensure that the loan is repaid or otherwise secured. As a result, the rule change provides that when a pledgee releases a pledged position, the position is deemed to be released as of the cutoff time for submitting the instructions to release the positions on the day that the instructions are received.

In addition to the amendments described above, the rule change makes conforming changes to Rules 601, 602, 1105, and 1106 and to the pledge account agreement.[5]

II. Discussion

Section 17A(b)(3)(F) of the Act[6] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody and control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule change is consistent with OCC's obligations under Section 17A(b)(3)(F) because the rule change should increase the ability of OCC's clearing members to finance their positions through the use of OCC's pledge program without impairing OCC's overall protection against member default.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with 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. OCC–99–04) be and hereby is approved.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 41507 (June 10, 1999) 64 FR 32600.

[3] For a detailed description of the pledge program, refer to Securities Exchange Act Release No. 19956 (July 19, 1983), 48 FR 33956 [File No. SR–OCC–82–25] (order approving proposed rule change).

[4] Market-makers, specialists, and registered traders are the categories of market professionals that re eligible to have their positions included in a clearing members' non-proprietary cross margin account, and many such market professionals participate in cross margining.

[5] OCC attached a copy of the amended pledge account agreement as Exhibit A to its filing, which is available for inspection and copying in the Commission's public reference room and through OCC.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41884; File No. SR–OCC–99–06]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Purchase of OCC Stock by Participant Exchanges and the Rights of Participant Exchanges on Liquidation of OCC

September 17, 1999.

On March 15, 1999, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–OCC–99–06) 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 May 26, 1999.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change updates the provisions of OCC's Certificate of Incorporation, By-Laws, and Stockholders Agreement that relate to the purchase of OCC stock by participant exchanges and the rights of

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 41422 (May 18, 1999) 64 FR 28543.

those exchanges in the event of OCC's liquidation. The rule change makes two substantive changes. First, it increases the maximum purchase price for OCC stock from $333,333 to $1,000,00 per exchange. Second, in the event of OCC's liquidation, it limits distributions to exchanges that first became stockholders after December 31, 1998, to the amounts that such exchanges paid for their stock plus a pro rata share of any increase in OCC's retained earnings after December 31, 1998.

Increase in Maximum Purchase Price

Article VII, Section 2 of OCC's By-Laws provides that an options exchange that wishes to become a participant in OCC must purchase 5,000 shares of Class A Common Stock and 5,000 shares of Class B Common Stock of OCC.[3] Previously, the price was an amount equal to book value as of the close of the preceding month but not less than $250,000 nor more than $333,333. As of December 31, 1998, the book value of 10,000 shares of OCC stock was $6,365,100, so the effective purchase price is the maximum price of $333,333.

The $333,333 maximum dates from 1975, when OCC (then named Chicago Board Options Exchange Clearing Corporation) became the common clearing facility for listed options. Recently, OCC engaged Deloitte & Touche, LLP (''Deloitte'') to recommend a fair price for participation in OCC in view of the length of time that had elapsed since the maximum was fixed and the prospect of new options markets becoming participant exchanges of OCC.[4] Deloitte arrived at a value of $1,080,000 for a 20% interest in OCC.

The rule change increases the maximum price for an interest in OCC to $1,00,000, which approximates the amount recommended by Deloitte. According to OCC, the $1,000,000 amount also approximates the value in 1999 dollars of $333,333 in 1975.[5] Therefore, OCC believes that increasing the maximum price to $1,000,000 would tend to equalize the investment required of new exchanges with the investments expressed in 1999 dollars made by OCC's present participant exchanges in the mid-1970's.[6]

In addition, OCC's rules previously specified a minimum purchase price of $250,00 if the book value of a proportionate interest in OCC would be less than that amount. The rule change eliminates the minimum price because OCC believes that the book value of a proportionate interest in OCC greatly exceeds $250,000 today and is likely to continue to do so.

Change in Liquidation Rights

The rule change establishes a new scheme for the distribution of OCC's net assets if OCC were to liquidate. Under the new scheme, holders of Class A Common Stock and Class B Common Stock would first be paid the par value of their shares ($10.00 per share). Next, each holder of Class B Common Stock would receive a distribution of $1,000,000, allowing it to recover the value of its investment in 1998 dollars. Next, an amount equal to OCC's stockholders' equity at December 31, 1998, minus the distributions described in the two preceding sentences would be distributed to those exchanges that acquired their Class B Common Stock before December 31, 1998. Finally, any excess assets (*i.e.* post-1998 retained earnings) would be distributed equally to all holders of Class B Common Stock. OCC's intention is to allow each exchange to recover its investment but to reserve OCC's present retained earnings for those participant exchanges that were stockholders during the period when the retained earnings were being accumulated.

Technical and Conforming Changes

The rule change revises the last sentence of Article VII, Section 2 of the By-Laws. Previously, that provision stated that if OCC fails or is unable to purchase a stockholder's shares when required under the Stockholders Agreement, the stockholder may sell its shares ''to a person who is qualified under Section 1 of this Article VII for participation in [OCC] as an 'Exchange' and who is not then a stockholder of [OCC].'' However, Section 1 of Article VII provides that in order to be qualified for participation in OCC as an exchange, a securities exchange or securities association must already have purchased stock in OCC. The rule change eliminates the circularity of the provision by allowing the stockholder to sell its shares to any national securities exchange or national association that has effective rules for the trading of options and who is not then a stockholder in OCC. The rule change also makes conforming changes to the Stockholders Agreement.

Article VII, Section 3 is amended to reflect previous rule changes providing for public directors and to eliminate an obsolete requirement that the stockholders renew their voting agreement every ten years. Article VII, Section 4 is amended to reflect the fact that the Participant Exchange Agreement between OCC and its participant exchanges now specifically refers to options disclosure documents required under Exchange Act Rule 9b–1.[7]

Section 10(a) of the Stockholders Agreement is amended to increase proportionately with the increase in the purchase price of OCC stock the dollar discounts that OCC will apply if it repurchases a participant exchange's stock within six years of the date when the stock was acquired. Section 12 of the Stockholders Agreement, which governs contributions to capital by the American Stock Exchange and the Chicago Board Options Exchange if another OCC stockholder sells its stock to OCC, is deleted in its entirety because it is obsolete.

II. Discussion

Section 17A(b)(3)(D) of the Act[8] requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. The Commission believes that the proposed rule change is consistent with OCC's obligations under Section 17A(b)(3)(D) because the rule change should ensure that the price that participant exchanges are required to pay for OCC stock reflects the value of those shares and that participant exchanges all pay equal amounts for OCC stock after purchase prices are adjusted for inflation. In addition, the rule change should provide for an equitable distribution of assets to OCC's participant exchanges if OCC were to liquidate.

III. Conclusion

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

[3] Class A Common Stock is voted to elect OCC's nine member directors. Class B Common Stock is voted, as a class, to elect OCC's public and management directors. Each participant exchange holds a separate series of Class B Common Stock that entitles it to elect one exchange director.

[4] *See, e.g.,* Securities Exchange Act Release No. 41439 (May 24, 1999), 64 FR 29367 (notice of filing of application for registration as a national securities exchange by the International Securities Exchange LLP).

[5] OCC has informed the Commission that based on the All Urban Consumer CPI, $333,333 on January 1, 1975, would amount of $1,009,932 in 1999, and that using the General Consumer Price Index, $333,333 on January 1, 1975, would amount to $1,056,518 in 1999.

[6] OCC's current participant exchanges (which include the American Stock Exchange, the Chicago Board Options Exchange, the Pacific Exchange, and the Philadelphia Stock Exchange) acquired their stock in OCC between 1973 and 1976.

[7] 17 CFR 240.9b–1.

[8] 15 U.S.C. 78q–1(b)(3)(D).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. OCC–99–06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–24915 Filed 9–23–99; 8:45 am]

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[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41881; File No. SR–PCX–99–16]

Self-Regulatory Organizations; Pacific Exchange, Inc. (''PCX''); Order Approving Proposed Rule Change and Notice of Filing and Order granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change Requiring Qualified Off-Floor Traders for Which PCX Is the Designated Examining Authority To Successfully Complete the General Securities Registered Representative Examination, Test Series 7

September 17, 1999.

On June 1, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change would amend PCX Rule 1.7(b)(9), Denial of and Conditions to Membership, to require off-floor traders [3] of member organizations for which the Exchange is the Designated Examining Authority (''DEA'') to successfully complete the General Securities Registered Representative Examination, Test Series 7 (''Series 7 Exam''), if the primary business of the member organization involves the trading of securities that is unrelated to the performance of the functions of a registered specialist, a registered market maker or a registered floor broker.

Notice of the proposed rule change was published in the **Federal Register** on July 2, 1999.[4] The Commission received no comment letters on the proposal. On September 16, 1999, the Exchange filed Amendment No. 1 with the Commission, which revised the rule text and made technical changes to the proposal.[5] This order approves the proposed rule change, as amended.

I. Background and Summary

PCX Rule 1.7(b)(9) currently provides that the Exchange may deny (or may condition) membership, or may prevent a natural person from becoming associated (or may condition an association) with a member, when an applicant, directly or indirectly, does not successfully complete such written proficiency examinations as required by the Exchange to enable it to examine and verify the applicant's qualifications to function in one or more of the capacities applied for. The Exchange proposes to amend PCX Rule 1.7(b)(9) to expressly require off-floor traders to successfully complete the Series 7 Exam. Specifically, the proposal provides that traders of member organizations for which the Exchange is the DEA must successfully complete the Series 7 Exam if the primary business of the member organization involves the trading of securities which is unrelated to the performance of the functions of a registered specialist, a registered market maker or a registered floor broker. The proposal further provides that the following are exempt from the requirement to successfully complete the Series 7 Exam: Exchange members who perform the function of a registered specialist, registered market maker, or registered floor broker (pursuant to PCX Rules 5.27(a), 6.33 or 6.44, respectively), and associated persons of member firms who facilitate the execution of stock transactions for the accounts of options market makers.[6]

For purposes of PCX Rule 1.7(b)(9), the term ''trader'' is defined as a person who is directly or indirectly compensated by an Exchange member organization or who is any other associated person of an Exchange member organization, and who trades, makes trading decisions with respect to, or otherwise engages in the proprietary or agency trading of securities.[7] In addition, the term ''primary business'' is defined as greater than 50% of the member organization's business.

The proposed rule change further provides that each member organization for which the Exchange is the DEA must complete on an annual basis and on a form prescribed by the Exchange a written attestation as to whether the member organization's primary business is performing the function of a registered specialist, a registered market maker, or a registered floor broker (pursuant to PCX Rules 5.27(a), 6.33 or 6.47, respectively).

The proposed rule change also states that the requirement to complete the Series 7 Exam will apply to current traders of member organizations that meet the specified criteria as well as to future traders of member organizations that meet the specified criteria at a later date. It further provides that traders of member organizations that meet the specified criteria at the time of the Commission's approval of the proposed rule must successfully complete the Series 7 Exam within six months of the date of notification by the Exchange.

II. Discussion

Under Section 19(b)(2) of the Act,[8] the Commission is required to approve a proposed rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization (''SRO''). Under the Act, SROs are assigned rulemaking and enforcement responsibilities for regulating the securities industry for the protection of investors and for related purposes. A key requirement for SROs is to assure that associated persons [9] of their members satisfy prescribed standards of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] According to the Exchange, the proposed rule change is intended to cover persons who are trading from off the trading floor and who are not exempt from having to pass the Series 7 examination under the proposed rule. *See* Letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), SEC (Sept. 15, 1999) (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 41555 (June 24, 1999), 64 FR 36063.

[5] *See supra* n. 3, Amendment No. 1.

[6] The Exchange has represented that no person may perform the function of a registered specialist, registered market maker or registered floor broker on the Exchange trading floors without first passing a specified examination. Specifically, Equity floor members must pass the Equity Member Test and Options floor members must pass the Options Floor Qualification Examination. There are two Equity Member Tests, one for specialists and one for floor brokers. While there is only one Options Floor Qualification Examination, there are separate sections of the exam: one for floor brokers, one for market makers, and one for both floor brokers and market makers. *See supra* n. 3, Amendment No. 1. According to the Exchange, there are a small number of off-floor traders, primarily associated with Options floor members, who will be exempt from the examination requirement. Telephone conversation among Michael D. Pierson, Director, Regulatory Policy, PCX, Nancy Sanow, Senior Special Counsel, Division, SEC and Joseph Morra, Attorney, Division, SEC, September 15, 1999.

[7] *Id.*

[8] 15 U.S.C. 78s(b)(2).

[9] As defined in Section 3(a)(21) of the Act, an associated person of a member is ''any partner, officer, director, or branch manager of such member (or any person occupying a similar status or performing similar functions), any persons directly or indirectly controlling, controlled by, or under common control with such member, or any employee of such member.'' 15 U.S.C. 78c(a)(21). The off-floor traders covered by the Exchange's proposed rule change are associated persons of the member firm.