

policy prohibits market participants from canceling MOC or LOC orders after 3:40 p.m. unless a legitimate error was made or the member had to comply with Rule 80A(c). This policy, by precluding market participants from canceling MOC/LOC orders based on information generated during a regulatory halt even if the stock reopened at a price substantially different from the last sale could unnecessarily expose market participants' positions to market risk.

The proposed rule change will allow market participants with pending MOC or LOC orders to react to news generated during a regulatory halt put into effect at 3:40 p.m. or later by enabling them to cancel such orders. A member's ability to cancel a MOC/LOC order after a regulatory halt put into effect at 3:40 p.m. or later is limited, however, to only allow cancellations to be made by 3:50 p.m. or when the stock reopens, whichever is first.

The proposed rule change also amends the Exchange's policy concerning MOC/LOC order entry after 3:40 p.m. Currently, market participants are only permitted to enter MOC or LOC orders after 3:40 p.m. to offset a published imbalance. If any type of trading halt is in effect at 3:40 p.m., no MOC or LOC orders could be entered because imbalances are not published. Moreover, market participants are prohibited from entering orders if a regulatory halt occurs after 3:40 p.m. even if an imbalance has been published. Again, these provisions could unnecessarily expose market participants to market risk.

The proposal would allow market participants to enter MOC or LOC orders after 3:40 p.m. if a regulatory halt has been put into effect at 3:40 p.m. or later. Market participants may enter orders on either side of the market until 3:50 p.m. or until the stock reopens, whichever occurs first. If an imbalance is published following a regulatory halt, however, market participants will only be permitted to enter MOC or LOC orders to offset the published imbalance. The imbalance publication procedure also has been amended to provide that if a stock reopens after 3:50 p.m., the specialist must publish an imbalance of 50,000 shares or more (or less than 50,000 shares with approval of a Floor Official), if practicable. This provision recognizes that from a practical standpoint it may not always be feasible for specialist to publish an imbalance late in the trading day after a trading halt. The proposal will provide specialists with the flexibility to consult with Exchange officials to determine

whether such a post trading halt imbalance must be published.

The proposed changes to MOC/LOC order entry and cancellation procedures should promote just and equitable principles of trade because they enable market participants to respond to news disseminated during regulatory halts. The proposed policy should enable market participants to make informed order entry and cancellation decisions based on current, disseminated information. The proposed rule changes, however, limit the ability of market participants to enter or cancel MOC or LOC orders to specific times. The Commission believes that these limitations should provide specialists with adequate time to expedite the orderly closing of their stocks.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-NYSE-98-42), as amended, is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41500; File No. SR-NYSE-99-18]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Exchange Rule 97, "Limitation on Members' Trading Because of Block Positioning," To Permit Member Firms to Net Proprietary Positions Within Aggregation Units and To Except Transactions Offsetting Market Risk That Resulted From Facilitating a Customer's Order

June 9, 1999.

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 4, 1999, the New York Stock Exchange, Inc. ("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. The

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 consists of amendments to Exchange Rule 97, "Limitation on Members' Trading Because of Block Positioning." First, the Exchange proposes to permit member organizations to determine whether they are long for purposes of Rule 97 by netting their long facilitation position with their other stock positions within the same "Aggregation Unit."³ Second, the proposed rule change would add an exception to Rule 97 for purchases to offset all or part of the market risk of a position, established previously or contemporaneously, that is economically equivalent to a short position in a stock, provided that such position was established as the result of facilitating a customer order. Third, the Exchange proposes to replace the term "trading account" with "proprietary account" to clarify that the restrictions of Rule 97 may apply regardless of where the long facilitation position is placed. Finally, the proposed rule change would delete subparagraph (a)(i), the substance of which is included within the meaning of subparagraph (a)(iii).

The following is the text of Exchange Rule 97 marked to reflect the proposed rule change. Additions to the current text appear in *italic* and deletions appear in brackets.

Limitation on Members' Trading Because of Block Positioning

Rule 97 (a) When a member organization holds any part of a long position in a stock in [its trading] a *proprietary* account resulting from a block transaction it effected with a customer, such member organization may not effect the following transactions for any account in which it has a direct or indirect interest for the remainder of the trading day on which it acquired such position:

[(i) a purchase on a "plus" tick if such purchase would result in a new daily high;]

(i)[(ii)] a purchase on a "plus" tick within one-half hour of the close;

(ii)[(iii)] a purchase on a "plus" tick at a higher than the lowest price at which any block was acquired in a previous transaction on that day; or

(iii)[(iv)] a purchase on a "zero plus" tick of more than 50% of the stock offered at a price higher than the lowest price at which any block was acquired in a previous transaction on that day.

For purposes of the restrictions in subparagraph (ii) [(iii)] and (iii)[(iv)] above, in the case where more than one block was

³ See note 6 and accompanying text.

acquired during the day, the lowest price of any such block will be the governing price.

(b) The provisions of paragraph (a) shall not apply to transactions made:

(1) for bona fide arbitrage or to engage in the purchase and sale, or sale and purchase of securities of companies involved in publicly announced merger, acquisition, consolidation, tender, etc.;

(2) to offset a transaction made in error;

(3) to facilitate the conversion of options;

(4) by specialists in the stocks in which they are registered;

(5) to facilitate the sale of a block of stock or a basket of stocks by a customer;

(6) to facilitate an existing customer's order for the purchase of a block of stock, or a specific stock within a basket of stocks, or a stock which is being added to or reweighted in an index, at or after the close of trading on the Exchange, provided that the facilitating transactions are recorded as such and the transactions in the aggregate do not exceed the number of shares required to facilitate the customer's order for such stock; [or]

(7) due to a stock's addition to an index or an increase in a stock's weight in an index, provided that the transactions in the aggregate do not exceed the number of shares required to rebalance the index portfolio.] or

(8) to hedge a position that is economically equivalent to a short stock position, provided that (i) the risk to be hedged is the result of a position acquired previously or contemporaneously in the course of facilitating a customer's order, and (ii) the transactions in the aggregate do not exceed the number of shares required to hedge such short position when netted with any long position in the stock as defined in .10 of this Rule.

Supplementary Material

.10 *Definitions.* A block positioner is a member organization which engages, either regularly or on an intermittent basis, in a course of business of acquiring positions to facilitate the handling of customers' orders on the Floor of the Exchange. For the purposes of this Rule, a block shall mean a quantity of stock having a market value of \$500,000 or more which is acquired by a member organization on its own behalf and/or for others from one or more buyers or sellers in a single transaction.

For purposes of this Rule, a "basket of stocks" shall mean a group of 15 or more stocks having a total market value of \$1 million or more.

For purposes of this Rule, an "index" shall mean a publicly disseminated statistical composite measure based on the price or market value of the component stocks in a group of stocks.

For purposes of this Rule, a member organization that holds in a proprietary account any part of a long position in a stock resulting from a block transaction with a customer shall aggregate such long position with all other proprietary positions in such stock that are held within the same Aggregation Unit as such long position. An Aggregation Unit is a defined trading unit within a member organization which meets the conditions set forth in TP File No. 97-42,

dated November 23, 1998 issued by the staff of the Securities and Exchange Commission ("No-action Letter"). A member organization which has not established defined Aggregation Units that comply with the No-action Letter shall not aggregate such long position with any other position maintained in the member organization's proprietary accounts, except at the end of the trading day.

.20 *Block positioners required to be registered.* No member organization shall engage in a course of business as a block positioner unless the Exchange has approved of its so acting and has not withdrawn such approval.

.30 *Net capital requirement.* A member organization which applies to be registered as a block positioner is required to have and maintain a minimum net capital requirement as defined in Rule 325 of the Exchange of \$1,000,000.

.40 *Reports by block positioners.* Upon of the Exchange a member organization registered with the Exchange as a block positioner shall file a report on Form 97 covering transactions effected on the Floor of the Exchange in connection with block positioning during the period specified in the request. This report is to be sent to Market Surveillance Services, 11 Wall Street, 11th Floor, as promptly as possible but no later than the close of business on the date in which the report is requested to be filed.

.50 *Basket Transactions.* See paragraph (c)(iv) of Rule 800 (Basket Trading: Applicability and Definitions) in respect of the inapplicability of this Rule to long stock positions resulting from basket transactions.

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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 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

Exchange Rule 97 prohibits a member organization that holds any part of a long position in a stock in its trading account resulting from a block transaction it effected with a customer from purchasing, for an account in which the member organization has a direct or indirect interest, additional shares of such stock on a "plus" or

"zero plus" tick under certain conditions for the remainder of the trading day. The Rule defines a "block" as a quantity of stock having a market value of \$500,000 or more.

Paragraph (b) provides exceptions to the rule for purchases involving bona fide arbitrage or trading in companies involved in a publicly announced merger, acquisition, consolidation or tender offer; to offset error transactions; to facilitate the conversion of options; for transactions by specialists in their specialty stocks; to facilitate the sale of a block of stock or a basket of stock by a customer; to facilitate an existing customer order for the purchase of a block of stock or a stock in a basket of stocks or a stock being added to or reweighted in an index at or after the close of trading on the Exchange; or to increase a proprietary position in a stock which is being added or increasing its weight in a publicly disseminated index, provided that the transactions in the aggregate do not exceed the number of shares required to facilitate the customer's purchase of such stock after the close or exceed the number of shares required to rebalance the portfolios.⁴

The Exchange is proposing an additional exception (proposed new paragraph (b)(8)) for purchases to offset all or part of the market risk of a position, established previously or contemporaneously, that is economically equivalent to a short position in the stock, provided that such position was established as the result of facilitating a customer's order. Examples of positions that would be deemed to be economically equivalent to a short position in the stock include a long put option or a short position in a call option, warrant, right or convertible or exchangeable securities. The number of shares purchased to hedge the short position must not exceed the outstanding market risk when such short position is netted with any long position in the stock as defined in .10 of the Rule.

For example, a member organization has sold short to a customer a security which is convertible into 100,000 shares of common stock. Thereafter, it facilitates a block transaction for another customer by buying 40,000 shares of the common stock for the member organization's proprietary account. It seeks to hedge its remaining short exposure in the convertible security by buying 60,000 shares of the common stock. Since the member

⁴ See Release No. 34-40404 (September 4, 1998), 63 FR 49145 (September 14, 1998) (File No. SR-NYSE-98-11).

organization has acquired a long facilitation position (*i.e.*, the 40,000 share purchase), it must now calculate whether it is long for purposes of Rule 97 as described in section .10 of the supplementary material to the Rule. If the firm determines it is long for purposes of Rule 97, it would be limited in the manner by which it could hedge the remaining short market risk. The proposed exception would permit the member organization to purchase up to the amount of its net short exposure without being subject to the tick restrictions of Rule 97.

Rule 97 was adopted due to concerns that a member organization might engage in manipulative practices by attempting to "mark-up" or "peg" the price of a stock in order to enable the position acquired in the course of block positioning to be liquidated at a profit or to maintain the market at the price at which the position was acquired. A stock purchase which offsets existing short market risk resulting from a facilitation and which does not establish a long position, does not provide an incentive to "mark up" or "peg" the price of a long stock position previously acquired as a block facilitation trade. Therefore, the Exchange believes that the proposed exception should be adopted.

The Exchange also is proposing to amend section .10 of the supplementary material to the Rule to specify how a member organization that has acquired a long position in a stock as the result of facilitating a customer's block transaction shall determine whether it is long for purposes of Rule 97, *i.e.*, under what circumstances the member organization must aggregate such position with other proprietary positions.

The Commission staff has recently issued a no-action letter⁵ setting forth conditions for permitting an individual trading unit ("Aggregation Unit") in a member organization to calculate its net position in a particular security for purposes of Rule 10a-1 under the Act⁶ independently from other Aggregation Units.⁷

⁵ Letter from Richard R. Lindsey, Director, Division of Market Regulation to Roger D. Blanc, Esq., Wilkie Farr & Gallagher, dated November 23, 1998 (TP File No. 97-42).

⁶ 17 CFR 240.10a-1.

⁷ These conditions include the following requirements: (1) a written plan that identifies each Aggregation Unit, specifies its trading objective, and supports its independent identity; (2) real-time netting by each Aggregation Unit of its positions; (3) reconciling at least once a day of net positions of all Aggregation Units with the firm's net position; (4) individual traders can be assigned to only one Aggregation Unit at any time; and (5) each trader pursuing a particular trading strategy must be included in one Aggregation Unit.

Under the proposed amendment to section .10 of the supplementary material to Rule 97, a member organization that has chosen to calculate its net positions by defined Aggregation Units, which meet the conditions set forth by the Commission staff in the 1998 no-action letter, would determine whether it is long for purposes of Rule 97 by netting its long facilitation position with its other stock positions within the same Aggregation Unit. A member organization that has not established defined Aggregation Units that comply with the no-action letter may not net such long position with any short position maintained in the member organization's proprietary accounts, except at the end of the trading day. For such a member organization, the restrictions would apply as long as it held any part of a long facilitation position resulting from a block transaction on the day the position was acquired.

Thus, the restrictions contained in paragraph (a) of the Rule would be triggered only if three conditions are met: (1) the member organization acquired a long position in a stock as the result of facilitating a block trade by a customer on that trading day; (2) the member organization is long for purposes of Rule 97 as defined in section .10 of the supplementary material; and (3) the member organization's purchase on a plus or zero plus tick does not fall under any exception in paragraph (b).

The requirement in section .10 of the supplementary material to aggregate a long block facilitation position with other proprietary positions within the same Aggregation Unit is proposed to be added to the Rule in recognition of current practices of large multi-service broker-dealers where profit and loss are calculated within defined Aggregation Units and each such unit conducts its trading without regard to the positions or activities of other units.

The Exchange is also proposing to replace the term "trading account" in paragraph (a) of the Rule with "proprietary account" to clarify that the Rule's restrictions may apply regardless of where the long facilitation position is placed, *e.g.*, a facilitation account or a trading account.

In addition, the Exchange is proposing to delete subparagraph (a)(i) (a purchase on a "plus" tick if such purchase would result in a new daily high) as it is included within the meaning of subparagraph (a)(iii) (a purchase on a "plus" tick at a price higher than the lowest price at which any block was acquired in a previous

transaction on that day), and renumbering accordingly.

2. Statutory Basis

The basis under the Act for this proposed rule change is Section 6(b)(5)⁸ which, in part, calls for exchange rules to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. The proposed rule change would define a long position for purposes of Rule 97 in a manner in that the Exchange believes more closely follows industry practice. It would also permit trading by member organizations to offset the risk of the equivalent of a short stock position, and thereby, add depth, liquidity and quality to the market for Exchange securities.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Within 35 days of the date of 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, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549-0609. Copies of the submission,

⁸ 15 U.S.C. 78f(b)(5).

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 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 Room. 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-99-18 and should be submitted by July 8, 1999.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41506; File No. SR-OCC-99-7]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending OCC's By-Laws Concerning End-of-Month Foreign Currency Options

June 10, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 10, 1999, 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 from interested persons on the proposed rule change.

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 reconcile a difference between OCC's By-Laws and the Rules of the Philadelphia Stock Exchange ("PHLX").

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

The proposed rule change will reconcile a difference between OCC's By-Laws and PHLX's Rules concerning the expiration date of end-of-month foreign currency options. OCC's By-Laws and PHLX's Rules both provide that end-of-month foreign currency options expire on the last Friday of the expiration month. However, PHLX's Rules provide that if the last Friday of the expiration month is December 31st, the options expire on "the Friday immediately preceding December 24th."³ OCC's By-Laws provide that if the last Friday of the expiration month is December 31st, the options expire on "the Friday immediately preceding December 25th."⁴ OCC's By-Laws also provide that if a foreign currency option expires on a holiday, the expiration date is the business day immediately preceding the holiday.⁵

The respective rules of OCC and PHLX provide for conflicting expiration dates for end-of-month options in 1999. December 31, 1999, is a Friday, so under PHLX's Rules the expiration date would be December 17, 1999, which is the Friday immediately preceding December 24th. Under OCC's By-Laws, the expiration date would ordinarily be December 24th, but this is a holiday, so the date would change to December 23rd. After consultation with PHLX, OCC has agreed that the expiration date for the end-of-month foreign currency options should be December 17, 1999. To implement this change, OCC is amending the definition of "expiration date" in Article XV, Section 1 of its By-Laws to provide that the expiration date for end-of-month foreign currency options be the Friday immediately

preceding December 24th, rather than December 25th, if December 31st falls on a Friday. This change will ensure that OCC's By-Laws and PHLX's Rules establish the same December expiration date for these options in 1999 and in future years.

OCC believes that the proposed rule change is consistent with Section 17A of the Act⁶ and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of transactions in foreign currency options by ensuring that the expiration date for such options is the same under OCC's By-Laws and PHLX's Rules.

(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.

(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 rule change has become effective pursuant to Section 19(b)(3)(A)(iii)⁷ of the Act and pursuant to Rule 19b-4(f)(4)⁸ promulgated thereunder because the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such 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

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

³ PHLX Options Rule 1000(b)(21)(ii).

⁴ Article XV, Section 1.E.2(iv) of OCC's By-Laws.

⁵ Article XV, Section 1.E.2(v) of OCC's By-Laws.

⁶ 15 U.S.C. 78q-1.

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(4).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).