(''GLB Act'')[4] and the Fed amendments to Regulation Y implementing GLB Act, the concentration restrictions found in Interpretations and Policies .02 should be rescinded for certain non-U.S. institutions.

GLB Act created a new type of holding company called a ''financial holding company'' and specified certain eligibility requirements for such institutions.[5] To become a financial holding company, GLB Act requires a bank holding company to submit a declaration to the Fed that the company elects to be a financial holding company and a certification that all of the depositor institutions controlled by the company are well capitalized and well managed. Under GLB Act, foreign banks are specifically permitted to qualify as financial holding companies. GLB Act also requires the Fed to apply comparable capital and management standards to such banks that are comparable to those applied to U.S. banks owned by a financial holding company, giving due regard to certain enumerated principles.

The Fed amended Regulation Y in order to implement provisions of the GLB Act governing the creation and conduct of financial holding companies.[6] Section 225.90 sets forth requirements that a foreign bank must meet for purposes of qualifying as a financial holding company, including capitalization and management tests.[7] The well-capitalized test includes risk based capital assessments.[8] The well-managed test requires the foreign bank to receive satisfactory Fed regulatory ratings, to receive the consent of its home country supervisor to the expansion of its U.S. activities, and to meet management standards comparable to those required of a U.S. bank owned by a financial holding company.[9] A foreign bank's election to be treated as a financial holding company is effective on the thirty-first day after the date that the election was received by the appropriate Federal Reserve Bank unless the applicant receives prior written notice that its election is effective or the applicant is notified that the election is ineffective.[10]

OCC believes that the Fed's regulatory policies governing the qualification of foreign banks as financial holding companies provide sufficient safeguards as to the creditworthiness of such institutions and the collectibility of letters of credit issued by them to warrant rescinding the concentration restrictions currently imposed on such institutions. Letters of credit issued by non-U.S. institutions currently represent only 3.2% of total margin deposits,[11] and OCC does not believe that rescinding the concentration requirements for qualified non-U.S. financial holding companies will materially increase its exposure to letters of credit issued by non-U.S. institutions specifically or letters of credit generally.

II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the clearing agency's custody or control or for which it is responsible. The rule change removes restrictions on the percentage of clearing member's margin of obligations that may be satisfied by letters of credit issued by non-U.S. institutions where the issuing institution has qualified as a financial holding company under Regulation Y or is an institution owned by or under the control of such a financial holding company. Removing the restrictions from such non-U.S. institutions gives clearing members a larger pool of financially sound institutions from which they may obtain letters of credit to use the satisfy their margin obligations while still providing OCC with comfort that the non-U.S. issuing financial institutions have sufficient capital and adequate management to issue letters of credit for OCC margin purposes. Therefore, the Commission finds that OCC's proposed rule change is consistent with section 17A of the Act and the rules and regulations thereunder.

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 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. SR–OCC–2001–03) be and hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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[4] Gramm-Leach-Bliley Financial Modernization Act of 1999, Pub. L. No. 106–102, 113 Stat. 1338 (1999).

[5] Qualified financial holding companies may engage in securities, insurance, and other activities that are financial in nature or incidental to a financial activity. 50 FR 14433.

[6] See 66 FR 399 (January 3, 2001) (Board of Governors of the Federal Reserve Board adopting a final rule to amend Regulation Y to implement the financial holding company provisions of the GLB Act).

[7] Section 225.93 sets forth provisions that are applicable should a foreign bank fail to meet the applicable capital and management standards and specifies the consequences of such failure. Consequences include being required to execute an agreement with the Fed providing for a schedule of actions to be taken by the foreign bank to become compliant and, if the foreign bank is unable to meet such schedule, being subjected to an order requiring the divestiture or termination of certain business in the United States. Section 12 CFR 225.93.

[8] Section 12 CFR 225.90(b).

[9] Section 12 CFR 225.90(c).

[10] Section 12 CFR 225.92. The Fed publishes a list of effective financial holding company elections on its web site. As of January 2001, 13 out of 32 non-U.S. institutions approved by OCC to issue letters of credit have qualified as financial holding companies.

[11] Letters of credit currently represent only 11.9% of total margin deposits.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45026; File No. SR–OCC–2001–10]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Clearing Fees for Security Futures

November 6, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 10, 2001, 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 provides for the fees that OCC will charge for clearing security futures contracts. OCC is proposing to charge the same clearing fees for security futures as it does for options.[2]

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

[2] A copy of the text of OCC's proposed rule change and current fee schedule for options is available at the Commission's Public Reference Room or through OCC.

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.[3]

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

The purpose of this rule change is to provide for the fees to be charged for clearing security futures contracts. OCC proposes to charge the same clearing fees for security futures as it charges for options. As with new options products, clearing fees for security futures will be abated through the first full calendar month of trading on each exchange and discounted for the second through the first full calendar month of trading on each exchange and discounted for the second and third calendar months.

The proposed rule change is consistent with Section 17A of the Act, as amended, because it provides for the equitable allocation of reasonable fees among clearing members.

(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

Because the foregoing rule change establishes fees to be imposed by OCC upon clearing members, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2).[5] 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.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. 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 will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2001–10 and should be submitted by December 5, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

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[3] The Commission has modified parts of these statements.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–(f)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45032; File No. SR–PCX–00–05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Amendment No. 4 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to Its Automatic Execution System

November 6, 2001.

I. Introduction

On March 8, 2000, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow broker-dealer orders to be eligible for automatic execution through the Exchange's Automatic Execution System (''Auto-Ex'') on an issue-by-issue basis. The Exchange also proposed to adopt rules to establish means of improving compliance with rules pertaining to the use of Auto-Ex. After publishing the proposal for notice and comment in the **Federal Register**,[3] the Commission partially approved the proposal and granted accelerated approval to Amendment Nos. 2 and 3.[4] Specifically, the Commission approved the portion of the proposal relating to the establishment of provisions to improve compliance with the Exchange's Auto-Ex rules; the Commission did *not* approve the portion of the proposal that would allow orders for the accounts of broker-dealers to be executed on Auto-Ex on an issue-by-issue basis.

On October 29, 2001, the PCX filed Amendment No. 4 to the proposed rule change.[5] In Amendment No. 4, PCX addressed the remaining portion of proposed rule change regarding the eligibility of broker-dealer orders for automatic execution through Auto-Ex on an issue-by-issue basis. This order grants accelerated approval to Amendment No. 4 to the proposed rule change and solicits comments from interested persons on that Amendment.

Below is the proposed text of the portion of the proposed rule change relating to the eligibility of broker-dealer orders for automatic execution through Auto-Ex, as amended by Amendment No. 4.[6] Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

¶ 5231 Automatic Execution System

Rule 6.87(a)—No change

(b) Eligible Orders.

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 43049 (July 18, 2000), 65 FR 45810 (July 25, 2000) (''Initial Proposal'').

[4] Securities Exchange Act Release No. 43971 (February 15, 2001), 66 FR 11344 (February 23, 2001) (''Partial Approval Order'').

[5] *See* letter from Michael D. Pierson, Vice President, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated October 26, 2001 (''Amendment No. 4'').

[6] The text of this rule change is based upon current PCX Rule 6.87(b). It disregards previously proposed amendments to PCX Rule 6.87(b) that were included in the Initial Proposal and approved in the Partial Approval Order.