

to establish the SuperMontage.⁶ The proposed SuperMontage rules contained reference to the concept of Agency Quote, as rule filing SR-NASD-99-09 was pending before the Commission at the time Nasdaq filed the SuperMontage proposal. Among other things, the SuperMontage proposed to establish a mechanism for market participants to display customer limit orders under a separate Nasdaq market maker ID ("MMID"). On January 19, 2001, the Commission approved the SuperMontage proposal, and the related rules that contained references to the still-pending Agency Quote proposal.⁷ On December 31, 2001, Nasdaq withdrew the Agency Quote proposal as the SuperMontage provided equivalent functionality as an Agency Quote.⁸ The purpose of this rule filing is to eliminate all references to the concept of "Agency Quote" in the approved SuperMontage rules.

2. Statutory Basis

Nasdaq believes the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act⁹ in general, and with Section 15A(b)(6) of the Act¹⁰ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

Nasdaq does not believe that the proposed rule change, as amended, will result in 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

Nasdaq neither solicited nor received any written comments with respect to the proposed rule change, as amended.

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

The foregoing proposed rule change, as amended, (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate. The proposed rule change, as amended, has therefore become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² At any time within 60 days of the filing of this proposed rule change, as amended, 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.¹³

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as amended, 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number

SR-NASD-2002-67 and should be submitted by August 22, 2002.

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. 34-46265; File No. SR-OCC-2002-09]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Fixing Settlement Prices in the Event of Market Disruptions

July 25, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on May 17, 2002, 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 would amend Article XII, Section 5 (relating to futures which include security futures) and Article XVII, Section 4 of OCC's by-laws (relating to index options) to provide OCC with the ability in the event of market disruptions to conform settlement prices for OCC-cleared security futures and index options to settlement prices that are used for related products (e.g., futures on the same index) not cleared by 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),

⁶ See Securities Exchange Act Release No. 42166 (November 22, 1999), 64 FR 68125 (December 6, 1999).

⁷ See Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

⁸ Nasdaq allows for market makers to submit multiple quotes/orders and, therefore, a separate agency quote is unnecessary. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Cyndi Nguyen, Attorney, Division, Commission, on July 19, 2002.

⁹ 15 U.S.C. 78o-3.

¹⁰ 15 U.S.C. 78o-3(b)(6).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). Nasdaq has requested and the Commission has waived the usual five-day pre-filing notice requirement.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

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 primary purpose of the proposed rule change is to ensure that OCC will have the ability in case of market disruptions to conform settlement prices for OCC-cleared security futures and index options, where appropriate, to settlement prices that are used for related products such as other futures on the same security or index traded in other markets and not cleared by OCC. The proposed rule change would primarily affect the fixing of exercise settlement amounts for expiring options as well as final settlement prices for maturing futures contracts.³ OCC does not anticipate any substantive change in its present policy with respect to fixing settlement prices for index options that are exercised prior to expiration.⁴

In the event of an interruption in the markets for an underlying security or one or more component securities in an underlying index, OCC needs to have discretion to act to set final settlement values in a manner that avoids inconsistencies between the futures and options markets and among futures markets.⁵ Investors may employ hedging and other trading strategies that involve holding positions on the same underlying security or index in different contracts. These strategies are based on the expectation that the values of different derivative contracts on the same underlying interest will have a predictable relationship to one another. This expectation may not be met when trading halts or other disruptions in markets for the underlying interests require the derivatives markets to fix settlement prices using prices or values other than those that would normally be used. In such cases, discrepancies in settlement prices can occur unless prices for derivative products traded in different markets are fixed using a

common method. Unless such coordination occurs, investors with positions in options and futures that were intended to hedge one another may find that the positions do not produce the anticipated offset.

In the spring of 2000, OCC attempted to solve the problem of a potential disconnect between the options and futures markets in setting final index contract settlement prices by conforming its rules more closely to the rules of the Chicago Mercantile Exchange ("CME") as then in effect.⁶ OCC's rule change, SR-OCC-00-01, broadened the circumstances under which OCC could fix a settlement price for expiring index options to include situations where market disruptions affected one or more securities in an index (as opposed to "securities representing a substantial portion of the value of an index") and added a paragraph relating solely to expiring options specifically permitting OCC to fix settlement prices based on the next opening prices for one or more component stocks.⁷

Effective December 1, 2001, CME changed its rules governing its method of fixing final settlement prices for each of its index futures products under certain circumstances. CME's newly amended rules provide that if the primary market for a component stock opens for trading on the day scheduled for determination of a final settlement price but the component stock does not trade while the market is open, the price of the component stock for purposes of calculating the final settlement price will be based on the last sale price of the stock unless CME's president or his delegate determines that there is a reasonable likelihood that trading in the component stock will occur shortly. In that case, for purposes of determining the final settlement price, the price of the component stock may be based on the opening price of the component

stock on the next day the component stock is traded on its primary market.⁸

OCC's rules do not authorize OCC to fix a settlement price based on a stock's next opening price in situations where the stock's primary market is open but the stock does not open or remain open for trading. SR-OCC-00-01 authorized the use of opening values only in cases where a stock's primary market did not open or remain open for trading at or before the time when the exercise settlement amount would ordinarily be determined. As a result, OCC is again faced with a potential disconnect between its rules and CME's rules.

The most fundamental aspect of SR-OCC-00-01 is that for the first time OCC was allowed to fix a settlement value based on prices that occurred after an expiration and to treat options that were in the money based upon that subsequently determined price as having been exercised on the expiration date. The proposed rule change would make more explicit the scope of OCC's ability to invoke that authority and the discretion that the extent to which OCC or an adjustment panel (in the case of options) can fix final settlement prices and exercise settlement amounts.⁹ The proposed rule change would make clear that OCC may follow CME's current rule and may use either the latest closing prices for individual stocks that fail to trade or use opening prices for the next day on which the stock trades.

The authority to fix final settlement prices for futures and exercise settlement amounts for options in unusual market conditions should be sufficiently broad to ensure that the authority will exist to conform such settlement values to the settlement values established for related products traded in other markets whenever that result is deemed on balance to be in the

⁸ CME added the following underlined language to CME Rule 2003.A:

If a component stock in the index does not trade on the day scheduled for determination of the Final Settlement Price while the primary market for that stock is open for trading, the price of that stock shall be determined, for the purposes of calculating the Final Settlement Price, based on the last sale price of that stock. *However, if the President of the Exchange or his delegate determines that there is a reasonable likelihood that trading in the stock shall occur shortly, the President or his delegate may instruct that the price of stock shall be based, for the purposes of calculating the Final Settlement Price, on the opening price of the stock on the next day that it is traded on its primary market. Factors to be considered in determining whether trading in the stock is likely to occur shortly shall include the nature of the event and recent liquidity levels in the affected stock.*

⁹ A supplement to the Options Disclosure Document that describes the substance of the by-law changes proposed herein has been prepared. It will be filed with the Commission once the options exchanges have reviewed it.

² The Commission has modified parts of these statements.

³ These would include single stock futures and narrow-based index futures as well as broad-based index futures subject to the exclusive jurisdiction of the Commodity Futures Trading Commission.

⁴ That general policy would be restated in proposed Interpretation .02 to Section 4 of Article XVII of OCC's by-laws.

⁵ This rule change would affect the fixing of final settlement prices for futures contracts and exercise settlement amounts for options. However, in the case of options exercised other than at expiration, coordination with other markets is ordinarily not a significant factor because either there is no concurrent final settlement in related futures markets or in any case an investor need not exercise the option.

⁶ For example, CME Rule 2003. A, which governs the method for determining the final settlement price for Standard & Poor's 500 Stock Index Futures, provided (at that time) as follows:

If the primary market for a component stock in the index does not open on the day scheduled for determination of the Final Settlement Price, then the price of that stock shall be determined, for the purposes of calculating the Final Settlement Price, based on the opening price of that stock on the next day that its primary market is open for trading.

If a component stock in the index does not trade on the day scheduled for determination of the Final Settlement Price while the primary market for that stock is open for trading, the price of that stock shall be determined, for the purposes of calculating the Final Settlement Price, based on the last sale price of that stock.

⁷ Securities Exchange Act Release No. 42769 (May 9, 2000), 65 FR 31036 (May 15, 2000) [SR-OCC-00-01]

best interests of investors. Experience has shown that this authority must be stated somewhat broadly so that if in the future CME or other related markets amend the circumstances in which they can fix settlement values or the means by which they use to fix those values, OCC would not need to amend its rules further to conform. Because CME and other markets often do not coordinate with OCC when they change their rules governing the fixing of settlement values, OCC may not be able to conform its rules to amendments made by other markets quickly enough to avoid a disconnect between the futures and options markets. The proposed change would provide OCC with discretion both as to the circumstances in which authority would exist to fix a settlement value and the method by which the settlement value would be fixed.¹⁰

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because it fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, protects investors and the public interest.

(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

¹⁰If OCC decides to fix the exercise settlement amount for an expiring index option, the settlement amount shall be fixed by a panel consisting of two designated representatives of each exchange on which the affected option is open for trading and the Chairman of OCC. The panel shall fix the exercise settlement amount based on its judgment as to what is appropriate for the protection of investors and the public interest, taking into account such factors as fairness to holders and writers of options of the affected options, the maintenance of a fair and orderly market in such options, consistency of interpretation and practice, and consistency with actions taken in related futures or other markets. OCC notes that the coordination of final settlement values is not the only factor that OCC or an adjustment panel could consider in deciding whether and how to fix settlement values. Accordingly, there could be circumstances where settlement values for OCC-cleared products would not be conformed to prices used in other markets, even though the authority would exist to do so.

to the proposed rule change, and none have been received.

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

Within thirty five-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 ninety 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.

VI. 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. 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-2002-09 and should be submitted by August 22, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF STATE

[Public Notice 4072]

Culturally Significant Objects Imported for Exhibition Determinations: "Against the Modern: Dagnon-Bouveret and the Transformation of the Academic Tradition"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, "Against the Modern: Dagnon-Bouveret and the Transformation of the Academic Tradition," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the National Academy of Design Museum, New York, New York, from on or about September 10, 2002, to on or about December 7, 2002, at the Society of the Four Arts, Palm Beach, Florida, from on or about January 3, 2003, to on or about February 9, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619-5997, and the address is United States Department of State, SA-44, Room 700, 301 4th Street, SW., Washington, DC 20547-0001.

Dated: July 19, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

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¹¹ 17 CFR 200.30-3(a)(12).