

market. In proposing to establish the new order type, Nasdaq seeks to provide market participants with more choices, thereby permitting them to represent their trading interest more completely than is currently possible on Nasdaq. The depth and liquidity of the market on Nasdaq could increase as a result of the enhanced interest and competition, which in turn could promote greater competition among market centers.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-NASD-2005-068) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52125; File No. SR-OCC-2005-09]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to OCC's Data Distribution Service

July 26, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on June 24, 2005, 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 purpose of the proposed rule change is to adopt a new DDS Supplement to support the conversion of OCC's data distribution service ("DDS")<sup>2</sup> to the technology used by OCC's new clearing system, ENCORE.

#### 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>3</sup>

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

An OCC clearing member may subscribe to DDS in order to receive in a machine readable format a copy of data processed by OCC that is proprietary to that clearing member (e.g., position and post-trade entries) and that is "non-proprietary" (i.e., data not specific to the clearing member) produced by OCC, including series, prices, and other information. A subscribing clearing member may instruct OCC to provide data to its managing clearing member or to its service bureau. Parties that are not clearing members may also subscribe to DDS in order to receive certain non-proprietary data. Data provided as a part of ENCORE DDS is organized into different "message types" that a subscriber may elect to receive.

ENCORE DDS has been developed to provide a secure, flexible framework for distributing messages to subscribers pursuant to their elections.<sup>4</sup> As is the case today, ENCORE DDS subscribers will be permitted to choose whether to access messages from OCC servers or to directly receive message transmissions from OCC. Subscribers may elect to receive messages on a real time basis (a new DDS offering) and/or on a batch basis (a current DDS offering) although not all message types will be made available under both methods.<sup>5</sup> For subscribers electing to receive DDS on a real time basis, an "end of day" message will alert them not to expect any further information from OCC for that day. ENCORE DDS will be available to subscribers through leased lines, the internet, or both. OCC will support the

current DDS format and the ENCORE DDS format during a transition period.

The DDS Supplement is structured to fit within OCC's existing framework for the Agreement for OCC Services and will replace the current form supplement between clearing members and OCC.<sup>6</sup> The DDS Supplement's provisions are generally self-explanatory, and they are intended to describe the respective responsibilities of OCC and the subscribing clearing member. Section 1 describes DDS and, if applicable, permits a clearing member to direct OCC to deliver messages to the clearing member's managing clearing member or service bureau, as applicable. Section 2 sets forth criteria associated with subscribing to DDS. Sections 3 through 5 set forth further responsibilities of the parties including limitations on warranties, liability,<sup>7</sup> and indemnification. Section 6 contains general terms regarding survival of certain provisions. Annex I provides an overview of message types offered as a part of ENCORE DDS. Annex II is a form which permits a clearing member to provide contact information regarding its managing clearing member and a certification of the managing clearing member with respect to DDS. Annex III is a comparable form for service bureaus.

OCC believes that the proposed change is consistent with Section 17A of the Act because ENCORE DDS provides a more efficient and effective means to furnish machine readable clearing-related data to clearing members. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

##### (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.

<sup>6</sup> The DDS Supplement to be entered into between OCC and clearing members subscribing to DDS is attached to the filing of proposed rule change as Exhibit 5.

<sup>7</sup> The limitation of liability provision contained in the DDS Supplement is based on the comparable provisions of the Supplement for Internet Access, which was approved by the Commission in Securities Exchange Act Release No. 46152 (July 1, 2002) 67 FR 45166 (July 8, 2002) [File No. SR-OCC-2001-09]. OCC has filed a proposed rule change with the Commission to establish a standard of care by which any potential liability of OCC to its clearing members would be judged [File No. SR-OCC-2003-13]. If approved, that proposed rule change would amend supplements to the Agreement for OCC Services to the extent a standard of care is established therein to reference the standard as it would be set forth in OCC's By-laws.

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> OCC offers certain ancillary services to clearing members that are not set forth in OCC's By-laws and Rules. Examples of such services include different channels by which clearing members may elect to receive data processed by OCC or to communicate instructions to OCC.

<sup>3</sup> The Commission has modified parts of these statements.

<sup>4</sup> Fees charged for DDS to clearing members and non-clearing members (as set forth in OCC's Schedule of Fees) will not be changed at this time.

<sup>5</sup> For example, price messages currently are expected to be only offered on a batch basis.

*(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) of the Act<sup>8</sup> and Rule 19b-4(f)(4)<sup>9</sup> promulgated thereunder because the proposal effects a change in an existing service of OCC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of OCC or persons using the service. 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.

### IV. 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. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2005-09 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-0609.

All submissions should refer to File Number SR-OCC-2005-09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at <http://www.optionsclearing.com>.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2005-09 and should be submitted on or before August 23, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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## DEPARTMENT OF STATE

[Public Notice 5145]

### Culturally Significant Objects Imported for Exhibition Determinations: "Style and Status: Imperial Costumes From Ottoman Turkey"

*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, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Style and Status: Imperial Costumes from Ottoman Turkey," imported from abroad for temporary exhibition within

the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Arthur M. Sackler Gallery, Smithsonian Institution, Washington, DC, from on or about October 29, 2005 to on or about January 22, 2006, 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 the exhibit objects, contact Wolodymyr R. Sulzysky, the Office of the Legal Adviser, Department of State, (telephone: 202-453-8050). The address is Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: July 26, 2005.

C. Miller Crouch,

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

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## DEPARTMENT OF STATE

[Delegation of Authority No. 281]

### Delegation by the Secretary of State to the Director General of the Foreign Service and Director of Human Resources of Authorities Normally Vested in the Under Secretary for Management

By virtue of the authority vested in me as Secretary of State by the laws of the United States, including Section 1 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2651a), I hereby delegate to W. Robert Pearson, to the extent authorized by law, all authorities vested in the Under Secretary for Management, including all authorities vested in the Secretary of State or head of agency that have been or may be delegated or re-delegated to the Under Secretary for Management.

Any authorities covered by this delegation may also be exercised by the Secretary of State or the Deputy Secretary of State.

Any act, executive order, regulation, or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation, or procedure as amended from time to time.

This delegation shall enter into effect upon signature and shall expire upon the appointment and entry upon duty of a new Under Secretary for Management.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(4).

<sup>10</sup> 17 CFR 200.30-3(a)(12).