

of trade, 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.

The Exchange has proposed to remove the current restriction on the ability of specialists to buy on plus ticks or sell on minus ticks without Floor Official approval, as set forth in NYSE Rules 104.10(5) and (6), for transactions in investment company units and Trust Issued Receipts (collectively referred to as "Exchange Traded Funds," or "ETFs"). The Commission believes that, because ETFs are priced derivatively, based on the value of an underlying basket of securities, the removal of this restriction is warranted, and notes that it has previously approved a similar rule change adopted by the American Stock Exchange LLC ("Amex").<sup>7</sup> In approving the proposed rule change, the Commission notes that an Exchange specialist must continue to engage in dealings for his or her own account to assist in the maintenance of a fair and orderly market.<sup>8</sup>

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (File No. SR-NYSE-2004-71), as amended, be, and hereby is, approved.

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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51586; File No. SR-OCC-2005-05]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Technical Changes That Add or Correct Cross-References in Article VIII, Section 5 of the By-Laws and in Rule 910

April 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 13, 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 proposed rule change adds or corrects cross-references by making technical changes to Article VIII, Section 5 of OCC's By-Laws and to OCC Rule 910, respectively.

#### 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>2</sup>

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

The purpose of the proposed rule change is to correct technical errors in Article VIII, Section 5(e) of OCC's By-Laws and in Rules 910(c) and (d).

In October 2004, the Commission approved a proposed rule change that revised Section 5(e) of Article VIII of

OCC's By-Laws.<sup>3</sup> Article VIII of OCC's By-Laws pertains to the application of OCC's clearing fund. In its filing, OCC mistakenly deleted the designation of clause (i) of Section 5(e). The proposed rule change reinserts it.

In March 2004, the Commission approved a proposed rule change that significantly restructured and revised Chapter IX of OCC's Rules.<sup>4</sup> Chapter IX of OCC's Rules pertains to delivery settlement of exercised equity options and matured stock futures. In its filing, OCC neglected to change cross-references in Rules 910 (c) and (d) to paragraph (b). (Paragraph (d) was redesignated as paragraph (b) in that filing). The proposed rule change corrects those cross-references.

##### (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) of the Act<sup>5</sup> and Rule 19b-4(f)(4)<sup>6</sup> thereunder because it effects a change that (i) 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 (ii) 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 the proposed rule change, the Commission may summarily abrogate the 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.

<sup>3</sup> Securities Exchange Act Release No. 50526 (October 13, 2004), 69 FR 61701 (October 20, 2004) [File No. SR-OCC-2004-13].

<sup>4</sup> Securities Exchange Act Release No. 49420 (March 16, 2004), 69 FR 13345 (March 22, 2004) [File No. SR-OCC-2003-08].

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>6</sup> 17 CFR 240.19b-4(f)(4).

<sup>7</sup> See Securities Exchange Act Release No. 49087 (January 15, 2004), 69 FR 3622 (January 26, 2004) (order approving, among other things, the removal of the restriction on Amex specialists from buying on plus ticks and selling on minus ticks without Floor Official approval for transactions in Exchange Traded Funds).

<sup>8</sup> See NYSE Rule 104 and Rule 11b-1 under the Act, 17 CFR 240.11b-1.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

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

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

<sup>2</sup> The Commission has modified parts of these statements.

#### 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-2005-05 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-OCC-2005-05. 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, 450 Fifth Street, NW., 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-2005-05 and should be submitted on or before May 17, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-51584; File No. SR-OCC-2005-04]**

#### **Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Procedures With Respect to Deposits of Cash or Securities With an Escrow Bank for Short Positions in Stock Option or Index Option Contracts**

April 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 1, 2005, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change 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 rule change from interested parties.

##### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The rule change modifies OCC's procedures with respect to deposits of cash or securities with an escrow bank for short positions in stock option or index option contracts.

##### **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 these statements.<sup>2</sup>

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by OCC.

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

OCC Rule 613 sets out procedures governing escrow deposits. Rule 613(f) currently provides that OCC will send to each clearing member by 9 a.m. Central Time on the first business day following each expiration date a list of each expired short position carried by that clearing member that was covered by an escrow deposit. By a prescribed deadline that same day, the clearing member is required to identify to OCC each short position on the list to which it has allocated an exercise notice. Based upon the information supplied by clearing members, by 9 a.m. Central Time the next business day OCC makes available to escrow banks and clearing members a final list of expired short positions covered by escrow deposits and indicates whether an exercise notice has been allocated to each such short position.

Rule 613(g) provides that OCC will release escrow deposits on its own initiative at 12 noon Central Time on the second business day following the expiration date with three exceptions. First, the release of an escrow deposit will be delayed if OCC is unable to produce the final list of expired short positions covered by escrow deposits within the time frame specified in its rules. Second, the release may be deferred if a clearing member carrying an expired short position covered by an escrow deposit fails to meet its margin or premium settlement obligations to OCC on the business day that the deposit would have been released. Third, if the final list shows that an exercise notice was allocated to an expired short position, the escrow deposit will not be released until 12 noon Central Time on the first business day after the exercise settlement date and can be delayed even further if National Securities Clearing Corporation ("NSCC") notifies OCC that the clearing member has not met its settlement obligations. In that event, the deposit will not be released until the first business day after OCC receives confirmation that it has no further obligations to NSCC with respect to the short position or if OCC has directed that settlement be made other than through NSCC, until OCC receives confirmation that the settlement has been made.

The processing of escrow deposits at expiration will be substantially simplified under ENCORE Release 4.5. OCC's report of expired positions covered by escrow deposits, the clearing