

19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup>

At any time within 60 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 No. SR-CBOE-2007-38 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-CBOE-2007-38. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. 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 No. SR-CBOE-2007-38 and should be submitted on or before May 24, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E7-8396 Filed 5-2-07; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55681; File No. SR-OCC-2007-03]

### Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amendment No. 5 of the Restated Participant Exchange Agreement

April 27, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> notice is hereby given that on March 13, 2007, 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 substantially by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>2</sup> and Rule 19b-4(f)(4)<sup>3</sup> thereunder so that the proposal was effective upon filing with the Commission. 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 the Substance of the Proposed Rule Change

The proposed rule change would amend the Restated Participant Exchange Agreement ("RPEA") between and among OCC and its six participant exchanges, which are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, LLC ("ISE"), NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc.

#### 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.

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

The proposed rule change amends Sections 2(g) and 23 of the RPEA that obligates the participant exchanges to indemnify OCC against specified losses incurred in connection with the introduction of new products.

##### 1. Background

New derivative products pose a variety of legal risks to OCC. While OCC generally declines to clear a product if it believes that there are valid concerns as to the product's legality, there can be no assurance that a product's legality will not be later challenged. Litigating such matters can be expensive, and an adverse outcome or settlement could result in substantial liabilities to OCC.

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6) also requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. CBOE has satisfied the five-day pre-filing requirement. As set forth in the Commission's initial approval of the Pilot Program, if CBOE proposes to: (1) Extend the Pilot Program; (2) expand the number of options eligible for inclusion in the Pilot Program; or (3) seek permanent approval of the Pilot Program, it must submit a Pilot Program report to the Commission along with the filing of its proposal to extend, expand, or seek permanent approval of the Pilot Program. CBOE must file any proposal to expand or seek permanent approval of the Pilot Program and the Pilot Program report with the Commission at least 60 days prior to the expiration of the Pilot Program. The Pilot Program report must cover the entire time the Pilot Program was in effect and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of \$1 strike price intervals for the options CBOE selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of CBOE's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how CBOE addressed them; (6) any complaints that CBOE received during the operation of the Pilot Program and how CBOE addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program. See Pilot Approval Order, *supra* note 5.

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

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

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>3</sup> 17 CFR 240.19b-4(f)(4).

New products sometimes raise intellectual property ("IP") issues. For example, in January 2005 when the ISE proposed to trade unlicensed options on SPDRs, Standard & Poor's parent company, the McGraw-Hill Companies, sued ISE and OCC asserting that a license was required not only to trade options on a proprietary index but also options on an exchange trade fund ("ETF") based on a proprietary index.<sup>4</sup> In May 2005, when ISE proposed to trade unlicensed options on DIAMONDS, Dow Jones & Company filed a similar action against ISE and OCC.<sup>5</sup> (The two lawsuits were later consolidated and eventually dismissed by court order, which order was upheld on appeal.)<sup>6</sup> More recently, ISE and OCC were sued by the Chicago Board Options Exchange, Incorporated ("CBOE") and two co-plaintiffs that asserted that ISE had proposed to trade unlicensed options on the S&P 500 Index and the Dow Jones Industrial Average in violation of exclusive license arrangement between CBOE and each of its co-plaintiffs.<sup>7</sup>

The current RPEA between and among OCC and the six options exchanges obligates the exchanges to indemnify OCC against specified losses (e.g., losses resulting from an exchange's violation of the Act or the RPEA or failure to make adequate disclosure regarding a product that it trades). However, the current RPEA does not generally obligate the exchanges to indemnify OCC against losses resulting from a product's illegality or against IP liability.<sup>8</sup>

## 2. Discussion

OCC is not obligated to clear a product if doing so would be illegal or

<sup>4</sup> *The McGraw-Hill Companies, Inc. v. International Securities Exchange, Inc. and The Options Clearing Corporation*, 05 Civ. 112 (HB) (U.S.D.C. S.D.N.Y.) In consideration of OCC's agreeing to clear unlicensed SPDR options, ISE agreed to indemnify OCC against any resulting liabilities or expenses.

<sup>5</sup> *Dow Jones & Company, Inc. v. International Securities Exchange, Inc. and The Options Clearing Corporation*, 05 CV 4954 (U.S.D.C. S.D.N.Y.) As in the SPDR case, *id.*, ISE agreed to indemnify OCC against any resulting liabilities or expenses.

<sup>6</sup> *Dow Jones & Co. v. International Securities Exchange, Inc.*, 451 F.3d 295 (2d Cir. 2006).

<sup>7</sup> *Chicago Board Options Exchange, Incorporated, et al v. International Securities Exchange, LLC and The Options Clearing Corporation*, 06 CH 24798, Circuit Court of Cook County, Ill., Chancery Division.

<sup>8</sup> OCC's clearing agreement for futures products, which was drafted more recently than the RPEA, contains broader indemnification provisions. It obligates the futures exchange to indemnify OCC against losses resulting from the exchange's violation of "any law or governmental regulation" and contains an express indemnity for IP liability.

would violate the IP rights of others.<sup>9</sup> However, legal issues are not always identifiable in advance. For example, claims that a new product violates IP rights of third parties may not surface until after the product is already trading. Even when an issue is identified in advance, OCC's assessment of its seriousness may be erroneous.

For these reasons, no matter how carefully OCC analyzes new products, there will often be some legal risk. To mitigate this risk, OCC and its participant exchanges are amending the RPEA to obligate an exchange that introduces a new product to provide indemnification similar to that required of futures exchanges for which OCC provides clearing services.<sup>10</sup> The terms of the amendment reflect the agreement of each participant exchange to severally, and not jointly, indemnify OCC and specified affiliates against losses and expenses incurred in connection with any action based on any options claim (i.e., a claim that the exchange does not have the right to trade an option or that the trading of such option by the exchange, that the issuance of such option by OCC or that the clearance and settlement of trades therein or exercises thereof by OCC would violate the IP or other rights of a third party).<sup>11</sup> In addition, the amendment redesignates and makes certain technical changes in preexisting indemnification provisions.<sup>12</sup>

OCC believes that the proposed change is consistent with Section 17A of the Act of 1934 and the rules promulgated thereunder because it reduces the legal exposure borne by OCC in connection with issuing and clearing new derivative products introduced by its participant exchanges and thereby strengthening OCC's ability to perform its duties as a registered clearing agency. OCC further states that the proposed change contributes to the safeguarding of securities and funds in the custody or control of OCC and that the proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

<sup>9</sup> Section 3 of the RPEA provides that if a proposed underlying interest does not fall within certain specified categories, OCC cannot be required to clear options on it without the approval of its Board. Even when the interest does fall within the specified categories (e.g., a securities index), OCC could not be required to clear options on it if doing so would be unlawful.

<sup>10</sup> See e.g., Filings No. SR-OCC-2006-18 (futures clearing agreement with PBOT) and 2003-06 (futures clearing agreement with CFE).

<sup>11</sup> New Sections 23(c) through (g) of the RPEA.

<sup>12</sup> See Section 1 of Amendment No. 5 and redesignated Sections 23(c) and (h) of the RPEA.

### 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

OCC has not solicited or received written comments relating to the proposed rule change. OCC will notify the Commission of any written comments it receives.

### 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>13</sup> and Rule 19b-4(f)(4)<sup>14</sup> thereunder because it effects a change in an existing OCC service that does not adversely affect the safeguarding of securities or funds in OCC's custody or control or for which it is responsible and does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule 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 No. SR-OCC-2007-03 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-OCC-2007-03. This file number

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(4).

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 OCC's principal office and on OCC's Web site at [http://www.theocc.com/publications/rules/proposed\\_changes/proposed\\_changes.jsp](http://www.theocc.com/publications/rules/proposed_changes/proposed_changes.jsp). 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 No. SR-OCC-2007-03 and should be submitted on or before May 24, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**  
Deputy Secretary.  
[FR Doc. E7-8429 Filed 5-2-07; 8:45 am]  
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**SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration # 10855 and # 10856]

**New Jersey Disaster # NJ-00006**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA-1694-DR), dated April 26, 2007.

*Incident:* Severe Storms and Inland and Coastal Flooding.

*Incident Period:* April 14, 2007 through April 20, 2007.

*Effective Date:* April 26, 2007.

*Physical Loan Application Deadline Date:* June 25, 2007.

*Economic Injury (EIDL) Loan Application Deadline Date:* January 28, 2008.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 04/26/2007, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties (Physical Damage and Economic Injury Loans):*

Bergen, Burlington, Essex, Passaic, Somerset, Union.

*Contiguous Counties (Economic Injury Loans Only):*

*New Jersey:* Atlantic, Camden, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Sussex.

*New York:* Bronx, York, Orange, Rockland, Westchester.

*Pennsylvania:* Bucks, Philadelphia.

*The Interest Rates are:*

	Percent
<i>For Physical Damage:</i>	
Homeowners With Credit Available Elsewhere .....	5.750
Homeowners Without Credit Available Elsewhere .....	2.875
Businesses With Credit Available Elsewhere .....	8.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere .....	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 108556 and for economic injury is 108560.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Jane M. Pease,**  
Acting Associate Administrator for Disaster Assistance.

[FR Doc. E7-8425 Filed 5-2-07; 8:45 am]

BILLING CODE 8025-01-P

**SMALL BUSINESS ADMINISTRATION**

**Notice of Action Subject to Intergovernmental Review Under Executive Order 12372**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

**SUMMARY:** The Small Business Administration (SBA) is notifying the public that it intends to grant the pending applications of 22 existing Small Business Development Centers (SBDCs) for refunding on October 1, 2007, subject to the availability of funds. Six states do not participate in the EO 12372 process; therefore, their addresses are not included. A short description of the SBDC program follows in the supplementary information below.

The SBA is publishing this notice at least 60 days before the expected refunding date. The SBDCs and their mailing addresses are listed below in the address section. A copy of this notice also is being furnished to the respective State single points of contact designated under the Executive Order. Each SBDC application must be consistent with any area-wide small business assistance plan adopted by a State-authorized agency.

**DATES:** A State single point of contact and other interested State or local entities may submit written comments regarding an SBDC refunding within 30 days from the date of publication of this notice to the SBDC.

**ADDRESSES:**

*Addresses of Relevant Sbdc State Directors*

Mr. Al Salgado, Region Director, Univ. of Texas at San Antonio, 501 West Durango Blvd., San Antonio, TX 78207, (210) 458-2450.

Mr. Clinton Tymes, State Director, University of Delaware, One Innovation Way, Suite 301, Newark, DE 19711, (302) 831-2747.

Ms. M.E. Gamble, State Director, West Virginia Development Office, Capitol Complex, Building 6, Room 652, Charleston, WV 25301, (304) 558-2960.

Ms. Carmen Marti, SBDC Director, Inter American University of Puerto Rico, Ponce de Leon Avenue, #416, Edificio Union Plaza, Seventh Floor, Hato Rey, PR 00918, (787) 763-6811.

Mr. Michael Young, Region Director, University of Houston, 2302 Fannin, Suite 200, Houston, TX 77002, (713) 752-8425.

Ms. Liz Klimback, Region Director, Dallas Community College, 1402

<sup>15</sup> 17 CFR 200.30-3(a)(12).