

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47196; File No. SR-OCC-2002-20]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Alternative Schedule of Fees for Clearing Transactions in Security Futures

January 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 28, 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 parties.

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

The proposed rule change would provide for an alternative schedule of fees for clearing transactions in security futures. Markets for which OCC provides clearance and settlement services for security futures are permitted to elect either OCC's standard or alternative schedule of fees.

#### 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>

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

The purpose of this proposed rule change is to amend OCC's schedule of fees to provide for an alternative, discounted fee schedule for clearing transactions in security futures. This proposed alternative fee schedule is based on the fees for clearing services contained in the Security Futures Agreement for Clearing and Settlement Services between OCC and OneChicago, LLC.<sup>3</sup> The alternative fee schedule is as follows:

(1) Trades with contracts of: (i) 1 to 500 contracts: \$0.07; (ii) 501 to 1,000 contracts: \$0.06; (iii) 1,001 to 2,000 contracts: \$0.05; and (iv) \$85.00 for transactions larger than 2,000 contracts.

(2) Associate clearinghouse cleared trades with contracts of: (i) 1 to 500 contracts: \$0.05; (ii) 501 to 1,000 contracts: \$0.0425; and (iii) 1,001 to 2,000 contracts: \$0.035; and (iv) \$61.00 for transactions larger than 2,000 contracts.

(3) Trades in new security futures product fee schedule:<sup>4</sup> (i) First calendar month traded: \$0.00; (ii) second calendar month traded: \$0.025, regardless of size; (iii) third calendar month traded: the lesser of the total at \$0.05/contract or \$85.00; and (iv) fourth calendar month reverts to applicable fee schedule as set forth above.

(4) Associate clearinghouse cleared trades in new security futures product fee schedule: (i) First calendar month traded: \$0.00; (ii) second calendar month traded: \$0.02, regardless of size; (iii) third calendar month traded: the lesser of the total at \$0.035/contract or \$61.00; and (iv) fourth calendar month reverts to applicable fee schedule as set forth above.

(5) Minimum monthly fee: \$200. Markets trading security futures products can elect OCC's standard or alternative fee schedule. Fees are charged on a per-side basis. The minimum monthly clearing fee is \$200. Because clearing fees are discounted under the alternative schedule, fees collected under it are excluded from any other rebates or discounts offered by

<sup>3</sup> Securities Exchange Act Release No. 46653 (October 11, 2002), 67 FR 64689 (October 21, 2002) [File No. SR-OCC-2002-07].

<sup>4</sup> For purposes of this alternative security futures fee schedule, "new security futures product" does not include security futures products overlying additional underlying interests of the same general description as interests on which security futures products are then traded (e.g., additional stocks or additional narrow-based indexes) unless there are material differences, other than as to variable terms such as expiration months, in the terms of the security futures product itself.

OCC and from any year-end refund of clearing fees.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>5</sup> and the rules and regulations thereunder applicable to OCC because it establishes a reasonable alternative fee schedule to be charged for clearing transactions in security futures.

#### (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. OCC will notify the Commission of any written comments received by OCC.

### 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)(ii)<sup>6</sup> of the Act and Rule 19b-4(f)(2)<sup>7</sup> promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by OCC. At any time within sixty days of the filing of such 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-OCC-2002-20. This file number should be included on the subject line if e-mail is used. To help us process and

<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</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.

review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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. All submissions should refer to File No. SR-OCC-2002-20 and should be submitted by February 18, 2003.

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. 34-47194; File No. SR-OCC-2002-26]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Relating to the Treatment of Multiple Accounts of the Same Type

January 15, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 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 amends OCC's by-laws and rules to make explicit OCC's existing interpretations

as to the treatment of multiple accounts of the same type whether maintained under one or more clearing numbers in the event of the liquidation of the clearing member's accounts 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), 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 proposed rule change sets forth certain interpretations as to the treatment of multiple accounts of the same type whether maintained under one or more clearing member numbers in OCC's system in the event of a liquidation of the clearing member's accounts by OCC pursuant to chapter XI of OCC's rules, "Suspension of a Clearing Member." These interpretations merely make more explicit OCC's existing interpretations and practices and do not represent any substantive change. OCC is formalizing them because it has become increasingly common for clearing members to maintain accounts under more than one clearing member number in OCC's clearing system.

OCC ordinarily assigns each clearing member a number which serves to identify the clearing member in OCC's system. Some clearing members have more than one clearing member number as a result of having acquired other clearing members or having requested separate numbers to identify particular divisions or sets of accounts for internal purposes. In other cases, OCC may assign additional clearing member numbers to a clearing member in order to permit the clearing member to maintain additional accounts that cannot be accommodated under the same number within OCC's system. For example, clearing members may be assigned an additional clearing member number in order to establish a JBO Account in addition to an existing combined market-maker account

because OCC's current clearing system cannot accommodate both accounts under a single number.

The need for multiple clearing member numbers will be reduced when ENCORE, OCC's new clearing system currently under development, becomes fully operational. Even then, however, there may be reasons for a single clearing member to maintain more than one clearing member number.

OCC believes that this rule change is advisable in order to clarify that OCC's suspension and liquidation rules look only to the clearing member as a legal entity and disregard any separation of the clearing member's business into divisions or separate sets of accounts. (Of course, absent a contrary agreement or a situation where piercing the corporate veil is appropriate under applicable principles of corporate law, affiliated clearing members that are separate legal entities would retain their separate identity in a liquidation.)

OCC is also modifying the wording of the lead-in language of article VI, section 3 of its by-laws, "Maintenance of Accounts," by changing the word "shall" to "may." This change is appropriate to make clear that clearing members are not required to maintain every different type of account that is permitted under section 3. This change in wording also represents a clarification rather than a substantive change. Indeed, many clearing members at present maintain fewer than all of the permitted types of accounts because some account types are not needed for their particular business activities.

OCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of securities transactions by clarifying the application of OCC's liquidation rules to clearing members that maintain multiple clearing member numbers.

##### (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.

<sup>8</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.