

the NASD By-Laws³ relating to foreign finders and foreign associates.

Under the rule as amended, member firms and persons associated with a member will be permitted to pay transaction-related compensation to non-registered foreign persons based upon the business of customers such persons direct to member firms. The following conditions must be met in order for the "foreign finder" exemption to apply: (1) the member firm must assure itself that the non-registered foreign person who will receive the compensation (the finder) is not required to register in the U.S. as a broker/dealer nor is subject to a disqualification as defined in Article II, Section 4 of the NASD By-Laws;⁴ (2) the member firm must further assure itself that the compensation arrangement does not violate applicable foreign law; (3) the finder must be a foreign national or a foreign entity domiciled abroad; (4) the customers directed to the member firm by the finder must be foreign nationals or foreign entities domiciled abroad transacting business in either foreign or U.S. securities; (5) the customers must receive a descriptive document that discloses the compensation being paid to the finder; (6) the customers must provide written acknowledgement of the existence of the compensation arrangement to the member firm and such acknowledgement must be retained and available for inspection by the Association; (7) records reflecting payments to the finder must be maintained on the member firm's books and the actual agreement between the member firm and the finder must be available for inspection by the Association; and (8) the confirmation of each transaction must indicate that a finder's fee is being paid pursuant to a compensation arrangement.

The amendment also will change the requirements with respect to foreign associates. Those persons designated as foreign associates pursuant to Part X of Schedule C of the NASD By-Laws⁵ now will be subject to U-4 registration but still will not be required to pass a qualification examination.

Notice of the proposed rule change, together with its terms of substance was provided by issuance of a Commission release⁶ and by publication in the **Federal Register**.⁷ No comments were

received in response to the notice. This order approves the proposed rule change.

As the NASD indicated in its rule filing, the scope of permissible business activities and the associated regulatory requirements differ between foreign finders and foreign associates. The NASD clarified these differences in a letter to the Commission.⁸ The NASD states that, "[t]he foreign associate will be registered with the NASD and will be deemed an associated person or employee of the member. The foreign associate would therefore be allowed to act in any registered capacity on behalf of the member [consistent with its designation as a foreign associate]. This could include acting as a trader or being the registered person responsible for servicing the accounts of [a] foreign national. The foreign finder would not be considered an associated person of the member and [its] activities would, therefore, be limited to those discussed in the rule filing.⁹ Under the rule as amended, the sole involvement of a foreign finder in the business of a member firm will be the initial referral of non-U.S. customers to the firm.

The Commission has determined to approve the NASD's proposal. The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations promulgated thereunder applicable to the NASD, including the requirements of Section 15A(b)(6) of the Act.¹⁰ Section 15A(b)(6) requires, in part that the rules of a national securities association be designated to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles 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 Commission finds that the amendments to Parts VI and X of Schedule C to the NASD By-Laws¹¹ are consistent with the foregoing statutory provision. The addition of Part VI, Section 2 will allow member firms to use foreign finders to expand overseas business opportunities while requiring the maintenance of necessary safeguards for investor protection. Further, the changes to Part X of Schedule C will improve regulatory oversight of member firms and their foreign associates.

Although foreign associates will continue to be free of the requirement of taking a qualification examination, the amendment will require foreign associates to be subject to U-4 registration.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, SR-NASD-94-51 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35362; File No. SR-OCC-94-13]

Self-Regulatory Organizations; The Options Clearing Corporation, Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Stockholders Agreement

February 13, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 28, 1994, 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

OCC proposes to amend Section 2 of its Stockholders Agreement to extend the voting agreement contained therein for a term coextensive with the term of the Stockholders Agreement and to conform the Stockholders Agreement to an amendment made to OCC's Restated Certificate of Incorporation providing for public directors on OCC's board of directors.² OCC also proposes to amend its address and that of the Chicago Board Options Exchange, Inc. as they appear in the Stockholders Agreement.

³ *MASD Manual*, Schedules to the By-Laws, Schedule C, Parts VI and X, (CCH) ¶¶ 1787, 1791.

⁴ *NASD Manual*, By Laws, Article II, Sec. 4, (CCH) ¶ 1124.

⁵ *Supra*, note 3.

⁶ Securities Exchange Act Release No. 34941 (November 4, 1994).

⁷ 59 FR 56102 (November 10, 1994).

⁸ Letter from Craig L. Landauer, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, SEC, (Feb. 8, 1995).

⁹ *Id.*

¹⁰ 15 U.S.C. Section 78o-3(b)(6).

¹¹ *Supra*, note 3.

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. § 78s(b)(1) (1988).

² For a description of the amendment to OCC's Restated Certificate of Incorporation providing for public directors on OCC's board of directors, refer to Securities Exchange Act Release No. 30449 (March 6, 1992), 57 FR 8949 [File No. 92-02] (order approving proposed rule change).

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

OCC proposes to amend Section 2 of its Stockholders Agreement to extend the voting agreement for a term coextensive with the term of the Stockholders Agreement. OCC also proposes to amend the Stockholders Agreement so it conforms to an amendment made to OCC's Restated Certificate of Incorporation providing for public directors on the board of directors, which was approved by the Commission on March 6, 1992.³ In addition, OCC proposes to amend its address and that of the CBOE as they appear in the Stockholders Agreement.

OCC, the American Stock Exchange, the Chicago Board Options Exchange, the New York Stock Exchange, the Pacific Stock Exchange, and the Philadelphia Stock Exchange are parties to a Stockholders Agreement dated January 3, 1975, as amended. Pursuant to Section 13 of the Stockholders Agreement, the voting agreement contained in Section 2 of the Stockholders Agreement will expire on January 3, 1995, unless extended.

In the past, Delaware law required that voting agreements among stockholders be limited to a term of ten years or less. However, a recent amendment to Delaware law eliminated the ten year limitation. Accordingly, the proposed amendment to the Stockholders Agreement would extend the voting agreement contained in Section 2 for a term coextensive with the term of the Stockholders Agreement which is effective until terminated by the mutual agreement of OCC and each stockholder.

OCC also proposes to amend the Stockholders Agreement to conform it to an amendment made to OCC's Restated Certificate of Incorporation providing for public directors. OCC proposes to:

(1) define public director in the same manner as defined in OCC's Certificate of Incorporation and By-Laws; (2) to include public directors in Section 2, Voting Shares of Stock; and (3) to add language to Section 3, Clause (ii) regarding the election of public directors. OCC also proposes to amend the addresses of OCC and the CBOE as they appear in Section 15 (a) and (b) of the Stockholders Agreement, respectively.

The Commission believes that the proposed rule change to OCC's Stockholder's Agreement is consistent with Section 17A of the Act and specifically with Section 17A(b)(3)(C).⁴ Section 17A(b)(3)(C) requires that a clearing agency assure fair representation of its shareholders or members and participants in the selection of its directors and administration of its affairs. The proposed rule change provides fair representation to stockholders by extending their voting rights to a term coextensive with the term of the Stockholders Agreement. The proposed rule change also assures fair representation in the selection of its directors and administration of its affairs by providing for public directors in conformity with OCC's Restated Certificate of Incorporation.

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)⁵ of the Act and pursuant to Rule 19b-4(e)(3)⁶ promulgated thereunder, because the proposal is concerned solely with the administration of OCC. At any time within sixty days of the filing of such 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-94-13 and should be submitted by March 10, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 35-26231]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 10, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by

⁴ 15 U.S.C. § 78q(b)(3)(C) (1988).

⁵ 15 U.S.C. § 78s(b)(3)(A)(iii) (1988).

⁶ 17 CFR 240.19b-4(e)(3) (1994).

⁷ 17 CFR 200.30-3(a)(12) (1994).

³ *Supra* note 2.