

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. 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 will also be available for inspection and copying at the principal office of the NSCC. All submissions should refer to the File No. SR-NSCC-2001-18 and should be submitted by April 11, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45561; File No. SR-NSCC-2002-02]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Revising NSCC's Fee Schedule

March 14, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 25, 2002, the National Securities Clearing Corporation ("NSCC") 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 NSCC. 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 consists of revisions to NSCC's fee schedule.

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

In its filing with the Commission, NSCC 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. NSCC 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 (i) establish fees for the XML-based account inquiry feature of NSCC's Mutual Fund Services ("MFS"), (ii) establish fees for the XML-based communications interface that transmits fund transaction data to NSCC's Fund/SERV for processing, (iii) establish base participation fees for those Fund Members and Mutual Fund Processors<sup>3</sup> using these XML-communication interface features, and (iv) standardize the descriptions, under the name "Fund/SPEED," of such MFS features and communications in NSCC's fee schedule.

In addition to and in conjunction with these changes, the proposed rule change provides for Fund/SERV fees for Fund/SERV Processing Only transactions that will settle on a participant to participant basis outside of NSCC.

All of the proposed fees are payable by the applicable Fund Member or Mutual Fund Processor. Pursuant to this rule change, the Fund/SPEED fee for account inquiry will be \$0.005 per request and fund response ("Account Inquiry"). The Fund/SPEED fee for the XML-interface transmission of fund transaction data (other than a new

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

<sup>3</sup> As defined in NSCC's Rule 52, a Mutual Fund Processor is a settling member that is acting in the capacity of a Fund Member in connection with the issuance or redemption of fund shares.

account transaction) to Fund/SERV will be \$.50 per item ("Subsequent Trade Transmission") and will be \$.75 per item for transmission of transaction data involving a new account ("New Account Trade Transmission.") All of these fees will be payable with respect to services provided from and after April 1, 2002.

In addition, participating Fund Members and Mutual Fund Processors will be charged a monthly membership fee to use these services determined as follows: \$250 per month for such members with less than twenty-five eligible mutual funds and/or eligible investment funds (identified by CUSIP) on Fund/SERV; \$1,000 per month for such members with between twenty five and ninety nine eligible mutual funds/investment funds on Fund/SERV; and \$2,500 per month for such members with one hundred or more eligible mutual funds/investment funds on Fund/SERV. These fees will be effective from and after February 1, 2002.

Finally, this rule change provides that the Fund/SERV fees payable with respect to Fund/SERV Processing Only transactions will be \$.175 per side, and the fee for both sides will be charged to and payable by the applicable Fund Member or Mutual Fund Processor, effective with respect to such services provided on and after April 1, 2002.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder, since it provides for the equitable allocation of dues, fees, and other charges among NSCC's participants.

##### (B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

##### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC has notified participants who use MFS of the Fund/SPEED changes. NSCC will notify the Commission of any written comments received by NSCC.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes and changes fees imposed by NSCC, it has become effective pursuant

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

to Section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and Rule 19b-4(f)(2)<sup>5</sup> promulgated thereunder. 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the NSCC. All submissions should refer to the File No. SR-NSCC-2002-02 and should be submitted by April 11, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45557; File No. SR-OCC-2001-17]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Establishing Financial Reporting Standards for Clearing Futures Commission Merchants That Are Not Fully Registered With the Commission as Broker-Dealers

March 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on November 9, 2001, 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 Rule 306 to facilitate financial reporting by clearing members that are FCMs not fully registered with the Commission as broker-dealers.

#### 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

As a result of the Commodity Futures Modernization Act, entities registered with the Commodity Futures Trading Commission ("CFTC") as futures commission merchants ("FCMs") are

allowed to trade in security futures upon notice registration with the Commission.<sup>3</sup> These entities are not subject to the full panoply of Commission regulation, and in particular, they are not required to file reports of financial condition under Rule 17a-5. As a result of amendments to OCC's Rules that were approved by the Commission in File No. SR-OCC-2001-07 (adopting rules for the clearance and settlement of security futures), such entities are now allowed to become clearing members of OCC.<sup>4</sup> OCC has also filed an application with the Commission and the CFTC seeking authority to clear futures on broad-based indexes and options thereon.<sup>5</sup> These products are regulated exclusively by the CFTC, and OCC's proposed rules would permit it to admit clearing members that are regulated exclusively by the CFTC and not registered as broker-dealers at all.

The purpose of this rule change is to facilitate financial reporting by clearing members that are FCMs not fully registered with the Commission as broker-dealers while providing OCC with the same level of financial oversight that OCC has with respect to other clearing members. Such FCMs will be permitted to file their monthly financial reports with OCC using the CFTC's Form 1-FR-FCM. However, notwithstanding the provisions of CFTC Regulation 1.10(b) generally requiring such reports to be filed with the CFTC on a quarterly basis, OCC will require such reports to be filed with OCC monthly. OCC believes that monthly reporting is conducive to the protection of OCC, its clearing members, and the public.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the regulations thereunder because it protects investors and the public interest by ensuring the availability of adequate financial information to OCC regarding clearing members.

##### (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>3</sup> Section 15(b)(11)(A) of the Securities Exchange Act of 1934.

<sup>4</sup> Securities Exchange Act Release No. 44727, (August 20, 2001), 66 FR 45351.

<sup>5</sup> The CFTC granted OCC's application for registration as a derivatives clearing organization on December 12, 2001. The Commission has published notice of OCC's filing. Securities Exchange Act Release No. 45152, (December 12, 2001), 66 FR 65770.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>6</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.