

filing requirement and the 30-day operative date.<sup>19</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2002-71 and should be submitted by June 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46005; File No. SR-OCC-2001-09]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Regarding Access to The Option Clearing Corporation's Information and Data Systems Via Electronic Means

May 30, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 1, 2001, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on April 23, 2002, amended the proposed rule change as

<sup>19</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

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

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 would amend OCC's Rules regarding access to its information and data systems via electronic means.

#### 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

Currently, OCC Rules support on-line data entry and data retrieval, but these provisions are limited solely to direct access via on-line terminals. OCC is in the process of developing a new clearance and settlement system to replace its existing system.<sup>3</sup> The new system will support internet access at a clearing member's election. The proposed rule change would add the definition of "electronic data entry," which would be broken down into "electronic data entry" and "electronic data retrieval," to Rule 101 to provide a more flexible and broader description of electronic means to communicate with clearing members.<sup>4</sup>

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

<sup>3</sup> As previously reported to the Commission, OCC is developing a new clearance and settlement system known as ENCORE to replace its existing system, INTRACS. OCC's implementation strategy is to replace INTRACS on a modular basis with new development code modules replacing targeted pieces of INTRACS which will then be "decommissioned". Newly developed and installed code will interface with remaining portions of INTRACS until the old system is completely replaced.

<sup>4</sup> Under the proposal, "electronic data entry" would be defined as the transmission by a clearing member to OCC via electronic means of reports, notices, instructions, data, or other items. "Electronic data retrieval" would be defined as the retrieval by a clearing member via electronic means

The proposed rule change would also eliminate outdated provisions that require clearing members to send representatives to access lock boxes to obtain papers and documents distributed by OCC and would clarify the manner in which clearing members exchange information with OCC. Under the proposed rule change, Rules 205 ("Submission of Items to Corporation [OCC]") and 206 ("Retrieval of Items from Corporation [OCC]") would require that a clearing member submit and retrieve instructions, notices, reports, data, and other items via electronic data entry or electronic data retrieval unless otherwise prescribed by OCC. Rules 205 and 206 would also provide that such electronic transmissions would constitute valid "writings" for purposes of applicable law. In the event unusual or unforeseen conditions prevent a clearing member from submitting or retrieving such items electronically, OCC would retain discretion to designate alternative means or to extend any applicable time cut-off times as may be deemed reasonable, practicable, and equitable under the circumstances.

The proposed rule change would amend Rule 208 ("Reports by the Corporation [OCC]") to provide clearing members with the ability to notify OCC via facsimile or e-mail of any errors contained in reports made available by OCC.

Under the proposed rule change, a new Rule 212 ("Security Measures") would set forth the obligations of clearing members to comply with security measures implemented by OCC, including access codes and authorization stamps. Under Rule 212, a clearing member would be bound by submissions made using a current access code or authorization stamp.

Finally, the proposed rule change would make conforming changes to Interpretations and Policies under Rules 801 ("Exercise of Options") and 1606A ("Alternative Settlement Procedures") to delete references to "on-line data entry" and to replace those references with the newly defined "electronic data entry." Interpretations and Policies .01 under Rule 801 also would be amended to accurately reference amended Rule 205 relating to the extension of cut-off times in the event of unusual or unforeseen conditions.

Attached as Exhibit B to the proposed rule change is the "Supplement to the Agreement for OCC Services for Internet Access" proposed to be entered into between OCC and its clearing members. OCC is developing a front-end portal

of reports, notices, instructions, data, and other items made available by OCC.

called MyOCC that will provide a unified access point from which clearing members will be able to obtain information from various applications contained within MyOCC for which the clearing member is authorized to have access. Access to MyOCC will be available to clearing members through the internet, existing enhanced clearing member interface terminals, or dedicated leased lines. To the extent clearing members elect to access OCC's information and data systems through internet connections, the Supplement specifies requirements relating to access codes, registration, authorization, and security.

This Supplement is structured to fit within OCC's existing framework of the "Agreement for OCC Services".<sup>5</sup> Provisions of the Supplement, which are generally self-explanatory, describe the respective responsibilities of the clearing member and OCC. Section 1 describes the scope of information and data systems that will be made available through the internet. Section 2 creates a requirement on the part of the clearing member to maintain a backup communication channel as a means to obtain access to OCC's information and data systems. Sections 3 and 4 set forth criteria relating to the right to use internet access. Section 5 allocates responsibility relating to the confidentiality and security of access codes. That section also requires the clearing member to provide information as may be necessary to register its authorized users for internet access and to maintain its own equipment. Section 5 also requires the clearing member to represent and warrant that it is authorized to obtain internet access on behalf of a managed clearing member. Sections 6 through 9 set forth further rights and responsibilities of the parties including limitations on liability, indemnification, and termination provisions, *etc.* Section 10 discloses that OCC may monitor the use of internet access to ensure compliance with the Supplement. Section 11 contains general terms including interpretation, severability, waiver, survival, and governing law.

The proposed rule change is consistent with section 17A of the Act because it promotes new data processing and communications techniques resulting in more efficient, effective, and safe procedures for clearance and settlement activities.

<sup>5</sup> See Securities Exchange Act Release No. 21015, 49 FR 23971 (June 4, 1984) (File No. SR-OCC-84-7) for the text of the Agreement for OCC Services.

*(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**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**VI. 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 OCC. All submissions should refer to the File No. SR-OCC-2001-09 and should be submitted by June 24, 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. 34-45993; File No. SR-OCC-2002-05]

**Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Closing Values for Index Options**

May 29, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on March 4, 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 would amend OCC's Rule 1804 to authorize OCC if it cannot obtain a closing value for an underlying index on the last trading day before expiration to fix a closing price for an index for exercise by exceptions purposes on whatever basis it deems appropriate, including using the most recent index value available.

**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>

<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.