

public interest.<sup>15</sup> Accordingly, the Commission hereby grants Nasdaq's request.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 such 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-2002-95 and should be submitted by August 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-19316 Filed 7-30-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46257; File No. SR-OCC-2002-02]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Providing Clearing Services to Options Exchanges That Are Not Stockholders

July 25, 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 Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission

("Commission") and on July 9, 2002, amended 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 by-laws and rules in order that OCC could provide clearing services to new options exchanges without having those exchanges become stockholders of 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 purpose of this rule change is to allow OCC to provide clearing services to new options exchanges without issuing new equity to such exchanges. Under OCC's existing by-laws, any new options market desiring to clear options transactions through OCC is required to purchase common stock in OCC and to execute the Stockholders Agreement to which the existing stockholder exchanges are parties. Management of OCC has concluded that the practice of issuing new equity to each market for which it provides clearing services is no longer either necessary or appropriate. Indeed, the practice has already been abandoned with respect to providing clearing services to markets trading only security futures or commodity futures.<sup>3</sup> The present rule change would permit OCC to clear options transactions for

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

<sup>3</sup> Article XII of the by-laws permits OCC to clear "security futures exchanges" without issuing equity to such exchanges and permits OCC to provide clearing services for other futures products on the same basis (Securities Exchange Act Release Nos. 44434 (June 15, 2001), 66 FR 33283 [File No. SR-OCC-2001-05] and 45946 (May 16, 2002), 67 FR 36056 [File No. SR-OCC-2001-16]).

additional exchanges on a similar basis. OCC believes that there is no more reason to permit or require new options exchanges to become OCC stockholders than to permit or require those other markets to do so.

Exchange ownership of clearing organizations is not required under Section 17A of the Act or of any other provision of the federal securities laws. State law at one time made such ownership necessary. Article VIII of the Uniform Commercial Code ("UCC"), as in effect in Illinois prior to the 1973 amendment, defined a "clearing corporation" as "a corporation all of the capital stock of which is held by or for a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934."<sup>4</sup> The UCC as now in effect in all U.S. jurisdictions no longer defines "clearing organization" in terms of ownership, and therefore, the UCC is no longer a constraint in determining the ownership of OCC.

Not only is there no continuing need to have new markets seeking clearing services become stockholders, there are a number of reasons not to do so. First, increasing the number of Class A and Class B stockholders could adversely affect OCC's ability to pursue new business opportunities.<sup>5</sup> Stock ownership gives the existing participant exchanges the right to a representative on OCC's board of directors and veto rights over certain significant transactions (e.g., a merger) or amendments to certain provisions of the constituent documents (e.g., Article VII of the by-laws regarding exchange qualifications). The participant exchanges have divergent and sometimes conflicting interests, and this will only become more prevalent as the number and types of options exchanges proliferates. Expanding the number of stockholders with veto rights increases the likelihood that a single stockholder might block action that is in the best interests of OCC and its other stockholders. Second, continuing to add

<sup>4</sup> The 1973 amendment identified certain other entities that could be owners of a clearing corporation while retaining securities exchanges or associations among the permitted owners.

<sup>5</sup> Holders of OCC Class A common stock have the right, by majority vote, to elect member directors of OCC. Holders of Class B common stock vote on the election of the management director and exchange directors of OCC. In addition, the votes of Class B common stock holders are required to amend OCC's certificate of incorporation, to adopt an agreement of merger or consolidation of OCC with or into any other corporation, to authorize or consent to the sale, lease, or exchange of all or substantially all of the property and assets of OCC, to authorize or consent to the dissolution of OCC, to receive dividends, to receive assets upon partial or final liquidation or dissolution of OCC.

<sup>15</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. See 15 U.S.C. 78c(f).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

Class A and B stockholders could soon result in substantial increases in the size of the OCC board. After the number of exchange directors reaches seven, each addition of an exchange director would require the addition of another member director in order to maintain the allocation between member directors and exchange directors called for under OCC's constituent documents. Ultimately, the OCC board could reach an unwieldy size. Finally, issuing additional Class A and Class B common stock for each new market would continually dilute the interests of the existing participant exchanges.

OCC proposes instead to create a new category of "non-equity exchange" to which markets that desire options clearing services from OCC would be admitted. In lieu of purchasing common stock of OCC, new participant exchanges would be required to enter into a Noteholders Agreement and to purchase a promissory note from OCC in the principal amount of \$1 million, which is the amount currently specified in Article VII, Section 2 of the by-laws as the maximum purchase price for additional equity currently required to be purchased by a new equity exchange. Instead of the equity interest received by such equity exchanges, non-equity exchanges would receive promissory notes bearing an interest rate return on their investments as described below.

Non-equity exchanges will be subject to admission requirements identical to those imposed on the current participant exchanges that hold equity. Among other things, new participant exchanges must be registered under the Act and must be in compliance with the rules promulgated thereunder by the Commission and must furnish information to OCC concerning such things as the exchange's operations, management, rules, and membership.

OCC will provide clearing services to non-equity exchanges on the same basis that it provides services to the equity exchanges. Non-equity exchanges would become parties to the existing Restated Participant Exchange Agreement in the same way that new participant exchanges have done in the past. No modification to the agreement is necessary because it does not address matters relating to an exchange's role as stockholder, which are confined to the Stockholders Agreement.

The rights of the existing participant exchanges as stockholders, including their rights to representation on OCC's board and their veto rights, have been preserved in Article VIIA relating to equity exchanges. Although non-equity exchanges will not have representation on OCC's board, their members that are

clearing members of OCC would be "participants" in OCC within the meaning of Section 17A(b)(3)(C) of the Act and would be entitled under that provision to "fair representation . . . in the selection of [OCC's] directors and administration of its affairs." Fair representation would be assured because participants that are members of non-equity exchanges would participate in the selection of OCC's member directors on the same basis as members of the equity exchanges.<sup>6</sup>

The Noteholders Agreement proposed in this rule filing contains restrictions on the transfer of promissory notes issued to non-equity exchanges and provides for the repurchase of the notes by OCC under certain circumstances parallel to the provisions applicable to the repurchase of Class A and Class B stock.<sup>7</sup> These provisions are designed to ensure that the promissory notes remain in the hands of participant exchanges of OCC and to give withdrawing exchanges the right to "put" the notes back to OCC. The promissory notes will bear interest at a rate determined by reference to provisions of the Internal Revenue Code.<sup>8</sup> The interest rate will be reset annually. Interest will be payable annually in arrears on the promissory note's anniversary date. If a promissory note is repurchased by OCC in less than six years from the date of the initial sale of the note, the purchase price of the note will be the principal amount plus any accrued and unpaid interest less a reduction based on the length of time since initial sale.<sup>9</sup> After six years, there would be no reduction, and the promissory notes would be redeemable at their aggregate principal amount plus any accrued and unpaid interest. Under the terms of Section VIII of the

<sup>6</sup> OCC has represented to the Commission that OCC management will (1) provide non-equity exchanges with the opportunity to make presentations to the OCC board or the appropriate board committee upon request and (2) will promptly pass on to non-equity exchanges any information that management considers to be of competitive significance to such exchanges disclosed to exchange directors at or in connection with any meeting or action of the OCC board or any board committee. Letter from William H. Navin, Executive Vice President, General Counsel, and Secretary, OCC (July 8, 2002).

<sup>7</sup> The Noteholders Agreement is attached as Exhibit I to OCC's filing.

<sup>8</sup> The interest rate for the promissory notes will be equal to the short-term applicable federal rate for purposes of Section 1274(d) of the Internal Revenue Code of 1986.

<sup>9</sup> The amount of the reduction, which is set forth in the Noteholders Agreement, would be \$300,000 if the note is purchased by OCC within two years of its original sell date, \$240,000 if more than two years but less than three years, \$180,000 if more than three years but less than four years, \$120,000 if more than four years but less than five years, and \$60,000 if more than five years but less than six years.

Noteholders Agreement, OCC's obligations to a noteholder are subordinated to the claims of all other creditors of OCC except that the obligation to repurchase a note from any noteholder ranks *pari passu* with OCC's obligations to repurchase notes from any other noteholders and to repurchase Class A or Class B common stock from any stockholder. The provisions of the Noteholders Agreement are generally parallel to corresponding provisions of the Stockholders Agreement.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act because it facilitates the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities and ensures fair representation of participants and stockholders of OCC.

#### *(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 the proposed rule change or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **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 OCC. All submissions should refer to the File No. SR-OCC-2002-02 and should be submitted by August 21, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

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

[FR Doc. 02-19312 Filed 7-30-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

**DATES:** Submit comments on or before September 30, 2002.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Randy Christopherson, Director, Denver Finance Center, Small Business Administration, 721 19th Street, Denver, CO. 80202.

**FOR FURTHER INFORMATION CONTACT:** Randy Christopherson, Director, (313) 844-0054 or Curtis B. Rich, Management Analyst, (202) 205-7030.

#### SUPPLEMENTARY INFORMATION:

*Title:* Transaction Report Loans Serviced by Lenders.

*Form No:* 172.

*Description of Respondents:* Small Business Administration Participating Lenders.

*Annual Responses:* 25,284.

*Annual Burden:* 3,865.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 02-19290 Filed 7-30-02; 8:45 am]

**BILLING CODE 8025-01-P**

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

**DATES:** Submit comments on or before September 30, 2002.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Linda Waters, Program Analyst, Office Government Contracting, Small Business Administration, 409 3rd Street, SW., Suite 8800, Washington DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Linda Waters, Program Analyst, (202) 205-7315 or Curtis B. Rich, Management Analyst, (202) 205-7030.

#### SUPPLEMENTARY INFORMATION:

*Title:* Small Business Administration, Application for Certificate of Competency.

*Form No:* 1531.

*Description of Respondents:* Small Business Owners.

*Annual Responses:* 300.

*Annual Burden:* 2,400.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 02-19291 Filed 7-30-02; 8:45 am]

**BILLING CODE 8025-01-P**

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3414]

#### State of New York (Amendment #2)

In accordance with information received from the Federal Emergency Management Agency, the above numbered declaration is hereby

amended to extend the deadline for filing applications for physical damages as a result of this disaster to August 14, 2002.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is February 17, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 25, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02-19289 Filed 7-30-02; 8:45 am]

**BILLING CODE 8025-01-P**

## DEPARTMENT OF STATE

### [Public Notice 4076]

#### Culturally Significant Objects Imported for Exhibition; *Determinations:* "Art Through the Ages: Masterpieces of Painting from Titian to Picasso"

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, "Art Through the Ages: Masterpieces of Painting from Titian to Picasso," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Guggenheim Hermitage Museum, Las Vegas, Nevada, from on or about August 30, 2002, to on or about March 2, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619-5997, and the address is United States Department of State, SA-44, Room 700, 301 4th Street, SW., Washington, DC 20547-0001.

<sup>10</sup> 17 CFR 200.30-3(a)(12).