

(3) Plus sales tax.

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

In its filing with the Commission, the Exchange 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. The Exchange 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

1. Purpose

The Exchange has a charge for cellular phones as part of its facilities and equipment fees.⁵ The charge has been the same since 1994. The Exchange proposes to increase the charge from \$2,100.00 to \$2,400.00 per year to help cover the costs of the recent upgrade to industry standards by Verizon Wireless to the NYSE Broker Mobile Phone System. The Exchange represents that this upgrade provides improved voice quality, longer battery life, smaller and lighter handsets, and improves technical support, which will in turn improve the Exchange's service level. The charge by its nature will continue to apply only to membership organizations that operate on the floor of the Exchange and utilize the NYSE Broker Mobile Phone System.

2. Statutory Basis

The NYSE believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,⁶ in general, and furthers the objectives of section 6(b)(4) of the Act,⁷ in particular, which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act⁸ and Rule 19b-4(f)(2) thereunder.⁹ At any time within 60 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 purpose of the Act.¹⁰

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 Exchange. All submissions should refer to File No. SR-NYSE-2002-29 and should be submitted by November 25, 2002.

⁸ 15 U.S.C. 78(s)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ For purposes of determining the effective date and calculating the 60-day abrogation date, the Commission considers October 28, 2002, the date NYSE filed Amendment No. 1, to be the effective date of the proposed rule change.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46733; File No. SR-OCC-2002-15]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Dating Assignments

October 28, 2002.

I. Introduction

On July 3, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR-OCC-2002-15 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹. Notice of the proposal was published in the **Federal Register** on August 23, 2002.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

This rule change modifies OCC Rule 803 to provide that assignments will be dated and effective on the same date that the related exercise notice is accepted by OCC. Rule 803(b) currently provides that assignments are dated and effective as of the business day following the exercise date. This reflects the mechanics of OCC's processing. OCC assigns exercises on an overnight basis, but assigned clearing members do not receive notice of assignment until the morning of the day after exercise. OCC's practice has been to date assignments as of the day the assigned clearing members receive the notice of assignment. However, the "trade" resulting from the exercise is treated as having occurred on the exercise date not the assignment date. Thus, settlement takes place on the third business day following the exercise date.³

This has the potential to cause confusion for call writers. OCC has learned that some, if not all, clearing

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 46377 (August 19, 2002), 67 FR 54689.

³ OCC Rule 902.

⁵ See Securities Exchange Act Release No. 34395 (July 18, 1994) 59 FR 38007 (July 26, 1994).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

members use the same assignment date as OCC. As a result, when a holder exercises a call on the day before an ex-dividend date in order to capture the dividend, the writer who is assigned the exercise may see an assignment date the same as the ex-dividend date. The writer's broker may then have to explain that the writer is required to give up the dividend to the exercising holder because the exercise occurred before the ex-dividend date even though the assignment did not. While the language of this filing reflects OCC's current business of clearing and settling exchange traded options, the filing and the change to OCC's by-laws and rules extend to assignments from national securities exchanges, national securities associations, futures merchants, security futures markets, and international markets for which OCC clears and settles transactions.⁴ Dating assignments on the same date as the related exercise will lessen the potential for this kind of confusion.

Other nonsubstantive changes are made to Rule 803 for the purposes of updating obsolete language. In addition, a conforming change is made to Rule 402, which pertains to supplemental reports of matched trades.

OCC believes that the proposed rule change is consistent with Section 17A of the Act because it eliminates a potential source for investor confusion.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.⁵ OCC's current procedure for dating assignments is a potential source of confusion. By changing OCC's assignment dating procedure to provide that assignments will be dated and effective on the same date that the related exercise notice is accepted by OCC, the proposed rule change should eliminate the potential for confusion and therefore is consistent with OCC's section 17A obligation to promote the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A(b)(3)(F) of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-2002-15) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46734; File No. SR-OCC-2002-18]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Matched Trade Reporting

October 28, 2002.

I. Introduction

On July 30, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR-OCC-2002-18 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on August 23, 2002.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The rule change modifies OCC's by-laws and rules to accommodate the transition to near real-time reporting of matched trade information by the options exchanges.³ In addition, OCC's rules are modified to reflect that OCC may make available to clearing members updated position and exercise information; however, such information is provisional until final processing.

Each option exchange currently compares the trade information submitted by purchasing and selling members with respect to each transaction effected on that exchange. A

compared transaction reflects that the parties to the trade have agreed on the terms of the trade. After the completion of its comparison processing, an exchange transmits to OCC a cumulative report of all matched trades effected or reconciled on that exchange on that particular trading day.⁴ A compared or "matched" trade reported to OCC also contains information required by OCC, including, for example, the identity of the purchasing and selling clearing members, the accounts in which each side of the transaction was effected, the exercise prices, the expiration date, and the number of options contracts.⁵ Each night, OCC processes the cumulative report of matched trades submitted by each option exchange, as well as exercise notices submitted by clearing members and accepted by OCC, and updates the clearing members' positions for the next trading day.

In connection with systems modification, OCC is amending its by-laws and rules so that it will accept and process matched trades reported by the exchanges on a near real-time basis. After receipt of a matched trade, OCC will process the matched trade information and make available updated position information for clearing member review throughout the trading day. However, a matched trade reported by a particular exchange might not always be complete or accurate for a variety of reasons. A clearing member may need to modify or append additional information after the matched trade has been sent to OCC. For example, a clearing member may need to reflect that a transaction was either to open or close a position. In such cases, the reporting exchange will instruct OCC to disregard a previously reported matched trade and will report new matched trade information to replace the original transaction. No replacement matched trade information will be reported by an exchange if the previously reported matched trade was to be disregarded altogether. Because an exchange may instruct OCC to disregard a previously submitted matched trade,

⁴ While OCC receives periodic matched trade transmissions for each option exchange during a business day, it currently uses the cumulative matched trade transmission made by each exchange for position processing and does not use intraday transmissions for position processing. OCC anticipates that the option exchanges will gradually transition to reporting of matched trades on a near real-time basis. Until all exchanges have transitioned to near real-time matched trade reporting during the business day, OCC's systems will accept and process cumulative batch transmissions, intermittent batch transmissions, and near real-time matched trade reporting.

⁵ See Article VI, Section 7 of OCC's By-Laws and OCC Rule 401 for a description of the information required by OCC.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 46378 (August 19, 2002), 67 FR 54688.

³ While the language of this filing reflects OCC's current business of clearing and settling exchange traded options, the filing and the change to OCC's by-laws and rules extend to matching trade information from national securities exchanges, national securities associations, futures merchants, security futures markets, and international markets for which OCC clears and settles transactions.

⁴ OCC Rules 912 and 913(e).

⁵ 15 U.S.C. 78q-1(b)(3)(F).