

have been deemed adequate under the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-NYSE-2003-40), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49103; File No. SR-ODD-2004-01]

Self-Regulatory Organizations; the Options Clearing Corporation; Order Granting Approval of Proposed Supplement To Amend the Options Disclosure Document Description Regarding Options Exercise Assignments and How To Exercise Options

January 20, 2004.

On January 7, 2004, the Options Clearing Corporation (“OCC”) submitted to the Securities and Exchange Commission (“Commission”), pursuant to Rule 9b-1 under the Securities Exchange Act of 1934 (“Exchange Act”),¹ five definitive copies of a supplement to its options disclosure document (“ODD”) that amends the ODD’s description of assignment methods for assigning options exercises and the description of how to exercise options (“Supplement”).² The proposed Supplement supercedes and replaces the November 1995 Supplement to the ODD, and amends the “Assignment” and “How to Exercise” sections in Chapter VIII of the ODD.

The ODD currently contains general disclosures on the characteristics and risks of trading standardized options. Recently, OCC amended its rules to change the methodology for assigning exercises to a clearing member’s customers’ account for S&P 100 (OEX) index options from random to pro rata.³

The proposed Supplement accommodates this change by amending the ODD’s description of assigning options exercises.⁴

Specifically, the proposed Supplement provides a more general description of options assignment methodologies that refers investors to OCC for more specific assignment information.⁵ In addition, the Supplement is being modified to provide a more general discussion of assignment exercise procedures of member firms to their customers by providing certain non-exclusive examples.⁶ The new revisions will state that, in cases where less than all the open interest is exercised, both OCC assignment procedures and broker assignment procedures may affect the likelihood that a customer’s position will be assigned and the potential size of such assignment.

Finally, the proposed Supplement also amends the description of how to exercise options. Specifically, the proposed Supplement amends the ODD by stating that investors should be aware of their brokerage firm’s policies regarding such firm’s cut-off time for accepting exercise instructions.

The Commission has reviewed the proposed Supplement and finds that it complies with Rule 9b-1 under the Exchange Act.⁷ The proposed Supplement is intended to be read in conjunction with the more general ODD, which, as described above, discusses the characteristics and risks of options generally.

Rule 9b-1(b)(2)(i) under the Exchange Act⁸ provides that an options market must file five copies of an amendment or supplement to the ODD with the Commission at least 30 days prior to the date definitive copies are furnished to customers, unless the Commission determines otherwise, having due regard to the adequacy of information disclosed and the public interest and

OCC, to date the only other options classes where pro rata exercise is permitted under OCC rules is for foreign currency flex options.

⁴ See OCC Letter, *supra* note 2.

⁵ The Commission notes that changes to OCC’s rules to accommodate new options assignment methods would still have to be submitted to the Commission under Section 19(b) of the Exchange Act. 15 U.S.C. 78s(b). Further, OCC must continue to ensure that the ODD is in compliance with the requirements of Exchange Act Rule 9b-1(b)(2)(i), 17 CFR 240.9b-1(b)(2)(i), including when future changes to options exercise procedures are made.

⁶ The Commission notes that any changes to the rules of the options exchanges concerning member firm assignment procedures would need to be submitted to the Commission under Section 19(b) of the Exchange Act. 15 U.S.C. 78s(b). See also note 5, *supra*.

⁷ 17 CFR 240.9b-1.

⁸ 17 CFR 240.9b-1(b)(2)(i).

protection of investors.⁹ In addition, five definitive copies shall be filed with the Commission not later than the date the amendment or supplement, or the amended options disclosure document, is furnished to customers. The Commission has reviewed the proposed Supplement, and finds it consistent with the protection of investors and in the public interest to allow the distribution of this document as of the date of this order.

It is therefore ordered, pursuant to Rule 9b-1 under the Exchange Act,¹⁰ that the proposed Supplement (SR-ODD-2004-01), which amends the ODD’s description of assignment methods, the risks of such assignments, and the description of how to exercise options, is approved. The Commission has also determined that definitive copies can be furnished to customers as of the date of this order.

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

Margaret H. McFarland,

Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3563]

Territory of American Samoa

As a result of the President’s major disaster declaration for Public Assistance on January 13, 2004, and subsequent amendment effective January 20, 2004 adding Individual Assistance, I find that The Island of Tutuila and The Manu’a Islands located within the Territory of American Samoa constitute a disaster area due to damages caused by high winds, high surf and heavy rainfall associated with Tropical Cyclone Heta that occurred on January 2, 2004, through January 6, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 22, 2004, and for economic injury until the close of business on October 20, 2004, at the address listed below or other locally announced locations:

U.S. Small Business Administration,
Disaster Area 4 Office, P.O. Box
419004, Sacramento, CA 95841-9004.
The interest rates are:

⁹ This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

¹⁰ 17 CFR 240.9b-1.

¹¹ 17 CFR 200.30-3(a)(39).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 17 CFR 240.9b-1.

² See letter from Jean M. Cawley, First Vice President and Deputy General Counsel, OCC, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated January 6, 2004 (“OCC letter”). See note 4, *infra*.

³ See Securities Exchange Act Release No. 48909 (December 11, 2003), 68 FR 74689 (December 24, 2003) (File No. SR-OCC-2003-05). According to