

Information Memo to inform its members of the revised procedures.

## 2. Statutory Basis

The NYSE believes the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>6</sup> that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

### *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 that is 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

Within 35 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 90 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 Exchange 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 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-NYSE-2004-09. This file number should be included on the subject line if e-mail is used. To help the

Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 NYSE.

All submissions should refer to File No. SR-NYSE-2004-09 and should be submitted by April 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-7275 Filed 3-31-04; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49477; File No. SR-OCC-2003-12]

### **Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Clearing Agreement**

March 25, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 31, 2003, 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 consists of the Futures Agreement for Clearing and Settlement Services ("PBOT Agreement"), dated October 23, 2003,

between OCC and the Philadelphia Board of Trade ("PBOT").

### **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*

PBOT intends to commence trading in cash-settled foreign currency futures. PBOT and OCC have entered into the PBOT Agreement pursuant to which OCC will provide clearing and settlement services for such contracts.<sup>3</sup> The PBOT Agreement is substantially similar to other futures related clearing agreements that were previously filed with the Commission, but it provides only for the clearance and settlement of cash-settled foreign currency futures.<sup>4</sup> To the extent that any terms of the PBOT Agreement are not traceable to one of OCC's other futures related clearing agreements, those terms are immaterial.

OCC believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Act because it will foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

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

OCC does not believe that the proposed rule change will impose any burden on competition.

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

<sup>3</sup> OCC already changed its by-laws and rules to accommodate the introduction of cash-settled foreign currency futures. Securities Exchange Act No. 49126 (January 25, 2004), 69 FR 04552 (January 30, 2004) [File No. SR-2003-07].

<sup>4</sup> Securities Exchange Act Release Nos. 46722 (October 25, 2002), 67 FR 67230 (November 4, 2002) File No. [SR-OCC-2002-13] (amended and restated clearing agreement with NQLX), 46058 (June 10, 2002), 67 FR 41287 (June 17, 2002) File No. [SR-OCC-2002-08] (security futures clearing agreement with IFX), and 46653 (October 11, 2002), 67 FR 64689 (October 21, 2002) File No. [SR-OCC-2002-07] (security futures clearing agreement with ONE).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

*(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**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act<sup>5</sup> and Rule 19b-4(f)(4)<sup>6</sup> thereunder because it effects a change in an existing service of OCC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission could have summarily abrogated 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-OCC-2003-12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent either in hardcopy or by e-mail but not by both methods. 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 and on OCC's Web site at <http://www.optionsclearing.com>. All submissions should refer to the File No. SR-OCC-2003-12 and should be submitted by April 22, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

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

[FR Doc. 04-7276 Filed 3-31-04; 8:45 am]

BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49478; File No. SR-OCC-2003-09]

**Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Minimum Net Capital Requirements for Appointed Clearing Members**

March 25, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 22, 2003, 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 specify minimum net capital requirements for appointed clearing members, which are OCC clearing members that facilitate stock settlement for other clearing members.

**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*

OCC's by-laws define an "underlying security" with respect to physically settled stock options and stock futures to mean the security or other asset that OCC is obligated to sell or purchase upon exercise or maturity of the contract. Normally, underlying securities are delivered and paid for through the facilities of the National Securities Clearing Corporation ("NSCC"), and clearing members that are eligible to clear and carry stock options and stock futures contracts must be NSCC participants except as otherwise provided in OCC's rules. OCC's by-laws and rules permit a clearing member ("Appointing Clearing Member") that is not an NSCC member to appoint another clearing member ("Appointed Clearing Member") that is an NSCC member to deliver or to receive underlying securities and to effect payment therefore through the facilities of NSCC obligations of the Appointing Clearing Member.

In connection with providing stock settlement services, an Appointed Clearing Member may be subject to increased risk of operational or other errors that could be charged against the Appointed Clearing Member's net capital. As a result, OCC has determined that Appointed Clearing Members should be required to maintain a specified minimum amount of net capital in order to perform such services. Therefore, OCC is proposing new Rule 309A to apply to stock settlement arrangements between clearing members the minimum net capital standards that currently are applied to facilities management arrangements between clearing members in Rule 309. This minimum net capital standard would require every Appointed Clearing Member to maintain net capital of not less than the greater of (i) the minimum net capital required under the provisions of OCC Rule 302 or (ii) the sum of (A) \$2,000,000 plus (B) \$100,000 times the number of Appointing Clearing Members in excess of four on whose behalf the Appointed Clearing Member effects settlements.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>6</sup> 17 CFR 240.19b-4(f)(4).

<sup>7</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.