

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,<sup>5</sup> and, in particular, the requirements of Section 15A(b)(5) of the Act.<sup>6</sup> The Commission believes that the proposed rule change will result in the equitable allocation of a reasonable fee among extranet service providers furnishing direct access services for Nasdaq market data feeds. The Commission notes that Nasdaq plans to use the proposed fee to support Nasdaq's costs associated with establishing and maintaining multiple extranet connections, the costs for republishing, increased network monitoring and maintenance costs, and new administrative and operational costs.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NASD-2004-118) be, and hereby is, approved.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50465; File No. SR-OCC-2003-09]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Relating to Minimum Net Capital Requirements for Appointed Clearing Members

September 29, 2004.

#### I. Introduction

On August 22, 2003, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2003-09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the

<sup>5</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78o-3(b)(5).

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

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

**Federal Register** on April 1, 2004.<sup>2</sup> No comment letters were received. On September 28, 2004, OCC filed Amendment No. 1 to the proposed rule change. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

The proposed rule change specifies minimum net capital requirements for Appointed Clearing Members, which are OCC clearing members that facilitate stock settlement for other clearing members. 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 and to receive underlying securities and to effect payment on their behalf through the facilities of NSCC.

In connection with providing stock settlement services, an Appointed Clearing Member may be subject to increased risk. 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 implementing new Rule 309A that will apply to Appointed Clearing Members the minimum net capital standards that currently are applied to Managing Clearing Members in facilities management arrangements in Rule 309. This minimum net capital standard will 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) \$4,000,000 plus (B) \$200,000 times the number of Appointing Clearing Members in excess of four on whose behalf the Appointed Clearing Member effects settlements.<sup>3</sup>

<sup>2</sup> Securities Exchange Act Release No. 49478, (March 25, 2004), 69 FR 17258.

<sup>3</sup> As originally filed the dollar amounts in (A) and (B) were \$2,000,000 and \$100,000. This was the

#### III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.<sup>4</sup> The Commission agrees with OCC that Appointed Clearing Members take on additional financial risk when they provide settlement services for Appointing Clearing Members. By increasing the minimum net capital requirement for Appointed Clearing Members, the proposed rule change is designed to provide OCC with additional assurances of Appointed Clearing Members' financial responsibility which should help OCC to better protect itself and its members from any additional risk posed by Appointed Clearing Members. Accordingly, the proposed rule change is designed to assure the safeguarding of securities and funds which are in OCC's custody or control or for which it is responsible.

OCC has requested that the Commission approve this proposed rule change prior to the thirtieth day after publication of notice of the filing. Because OCC's amendment (1) changed only the dollar amount of required capital and not the substance of the proposed rule change, (2) followed up on what OCC had stated it was going to do in its filing increasing the net capital requirement for Managing Clearing Members,<sup>5</sup> (3) made the calculation of the net capital requirements for Appointed Clearing Members and Managing Clearing Members consistent, and (4) will help OCC to protect itself and its members from any additional risk posed by Appointing Clearing Members, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

subject of the amendment filed on September 28, 2004.

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>5</sup> Securities Exchange Act Release No. 49843 (June 9, 2004), 69 FR 13744 (June 18, 2004) [File No. SR-OCC-2003-11].

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2004-11 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-OCC-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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at <http://www.optionsclearing.com>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2004-09 and should be submitted on or before October 29, 2004.

**V. 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 Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-2003-09) be and hereby is approved.

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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**DEPARTMENT OF STATE**

**[Public Notice 4856]**

**Bureau of Nonproliferation;  
Determination on Export-Import Bank  
Support for U.S. Exports to Libya**

**AGENCY:** Bureau of Nonproliferation, Department of State.

**ACTION:** Notice.

**SUMMARY:** Pursuant to section 2(b)(4) of the Export-Import Bank Act of 1945, as amended, the President has determined and certified to Congress that it is in the national interest for the Export-Import Bank to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to Libya.

**EFFECTIVE DATE:** November 13, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Caroline R. Russell, Office of Regional Affairs, Bureau of Nonproliferation, Department of State ((202) 647-9786).

**SUPPLEMENTARY INFORMATION:** In accordance with section 2(b)(4) of the Export-Import Bank Act of 1945, as amended, the Department of State determined that Libya has materially violated a safeguards agreement with the International Atomic Energy Agency (IAEA). This determination is based on the extensive Libyan nuclear activities conducted outside safeguards detailed in the IAEA Director General's February 20, 2004 report to the IAEA Board of Governors. It is also supported by the decision of the IAEA Board that Libya's failure to meet the requirements of its safeguards agreement "constituted noncompliance" pursuant to Article XII.C. of the IAEA statute. As a result of this determination, under section 2(b)(4) of the Export Import Bank Act of 1945, the Board of Directors of the Export Import Bank is prohibited from giving "approval to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports" to Libya.

The President has determined and certified to Congress pursuant to section 2(b)(4) that "it is in the national interest" to waive the restrictions in the law and allow the Export-Import Bank to support United States exports to

Libya. This Presidential determination removes this impediment to Export-Import Bank support for United States exports to Libya beginning November 13, 2004 (45 days after the date the President's determination and certification was submitted to Congress). The Export-Import Bank should be consulted about other legal provisions that may continue to restrict Export-Import Bank support for United States exports to Libya.

Dated: September 29, 2004.

**Susan F. Burk,**

*Acting Assistant Secretary of State for Nonproliferation, Department of State.*

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**OFFICE OF THE UNITED STATES  
TRADE REPRESENTATIVE**

**[Docket No. WTO/DS315]**

**WTO Dispute Settlement Proceeding  
Regarding European Communities—  
Selected Customs Matters**

**AGENCY:** Office of the United States Trade Representative.

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

**SUMMARY:** The Office of the United States Trade Representative ("USTR") is providing notice that on September 21, 2004, in accordance with the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement"), the United States requested consultations with the European Communities regarding (a) the non-uniform administration by the European Communities of laws, regulations, judicial decisions, and administrative rulings pertaining to the classification and valuation of products for customs purposes, and to requirements, restrictions or prohibitions on imports, and (b) the failure of the European Communities to institute judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review and correction of administrative action relating to customs matters. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before November 8, 2004, to be assured of timely consideration by USTR.

**ADDRESSES:** Comments should be submitted (i) electronically, to [FR0448@ustr.gov](mailto:FR0448@ustr.gov), Attn: "European Communities—Selected Customs

<sup>6</sup> 17 CFR 200.30-3(a)(12).