

III. 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. Comments may be submitted by any of the following methods:

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. Please include File Number SR-FINRA-2007-022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2007-022. 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 Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2007-022 and should be submitted on or before January 7, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

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.¹³ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,¹⁴ which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, 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.

The proposed rule change would make FINRA's NYSE Rule 342.13 identical to the version of NYSE Rule 342.13 in the NYSE rulebook that was recently approved by the Commission.¹⁵ In addition, the Commission believes that the proposed rule change comports with the provisions of the 17d-2 Agreement, as approved by the Commission, in which FINRA and NYSE agreed to promptly propose conforming changes, absent a disagreement about the substance of a proposed rule change to one of the Common Rules, to ensure that such rules continue to be Common Rules under the Agreement. In this regard, the Commission believes it is appropriate for the proposed rule to be effective retroactively as of November 28, 2007, which is the date NYSE's amendment to NYSE Rule 342.13 was approved by the Commission.¹⁶

The Commission finds good cause, consistent with Section 19(b)(2) of the Act,¹⁷ for approving this proposed rule change before the thirtieth day after the publication of notice thereof in the **Federal Register**. This approval allows the proposed rule change to take effect without delay. NYSE's proposed revision to NYSE Rule 342.13 was published for comment and approved by the Commission.¹⁸ Interested persons were provided the opportunity to submit comments on rule text that is identical to FINRA's proposal, and no comments were received. The Commission believes FINRA's proposal raises no new regulatory or substantive issues.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-FINRA-

2007-022), be, and it hereby is, approved on an accelerated basis effective November 28, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-24309 Filed 12-14-07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56930; File No. SR-OCC-2006-09]

Self-Regulatory Organizations; the Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Choice of Law and Forum Selection

December 7, 2007.

I. Introduction

On May 22, 2006, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2006-09 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 April 27, 2007.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change will add new general choice of law and forum selection provisions to OCC's By-Laws. The purpose of the proposed rule change is to ensure there are appropriate choice of law and forum selection provisions governing all contractual relations between OCC and each of its clearing members. The proposed provisions should provide greater clarity, consistency, and predictability in the application of the law to all contractual relations between OCC and each of its clearing members and in the choice of forum in the event of litigation on such matters.

OCC's By-Laws and Rules each currently contain choice of law provisions that apply in somewhat limited circumstances. This approach is problematic as it could lead to inconsistencies between the two provisions or because it may fail to

¹³ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78o-3(b)(6).

¹⁵ See *supra*, note 4.

¹⁶ *Id.*

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ *Id.*

¹⁹ *Id.*

¹⁹ *Id.*

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 55653,

properly specify a governing law with respect to certain contractual relations altogether.

Article VI, Section 9(c) of OCC's By-Laws provides that Illinois law, specifically the Illinois Uniform Commercial Code, is the governing law with respect to cleared contracts. A "cleared contract" is defined in Article I, Section 1 of OCC's By-Laws as "a cleared security or commodity future or futures option that is cleared by [OCC]." A "cleared security" is defined as "an option contract (other than a futures option), a security future or a BOUND." However, OCC has interactions and relationships with clearing members not directly involving cleared contracts (e.g., membership and financial requirements). Accordingly, the choice of law provisions in Article VI, Section 9(c) are not comprehensive.

OCC Rule 614(m), which clarifies the limited obligations of OCC in connection with pledges of cleared securities, incorporates certain provisions of Article VI, Section 9 of the By-Laws by reference and also contains special provisions applicable in the event that, notwithstanding the choice of law provisions of Article VI, Section 9(c), the laws of a jurisdiction that has not adopted the 1994 revisions to Article 8 and 9 of the UCC are applicable to security interests in pledged securities. However, because all 50 U.S. States, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico have now adopted the 1994 revisions to Article 8 and 9 of the UCC, the special provisions are unnecessary.

Article V (Clearing Members), Section 3 (Conditions to Admission), paragraph (k) of OCC's By-Laws provides that as a condition to admission as a clearing member non-U.S. securities firms must consent to the jurisdiction of Illinois courts and to the application of U.S. law in connection with any dispute with OCC arising from membership. However, this provision only applies to the limited context of disputes with OCC arising from membership.

The proposed rule change adds a general choice of law provision to OCC's By-Laws in order to provide consistency and predictability in the application of the law to all relations between OCC and its clearing members. This new provision will be particularly useful with respect to collateral posted by non-U.S. clearing members where a clear choice of law provision could provide further assurance that OCC's interests in such collateral are properly perfected. Such a provision will also decrease the likelihood of an inadvertent inconsistency among provisions of the various Articles of the By-Laws.

Illinois law is the most logical choice to be the governing law under the proposed choice of law provision given OCC's location and OCC's familiarity with Illinois law. Selecting Illinois law, along with federal law, as the governing law will also result in greatest consistency with current provisions of OCC's By-Laws and Rules. In addition, selection of Illinois as the forum for resolving any claims or disputes arising out of or relating to OCC's By-Laws or Rules will be most logical in light of the consistent application of Illinois law to relations between OCC and its clearing members.

The following revisions to OCC's By-Laws and Rules are necessary to create a general choice of law provision:

(1) *New Choice of Law Provision:* OCC will add a new Section 10 (General Choice of Law and Forum Selection) to Article IX (General Provisions) of its By-Laws. New Section 10 will specify Illinois law as the governing law with respect to OCC's By-Laws and Rules as well as any agreements between OCC and clearing members. It will also specify that any lawsuits between clearing members and OCC be brought in a federal court or in the absence of federal jurisdiction in a state court located in Chicago, Illinois. Existing Sections 10–12 of Article IX will be renumbered as Sections 11–13 but will otherwise remain unchanged.

(2) *Amendments to Other Sections of the By-Laws:* OCC will remove Article VI, Section 9(c) of the By-Laws in its entirety and replace it with a reference to Article IX, Section 10 of the By-Laws and with a notice provision that persons desiring to perfect security interests in cleared securities should seek the advice of counsel.

(3) *Amendments to Rules:* OCC will make conforming amendments to Rule 604(b)(3)(ii) and to Interpretation and Policy .01 under Rule 614. These amendments are necessary in light of the adoption of the general choice of law provision described above. OCC will also delete language in Rule 614(m) providing for a contingency in the event of the application of the law of a jurisdiction that has not adopted the 1994 amendments to Articles 8 and 9 of the UCC as these are no longer necessary.

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.³

³ 15 U.S.C. 78q-1(b)(3)(F).

The proposed rule change is designed to eliminate any uncertainty about the law applicable to contractual disputes between OCC and its members and about the forum for any litigation between OCC and its members. Uncertainty about these matters could prolong contractual disputes or litigation, which ultimately could affect or interfere with OCC's ability to clear and settle securities transactions for one or more of its members. Additionally, the proposed rule change is designed to assure that OCC's interests in members' collateral is perfected because the rule change clarifies that Illinois law applies to the securities on deposit at OCC by its foreign members. In the event of a member default, OCC uses such collateral either in the form of margin or clearing fund to meet its settlement obligations and to protect itself and its other members from financial loss. Accordingly, because the proposed rule change adds a new choice of law and forum selection provision to OCC's rules, the Commission finds that it is designed to assure the safeguarding of securities and funds which are in OCC's custody or control of for which it is responsible under Section 17A of the Act.

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 Section 17A of the Act and the rules and regulations thereunder.⁴

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2006–09) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁵

Florence E. Harmon,

Deputy Secretary.

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SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Alterations to Existing System of Records, Including New Routine Use

AGENCY: Social Security Administration (SSA).

⁴ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁵ 17 CFR 200.30-3(a)(12).