

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49987; File No. SR-OCC-2004-07)

July 8, 2004

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Settlements of Exercises and Assignments of Foreign Currency Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on May 10, 2004, 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 updates OCC's By-laws and Rules pertaining to the settlement of exercised foreign currency options in anticipation of the installation of the portion of OCC's new ENCORE clearing system that will process those settlements.

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.²

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified parts of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to update OCC's By-laws and Rules pertaining to the settlement of exercised foreign currency options in anticipation of the installation of the portion of OCC's new ENCORE clearing system that will process those settlements. This installation, which was scheduled for May 7, 2004, will convert existing processing to the ENCORE technology with only a few variations. Nevertheless, OCC wishes to take this occasion to update its Rules by eliminating details that now seems more appropriately included in operational procedures than in its rulebook and by making a few other changes, as described below, that are appropriate to reflect experience that OCC has gained and certain developments that have occurred since OCC's Rules were initially adopted. These amendments are equally applicable before and after the planned conversion to the ENCORE system. The specific changes are described below.

Overview of the Exercise Settlement Process for Foreign Currency Options

As set forth in Rules 1605, 1606, and 1606A, the gross settlement obligations for all accounts are netted down to a single amount for each currency pair following the assignment of exercise notices with respect to foreign currency options for all accounts within a particular clearing number. Netting occurs within a currency pair so that an obligation to deliver a specific foreign currency against the receipt of U.S. dollars will be netted against an obligation to receive that same foreign currency against payment of U.S. dollars. In the event that two or more settlements arising from different exercise/assignment dates for a currency pair will settle on the same date, those settlements will also be netted. If such processing nets out all settlement obligations for a currency, then such obligations are deemed discharged. To the extent a

settlement obligation remains, OCC makes available to settling clearing members a report showing their projected settlements. Settlement obligations arising from multiple clearing numbers controlled by the same clearing member are not netted against each other.

In response to the projected settlement report, clearing members may submit instructions designating obligations to be settled on a delivery versus payment (“DVP”) basis. A clearing member may instruct OCC that it will settle all or, subject to certain constraints imposed by OCC’s procedures, any part of the gross obligation on a DVP basis and any remaining net settlement may also be settled on a DVP basis. After the close of the DVP window, OCC recalculates the remaining net currency pairs, eliminating deliveries and payments to be settled under the submitted DVP instructions. If DVP instructions were not submitted for the entire remainder, those remaining net obligations will settle on a regular way basis. Final settlement obligations, identifying the applicable settlement method, are then made available to clearing members and reported to their banks.

Two business days before settlement date, OCC debits the settling clearing members’ bank accounts for U.S. dollar obligations settling on a regular way basis. The debited amount is held until settlement date. On settlement date, if a settling clearing member with a collect in U.S. dollars had no opposite foreign currency obligation, the U.S. dollar collect will be released during regular morning settlements. If the settling clearing member did have a foreign currency deliver obligation, OCC will make the corresponding U.S. dollar settlement upon receiving confirmation from OCC’s bank that the clearing member has satisfied its settlement obligations. If OCC receives a partial delivery of a foreign currency, the deficiency is treated as unsettled and only a portion of the U.S. dollars being held will be released to the collecting clearing member. OCC will issue new regular way settlement information for the unsettled foreign currency obligation.

As provided in Rule 1606(c) and Interpretation .01 following Rule 1606, in the case of certain currencies OCC (or OCC's bank) requires that a clearing member must obtain an advance guarantee from its bank that the bank will deliver the currency on the exercise settlement date. This requirement is imposed for those currencies for which delivery is likely to be delayed in the absence of such guarantees as determined by OCC's bank through its experience in the currency markets. For those currencies for which a guarantee is required, the clearing member must both provide a bank guarantee of the settlement and then make actual settlement in order to discharge its obligations. In the case of DVP settlements, the clearing member's bank advises OCC whether it has accepted or rejected the DVP instructions. If rejected, OCC's acceptance of the DVP instruction is revoked and the settlement obligation will be processed as a regular way settlement. Obligations settling on a DVP basis are settled on the exercise settlement date.

Description of the Specific Rule Changes

The principal changes are to Rules 1605, 1606, and 1606A of Chapter XVI. These rules have been substantially redrafted, and accordingly, the former rules are deleted in their entirety. The revised rules essentially set forth the settlement process described above. The revised rules also eliminate references to The Intermarket Clearing Corporation ("ICC"), which has been merged into OCC.

Rule 1604(b) is being amended to grant authority to the Chairman, Management Vice Chairman, President, and any delegate of such officers the authority to advance or postpone the settlement date for exercises of foreign currency options because it may be impractical or impossible to convene a Board meeting in time to address unusual conditions as action is typically required on the day the conditions arise. The Board's delegation increases OCC's flexibility to respond to unexpected or unusual events affecting the exercise settlement date for foreign currency options. While OCC has not experienced any unusual events relating to the

settlement of foreign currency obligations, management believes that it is important that OCC have a level of flexibility in order to immediately respond to unusual conditions that may make it necessary to change a settlement date for foreign currency obligations. A similar change to Rule 902, Obligations to Deliver, was made in 2002 to give these same officers authority to extend or postpone a settlement date for exercises of equity options.³

Certain nonsubstantive, conforming changes are made elsewhere in the rules. Amendments to Rule 602(f)(2) of Chapter VI, Rule 1107 of Chapter XI, and Rule 1602 of Chapter XVI were necessary to correct references to Rule 1605 and to conform terminology to the defined terms contained in the other revised rules.

OCC believes that the proposed changes to its rules are consistent with the purpose and requirements of Section 17A of the Securities and Exchange Act of 1934, as amended, because such changes are designed to promote the prompt and accurate clearance and settlement of transactions in and exercises of foreign currency options and to assure safeguarding of securities and funds in the custody and control of OCC.

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

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

(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

³ Securities Exchange Act Release No. 47629 (April 3, 2003), 68 FR 17715 (April 10, 2003) [File No. SR-OCC-2002-21].

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁴ and Rule 19b-4(f)(4)⁵ promulgated thereunder because the proposal effects a change in an existing service of OCC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (B) 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 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 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. 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-OCC-2004-07 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.

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(f)(4).

All submissions should refer to File Number SR-OCC-2004-07. 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 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-2004-07 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Margaret H. McFarland
Deputy Secretary

⁶ 17 CFR 200.30-3(a)(12).