

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-52869; File No. SR-OCC-2005-16)

December 1, 2005

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Gasoline Index Futures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on October 26, 2005, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>2</sup> and Rule 19b-4(f)(4) thereunder<sup>3</sup> making the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would permit OCC to clear and settle cash-settled futures contracts proposed to be listed by the CBOE Futures Exchange (“CFE”) that are intended to track the price of reformulated, regular octane gasoline sold through retail outlets (“Gasoline Index Futures”).

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

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

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>3</sup> 17 CFR 240.19b-4(f)(2).

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 these statements.<sup>4</sup>

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

A. Gasoline Index Futures

The purpose of this rule change is to permit OCC to clear and settle Gasoline Index Futures contracts proposed to be listed by CFE. Gasoline Index Futures will have as their underlying interest indexes of retail gasoline prices ("Gasoline Indexes") published by the Energy Information Administration ("EIA") of the U.S. Department of Energy. The Gasoline Indexes are compiled and released each Monday evening from surveys of prices at retail gasoline outlets conducted by the EIA each Monday morning. CFE is proposing to list Gasoline Index Futures on six underlying Gasoline Indexes, one for the entire United States and one for each of five "Petroleum Administration for Defense Districts." Gasoline Index Futures would cease trading on the third Friday of the expiration month and would settle on the following Tuesday using as a final settlement price (a) the Gasoline Index levels published on the Monday preceding the settlement date multiplied by (b) a contract multiplier of 10,500. For example, a Gasoline Index of \$3.00 per gallon would result in a final settlement price of \$31,500.

OCC currently clears and settles futures on stock indexes. Although Gasoline Index Futures will be the first non-stock index futures contracts cleared and settled by OCC, OCC can clear them under its existing By-Laws and Rules applicable to clearing futures contracts with the minor amendments proposed in this filing. OCC will collect margin and make variation payments with respect to Gasoline Index Futures as in the case of any other futures contract.

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<sup>4</sup> The Commission has modified the text of the summaries prepared by OCC.

However, because the Gasoline Indexes are published only once a week, OCC will be required to estimate one-day volatilities in calculating initial margin. Because OCC will estimate volatilities conservatively, margins are likely to be higher than if underlying prices were available on a daily basis. Gasoline Index Futures will be cleared under the current clearing agreement between OCC and CFE subject only to the execution by OCC and CFE of a new Schedule C listing the Gasoline Indexes as permissible underlyings.

B. Rule Changes

The terms Broad-Based Index Future and Narrow-Based Index Future were defined in OCC's rule filing permitting it to clear security futures in a manner that limited OCC's futures clearing and settlement activities to futures on narrow-based stock indexes. There is no longer a need to describe any such limitation because OCC is registered with the Commodity Futures Trading Commission ("CFTC") as a derivatives clearing organization, and the Commission and the CFTC have previously approved rules permitting OCC to clear commodity futures contracts. In order to simplify OCC's Rules and to provide for non-stock index futures, those terms are removed, and the definition of "Index Future" is being amended to apply to a future on an index of securities or commodities. Like the definition of Index Future, Sections 4(a) and (b) of Article XII of OCC's By-Laws are amended so that underlying indexes need not consist only of indexes of securities.

A new sentence is added at the end of Article XII, Section 4(c) to account for the possibility that if the Gasoline Indexes (or similar indexes not derived from market-traded instruments) become unavailable, a substitute index may not be available. In that instance, OCC would terminate the index future and fix a settlement price in accordance with Section 5, and any

options on such future would be automatically exercised if in-the-money based on the settlement price set by OCC. Options that were out-of-the-money would terminate.

Section 5 is amended to account for the fact that the prices that are used to calculate Gasoline Indexes are not derived from an organized market. Currently, Section 5(a) assumes that the price or value of all underlying interests or the constituents of all underlying indexes will be taken from organized markets where such underlying interests or constituents are traded. Because different rules are necessary when the prices or values of underlying interests or constituents are not available from an organized market, introductory language is added to Section 5(a) to limit that paragraph's applicability to market-traded interests or constituents, and a new paragraph (b) is added so that OCC may act when a price or value of an underlying interest or constituent that is not traded on a market is unavailable. Current paragraph (a)(2) is being redesignated as (c)(2), and a new provision is added to that paragraph so that OCC may (i) fix the final settlement price for a non-market-traded underlying interest or constituent using a price or value or a combination or average of prices or values deemed appropriate by OCC or (ii) simply fix the final settlement price at the most recently determined settlement price for the future. Because in the latter case the final settlement price would equal the previous settlement price, no final variation payment would be made.

The introductory paragraph to Chapter XIII is simplified by replacing lists of underlying interests and contracts cleared and settled by OCC with more generic terms incorporating all underlying interests and all futures and futures options OCC is permitted to clear under its current rules. This change conforms that paragraph to the corresponding introductory paragraph in Article XII.

The proposed changes to OCC's By-Laws and Rules are consistent with Section 17A of the Act<sup>5</sup> and the rules and regulations thereunder applicable to OCC because they are designed to promote the prompt and accurate clearance and settlement of derivative transactions, to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. The proposed rule change is not inconsistent with any other provision of the By-Laws and Rules 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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and Rule 19b-4(f)(4)<sup>7</sup> thereunder because it effects a change in an existing service that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not

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<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(4).

significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such 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](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2005-16 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-OCC-2005-16. 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, 100 F Street, NE, 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-2005-16 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.<sup>8</sup>

Jonathan G. Katz  
Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).