

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49478; File No. SR-OCC-2003-09)

March 25, 2004

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ 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.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

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.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because it specifies the minimum net capital requirement for clearing members that facilitate stock settlements on behalf of other clearing members.

(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

Within thirty five 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 ninety 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 self-regulatory organization 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.

VI. 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-2003-09. 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 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 website at <http://www.optionsclearing.com>. All submissions should refer to the File No. SR-OCC-2003-09 and should be submitted by [insert date 15 days after date of publication in the Federal Register].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.³

Margaret H. McFarland
Deputy Secretary

³ 17 CFR 200.30-3(a)(12).