

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50465; File No. SR-OCC-2003-09)

September 29, 2004

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

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”).¹ Notice of the proposal was published in the Federal Register on April 1, 2004.² 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.

¹ 15 U.S.C. 78s(b)(1).

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

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.³

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.⁴ The Commission agrees with OCC that Appointed Clearing Members take on additional financial risk when they provide settlement services for

³ As originally filed the dollar amounts in (A) and (B) were \$2,000,000 and \$100,000. This was the subject of the amendment filed on September 28, 2004.

⁴ 15 U.S.C. 78q-1(b)(3)(F).

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 Amendment No. 1 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,⁵ (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 Amendment No. 1 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:

⁵ 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. Please include File Number SR-OCC-2003-09 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-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, please use only one method. The Commission will post all comments on the Commission's Internet website (<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 website 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-2003-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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 and Amendment No. 1 is approved on an accelerated basis.

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).