

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53811; File No. SR-NSCC-2005-17]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change to Modify Its Rules and Procedures Related to the Collection of Commission Payments

May 16, 2006.

#### I. Introduction

On December 29, 2005, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on February 3, 2006, amended proposed rule change SR-NSCC-2005-17 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on March 13, 2006.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description

As part of ongoing efforts to increase processing efficiencies, NSCC is modifying its Rule 16, "Settlement of Commissions," to further standardize and automate the processing of commission bill payments.

In 2001, NSCC modified Rule 16 to implement the use of Automated Clearing House ("ACH") wire transfers when making payments to non-clearing members utilizing NSCC's Commission Bill Service. As a part of NSCC's move to payment of credits by ACH wire transfer, all non-clearing members were required to execute appropriate ACH documentation in order to receive their credit payments.<sup>3</sup> While NSCC automated the payment of funds from NSCC to non-clearing members, the collection of monies owed to NSCC by non-clearing members was not automated. Non-clearing members continued to pay commission bill settlement funds to NSCC by checks.

NSCC is now further modifying Rule 16 to require the use of ACH preauthorized payments in the collection of funds from those non-clearing members that are indebted to NSCC as a result of their utilization of the Commission Bill Service. Accordingly, at the time as determined

and announced to users of the Commission Bill Service by NSCC, NSCC will debit the bank account designated by each non-clearing member an amount equal to the amount owed by the non-clearing member to NSCC.<sup>4</sup> All non-clearing members will be required to execute appropriate ACH documentation.

In addition to the above change, NSCC is also making a technical correction to Rule 16(3) to conform the Rule to practice. NSCC will eliminate text that provides that non-clearing members must deliver information to NSCC on the 10th day of each month. NSCC is eliminating this text because this practice has been discontinued.

#### Implementation

NSCC will work with New York Stock Exchange ("NYSE") and American Stock Exchange ("AMEX") staff to obtain new ACH documentation from all non-clearing members that currently utilize the Commission Bill Service. Within two weeks of approval by the SEC of this rule filing, NSCC will begin implementing the ACH debit process on a rolling-basis. NSCC anticipates that collection of funds by check from non-clearing members to NSCC will be discontinued in its entirety by the end of the second quarter of 2006.

#### III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions.<sup>5</sup> By requiring electronic payment of funds from non-clearing members utilizing its Commission Bill Service, NSCC should reduce processing errors and delays that are typically associated with the manual processing of checks. As such, the proposed rule change is consistent with NSCC's statutory obligation to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions.

#### 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.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (File No. SR-NSCC-2005-17) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53812; No. SR-OCC-2006-03]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Effect Certain Fee Changes to Ancillary Services Program

May 16, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 13, 2006, 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)(ii) of the Act<sup>2</sup> and Rule 19b-4(f)(2)<sup>3</sup> thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

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

The principal purpose of the rule change is to effect certain fee changes to OCC's ancillary services program.

#### 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

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

<sup>2</sup> Securities Exchange Act Release No. 53424 (March 6, 2006), 71 FR 12759.

<sup>3</sup> Securities Exchange Act Release No. 44550 (July 12, 2001), 66 FR 37509 (July 18, 2001) [File No. SR-NSCC-2001-08].

<sup>4</sup> Currently, commission bill settlement takes place on the 15th day of each month or on the next preceding business day if the 15th is not a business day.

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

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

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*

The principal purpose of the rule change is to effect certain fee changes with respect to OCC's ancillary services program.

In addition to clearance and settlement services, OCC provides its clearing members with a number of ancillary services ranging from on-line access to OCC systems to report and data distribution offerings. Hardware and communication lines support these ancillary service offerings. In August, 2002, OCC implemented a four-tiered fee structure for its ancillary services with a different bundle of services offered at a fixed cost for each tier.<sup>5</sup>

In September, 2005, OCC's board of directors authorized a plan to eliminate the requirement that clearing members use OCC-supplied equipment and dial-up interface system ("EMCI platform") as the primary approved means to access ENCORE, OCC's clearing system, which is available on the Internet.<sup>6</sup> In connection with completing plan details, OCC reviewed its ancillary services program and decided to make certain fee adjustments. A detailed listing of these changes to OCC's ancillary fees can be found at [http://www.theocc.com/publications/rules/proposed\\_changes/sr\\_occ\\_06\\_03.pdf](http://www.theocc.com/publications/rules/proposed_changes/sr_occ_06_03.pdf).

Accordingly, effective April, 2006, OCC will reduce the fixed monthly ancillary fees charged to Tier I, II, and III clearing members by \$300.00/month and the cost of maintaining an additional clearing member number by \$100.00/month. These fee reductions reflect the elimination of the ECMI platform and are further intended to offset additional costs that will be incurred by clearing members in deploying the required Internet access. OCC intends to increase the ancillary service fee charged to Tier IV members by \$150.00/month to reflect the cost of supporting secure Web-based access to the Stock Loan system by Tier IV clearing members.

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

<sup>5</sup> Securities Exchange Act Release No. 34-46339 (August 12, 2002), 67 FR 53828-01 (August 19, 2002) [File No. SR-OCC-2002-17]. The ancillary services associated with each membership tier are described later in this filing.

<sup>6</sup> Clearing members will be required to use an OCC approved alternative to access ENCORE through the Internet.

Finally, OCC intends to reduce the fee charged to subscribing clearing members for OCC-provided leased lines (which provide for secure point-to-point communications) by \$1,000/month in order to pass on the lower line charges OCC has negotiated with its telephone providers.<sup>7</sup>

OCC believes the proposed rule change is consistent with section 17A of the Act,<sup>8</sup> as amended, because it clarifies and updates OCC's fee schedule. As such, it provides for the equitable allocation of fees among its participants and aligns fees for services with the associated cost to deliver the service.

*(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 proposed rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> thereunder because the rule establishes a due, fee, or other charge. 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:

<sup>7</sup> In addition, OCC intends to make conforming changes to the Supplement to the Agreement for OCC Services: Ancillary Services and the Supplement to the Agreement for OCC Services: Communication Options. C/MACS references are eliminated because that system is no longer used. 56.0 kb line references are eliminated because that line speed is no longer supported.

<sup>8</sup> 15 U.S.C. 78q-1.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

*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-2006-03 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 20549-9303.

All submissions should refer to File Number SR-OCC-2006-03. 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 filings 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-2006-03 and should be submitted on or before June 13, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Nancy M. Morris,**  
Secretary.

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<sup>11</sup> 17 CFR 200.30-3(a)(12).