

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43635; File No. SR-NASD-00-68]

### Self-Regulatory Organizations; The National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Transfer Customer Account(s)

November 29, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, notice is hereby given that, on November 20, 2000, the National Association of Securities Dealers, Inc. ("NASD") through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") 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 NASD. 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 allow the NASD to amend Rule 11879(e) of the Uniform Practice Code to require that following the validation of a transfer instruction, the carrying member must complete the transfer of customer account(s) to the receiving member within three business days instead of four business days.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

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

Rule 11870(e) regulates the transfer of customer accounts from one member

organization to another. Such transfers are generally effected through the Automated Customer Account Transfer ("ACAT") Service, which is a system administered by the National Securities Clearing Corporation ("NSCC"). Since the inception of the ACAT Service in 1985, numerous enhancements to the system have allowed for faster and more efficient transfers of customer accounts. The NSCC enhanced the ACAT Service in 1999 to require carrying members to complete the transfer of accounts to the receiving member within three business days following the validation of a transfer instruction. The NYSE has already amended its Rule 412 to reduce the total post-validation transfer period from four days to three days.<sup>3</sup> The NASD currently expects its members to comply with the three-day requirement notwithstanding that Rule 11870(e) to conform to the NYSE Rule 412(b)(3) requirement that post-validation transfer occur within three business days. This will make Rule 11870(e) consistent with the current NSCC and NYSE three-day requirement, which is the industry standard.

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change is designed to accomplish these ends by reducing the time frame allowed for the transfer of customer accounts from one member organization to another and to make NASD requirements conform to NYSE Rule 412(b)(3) and current NSCC requirements.

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

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

##### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule change and Timing for Commission Action

The proposed rule change has been filed by NASD as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act.<sup>4</sup> In accordance with Rule 19b-4(f)(6)(iii), prior to the filing date, NASD Regulation submitted written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change. In that notice of its intent, NASD Regulation requested that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing, as consistent with the protection of investors and the public interest. The Commission has decided to waive that requirement. Accordingly, the proposed rule change will become effective upon filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. 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 the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All submissions should refer to File No. SR-NASD-00-68 and should be submitted by December 21, 2000.

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by the NASD.

<sup>3</sup> Securities Exchange Act Release No. 40712 (Nov. 25, 1998), 63 FR 67163 (December 4, 1998).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43630; File No. SR-OCC-00-05]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Stockholder Approval of Certain By-Law Amendments

November 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that, on June 20, 2000, 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 parties.

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

The proposed rule change would amend Article XI, Section 1 to provide more explicit authorization for a procedure to obtain stockholder approval of certain By-Law amendments.<sup>2</sup>

#### 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 section (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

#### (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 make explicit a long-standing interpretation of OCC's By-Laws, Article XI, Section 1, which provides that certain enumerated provisions of the By-Laws "may not be amended by action of the Board of Directors without the approval of the holders of all of the outstanding Common Stock of the Corporation." Each of OCC's stockholders is a participant exchange of OCC, and each is entitled to elect one "exchange director" to OCC's board of directors. It has been the practice of OCC and the exchanges to consider the affirmative vote of each exchange director to be the required approval of the stockholder that elected that exchange director. OCC is proposing to amend Article XI, Section 1 to provide more explicit authorization for this procedure. The proposed rule change was approved by the holders of all outstanding common stock of OCC by unanimous written consent on May 23, 2000, and by OCC's board of directors at a meeting held on May 23, 2000.

In order to eliminate any potential conflict between an exchange director's fiduciary duty as a director of OCC and his or her duty to the stockholder that elected the director, the rule change also allows an exchange director to choose not to have his or her vote in favor of a By-Laws amendment considered to be the approval of such stockholder. In the event that any exchange director exercises this right, the rule change provides that the By-Laws amendment in question will require the written approval of the stockholder represented by that exchange director. Such approval could then be given or withheld by the stockholder without the vote of the exchange director.

The proposed rule change is consistent with Delaware corporate law. Absent the current provision in Article XI, Section 1 of the By-Laws, no stockholder action would be required in order to amend any part of the By-Laws of OCC. Where the requirement of stockholder "approval" is imposed by the By-Laws, the By-Laws may specify the mechanism by which that approval is to be obtained.

The proposed rule change is also consistent with the purposes and requirements of Section 17A of the Act<sup>4</sup> and the rules and regulations thereunder applicable to OCC because it

assures the fair representation of OCC stockholders in the administration of OCC's affairs and does not impose any burden on competition.

#### (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 relating to the proposed rule change have not yet been solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)<sup>5</sup> of the Act and Rule 19b-4(f)(3)<sup>6</sup> promulgated thereunder because the proposal is solely concerned with the administration of OCC and does not affect the protection of investors or the public interest and does not impose any burden on competition. At any time within sixty days of the filing of such 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 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.

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

<sup>2</sup> A copy of the text of OCC's proposed rule change and the attached exhibit are available at the Commission's Public Reference Section or through OCC.

<sup>3</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>4</sup> 15 U.S.C. 78q-1.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>6</sup> 17 CFR 240.19b-4(f)(3).