

If a default is not quickly remedied, OCC will likely suspend the defaulting clearing member. However, OCC believes that it should not have to make the decision to suspend as a precondition to borrowing against the clearing fund. Similarly, OCC believes that it should not be a precondition to such use of the clearing fund that OCC is unable to obtain "prompt" delivery of, or convert "promptly" to cash, any asset credited to an account of a defaulting clearing member. OCC interprets "prompt" and "promptly" in this context as meaning "in sufficient time to enable OCC to use the proceeds to meet its obligations." However, OCC does not believe that its ability to such use of the clearing fund should turn on questions of interpretation.

Accordingly, OCC is proposing to amend Article VIII, Section 5(e) of its By-Laws to eliminate the requirements that OCC (i) suspend a defaulting clearing member and (ii) be unable to obtain prompt delivery of collateral or be unable to convert it promptly to cash as preconditions to use of the clearing fund. As amended, Section 5(e) would allow OCC to use clearing fund assets as collateral for loans whenever OCC deems such borrowings to be necessary or advisable in order to meet obligations arising out of the default or suspension of a clearing member or any action taken by OCC in connection therewith.

OCC believes that the proposed rule change is consistent with Section 17A of the Act and the regulations thereunder because it enhances OCC's ability to respond to and manage clearing member defaults in a manner that increases the protection of investors and persons facilitating transactions by and acting on behalf of investors and because it limits systematic risk.

*(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. 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-2004-13 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-2004-13. 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, 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 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-2004-13 and should be submitted on or before September 28, 2004. For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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**SMALL BUSINESS ADMINISTRATION**

**[Declaration of Disaster #P044]**

**Commonwealth of the Northern Mariana Islands (Amendment #1)**

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective August 23, 2004, the above numbered Public Assistance declaration is hereby amended to include the islands of Agrigan, Alamagan, and Pagan located within the Commonwealth of Northern Mariana Islands as disaster areas due to damages caused by flooding, high surf, high winds, and wind driven rain associated with Typhoon Tingting occurring on June 27–29, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 27, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: August 27, 2004.

**Herbert L. Mitchell,**  
*Associate Administrator for Disaster Assistance.*

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**SMALL BUSINESS ADMINISTRATION**

**[Declaration of Disaster #3618]**

**Commonwealth of the Northern Mariana Islands**

As a result of the President's major disaster declaration for Public Assistance on August 26, 2004, and Amendment 1 adding Individual Assistance on August 27, 2004, I find that the islands of Rota, Saipan, and Tinian, located within the Commonwealth of the Northern Mariana Islands, constitute a disaster area due to damages caused by flooding, high surf, storm surge, and high winds as a result

<sup>4</sup> 17 CFR 200.30-3(a)(12).