

Commission believes it is appropriate for the MSRB to grant dealers who have established the appropriate routine business practices a safe harbor exemption from liability for calls made out of genuine error.

#### *E. Miscellaneous*

The Commission believes that the MSRB's proposal to apply the telemarketing and telephone solicitation restrictions to wireless telephone numbers is appropriate, given that consumers can register wireless telephone numbers in the national do-not-call registry. Further, the Commission believes that a dealer should not be able to avoid accountability for complying with telemarketing restrictions and regulations by employing another entity to perform telemarketing services on behalf of the dealer. Accordingly, the Commission finds proposed MSRB Rule G-39(f), relating to outsourcing telemarketing, to be appropriate.

#### *F. Accelerated Approval of Amendment No. 1*

The Commission finds good cause, pursuant to section 19(b)(2) of the Act, for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. As discussed above, in Amendment No. 1, the MSRB expanded the breadth of the established business relationship exception. The Commission believes that the proposed Amendment No. 1 will, among other things, facilitate dealers' ability to uphold their agency obligations by enabling them to make a telemarketing call under certain circumstances to customers who have not actively traded or made deposits to their brokerage accounts. In making the determination to accelerate approval of Amendment No. 1, the Commission notes that the majority of commenters supported a broader definition of "established business relationship."<sup>40</sup>

#### **VI. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-MSRB-2003-07. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All submissions should refer to File No. SR-MSRB-2003-07 and should be submitted by February 20, 2004.

#### **VII. Conclusion**

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>41</sup> that the proposed rule change, as amended (File No. SR-MSRB-2003-07) 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.<sup>42</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-49126; File No. SR-OCC-2003-07]**

#### **Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Clearance and Settlement of Foreign Currency Futures**

January 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 4, 2003, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on November 17, 2003, amended 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 accommodates the introduction of foreign currency futures as proposed to be traded by the Philadelphia Board of Trade ("PBOT") and cleared by OCC.

#### **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.<sup>2</sup>

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

The proposed amendments provide for the clearance and settlement of cash-settled futures of foreign currency. The same basic rules and procedures currently applicable to other cash-settled futures contracts will be applicable to cash-settled foreign currency futures.

The by-laws and rules of PBOT provide for listing physically-settled foreign currency futures, which were historically cleared through The Intermarket Clearing Corporation ("IMM"), a subsidiary of OCC. PBOT now proposes to list cash-settled foreign currency futures for trading through its facilities, and OCC proposes to provide clearing and settlement services for these new contracts directly rather than through ICC. OCC would perform this function in its capacity as a derivatives clearing organization ("DCO") registered as such under the Commodity Exchange Act.

OCC's existing rules already provide for the clearance of cash-settled futures. They do not, however, specifically contemplate cash-settled futures for which a foreign currency is the underlying interest. The purpose of the present rule change is to amend the rules as necessary to provide for

<sup>41</sup> 15 U.S.C. 78s(b)(2).

<sup>42</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The Commission has modified parts of these statements.

<sup>40</sup> See Schwab Letter, at 4; SIA Letter, at 4.

clearance and settlement of this additional type of future.

The proposed cash-settled foreign currency futures will be cleared and settled in a manner similar to other cash-settled futures. Daily variation margin and final settlement prices for cash-settled foreign currency futures will be calculated by marking to the futures price as reported to OCC by PBOT. PBOT has informed OCC that, in the event that there is no recent price in the futures market or the futures price is otherwise deemed inappropriate for use, PBOT has the authority under its rules to use alternative means to determine a price for the underlying foreign currency. OCC has similar authority under its own rules.<sup>3</sup> Cash-settled foreign currency futures will be settled at maturity through a final variation payment made in U.S. dollars and not through delivery of the underlying currency.

The proposed changes include amendments and additions to the definitions in Article I of the By-Laws and to the rules governing Futures in Article XII of the By-Laws and Chapter XIII of the Rules. The following is brief description of the significant amendments and additions. Certain nonsubstantive changes intended to conform or make corrections to existing by-laws and rules are self-explanatory and not discussed below.

OCC proposes to add a definition of cash-settled foreign currency future in Article I of the By-Laws. The definitions of final settlement price and final variation payment have been included in order to correct the alphabetization.

Article XII sets out the basic provisions for futures and futures options. Section 3(a) contains a general expression of OCC's authority to make adjustments to the terms of futures and futures options to reflect relevant events affecting underlying interests. A sentence has been added to this section 3(a) which directs the reader to new section 4A for specific information about circumstances under which adjustments to cash-settled foreign currency futures might be made and about the process for making such determinations. New section 4A, including Interpretation .01 thereto, has been adapted from the adjustment provision for cash-settled foreign currency options in Article XXII, section 3 of the By-Laws. Section 6 of Article XII of the By-Laws is being amended to make clear that final settlement prices for futures contracts may be based upon prices or quotations in other markets for

the relevant underlying interest, such as the cash or spot markets.

By-Laws in Article XXII apply only to cash-settled foreign currency options. Because of the potential for confusion and as guidance to the reader, a cross-reference has been added to the Introduction of this Article noting that rules governing cash-settled foreign currency futures appear in Article XII of the By-Laws and Chapter XIII of the Rules.

Chapter X of the Rules governs clearing fund contributions, and Rule 1001 governs the amount of contributions. Rule 1001 contains special provisions applicable to a clearing member who is an affiliate of a previously admitted clearing member and that becomes a clearing member solely for the purpose of clearing transactions in certain designated futures and futures options. The proposed amendment broadens the categories of contracts subject to the special provisions to include all commodity futures and options on commodity futures. A clearing member that qualifies for this special treatment is deemed to be in compliance with its minimum contribution requirement if the entity contributes the amount calculated with respect to it under the basic clearing fund formula, notwithstanding that such amount is less than the \$150,000 minimum, so long as its previously admitted affiliate is in compliance with the \$150,000 minimum.

OCC believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Act because it facilitates the establishment of linked or coordinated facilities for clearance and settlement of transactions in foreign currency options and cash-settled foreign currency futures and provides for the efficient clearance and settlement of the latter by adapting existing OCC rules previously approved as effective in promoting the prompt and accurate clearance and settlement of other types of futures contracts.

*(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 rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act<sup>4</sup> and Rule 19b-4(f)(4)<sup>5</sup> thereunder because it effects a change in an existing service of OCC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within 60 days of the filing of the proposed rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-OCC-2003-07. 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 Web site at <http://www.optionsclearing.com>. All

<sup>3</sup> Article XII, section 5 of OCC's By-Laws and Chapter XIII, Rule 1301(d) of OCC's Rules.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(4).

submissions should refer to the File No. SR-OCC-2003-07 and should be submitted by February 20, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49124; File No. SR-OCC-2003-06]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Clearing Agreement

January 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 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 consists of the Agreement for Clearing and Settling Security Futures and Futures and Futures Options on Broad-Based Indexes between OCC and the Chicago Board Options Exchange ("CBOE").

#### 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.<sup>2</sup>

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

The CBOE intends to open a futures exchange, to be known as CBOE Futures Exchange, LLC ("CFE"). CFE has applied to the Commodity Futures Trading Commission ("CFTC") for designation as a contract market and intends to notice register to be a limited purpose national securities exchange for the trading of futures before such trading commences. CFE and OCC have entered into a clearing agreement ("CFE Agreement") pursuant to which OCC will provide clearing and settlement services with respect to the security futures and futures and options on futures on broad-based security indexes that may be traded on CFE.<sup>3</sup> The CFE Agreement is substantially similar to OCC's amended and restated clearing agreement with Nasdaq Liffe Markets, LLC ("NQLX") but includes some terms taken from OCC's security futures clearing agreements with the Island Futures Exchange, LLC ("IFX") and OneChicago, LLC ("ONE"), which were previously filed with the Commission.<sup>4</sup> To the extent that terms of the CFE Agreement are not traceable to one of these sources, those terms are immaterial.

OCC believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Act because it will foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

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

OCC does not believe that the proposed rule change will impose any burden on competition.

<sup>3</sup> OCC is registered as a "derivatives clearing organization" under the Commodity Exchange Act by order of the Commodity Futures Trading Commission (December 10, 2001). The Commission previously approved OCC's rule filing to clear futures and futures options on broad-based stock indexes. Securities Exchange Act Release No. 45946 (May 16, 2002), 67 FR 36056 (May 22, 2002), File No. [SR-OCC-2001-16].

<sup>4</sup> Securities Exchange Act Release Nos. 46722 (October 25, 2002), 67 FR 67230 (November 4, 2002) File No. [SR-OCC-2002-13] (amended and restated clearing agreement with NQLX), 46058 (June 10, 2002), 67 FR 41287 (June 17, 2002) File No. [SR-OCC-2002-08] (security futures clearing agreement with IFX), and 46653 (October 11, 2002), 67 FR 64689 (October 21, 2002) File No. [SR-OCC-2002-07] (security futures clearing agreement with ONE).

#### (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 rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act<sup>5</sup> and Rule 19b-4(f)(4)<sup>6</sup> thereunder because it effects a change in an existing service of OCC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-OCC-2003-06. 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

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

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

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The Commission has modified parts of these statements.