SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52030; File No. SR–OCC–2003–04]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to a New Customers' Lien Account

July 14, 2005.

I. Introduction

On July 21, 2003, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2002–16 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On December 20, 2004 OCC amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on March 14, 2005.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change provides for the introduction of a new ''customers' lien account'' that may be carried at OCC by a clearing member. The new account type will be used only for customers that are margined on a portfolio risk basis or that are margined pursuant to a cross-margining arrangement in accordance with exchange rules.

In conjunction with the Chicago Board Options Exchange (''CBOE''), American Stock Exchange, New York Stock Exchange (''NYSE''), Chicago Mercantile Exchange (''CME''), Chicago Board of Trade, and various member firms, OCC has established a program under which eligible customers may elect to establish accounts, limited to specified derivative products, that will be margined on a portfolio margining basis rather than under the ''strategy-based'' margining method currently set forth in the exchanges' margin rules.[3] The program will permit eligible customers to establish risk-based margin accounts that will be limited to specified derivative products subject to regulation by the Commission, and it will also provide for accounts in which derivative products regulated by the Commission may be cross-margined with related futures products regulated exclusively by the Commodity Futures Trading Commission (''CFTC''). Under the current proposal, a cross-margining account of an eligible customer will be treated as a securities account for regulatory purposes.[4] A single ''customers' lien account'' created under new paragraph (i) of Article VI (Clearance of Exchange Transactions), Section 3 (Maintenance of Accounts) of OCC's By-Laws will be used to clear all transactions of eligible customers under a portfolio margining program or cross-margining program so long as the products included in the account are all cleared by OCC.[5] OCC will have a lien on all positions and assets in a customers' lien account as security for the OCC clearing member's obligations to OCC relating to the account.[6] OCC will continue to require full premium payment from the clearing firm for all options purchased whether or not the firm extends credit to a customer for the purchase.

Where cross-margining accounts include products cleared by OCC as well as futures products cleared by CME or other derivatives clearing organizations other than OCC, OCC's clearing function will occur in a separate customers' lien account to be established for each cross-margining program. A corresponding account will be established at each participating derivatives clearing organization. Liquidation of these accounts would be subject to the cross-margining agreement between or among OCC and the participating derivatives clearing organization(s) just as liquidation under the cross-margining programs would occur today. Any new cross-margining agreements or any amendments to existing cross-margining agreements will be separately filed with the Commission for approval. It is anticipated that clearing members may establish a customers' lien account corresponding to a cross-margining agreement among OCC, CME, and the New York Clearing Corporation. Separate customers' lien accounts would correspond to cross-margining agreements between OCC and other futures clearing organizations.

As stated in the CBOE rule filing, the current program includes only the following eligible products: (i) Broad-based securities index options (including stock index warrants) listed on a national securities exchange; (ii) related marginable exchange-traded funds; and (iii) broad-based securities index futures contracts and futures options contracts to the extent they are cross-margined with listed index options.

OCC is making the following revisions to its By-Laws and Rules to provide for the introduction of customers' lien accounts.

First, OCC is adding a new defined term, ''customers' lien account,'' to Article I of its By-Laws. The definition simply cross-references the description of the account in Article VI, Section 3(i) of the By-Laws.

Second, Article VI of the By-Laws sets out the basic terms of option contracts and the general rules for the clearance of exchange transactions. Section 3 contains a description of each of the types of accounts that clearing members may establish and maintain with OCC. A new Section 3(i) is being added that contains a description of the proposed ''customers' lien account'' and provisions setting forth OCC's lien on all long positions, securities, margin, and other funds in these accounts and OCC's right to close out positions in these accounts. As provided in the amendment to Rule 611, which is described below, positions in customers' lien accounts will be deemed to be unsegregated. Section 3 is also being amended to correct the paragraph numbers of the Interpretations and Policies to Section 3.

Third, OCC is making a minor, conforming amendment to Section 4 of Article VI of the By-Laws.

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 51330 (March 8, 2005), 70 FR 12527.

[3] For a detailed description of the program see Securities Exchange Act Release Nos. 51614 (April 26, 2005), 70 FR 22935 (May 3, 2005) [File No. SR–CBOE–2002–03] and 51615 (April 26, 2005), 70 FR 22953 (May 3, 2005) [File No. SR–NYSE–2002–19]. The Commission notes that OCC's proposed rule change is applicable to any exchange with Commission approved rules providing for such margining.

[4] CBOE has submitted a request to the CFTC for an exemption from the segregation requirements and from other provisions of the Commodity Exchange Act to the extent necessary to permit futures contracts to be carried in securities accounts subject to regulation by the Commission.

[5] OCC is registered as a derivatives clearing organization under the Commodity Exchange Act and is therefore able to clear CFTC-regulated derivative products as well as Commission-regulated derivative products.

[6] Under Commission Rules 8c–1, 15c2–1, and 15c3–3, fully paid for securities held for the account of a customer generally may not be subject to liens to secure obligations of the carrying broker-dealer. To facilitate compliance with these customer protection rules, OCC's rules require clearing members to carry fully paid for positions of public securities customers in a customers' account under which all long positions are considered ''segregated'' and therefore free of OCC's lien unless specifically designated as ''unsegregated.'' All long options positions in customers' lien accounts, however, would automatically be considered unsegregated for purposes of OCC's placing a lien on these positions. OCC has requested and received a no-action letter from the Commission's Division of Market Regulation with respect to OCC treating these positions as unsegregated notwithstanding these provisions of Rules 8c–1, 15c2–1 and 15c3–3. Letter from Bonnie Gauch, Attorney, Division of Market Regulation, to William H. Navin, General Counsel, OCC (July 14, 2005).

Fourth, OCC's Rule 611 treats all long option positions in the regular securities customers' account as ''segregated'' and therefore free of OCC's lien except to the extent that a clearing member is entitled to ''unsegregate'' long positions that are part of a customer spread. Rule 611 is being amended to provide that all positions in customers' lien accounts will be deemed to be ''unsegregated.''

Fifth, Chapter XI of OCC's Rules is being amended to provide for the liquidation of a clearing member's customers' lien account in the event that the clearing member is suspended. In essence, a customers' lien account will be treated in exactly the same manner as a combined market-maker account. Under these provisions, proceeds of long options or security futures in a customers' lien account will be applied only to satisfy obligations arising from that account.

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.[7] The proposed rule change is designed to facilitate a new portfolio customer margining program that was the subject of proposed rule changes filed by NYSE and CBOE and was approved by the Commission.[8] In order to reduce the disparity between the customer-level margin requirement and the clearing-level margin requirement that would occur if portfolio margining were allowed at the customer level but not at the clearing member level, the member's portfolio of eligible transactions will be cleared and settled at OCC through a new customers' lien account and OCC will compute margin for such account using the same portfolio margining methodology (OCC's TIMS methodology) that is used to calculate margin at the customer level.

OCC's Rule 611(c) currently allows a clearing member to unsegregate a customer's long option position only if the position is offset by a short position being carried for the same customer and if the customer's margin requirement is reduced as a result of the offsetting positions. Under the customer portfolio margining methodology program, all long positions in the customers' lien account will be available as an offset to all short positions, regardless of the identity of the customer. This should provide for a greater diversification benefit to OCC's clearing members in the calculation of their margin. However, because all positions in the customers' lien account will be unsegregated and therefore will be subject to OCC's lien, the long positions in the account will be available to OCC in the event a clearing member fails to settle its obligations relating to a short position. Accordingly, because the proposed rule change is designed to ensure that transactions in securities which are eligible for the new portfolio margining program approved by the Commission will be cleared and settled by OCC in a manner that will not reduce the adequacy of collateral available to OCC, the proposed rule change should not adversely affect OCC's ability to assure the safeguarding of securities and funds which are in OCC's custody and control or for which OCC is responsible.

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, that the proposed rule change (File No. SR–OCC–2003–04) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3915 Filed 7–21–05; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] Securities Exchange Act Release No. XXXXX (July, 2005).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration No. 10137 and No. 10138]

Florida Disaster Number FL–00005

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA–1595–DR), dated 7/10/2005.

Incident: Hurricane Dennis.

Incident Period: 7/10/2005 and continuing.

DATES: Effective Date: 7/13/2005.

Physical Loan Application Deadline Date: 9/08/2005.

EIDL Loan Application Deadline Date: 4/10/2006.

ADDRESSES: Submit completed loan applications to:

U.S. Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Florida, dated 7/10/2005, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Bay, Franklin, Gulf, Okaloosa, Wakulla, and Walton.

Contiguous Counties:

Florida: Calhoun, Holmes, Jackson, Jefferson, Leon, Liberty, and Washington.

Alabama: Covington and Geneva.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05–14468 Filed 7–21–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration No. 10139 and No. 10140]

Florida Disaster Number FL–00004

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Florida dated 7/13/2005.

Incident: Severe Storms and Flooding.

Incident Period: 6/25/2005 through 7/07/2005.

EFFECTIVE DATE: 7/13/2005.

Physical Loan Application Deadline Date: 9/12/2005.

EIDL Loan Application Deadline Date: 4/13/2006.

ADDRESSES: Submit completed loan applications to:

U.S. Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration,