

about the potential need to register as an investment advisor or broker-dealer under certain conditions.

As noted above, the SIA expressed concern about a statement in Amendment No. 2 advising firms that the activities specified in Rule 2360(g) may be considered part of a plan to promote day trading when combined with other acts.⁴⁶ Rule 2360(g) provides that firms will not be deemed to be promoting a day-trading strategy *solely* by engaging in one of the listed activities. The Commission believes that NASD Regulation addressed this concern in its Amendment No. 2 by correctly noting that Rule 2360(g) would not subject a firm to the new rules *solely* by engaging in the activities listed in that rule. The Commission finds that, in making the determination of whether a firm is promoting a day-trading strategy, it is reasonable for NASD Regulation to consider all of the firm's activities, including those listed in Rule 2360(g).

Finally, the Commission notes that the NASD will announce the operational date of the proposed rule change in a Notice of Members to be published no later than 60 days following the date of approval by the Commission. The operational date will be 30 days following the date of publication of the Notice to Members announcing Commission approval.

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission finds that the additional disclosures noted in Amendment No. 2 will provide greater information to investors about the risk of day trading and thus should strengthen the proposal. Moreover, the amendment raises no significant regulatory issues. Accordingly, the Commission finds good cause, consistent with Sections 15A(b)(6)⁴⁷ and 19(b)(2)⁴⁸ of the Act, to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-99-41 and should be submitted by August 7, 2001.

VI. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act⁴⁹ that the proposed rule change (SR-NASD-99-41), as amended, is approved and Amendment No. 2 to the proposed rule change is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43023; File No. SR-OCC-99-14]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Price Used in Calculating Premium Margin

July 11, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 26, 1999, 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 set an option's marking price at the last sale price for purposes of calculating premium margin.

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 these statements.²

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

OCC proposes to amend Rule 601 (relating to margining of equity options) and Rule 602 (relating to margining of non-equity options) to set marking prices at the last sale price, adjusted to the highest bid if the last sale price is below the highest bid or adjusted to the lowest offer if the last sale price is above the lowest offer. The purpose of the proposed rule change is twofold. First, OCC believes that the proposed change results in a more accurate assessment of risk and therefore a more appropriate margin requirement. Second, OCC believes that the proposed rule change will provide consistency with the marking practices of clearing members, the majority of whom are believed to use the method currently proposed.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act³ and the rules and regulations thereunder applicable to OCC because the proposed rule change will enable OCC to better facilitate 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 have any impact or impose any burden on competition.

⁴⁶ See June 30 SIA Letter, *supra* note 29.

⁴⁷ 15 U.S.C. 78o-3(b)(6).

⁴⁸ 15 U.S.C. 78s(b)(2).

⁴⁹ 15 U.S.C. 78s(b)(2).

⁵⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has notified the text of the summaries prepared by OCC.

³ 15 U.S.C. 78q-1(b)(3)(A).

(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. OCC will notify the Commission of any written comments received by OCC.

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 such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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 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. All submissions should refer to File No. SR-OCC-99-14 and should be submitted by August 7, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43022; File No. SR-OCC-99-12]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Adjustments to Index Options

July 11, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 2, 1999, 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 Organizations Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC's By-Laws governing index option adjustment to permit the substitution of a successor index for an underlying index.

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 these statements.²

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

The primary reason for the proposed rule change is to provide for the substitution of a successor index for an underlying index. Because substitution of a successor index for an underlying index may require changes to the terms of outstanding options, OCC also seeks the authority to make adjustments to such terms as necessary to reflect the substitution. While OCC believes such substitution and adjustment are already implicitly provided for under the provisions of OCC's By-Laws at Article XVII, Section 4 ("Unavailability or Inaccuracy of Current Index Value"), OCC seeks to clarify its authority through the proposed rule change.

New paragraph (d) of Article XVII, Section 3 will provide that a successor index may be substituted for an underlying index in the event that the underlying index's publication is discontinued, when the underlying index is replaced with another index, or when an index's composition or method of calculation has so materially changed that it is deemed to be a different index. As in the case of other adjustments, the determination to substitute a successor index and the selection of the index will be made by an adjustment panel. The successor index is to be an index which is deemed to be reasonably comparable to the index for which it substitutes.

Article XVII, Section 3, paragraph (c), which is applicable to adjustments to index options generally, will be amended to provide for adjustments as necessary to accommodate a successor index. In addition, paragraph (c) will be amended to expand the rule in other respects to cover a broader range of potential changes in the calculation of index values and to give added flexibility to OCC in making appropriate adjustments to reflect such changes.

These amendments will grant OCC the authority to adjust outstanding options in the event that an exchange increases or decreases the index multiplier for any index option contract or in the event that any change in the method of calculation of an underlying index creates a discontinuity or change in the level of the index that does not reflect a change in the prices or values of the index's constituent securities. Such a change would occur, for example, if the value of an index were reset from 10,000 to 1,000, which would create a discontinuity that would affect all outstanding options. The changes proposed to Article 1, Section 1 and to Article XVII, Section 1 are designed to

⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by OCC.