

these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The NASD asserts that NNMS/SuperSOES allows market makers to divide quoted share amounts submitted to the system between those shares they direct to display publicly in the Nasdaq montage and the shares they desire to keep in reserve. Known as "reserve size," shares kept in reserve are available for execution through SuperSOES, but are not shown to the marketplace.⁵ The NASD believes that reserve size is an important tool for market participants seeking to execute large securities transactions while limiting negative market price impacts associated with public knowledge of those attempted sales of purchases.

Currently, the rules of Nasdaq's SuperSOES system prohibit the use of its reserve size functionality unless a market maker is displaying at least 1000 shares in its public quote. To Nasdaq's knowledge, it is the only market or trading venue that imposes such a display obligation. The NASD claims that this requirements was initially imposed in the belief that it would encourage the display of larger sized share amounts in the Nasdaq market. The NASD believes that the advent of decimalization, however, has resulted in a diffusion of trading interest and liquidity across multiple price points that militates against the continuous display of large share amounts at a single price level. The NASD asserts that this particularly true for stocks that trade less frequently. In addition, the NASD believes that the continuation of the current rule places NNMS at a competitive disadvantage to other execution systems that allow the use of reserve size without a 1000-share display requirement.

As a result, Nasdaq proposes to eliminate the 1000-share display requirement for using NNMS reserve size. Under the proposed rule change, market makers would be allowed to use NNMS' reserve size anytime they displayed a quote of at least one round lot (100 shares). Nasdaq would continue

its policy of allowing the use of reserve size even if a particular displayed quotation dropped below 100 shares based on partial, interim, executions against that un-updated quote. The NASD believes that the elimination of the 1000-share display requirement makes NNMS reserve size functionality available to market makers on terms similar to the reserve size facilities of competing trading systems while continuing to encourage the display of trading interest through NNMS' "displayed size first" execution algorithm.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁶ in general, and with Section 15A(b)(6) of the Act,⁷ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

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

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

No written comments were solicited or received.

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

Within 35 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 90 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 NASD consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, 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, as amended, 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, as amended, 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 filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2001-66 and should be submitted by December 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45021; File No. SR-OCC-2001-04]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Forms of Margin Collateral

November 5, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 9, 2001, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on August 24, 2001, 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

⁵ Under NNMS's execution algorithm, the system executes against all publicly-displayed shares at the same price level before executing in time priority against reserve size at that same price.

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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 would expand the forms of high quality debt securities that OCC may accept as margin collateral to include non-callable fixed income debt securities issued by approved government sponsored enterprises.

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.²

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

The purpose of this rule change is to expand the types of debt securities that clearing members may deposit with OCC as margin collateral. The declining supply of U.S. Treasury bills, notes, and bonds has been the subject of increased scrutiny from the financial markets. In light of this decreasing supply, OCC proposes to accept non-callable, fixed income debt securities issued by approved government sponsored enterprises ("GSEs") as another form of high quality, liquid debt securities that clearing members may deposit as margin. OCC's membership/margin committee has approved the debt securities issued by two GSEs, the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae), as being eligible for deposit. Both companies are stockholder-owned, Congressionally chartered corporations with the public purpose of increasing the supply and availability of home mortgages.

In 1998, Freddie Mac initiated its Reference Debt Program ("RDP") in order to finance the mortgages it retains. Through the RDP program, which was expanded to include bills in 2000, Freddie Mac sells large issues of long

and short-term non-callable debt (*i.e.*, bills, notes, and bonds) to provide investors with high quality debt securities. The debt securities generally are distributed through a group of participating dealers that also support secondary trading in the securities. To ensure broad based dealer participation, Freddie Mac limits the allocation to any one dealer to 35 percent of the offered amount. The debt securities are offered according to a predetermined schedule and issued in sufficient quantities to provide investors with liquid secondary markets.³ The RDP debt securities issued by Freddie Mac are the general obligations of the company and are not secured by the full faith and credit of the U.S. Government. Not all RDP debt has been rated. However, all such debt that has been rated has received S&P and Moody's top ratings. Domestic clearing and settlement may be done through organizations participating in one or more U.S. clearing systems, principally the book entry system operated by the Board of Governors of the Federal Reserve System or the DTC system. As a result, OCC will be readily able to perfect its security interest in these securities.

Also in 1998, Fannie Mae launched the Benchmark Debt Program (BDP), its debt financing initiative. The BDP model is almost identical to the RDP model. Through the BDP, Fannie Mae sells large issues of non-callable long and short-term debt securities⁴ that are the general obligations of the company and are not secured by the full faith and credit of the U.S. Government. Other than the total value of securities issued in the programs, the most notable difference between the RDP and BDP is that all BDP securities have been rated and have received Moody's and S&P's top credit ratings.

The debt securities issued by Freddie Mac and Fannie Mae are liquid, marketable, and of high credit quality, making them an appropriate form of collateral. These characteristics ensure that OCC will be readily able to liquidate the securities and realize their market value in order to cover any clearing member default. Securities

haircuts have been prescribed to cover any market and liquidity risk.⁵ They are based upon OCC's analysis of the daily volatility of these issues since their launch. The haircuts in all cases cover the largest one-day decline in the securities and, therefore, are considered appropriate.

OCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations. In particular, OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act⁶ because it responds to the decreasing supply of U.S. Government securities by allowing clearing members to deposit other high quality, liquid debt securities with OCC as margin collateral in a manner that safeguards securities that are within OCC's custody and control.

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 OCC 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.

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

⁴ At the end of 2000, the total outstanding notional value of non-callable RDP bonds and notes approached \$100 billion while the outstanding notional value of the non-callable RDP bills approached \$600 billion. Freddie Mac's web site, www.freddiemac.com, provides a detailed description of the RDP program.

⁵ At the end of 2000, the total outstanding notional value of non-callable BDP bonds and notes approached \$180 billion. The outstanding notional value of BDP bills approached \$350 billion in notional value at the end of 2000. Fannie Mae's web site, www.fanniemae.com, provides a detailed description of its BDP program.

⁶ Technical changes are also being made to Rule 604(b)(1) in order to more accurately describe the maturity periods of Government securities for purposes of valuation as margin collateral.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

² The Commission has modified parts of these statements.

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 will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-2001-04 and should be submitted by December 4, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45030; File No. SR-OCC-2001-15]

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

November 6, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 22, 2001, 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 OCC's by-laws and rules to eliminate the theoretical ability of

clearing members to choose a correspondent clearing corporation.

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 purpose of the proposed rule change is to amend OCC by-laws and rules to eliminate the theoretical ability of a clearing member to choose a correspondent clearing corporation to act on the clearing member's behalf for purposes of effecting settlements of exercised stock options, BOUNDS, and matured physically settled security futures (collectively, "physical delivery contracts"). The current by-laws describe a correspondent clearing corporation as a clearing corporation, as defined under the Act, which by agreement with OCC provides facilities for settling physical delivery contracts. The correspondent clearing corporation selected by a clearing member to effect settlement on its behalf is referred to as a designated clearing corporation.

Presently, National Securities Clearing Corporation ("NSCC") is the only entity that qualifies as a correspondent clearing corporation, which therefore negates the need for OCC's rules to allow for clearing member choice. OCC does not anticipate that any other entity will qualify as a correspondent clearing corporation in the foreseeable future.³ Accordingly, OCC desires to update its by-laws and rules to reflect the current reality that only NSCC qualifies as a correspondent clearing corporation. This change should not have any adverse impact of the membership.

The proposed rule change is consistent with the requirements of Section 17A of the Act because it keeps

current OCC by-law and rule provisions that address linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, and securities futures.

(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 and Rule 19b-4(f)(4) thereunder because it effects a change in an existing service of OCC that does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible, and it does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of this 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 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

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

³ Should any entity qualify as a correspondent clearing corporation, OCC will work with that entity to create a linked facility with OCC as a correspondent clearing corporation for purposes of settling physical delivery contracts.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).