

review. In addition, the system provides each filer with a local electronic database of the information it has filed with the Department. NASD Regulation District examiners, Enforcement staff and other internal users also can access the filing information as needed.

Since its implementation, COBRA has improved the efficiency of the review process for electronic filings, decreased review time, and reduced the amount of paper correspondence and documents that members must file with the Department. The system has operated as a faster and more efficient mechanism for communication between filers and NASD Regulation.

#### Description of Proposed Amendments

NASD Regulation is proposing to amend NASD Rule 2710(b)(6) to require members to file information required by subparagraph (b)(6) with the Department through its electronic filing system. The obligation to file information electronically that is proposed in subparagraph (b)(6) would apply to all offerings subject to the Rule's filing requirements, regardless of whether the offering is exempt from registration with the SEC or is submitted confidentially to the SEC for review.

NASD Regulation also is proposing to adopt new subparagraph (b)(5)(B) of Rule 2710 to provide that all documents that are filed with the SEC through the EDGAR system shall be treated as filed with the Association. Members that do not file documents with the SEC through EDGAR would remain obligated to continue to submit multiple copies of any required documents in paper format. However, NASD Regulation is proposing to amend NASD Rule 2710(b)(5)(A) (ii) and (iii) to reduce the number of required copies of these documents from five to three.

#### Implementation

NASD Regulation has hosted several training sessions to provide opportunities for members and their counsel to learn how to file offerings using COBRADesk. In addition, certain Department staff members are dedicated to assisting filers when they access and navigate the system. Prior to and following Commission approval of the proposed rule change, the Department will provide additional training sessions and providing continuing support and assistance to members and their counsel who have questions and are unfamiliar with the system.

The NASD will publish a Notice To Members within 30 days of Commission approval announcing the proposed rule

change and providing an effective date within 60 days of Commission approval.

#### 2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>5</sup> which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change will facilitate the Association's review of public offerings of securities and assist the Association to maintain a confidential, nonpublic database of information related to such filings.

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

NASD Regulation does not believe that the proposed rule change 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

Written comments were neither solicited nor 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 NASD Regulation 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 proposal 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 Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR-NASD-2001-46 and should be submitted by September 14, 2001.

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

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44723; File No. SR-OCC-2001-03]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Rescind Concentration Restrictions on Letters of Credit Issued by Certain Non-U.S. Institutions

August 20, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 11, 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.<sup>2</sup> 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 rescind the concentration restrictions on letters of credit issued by certain non-U.S. institutions.

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

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

<sup>2</sup> A copy of OCC's proposed rule change is available at the Commission's Public Reference Section or through OCC.

<sup>5</sup> 15 U.S.C. 78o-3.

## 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.<sup>3</sup>

### (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 rescind the concentration restrictions placed upon letters of credit issued by a non-U.S. institution where the issuing institution has qualified as a financial holding company under Regulation Y of the Board of Governors of the Federal Reserve System ("Fed") or is an institution owned by or under the control of such a financial holding company.

OCC began accepting letters of credit from non-U.S. institutions in January 1983 in response to concerns that U.S. institutions were increasing their fees to clearing members or were otherwise reducing their overall commitment to financing clearing members. A combination of factors led OCC to impose more stringent qualification standards on non-U.S. institutions than on U.S. institutions issuing letters of credit for the benefit of OCC.<sup>4</sup> The qualification standards generally are found in Sections .01 through .08 of the Interpretations and Policies under OCC Rule 604.

OCC has recently completed a reassessment of these standards to ensure that they remain appropriate and achieve their intended purposes. We have concluded that with the enactment of the Gramm-Leach-Bliley financial Modernization Act of 1999 ("GLB")<sup>5</sup> and the Fed amendments to Regulation Y implementing GLB, the concentration

restrictions found in Interpretations and Policies .02 should be rescinded for certain non-U.S. institutions.

GLB created a new type of holding company called a "financial holding company" and specified certain eligibility requirements for such institutions.<sup>6</sup> To become a financial holding company, GLB requires a bank holding company to submit a declaration to the Fed that the company elects to be a financial holding company and a certification that all of the depository institutions controlled by the company are well capitalized and well managed. Under GLB, foreign banks are specifically permitted to qualify as financial holding companies. GLB also requires the Fed to apply comparable capital and management standards to such banks that are comparable to those applied to U.S. banks owned by a financial holding company, giving due regard to certain enumerated principles.

The Fed has amended Regulation Y in order to implement provisions of the GLB Act governing the creation and conduct of financial holding companies.<sup>7</sup> Section 225.90 sets forth requirements that a foreign bank must meet for purposes of qualifying as a financial holding company, including capitalization and management tests.<sup>8</sup> The well-capitalized test includes risk based capital assessments.<sup>9</sup> The well-managed test requires the foreign bank to receive satisfactory Fed regulatory ratings, to receive the consent of its home country supervisor to the expansion of its U.S. activities, and to meet management standards comparable to those required of a U.S. bank owned by a financial holding company.<sup>10</sup> A foreign bank's election to be treated as a financial holding company is effective on the thirty-first day after the date that the election was received by the appropriate Federal Reserve Bank unless the applicant receives prior written notice that its election is

effective or the applicant is notified that the election is ineffective.<sup>11</sup>

OCC believes that the Fed's regulatory policies governing the qualification of foreign banks as financial holding companies provide sufficient safeguards as to the creditworthiness of such institutions and the collectibility of letters of credit issued by them to warrant rescinding the concentration restrictions currently imposed on such institutions. Letters of credit issued by non-U.S. institutions currently represent only 3.2% of total margin deposits,<sup>12</sup> and OCC does not believe that rescinding the concentration requirements for qualified non-U.S. financial holding companies will materially increase its exposure to letters of credit issued by non-U.S. institutions specifically or letters of credit generally.

The proposed rule change is consistent with section 17A of the Act because it would facilitate the prompt and accurate clearance and settlement of securities transactions and should allow OCC to safely keep funds and securities while allowing non-U.S. institutions that have qualified as financial holding companies to compete on an equal footing with U.S. institutions for purposes of issuing letters of credit on behalf of clearing members.

### (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

<sup>6</sup> Qualified financial holding companies may engage in securities, insurance, and other activities that are financial in nature or incidental to a financial activity. 50 FR 14433.

<sup>7</sup> See 66 FR 399 (January 3, 2001) (Board of Governors of the Federal Reserve Board adopting a final rule to amend Regulation Y to implement the financial holding company provisions of the GLB).

<sup>8</sup> Section 225.93 sets forth provisions that are applicable should a foreign bank fail to meet the applicable capital and management standards and specifies the consequences of such failure. Consequences include being required to execute an agreement with the Fed providing for a schedule of actions to be taken by the foreign bank to become compliant and, if the foreign bank is unable to meet such schedule, being subjected to an order requiring the divestiture or termination of certain business in the United States. Section 12 CFR 225.93 (2000).

<sup>9</sup> Section 12 CFR 225.90(b) (2000).

<sup>10</sup> Section 12 CFR 225.90(c) (2000).

<sup>11</sup> Section 12 CFR 225.92 (2000). The Fed publishes a list of effective financial holding company elections on its web site. As of January 2001, 13 out of 32 non-U.S. Institutions approved by OCC to issue letters of credit have qualified as financial holding companies.

<sup>12</sup> Letters of credit currently represent only 11.9% of total margin deposits.

<sup>3</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>4</sup> Those factors included concerns about the diversity of regulatory structures, exposure to economic or political risk outside of the United States, and OCC's relative inexperience in dealing with non-U.S. institutions. Securities Exchange Act Release No. 19422 (January 12, 1983), 48 FR 2481 [File No. SR-OCC-82-8] (formalizing certain OCC criteria for approving domestic and foreign banks as issuers of letters of credit for margin purposes).

<sup>5</sup> Gramm-Leach-Bliley Financial Modernization Act of 1999, Pub. L. No. 106-102, 113 Stat. 1338 (1999).

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-2001-03 and should be submitted by September 14, 2001.

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

**Jonathan G. Katz,**  
*Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44722; File No. SR-SCCP-2001-04]

#### Self-Regulatory Organizations; The Stock Clearing Corporation of Philadelphia; Order Granting Approval of a Proposed Rule Change Establishing Fines for Late Margin Call Payments and an Appeal for Such Fines

August 20, 2001.

On February 27, 2001, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-

SCCP-2001-04) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposed rule change was published in the **Federal Register** on May 29, 2001.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### I. Description

The purpose of the filing is to implement a fine schedule for SCCP margin members who are late meeting a margin call payment. The proposed rule change is intended to encourage the timely payments of margin calls. Rule 9 provides, in part, that SCCP will provide margin accounts for margin members that clear and settle their transactions through SCCP's omnibus clearance and settlement account. SCCP provides margin for such accounts based on its procedures and Regulation T of the Board of Governors of the Federal Reserve System. Margin members who are designated as specialists or alternate specialists in a security receive margin credit of 15% with respect to positions in that security held in their specialist accounts. Members holding positions for which they are not designated as a specialist or alternate specialist receive non-specialist margin credit of 50%. SCCP may issue margin calls to any margin member when the margin requirement exceeds the account equity. Pursuant to SCCP procedures, margin call payments are due by 12:00 p.m. EST the business day of the call. Late margin payments are not currently subject to a specific late fine although members may be subject to possible disciplinary action pursuant to SCCP Rule 22.

SCCP believes that implementation of the proposed fine schedule will reduce the number of incidents of later margin call payments by members. Notwithstanding the late margin call payment fine, members would continue to be subject to possible disciplinary action pursuant to SCCP Rule 22.

Currently, Rule 23 provides, in relevant part, a SCCP participant<sup>3</sup> with the right to appeal from any decision or decisions of SCCP resulting in sanctions or penalties imposed under Rule 20 or 22.<sup>4</sup> SCCP proposes to include fines

imposed under Rule 9 to the list of applicable actions specified in Rule 23.

#### II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the clearing agency's custody or control or for which it is responsible. The rule change allows SCCP to fine members for making later margin payments. Implementing the fine schedule should encourage margin members to submit margin payments in a timely manner thereby providing SCCP with adequate collections so that it may fulfill its safeguarding obligations. Therefore, the Commission finds that SCCP's proposed rule change is consistent with section 17A of the Act and the rules and regulations thereunder.

#### III. 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-SCCP-2001-04) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**  
*Secretary.*

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#### SMALL BUSINESS ADMINISTRATION

##### Office of the National Ombudsman

##### Tri-Regional Regulatory Fairness Board Town Hall Meeting

The Office of the National Ombudsman, U.S. Small Business Administration, will convene a Town Hall Meeting on Wednesday, August 29, 2001, from 3:00-5:30 pm EST, at the Hyatt Regency, One Goat Island, Newport, RI, 02840, to hear comments and/or complaints from small businesses and representatives of trade associations concerning potentially unfair regulatory enforcement or compliance actions taken by Federal agencies.

Anyone wishing to attend and make comments must contact James Van

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

<sup>2</sup> Securities Exchange Act Release No. 44334 (May 22, 2001), 66 FR 29199.

<sup>3</sup> The term "participants" means persons or organizations which have qualified for membership in SCCP pursuant to SCCP Rules 2 and 3. Participants are also referred to in SCCP Rules as "members."

<sup>4</sup> SCCP Rule 23 Section 1(c).

<sup>5</sup> 17 CFR 200.30-3(a)(12).