

provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-96-21 and should be submitted by November 1, 1996.

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

Margaret H. McFarland,  
Deputy Secretary.

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[Release No. 34-37792; File No. SR-OCC-96-11]

**Self-Regulatory Organization; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Membership Standards**

October 7, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 30, 1996, 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 will amend OCC's by-laws and rules regarding OCC's initial membership standards and the ongoing duties of clearing members.

**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 principal purpose of the proposed rule change is to amend certain initial membership standards and certain ongoing duties of clearing members. OCC has a three tiered system of safeguards against a clearing member failure or default, and this system is reviewed each year. The initial membership standards and ongoing duties comprise the system's first tier of safeguards. The other two tiers are margin requirements and clearing fund deposits. OCC's membership standards are designed to assure OCC of an applicant's initial creditworthiness, operational capability and experience, and competence to clear option transactions.

OCC is proposing to make several enhancements to its initial membership standards and ongoing duties of clearing members. The proposed changes and the purposes thereof are described below.

**1. Article V, Section 1 of the By-Laws**

A number of changes are being proposed to the Interpretations and Policies ("Interpretations") under Article V, Section 1 of OCC's by-laws. Interpretation 2 will be amended to add clause d, which will provide that the Membership/Margin Committee ("Committee") of the Board of Directors ("Board") will not recommend approval of an application for clearing membership unless the applicant's Designated Examining Authority ("DEA") has stated that it has no objections to the application for clearing membership. If requested in writing by the applicant, the Committee will be permitted to waive the requirement in exceptional cases and where good cause is shown. Under OCC's current membership review procedures, an applicant's DEA is contacted for information regarding the applicant and is requested to provide advice or any objections with respect to the applicant's ability to self-clear option transactions. OCC believes that input from an applicant's DEA provides critical information regarding the firm's compliance with all applicable requirements with respect to the maintenance of books and records as well as the firm's ability operationally and financially to self-clear. The proposed addition of clause d to Interpretation 2 will codify OCC's existing procedures.

Interpretation 3 will be amended to require that if an applicant elects to use

an associated person to satisfy the applicable requirements of clauses a through c thereof the designated associate person must be a full time employee of the applicant.<sup>3</sup> The purpose of the requirements contained in clauses a through c is to ensure that an applicant has at least one person with sufficient competence and experience to supervise the preparation of financial reports and the back office operations of the applicant. Interpretation 3 also will be amended to require that the key operations employees required to have attended applicable OCC operations readiness review sessions and successfully completed any applicable OCC operational and financial examinations for operations employees be full time employees and attend all such review sessions. OCC believes that the preparation of financial reports and the proper operation of back office responsibilities are such critical functions that it is appropriate that there be full time supervision of these functions.

Interpretation 4 will be amended to eliminate the ability of an applicant for clearing membership to enter into a facilities management arrangement with a non-clearing member. There are no current limitations on who might act as a non-clearing member facilities manager, and OCC is limited in its ability to obtain financial and other information relating to the creditworthiness and operational capability of such a non-clearing member facilities manager. As a result, OCC believes it is prudent to permit only OCC clearing members to act as facilities managers for applicants because OCC has existing systems in place to monitor their creditworthiness and operational capabilities. Although OCC currently has two clearing members that use the same non-clearing member facilities manager, OCC believes that each of these clearing members will be able to enter into a facilities management arrangement with a clearing member.

Interpretation 5 will be added to authorize the Committee to recommend

<sup>3</sup> Clauses a through c require that an applicant that is a registered broker-dealer must be registered as a "Limited Principal—Financial Operations" with the National Association of Securities Dealers; an applicant that is applying for clearing membership as an exempt Canadian clearing member must be registered as a principal/director/officer and as a designated registered options principal with the Investment Dealers Association of Canada; and an applicant that is a non-U.S. securities firm must have completed any applicable OCC financial and operational examination for employees who are responsible for supervising the preparation of applicant's financial reports.

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> These statements have been modified by the Commission.

to the Board that additional financial requirements be imposed on an applicant for clearing membership (e.g., an increase in net capital or a requirement to make and maintain initial margin deposits) or that restrictions be imposed on the applicant's clearance of option transactions if the Committee has determined that the applicant's financial or operational condition in relation to the business that the applicant has proposed to transact through OCC makes such action necessary or advisable for the protection of OCC, clearing members, or the general public. The Board will be required to review independently such a recommendation to determine whether it should be imposed on an applicant. Any requirements or restrictions so imposed would remain in force for the period determined by the Board but in any event no longer than the end of the first three calendar months commencing after the applicant's admission to clearing membership.

OCC believes that it is important for the Committee to have the means to address situations where an applicant might otherwise technically meet OCC's membership standards but might present special risks to OCC and its clearing membership because of the type and volume of business the applicant proposes to transact relative to its financial or operational capability. This authority is similar to the authority found in OCC Rule 305, under which the Chairman or President may impose certain restrictions on the activities of a clearing member if such officer believes that the financial or operational condition of a clearing member warrants such action for the protection of OCC, other clearing members, and the general public. The three month time limitation would ensure that the requirements or restrictions imposed under this initial authority would not have an unlimited duration and, therefore, would not be unduly burdensome on an applicant. However, the restriction would permit OCC to gain experience with the ability of the applicant to meet the responsibilities of clearing membership before having to consider acting under Rule 305.

## 2. Article V, Section 3 of the By-Laws

Section 3 of Article V will be amended to add Interpretation 1. Such interpretation will require an applicant, which is approved for clearing membership subject to the satisfaction of specified conditions, to meet those specified conditions within six months from the date on which its application

is approved unless the Board prescribes a shorter time period at the time of approval. If an applicant failed to meet the specified conditions within the applicable time period, the approval of the application will be deemed withdrawn, and the application will be deemed to have lapsed unless the period to satisfy those conditions is extended by OCC. Any applicant seeking such an extension will be required to make a written request specifying any material changes that have occurred in its ability to transact business with OCC. The Chairman or the President will be vested with the authority to approve or disapprove the extension request. No deadline could be extended beyond one year from the date the application originally was approved.

This interpretation is intended to ensure that an approved applicant meets in a timely fashion all conditions associated with its application for clearing membership and to protect OCC against material but unknown changes in such applicant's financial and operational condition. In addition, it will ensure that an applicant remains current with respect to the operational requirements for transacting business with OCC.

## 3. Chapter II of the Rules

Rule 201 will be amended (i) to delete the requirement that each clearing member maintain an office in the vicinity of the office of OCC designated by the clearing member pursuant to Rule 204 and (ii) to ensure that every clearing member provides OCC with prompt written notice of the relocation of either its principal office or the office maintained by the clearing member to comply with the requirements of Rule 201(a) or of a material change in a non-U.S. clearing member's arrangements under Rule 201(b) with OCC as an alternative to an office under Rule 201(a).

Rule 214(a) will be amended to require that only associated persons who are full time employees of a clearing member may satisfy the applicable requirements of that rule.<sup>4</sup> The interpretations thereunder will be amended (i) to shorten the time period to three months within which a clearing member must replace an associated person through whom a clearing member has been meeting the requirements of the rule and (ii) to require notice of any separation between

the clearing member and such associated person.

Rule 215 will be added to require each clearing member to provide OCC with prompt prior written notice of material changes to its operations including: (i) its involvement in any merger, combination, or consolidation; (ii) the acquisition of another entity; (iii) the sale of a significant portion of its assets; (iv) a change in its form of business organization or the name under which it does business; and (v) a change in the direct or indirect beneficial ownership of 10% or more of the equity of the clearing member. Clearing members will be required to provide OCC with such documents as OCC might require with respect to such events as well as a list of persons or entities that are the beneficial owners directly or indirectly of 10% or more of the equity of the clearing member.

The purpose of these proposed changes is to modify OCC's rules regarding location of clearing member offices. OCC no longer believes that it is necessary for clearing members to maintain an office in the actual vicinity of an office of OCC because electronic and other capabilities exist that reduce the importance of physical proximity in ensuring that a clearing member is able to transact promptly all necessary business with OCC. The other changes are designed to ensure (i) that OCC is advised of material changes to a clearing member's business so that applicable agreements, documentation, and collateral can be amended in a timely and efficient manner; (ii) that OCC is advised of changes that might affect the financial or operational capability of clearing members; and (iii) that the clearing member's full capabilities are promptly restored in the case of key employee departures. Rule 214 will be amended for the reasons described above in relation to Interpretation 3 of Section 1, Article V of the by-laws.

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The proposed rule change is consistent with Section 17A of the Act<sup>5</sup> in that it augments OCC's initial and ongoing membership standards which are designed to ensure a participant's creditworthiness, operational capability and experience, and competency in clearing options transactions.

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

Any membership standard has the potential to exclude certain persons from clearing membership and thereby technically to reduce the number of competing clearing members. However,

<sup>4</sup> Rule 214(a) contains provisions similar to Interpretation 3 of Article V, Section 1 of the by-laws.

<sup>5</sup> 15 U.S.C. 78q-1 (1988).

OCC believes that the proposed changes in membership standards and procedures appropriately balances such potential effects against the important need to ensure that new OCC clearing members do not expose OCC, its members, the national clearing system, or the investing public to undue risk.

*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 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. 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. 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 provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR-OCC-96-11 and should be submitted by November 1, 1996.

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

Margaret H. McFarland,

*Deputy Secretary.*

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**[Release No. 34-37793; File No. SR-OCC-96-13]**

**Self-Regulatory Organization; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Unit Investment Trusts as Margin Collateral**

October 7, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 6, 1996, 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 will permit OCC to accept certain publicly traded units of beneficial interest in unit investment trusts as a form of margin collateral.

**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 principal purpose of the proposed rule change is to permit clearing members to deposit as margin

with OCC publicly traded units of beneficial interest ("trust units") in unit investment trusts that hold portfolios or baskets of common stocks. These classes of trust units are traded and cleared like shares of common stock and are typically held in book entry form at a securities depository. As a result, OCC will be able readily to perfect a security interest in deposited trust units and to liquidate them if necessary.

Accordingly, OCC believes it is appropriate to accept trust units as a form of margin collateral under the conditions specified in new subparagraph (4) to Rule 604(d).

Subparagraph (4) will permit OCC to accept trust units as a form of margin collateral. It will provide that the term "stock" as used in Rule 604(d) includes trust units in unit investment trust holding portfolios or baskets of common stocks. In order to be eligible for deposit, the trust units will also have to meet the requirements applicable to stock under Rule 604(d) and be of a class approved by OCC for deposit as margin.<sup>3</sup> Pursuant to Rule 604(d)(1), trust units will be valued on a daily basis at 60% of current market value.

Section 11 will be added to the Interpretations and Policies of Rule 604 to vest OCC's Membership/Margin Committee (the "Committee") with the authority to approve classes of trust units for deposit as margin. At the present time, the Committee has approved Standard & Poor's ("S&P") depository receipts on the S&P 500 Index and S&P MidCap 400 Index as being classes approved for deposit as margin. In addition, the proposed rule change will replace the term "stocks" with the term "securities" in subparagraphs (2) and (3) to Rule 604(d). Subparagraphs (2) and (3) of Rule 604(d) limit the use of customer securities as margin and prescribe the method of depositing margin securities. The amendment will clarify that such sections apply not only to stocks but also corporate bonds eligible as margin deposits under Rule 604(d)(1).

The proposed rule change is consistent with Section 17A of the Act because it expands the forms of margin collateral that may be deposited with OCC in a prudent and safe manner

<sup>3</sup> Rule 604(d) requires that to be eligible as margin deposits, stock must have a market value greater than \$10 per share and must be traded either on a national securities exchange and have last sale reports collected and disseminated pursuant to a consolidated transaction reporting plan or traded in the over-the-counter market and designated as a national market system security pursuant to the Commission's Rule 11Aa2-1.

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> These statements have been modified by the Commission.