

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release 34-41427; File No. SR-MCC-99-01]

### Self-Regulatory Organizations; Midwest Clearing Corporation; Notice of Filing of a Proposed Rule Change Regarding Sponsored Account Fund Contributions

May 19, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on February 26, 1999, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-MCC-99-01) as described in Items I, II, and III below, which items have been prepared primarily by MCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will increase the minimum contribution that sponsored participants are required to make to MCC's sponsored account fund.

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

In its filing with the Commission, MCC 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. MCC 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

MCC sponsors accounts ("sponsored accounts") for certain eligible Chicago Stock Exchange specialists, floor brokers, and market makers ("sponsored participants") to provide them with access to the clearance, settlement, and depository services of a qualified clearing agency.<sup>3</sup> To cover any losses that MCC may incur from operating the sponsored accounts, MCC requires sponsored participants to contribute to a sponsored account fund. A sponsored participant's required contribution to the sponsored account fund currently is the greater of \$15,000 ("minimum contribution") or 110% of the amount calculated pursuant to the formula of NSCC and DTC ("alternative contribution")<sup>4</sup>

According to MCC, both NSCC and DTC require a minimum deposit of \$10,000.<sup>5</sup> Therefore, the current minimum amount a sponsored participant must contribute to the sponsored account fund is \$22,000, which is based on the alternative contribution formula.

Under the proposed rule change, the minimum contribution will increase from \$15,000 to \$150,000. As a result, the new required contribution will be \$150,000, which will be based on the minimum contribution amount. MCC believes the increase is necessary due to an increased volume of transactions cleared through the sponsored accounts and increased market volatility.

The increase will be phased-in over a twelve-month period. To announce the actual phase-in dates, MCC will issue an administrative bulletin no later than thirty days after the Commission's order approving the proposal. The first phase-in date will be no more than 60 days from the date the bulletin is published and will increase the minimum contribution to \$50,000. The second and third phase-in dates will be six months and twelve months from the initial phase-in date and will increase the minimum contribution to \$100,000 and \$150,000, respectively.

MCC believes the proposed rule change is consistent with Section

17A(b)(3)(F)<sup>6</sup> of the Act and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions and because it will assure the safeguarding of the securities and funds in MCC's custody or control or for which MCC is responsible.

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

MCC does not believe that the proposed rule change will impose any burden on competition.

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

MCC has neither solicited nor received written comments on the proposed rule change.

### 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 MCC 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 fix six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, 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 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, D.C. 20549. Copies of such

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by MCC.

<sup>3</sup> MCC uses the services of two qualified clearing agencies on behalf of its sponsored participants: National Securities Clearing Corporation ("NSCC") and The Depository Trust Company ("DTC").

<sup>4</sup> The formula for the alternative contribution is based on the participant's use of MCC's services or those of a qualified clearing agency. The proposed rule change does not affect the alternative contribution calculation.

<sup>5</sup> See Letter from Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, Chicago Stock Exchange (March 19, 1999).

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

filing also will be available for inspection and copying at the principal office of MCC. All submissions should refer to File No. SR-MCC-99-01 and should be submitted by June 16, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41422; File No. SR-OCC-99-06]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Purchase of OCC Stock by Participant Exchanges and the Rights of Participant Exchanges on Liquidation of OCC

May 18, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on March 15, 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 from interested persons on the proposed rule change.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, OCC will update the provisions of its Certificate of Incorporation, By-Laws, and Stockholders Agreement relating to the purchase of OCC stock by participant exchanges and the rights of those exchanges in the event of OCC's liquidation.

#### 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 rule change would make two substantive changes. First, it would increase the maximum purchase price for OCC stock from \$333,333 to \$1,000,000 per exchange. Second, upon liquidation of OCC it would effectively limit distributions to exchanges that first became stockholders after December 31, 1998, to the amounts that such exchanges paid for their stock plus a pro rata share of any increase in OCC's retained earnings after December 31, 1998.

##### Increase in Maximum Purchase Price

Article VII, Section 2 of OCC's By-Laws provides that an options exchange that wishes to become a participant in OCC must purchase 5,000 shares of Class A Common Stock and 5,000 shares of Class B Common Stock of OCC.<sup>3</sup> Currently, the price is an amount equal to book value as of the close of the preceding month but not less than \$250,000 nor more than \$333,333. As of December 31, 1998, the book value of 10,000 shares of OCC stock was \$6,365,100 per share so the effective purchase price is the maximum price of \$333,333.

The \$333,333 maximum dates from 1975, when OCC (then named Chicago Board Options Exchange Clearing Corporation) became the common clearing facility for listed options. It has not been reconsidered since that time. In view of the length of time that has elapsed since the present maximum was fixed and the prospect that new options markets may seek to become participant exchanges of OCC,<sup>4</sup> OCC engaged Deloitte & Touche, LLP ("Deloitte") to recommend a fair price for participation in OCC.

Using a variety of valuation methodologies and substantially discounting book value to reflect lack of control and lack of marketability, Deloitte arrived at an indicated value of

\$1,080,000 for a 20% interest in OCC. The proposed rule change would increase the maximum price for an interest in OCC to \$1,000,000, which approximates the amount recommended by Deloitte.

The \$1,000,000 amount also approximates the value in 1999 dollars of \$333,333 in 1975.<sup>5</sup> The present participant exchanges acquired their stock in OCC between 1973 and 1976. Increasing the maximum price to \$1,000,000 would tend to equalize the investment required of new exchanges with the investments made by OCC's present participant exchanges in the mid-1970's, expressed in 1999 dollars.

OCC's present rules specify a minimum purchase price of \$250,000 if the book value of a proportionate interest in OCC would be less than that amount. Because the book value of a proportionate interest in OCC greatly exceeds \$250,000 and is likely to continue to do so, the proposed rule change would eliminate the minimum price as unnecessary.

##### Change in Liquidation Rights

Under OCC's present charter, if OCC were to liquidate, the holders of Class A Common Stock would be entitled to receive the par value of their shares and the balance of OCC net assets would be distributed to the holders of Class B Common Stock. Because the purchase price of Class B Common Stock is capped at a level substantially below book value, the current liquidation scheme would provide a potential windfall to new stockholders. If a new exchange purchased stock either for the present maximum of \$33.33 per share or the proposed maximum of \$100.00 per share and if OCC then liquidated, each holder of Class B Common Stock, including the new exchange, would be entitled to receive more than \$500.00 per share on liquidation. OCC has no intention of liquidating. Nevertheless, the outcome if OCC did liquidate would be unfair to those exchanges that were stockholders while OCC was accumulating its present stockholders' equity.

The proposed rule change would address this potential inequity by establishing a new scheme for distribution of OCC's net assets on liquidation. Under the new scheme, holders of Class A Common Stock and Class B Common Stock would first be paid the par value of their shares (\$10.00 per share). Next, each holder of

<sup>2</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>3</sup> The holders of Class A Common Stock elect OCC's member directors. The holders of Class B Common Stock voting together as a class elect OCC's public and management directors. Each exchange holds a separate series of Class B Common Stock entitling it to elect one exchange director.

<sup>4</sup> Cf. "Fledgling Electronic Options Exchange Files with SEC for Registration as National Bourse," *The Wall Street Journal*, Feb. 3, 1999, at C 11.

<sup>5</sup> Based on the All Urban Consumer CPI, \$333,333 on January 1, 1975, would amount to \$1,009,932 in 1999. Using the General Consumer Price Index, \$333,333 on January 1, 1975, would amount to \$1,056,518 in 1999.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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