

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.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-13302 Filed 5-25-99; 8:45 am]

BILLING CODE 8010-01-M

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"),¹ 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.²

(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.³ 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,⁴ 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 1975.⁵ 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

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

³ 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.

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

⁵ 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.

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

Class B Common Stock would receive a distribution of \$1,000,000, allowing it to recover the value of its investment in 1998 dollars. Next, an amount equal to OCC's stockholders' equity at December 31, 1998, minus the distributions described in the two preceding sentences would be distributed to those exchanges that acquired their Class B Common Stock before December 31, 1998. Finally, any excess assets (*i.e.*, post-1998 retained earnings) would be distributed equally to all holders of Class B Common Stock. The effect would be to allow each exchange to recover its investment but to reserve OCC's present retained earnings for those exchanges that were stockholders during the period when the earnings were being accumulated.

Technical and Conforming Changes

The last sentence of Article VII, Section 2 of the By-Laws would be revised to eliminate a circularity. That provision currently states that if OCC fails or is unable to purchase a stockholder's shares when required under the Stockholders Agreement, the stockholders may sell its shares "to a person who is qualified under Section 1 of this Article VII for participation in [OCC] as an 'Exchange' and who is not then a stockholder of the Corporation." However, Section 1 of Article VII provides that in order to be qualified for participation in OCC as an Exchange, a securities exchange or securities association must already have purchased stock in OCC. The proposed rule change would eliminate the circularity by allowing the stockholders to sell its shares to any national securities exchange or national securities association that had effective rules for the trading of options. Conforming changes would be made in the Stockholders Agreement.

Article VII, Section 3 would be amended to reflect previous rule changes providing for public directors. It would also be amended to eliminate an obsolete requirement that the stockholders renew their voting agreement every ten years.

Article VII, Section 4 would be amended to reflect the fact that the Participant Exchange Agreement between OCC and its participant exchanges now includes provisions relating to Rule 9b-1 options disclosure documents.

Section 10(a) of the Stockholders Agreement would be amended to eliminate obsolete material and to increase, proportionately with the proposed increase in the purchase price of OCC stock, the dollar discounts that would apply if OCC found it necessary

to repurchase a participant exchange's stock within six years of the date when the stock was acquired. Section 12 of the Stockholders Agreement, which is obsolete, would be deleted in its entirety.

OCC believes that the proposed rule change is consistent with Section 17A of the Act⁶ and the rules and regulations thereunder because it provides for a fair valuation of OCC's stock on its acquisition and liquidation.

(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 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. 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-99-06 and should be submitted by June 16, 1999.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 99-13303 Filed 5-25-99; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Notice 3066]

Office of the Deputy Assistant Secretary for Energy, Sanctions, and Commodities; Receipt of Application for a Permit for Pipeline Facilities To Be Constructed and Maintained on the Borders of the United States

AGENCY: Department of State.

SUMMARY: This is a correction to **Federal Register** Public Notice 3049 of May 4, 1999 (published at 64 FR 24689, May 7, 1999). The Department of State has received an application from the Penn Octane Corporation requesting a permit, pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993, authorizing Penn Octane Corporation, in a joint venture with Cowboy Pipeline Services Company International, to construct, connect, operate and maintain two pipelines originating in the Port of Brownsville District, Texas and crossing the International Boundary (Rio Grande River) between Cameron County, Texas and the State of Tamaulipas, Mexico. The pipelines to be constructed would be used to transport liquid petroleum gas (LPG) and refined petroleum products (diesel/gasoline) from the United States to Mexico. Penn Octane Corporation is a publicly held company headquartered in Los Angeles California. The proposed pipelines will connect a currently existing pipeline in Cameron County, Texas with a proposed storage and distribution terminal in Tamaulipas, Mexico which will be constructed and operated by Penn Octane of Mexico.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before June 20, 1999.

⁶ 15 U.S.C. 78q-1.

⁷ 17 CFR 200.30-3(a)(12).