Exchange know whether members have active securities accounts.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b)(5)[4] of the Act, which requires that an exchange have rules that are designed to promote just and equitable principles of trade, 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. The Exchange believes that the proposed rule change, as amended, will help accomplish these ends by strengthening the Exchange's ability to surveil the Floor activities of members.

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

The Exchange does not believe that the proposed rule change, as amended, will impose 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

The Exchange 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 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 Exchange 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 Amendment No. 2 to the proposed rule change is consistent with the Act. Persons making written submission 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 offices of the NYSE. All submissions should refer to File No. SR–NYSE–99–25 and should be submitted by July 6, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–15622 Filed 6–20–01; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44434; File No. SR–OCC–2001–05]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Clearing Security Futures

June 15, 2001.

On March 21, 2001, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') and on April 16, 2001, amended a proposed rule change (File No. SR–OCC–2001–05) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on April 30, 2001.[2] Three comment letters were received.[3] For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The Commodity Futures Modernization Act (''CFMA''), which became law on December 21, 2000, eliminated the preexisting ban on trading in futures contracts on individual securities and narrow-based stock indices. Such ''security futures'' will be permitted to be traded on a principal to principal basis between ''eligible contract participants'' on August 21, 2001, and by other classes of customers on December 21, 2001. The purpose of OCC's proposed rule change is to make an initial identification of the kinds of markets for whom OCC will clear transactions in security futures.

OCC proposed to amend its By-Laws to provide that OCC may clear transactions in security futures effected on any national securities exchange or association registered under Section 6(a) or 15A(a) of the Act, as amended, or any ''designated contract market'' (as that term is used in the Commodity Exchange Act (''CEA'')) that is registered as a national securities exchange under Section 6(g) of the Act.

OCC anticipates that some or all of OCC's five participant exchanges will trade security futures, either on the participant exchange itself or on an affiliated futures exchange. OCC expects that it will therefore enter into the business of clearing security futures. However, the types of entities that can provide a marketplace for security futures include markets in addition to the options exchanges that are OCC's participant exchanges. These include other national securities exchanges and national securities associations as well as any ''board of trade'' that has been designated as a ''contract market'' under the CEA. An SEC-regulated market that wishes to trade security futures is required to obtain a limited-purpose registration as a designated contract market in security futures products under the CEA through a notice filing with the Commodity Futures Trading Commission (''CFTC''). A CFTC-regulated market trading security futures is required to obtain a limited-purpose registration with the Commission as a national securities exchange under a similar procedure. Each market will be regulated primarily by the agency (*i.e.,* the Commission or the CFTC) with which it is fully registered.

OCC believes that it is well-positioned to clear security futures for any of these types of markets. OCC's role as the common clearinghouse for equity options offers opportunities for margin offsets and other efficiencies that would not be as readily available if positions in security futures were carried with other clearinghouses. OCC's settlement interface with the National Securities Clearing Corporation gives OCC the

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 44212, (April 23, 2001), 66 FR 21425.

[3] Letters to Jonathan Katz, Secretary, SEC, from Chris Concannon, Vice President, The Island ECN, Inc. (May 21, 2001) (''Island letter''); William H. Navin, Executive Vice President and General Counsel, OCC (June 1, 2001) (''OCC letter''); and Fulbright & Jaworski, L.L.P., on behalf of The Philadelphia Stock Exchange, (June 7, 2001) (''PHLX letter'').

ready ability to effect delivery of underlying stocks with respect to physically settled security futures. Because of OCC's experience and expertise in adjusting equity option contracts to compensate for various corporate actions, OCC is prepared to perform the same necessary function for security futures. Finally, OCC, as a securities clearing agency, is legally able to clear security futures transactions originating on any type of market whereas a futures clearinghouse cannot clear security futures transactions originating on national securities exchanges that are registered with the Commission pursuant to Section 6(a) of the Act without registering as a securities clearing agency.[4]

Clearing members have conveyed to OCC their desire to consolidate clearance, settlement, and collateralization of similar or hedgeable products. This need grows in urgency with the scale of the collateral necessary to support the growing security derivatives markets.

OCC believes that by clearing security futures, it will minimize the scale and cost of collateral, maximize the efficiency of clearance and settlement, reduce systemic risk, provide the best possible service to clearing members at the lowest possible price, and ultimately will reduce costs to investors. Therefore, as an initial step in providing clearing services for security derivatives markets, OCC wishes to begin clearing stock futures transactions for any national securities exchange or association registered under Section 6(a) or 15A(a) of the Act or any ''designated contract market'' (as that term is used in the CEA) that is registered as a national securities exchange under Section 6(g) of the Act.

Because these products and the systems and other infrastructure needed to clear them are still being designed and developed, OCC has not yet filed a complete set of rules for clearing security futures. These rules, including a proposed form of clearing agreement for security futures, will be filed subsequently under Rule 19b–4. However, OCC filed the present rule filing to identify for which markets OCC will initially clear so those markets and OCC can begin preparing for the start of security futures trading, which can begin on August 21, 2001.

Accordingly, the proposed amendment to Article I of OCC's By-Laws defines a separate category of market—a ''security futures market''—for whom OCC would clear transactions in security futures. The definition of ''security futures market'' includes certain marketplaces for security futures under the provisions of the CFMA other than participant exchanges.[5] A security futures market would not be defined as an ''exchange'' under OCC's By-Laws, and OCC would be simply a provider of clearing services to such markets.[6] For convenience, however, the terms ''exchange transaction,'' ''exchange rules,'' and ''exchange member'' would be redefined to include transactions on, and the rules and members of, as the case may be, a security futures market.[7]

OCC anticipates that it will clear security futures transactions on the same terms and subject to the same clearing fees for any market for which it clears. However, OCC proposes to distinguish in limited ways between participant exchanges and security futures markets that are affiliated with a participant exchange, on the one hand, and non-affiliated security futures markets on the other hand.

For example, OCC proposes that markets other than participant exchanges and their affiliates be required to make some form of ''investment'' in OCC analogous to the redeemable equity investments required of participant exchanges. However, OCC does not propose that such markets be offered common stock. Instead, OCC proposes that non-affiliated security futures markets be required to make a ''good faith'' deposit with OCC of $250,000 to support the clearing of transactions for security futures.[8] That deposit will be refunded to the security futures market in whole or in part if it ceases clearing security futures through OCC. OCC is considering formula that would fix the amount of the refund at the lesser of either the full amount of the original deposit or 50% of the amount of clearing fees received by OCC from clearing members as a result of transactions on that market (*i.e.,* a kind of ''earn out'' provision).[9]

OCC would not be obligated to undertake security futures clearing for any non-affiliated security futures market if it determined that to do so would tax OCC's resources in a way that would jeopardize OCC's ability to fully perform its other contractual and statutory responsibilities. Any OCC determination to refuse to undertake security futures clearing for a non-affiliated security futures market will be done on a fair and non-discriminatory basis.

The proposed By-Law provision would also require an exchange or security futures market that wishes OCC to clear its transactions in security futures to enter into a clearing agreement with OCC that would define the business relationship between OCC and such market with respect to security futures. Additionally, as described below, OCC proposes covering security futures udner separate clearing agreements between it and the markets desiring to clear security futures transactions through OCC rather than to incorporate such agreements concerning security futures in the Restated Participant Exchange Agreement (''RPEA''). OCC anticipates that there will be separate but uniform (except for provisions relating to the good faith deposit required of non-affiliated security futures markets) clearing agreements with each exchange and security futures market that clears security futures through OCC. These agreements would cover some of the same matters covered in the RPEA but would omit inapplicable provisions relating to the registration statement on which OCC registers options, registration under state securities laws, and the options disclosure document. The clearing agreement would also contain appropriate indemnification of OCC and its officers and directors. The clearing agreement would terminate if the exchange or security futures market is no longer eligible to list security futures, no longer lists security futures despite being eligible to do so, or is in material breach of the clearing agreement.

II. Discussion

Section 19(b)(2)(B) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with

[4] 15 U.S.C. 78q–1(b)(1).

[5] At the present, OCC does not define the term ''security futures market'' to include an ''alternative trading system'' or a ''derivatives transaction execution facility'' even though such markets may also trade security futures under provisions of the CFMA.

[6] A security futures market would not be defined as an exchange under OCC's By-Laws because such market would not be required to purchase OCC stock, would not have representation on the OCC board, and would not be required to execute a participant agreement under Article VII of OCC's By-Laws.

[7] The term ''security futures market'' is included in the above-named terms in OCC's rules so that OCC will be able to clear security futures for such a market.

[8] This is similar to the requirement that participant exchanges make an investment in OCC of common stock but is considerably less than the $1 million fee associated with making such an investment.

[9] Such completed formula will be subject to a future rule filing by OCC either as a statement of fees or as part of the clearing agreement for security futures.

the requirements of the Act and the rules and regulations thereunder applicable to such organization. For the reasons set forth below, the Commission believes that OCC's proposed rule change is consistent with OCC's obligations under the Act. Specifically, the proposal rule change is consistent with Section 17A(b)(3)(A) of the Act which requies that a clearing agency be organized and have the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and with Section 17A(b)(3)(F) which requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[10] For the reasons set forth below, the Commission also finds that the proposed rule change is consistent with Section 17A(b)(3)(I) of the Act which requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[11]

A. Prompt and Accurate Clearance and Settlement of Securities Transactions

Among other things, the CFMA amended the Act to include ''security future'' within the definition of ''security.'' [12] Under Section 17A of the Act, registered clearing agencies are authorized to clear securities. OCC's proposed rule change amends its By-Laws to allow it to clear and settle security futures effected on any national securities exchange or association registered under Section 6(a) or 15A(a) of the Act or on any ''designated contract market'' that is registered as a national securities exchange under Section 6(g) of the Act. OCC's proposed rule change is consistent with Sections 17A(b)(3)(A) and (F) of the Act in that it should facilitate the prompt and accurate clearance and settlement of transactions in security futures by providing an efficient and reliable clearing facility for these instruments.

B. Clearing Agency Rules and the Burden on Competition

In response to OCC's proposed rule change, the Commission received one negative comment letter, from The Island ECN, Inc. (''Island''). Island's main objection to the proposed rule change is that it does not include clearance and settlement provisions for Alternative Trading Systems (''ATSs''), of which Island is one. The Island letter urged the Commission to withhold its approval of the proposed rule change unless OCC opens its clearing services to all market participants that are allowed to trade security futures concurrent with national securities exchanges or associations. The Island letter asserts that because the CFMA allows an ATS to trade security futures, OCC must provide clearing services to ATSs with the current proposed rule change; otherwise, the Commission will be allowing OCC and its participant exchanges to eliminate or restrict any ATS competition that they may face.

The Commission has carefully considered all relevant factors and disagrees with Island's views on the alleged anticompetitive effects of the proposed rule change. Section 17A(b)(3)(I) of the Act requires that a clearing agency's rules ''do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of'' the Act.[13] The Commission believes that OCC's proposal rule change is an appropriate first step in implementing the rules that will be needed to clear security futures for the security futures markets as they may develop. Indeed, OCC explicitly recognized in its proposed rule change that it will need to adopt additional rules governing security futures, such as the form of a clearing agreement, as the trading in these products and markets develop.

The Commission believes that, due to the fact that this rule change does not foreclose OCC from clearing security futures for ATSs, approval of the proposed rule change will not burden competition or limit the ability of ATSs to trade and clear security futures. OCC's proposed rule change is only an initial step in its plans to undertake the clearance and settlement services for markets that trade security futures. In addition to the proposed rule change's explicit recognition that OCC plans to file additional proposed rule changes relating to the clearance and settlement of security futures, OCC staff has represented orally to Commission staff that at OCC's July 24, 2001, board meeting, OCC staff will recommend that OCC's board authorize the filing of a proposed rule change authorizing OCC to clear security futures for ATSs.[14]

Island also asserts that if it were denied the ability to clear through OCC, Island would be precluded from trading security futures, which are required by Section 6(h)(1) of the Act to be listed on a national securities exchange or association, because OCC would be the only clearer for those security futures. Under Section 6(h)(1) of the Act, an ATS can trade a security future only if that security future is listed on a national securities exchange or association. The OCC letter points out that the security future traded by the ATS must have contract terms identical to the exchange or association-listed security future but that such identical contract terms do not mean that those security futures must be cleared by the same clearing organization.

The Commission believes that OCC's interpretation in its letter is the correct one as to the clearing implications presented by Sections 6(h)(1) and (5) of the Act. The Commission believes that the purpose of Section 6(h)(1) is to ensure that a regulated national securities exchange or national securities association establish terms for security futures and standards for the selection of underlying securities, consistent with the Act's listing standard requirements. Therefore, as long as the security futures satisfy these requirements and the coordinated surveillance and trading halt protections in Section 6(h)(5), they need not be cleared by OCC or any other specific clearing organization.

In addition, the Commission disagrees with Island's assertion that OCC's proposed rule change fosters the same kind of anticompetitive behavior that is prohibited by the settlement accord that the options exchanges entered into with the Department of Justice and the Commission. OCC's proposed rule change does not foreclose the possibility of clearing for other entities, such as ATSs. Indeed, the proposed rule change expands the types of entities for which OCC will provide clearing services to include contract markets that are notice-registered as securities exchanges with the Commission. OCC further represents in its proposed rule change that it expects it will clear security futures transactions on security futures markets on the same terms and subject to the same clearing fees that it will apply to security futures transactions originating

[10] 15 U.S.C. 78q–1(b)(3)(A), (F).

[11] 15 U.S.C. 78q–I(b)(3)(I).

[12] 15 U.S.C. 78c(a)(10).

[13] *See also* Securities Exchange Act of 1934, Section 3(f) (in reviewing rule of self-regulatory organization, Commission shall consider protection of investors, efficiency, competition, and capital formation) (emphasis added); *See also Bradford Nat'l Clearing Corp.* v. *SEC*, 191 U.S. App. D.C. 383; 590 F.2d 1085 (1978) (competition is one factor among others that the Commission must consider in connection with the approval of a clearing agency's rules).

[14] Meeting between George Hender, Management Vice Chairman, William H. Navin, Executive Vice President and General Counsel, and Susan Milligan, First Vice President and Special Counsel, OCC, and staff of the Division of Market Regulation on May 24, 2001.

on the exchanges. Such equality of treatment is consistent with fostering competition.

C. Additional Provisions

The Commission also believes that the provisions of OCC's proposed rule requiring (1) the deposit of $250,000 by non-affiliated security futures markets with OCC in return for the provision of security future clearing services, (2) the clearing agreement that OCC would enter into with an exchange or securities futures market before OCC undertakes to clear for either of those entities, and (3) the ability of OCC to refuse to undertake securities clearing for any non-affiliated security futures market if doing so would jeopardize OCC's ability to fully perform its other responsibilities, are consistent with Section 17A(b)(3)(F) of the Act.

The Commission believes that the $250,000 deposit to OCC in return for the provision of clearing services to non-affiliated security futures markets and the clearing arrangement are appropriate and consistent with Section 17A(b)(3)(F) of the Act because they will assist OCC and the security futures markets to set up the necessary arrangements whereby OCC can provide for the prompt and accurate clearance and settlement of securities transactions that take place on those markets.

The Commission believes that allowing OCC to refuse clearing services to any non-affiliated security futures market if doing so would jeopardize OCC's ability to fully perform its other responsibilities is consistent with OCC's obligation under Section 17A(b)(3)(F) of the Act to assure the safeguarding of securities and funds which are in OCC's custody or for which it is responsible because it allows OCC to avoid exposure to unnecessary financial and operational risks in a nondiscriminatory fashion.

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–OCC–2001–05) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–15624 Filed 6–20–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Applicant No. 99000418]

Bluestem Capital Partners III Limited Partnership; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Bluestem Capital Partners III Limited Partnership (''Bluestem III''), 122 S Phillips Ave., Suite 300, Sioux Falls, South Dakota, 57104, an applicant for a Federal License under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2000)). Bluestem III proposes to provide equity financing to Hat World Corporation, 8142 Woodland Drive, Indianapolis, IN 46078. The financing is contemplated for the purpose of providing capital to Hat World Corporation to fund the acquisition of various assets from the Lids' bankruptcy trustee.

The financing is brought within the purview of § 107.730(a)(1) of the SBA Regulations because Bluestem Capital Partners I, LLC and Bluestem Capital Partners II Limited Partnership, both Associates of Bluestem III, each currently own greater than 10 percent of Hat World Corporation, and therefore, Hat World Corporation is considered an Associate of Bluestem III as defined in § 107.50 of the SBA Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: June 12, 2001.

Harry Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 01–15643 Filed 6–20–01; 8:45 am]

BILLING CODE 8010–01–M

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 01/01–0339]

Chestnut Venture Partners, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Chestnut Venture Partners, L.P., 75 State Street, Suite 2500, Boston, Massachusetts 02109, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and § 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2001)). Chestnut Venture Partners, L.P., proposes to make an equity investment in Florida Digital Network, Inc. The financing is contemplated to implement a new business plan which involves a substantial change in size, scope and nature of Florida Digital Network, Inc.'s operations and service offerings.

This financing is brought within the purview of § 107.730(a)(1) of the Regulations because Media/Communications Partners III, L.P. and M/C Investors, LLC, Associates of Chestnut Venture Partners, L.P., presently own greater than 10 percent of Florida Digital Network, Inc., and therefore, Florida Digital Network, Inc., is considered an Associate of Chestnut Venture Partners, L.P., as defined in § 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Acting Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: June 13, 2001.

Harry Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 01–15642 Filed 6–20–01; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 3705]

Culturally Significant Objects Imported for Exhibition Determinations: ''Exploring the Holy Land: David Roberts and Beyond''

AGENCY: United States Department of State.

ACTION: Notice.