

effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</sup> normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>12</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay, and designate the proposed rule change immediately operative.<sup>13</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>14</sup> The Exchange has stated that the restated certificate of incorporation as modified by this proposed rule change must be filed with the Secretary of State of the State of New York before the closing of the merger that is scheduled for March 7, 2006. The Commission notes that the proposed modifications to the restated certificate of incorporation are technical changes that are non-substantive. Accordingly, the Commission designates that the proposed rule change become operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2006-15 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2006-15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2006-15 and should be submitted on or before April 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53425; File No. SR-OCC-2005-19]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to Submission of Exercise Notices for American Option Contracts Other Than at Expiration

March 6, 2006.

#### I. Introduction

On December 12, 2005, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2005-19 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on January 18, 2006.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description

The purpose of the proposed rule change is to modify OCC Rule 801, which applies to the submission of exercise notices for American-style option contracts other than at expiration, to delete specific references to the times when such exercise notices may be submitted and to instead provide OCC with the authority to prescribe the time frames for their submission. Implementing this change requires additional conforming changes to Rule 801 as described herein.

##### *Rule 801*

Rule 801(a) permits a clearing member desiring to exercise an American-style equity or non-equity option on a business day other than the business day prior to its expiration to submit an exercise notice to OCC between 9 a.m. and 7 p.m. provided that an exercise notice for an American-style currency option must be submitted by 2:30 p.m.<sup>3</sup> (All times are at Central Time.) Exercise instructions submitted with respect to equity and non-equity options become irrevocable at 7 p.m. and 2:30 p.m. in the case of currency options unless the exercise instruction has been modified or revoked by a clearing member because of a bona fide error by the clearing member or its

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> *Id.*

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> The Exchange also asked the Commission to waive the five-business day pre-filing notice requirement. See Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii). The Commission is exercising its authority to designate a shorter time and notes that the Exchange provided the Commission with one business day notice.

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 53090 (January 10, 2006), 71 FR 2973.

<sup>3</sup> Except for short dated options, an American-style option may not be exercised on the business day prior to its expiration date.

customer in accordance with the procedures prescribed by OCC.

Rule 801(b) allows the OCC Board of Directors to designate with not less than seven days' prior written notice to non-equity securities clearing members a cut-off time earlier than that specified in Rule 801(a) as the deadline for submitting exercise notices with respect to American-style non-equity option contracts and the time when such exercise notices become irrevocable.

Subject to specified exceptions and conditions, Rule 801(e) grants certain OCC employees<sup>4</sup> the discretion to permit a clearing member to file, revoke, or modify any exercise notice submitted in accordance with Rule 801(a) after the 7 p.m. deadline for the purpose of correcting a bona fide error. One condition is that the requesting clearing member is liable to OCC for a late filing fee in escalating increments and time segments. The late filing fee is as follows:

- \$2,000 for any request accepted between 7 p.m. and 8 p.m.;
- \$5,000 for any request accepted between 8:01 p.m. and the start of critical processing provided that the request does not materially affect the start of critical processing; and
- \$20,000 per line item listed on any exercise notice accepted for filing after the start of critical processing with 50% of the fee to be distributed to the assigned clearing member or clearing members on a pro rata basis if more than one clearing member is assigned.

#### *Changes to Rule 801*

The operational and processing efficiencies gained from real-time trade submission have prompted the OCC Roundtable<sup>5</sup> to propose that OCC advance the 7 p.m. cut-off time for submission of post-trade instructions, including exercise notices, by clearing members on regular business days. The Roundtable believes that an earlier deadline for filing such instructions would further straight-through processing goals by permitting OCC to move forward the times when it initiates nightly processing and distributes data to members.

Although current discussions have centered on a post-trade submission cut-off time of 6:30 p.m., the Roundtable has

not yet reached a consensus on a recommended time.<sup>6</sup> Notwithstanding that additional discussions are required to determine a new deadline, the Roundtable has asked OCC to amend Rule 801 to eliminate the requirement that exercise notices with respect to most American-style options be submitted between 9 a.m. and 7 p.m. on a business day. In response to the Roundtable's request and consistent with other OCC rules, OCC will amend Rule 801 to permit OCC to specify the times when such exercise notices may be submitted.<sup>7</sup> (Such times will be specified in OCC's operations manual.) The amendment will allow OCC to promptly implement the new deadline for post-trade instructions once it is determined and will give OCC greater flexibility in responding to future operational and technology developments. OCC will also make the following conforming changes to Rule 801.

- Amend Rule 801(a) to eliminate the mandated 2:30 p.m. deadline for filing exercise notices with respect to currency options. The deadline will instead be a time specified by OCC (in its operations manual). While there are no current plans to advance this deadline, the language of the rule will be changed for consistency and future flexibility.
- Amend Rule 801(a) to provide that the prescribed deadlines for submitting exercise notices may be changed with not less than 30 days' prior written notice to affected clearing members. This will ensure that clearing members have sufficient time to adjust their procedures for submitting exercise notices.
- Delete Rule 801(b) which authorizes the Board to advance the deadline for submitting exercise notices for American-style non-equity options. The subject matter of Rule 801(b) will be covered by the changes to Rule 801(a).
- Amend Rule 801(e) to restructure portions of the fee schedule for submitting late requests to file, revoke, or modify exercise notices. The \$2,000 filing fee will be eliminated. The \$5,000 filing fee will be applied to all requests accepted after the deadline specified pursuant to Rule 801(a) but before the start of critical processing. No change

will be made to the filing fee for requests accepted after the start of critical processing. These proposed changes will align the filing fee schedule under Rule 801 with the filing fee schedule for supplementary exercise notices filed under Rule 805 (which applies to expiration date processing).

### **III. Discussion**

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>8</sup> The Commission finds that OCC's proposed rule change is consistent with this requirement because it enables OCC to take advantage of operational and processing efficiencies gained from real-time trade submission to move forward the times for accepting submissions of exercise notices. Earlier submission of exercise notices permits OCC to move forward the times when it initiates nightly processing and distributes data to its members. Moreover, by OCC having more flexibility with respect to designating time frames and deadlines OCC will be able to keep such time frames and deadlines in step with future operational and technical advances.

### **IV. 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,<sup>9</sup> that the proposed rule change (File No. SR-OCC-2005-19) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Nancy M. Morris,**  
Secretary.

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<sup>4</sup> Those employees are OCC's Chairman, Management Vice Chairman, President, or a designee of such officer.

<sup>5</sup> The OCC Roundtable is an OCC-sponsored advisory group comprised of representatives from OCC, a cross-section of clearing members, participant exchanges, and industry service bureaus. The Roundtable considers operational improvements that may be made to increase efficiencies and to lower costs in the options industry.

<sup>6</sup> An analysis by OCC staff determined that submission of files containing exercise instructions after 6:30 p.m. occurred seven times during the period April 1–December 31, 2005. E-mail from Jean M. Cawley, First Vice President and Deputy General Counsel, dated January 11, 2006.

<sup>7</sup> Under Rule 805, OCC already has the authority to prescribe deadlines for the submission of exercise instructions for purposes of expiration date processing.

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).