associated with the maintenance of TradeWorks. The Exchange will bear the remaining cost.

According to the Exchange, this arrangement will entail a payment by each Member Organization who elects to continue to use TradeWorks of $10,000 for each percentage point of usage attributable to that Member Organization, allocated according to each Member Organization's usage of TradeWorks based on usage data for February 2006. The fee will be billed in nine monthly installments. The Exchange submits that seventeen Member Organizations, representing approximately 35% of February 2006 usage, have agreed to continue to use TradeWorks on these terms, representing a total billing of $358,500. The Exchange will not permit Member Organizations to use TradeWorks that have not agreed in advance to the foregoing payment as a fee covering the entire period from the date of this filing until December 31, 2006.

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(4) of the Act,[8] in particular, in that it is designed to assure the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

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

The NYSE does not believe that the proposed rule change 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder,[10] since it establishes or changes a due, fee or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary of appropriate in the public interest, for the protection of investors, or otherwise in the 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*. Please include File Number SR–NYSE–2006–26 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–2006–26. 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 Section. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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 No. SR–NYSE–2006–26 and should be submitted on or before June 9, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–7641 Filed 5–18–06; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53794; File No. SR–OCC–2005–23]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Use of Margin Deposit in the Event of a Clearing Member Liquidation

May 11, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 16, 2004, 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 would have two complementary purposes. It would (1) eliminate certain unnecessary restrictions on the use of margin in the liquidation of a suspended Clearing Member under Chapter XI of the Rules and (2) ensure that other restrictions on the use of margin that are appropriately imposed in the By-Laws are properly reflected in Chapter XI of the Rules.

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),

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

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

Provisions in OCC's By-Laws relating to the potential use of securities and other margin assets in the event of a Clearing Member's liquidation currently restrict the use of such assets in ways not required under applicable laws and regulations. In addition, certain provisions of OCC's Rules applicable to Clearing Member liquidations do not fully or clearly reflect limitations imposed by the By-Laws.

OCC is proposing to amend Chapter XI of the Rules to more precisely reflect appropriate limitations on the use of Clearing Member margin deposits and is proposing to amend provisions of the By-Laws to allow OCC to make use of those margin deposits to the fullest extent consistent with (i) applicable customer protection provisions and (ii) the ability of OCC and Clearing Member systems to identify margin assets subject to those provisions.

Article VI, Section 3 of the By-Laws sets out a number of different types of accounts that a Clearing Member may establish and maintain on OCC's books. These accounts include firm accounts, separate market-maker's accounts, combined market-makers' accounts, customers' accounts, and others. For each of these account types, Section 3 provides that OCC shall have a lien on property in the account and specifies the extent of the obligations secured by the lien. For example, in the case of the firm lien account, Section 3(a) of Article VI states that ''the Corporation shall have a lien on all positions and on all other securities, margin and other funds in such account as security for all of the Clearing Member's obligations to the Corporation * * *.'' This language permits all of the Clearing Member's assets on deposit with OCC with respect to the firm account to be applied to any obligation of the Clearing Member to OCC regardless of whether that obligation arises from the firm account or any other account. This is appropriate in that, generally speaking, the Clearing Member may deposit with respect to the firm account only those assets that it is permitted under applicable law to treat as its own. Such assets include all cash not required by Rule 15c3–3[3] to be deposited in a special reserve bank account for the benefit of customers and any securities that belong to the Clearing Member and not to its customers as that term is defined in Rules 15c2–1 and 8c–1 (''hypothecation rules'').[4]

The lien language applicable to assets in other types of accounts, however, restricts the application of margin assets to obligations of the Clearing Member arising from that particular account. For example, in the case of a combined market-makers' account other than a proprietary combined market-makers' account, Section 3(c) of Article VI states that ''the Corporation shall have a lien on all long positions, securities, margin and other funds in such combined Market-Maker's account with the Clearing Member as security for the Clearing Member's obligations to the Corporation in respect of all Exchange transactions effected through such account, short positions maintained in such account, and exercise notices assigned to such account * * *.'' Under this language, OCC's lien on margin assets deposited with respect to a combined market-makers' account does not secure any obligations of the Clearing Member other than those arising from this account.[5]

These limitations on the use of assets in an account to obligations arising from the same account were adopted in order to avoid violation by Clearing Members of the hypothecation rules cited above.[6] The rules containing these limitations, which rules are substantially identical to one another, provide in pertinent part that a broker or dealer may not permit securities carried for the account of any customer to be commingled with securities ''carried for any person other than a bona fide customer under a lien for a loan made to such broker or dealer.''[7] Although it is not at all clear that this language should apply to OCC's lien, which is not a ''lien for a loan'' in the ordinary sense, OCC has historically taken the conservative view that it does apply and does not propose now to do otherwise.

Nevertheless, it is clear that the hypothecation rules apply only to ''securities carried for the account of any customer.'' Assets other than securities are not subject to the rule. Thus, a Clearing Member is not required to segregate cash received by a Clearing Member from any securities customer from other cash deposited by the Clearing Member with OCC as margin. Subject to the requirement to fund its special reserve bank account under Rule 15c3–3(e) and to fund a special reserve bank account for any proprietary account of an introducing broker dealer (''PAIB'') account that the broker-dealer has agreed to maintain, a broker-dealer may treat cash received from securities customers as its own. Therefore, a Clearing Member is permitted to deposit cash (other than cash received from commodity customers, which is required to be segregated under provisions of the Commodity Exchange Act [''CEA'']), as margin for any of its accounts at OCC without regard to the source of the cash. Accordingly, the lien language applicable to combined market-makers' accounts and certain other account types is overly restrictive as applied to cash and any other non-securities assets that might be deposited as margin in an account.[8] OCC's lien could lawfully be applied to such non-securities assets to secure any obligation of the Clearing Member to the same extent as if the cash had been deposited with respect to the Clearing Member's firm lien account.

It is also true that when securities other than customer securities are deposited with OCC as margin with respect to a customer account (other than a commodity customer account where securities must be segregated pursuant to provisions of the CEA),

[2] The Commission has modified parts of these statements.

[3] 17 CFR 240.15c3–3.

[4] 17 CFR 240.15c2–1 and 240.8c-1.

[5] In some cases, however, multiple accounts of the same account type are treated as a single account as provided in Interpretation .02 following Article VI, Section 3 of the By-Laws. Thus, for example, if a clearing member maintains more than one combined market makers' account for associated market makers, those accounts would be treated as a single account for liquidation purposes. Similarly, multiple securities customers' accounts would be treated as a single securities customers' account for liquidation purposes.

[6] The limitation is actually more restrictive than would be required under the hypothecation rules because OCC could lawfully apply assets in the account to obligations arising from the customers' account and any other accounts in which positions of securities customers as defined in the hypothecation rules are carried. Similarly, assets in the public customers' account could be applied to obligations arising from a market-maker account. As a matter of policy, however, OCC has maintained the separation continued here.

[7] 17 CFR 240.15c2–1(a)(2) and 240.8c–1(a)(2). The term customer is defined in paragraph (b)(1) of these rules not to include partners, officers, or directors of the broker-dealer or a participant in a joint account with a broker-dealer. Unlike Rule 15c3–3, however, the hypothecation rules do not exclude broker-dealers from the definition of customer. Accordingly, market-makers that do not have any of these specified relationships with their clearing broker must be treated as customers for purposes of the hypothecation rules.

[8] At present, the only other non-securities assets that may be deposited as margin are letters of credit (''LOCs''). LOCs are subject to special OCC rules in that an LOC may be secured by customer securities pledged by the broker-dealer to the issuer of the LOC. In such a situation, the LOC would be subject to the restrictions applicable to the securities. The broker-dealer may comply with those restrictions under OCC's Rules by designating the LOC as a ''restricted'' LOC and by specifying which account type is secured by the LOC.

those securities would not for that reason alone have to be treated as securities carried for the account of any customer, and OCC's lien could lawfully apply. However, there are no systems in place that allow OCC to distinguish between customer and non-customer securities when they are deposited as margin for a customer account, including a market-maker account. Accordingly, OCC will continue to treat all securities deposited as margin for any securities account other than a proprietary account as if the securities were customer securities for purposes of the hypothecation rules.

In order to address the discrepancies described above, OCC is proposing to amend Article I, Section 1 of the By-Laws to define two different types of liens: a ''general lien'' and a ''restricted lien.'' Assets subject to a general lien would serve as security for all obligations of the Clearing Member to OCC regardless of the origin or nature of those obligations. The proposed rule change would also define a ''general lien account'' as one in which OCC has a general lien over all assets in the account. Thus, the firm account and any other proprietary account, such as a proprietary market-maker's account, would be a general lien account, and all general lien accounts would be treated as a single firm lien account in a liquidation of the Clearing Member. This is precisely the same result as under the present rules.

The definition of a restricted lien would provide that assets in an account that are specified as subject to a restricted lien serve as security only for obligations arising from that particular account or from a specified group of accounts to which that account belongs.[9] A restricted lien account would be defined as an account in which specified assets are subject to a restricted lien. All accounts other than the various types of proprietary accounts would be restricted lien accounts. However, not all assets in those accounts would be subject to a restricted lien. Cash and any other non-securities assets in a restricted lien account, because they are not subject to the restrictions of the hypothecation rules, would be subject to a general lien. However, an exception would be made for the securities customers' account and the customer lien account where all assets, including cash, would be subject only to a restricted lien. The reason for this exception is that, although these non-securities assets are not subject to the hypothecation rules, the provisions of Rule 15c3–3(e) and in particular the reserve formula used in calculating the amount of funds a Clearing Member is required to deposit in the special reserve bank account for the exclusive benefit of customers provide a debit (*i.e.*, a reduction in the required deposit) reflecting ''[m]argin required and on deposit with [OCC] for all option contracts written or purchased in customer accounts.'' Given this debit in the reserve formula, it would appear to be inconsistent to use funds in the account as collateral for obligations other than those arising in such accounts. This limitation is reflected in the proposed rule change.

In order to eliminate unnecessary restrictions on the use of non-securities assets in certain accounts as described above, OCC proposes to modify the lien language appearing in the following paragraphs of Article VI, Section 3: paragraph (a), to the extent applicable to firm non-lien accounts; paragraph (b) to the extent applicable to separate market-maker accounts other than proprietary market-maker accounts; paragraph (c), to the extent applicable to combined market-makers' accounts other than proprietary combined market-makers' accounts; and paragraph (h) applicable to JBO Participants' accounts. The modification necessary in each case is to provide that margin assets deposited with respect to the applicable account and consisting of cash and other non-securities collateral may be applied to any obligation of the Clearing Member rather than only to obligations arising from that account. This is accomplished by subjecting securities assets in the accounts to a restricted lien while non-securities assets in certain of the account are subject to a general lien. Other changes in Article VI, Section 3 are non-substantive changes intended to make use of the newly defined terms, to improve consistency, to eliminate repetition, and to clarify ambiguities.[10]

In order to conform to the changes made in provisions of Article VI, Section 3(a) relating to firm non-lien accounts and in Section 3(e) relating to the securities customers' account, OCC is proposing to delete the specific lien language applicable to unsegregated long positions currently set forth in Rule 611. The extent of these liens would be set forth in the cited provisions of Article VI, Section 3.

Notwithstanding the limitations of the existing lien language described above applicable to accounts other than proprietary accounts, these limitations are not fully reflected in the provisions of OCC's Rule 1104(a), which governs the creation of a liquidating settlement account and payments from that account in a Clearing Member liquidation. Rule 1104(a) presently provides, in effect, that proceeds from restricted letters of credit,[11] unsegregated long positions, and variation payments resulting from positions in security futures in a public customers' account, may not be applied to obligations other than those arising from the public customers' account. It does not similarly restrict the use of proceeds of securities deposited directly as margin for that account even though the application of such securities to obligations arising out of other accounts would arguably be in violation of the hypothecation rules and even though such use would be inconsistent with OCC's restricted lien on those securities. In the event of a Clearing Member liquidation prior to the approval of this rule change, OCC would observe the limitations of the hypothecation rules and the lien language as it presently exists in OCC's By-Laws notwithstanding that those limitations are not fully reflected in Rule 1104(a). Those limitations are fully consistent with OCC's risk management system in that OCC has never set margin or clearing fund requirements with the expectation that it would have excess collateral in one account that could be applied against obligations arising in other accounts. OCC determines its risk margin requirements on each Clearing Member account independently.

Nevertheless, if in liquidating any Clearing Member account a shortfall occurred, it would obviously be in the interest of OCC, its Clearing Members, and the integrity of the clearing system if OCC were able to apply the margin assets that it holds to the fullest extent practicable without violating applicable law. In addition, the intended restrictions on the use of proceeds of positions and securities in the securities customers' account as well as in market-maker accounts and other restricted lien accounts as OCC is now proposing to

[9] The reference to groups of accounts is necessary because, for example, a clearing member may have multiple combined market makers' accounts that would be liquidated as if they were a single account. The same would be true if a clearing member had more than one securities customers' account. These account groupings are addressed in existing Interpretation .02 following Article VI, Section 3 of the By-Laws.

[10] No changes of substance are proposed to be made with respect to futures accounts subject to segregation requirements under the CEA.

[11] OCC is proposing to amend the definition of restricted letter of credit in Rule 101 in order to make it more generic. In current practice, restricted letters of credit are used not only for the securities customers' account but may also be used in a segregated futures account. The letter of credit must indicate on its face the purpose or purposes to which it may be applied.

refer to them generically should be clearly stated. By making use of the newly defined terms general lien and restricted lien and by relying on the provisions of Article VI, Section 3 as proposed to be amended, only relatively minor amendments to the provisions of Rule 1104(a) are required to effectuate the dual purposes of this proposed rule change. Other proposed changes in Rule 1104 are intended for clarification only and are not substantive.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because it will promote the prompt and accurate clearance and settlement of securities transactions, remove impediments to the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions, and assure the safeguarding of securities and funds in the custody or control of OCC by clarifying limitations on the use of certain customer property in the event of a Clearing Member insolvency while protecting the clearing system by permitting broader use of other collateral deposited by Clearing Members.

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 the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

VI. 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*. Please include File Number SR–OCC–2005–23 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–OCC–2005–23. 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com*.

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–OCC–2005–23 and should be submitted on or before June 9, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–7624 Filed 5–18–06; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on March 15, 2006 (71 FR 13452)

DATES: Comments must be submitted on or before June 19, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Victor Angelo, Office of Support Systems, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6470). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On March 15, 2006, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 71 FR 13452. FRA received no comments after issuing this notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for