

Number SR-ISE-2005-50 and should be submitted by February 21, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53151; File No. SR-OCC-2005-21]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Allocations Processing

January 19, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 13, 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. OCC filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>2</sup> whereby the proposal was effective upon filing with the Commission. 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 adopts new Rule 405, Allocations, to govern the processing of post-trade allocation instructions for commodity contracts that are subject to the exclusive jurisdiction of the Commodity Futures Trading Commission ("CFTC") that are submitted by clearing members through a new system OCC plans to install in January 2006. The rule change also makes conforming by-law and rule changes, including the addition of certain new definitions.

#### 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>3</sup>

#### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC's new allocation system will permit the allocation of positions in securities options, security futures, commodity futures, and options on futures. In order to permit use of the allocation system, when installed, for commodity contracts cleared by OCC that are subject to the exclusive jurisdiction of the CFTC, OCC is filing the proposed rule change under section 19(b)(3)(A) for immediate effectiveness. However, new Rule 405 includes Interpretation and Policy .02 which states that the system may not be used for securities options or security futures until the Commission has issued an approval order with respect to Rule 405. OCC filed a separate proposed rule change under section 19(b)(2), File No. SR-OCC-2005-22, that would adopt Rule 405 for use in allocating positions in contracts subject to the Commission's jurisdiction.<sup>4</sup>

OCC plans to provide clearing members with a centralized system for processing allocation or "give-up" instructions across all exchanges for which OCC provides clearing services. Allocations are post-trade instructions entered by one clearing member (*i.e.*, an authorized "executing" or "giving-up" clearing member) that direct a transaction or position to the account of another clearing member (*i.e.*, the "carrying" or "given-up" clearing member). OCC's centralized system will enhance OCC's service offerings and will provide efficiencies to clearing members.

Post-trade allocations of securities options are currently processed through OCC's Clearing Member Trade Assignment ("CMTA") functionality, which normally causes a transaction to automatically be moved into an account of the carrying clearing member so long as the executing and carrying clearing members have an effective CMTA arrangement registered with OCC for the exchange submitting the matching trade

information for that transaction.<sup>5</sup> Once Rule 405 is approved by the Commission for purposes of allocating positions in securities options, clearing members will be able to elect either to continue to use the existing CMTA system or to use the new allocation system for securities options.

For most commodity futures cleared through OCC, post-trade allocations are currently processed through The Clearing Corporation's ("CCorp") "give-up" system, which requires the given-up clearing member to affirmatively accept a transaction.<sup>6</sup> OCC's allocation system will enable clearing members to process futures "give-ups" without going through the CCorp system.

New Rule 405 will govern the processing of allocation instructions and will operate as follows. Transactions will first clear in the designated account of the giving-up clearing member. Instructions to allocate positions may be submitted either through an exchange's system for providing matching trade information to OCC or through OCC's clearing system, ENCORE. In either case, if the given-up and giving-up clearing members are parties to an allocation agreement that has been registered with OCC, OCC will automatically allocate the positions resulting from an allocation instruction to a designated account of the given-up clearing member without further action by the clearing members.<sup>7</sup> If the clearing members are not parties to a registered allocation agreement, OCC will not effect the allocation instruction until the given-up clearing member gives OCC notice of its affirmative acceptance of the allocated positions. (In contrast, the CMTA system does not allow for acceptance of allocated positions without a registered CMTA agreement.) If the given-up clearing member does not give OCC notice of such acceptance by an OCC-specified deadline, the allocation instruction will not be processed, and the positions will remain in the account of the giving-up clearing member, which will remain obligated on those positions.

A given-up clearing member will be responsible for appropriately allocated positions. Given-up positions are moved to the given-up clearing member's account at the premium price in the case of options or at the contract price in the case of futures at which the positions were established by the executing clearing member. Positions

<sup>3</sup> The Commission has modified parts of these statements.

<sup>4</sup> If the Commission approves proposed rule change SR-OCC-2005-22, OCC would delete Interpretation and Policy .02.

<sup>5</sup> See OCC Rule 403.

<sup>6</sup> See OCC Rule 404.

<sup>7</sup> Unlike CMTAs, clearing members will not be required to register their allocation arrangement by exchange.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

that are allocated on an intraday basis will not be reflected in position reports until the following business day. However, OCC will take those positions into account in processing any intraday settlements authorized by its By-laws and Rules, including intraday margin settlements. A given-up clearing member may enter an instruction to reverse an allocation that was accepted in error. If the given-up and giving-up clearing members are parties to a registered allocation agreement, the reversing instruction will be automatically processed. If the clearing members are not parties to a registered allocation agreement, the reversing instruction must be affirmatively accepted by the original giving-up clearing member.

Allocation instructions may be for a single position (*i.e.*, a position in a given series established at a single price) or for a group of positions (*i.e.*, positions in the same series established at different prices). Allocation instructions for grouped positions must be submitted through ENCORE. For single positions, the instruction must identify the contract quantity, series, and price as specified in the matching trade information. For grouped positions, the allocation instruction must provide the same information, but the price may be an average price if not prohibited under exchange rules and applicable law.<sup>8</sup> For the convenience of clearing members, OCC's system will produce a suggested average price for grouped allocations that clearing members may adopt for purposes of processing the instruction.

Registration of allocation agreements may be terminated either by mutual agreement or unilaterally. Mutually terminated registrations will be effected immediately in OCC's system. Unilaterally terminated registrations will be terminated in OCC's system effective as of 8 a.m. CST the business day after the termination notice is received by OCC and the other clearing member. These are the same standards currently applied to terminating CMTA arrangements under OCC Rule 403. Following termination of registration of an allocation agreement, an allocated position may be allocated to a given-up

clearing member only upon its affirmative acceptance.

Other changes made to OCC's By-laws and Rules reflect the adoption of Rule 405, including the addition of Given-Up Clearing Member and Giving-Up Clearing Member as defined terms in Article I, section 1.

OCC believes that the proposed rule change is consistent with section 17A of the Act because it is designed to ensure that positions resulting from exchange transactions are carried in the appropriate clearing member account, which is the account of the clearing broker for the investor for whom such transactions were executed and thereby promotes the prompt and accurate clearance and settlement of transactions in derivative contracts, fosters cooperation and coordination with persons engaged in the clearance and settlement of such transactions, removes impediments to and perfects a mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, protects investors and the public interest. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

#### *(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**

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(4)<sup>10</sup> thereunder because it effects a change in an existing service of a registered clearing agency that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible; and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. 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.

### **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](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2005-21 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 20549-9303.

All submissions should refer to File Number SR-OCC-2005-21. 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-2005-21 and should

<sup>8</sup> Average pricing is permitted under the Commodity Exchange Act in certain circumstances. In those circumstances, a clearing member may instruct OCC to use the average price in clearing and settling the trades. Clearing members have requested that OCC provide functionality that would also permit positions in securities options and security futures to be allocated at an average price. Accordingly, OCC has developed its allocation system to accommodate the use of such prices for security options and futures, provided that such use does not violate exchange rules or applicable law.

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

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

be submitted on or before February 21, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Nancy M. Morris,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53150; File No. SR-OCC-2005-22]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Allocations Processing

January 19, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 13, 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 amend Rule 405, Allocations, so that it would apply to allocations of positions in contracts subject to the Commission's jurisdiction.

#### 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

In January 2006 OCC plans to install a new system to process post-trade allocation instructions by clearing members. In order to accommodate the immediate use of the allocation system for commodity contracts cleared by OCC that are subject to the exclusive jurisdiction of the CFTC, OCC adopted Rule 405 by submitting File No. SR-OCC-2005-21 for immediate effectiveness pursuant to section 19(b)(3)(A) of the Act.<sup>3</sup> However, Interpretation and Policy .02 to Rule 405 provides that the system may not be used for securities options or security futures until the Commission issues an approval order with respect to Rule 405. OCC submitted the proposed rule change for purposes of adopting Rule 405 for use in allocating positions in contracts which are subject to the Commission's jurisdiction.<sup>4</sup> This rule change is being filed pursuant to section 19(b)(2) for approval by the Commission.

The new allocation system and Rule 405 provide clearing members with a centralized system for processing allocation or "give-up" instructions across all exchanges for which OCC provides clearing services. Allocations are post-trade instructions entered by one clearing member (*i.e.*, an authorized "executing" or "giving-up" clearing member) that direct a transaction or position to the account of another clearing member (*i.e.*, the "carrying" or "given-up" clearing member). OCC's centralized system will enhance OCC's service offerings and will provide efficiencies to clearing members.

Post-trade allocations of securities options are currently processed through OCC's Clearing Member Trade Assignment ("CMTA") functionality, which normally causes a transaction to automatically be moved into an account of the carrying clearing member so long as the executing and carrying clearing members have an effective CMTA arrangement registered with OCC for the exchange submitting the matching trade information for that transaction.<sup>5</sup> Once Rule 405 is approved by the Commission for purposes of allocating positions in securities options, clearing members will be able to elect either to

continue to use the existing CMTA system or to use the new allocation system for securities options.

For most commodity futures cleared through OCC, post-trade allocations are currently processed through The Clearing Corporation's ("CCorp") "give-up" system, which requires the given-up clearing member to affirmatively accept a transaction.<sup>6</sup> OCC's allocation system will enable clearing members to process commodity futures "give-ups" without going through the CCorp system.

Rule 405 currently governs the processing of allocation instructions for contracts subject to the exclusive jurisdiction of the CFTC. As amended by the proposed rule change, Rule 405 would operate in the same fashion for contracts subject to the Commission's jurisdiction. Transactions will first clear in the designated account of the giving-up clearing member. Instructions to allocate positions may be submitted either through an exchange's system for providing matching trade information to OCC or through OCC's clearing system, ENCORE. In either case, if the given-up and giving-up clearing members are parties to an allocation agreement that has been registered with OCC, OCC will automatically allocate the positions resulting from an allocation instruction to a designated account of the given-up clearing member without further action by the clearing members.<sup>7</sup> If the clearing members are not parties to a registered allocation agreement, OCC will not effect the allocation instruction until the given-up clearing member gives OCC notice of its affirmative acceptance of the allocated positions. (In contrast, the CMTA system does not allow for acceptance of allocated positions without a registered CMTA agreement.) If the given-up clearing member does not give OCC notice of such acceptance by an OCC-specified deadline, the allocation instruction will not be processed, and the positions will remain in the account of the giving-up clearing member, which will remain obligated on those positions.

A given-up clearing member will be responsible for appropriately allocated positions. Given-up positions are moved to the given-up clearing member's account at the premium price in the case of options or at the contract price in the case of futures at which the positions were established by the executing clearing member. Positions that are allocated on an intraday basis

<sup>3</sup> The notice of filing and immediate effectiveness of File No. SR-OCC-2005-21 will be published in the **Federal Register** at approximately the same time as the notice for this proposed rule change.

<sup>4</sup> OCC proposes to delete Interpretation and Policy .02 to Rule 405 in this filing.

<sup>5</sup> See OCC Rule 403.

<sup>6</sup> See OCC Rule 404.

<sup>7</sup> Unlike CMTAs, clearing members will not be required to register their allocation arrangement by exchange.

<sup>11</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 parts of these statements.