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.[15]

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–MSRB–2005–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–MSRB–2005–05. 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 MSRB. 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–MSRB–2005–05 and should be submitted on or before May 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jill M.Peterson,

Assistant Secretary.

[FR Doc. 05–7650 Filed 4–15–05; 8:45 am]

BILLING CODE 8010–01–U

[15] *See* section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on April 1, 2005, the date that the MSRB filed Amendment No. 1.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51533; File No. SR–MSRB–2005–06]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Frequency of Updates from the National Do-Not-Call Registry Pursuant to Rule G–39

April 12, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 23, 2005, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the MSRB. The MSRB has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal 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 MSRB is filing with the Commission a proposed rule change amending Rule G–39, on telemarketing, to require a broker, dealer or municipal securities dealer that seeks to qualify for the safe harbor set forth in Rule G–39 to, among other things, use a process to prevent telephone solicitations to any telephone number in a version of the national do-not-call registry obtained from the administrator of the registry no more than thirty-one (31) days prior to the date any call is made. This proposed amendment is consistent with recent amendments to the comparable do-not-call rules of the Federal Trade Commission (''FTC'') and the Federal Communications Commission (''FCC''). The proposed rule change will become effective on May 1, 2005. The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org*), at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

In 2003, the FTC, via its Telemarketing Sales Rule, and the FCC, via its Miscellaneous Rules Relating to Common Carriers, established requirements for sellers and telemarketers to participate in a national do-not-call registry.[5] Since June 2003, consumers have been able to enter their home telephone numbers into the national do-not-call registry, which is maintained by the FTC. Under rules of the FTC and FCC, sellers and telemarketers generally are prohibited from making telephone solicitations to consumers whose numbers are listed in the national do-not-call registry. The FCC's do-not-call rules apply to brokers, dealers and municipal securities dealers while the FTC's rules do not.[6]

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(6).

[5] The do-not-call rules of the FCC and FTC are very similar in terms of substance, in part, because Congress directed the FCC to consult with the FTC to maximize consistency between their respective do-not-call rules. *See* The Do-Not-Call Implementation Act, 108 P.L. 10, 117 Stat. 557 (Mar. 11, 2003).

[6] *See* 15 U.S.C. § 6102(d)(2)(A), which provides that ''The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to * * *[among other persons, brokers or dealers] * * *'' The FTC's do-not-call rules were promulgated under 15 U.S.C. § 6102. The FCC's

In July 2003, the SEC requested that the MSRB amend its telemarketing rules to require brokers, dealers and municipal securities dealers to participate in the national do-not-call registry.[7] Because brokers, dealers and municipal securities dealers are subject to the FCC's do-not-call rules, the MSRB modeled its rules in this area after those of the FCC and codified these do-not-call requirements in Rule G–39, with minor modifications tailoring the rules to broker, dealer and municipal securities dealer activities and the securities industry. The SEC approved these rules in January 2004.[8]

Safe Harbor Provision for the National Do-Not-Call Registry Requirements

The FCC and FTC each provided persons subject to their respective do-not-call rules a ''safe harbor'' providing that a seller or telemarketer is not liable for a violation of the do-not-call rules that is the result of an error if the seller or telemarketer's routine business practice meets certain specified standards. The MSRB has provided a parallel safe harbor in paragraph (c) of Rule G–39; this safe harbor is limited to a violation of subparagraph (a)(iii) of Rule G–39, which prohibits initiating any telephone solicitation to any person who has registered his or her telephone number with the national do-not-call registry.

Today, to be eligible for this Rule G–39 safe harbor, a broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer must demonstrate that the broker, dealer or municipal securities dealer's routine business practice meets four standards. First, the broker, dealer or municipal securities dealer must have established and implemented written procedures to comply with the national do-not-call rules. Second, the broker, dealer or municipal securities dealer must have trained its personnel, and any entity assisting it in its compliance, in procedures established pursuant to the national do-not-call rules. Third, the broker, dealer, or municipal securities dealer must have maintained and recorded a list of telephone numbers that the broker, dealer or municipal securities dealer may not contact. Fourth, the broker, dealer or municipal securities dealer must use a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the FTC no more than three months prior to the date any call is made, and must maintain records documenting this process.

Shortly after the MSRB's rules were approved, Congress instructed the FTC to amend it telemarketing rules to require use of a national do-not-call registry no more than thirty-one days old.[9] Accordingly, in March 2004, the FTC amended its Telemarketing Sales Rule to require sellers and telemarketers seeking to qualify for the FTC's do-not-call safe harbor to use a version of the national do-not-call registry obtained from the FTC no more than thirty-one days prior to the date any call is made. In August 2004, the FCC adopted a conforming amendment to its Miscellaneous Rules Relating to Common Carriers, requiring that persons who seek to qualify for a similar safe harbor provided in the rule use a version of the national do-not-call registry obtained from the administrator of the national do-not-call registry (*i.e.,* the FTC) no more than thirty-one days prior to the date any call is made.[10] The FTC and FCC rule amendments took effect on January 1, 2005.

The MSRB is proposing to amend Rule G-39 to conform to this change in the rules of the FTC and FCC. The MSRB believes that this change is necessary to maintain the consistency between the telemarketing rules of the MSRB and the FTC and FCC (particularly given that the FCC's rules already directly apply to broker-dealers), and that investors generally expect the MSRB's telemarketing standards to be comparable to those of the FTC and FCC. Additionally, under the Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994, the SEC has requested that the MSRB amend its do-not-call rules to conform to the recent amendments to the FTC's do-not-call rules.

The MSRB's proposed rule change would take effect on May 1, 2005. Accordingly, under the proposed rule change, effective May 1, 2005, a broker, dealer or municipal securities dealer seeking to qualify for the safe harbor in Rule G–39 would be required to use a process to prevent telephone solicitations to any telephone number in a version of the national do-not-call registry obtained from the administrator of the registry (*i.e.,* the FTC) no more than thirty-one days prior to the date any call is made.

2.Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[11] which provides that MSRB rules shall:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *

The MSRB believes that the proposed rule change will increase the protection of investors by enabling investors who do not want to receive telephone solicitations to receive the benefits and protections of the national do-not-call registry sooner.

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

The MSRB does not believe that the proposed rule change will result in any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all dealers.

C.Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

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

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from March 23, 2005, the date on

rules are not subject to this limitation and apply to all sellers and telemarketers.

[7] The Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 (codified at 15 U.S.C. § 6102) requires the SEC to promulgate telemarketing rules substantially similar to those of the FTC or to direct self-regulatory organizations to promulgate such rules unless the SEC determines that such rules are not in the interest of investor protection.

[8] Exchange Act Release No. 49127 (January 26, 2004); 69 FR 4548 (January 30, 2004).

[9] 69 FR 16368 (Mar. 29, 2004). The FTC indicated that it was directed to amend its rules by Congress in the Consolidated Appropriations Act of 2004, Pub. L. 108-199, 188 Stat 3 (requirement in Division B, Title V).

[10] 69 FR 60311 (Oct. 8, 2004); CG Docket No. 02–278, FCC 04–204 (adopted Aug. 25, 2004; released Sept. 21, 2004). The FCC indicated that while Congress did not direct the FCC to amend its do-not-call rule, it determined to do so, in part, because it is required to consult and coordinate with the FTC with respect to, and maximize the consistency of, their respective do-not-call rules. 69 FR 60313.

[11] 15 U.S.C. 78o–4(b)(2)(C).

which it was filed, and the MSRB provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

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.[14]

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–MSRB–2005–06 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–MSRB–2005–06. 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 MSRB. 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–MSRB–2005–06 and should be submitted on or before May 9, 2005.

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

Jill M. Peterson,

Assistant Secretary.

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[15] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51521; File No. SR–OCC–2004–17]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Calculating Net Capital Under OCC Rule 307

April 11, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 27, 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 OCC Rule 307 by adopting Interpretation and Policy .01 (''IP .01'') thereunder that would require clearing members that could otherwise take advantage of Commission Rule 15c3–1(a)(6) under the Act to include the risk-based haircuts associated with proprietary securities positions in determining their compliance with OCC's minimum net capital requirements.

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

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

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

The purpose of this proposed rule change is to add IP .01 to OCC Rule 307. Rule 307 requires a clearing member to compute its ''net capital,'' ''aggregate indebtedness,'' and ''debt-equity total'' in accordance with Commission Rule 15c3–1 under the Act for purposes of OCC Rules.[3] The proposed rule change would require clearing members that could otherwise take advantage of Commission Rule 15c3–1(a)(6) to deduct the risk-based haircuts associated with proprietary securities positions in determining their compliance with OCC's minimum net capital requirements.[4] Although the exemption in Rule 15c3–1(a)(6) from the securities haircuts in Rule 15c3–1(c)(2)(vi) and Appendix A under Rule 15c3–1 ensures from a systemic standpoint that capital exists to support open positions, it does not ensure that capital is maintained in the entity to which OCC has credit exposure. As a result, OCC is exposed to the volatility of the positions relative to the clearing member's net income without any reserve against net capital. OCC believes that the exemption in Rule

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

[3] OCC Rule 307 provides that a clearing member that is registered as a futures commission merchant and is not otherwise required to calculate net capital in accordance with Rule 15c3–1 may instead calculate net capital as required under the rules of the Commodity Futures Trading Commission.

[4] Rule 15c3–1 requires that every broker or dealer maintain net capital no less than the minimum net capital as set forth by the rule. Paragraph (c) of the rule defines net capital as the net worth of a broker or dealer, adjusted by among other things, securities haircuts that are set forth in paragraph (c)(vi) and appendix A of the rule. Paragraph (a)(6) allows market makers, specialists, and certain other dealers to elect to apply paragraph (a)(6)(iii) in lieu of paragraph (c)(vi) or Appendix A under Rule 15c3–1. In general, paragraph (a)(6)(iii) requires that a dealer maintain a liquidating equity with respect to securities positions in his market maker or specialist account at least equal to 25 percent of the market value of the long positions and 30 percent of the market value of the short positions.