

one commenter's concern with the timing of the disclosure of arbitrator conflicts, the Exchange noted that an arbitrator's duty to disclose conflicts pursuant to Rule 610 is a continuing duty, and additional information received by the Exchange pursuant to Rule 610 is immediately forwarded to the parties.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4, including whether Amendment No. 4 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2005-02 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NYSE-2005-02. 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 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 Number SR-NYSE-2005-02 and should

be submitted on or before December 20, 2005.

### IV. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is consistent with section 6(b) <sup>36</sup> of the Act in general and section 6(b)(5) of the Act <sup>37</sup> in particular, which require that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.<sup>38</sup> The proposed rule change makes permanent the pilot program allowing for list selection of arbitrators, but does so with modifications that make it easier for customers to opt for list selection, while retaining the method of traditional arbitrator appointment as an alternative for parties. The proposed rule change institutes a system of selecting arbitrators that is comparable to the SICA's UCA and that of the NASD. Although commenters expressed concerns with various of the modifications between the pilot program and the amendments to NYSE Rule 607 put forth in the proposed rule change, including the elimination of the second list and the limitations on preemptive strikes, the Exchange described the way these provisions had operated during the Exchange's administration of the pilot program, and explained the ways in which these provisions had appeared to the Exchange to delay the arbitration process. In light of the Exchange's experience with the pilot program, the Exchange's decision to eliminate these provisions of the pilot program appears reasonable. The Exchange also explained that arbitrator's past awards are readily available to parties, and that the last three arbitrator award decisions will be sent to parties should they request it. The NYSE also amended its Rule 607 in order to provide for a time period in which the lists of arbitrators should be sent to the parties that is the same as the NASD's requirement, creating consistency between the two systems.

We believe that the proposed amendments to NYSE Rule 607 will provide the NYSE with a list selection mechanism for selecting arbitrators comparable to that of the NASD and SICA's UCA, and that the list selection process will give customers increased

involvement in the selection of the arbitrators who will hear their claims, leading to increased investor confidence in the NYSE's arbitral selection system.

#### Accelerated Approval of Amendment No. 4

The Commission finds good cause for approving Amendment No. 4 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to section 19(b)(2) of the Act.<sup>39</sup> Amendment No. 4 provided a time period in which the NYSE would be required to provide the parties with lists of arbitrators. Setting a specific time for sending the lists of arbitrators to the parties will create consistency across the arbitration system in place at the NYSE. Further, the timing of the NYSE's sending of the lists to parties is identical to that of the NASD, thereby creating consistency between the two arbitration systems. The Commission finds that, given the benefits of having the Exchange set a specific time for sending out the lists of arbitrators, it is appropriate for the Exchange to amend the proposed rule text to reflect consistency in the involvement of arbitrators in the process. Accordingly, the Commission believes that accelerated approval of Amendment No. 4 is appropriate.

### V. Conclusion

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act <sup>40</sup> that the proposed rule change (SR-NYSE-2005-02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>41</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. E5-6653 Filed 11-28-05; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52790; File No. SR-OCC-2005-13]

#### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Clearing Fees for Certain Transactions Executed on OneChicago, LLC

November 17, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>39</sup> 15 U.S.C. 78s(b)(2).

<sup>40</sup> 15 U.S.C. 78s(b)(2).

<sup>41</sup> 17 CFR 200.30-3(a)(12).

<sup>36</sup> 15 U.S.C. 78f(b).

<sup>37</sup> 15 U.S.C. 78f(b)(5).

<sup>38</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

("Act"),<sup>1</sup> notice is hereby given that on September 29, 2005, 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)(ii) of the Act,<sup>2</sup> and Rule 19b-4(f)(2) thereunder,<sup>3</sup> 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 purpose of the proposed rule change is to charge clearing fees to OneChicago, LLC ("ONE") for cleared trades where an OCC clearing member is on one or both sides of the trade based on OCC's standard rebate-eligible fee schedule ("Standard Fee Schedule"), rather than under the alternate rebate-ineligible fee schedule ("Alternate Fee Schedule") adopted when OCC and ONE entered into the Security Futures Agreement for Clearing and Settlement Services ("ONE Clearing Agreement").

### **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>4</sup>

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

Under the Standard Fee Schedule, OCC clearing members pay OCC's standard clearing fees and are eligible to receive rebates of excess clearing fees when and as determined by OCC's Board of Directors. When negotiating its clearing agreement with OCC, ONE preferred to pay OCC's clearing fees itself rather than have OCC charge those

fees to clearing members.<sup>5</sup> Because ONE wanted to plan on set fees and avoid the uncertainty of a rebate that might be less than expected, OCC agreed to an Alternate Fee Schedule which provides for the following fees:

- 7¢ per side for trades of 1 to 500 contracts.
- 6¢ per side for trades of 501 to 1,000 contracts.
- 5¢ per side for trades of 1,001 to 2,000 contracts, and
- \$85 for trades larger than 2,000 contracts.<sup>6</sup>

The Alternate Fee Schedule also includes certain new product discounts.<sup>7</sup> Under the terms of the ONE Clearing Agreement, the Alternate Fee Schedule expired on November 8, 2005.

Since the adoption of the Alternate Fee Schedule, OCC has both reduced and discounted its Standard Fee Schedule.<sup>8</sup> The current discounted Standard Fee Schedule is:

- 5¢ per contract for trades of 1 to 500 contracts.
- 4¢ per contract for trades of 501 to 1,000 contracts.
- 3¢ per contract for trades of 1,001 to 2,000 contracts, and
- \$55 for trades larger than 2,000 contracts.

This discounted fee structure remains in effect until further action by OCC's Board of Directors.

In response to a request by ONE, OCC has agreed to charge fees to ONE under the Standard Fee Schedule including standard new product fee discounts<sup>9</sup> for

<sup>5</sup> At that time, clearing fees under OCC's Standard Fee Schedule were:

- 9¢ per side for trades of 1 to 500 contracts.
- 7¢ per side for trades of 501 to 1,000 contracts.
- 6¢ per side for trades of 1,001 to 2,000 contracts, and
- \$110 for trades larger than 2,000 contracts.

<sup>6</sup> Securities Exchange Act Release No. 47196 (January 15, 2003), 68 FR 3922 (January 27, 2003) [File No. SR-OCC-2002-20]. Pursuant to the ONE Clearing Agreement, the CME has been designated as an associated clearinghouse ("ACH") for ONE. Under the Alternate Fee Schedule, different fees are charged where the ACH is on one or both sides of a trade. Those fees are not being changed by this filing.

<sup>7</sup> Securities Exchange Act Release No. 47196. The "new securities future product" discounts are as follows:

- First month traded: No fee.
- Second month traded: 2.5¢ regardless of size.
- Third month traded: The lesser of the total at 5¢ or \$85.
- Fourth month traded: Reverts to Alternate Fee Schedule.

<sup>8</sup> See Securities Exchange Act Release Nos. 49436 (March 17, 2004), 69 FR 13932 (March 24, 2004) [File No. SR-OCC-2004-01], 50080 (July 26, 2004), 69 FR 45873 (July 30, 2004) [File No. SR-OCC-2004-12], 50951 (December 30, 2004), 70 FR 1489 (January 7, 2005) [File No. SR-OCC-2004-22], and 52034 (July 14, 2005), 70 FR 42134 (July 21, 2005) [File No. SR-OCC-2005-08].

<sup>9</sup> The "new products" discounts under the Standard Schedule are as follows:

trades where at least one side is cleared by an OCC clearing member. OCC is willing to provide ONE with the benefit of the Standard Fee Schedule for such trades before the date the Alternate Fee Structure for ONE is set to expire. Accordingly, effective October 1, 2005, OCC charged ONE clearing fees based on the Standard Fee Schedule. Any refund of clearing fees charged under the Standard Schedule will be paid to ONE.

OCC believes that the proposed change is consistent with Section 17A of the Act because it provides the benefit of a discounted, rebate-eligible clearing fee schedule for certain trades to a market for which OCC provides clearance and settlement services. 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)(ii) of the Act<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</sup> thereunder because it establishes or changes a due, fee, or other charge. 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.

- First month traded: No fee.
- Second month traded: For trades with contracts of:
  - 1-4,400—1 cent/side.
  - > 4,400—\$40.
- Third month traded: For trades with contracts of:
  - 1-2,200—2 cents/side.
  - > 2,200—\$40.
- Fourth month traded: Reverts to Standard Fee Schedule.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(2).

<sup>4</sup> The Commission has modified parts of these statements.

#### 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-OCC-2005-13 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-OCC-2005-13. 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-2005-13 and should be submitted on or before December 20, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Jonathan G. Katz,**

*Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-52789; File No. SR-OCC-2005-14]**

#### **Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Position Sub-Accounts**

November 17, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 29, 2005, 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)(iii) of the Act,<sup>2</sup> and Rule 19b-4(f)(4) thereunder,<sup>3</sup> 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 proposed rule change sets forth certain interpretations as to the treatment of position sub-accounts maintained with respect to one or more account types established by a clearing member under a particular clearing member number<sup>4</sup> in the event of the clearing member's liquidation.<sup>5</sup>

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(4).

<sup>4</sup> Clearing member numbers are used to identify clearing members within OCC's system. For a variety of reasons, a clearing member may use more than one clearing member number. See Securities Exchange Act Release No. 47194 (January 15, 2003), 68 FR 3923 (January 27, 2003) [File No. SR-OCC-2002-26].

<sup>5</sup> The proposed change to Article VI, Section 3, Interpretation and Policy .02 is conforming in nature and reflects the Commission's recent approval of the proposed rule change in Securities Exchange Act Release No. 52030 (July 14, 2005), 70 FR 42405 (July 22, 2005) [File No. SR-OCC-2003-04].

#### **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>6</sup>

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

OCC's clearing systems have historically contained functionality that identifies the positions of each market maker participating in a combined market makers' account.<sup>7</sup> Position sub-accounting in a combined market makers' account is accomplished by using each participating market maker's unique acronym to identify the market maker's trades for clearance and settlement, including position reporting. Because of the large number of transactions effected by market makers, reporting their positions on a sub-account basis facilitates clearing member reconciliation and balancing processes. Position sub-accounting also avoids the need for firms carrying a combined market makers' account to allocate assignments to particular market makers because OCC assigns exercise notices directly to market maker sub-accounts.<sup>8</sup>

OCC's new clearing system, ENCORE, was designed to extend position sub-accounting to other account types that a clearing member may maintain with OCC although this functionality has not yet been offered to clearing members. Once OCC completes a system and clearing member readiness assessment, OCC intends to gradually roll out position sub-accounting for these other account types to interested clearing members. OCC expects the roll-out to commence in or about the second quarter of 2006. OCC anticipates that

<sup>6</sup> The Commission has modified parts of these statements.

<sup>7</sup> A combined market makers' account is confined to the exchange transactions of the market makers for which it was established. OCC also permits sub-accounting within a clearing member's segregated futures professional account. All positions carried within each of these account types are maintained on sub-account basis.

<sup>8</sup> Securities Exchange Act Release No. 46735 (October 28, 2002), 67 FR 67434 (November 5, 2002) [File No. SR-OCC-2002-19].

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