

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-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.¹²

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"),¹ 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,² and Rule 19b-4(f)(4) thereunder,³ 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 number⁴ in the event of the clearing member's liquidation.⁵

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A)(iii).

³ 17 CFR 240.19b-4(f)(4).

⁴ 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].

⁵ 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.⁶

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.⁷ 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.⁸

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

⁶ The Commission has modified parts of these statements.

⁷ 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.

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

¹² 17 CFR 200.30-3(a)(12).

interested clearing members will initially limit their use of the new sub-accounts to large-volume customers such as institutions and foreign affiliates in order to further improve the efficiency of their reconciliation processes.

Like the process used to provide position sub-accounting for market makers, unique identifying acronyms will be assigned for use by clearing members in creating position sub-accounts with respect to other accounts maintained under a given clearing member number. Exchange transactions may be directly cleared into a sub-account by submitting the applicable assigned acronym in the matching trade information. Alternatively, a clearing member would be permitted to effect a post-trade instruction in OCC's systems to transfer the position to a sub-account. As in the case of market maker sub-accounts, OCC will assign exercise notices directly to applicable position sub-accounts.⁹

The potential increase in the number of sub-accounts that may be carried on OCC's books, coupled with the fact that sub-accounts would now be permitted to be maintained in accounts in which positions also are carried on an omnibus basis, has led OCC to conclude that it would be advisable to formalize existing interpretations regarding the treatment of position sub-accounts in the event of a clearing member liquidation. For such purposes, market-maker sub-accounts always have been treated as a single account. The proposed rule change codifies this existing interpretation and extends it to the sub-accounts that will now be permitted to be carried in other account types. In order to provide for a controlled implementation of position sub-accounting with respect to other account types, a further interpretation has been added which permits OCC to limit, for systemic or operational reasons, the overall number of sub-accounts that a clearing member may maintain with respect to particular account types. As is the case today, OCC would not limit the number of market professional sub-accounts a clearing member could carry in recognition of their role in providing market liquidity.

OCC believes that the proposed change is consistent with Section 17A of Act because by clarifying the

⁹ Exchange rules require member firms to establish fixed procedures for allocating assignments to customers and to inform their customers of the method used and how it works. See, e.g., CBOE Rule 11.2. OCC will require clearing members that establish customer sub-accounts to give each customer for which a sub-account is opened a notice disclosing that OCC will assign exercises directly to the sub-account.

application of OCC's liquidation rules to position sub-accounts carried by clearing members it better enables OCC to safeguard the securities and funds in its possession or for which it is responsible. 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 rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(4)¹¹ promulgated thereunder because the proposal effects a change in an existing service of OCC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within sixty 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.

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¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(4).

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

Jonathan G. Katz,
Secretary.

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¹² 17 CFR 200.30-3(a)(12).