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

Written comments on the proposed rule change were neither solicited nor received.

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

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change. In addition, the Exchange has requested that the Commission waive the 30-day pre-operative delay. The Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and in the public interest because it will allow the Pilot Program to continue uninterrupted.[14]

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 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 No. SR–NYSEArca–2006–49 on the subject line.

Paper comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEArca–2006–49. 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 will also be available for inspection and copying at the principal office of NYSE Arca. 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–NYSEArca–2006–49 and should be submitted on or before September 29, 2006.

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

Nancy M. Morris,

Secretary.

[FR Doc. E6–14877 Filed 9–7–06; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *Id.*

[14] For purposes only of waiving the pre-operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54382; File No. SR–OCC–2005–23]

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

August 29, 2006.

I. Introduction

On December 16, 2005, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2005–23 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on May 19, 2006.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

Currently, OCC's By-Laws relating to the potential use of securities and other margin assets in the event of a clearing member's liquidation 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. The proposed rule change amends Chapter XI of the Rules to more precisely reflect appropriate limitations that are imposed by OCC's By-Laws on the use of clearing member margin deposits and amends 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

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

[2] Securities Exchange Act Release No. 53794, (May 11, 2006), 71 FR 29206.

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 Commission 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 Commission 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 a broker-dealers' 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), 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 amending 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 will 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, will be a general lien account, and all general lien accounts will be treated as a single firm lien account in a

[3] 17 CFR 240.15c3–3.

[4] 17 CFR 240.15c2–1 and 240.8c–1. 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. 17 CFR 240.15c2–1(a)(2) and 240.8c–1(a)(2).

[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 an 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] 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.

liquidation of the clearing member. This is precisely the same result as under the present rules.

The definition of a restricted lien will 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 will 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 will 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 will 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) for ''[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 is modifying 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 subjecting non-securities assets in certain of the account 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 its Rules to the changes made in provisions of Article VI, Section 3(a) of the By-Laws relating to firm non-lien accounts and in Section 3(e) relating to the securities customers' account, OCC is deleting 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, the limitations of the use of margin 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 under 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 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 the rule change. Other changes to Rule 1104 are intended for clarification only and are not substantive.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[12] OCC Rule 1104 provides that following the suspension of a clearing member OCC will create a liquidating settlement account for the purpose of making settlement payments for the clearing member's obligations to OCC. Under Rule 1104, all margin deposited by the suspended member in all of the member's accounts, as well as its contribution to OCC's clearing fund, will be converted to cash and will be deposited in the liquidating settlement account. To the extent such funds are insufficient for settlement and the clearing member is otherwise unable 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 being made with respect to futures accounts subject to segregation requirements under the CEA.

[11] OCC is amending 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. Under OCC's Rules, he letter of credit must indicate on its face the purpose or purposes to which it may be applied.

[12] 15 U.S.C. 78q–1(b)(3)(F).

satisfy its obligations, OCC may have to use its clearing fund, which is made up from contributions from all clearing members, to make up the loss.

Under the current version of Article VI, Section 3, of OCC's By-Laws, OCC has a lien on cash and non-securities assets in a non-proprietary account for purposes of the obligations of such account only, thus limiting OCC's ability to use these assets in the liquidating settlement procedures provided for in Rule 1104. Although OCC is entitled under Rule 1108 to recover any amounts owed to it by the suspended Clearing member and OCC's members are entitled under Article VIII of the By-Laws to share in a recovery of charges against the clearing fund, the restriction on the use of the assets in non-proprietary accounts unnecessarily complicates the liquidating settlement process.

The rule change gives OCC a general lien over the cash and non-securities assets in non-proprietary accounts at OCC, other than securities customers' accounts and customer lien accounts, so that those assets may be used to meet any of the member's obligations to OCC for purposes of creating a liquidating settlement account under Rule 1104. Accordingly, by revising its By-Laws and Rules to give OCC broader access to collateral in the event of a clearing member liquidation while still complying with the Commission's hypothecation rules and customer protection rule, OCC has designed the proposed rule change to improve its ability to protect itself and its clearing members from the potential losses associated with a clearing member liquidation without affecting the protection of customers' securities under the Commission's rules. As a result, the Commission finds that the proposed rule change is designed to assure the safeguarding of securities and funds which are in OCC's custody or control or for which OCC is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2005–23) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E6–14857 Filed 9–7–06; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5542]

Culturally Significant Objects Imported for Exhibition Determinations: ''In the Beginning: Bibles Before the Year 1000''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''In the Beginning: Bibles Before the Year 1000,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Arthur M. Sackler Gallery, Washington, DC, from on or about October 21, 2006, until on or about January 7, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 31, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–14903 Filed 9–7–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5540]

Culturally Significant Objects Imported for Exhibition Determinations: ''Manet and the Execution of Maximilian''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Manet and the Execution of Maximilian,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Modern Art, New York, New York, from on or about November 5, 2006, until on or about January 29, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 1, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–14894 Filed 9–7–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5541]

Culturally Significant Objects Imported for Exhibition Determinations: ''Prayers & Portraits: Unfolding the Netherlands Diptych''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C.