

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51330; File No. SR-OCC-2003-04)

March 8, 2005

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to a New Customers' Lien Account

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 21, 2003, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on December 20, 2004, amended, 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's By-Laws and Rules to support the introduction of a new customers' lien account that may be carried at OCC by a clearing member.

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>

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

<sup>2</sup> The Commission has modified parts of these statements.

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

The proposed rule change would provide for the introduction of a new “customers’ lien account” that may be carried at OCC by a clearing member. The new account type would be used only to clear transactions of eligible customers that an OCC clearing member has agreed to margin on a portfolio risk basis or that a commodity clearing organization has agreed to margin in connection with a cross-margining arrangement in accordance with rules proposed by certain exchanges.

OCC, in conjunction with the Chicago Board Options Exchange (“CBOE”), American Stock Exchange, New York Stock Exchange (“NYSE”), Chicago Mercantile Exchange (“CME”), Chicago Board of Trade and various member firms, is seeking to establish a program under which eligible customers may elect to establish accounts, limited to specified derivative products, that would be margined on a risk-based or portfolio margining basis rather than under the “strategy-based” method currently set forth in the exchanges’ margin rules. The proposed program is described in detail in a proposed rule change filed by CBOE ( “CBOE Rule Filing”) in which CBOE proposes to amend its margin rules to provide for the program.<sup>3</sup> The proposed program would permit eligible customers to establish risk-based margin accounts that would be limited to specified derivative products subject to regulation by the Commission, and it would also provide for accounts in which derivative products regulated by the Commission may be cross-margined with related futures products regulated exclusively by the Commodity Futures Trading Commission (the “CFTC”). Under the current proposal, a cross-margining account of

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<sup>3</sup> Securities Exchange Act Release No. 50886 (December 20, 2004), 69 FR 77275 (December 27, 2004) [File No. SR-CBOE-2002-03]. A similar proposed rule change was filed by NYSE. Securities Exchange Act Release No. 50885 (December 20, 2004), 69 FR 77287 (December 27, 2004) [File No. SR-NYSE-2002-19].

an eligible customer would be treated as a securities account for regulatory purposes.<sup>4</sup> A single “customers’ lien account” created under the proposed new paragraph (i) of Article VI, Section 3 of OCC’s By-Laws would be used to clear all transactions of eligible customers under a portfolio margining program or cross-margining program so long as the products included in the account are all cleared by OCC.<sup>5</sup> OCC would have a lien on all positions and assets in a customers’ lien account as security for the OCC clearing member’s obligations to OCC relating to the account.<sup>6</sup> OCC would continue to require full premium payment from the clearing firm for all options purchased whether or not the firm extends credit to a customer for the purchase.

Where cross-margining accounts include products cleared by OCC as well as futures products cleared by CME or other derivatives clearing organizations other than OCC, under a cross-margining program OCC’s clearing function would occur in a separate customers’ lien account to be established for each such program. A corresponding account would be established at the participating derivatives clearing organizations. Liquidation of these accounts would be

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<sup>4</sup> CBOE plans to submit a request to the CFTC for an exemption from the segregation requirements and from other provisions of the CEA to the extent necessary to permit futures contracts to be carried in securities accounts subject to regulation by the Commission.

<sup>5</sup> OCC is registered as a derivatives clearing organization under the Commodity Exchange Act and is therefore able to clear CFTC-regulated derivative products as well as Commission-regulated derivative products.

<sup>6</sup> Under Commission Rules 8c-1, 15c2-1, and 15c3-3, securities held for the account of a customer generally may not be subject to liens to secure obligations of the carrying broker-dealer in an amount that exceeds the amount of total customer indebtedness. To facilitate compliance with these customer protection rules, OCC’s rules require clearing members to carry positions of public securities customers in a customers’ account under which all long positions are considered “segregated” and therefore free of OCC’s lien, unless specifically designated as “unsegregated.” All long options positions in customers’ lien accounts, however, would automatically be considered unsegregated for purposes of OCC’s placing a lien on these positions. OCC has requested no-action relief from the Commission’s Division of Market Regulation which will permit OCC to treat these positions as unsegregated notwithstanding these provisions of Rules 8c-1, 15c2-1 and 15c3-3.

subject to a cross-margining agreement between or among OCC and the participating derivatives clearing organizations just as in the case of the existing cross-margining programs. These agreements or appropriate amendments to existing agreements would be separately filed with the Commission for approval. It is anticipated that a clearing member may establish a customers' lien account corresponding to a cross-margining agreement among OCC, CME and the New York Clearing Corporation. Separate customers' lien accounts would correspond to cross-margining agreements between OCC and other futures clearing organizations.

As stated in the CBOE rule filing, the currently proposed program includes only the following eligible products: (i) all broad-based U.S. market index options (including stock index warrants) listed on a national securities exchange; (ii) marginable exchange-traded funds; and (iii) index futures contracts and futures options contracts to the extent they are cross-margined with listed index options.

The following proposed revisions to OCC's By-Laws and Rules are necessary to provide for the introduction of customers' lien accounts.

**New Defined Term:** OCC proposes to add a new defined term, "customers' lien account," in Article I of the By-Laws. The definition simply cross-references the description of the account in Article VI, Section 3(i).

**Amendments to Article VI of the By-Laws:** Article VI sets out the basic terms of option contracts and the general rules for the clearance of exchange transactions. Section 3 contains a description of each of the types of accounts that clearing members may establish and maintain with OCC. A new Section 3(i) would be added that would contain a description of the proposed "customers' lien account," including provisions setting forth OCC's lien on all long positions, securities, margin, and other funds in such these accounts and OCC's right to close out positions in these accounts. As provided in the proposed amendment to Rule 611 below, positions in

customers' lien accounts would be deemed to be unsegregated. Section 3 would be further amended to correct the paragraph numbers of the Interpretations and Policies to Section 3.

A minor, conforming amendment has been made to Section 4 of Article VI.

Amendments to the Rules: OCC's Rule 611 treats all long option positions in the regular securities customers' account as "segregated" and therefore free of OCC's lien except to the extent that a clearing member is entitled to "unsegregate" long positions that are part of a customer spread. Rule 611 would be amended to provide that all positions in customers' lien accounts will be deemed to be "unsegregated."

Changes are being proposed in Chapter XI of the Rules to provide for the liquidation of a clearing member's customers' lien account in the event that the clearing member is suspended. In essence, a customers' lien account would be treated in exactly the same manner as a combined market-maker account. Under these provisions, proceeds of long options or security futures in a customers' lien account would be applied only to satisfy obligations arising from that account.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because it provides for operational and economic efficiencies in customer margining and increases the safety of the clearing system by applying previously approved risk-based margining procedures to clearing accounts containing the transactions of eligible customers. 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

Within thirty five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) by order approve the proposed rule change, or
- (b) institute proceedings to determine whether the proposed rule change should be disapproved.

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-2003-04 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-OCC-2003-04. 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 website (<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, 450 Fifth Street, NW, 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 website at [www.optionsclearing.com](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-2003-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).