



THE OPTIONS CLEARING
CORPORATION

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June 21, 2004

VIA FEDERAL EXPRESS

Jean A. Webb
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Rule Filing SR-OCC-2004-13 Rule Certification

Dear Secretary Webb:

Enclosed is a copy of the above-referenced rule filing, which The Options Clearing Corporation ("OCC") is submitting pursuant to the self-certification procedures of Commission Regulation 40.6. This rule filing has been, or is concurrently being, submitted to the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934 (the "Exchange Act").

In conformity with the requirements of Regulation 40.6(a)(3), OCC states the following: The text of the rule is set forth at Item 1 of the enclosed filing. The date of implementation of the rule is the date the proposed rule is approved by the SEC or otherwise becomes effective under the Exchange Act. Item 5 of the enclosed filing sets forth a description of any written comments on the rule filing, including any such comments expressing opposing views that were not incorporated into the proposed rule.

OCC hereby certifies that the rule set forth at Item 1 of the enclosed filing complies with the Commodity Exchange Act and the Commission's regulations thereunder.

JEAN M. CAWLEY

FIRST VICE PRESIDENT AND DEPUTY GENERAL COUNSEL

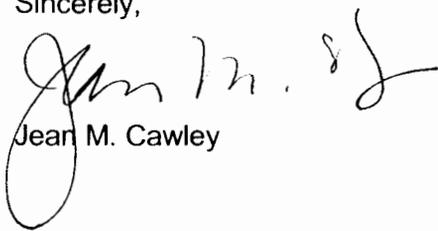
ONE N. WACKER DRIVE, SUITE 600 CHICAGO, ILLINOIS 60606 TEL 312.322.6269 FAX 312.322.6280

JCAWLEY@THEOCC.COM WWW.OPTIONSCLEARING.COM



Should you have any questions regarding this matter, please do not hesitate to contact the undersigned at (312) 322-6269.

Sincerely,



Jean M. Cawley

Enclosure

cc: CFTC Central Region (w/ enclosure)
525 West Monroe Street, Suite 1100
Chicago, IL 60661
Attn: Frank Zimmerle

Jerry W. Carpenter
Assistant Director (SEC)

2004-13cftc.ltr



THE OPTIONS CLEARING
CORPORATION

June 21, 2004

VIA COURIER DELIVERY

Jerry W. Carpenter
Assistant Director
Division of Market Regulation
Mail Stop 10-1
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

**Re: The Options Clearing Corporation
File No. SR-OCC-2004-13**

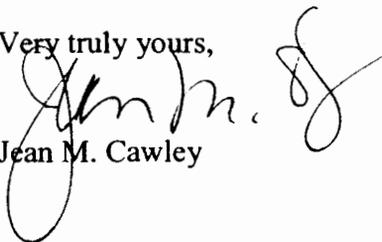
Dear Jerry:

The Options Clearing Corporation hereby files a manually signed original and eight copies of the referenced rule change. This rule change amends Article VIII, Section 5(e) to eliminate certain preconditions on OCC's ability to borrow against the clearing fund in the event of a clearing member default.

Pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934, OCC requests that the Commission accelerate its approval of this filing for the reasons specified therein.

Please call me at (312) 322-6269 with any questions you may have on this filing.

Very truly yours,


Jean M. Cawley

cc: Jean A. Webb
Secretary (CFTC)

JC/sd
2004-13sec.ltr

JEAN M. CAWLEY

FIRST VICE PRESIDENT AND DEPUTY GENERAL COUNSEL

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File No. SR-OCC-2004-13

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 19b-4

Proposed Rule Change
by

THE OPTIONS CLEARING CORPORATION

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

Item 1. Text of the Proposed Rule Change

The Options Clearing Corporation (“OCC”) proposes to amend Article VIII, Section 5(e) of its by-laws as set forth below. Underlining indicates material proposed to be added and brackets indicate material proposed to be deleted.

THE OPTIONS CLEARING CORPORATION

BY-LAWS

* * *

ARTICLE VIII

Clearing Fund

* * *

Application of Clearing Fund

SECTION 5. (a) – (d) [unchanged]

(e) If [(i) a Clearing Member is suspended and the Corporation is unable to obtain prompt delivery of, or to convert promptly to cash, any asset credited to any account of such Clearing Member with the Corporation; and as a result thereof,] the Corporation deems it necessary or advisable to borrow funds in order to meet obligations arising out of the default or [such] suspension of a Clearing Member or any action taken by the Corporation in connection therewith pursuant to Chapter XI of the Rules or otherwise; or (ii) the Corporation sustains a loss reimbursable out of the Clearing Fund pursuant to paragraph (b) but elects to borrow funds in lieu of immediately charging such loss to the Clearing Fund; and in either case the Corporation determines that it will be unable to borrow such funds on acceptable terms on an unsecured basis; then the Corporation may take possession of and pledge, as security for such borrowings, cash or securities deposited by Clearing Members as contributions to the Clearing Fund and securities in which cash contributions to the Clearing Fund have been invested by the Corporation; provided, in the case of any borrowings under the circumstances specified in clause (i) above, that the proceeds of any such borrowings will be used solely for the purposes described in clause (i). Such borrowings, irrespective of the application of the proceeds, shall not be deemed to be

charges against the Clearing Fund for a period not to exceed thirty days, and, during said period, shall not affect the amount or timing of any charges otherwise required to be made against the Clearing Fund pursuant to this Section. If such borrowings shall exceed thirty days, the Corporation, at the close of business of the thirtieth day (or on the first Business Day thereafter), shall consider the amount used to meet such borrowings as an actual loss to the Clearing Fund and immediately allocate such loss in accordance with this Section.

(f) – (g) [unchanged]

... *Interpretations & Policies* [unchanged]

* * *

Item 2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of OCC at a meeting held on May 25, 2004.

Questions regarding the proposed rule change should be addressed to Jean M. Cawley, First Vice President and Deputy General Counsel, at (312) 322-6269.

Item 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to modify Article VIII, Section 5(e), which permits OCC to borrow against its clearing fund in specified situations. Specifically, Section 5(e) permits OCC to effect such borrowings as follows:

- If a clearing member is suspended and OCC is unable to obtain prompt delivery of, or convert promptly to cash, any asset credited to any of the clearing member's accounts; and, as a result, OCC deems it necessary or advisable to borrow funds to meet obligations arising out of the suspension; or

- If OCC sustains a loss due to the failure of a bank or another clearing organization, and elects to borrow funds in lieu of immediately charging the loss to the clearing fund.

In either case, OCC must first determine that it cannot borrow the necessary funds on an unsecured basis; and borrowings are limited to a maximum of 30 days. After 30 days, the amount of the loan must be charged against the clearing fund.

In the event of a clearing member default, OCC may need immediate liquidity even before it has made the decision to suspend the clearing member. Historically, defaults tend to occur at 9:00 A.M. (CT), the time at which clearing members' accounts are debited for options premiums, exercise settlement payments, and mark-to-market payments.¹ OCC has an obligation to settle with the clearing members entitled to those payments at 10:00 A.M. (CT). Although OCC may be able to make settlement by using its own cash or by borrowing against its unsecured credit lines (currently \$20 million), it is possible that those resources would not be sufficient.

In order to borrow against its secured lines of credit (currently \$150 million; and in the process of being doubled), OCC would have to (i) suspend the clearing member and (ii) have difficulty in obtaining or liquidating the defaulting clearing member's collateral. If a default is not quickly remedied, OCC will likely suspend the defaulting clearing member. However, OCC believes that it should not have to make the decision to suspend as a precondition to borrowing against the clearing fund. Similarly, OCC believes that it should not be a precondition to borrowing against the clearing fund that OCC is unable to obtain "prompt" delivery of, or to convert "promptly" to cash, any asset credited to an account of a defaulting

clearing member. OCC interprets “prompt” and “promptly” in this context as meaning “in sufficient time to enable OCC to use the proceeds to meet its obligations.” However, OCC does not believe that its ability to effect such borrowings should turn on questions of interpretation.

Accordingly, OCC is proposing to amend Article VIII, Section 5(e) to eliminate the requirements that OCC (i) suspend a defaulting clearing member and (ii) be unable to obtain prompt delivery of collateral, or covert it promptly to cash, as preconditions to borrowing against the clearing fund. As amended, Section 5(e) would allow OCC to borrow against the clearing fund whenever it deems such borrowings to be necessary or advisable in order to meet obligations arising out of the default or suspension of a clearing member or any action taken by OCC in connection therewith.

* * *

The proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934, as amended (the "Exchange Act") because it enhances OCC’s ability to respond to and manage clearing member defaults in a manner that increases the protection of investors and persons facilitating transactions by and acting on behalf of investors and limits systemic risk.

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

¹ 9:00 A.M. (CT) is also the time when members’ accounts are debited for margin deficiencies; but margin payments, unlike premium, exercise settlement, and mark-to-market payments, are not pass-through payments.

Item 5. 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.

Item 6. Extension of Time Period for Commission Action

Not applicable.

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934, OCC requests that the Commission accelerate its approval of this proposed rule change. OCC believes that there is good cause for the Commission to accelerate such approval as OCC is proposing to eliminate preconditions to borrowing against the clearing fund in the event of a clearing member default. Eliminating these preconditions will enhance OCC's ability to respond to and manage clearing member defaults in a manner that limits systemic risk and enhances investor protection.

Item 8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on a rule of another self-regulatory organization or of the Commission.

Item 9. **Exhibits**

Exhibit 1. Completed Notice of Proposed Rule Change for publication in
the Federal Register.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, The Options Clearing Corporation has caused this filing to be signed on its behalf by the undersigned hereunto duly authorized.

THE OPTIONS CLEARING CORPORATION

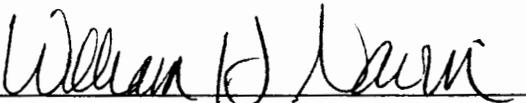
By: 
William H. Navin
Executive Vice President and
General Counsel

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____ ; File No. SR-OCC-2004-13

SELF-REGULATORY ORGANIZATION

Proposed Rule Change By
The Options Clearing Corporation

Relating to Borrowing
Against the Clearing Fund

Comments requested within ____ days
after the date of this publication.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C.

'78s(b)(1), notice is hereby given that on _____, 2004, The Options

Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 Article VIII, Section 5(e) of OCC's by-laws, which authorizes OCC to borrow against the clearing fund in specified situations.

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 self-regulatory organization 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 self-regulatory organization 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

The purpose of this rule change is to modify Article VIII, Section 5(e), which permits OCC to borrow against its clearing fund in specified situations. Specifically, Section 5(e) permits OCC to effect such borrowings as follows:

- If a clearing member is suspended and OCC is unable to obtain prompt delivery of, or convert promptly to cash, any asset credited to any of the clearing member's accounts; and, as a result, OCC deems it necessary or advisable to borrow funds to meet obligations arising out of the suspension; or
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The proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934, as amended (the "Exchange Act") because it enhances OCC's ability to respond to and manage clearing member defaults in a manner that increases the protection of investors and persons facilitating transactions by and acting on behalf of investors and limits systemic risk.

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

Pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934, OCC requests that the Commission accelerate its approval of this proposed rule change. OCC believes that there is good cause for the Commission to accelerate such approval as OCC is proposing to eliminate preconditions to borrowing against the clearing fund in the event of a clearing member default. Eliminating these preconditions will enhance OCC's ability to respond to and manage clearing member defaults in a manner that limits systemic risk and enhances investor protection.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by _____.

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

Secretary

Dated: _____