



THE OPTIONS CLEARING
CORPORATION

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October 10, 2003

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-2003-11 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

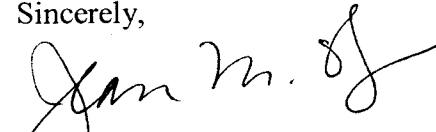
FIRST VICE PRESIDENT AND DEPUTY GENERAL COUNSEL

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)

2003-11cftc.ltr





THE OPTIONS CLEARING
CORPORATION

October 10, 2003

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-2003-11**

Dear Jerry:

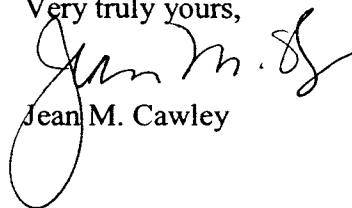
The Options Clearing Corporation hereby files a manually signed original and eight copies of the referenced rule change. This rule change proposes to:

- Improve the description of the Clearing Member Trade Assignment facility within OCC's by-laws and rules;
- Increase OCC's initial and minimum net capital requirements; and
- Impose a special minimum clearing fund requirement for "execution-only" clearing members (i.e., clearing members that confine their business to executing transactions which are then given up to other clearing members for clearance and settlement).

This filing is being made pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934, as amended, and Rule 19b-4 thereunder. The Federal Register notice will be emailed to you.

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)

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

JC/sd
2003-11sec.ltr

File No. SR-OCC-2003-11

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 its by-laws and rules 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 I

DEFINITIONS

Definitions

Section 1.

A.

(1) – (14) [unchanged]

[Authorized Exchange Members

(15) The term “authorized Exchange members” means, in respect of any Clearing Member at any specific time, the Exchange members who themselves are Clearing Members and who are authorized to compare Exchange transactions on behalf of such Clearing Member.]

B. [unchanged]

C.

(1) – (3) [unchanged]

Carrying Clearing Member

(4) The term “Carrying Clearing Member” means a Clearing Member that has authorized an Executing Clearing Member to direct the transfer of an Exchange transaction to a designated account of such Carrying Clearing Member pursuant to a CMTA arrangement.

(4) – (10) [renumbered as (5) – (11) but otherwise unchanged]

Clearing Member

(12[1]) The term “Clearing Member” means a person or organization that has been admitted to membership in the Corporation pursuant to the provisions of the By-Laws and Rules. The term “Stock Clearing Member” shall mean those Clearing Members approved in accordance with Article V of the By-Laws to clear transactions in stock options and BOUNDS. The terms “Treasury Securities Clearing Member,” “Foreign Currency Clearing Member,” “Cross-Rate Foreign Currency Clearing Member,” and “Cash-Settled Foreign Currency Clearing Member,” shall mean those Clearing Members approved in accordance with Article V of the By-Laws to clear transactions in Treasury securities options (excluding yield-based Treasury options), foreign currency options, cross-rate foreign currency options, and cash-settled foreign currency options, respectively. The term “Security Futures Clearing Member” shall mean a Clearing Member approved in accordance with Article V of the By-Laws to clear transactions in security futures. The term “Commodity Futures Clearing Member” shall mean a Clearing Member approved in accordance with Article V of the By-Laws to clear transactions in commodity futures and futures options. The term “Index Clearing Member” shall mean a Clearing Member approved to clear transactions in cash-settled options. The term “Flexibly Structured Option Clearing Member” shall mean a Clearing Member approved to clear transactions in Flexibly Structured Options. The term “Non-Equity Securities Clearing Member” shall mean a Clearing Member that is one or more of the following: a Treasury Securities Clearing Member, a Foreign Currency Clearing Member, a Cross-Rate Foreign Currency Clearing Member, a Cash-Settled Foreign Currency Clearing Member, an Index Clearing Member. The term “Domestic Clearing Member” means any Clearing Member other than a “Non-U.S. Clearing Member” as defined in this Article I. The term “FX Index Option Clearing Member” shall mean a Clearing Member approved to clear transactions in Flexibly Structured Index Options Denominated in a Foreign Currency (“FX Index Options”). The term “Execution-Only Clearing Member” shall mean a Clearing Member approved only to act as an Executing Clearing Member and not to carry positions in its accounts with the Corporation on a routine basis.

(12 – 14) [renumbered as (13) – (15), but otherwise unchanged]

CMTA

(16) The term “CMTA” (Clearing Member Trade Assignment) means the process by which an Executing Clearing Member directs the transfer of an Exchange transaction to a designated account of a Carrying Clearing Member for clearance and settlement.

CMTA Agreement

(17) The term “CMTA Agreement” means a written agreement between a Carrying Clearing Member and an Executing Clearing Member regarding their respective responsibilities in connection with their CMTA arrangement.

CMTA Retransfer

(18) The term “CMTA Retransfer” means the process by which an Executing Clearing Member, upon receiving the Return of a position because of the misidentification of the Carrying Clearing Member, transfers the position to the correct Carrying Clearing Member.

(15) – (27) [renumbered as (19) – (31) but otherwise unchanged]

D. [unchanged]

E.

(1) – (12) [unchanged]

Executing Clearing Member

(13) The term “Executing Clearing Member” means a Clearing Member that has been authorized by a Carrying Clearing Member to direct Exchange transactions to be transferred to a designated account of the Carrying Clearing Member pursuant to such Clearing Members’ CMTA arrangement.

(13) – (19) [renumbered as (14) – (20) but otherwise unchanged]

F– Q. [unchanged]

R.

(1) – (3) [unchanged]

Return

(5) The term “Return” means the process by which a Carrying Clearing Member transfers back to an Executing Clearing Member, for one or more reasons specified in the CMTA Agreement between the Clearing Members, a position resulting from an Exchange transaction transferred by the Executing Clearing Member to an account of the Carrying Clearing Member.

(5) [renumbered as (6) but otherwise unchanged]

S. – Z. [unchanged]

ARTICLE V

Clearing Members

Qualifications

SECTION 1. [unchanged]

...Interpretations and Policies:

.01 - .02 [unchanged]

.03 a. – c. [unchanged]

In addition, the Membership/Margin Committee will not recommend the approval of any application for clearing membership unless:

d. [unchanged]

e. if the applicant has not applied for authorization to clear all types of transactions (i.e., customer transactions, firm transactions, market-maker and JBO Participant transactions), or all kinds of transactions (e.g., transactions in stock options, Treasury securities options, foreign currency options, cross-rate foreign currency options, cash-settled options, futures options and futures), or has not applied to carry positions in its accounts on a routine basis, or has not applied to be a Hedge Clearing Member, the applicant shall have undertaken to apply to the Membership/Margin Committee for further approval before commencing to clear any type or kind of transaction for which approval is not currently being sought, before carrying positions in its accounts on a routine basis, or before participating in the Stock Loan/Hedge Program, as applicable.

.04 - .08 [unchanged]

ARTICLE VI

CLEARANCE OF EXCHANGE TRANSACTIONS

General Clearance Rule

SECTION 1. [unchanged]

...Interpretations and Policies:

.01 (a) It is the policy of the Corporation to permit a Clearing Member to submit adjustments to its positions with the Corporation to (1) effect a transfer of accounts between Clearing Members; (2) [reflect a transaction or]effect a Return, (3) effect a CMTA Retransfer [correct a bona fide error involving a transaction effected by an authorized Exchange member]; and (4) correct a bona fide error or omission regarding an Exchange transaction previously submitted to the Corporation by the Exchange, security futures market, futures market, futures market or international market on which such Exchange transaction occurred. Such data shall be submitted in such form and within such times as the Corporation shall prescribe. Such adjustments shall be treated as Exchange transactions for the purposes of Sections 15 and 16 of Article VI of the By-Laws and for the purposes of other sections of Article VI except where the context otherwise requires.

(b) [unchanged]

.02 [unchanged]

Responsibility of Clearing Members for Exchange Transactions

SECTION 2. Every Clearing Member shall be responsible for the clearance of the Exchange transactions of the Clearing Member and of the Exchange transactions transferred to one of its accounts pursuant to a registered CMTA arrangement as further specified in Rule 403[compared on behalf of the Clearing Member by each authorized Exchange member. An Exchange member shall be deemed to be an authorized Exchange member of a Clearing Member in respect of an Exchange transaction if such Exchange member is listed on the list of the Clearing Member's authorized Exchange members currently on file with the Corporation].

RULES

CHAPTER III

Financial Requirements

Initial Requirements

RULE 301. (a) Every Clearing Member registered as a broker or dealer under Section 15(b)(1) or (2) of the Securities Exchange Act of 1934 shall have an initial net capital of not less than \$[1,000,000] 2,500,000, and the aggregate principal amount of its satisfactory subordination agreements (other than such agreements which qualify as equity capital under Securities and Exchange Commission Rule 15c3-1(d)) shall not initially exceed 70 per cent of its debt-equity total. Every Clearing Member (other than an exempt Non-U.S. Clearing Member) which has not elected to operate pursuant to the alternative net capital requirements shall also have an initial net capital of not less than 12-1/2 per cent of such Clearing Member's aggregate indebtedness. Every Clearing Member electing to operate pursuant to the alternative net capital requirements shall also have an initial net capital of not less than 5 per cent of its aggregate debit items. Every Clearing Member shall continue to meet the requirements set forth in the preceding provisions of this Rule until the later of (i) three months after its admission to Clearing Membership, or (ii) twelve months after it commenced doing business as a broker or dealer.

(b) [unchanged]

(c) Every Clearing Member registered as a futures commission merchant under Section 4f(a)(1) of the Commodity Exchange Act shall have an initial requirement of not less than \$[1,000,000] 2,500,000 in adjusted net capital as computed under the regulations of the Commodity Futures Trading Commission, and shall meet such greater or additional minimum financial requirements as are established by regulation of the Commodity Futures Trading Commission in respect of futures commission merchants. Every such Clearing Member shall continue to meet the requirements set forth in the preceding sentence until the later of (i) three months after its admission to Clearing Membership, or (ii) twelve months after it commenced doing business as a futures commission merchant. For purposes of determining compliance with any minimum net capital requirements specified elsewhere in the By-Laws and Rules, a Clearing Member referred to in this paragraph shall calculate its net capital as specified in the rules of the Commodity Futures Trading Commission.

...Interpretations and Policies:

.01 An exempt Non-U.S. Clearing Member that is a Canadian Clearing Member and that commenced doing business as a broker or dealer within twelve months prior to its admission to Clearing Membership shall maintain an initial early warning reserve (as determined in accordance with the Joint Regulatory Financial Questionnaire and Report) of not less than \$[1,000,000] 2,500,000 (United States) until the later of (i) three months after its admission to Clearing Membership, or (ii) twelve months after it commenced doing business as a broker or dealer. An exempt Non-U.S. Clearing Member that is a Canadian Clearing Member and not subject to the requirements of the previous sentence shall maintain an initial early warning reserve of not less than such United States dollar amount as the Corporation may require, on a case by case basis, at the time of such Clearing Member's application for Clearing Membership. Every such Clearing Member shall continue to meet such requirement until three months after its admission to Clearing Membership.

.02 [unchanged]

Minimum Net Capital

RULE 302. (a) No opening purchase transaction or opening sale transaction shall be cleared by or through any Clearing Member, and no Stock Loan shall be entered into by any Clearing Member, at any time when such Clearing Member's net capital is less than the greater of \$[750,000] 2,000,000 or (in the case of a Clearing Member not electing to operate pursuant to the alternative net capital requirements, other than an exempt Non-U.S. Clearing Member) 6 2/3 per cent of its aggregate indebtedness or (in the case of a Clearing Member electing to operate pursuant to the alternative net capital requirements) 2 per cent of its aggregate debit items.

(b) [unchanged]

...Interpretations and Policies:

.01 An exempt Non-U.S. Clearing Member that is a Canadian Clearing Member shall maintain early warning reserve (as determined in accordance with the Joint Regulatory Financial Questionnaire and Report) of not less than the greater of \$[750,000] 2,000,000 (United States) or 2% of such Canadian Clearing Member's total margin required (as determined in accordance with the Joint Regulatory Financial Questionnaire and Report).

.02 Every Clearing Member that was a Clearing Member as of October 1, 2003 shall meet the minimum net capital requirement of \$2 million by October 1, 2004.

Early Warning Notice

RULE 303. (a) [unchanged]

(b) A Clearing Member registered as a broker-dealer under Section 15(b)(1) or (2) of the Securities Exchange Act of 1934 shall notify an officer of the Corporation immediately by telephone, and shall promptly (in any event prior to 3:00 P.M. Central Time (4:00 P.M. Eastern Time) of the following business day) confirm such notice in writing, if:

(1) such Clearing Member's net capital shall become less than the greater of \$[1,000,000] 2,500,000, or (in the case of a Clearing Member not electing to operate pursuant to the alternative net capital requirements) of its aggregate indebtedness, or (in the case of a Clearing Member electing to operate pursuant to the alternative net capital requirements) of its aggregate debit items; or

(2) – (6) [unchanged]

(c) A Clearing Member registered as a futures commission merchant under Section 4f(a)(1) of the Commodity Exchange Act shall notify an officer of the Corporation immediately by telephone, and shall promptly (in any event prior to 3:00 P.M. Central Time (4:00 P.M. Eastern Time) of the following business day) confirm such notice in writing, if the Clearing Member's net capital shall become less than the greater of \$[1,000,000] 2,500,000 or the minimum net capital required by the Clearing Member's Designated Self-Regulatory Organization.

(d) [unchanged]

...Interpretations and Policies:

.01 [unchanged]

.02 An exempt Non-U.S. Clearing Member that is a Canadian Clearing Member shall perform daily computations of its early warning reserve (as determined in accordance with the Joint Regulatory Financial Questionnaire and Report) and shall notify the Corporation promptly, and in any event prior to 3:00 P.M. Central Time (4:00 P.M. Eastern Time) of the following business day, if such Clearing Member's early warning reserve shall become less than (i) \$[1,000,000] 2,500,000 (United States), at the United States dollar to Canadian dollar exchange rate then in effect (determined in such manner as the Corporation shall prescribe).

Restrictions on Distributions

RULE 304. (a) [unchanged]

(b) No Clearing Member other than an exempt Non-U.S. Clearing Member shall withdraw any funds from the accounts of partners (if such accounts are included as part of the net capital of the Clearing Member), and no such Clearing Member shall make any withdrawal or payment whether by dividend or distribution or otherwise to stockholders, partners, or employees, if the effect

of such withdrawal or payment would be to reduce the net capital of the Clearing Member below \$[1,000,000] 2,500,000, or such withdrawal or payment would be inconsistent with the requirement of paragraph (e) of Securities and Exchange Commission Rule 15c3-1.

(c) [unchanged]

...Interpretations and Policies:

.01 [unchanged]

.02 No exempt Non-U.S. Clearing Member that is a Canadian Clearing Member shall withdraw any funds from the accounts of partners, if such accounts are included as part of the early warning reserve (as determined in accordance with the Joint Regulatory Financial Questionnaire and Report) of the Clearing Member, and no such Clearing Member shall make any withdrawal or payment whether by dividend or distribution or otherwise to stockholders, partners, or employees, if the effect of such withdrawal or payment would be to reduce the early warning reserve of such Clearing Member below \$[1,000,000] 2,500,000 (United States), at the United States dollar to Canadian dollar exchange rate then in effect (determined in such manner as the Corporation may prescribe).

Restrictions on Certain Transactions, Positions and Activities

RULE 305. (a) – (d) [unchanged]

...Interpretations and Policies:

Situations in which action may be taken under Rule 305 include, but are not limited to, the following:

.01 A Clearing Member's net capital becomes less than \$[1,000,000] 2,500,000 or, as applicable, 11 per cent of the sum described in clauses (i) and (ii) of Rule 303(a)(3) or 11 per cent of the deductions described in Rule 303(a)(4).

.02 - .10 [unchanged]

Managing Clearing Members and Managed Clearing Members

RULE 309. (a) [unchanged]

(b) Every Managing Clearing Member shall at all times maintain net capital of not less than the greater of (i) the minimum net capital required under the provisions of Rule 302 or (ii) the sum

of (A) \$[2]4,000,000 plus (B) \$[1]200,000 times the number of Managed Clearing Members in excess of four for which the Managing Clearing Member provides facilities management services.

(c) – (e) [unchanged]

...Interpretations and Policies:

.01 Every Managing Clearing Member that was a Managing Clearing Member as of October 1, 2003 shall meet the minimum net capital requirement of this Rule by October 1, 2004.

Appointed Clearing Members and Appointing Clearing Members¹

RULE 309A. (a) Every Appointed Clearing Member shall at all times maintain net capital of not less than the greater of (i) the minimum net capital required under the provisions of Rule 302 or (ii) the sum of (A) \$[2]4,000,000 plus (B) \$[1]200,000 times the number of Appointing Clearing Members in excess of four on whose behalf the Appointed Clearing Member makes settlement of obligations to deliver or receive underlying securities arising from the exercise or maturity of cleared securities.

(b) – (c) [unchanged]

...Interpretations and Policies:

.01 Every Appointed Clearing Member that was an Appointed Clearing Member as of October 1, 2003 shall meet the minimum net capital requirement of this Rule by October 1, 2004.

CHAPTER IV

Trade Reporting and Matching

Reporting of Matched Trades

RULE 401. (a) [unchanged]

(b) Subject to Rule 403, [E]each Clearing Member shall be responsible to the Corporation in respect of each Exchange transaction in which such Clearing Member is identified as a Purchasing Clearing Member or Writing or Selling Clearing Member in matching trade information reported to

¹ Rule 309A was proposed in File No. SR-OCC-2003-09, and this filing assumes that Rule 309A will be adopted before the approval of this filing. However, if this filing is approved before Filing No. SR-OCC-2003-09, OCC will amend that filing to change the capital requirements as set forth herein.

the Corporation by an Exchange, futures market, security futures market or an international market, whether or not such matching trade information was correct.

(c) – (d) [unchanged]

* * *

Clearing Member Trade Assignment (“CMTA”)

RULE 403. (a) Clearing Members that are parties to a CMTA arrangement shall register their arrangement with the Corporation and provide such information regarding the arrangement as the Corporation shall require. The registration of a CMTA arrangement shall be effective when the Clearing Members have supplied to the Corporation matching information regarding the arrangement. Such registration shall: (i) constitute notice to the Corporation that the Executing Clearing Member has been authorized by the Carrying Clearing Member to direct the transfer of Exchange transactions to a designated account or accounts of the Carrying Clearing Member; (ii) constitute the continuing representation and warranty of each Clearing Member to the Corporation that they have executed and retained in their files a CMTA Agreement that is in substantially the form approved by the Corporation; and (iii) remain in effect until terminated as specified herein.

(b) Before transferring an Exchange transaction to a Carrying Clearing Member as specified in the matching trade information reported to the Corporation, the Corporation shall first determine whether a CMTA registration is in effect between the Executing Clearing Member and the Carrying Clearing Member. If such a registration is in effect, the Corporation shall transfer the Exchange transaction to the designated account of the Carrying Clearing Member. If a CMTA registration is not in effect, the transaction shall be deemed to be a failed CMTA transaction and shall not be transferred to an account of the Carrying Clearing Member. A failed CMTA transaction will instead be transferred to a designated account of the Executing Clearing Member, which shall be responsible for the clearance and settlement of such transaction. In the absence of such designation, the Corporation shall transfer the failed CMTA transaction to the customers’ or segregated futures account, as applicable, of the Executing Clearing Member.

(c) The Carrying Clearing Member shall be responsible for the clearance and settlement of each Exchange transaction that has been transferred to one of its accounts pursuant to an effective CMTA registration, subject to such Carrying Clearing Member’s right to effect a Return as specified herein.

(d) A Carrying Clearing Member may Return to the Executing Clearing Member a position resulting from the transfer of an Exchange transaction, as follows:

(1) Except as otherwise provided herein, the right of a Carrying Clearing Member to effect a Return is conditioned upon the Carrying Clearing Member (i)

delivering an irrevocable notice of such Return (a "Return Notice") to the Corporation and to the Executing Clearing Member and (ii) entering an irrevocable instruction to the Corporation (a "Return Instruction") to transfer such position to an account of the Executing Clearing Member. A Return Notice shall be delivered and a Return Instruction shall be entered at or prior to 8:15 a.m. Central Time (9:15 a.m. Eastern Time) on the business day first succeeding the trade date for the transaction.

(2) A Return Notice directed to the Corporation shall be delivered in accordance with the procedures from time to time specified by the Corporation, and shall constitute the Carrying Clearing Member's representation and warranty that a Return Notice has been properly delivered to the Executing Clearing Member. A Return Instruction shall be entered in accordance with the procedures from time to time specified by the Corporation.

(3) A Return shall be effected only for one or more reasons permitted in the CMTA Agreement between the Clearing Members. The Carrying Clearing Member shall identify the reason(s) for the Return in connection with its entry of a Return Instruction in accordance with procedures specified by the Corporation, and the Corporation shall make such reason(s) available to the Executing Clearing Member. The delivery of a Return Notice and entry of a Return Instruction constitutes a Carrying Clearing Member's representation and warranty that the reason(s) for the Return is one of the reasons designated in the CMTA Agreement between such Clearing Members. The Corporation shall have no obligation to inquire into the validity of the reason(s) for any Return.

(4) A Return will be effective upon the latter of the Carrying Clearing Member's delivery of the Return Notice or entry of the Return Instruction, provided that such delivery and entry occur at or before the cut off time specified in this Rule.

(e) The Carrying Clearing Member shall be responsible for the clearance and settlement of any position resulting from an Exchange transaction transferred to it in accordance herewith that (i) has been exercised or assigned, (ii) has matured or (iii) will expire or mature before the Corporation's next business day, notwithstanding the fact that the Carrying Clearing Member has the right to Return such position. To the extent that a Carrying Clearing Member has the right to Return such position, the Carrying Clearing Member shall not effect a Return pursuant to this Rule. Rather, the respective rights, obligations and claims of the Carrying Clearing Member and the Executing Clearing Member with respect to such position shall be governed by the CMTA Agreement between the Clearing Members. A Carrying Clearing Member shall also be responsible for any position for which it did not effect a Return notwithstanding that it had the right to do so.

(f) An Executing Clearing Member shall designate the account into which positions shall be transferred pursuant to a Return effected by a Carrying Clearing Member. In the absence of such designation, such positions shall be transferred to the customers' or segregated futures

account, as applicable, of the Executing Clearing Member. An Executing Clearing Member that receives a position following a Return shall be responsible for such position and may not re-transfer it to the Carrying Clearing Member that initiated the Return. To the extent that a Return is due to the misidentification of the Carrying Clearing Member, the Executing Clearing Member may effect a CMTA Retransfer with respect to the returned position to correct its error and the Carrying Clearing Member receiving the position shall thereafter be responsible for it, subject to any right that it may have to Return such position. CMTA Retransfers shall be completed within the timeframes periodically specified by the Corporation.

(g) If a Return or CMTA Retransfer is not effected until after the date of the relevant transaction, such Return or CMTA Retransfer will not be reflected in any Daily Position Reports and no premium, variation or margin adjustments will be made in respect of such Return until the business day after the date on which the Return or CMTA Retransfer is effected. Notwithstanding the foregoing, the Corporation shall be entitled to effect margin settlements and/or other settlements in respect of any Return or CMTA Retransfer on an intra-day basis as otherwise specified in the By-Laws and Rules.

(h) A Carrying Clearing Member may not submit a Return Notice or Return Instruction after the cutoff time specified in this Rule, and the submission of either a Return Notice or a Return Instruction thereafter may subject the Carrying Clearing Member to disciplinary action. Any failure of a Carrying Clearing Member to enter a Return Instruction to the Corporation for which a timely Return Notice has been given also may subject the Carrying CMTA Clearing Member to disciplinary action, unless (i) the position to be Returned matured, was exercised or assigned or expired unexercised on trade date or the business day first succeeding the trade date for the transaction or (ii) such failure was caused by systems unavailability or some other event outside of the reasonable control of such Carrying Clearing Member. Effecting a CMTA Retransfer after the timeframe specified by the Corporation may subject the Executing Clearing Member to disciplinary action.

(i) Clearing Members that have registered a CMTA arrangement may mutually agree to terminate such registration by delivering notice thereof to the Corporation in accordance with procedures specified by the Corporation. In addition, either Clearing Member may unilaterally terminate the registration by delivering written notice of termination to the other Clearing Member and to a designated representative of the Corporation in accordance with procedures and time frames prescribed by the Corporation. The Corporation shall be authorized to terminate all CMTA registrations of a suspended Clearing Member effective as of the date and time specified by the Corporation.

(j) Upon receipt of a termination notice in respect of a CMTA registration, the Corporation shall promptly notify the affected Clearing Members of the termination. A mutually agreed upon termination shall be effective when both Clearing Members thereto notify the Corporation that they have agreed to terminate their CMTA registration. A unilateral termination shall be effective at 8:00 a.m. Central Time (9:00 a.m. Eastern Time) on the business day

immediately succeeding the business day on which notice of termination was given to the Corporation.

(k) The Carrying Clearing Member shall be responsible for the clearance and settlement of all Exchange transactions properly submitted for transfer prior to the effective termination of the CMTA registration, subject to any right that it may have to Return such transaction. After the termination of a CMTA registration, all transactions submitted for transfer pursuant to such registration shall be deemed to be failed CMTA transactions and shall be transferred as specified in paragraph (b) herēof.

...*Interpretation and Policies:*

.01 In the event that the Corporation has not made available position and exercise and assignment reports to Clearing Members by 6:00 a.m. Central Time (7:00 a.m. Eastern Time), or such other time as the Corporation may periodically establish on not less than 30 days prior notice to affected Clearing Members, the Corporation shall have the discretion to extend the cut-off time for the submission of Return Notices and Return Instructions to such time as the Corporation deems fair and equitable under the circumstances. The Corporation shall provide notice of such extension to Clearing Members as soon as is practicable under the circumstances, using such means as the Corporation may from time to time determine.

CHAPTER X

Clearing Fund Contributions

Amount of Contribution²

RULE 1001. (a) The contribution to the Clearing Fund of each Clearing Member (except recently admitted Clearing Members whose contributions are fixed pursuant to Article VIII of the By-Laws) for each calendar month shall be the greater of (x) ~~[\$150,000]~~ ***the minimum clearing fund contribution specified in paragraph (b) of this Rule*** or (y) such Clearing Member's proportionate share of an amount equal to [5%, or such greater percentage as the Board of Directors shall from time to time prescribe by resolution, of the average aggregate margin requirement in respect of positions outstanding during the preceding calendar month] : (i) 10% of the average daily risk margin requirement in respect of positions outstanding during the

² This rule provision reflects the changes proposed to Rule 1001 in File No. SR-OCC-2002-03, including Amendment No. 1 thereto. Material proposed to be added by this filing is italicized, underlined and in bold type. Material proposed to be deleted by this filing is enclosed in double brackets, italicized and in bold type. Marking are otherwise as specified in Amendment No. 1 Filing No. SR-OCC-2002-03. If this filing is approved before Filing No. SR-OCC-2002-03, OCC will amend that filing to reflect the changes herein. If Filing No. SR-OCC-2002-03 is approved before this filing, OCC will amend this filing accordingly.

preceding calendar month, if the average daily risk margin requirement is \$5 billion or less; (ii) \$500 million plus 6% of the amount by which the average daily risk margin requirement in respect of positions outstanding during the preceding calendar month exceeds \$5 billion, if the average daily risk margin requirement is greater than \$5 billion and less than or equal to \$10 billion; (iii) \$800 million plus 5% of the amount by which the average daily risk margin requirement in respect of positions outstanding during the preceding calendar month exceeds \$10 billion, if the average daily risk margin requirement is greater than \$10 billion and less than or equal to \$15 billion; or (iv) \$1.05 billion plus 4% of the amount by which the average daily risk margin requirement in respect of positions outstanding during the preceding calendar month exceeds \$15 billion, if the average daily risk margin requirement is greater than \$15 billion. For purposes of the calculations described in this Rule 1001, all stock loan positions and stock borrow positions shall be deemed to be margin-eligible. Notwithstanding clause (x) of this paragraph (a), an entity that is an affiliate of a Clearing Member and that also becomes a Clearing Member solely for the purpose of clearing transactions in security futures, commodity futures, and/or options on commodity futures shall be deemed to be in compliance with the [\$150,000] minimum clearing fund contribution if its contribution is equal to the amount specified in clause (y) of this paragraph and the earlier-admitted Clearing Member is in compliance with the minimum requirement under clause (x).

(b) The minimum clearing fund contribution shall be \$150,000, or, in the case of an Execution-Only Clearing Member, \$150,000 plus \$15 times the average daily number of contracts executed by such Clearing Member during the preceding calendar month.

(c) As used in this Rule 1001, the term "risk margin" has the meaning assigned to it in Rules 601 and 602. For the purposes of this Rule, the average daily [aggregate] risk margin requirement in respect of positions outstanding during the preceding calendar month shall be determined by (i) determining, for each business day during the preceding calendar month, the sum of all daily risk margin required to be deposited on such business day by all Clearing [[m]]Members and (ii) dividing the sum arrived at in step (i) by the aggregate number of business days in such preceding calendar month. A Clearing Member's proportionate share shall be a fraction, the numerator of which shall be the daily average number of options and futures contracts, BOUNDS and shares of Eligible Stock underlying stock loan and borrow positions (with the number of shares of Eligible Stock underlying each stock loan position and each stock borrow position adjusted by being divided by the unit of trading applicable to option contracts overlying that Eligible Stock), as the case may be, held by such Clearing Member in open positions with the Corporation during the preceding calendar month and the denominator of which shall be the daily average number of options and futures contracts, BOUNDS, and shares of Eligible Stock underlying stock loan and borrow positions (adjusted in the same manner as the numerator), held by all Clearing Members in open positions with the Corporation during such preceding calendar month. Such numerator and such denominator shall each include the average daily number of contracts held in paired X-M accounts.

(d) For purposes of this Rule, the average daily number of contracts executed by an Execution-Only Clearing Member shall be determined by (i) determining, for each business day during the preceding calendar month, the sum of all contracts executed by such Clearing Member and (ii) dividing the sum arrived at in step (i) by the aggregate number of business days in such preceding calendar month.

...*Interpretations and Policies:*

.01 [unchanged]

.02 The special minimum clearing fund requirement for Execution-Only Clearing Members shall be effective as of October 1, 2004.

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 September 23, 2003.

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:

- ◆ improve the description of the Clearing Member Trade Assignment (“CMTA”) facility within OCC’s by-laws and rules;
- ◆ increase OCC’s initial and minimum net capital requirements; and
- ◆ increase OCC’s minimum clearing fund requirement for “execution-only” clearing members.

Background

CMTA processing permits one clearing member (a “carrying clearing member”) to authorize another clearing member (an “executing clearing member”) to direct that exchange transactions be transferred to an account of the carrying clearing member for clearance and settlement.³ The executing clearing member executes the transaction itself or guarantees the broker who executed the transaction, and directs the transaction to be cleared into an account of the carrying clearing member via the options exchanges’ systems for reporting matching trade information to OCC. A carrying clearing member does not have the ability to approve or reject such a direction before the transaction is entered into the exchanges’ systems for reporting to OCC.

The matching trade information submitted by an exchange for a transaction that has been executed pursuant to a CMTA arrangement will identify both the carrying and executing clearing members by their assigned clearing numbers. OCC permits an executing clearing member to transfer transactions effected only on the exchange(s) designated by the carrying clearing member in a CMTA authorization filed with OCC. Accordingly, before a transaction is transferred to an account of the carrying clearing member for clearance, OCC’s system confirms that (i) there is a valid CMTA arrangement between the carrying and executing clearing member and (ii) the exchange transaction was effected on a designated exchange. The carrying clearing member is then responsible for settling the trade and maintaining the resulting position. If their arrangement permits, a carrying clearing member may transfer the position back

³ The CMTA facility was developed to permit carrying clearing members to clear and settle transactions effected on an exchange where they are either not a member or do not maintain a presence for trade execution.

to the executing clearing member via OCC's systems to correct a bona fide error by the latter in identifying the carrying clearing member in the matching trade information submitted in respect of the transaction.⁴

OCC's CMTA facility supports two distinct types of business. First, clearing members that execute transactions for correspondent brokers use the process to transfer transactions to the correspondent brokers' clearing firms. Second, firms that execute trades for institutional and other customers with prime brokerage arrangements use the process to transfer the trades to the prime broker clearing member.

Discussion

A. CMTA Rule Changes

Article VI, Sections 1 and 2 of OCC's by-laws and the term "authorized Exchange member" as defined in Article I, Section 1 of the by-laws provide the current framework for OCC's CMTA facility. In response to clearing member requests, OCC has been working with the options exchanges and a group of clearing members who act as prime brokers to update OCC's rules to improve the description of the CMTA facility. In particular, the group's efforts have been focused on better defining the rights and obligations of the clearing members that are parties to a CMTA arrangement in order to increase the regulatory and legal certainties with respect thereto. Proposed Rule 403 is the result of that collaborative effort and it would operate as follows.

⁴ This commonly occurs if the executing clearing member has transposed digits within the carrying clearing member's clearing number, causing the transaction to clear in an account of the wrong clearing member (assuming a valid CMTA arrangement exists between the executing and misidentified carrying clearing member).

Proposed Rule 403 will require clearing members that are parties to a CMTA arrangement to register their arrangement with OCC and provide required details relative thereto. Such registration will be effective when the clearing members provide matching information regarding their arrangement.

The checks performed by OCC's system to verify that a valid CMTA registration exists have been incorporated into Rule 403. Transactions that fail these checks will be transferred to a designated account or, if such designation has not been made, the customers' account or segregated futures account of the executing clearing member, as applicable. A carrying clearing member is responsible for each transaction transferred to its account pursuant to a CMTA arrangement, subject to its right to return the resulting position for certain specified reasons (see below). Notwithstanding that right, the carrying clearing member is responsible to effect premium or margin settlement, as applicable, on the business day after the trade was executed for any positions it intends to return that are carried in its accounts after nightly processing.⁵

⁵ Certain exchanges submit matching trade information on a real time or intermittent basis during a trading day. OCC immediately processes such submissions and makes updated position information available for clearing member review throughout the day. For transactions effected on such exchanges, clearing members may be able to effect a return before OCC closes its window for the submission of returns, in which case the executing clearing member would be responsible for any premium or margin settlement.

A position transferred pursuant to a CMTA arrangement may be returned to the executing clearing member, upon notice, for reasons to be specified in a standard agreement.⁶ The reasons that have been under discussion include: (i) the matching trade information did not conform to the trade information supplied to the carrying clearing member by the customer on whose behalf the trade was executed (e.g., transaction was for a put option in a particular series rather than a call option), (ii) the carrying clearing member's reasonable belief that the trade involved a violation of applicable law, rule or regulation (e.g., failure to deliver a prospectus); (iii) the carrying clearing member no longer carries the account of the customer on whose behalf the trade was executed or has restricted the customer's ability to use the CMTA process; or (iv) the carrying clearing member was misidentified in the matching trade information. Returns must be effected by a prescribed cutoff time before trading commences on the business day after trade date, and in accordance with specified procedures. OCC will pass through certain information regarding the reasons given for a return, but will not seek to validate the stated reasons. A position that has been assigned, exercised or matured may not be transferred or returned under Rule 403 and will be dealt with in accordance with the provisions of the CMTA agreement between the clearing members.

A carrying clearing member may not effect a return after the prescribed cutoff time, and an executing clearing member that receives back a position may not retransfer it to the carrying clearing member. Initiating a return after the applicable cutoff time may subject the carrying clearing member to disciplinary action. In the case of a position returned due to a

⁶ The clearing members have formed an ad hoc committee under the auspices of the Securities Industry Association to collaborate on a standard form agreement. That agreement is currently in draft form.

misidentification of the carrying clearing member, the executing clearing member may retransfer the position to the correct carrying clearing member in order to correct the error.⁷

A registered CMTA arrangement may only be terminated as specified in Rule 403, which permits clearing members to either mutually or unilaterally terminate the arrangement.⁸ Terminations by mutual agreement will be effective when OCC receives notice of termination from both clearing members. Unilateral terminations will be effective the next business day after notice has been given to OCC, which will also notify the other clearing member of the termination. Transactions effected after the effective time of a termination will be treated as failed CMTAs, and will be the responsibility of the executing clearing member.

Other rule changes relating to CMTAs include additional definitions of terms used in CMTA processing (e.g., carrying clearing member, executing clearing member etc) and other conforming changes.

B. Increases in Net Capital and Minimum Clearing Fund Requirements

OCC has also reassessed the risks associated with CMTA transactions. A small number of OCC's clearing members conduct an "execution only" business (i.e., they confine their business to executing transactions which are then given up to carrying clearing members for clearance and settlement). Both the membership approval of these firms and their clearing fund deposits are premised on the fact that they pose limited position risk to OCC because they do not

⁷There is no approval process associated with position transfers between clearing members to correct clearing errors. OCC determined not to include an approval process for such transfers based on discussions with clearing members during the development of ENCORE Release 3.0. Clearing members expressed the view that an approval process would be inefficient from an operational and administrative perspective and would increase system overhead, adversely affecting their ability to review position changes on a timely basis.

⁸ OCC has retained the right to terminate all CMTA arrangements of a suspended clearing member.

normally carry positions. The average net capital of these firms is substantially less than the average across OCC's clearing membership, although each firm's net capital is above OCC's current initial requirement. Each maintains the minimum clearing fund deposit of \$150,000.

With the proposed increase in the number of permissible reasons for returning a position, there is an increased possibility that executing clearing members, including execution-only firms, will be required to make premium or margin settlement for a position before it can be closed out or otherwise managed. To address this possibility, OCC has determined to increase its initial and minimum net capital requirements for all clearing members and to increase the minimum clearing fund deposit for execution-only firms. Initial required net capital will be increased from \$1 million to \$2.5 million, and minimum net capital will be increased from \$750,000 to \$2 million.⁹ The minimum clearing fund deposit for execution-only firms will be increased from \$150,000 to \$150,000 plus \$15 times the firm's average daily executed volume for the preceding calendar month.

To determine the amount of the increase in net capital requirements, OCC analyzed the instances in which positions were carried in the accounts of execution-only clearing members for the twelve-month period ending July 31, 2003.¹⁰ Based on that analysis, OCC determined that a minimum net capital of \$2 million would have been sufficient to avoid any additional position related margin calls. Initial net capital historically has been set above the minimum net capital amount, and OCC has determined to set the initial net capital requirement at

⁹ These new capital standards are consistent with the capital requirements of other clearing organizations. For example, the Chicago Mercantile Exchange's initial net capital requirement is \$2 million, while BOTCC's is \$2.5 million.

\$2.5 million. The increases are being applied to all clearing members because over 80% of OCC's clearing members are eligible to use the CMTA facility.

The special net capital requirements for firms providing facilities management services (see OCC Rule 309) and stock settlement services (see proposed OCC Rule 309A; Filing No. SR-OCC-2003-09) are being increased proportionately. A firm providing such services will be required to have a minimum net capital of \$4 million plus \$200,000 times the number of firms over four that it services.

The proposed increases in OCC's net capital requirements will not be unduly burdensome. Only two OCC clearing members (one of which is an execution-only firm) maintain net capital below the proposed minimum of \$2 million. (No firm that provides facilities management services or stock settlement services will be affected by the proposed increase for those firms.) Clearing members will be given a one-year grace period from October 1, 2003 to achieve compliance with the new requirements (i.e., they must be in compliance by October 1, 2004).

Execution-only clearing members pose a special risk because they do not ordinarily carry positions overnight and therefore do not ordinarily deposit margin with OCC. This means that if a position is returned to an execution-only member, and the member fails to make settlement, the only asset of the member that OCC can draw upon to liquidate the position is the member's clearing fund deposit. Today, execution-only members maintain the minimum clearing fund deposit of \$150,000 because OCC's clearing fund requirements are based on

¹⁰ The instances in which positions were carried in execution-only clearing members' accounts was relatively low, with the greatest rate of "returned" positions for such firms was 4.11%.

positions maintained during the preceding month, and execution-only firms do not maintain positions. To determine a new minimum clearing fund requirement for execution-only members, OCC analyzed executed trade activity for the four execution-only clearing members over a period where total volume was deemed to be within normal ranges, and assessed the net price change risk (through simulation) of the contracts executed by the firms relative to average daily executed volume. Dividing net price change risk by average daily executed volume resulted in net risk per contract of \$15.85. OCC is proposing to increase the minimum clearing fund requirement for execution-only members to \$150,000 plus \$15 times average daily executed volume for the preceding month. Execution-only firms will be given the one-year grace period described above to comply with this new minimum.

Conforming changes have been made to the definitional provisions of the by-laws, qualification standards for admission, various financial responsibility rules, and the rule defining monthly contributions to the clearing fund.

* * *

The proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934, as amended (the "Exchange Act") because it fosters the prompt and accurate clearance and settlement of securities transactions, the safeguarding of funds and securities, and the protection of investors and the persons facilitating transactions by and acting on behalf of investors.

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.

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)

Not applicable.

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

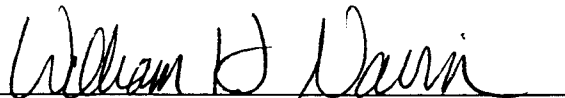
By: 
William H. Navin
Executive Vice President and
General Counsel

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____ ; File No. SR-OCC-2003-11

SELF-REGULATORY ORGANIZATION

Proposed Rule Change By
The Options Clearing Corporation

Relating to Clearing Member
Trade Assignment Processing

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 _____, 2003, 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 OCC's by-laws and rules to:

- ◆ improve the description of the Clearing Member Trade Assignment

(“CMTA”) facility within OCC’s by-laws and rules;

- ◆ increase OCC’s initial and minimum net capital requirements; and
- ◆ increase OCC’s minimum clearing fund requirement.

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:

- ◆ improve the description of the Clearing Member Trade Assignment (“CMTA”) facility within OCC’s by-laws and rules;
- ◆ increase OCC’s initial and minimum net capital requirements; and
- ◆ increase OCC’s minimum clearing fund requirement for “execution-only” clearing members.

Background

CMTA processing permits one clearing member (a “carrying clearing member”) to authorize another clearing member (an “executing clearing member”) to direct that exchange transactions be transferred to an account of the carrying clearing member for clearance and settlement.¹ The executing clearing member executes the transaction itself or guarantees the broker who executed the transaction, and directs the transaction to be cleared into an account of the carrying clearing member via the options exchanges’ systems for reporting matching trade information to OCC. A carrying clearing member does not have the ability to approve or reject such a direction before the transaction is entered into the exchanges’ systems for reporting to OCC.

The matching trade information submitted by an exchange for a transaction that has been executed pursuant to a CMTA arrangement will identify both the carrying and executing clearing members by their assigned clearing numbers. OCC permits an executing clearing member to transfer transactions effected only on the exchange(s) designated by the carrying clearing member in a CMTA authorization filed with OCC. Accordingly, before a transaction is transferred to an account of the carrying clearing member for clearance, OCC’s system confirms that (i) there is a valid CMTA arrangement between the carrying and executing clearing member and (ii) the exchange transaction was effected on a designated exchange. The carrying clearing member is then responsible for settling the trade and maintaining the resulting position. If their arrangement permits, a carrying clearing member may transfer the position back

¹ The CMTA facility was developed to permit carrying clearing members to clear and settle transactions effected on an exchange where they are either not a member or do not maintain a presence for trade execution.

to the executing clearing member via OCC's systems to correct a bona fide error by the latter in identifying the carrying clearing member in the matching trade information submitted in respect of the transaction.²

OCC's CMTA facility supports two distinct types of business. First, clearing members that execute transactions for correspondent brokers use the process to transfer transactions to the correspondent brokers' clearing firms. Second, firms that execute trades for institutional and other customers with prime brokerage arrangements use the process to transfer the trades to the prime broker clearing member.

Discussion

C. CMTA Rule Changes

Article VI, Sections 1 and 2 of OCC's by-laws and the term "authorized Exchange member" as defined in Article I, Section 1 of the by-laws provide the current framework for OCC's CMTA facility. In response to clearing member requests, OCC has been working with the options exchanges and a group of clearing members who act as prime brokers to update OCC's rules to improve the description of the CMTA facility. In particular, the group's efforts have been focused on better defining the rights and obligations of the clearing members that are parties to a CMTA arrangement in order to increase the regulatory and legal certainties with respect thereto. Proposed Rule 403 is the result of that collaborative effort and it would operate as follows.

² This commonly occurs if the executing clearing member has transposed digits within the carrying clearing member's clearing number, causing the transaction to clear in an account of the wrong clearing member (assuming a valid CMTA arrangement exists between the executing and misidentified carrying clearing member).

Proposed Rule 403 will require clearing members that are parties to a CMTA arrangement to register their arrangement with OCC and provide required details relative thereto. Such registration will be effective when the clearing members provide matching information regarding their arrangement.

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³ Certain exchanges submit matching trade information on a real time or intermittent basis during a trading day. OCC immediately processes such submissions and makes updated position information available for clearing member review throughout the day. For transactions effected on such exchanges, clearing members may be able to effect a return before OCC closes its window for the submission of returns, in which case the executing clearing member would be responsible for any premium or margin settlement.

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⁴ The clearing members have formed an ad hoc committee under the auspices of the Securities Industry Association to collaborate on a standard form agreement. That agreement is currently in draft form.

misidentification of the carrying clearing member, the executing clearing member may retransfer the position to the correct carrying clearing member in order to correct the error.⁵

A registered CMTA arrangement may only be terminated as specified in Rule 403, which permits clearing members to either mutually or unilaterally terminate the arrangement.⁶ Terminations by mutual agreement will be effective when OCC receives notice of termination from both clearing members. Unilateral terminations will be effective the next business day after notice has been given to OCC, which will also notify the other clearing member of the termination. Transactions effected after the effective time of a termination will be treated as failed CMTAs, and will be the responsibility of the executing clearing member.

Other rule changes relating to CMTAs include additional definitions of terms used in CMTA processing (e.g., carrying clearing member, executing clearing member etc) and other conforming changes.

D. Increases in Net Capital and Minimum Clearing Fund Requirements

OCC has also reassessed the risks associated with CMTA transactions. A small number of OCC's clearing members conduct an "execution only" business (i.e., they confine their business to executing transactions which are then given up to carrying clearing members for clearance and settlement). Both the membership approval of these firms and their clearing fund deposits are premised on the fact that they pose limited position risk to OCC because they do not

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With the proposed increase in the number of permissible reasons for returning a position, there is an increased possibility that executing clearing members, including execution-only firms, will be required to make premium or margin settlement for a position before it can be closed out or otherwise managed. To address this possibility, OCC has determined to increase its initial and minimum net capital requirements for all clearing members and to increase the minimum clearing fund deposit for execution-only firms. Initial required net capital will be increased from \$1 million to \$2.5 million, and minimum net capital will be increased from \$750,000 to \$2 million.⁷ The minimum clearing fund deposit for execution-only firms will be increased from \$150,000 to \$150,000 plus \$15 times the firm's average daily executed volume for the preceding calendar month.

To determine the amount of the increase in net capital requirements, OCC analyzed the instances in which positions were carried in the accounts of execution-only clearing members for the twelve-month period ending July 31, 2003.⁸ Based on that analysis, OCC determined that a minimum net capital of \$2 million would have been sufficient to avoid any additional position related margin calls. Initial net capital historically has been set above the minimum net capital amount, and OCC has determined to set the initial net capital requirement at

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Conforming changes have been made to the definitional provisions of the by-laws, qualification standards for admission, various financial responsibility rules, and the rule defining monthly contributions to the clearing fund.

* * *

The proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934, as amended (the "Exchange Act") because it fosters the prompt and accurate clearance and settlement of securities transactions, the safeguarding of funds and securities, and the protection of investors and the persons facilitating transactions by and acting on behalf of investors.

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 35 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 90 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.

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: _____