



THE OPTIONS CLEARING
CORPORATION

November 4, 2003

VIA FEDERAL EXPRESS

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

2003 11 05 11:00

11/5/03

Re: Rule Filing SR-OCC-2003-13 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

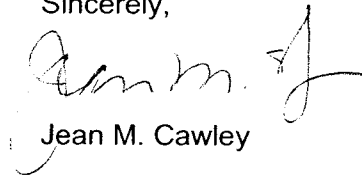
FIRST VICE PRESIDENT AND DEPUTY GENERAL COUNSEL

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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)

2003-13cftc.ltr



File No. SR-OCC-2003-13

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” or “the Corporation”) proposes to amend Article VI of its By-Laws as set forth below in order to establish a standard of care by which any potential liability of OCC to its Clearing Members would be judged. Material proposed to be added to OCC’s By-Laws as currently in effect is underlined.

THE OPTIONS CLEARING CORPORATION

BY-LAWS

* * *

Article VI

Clearance of Exchange Transactions

* * *

Limitation of Liability

Section 25. (a) Notwithstanding any other provision in the By-Laws and Rules, the Corporation will not be liable for any action taken, or any delay or failure to take any action, under the By-Laws and Rules or otherwise, to fulfill the Corporation’s obligations to its Clearing Members, other than for losses caused directly by the Corporation’s gross negligence, willful misconduct, or violation of federal securities laws for which there is a private right of action. Under no circumstances will the Corporation be liable for the acts, delays, omissions, bankruptcy, or insolvency of any third party, including, without limitation, any bank or other depository, custodian, sub-custodian, clearing or settlement system, data communication service, or other third party, unless the Corporation was grossly negligent, engaged in willful misconduct, or acted in violation of federal securities laws for which there is a private right of action, in selecting such third party; and

(b) Under no circumstances will the Corporation be liable for any indirect, consequential, incidental, special, punitive or exemplary loss or damage (including, but not limited to, loss of

business, loss of profits, trading losses, loss of opportunity and loss of use) however suffered or incurred, regardless of whether the Corporation has been advised of the possibility of such damages or whether such damages otherwise could have been foreseen or prevented.

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

OCC seeks to adopt a standard of care by which any potential liability of OCC to its Clearing Members would be judged. Historically, the Commission has allowed clearing agencies and other self regulatory organizations to establish their own standard of care and to allocate rights and liabilities between a clearing agency and its clearing members, which are sophisticated financial entities. The standard proposed by OCC is substantially identical to the standard recently adopted by the Government Securities Division ("GSD") of Fixed Income Clearing Corporation ("FICC") (formerly named Government Securities Clearing Corporation) and approved by the Commission.¹

Since its founding in 1973, OCC has performed its non-custodial clearing services with an exemplary level of care. OCC's record of fulfilling its commitments to its Clearing

Members for over 30 years reflects OCC's commitment to serving the best interests of its Clearing Members. OCC has comprehensive systems and standards in place to ensure that its clearing functions are executed with the highest level of accuracy. In addition to OCC's own concern for accuracy, the extensive regulatory oversight to which OCC is subject with respect to financial and operational matters makes a gross negligence standard of care appropriate for OCC. Moreover, the proposed standard of care is consistent with standards adopted by other self-regulatory organizations and approved by the Commission.

OCC believes that adopting a uniform rule limiting OCC's liability to direct losses caused by OCC's gross negligence, willful misconduct, or violation of federal securities laws for which there is a private right of action is an appropriate commercial standard of care that will prevent undue liability from burdening OCC's resources so that OCC can properly devote its resources to the accurate clearance and settlement of options.

The proposed changes to OCC's Rules are consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934, as amended, because such changes are designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure safeguarding of securities and funds in the custody and control of OCC. In addition, consistent with Section 17A(a)(2)(B), SEC approval of the proposed rule change would assure equal regulation of OCC relative to other clearing agencies.

¹ SEC Release No. 34-48201.

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

OCC does not consent to an extension of the time period specified in Section 19(b)(2) of the Act.

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 was based on a rule change filed by the then Government Securities Clearing Corporation (File No. SR-GSCC-2002-10) and approved by the Commission (Release No. 34-48201).

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
William H. Navin
Executive Vice President and
General Counsel