

SECURITIES AND EXCHANGE COMMISSION
Washington, DC 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

This filing (the “First Amended Filing”) amends and restates in its entirety rule filing no. SR-OCC-2003-04, which was filed by The Options Clearing Corporation (“OCC” or the “Corporation”) with the Securities and Exchange Commission (the “Commission”) on July 17, 2003. The purpose of the First Amended Filing is to remove a previously proposed “Interpretation and Policy” following Article VI, Section 3 of OCC’s By-Laws. The proposed paragraph contemplated that certain relief from the Commission’s customer protection rules would be granted in the Commission’s order approving this proposed rule change. The Commission has requested that OCC instead seek “no action” relief to cover the same points.

OCC proposes to amend its By-Laws and Rules as set forth below in order to facilitate the implementation of proposed exchange rules that would permit certain eligible customers to have accounts in which positions in specified derivative products would be margined on a “portfolio margining” basis. Material proposed to be added to OCC’s By-Laws and Rules as currently in effect is underlined and material proposed to be deleted is enclosed in bold brackets.

* * *

THE OPTIONS CLEARING CORPORATION**BY LAWS****ARTICLE I****Definitions**

SECTION 1. Unless the context requires otherwise (or except as otherwise specified in the By-Laws), the terms defined herein shall, for all purposes of these By-Laws and the Rules of the Corporation, have the meanings herein specified.

A.-B. [unchanged]

C. (1)-(31) [unchanged]

Customers' Account

(32) The term "customers' account" in respect of a Clearing Member means an account of the Clearing Member on the records of the Corporation which is confined to Exchange transactions cleared and positions carried by the Clearing Member on behalf of its securities customers, other than those transactions of Market-Makers which are cleared through a Market-Maker's account. The term "customers' account" does not include a segregated futures account or a customers' lien account.

Customers' Lien Account

(33) The term "customers' lien account" in respect of a Clearing Member means an account of the Clearing Member on the records of the Corporation as provided under Article VI, Section 3(i) of the By-Laws.

D.-Z. [unchanged]

* * *

ARTICLE VI**Clearance of Exchange Transactions**

* * *

Maintenance of Accounts

SECTION 3. Every Clearing Member may establish and maintain with the Corporation one or more of the following accounts:

(a)-(h) [unchanged]

(i) A customers' lien account for those securities customers that are eligible, and that have elected, to carry accounts with the Clearing Member that are margined on a portfolio risk basis or pursuant to a cross-margining arrangement, in accordance with Exchange Rules. The Clearing Member, on behalf of itself and each customer on whose behalf positions may be maintained in the customers' lien account, agrees that (i) the positions of such customer may be commingled with the positions of other eligible customers; (ii) the Corporation shall have a lien on all positions, securities, margin and other funds in such account as security for all of the Clearing Member's obligations to the Corporation in respect of such account; and (iii) the Corporation may close out positions in such account and apply the proceeds thereof at any time without prior notice to the Clearing Member or customer. A separate customers' lien account may be established in connection with a cross-margining program for eligible customers between the Corporation and one or more Participating CCOs, and any such account shall be subject to such additional provisions as may be set forth in the By-Laws and Rules and in the applicable Participating CCO Agreement.

. . . Interpretations and Policies:

.01 - .02 [unchanged]

[.02] .03 Each Clearing Member that effects transactions or carries assets on behalf of any person in any account established and maintained pursuant to this Section 3 shall be deemed to represent and warrant to the Corporation that it has obtained any necessary agreement or consent from each person for whom such transaction is effected or assets are carried to the provisions of this Section 3 applicable to such account (including without limitation the granting of a security interest to the Corporation in such account) and that effecting such transaction and carrying such assets for such person in such account is in compliance with applicable laws, regulations and rules by which such Clearing Member is bound. The rights of the Corporation under the By-Laws and Rules shall be enforceable in accordance with their terms notwithstanding the failure of a Clearing Member to obtain any required agreement or consent of any such person and notwithstanding any defect or limitation in any such agreement or consent.

[.03] .04 As used in this Section 3, the phrase "all long positions, securities, margins and other funds" is deemed to include any "investment property" as that term is defined in Article 9 of the Uniform Commercial Code (including long and short positions in security futures) and any other asset in the applicable account. Additionally, as used in this Section 3, the phrase "obligations to the Corporation in respect of all Exchange

transactions” includes any and all obligations arising directly or indirectly from an Exchange transaction, including, without limitation, (a) obligations relating to any long or short position in any cleared contract that is created in an Exchange transaction, (b) any obligation to make a cash payment, or physical delivery of an underlying interest, resulting from the exercise of, assignment of an exercise notice to, or maturity of such a cleared contract, and (c) any fees or charges imposed by the Corporation with respect to such Exchange transactions.

Obligation of Purchasing Clearing Members

SECTION 4. The Purchasing Clearing Member in an Exchange transaction in respect of a cleared contract other than a future shall be obligated to pay the Corporation the amount of the premium agreed upon in such Exchange transaction. In the event that the Corporation fails to receive such payment at or before the settlement time, the Corporation shall have the right to apply any funds credited to accounts of the Clearing Member with the Corporation or that are otherwise in the possession or at the disposal of the Corporation to the payment of such premium; provided, however, that the Corporation shall not apply funds in a customers’ account, segregated futures account (including a segregated futures professional account), customers’ lien account, Market-Maker’s account (if the Market-Maker is a customer) or in a combined Market-Makers’ account (if the Market-Makers are customers) for the payment of premiums on transactions in any account other than such account. Notwithstanding any other provision of the By-Laws or Rules, if the Corporation accepts an opening purchase transaction in an account at a time when the Corporation has not received payment of all amounts due from the Purchasing Clearing Member in respect of such account, the long position resulting from the acceptance of such transaction by the Corporation shall be deemed to be an unsegregated long position, and the Corporation shall have the right to close out or, in the case of options, to exercise such long position and to apply the proceeds in accordance with Chapter XI of the Rules.

* * *

RULES

* * *

CHAPTER VI

Margins

* * *

Segregation of Long Positions

RULE 611. (a) Subject to the provisions of Article VI, Section 4 of the By-Laws, all long positions (other than long positions in futures) in securities customers' accounts and firm non-lien accounts shall be deemed to be segregated long positions unless the Corporation receives contrary instructions from a Clearing Member in accordance with the following provisions of this Rule 611. All segregated long positions shall be held by the Corporation free of any charge, lien or claim of any kind in favor of the Corporation or any person claiming through it, until such positions shall be closed or exercised in accordance with the By-Laws and Rules or until the Clearing Member shall file with the Corporation written instructions, in such form as the Corporation may from time to time prescribe, directing that such positions be released from segregation. All positions in futures shall be deemed to be unsegregated for purposes of this Rule 611. All positions in cleared securities that are carried in a customers' lien account shall be deemed to be unsegregated for purposes of this Rule 611.

(b) – (c) [unchanged]

* * *

CHAPTER XI

Suspension of a Clearing Member

* * *

Pending Transactions and Variation Payments

RULE 1105. Notwithstanding any other provision of the By-Laws and Rules, the Corporation shall have no obligation to accept any matched Exchange transaction of a suspended Clearing Member that was effected after the time at which the Clearing Member was suspended. In the event an Exchange transaction of a suspended Clearing Member is rejected by the Corporation, such transaction shall be closed by the other party thereto in accordance with the Exchange Rules of the Exchange, security futures market, futures market or international market on which the transaction was effected. Exchange transactions of a suspended Clearing Member that are accepted by the Corporation shall be treated in the following manner:

(a)-(c) [unchanged]

(d) Premiums on closing sale transactions in options or BOUNDS and variation payments received on positions or transactions in security futures in a customers' lien account shall be held in such account, pending the closing out of all open positions and transactions in such account, for application in accordance with the provisions of Section 3 of Article VI of the By-Laws applicable to such portfolio margining account.

([d]e) Premiums payable on opening or closing purchase transactions in options or BOUNDS and variation payments payable on positions or transactions in security futures in any account shall be withdrawn by the Corporation from the Liquidating Settlement Account; provided, however, that (i) any such payments payable in respect of a Market-Maker's account or a customers' lien account shall first be withdrawn from the funds available in such account and only the amount of any deficit therein shall be withdrawn from the Liquidating Settlement Account; (ii) any such payments payable in respect of the segregated futures account shall first be withdrawn from the suspended Clearing Member's Segregated Liquidating Settlement Account and only the amount of any deficit therein shall be withdrawn from the Liquidating Settlement Account; and (iii) any such payments payable in respect of the internal non-proprietary cross-margining account shall first be withdrawn from the suspended Clearing Member's Internal Non-Proprietary Cross-Margining Liquidating Settlement Account and only the amount of any deficit therein shall be withdrawn from the Liquidating Settlement Account.

(e)-(g) [renumbered as (f)-(h) but otherwise unchanged]

Open Positions

RULE 1106. (a) [unchanged]

(b) **Short Positions in Options and BOUNDS.** (1) Except as hereinafter provided, open short positions in options or BOUNDS of a suspended Clearing Member in all accounts, other than a segregated futures account or an internal non-proprietary cross-margining account as updated to reflect pending transactions that have been accepted by the Corporation, shall be closed by the Corporation in the most orderly manner practicable. Amounts payable in settlement of closing purchase transactions in options effected by the Corporation shall be withdrawn from the suspended Clearing Member's Liquidating Settlement Account; provided, however, that amounts payable in settlement of closing purchase transactions and in respect of any dividend equivalent obligation in a Market-Maker's account or a customers' lien account shall first be withdrawn from the funds available in such account and only the amount of any deficit therein shall be withdrawn from the Liquidating Settlement Account. The suspended Clearing Member or its representative shall be notified as promptly as possible of any closing or transfer of short positions pursuant to this Rule.

(2)-(3) [unchanged]

(c)-(e) [unchanged]

(f) **Protective Action.** If the Chairman, the Management Vice Chairman, or the President of the Corporation shall (i) determine that the Corporation is unable, for any reason, to close out in a prompt and orderly fashion any unsegregated long positions or short positions in options or BOUNDS, or long or short positions in futures, or to convert to cash any margin deposits of a suspended Clearing Member, or (ii) elect pursuant to Rule 1106(e) not to close out any such positions or pursuant to Rule 1104(b) not to convert to cash any such margin deposits, such officer may authorize the execution from time to time for the account of the Corporation, solely for the purpose of reducing the risk to the Corporation resulting from the continued maintenance of such positions or the continued holding of such margin deposits, of hedging transactions, including, without limitation, the purchase or sale of underlying interests or interests deemed similar thereto or option contracts or futures contracts on any such underlying or similar interests. Such officer may delegate to specified officers or agents of the Corporation the authority to determine, within such guidelines, if any, as such officer shall prescribe, the nature and timing of such hedging transactions. Any authorization of hedging transactions shall be reported to the Board of Directors within 24 hours, and any such transactions that are executed shall be reported to the Membership/Margin Committee on a daily basis. Any costs or expenses, including losses, sustained by the Corporation in connection with transactions effected for its account pursuant to this paragraph shall be charged to the Liquidating Settlement Account of the suspended Clearing Member, and any gains realized on such transactions shall be credited to such Liquidating Settlement Account; provided, however, that (i) costs, expenses, and gains allocable to the hedging of positions in a Market-Maker's account or a customers' lien account shall be charged or credited, as the case may be, to that account, and only the excess, if any, of such costs and expenses over the funds available in that account shall be charged to the Liquidating Settlement Account; (ii) costs, expenses, and gains allocable to the hedging of positions in a segregated futures account shall be charged or credited, as the case may be, to the Segregated Liquidating Settlement Account, and only the excess, if any, of such costs and expenses over the funds available in that account shall be charged to the Liquidating Settlement Account; and (iii) costs, expenses, and gains allocable to the hedging of positions in an internal non-proprietary cross-margining account shall be charged or credited, as the case may be, to the Internal Non-Proprietary Cross-Margining Liquidating Settlement Account, and only the excess, if any, of such costs and expenses over the funds available in that account shall be charged to the Liquidating Settlement Account. Reasonable allocations of costs, expenses, and gains among accounts made by the Corporation for the purpose of implementing the proviso to the preceding sentence shall be binding on the Clearing Member and any persons claiming through the Clearing Member and their respective successors and assigns.

(g) [unchanged]

Exercised or Matured Contracts

RULE 1107. (a) Unless the Corporation stipulates otherwise in a particular case, exercised option contracts to which a suspended Clearing Member is a party (either as the exercising Clearing Member or as the assigned Clearing Member) and matured, physically-settled stock futures to which such Clearing Member is a party shall be disposed of as follows:

(1)-(5) [unchanged]

(6) All other exercised option contracts and matured, physically-settled stock futures to which the suspended Clearing Member was a party shall be closed through the buy-in and sell-out procedures provided in the Rules. All losses and gains on such buy-ins and sell-outs shall be paid from or credited to, as the case may be, the Liquidating Settlement Account of the suspended Clearing Member, provided, however, that (i) all losses on such buy-ins and sell-outs in a Market-Maker's account or a customers' lien account shall first be paid from such account to the extent there are funds available in such account and only the amount of any deficit therein shall be paid from the Liquidating Settlement Account; (ii) all losses on such buy-ins and sell-outs in a segregated futures account shall first be paid from the Segregated Liquidating Settlement Account to the extent permitted by applicable law and to the extent that there are funds available in such account, and only the amount of any deficit shall be paid from the Liquidating Settlement Account; and (iii) all losses on such buy-ins and sell-outs in an internal non-proprietary cross-margining account shall first be paid from the Internal Non-Proprietary Cross-Margining Liquidating Settlement Account to the extent permitted by applicable law and to the extent that there are funds available in such account, and only the amount of any deficit shall be paid from the Liquidating Settlement Account.

(b)-(c) [unchanged]

Item 2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by OCC's Board of Directors at a meeting held on July 23, 2002.

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

Introduction

The proposed amendments would provide for the introduction of a new "customers' lien account" that may be carried at OCC by a Clearing Member. The new account type would be used only to clear transactions of eligible customers that an OCC Clearing Member has agreed to margin on a portfolio risk basis or that a commodity clearing organization has agreed to margin in connection with a cross-margining arrangement in accordance with rules proposed by certain exchanges. In addition, this First Amended Filing reflects other rule changes that have become effective since this rule change was originally filed, and contains certain additional non-substantive changes.

Background

OCC, in conjunction with the Chicago Board Options Exchange ("CBOE"), American Stock Exchange, New York Stock Exchange ("NYSE"), Chicago Mercantile Exchange ("CME"), Chicago Board of Trade and various member firms, is seeking to establish a pilot program under which eligible customers may elect to establish accounts, limited to specified derivative products, that would be margined on a risk-based or portfolio margining basis rather than under the "strategy-based" method currently set forth in the exchanges' margin rules. The proposed pilot program is described in detail in CBOE's pending rule filing no. SR-CBOE-2002-03 (the "CBOE Rule Filing") in which CBOE proposes to amend its margin rules to provide for the pilot program.¹ The

¹ A similar rule filing was submitted by NYSE in SR-NYSE-2002-19, and is also pending

proposed pilot program permits eligible customers to establish risk-based margin accounts that would be limited to specified derivative products subject to regulation by the Commission, and it also provides for accounts in which derivative products regulated by the Commission may be cross-margined with related futures products regulated exclusively by the Commodity Futures Trading Commission (the "CFTC"). Under the current proposal, a cross-margining account of an eligible customer would be treated as a securities account for regulatory purposes.² A single "customers' lien account" created under the proposed new paragraph (i) of Article VI, Section 3 of OCC's By-Laws would be used to clear all transactions of eligible customers under a portfolio margining program or cross-margining program so long as the products included in the account are all cleared by OCC.³ OCC would have a lien on all positions and assets in a customers' lien account as security for the OCC Clearing Member's obligations to OCC relating to the account.⁴ OCC would continue to require full premium payment from the clearing

approval by the Commission.

² CBOE plans to submit a request to the CFTC for an exemption from the segregation requirements and other provisions of the CEA to the extent necessary to permit futures contracts to be carried in securities accounts subject to regulation by the Commission.

³ OCC is registered as a derivatives clearing organization under the Commodity Exchange Act and is therefore able to clear CFTC-regulated derivative products as well as Commission-regulated derivative products.

⁴ Under Commission Rules 8c-1, 15c2-1 and 15c3-3, securities held for the account of a customer generally may not be subject to liens to secure obligations of the carrying broker-dealer in an amount that exceeds the amount of total customer indebtedness. To facilitate compliance with these customer protection rules, OCC's rules require Clearing Members to carry positions of public securities customers in a customers' account under which all long positions are considered "segregated," and therefore free of OCC's lien, unless specifically designated as "unsegregated." All long options positions in customers' lien accounts, however, would automatically be considered unsegregated for purposes of OCC's placing a lien on these positions. OCC is seeking no-action relief which will permit OCC to treat these positions as unsegregated notwithstanding these provisions of Rules 8c-1, 15c2-1 and 15c3-3.

firm for all options purchased, whether or not the firm extends credit to the customer for the purchase.

Where cross-margining accounts include products cleared by OCC as well as futures products cleared by CME or other derivatives clearing organizations (other than OCC) under a cross-margining program, OCC's clearing function would occur in a separate customers' lien account to be established for each such program. A corresponding account would be established at the participating derivatives clearing organization(s). Liquidation of these accounts would be subject to a cross-margining agreement between or among OCC and the participating derivatives clearing organizations just as in the case of the existing cross-margining programs. These agreements, or appropriate amendments to existing agreements, would, of course, be separately filed with the Commission for approval. It is anticipated that a Clearing Member may establish a customers' lien account corresponding to a cross-margining agreement among OCC, CME and the New York Clearing Corporation. Separate customers' lien accounts would correspond to cross-margining agreements between OCC and other futures clearing organizations.

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

OCC's Proposed By-Law and Rule Changes

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

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

Amendments to Article VI of the By-Laws: Article VI sets out the basic terms of option contracts and the general rules for the clearance of Exchange transactions. Section 3 contains a description of each of the types of accounts that Clearing Members may establish and maintain with OCC. A new Section 3(i) has been added, which contains a description of the proposed customers' lien accounts, including provisions setting forth OCC's lien on all long positions, securities, margin and other funds in such these accounts and OCC's right to close out positions in these accounts. As provided in the amendment to Rule 611 below, positions in customers' lien accounts are deemed to be unsegregated. Section 3 has been further amended to correct the paragraph numbers of this section's Interpretations and Policies.

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

Amendments to the Rules: OCC's Rule 611 treats all long option positions in the regular securities customers' account as "segregated" and therefore free of OCC's lien except to the extent that the Clearing Member is entitled to "unsegregate"

long positions that are part of a customer spread. Rule 611 is being amended to provide that all positions in customers' lien accounts will be deemed to be unsegregated.

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

* * *

The proposed rule change is consistent with the purposes and requirements of Section 17A of the Exchange Act of 1934, as amended (the "Act") because it provides for operational and economic efficiencies in customer margining and increases the safety of the clearing system by applying previously approved risk-based margining procedures to clearing accounts containing the transactions of eligible customers. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

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

OCC does not believe that the proposed rule change would impose any material impact 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 Rules of Another Regulatory Organization or of the Commission

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

Item 9. Exhibits

Exhibit 1 Completed notice of the proposed rule change for publication in the Federal Register.

Exhibit 4 Full text of the proposed rule change marked to indicate additions to, and deletions from, the immediately preceding filing.

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-2003-04 A-1

SELF-REGULATORY ORGANIZATION

Proposed Rule Change By
The Options Clearing Corporation

Relating to a Customers' Lien Account

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 the Substance of the Proposed Rule Change**

The proposed amendments would provide for the introduction of a new "customers' lien account" that may be carried at OCC by a Clearing Member.

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

In its filing with the Commission, 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

Introduction

The proposed amendments would provide for the introduction of a new “customers’ lien account” that may be carried at OCC by a Clearing Member. The new account type would be used only to clear transactions of eligible customers that an OCC Clearing Member has agreed to margin on a portfolio risk basis or that a commodity clearing organization has agreed to margin in connection with a cross-margining arrangement in accordance with rules proposed by certain exchanges. In addition, this First Amended Filing reflects other rule changes that have become effective since this rule change was originally filed, and contains certain additional non-substantive changes.

Background

OCC, in conjunction with the Chicago Board Options Exchange (“CBOE”), American Stock Exchange, New York Stock Exchange (“NYSE”), Chicago Mercantile Exchange (“CME”), Chicago Board of Trade and various member firms, is seeking to establish a pilot program under which eligible customers may elect to establish

accounts, limited to specified derivative products, that would be margined on a risk-based or portfolio margining basis rather than under the “strategy-based” method currently set forth in the exchanges’ margin rules. The proposed pilot program is described in detail in CBOE’s pending rule filing no. SR-CBOE-2002-03 (the “CBOE Rule Filing”) in which CBOE proposes to amend its margin rules to provide for the pilot program.¹ The proposed pilot program permits eligible customers to establish risk-based margin accounts that would be limited to specified derivative products subject to regulation by the Commission, and it also provides for accounts in which derivative products regulated by the Commission may be cross-margined with related futures products regulated exclusively by the Commodity Futures Trading Commission (the “CFTC”). Under the current proposal, a cross-margining account of an eligible customer would be treated as a securities account for regulatory purposes.² A single “customers’ lien account” created under the proposed new paragraph (i) of Article VI, Section 3 of OCC’s By-Laws would be used to clear all transactions of eligible customers under a portfolio margining program or cross-margining program so long as the products included in the account are all cleared by OCC.³ OCC would have a lien on all positions and assets in a customers’ lien account as security for the OCC Clearing Member’s obligations to OCC relating to the account.⁴ OCC would continue to require full premium payment from the clearing

¹ A similar rule filing was submitted by NYSE in SR-NYSE-2002-19, and is also pending approval by the Commission.

² CBOE plans to submit a request to the CFTC for an exemption from the segregation requirements and other provisions of the CEA to the extent necessary to permit futures contracts to be carried in securities accounts subject to regulation by the Commission.

³ OCC is registered as a derivatives clearing organization under the Commodity Exchange Act and is therefore able to clear CFTC-regulated derivative products as well as Commission-regulated derivative products.

⁴ Under Commission Rules 8c-1, 15c2-1 and 15c3-3, securities held for the account of a customer

firm for all options purchased, whether or not the firm extends credit to the customer for the purchase.

Where cross-margining accounts include products cleared by OCC as well as futures products cleared by CME or other derivatives clearing organizations (other than OCC) under a cross-margining program, OCC's clearing function would occur in a separate customers' lien account to be established for each such program. A corresponding account would be established at the participating derivatives clearing organization(s). Liquidation of these accounts would be subject to a cross-margining agreement between or among OCC and the participating derivatives clearing organizations just as in the case of the existing cross-margining programs. These agreements, or appropriate amendments to existing agreements, would, of course, be separately filed with the Commission for approval. It is anticipated that a Clearing Member may establish a customers' lien account corresponding to a cross-margining agreement among OCC, CME and the New York Clearing Corporation. Separate customers' lien accounts would correspond to cross-margining agreements between OCC and other futures clearing organizations.

As stated in the CBOE Rule Filing, the currently proposed pilot program includes only the following eligible products: (i) all broad-based U.S. market index

generally may not be subject to liens to secure obligations of the carrying broker-dealer in an amount that exceeds the amount of total customer indebtedness. To facilitate compliance with these customer protection rules, OCC's rules require Clearing Members to carry positions of public securities customers in a customers' account under which all long positions are considered "segregated," and therefore free of OCC's lien, unless specifically designated as "unsegregated." All long options positions in customers' lien accounts, however, would automatically be considered unsegregated for purposes of OCC's placing a lien on these positions. OCC is seeking no-action relief which will permit OCC to treat these positions as unsegregated notwithstanding these provisions of Rules 8c-1, 15c2-1 and 15c3-3.

options (including stock index warrants) listed on a national securities exchange; (ii) marginable exchange-traded funds; and (iii) index futures contracts and futures options contracts to the extent they are cross-margined with listed index options.

OCC's Proposed By-Law and Rule Changes

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

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

Amendments to Article VI of the By-Laws: Article VI sets out the basic terms of option contracts and the general rules for the clearance of Exchange transactions. Section 3 contains a description of each of the types of accounts that Clearing Members may establish and maintain with OCC. A new Section 3(i) has been added, which contains a description of the proposed customers' lien accounts, including provisions setting forth OCC's lien on all long positions, securities, margin and other funds in such these accounts and OCC's right to close out positions in these accounts. As provided in the amendment to Rule 611 below, positions in customers' lien accounts are deemed to be unsegregated. Section 3 has been further amended to correct the paragraph numbers of this section's Interpretations and Policies.

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

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

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

* * *

The proposed rule change is consistent with the purposes and requirements of Section 17A of the Exchange Act of 1934, as amended (the "Act") because it provides for operational and economic efficiencies in customer margining and increases the safety of the clearing system by applying previously approved risk-based margining procedures to clearing accounts containing the transactions of eligible customers. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

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

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

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

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

Within 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, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2003-04 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-OCC-2003-04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference 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 comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2003-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register] _____.

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

Secretary

Dated: _____

EXHIBIT 4

This Exhibit 4 marks the text of the rule change contained in Item 1 of the First Amended Filing to indicate additions to, and deletions from, the immediately preceding filing (the “Original Filing”). Material added to, or deleted from, OCC’s rules as the result of rule changes approved by the Commission since the date of the Original Filing is double underlined and bolded or stricken through and bolded, respectively. This First Amended Rule Filing also removes from the Original Filing proposed changes to the “Interpretations and Policies” following Article VI, Section 3 of OCC’s By-Laws; these proposed changes are stricken through. Material that was proposed to be added to, or deleted from, OCC’s By-Laws and Rules both in the Original Filing and the First Amended Filing is underlined or enclosed in bold brackets, respectively. Changes not falling within the above categories are explained in footnotes.

* * *

THE OPTIONS CLEARING CORPORATION

BY- LAWS

ARTICLE I

Definitions

SECTION 1. Unless the context requires otherwise (or except as otherwise specified in the By-Laws), the terms defined herein shall, for all purposes of these By-Laws and the Rules of the Corporation, have the meanings herein specified.

A.-B. [unchanged]

C. (1)-(~~2631~~) [unchanged]

Customers' Account

(~~2732~~) The term "customers' account" in respect of a Clearing Member means an account of the Clearing Member on the records of the Corporation which is confined to Exchange transactions cleared and positions carried by the Clearing Member on behalf of its securities customers, other than those transactions of Market-Makers which are cleared through a Market-Maker's account. The term "customers' account" does not include a segregated futures account or a customers' lien account.

Customers' Lien Account

(~~2733~~) The term "customers' lien account" in respect of a Clearing Member means an account of the Clearing Member on the records of the Corporation as provided under Article VI, Section 3(i) of the By-Laws.

D.-Z. [unchanged]

* * *

ARTICLE VI

Clearance of Exchange Transactions

* * *

Maintenance of Accounts

SECTION 3. Every Clearing Member may⁵ establish and maintain with the Corporation one or more of the following accounts:

(a)-(h) [unchanged]

(i) A customers' lien account for those securities customers that are eligible, and that have elected, to carry accounts with the Clearing Member that are margined on a portfolio risk basis or pursuant to a cross-margining arrangement, in accordance with

⁵ The word "may" in the First Amended Filing replaces the word "shall" in the Original Filing. This change has been made to correct a drafting error in the Original Filing.

Exchange Rules. The Clearing Member, on behalf of itself and each customer on whose behalf positions may be maintained in the customers' lien account, agrees that (i) the positions of such customer may be commingled with the positions of other eligible customers; (ii) the Corporation shall have a lien on all positions, securities, margin and other funds in such account as security for all of the Clearing Member's obligations to the Corporation in respect of such account; and (iii) the Corporation may close out positions in such account and apply the proceeds thereof at any time without prior notice to the Clearing Member or customer. A separate customers' lien account may be established in connection with a cross-margining program for eligible customers between the Corporation and one or more Participating CCOs, and any such account shall be subject to such additional provisions as may be set forth in the By-Laws and Rules and in the applicable Participating CCO Agreement.

*. . . Interpretations and Policies:*⁶

.01

~~.02 .03~~ — [unchanged]

~~.04~~ — Pursuant to SEC Release No. 34 ~~[insert no. of adopting release pertaining to this rule change]~~, positions in cleared securities in a customers' lien account are conclusively deemed not to be "fully paid securities" or "excess margin securities" for purposes of SEC Rule 15c3-3 and need not be "segregated" pursuant to Rule 611. The application of the Corporation's lien to such positions is deemed not to violate SEC Rule 15c3-3 or Rules 15c2-1 or 8c-1.

[.02] .03 Each Clearing Member that effects transactions or carries assets on behalf of any person in any account established and maintained pursuant to this Section 3 shall be deemed to represent and warrant to the Corporation that it has obtained any necessary agreement or consent from each person for whom such transaction is effected or assets are carried to the provisions of this Section 3 applicable to such account (including without limitation the granting of a security interest to the Corporation in such account) and that effecting such transaction and carrying such assets for such person in such account is in compliance with applicable laws, regulations and rules by which such Clearing Member is bound. The rights of the Corporation under the By-Laws and Rules shall be enforceable in

⁶ The First Amended Filing removed the previously proposed Interpretation and Policy .04, which contemplated that certain relief from the Commission's customer protection rules would be granted by the Commission's order approving this proposed rule change. OCC now seeks "no action" relief to cover the same points. This section's Interpretations and Policies have been further amended to correct the paragraph numbers. Filing no. SR-OCC-2002-26 approved Interpretation and Policy .02, which was effective when filed on October 15, 2002. Filing no. SR-OCC-2002-10 approved Interpretations and Policies numbered as .02 and .03, but which should have been numbered .03 and .04. This filing was effective when approved on September 22, 2003.

accordance with their terms notwithstanding the failure of a Clearing Member to obtain any required agreement or consent of any such person and notwithstanding any defect or limitation in any such agreement or consent.

[.03].04 As used in this Section 3, the phrase "all long positions, securities, margins and other funds" is deemed to include any "investment property" as that term is defined in Article 9 of the Uniform Commercial Code (including long and short positions in security futures) and any other asset in the applicable account. Additionally, as used in this Section 3, the phrase "obligations to the Corporation in respect of all Exchange transactions" includes any and all obligations arising directly or indirectly from an Exchange transaction, including, without limitation, (a) obligations relating to any long or short position in any cleared contract that is created in an Exchange transaction, (b) any obligation to make a cash payment, or physical delivery of an underlying interest, resulting from the exercise of, assignment of an exercise notice to, or maturity of such a cleared contract, and (c) any fees or charges imposed by the Corporation with respect to such Exchange transactions.

Obligation of Purchasing Clearing Members

SECTION 4. The Purchasing Clearing Member in an Exchange transaction in respect of a cleared contract other than a future shall be obligated to pay the Corporation the amount of the premium agreed upon in such Exchange transaction. In the event that the Corporation fails to receive such payment at or before the settlement time, the Corporation shall have the right to apply any funds credited to accounts of the Clearing Member with the Corporation or that are otherwise in the possession or at the disposal of the Corporation to the payment of such premium; provided, however, that the Corporation shall not apply funds in a customers' account, segregated futures account (including a segregated futures professional account), customers' lien account, Market-Maker's account (if the Market-Maker is a customer) or in a combined Market-Makers' account (if the Market-Makers are customers) for the payment of premiums on transactions in any account other than such account. Notwithstanding any other provision of the By-Laws or Rules, if the Corporation accepts an opening purchase transaction in an account at a time when the Corporation has not received payment of all amounts due from the Purchasing Clearing Member in respect of such account, the long position resulting from the acceptance of such transaction by the Corporation shall be deemed to be an unsegregated long position, and the Corporation shall have the right to close out or, in the case of options, to exercise such long position and to apply the proceeds in accordance with Chapter XI of the Rules.

* * *

RULES

* * *

CHAPTER VI

Margins

* * *

Segregation of Long Positions

RULE 611. (a) Subject to the provisions of Article VI, Section 4 of the By-Laws, all long positions (other than long positions in futures) in securities customers' accounts and firm non-lien accounts shall be deemed to be segregated long positions unless the Corporation receives contrary instructions from a Clearing Member in accordance with the following provisions of this Rule 611. All segregated long positions shall be held by the Corporation free of any charge, lien or claim of any kind in favor of the Corporation or any person claiming through it, until such positions shall be closed or exercised in accordance with the By-Laws and Rules or until the Clearing Member shall file with the Corporation written instructions, in such form as the Corporation may from time to time prescribe, directing that such positions be released from segregation. All positions in futures shall be deemed to be unsegregated for purposes of this Rule 611.

All positions in cleared securities that are carried in a customers' lien account shall be deemed to be unsegregated for purposes of this Rule 611.

* * *

CHAPTER XI

Suspension of a Clearing Member

* * *

Pending Transactions and Variation Payments

RULE 1105. Notwithstanding any other provision of the By-Laws and Rules, the Corporation shall have no obligation to accept any matched Exchange transaction of a suspended Clearing Member that was effected after the time at which the Clearing Member was suspended. In the event an Exchange transaction of a suspended Clearing Member is rejected by the Corporation, such transaction shall be closed by the other party thereto in accordance with the Exchange Rules of the Exchange, security futures market, futures market or international market on which the transaction was effected. Exchange transactions of a suspended Clearing Member that are accepted by the Corporation shall be treated in the following manner:

(a)-(c) [unchanged]

(d) Premiums on closing sale transactions in options or BOUNDS and variation payments received on positions or transactions in security futures in a customers' lien account shall be held in such account, pending the closing out of all open positions and transactions in such account, for application in accordance with the provisions of Section 3 of Article VI of the By-Laws applicable to such portfolio margining account.

([d]e) Premiums payable on opening or closing purchase transactions in options or BOUNDS and variation payments payable on positions or transactions in security futures in any account shall be withdrawn by the Corporation from the Liquidating Settlement Account; provided, however, that (i) any such payments payable in respect of a Market-Maker's account or a customers' lien account shall first be withdrawn from the funds available in such account and only the amount of any deficit therein shall be withdrawn from the Liquidating Settlement Account; ~~and~~ (ii) any such payments payable in respect of the segregated futures account shall first be withdrawn from the suspended Clearing Member's Segregated Liquidating Settlement Account and only the amount of any deficit therein shall be withdrawn from the Liquidating Settlement Account; ~~and~~ (iii) any such payments payable in respect of the internal non-proprietary cross-margining account shall first be withdrawn from the suspended Clearing Member's Internal Non-Proprietary Cross-Margining Liquidating Settlement Account and only the amount of any deficit therein shall be withdrawn from the Liquidating Settlement Account.

(e)-(g) [renumbered as (f)-(h) but otherwise unchanged]

Open Positions

RULE 1106. (a) [unchanged]

(b) **Short Positions in Options and BOUNDS.** (1) Except as hereinafter provided, open short positions in options or BOUNDS of a suspended Clearing Member in all accounts, other than a segregated futures account, or an internal non-proprietary cross-margining account as updated to reflect pending transactions that have been accepted by the Corporation, shall be closed by the Corporation in the most orderly

manner practicable. Amounts payable in settlement of closing purchase transactions in options effected by the Corporation shall be withdrawn from the suspended Clearing Member's Liquidating Settlement Account; provided, however, that amounts payable in settlement of closing purchase transactions and in respect of any dividend equivalent obligation in a Market-Maker's account or a customers' lien account shall first be withdrawn from the funds available in such account and only the amount of any deficit therein shall be withdrawn from the Liquidating Settlement Account. The suspended Clearing Member or its representative shall be notified as promptly as possible of any closing or transfer of short positions pursuant to this Rule.

(2)-(3) [unchanged]

(c)-(e) [unchanged]

(f) **Protective Action.** If the Chairman, the Management Vice Chairman, or the President of the Corporation shall (i) determine that the Corporation is unable, for any reason, to close out in a prompt and orderly fashion any unsegregated long positions or short positions in options or BOUNDS, or long or short positions in futures, or to convert to cash any margin deposits of a suspended Clearing Member, or (ii) elect pursuant to Rule 1106(e) not to close out any such positions or pursuant to Rule 1104(b) not to convert to cash any such margin deposits, such officer may authorize the execution from time to time for the account of the Corporation, solely for the purpose of reducing the risk to the Corporation resulting from the continued maintenance of such positions or the continued holding of such margin deposits, of hedging transactions, including, without limitation, the purchase or sale of underlying interests or interests deemed similar thereto or option contracts or futures contracts on any such underlying or similar interests. Such officer may delegate to specified officers or agents of the Corporation the authority to determine, within such guidelines, if any, as such officer shall prescribe, the nature and timing of such hedging transactions. Any authorization of hedging transactions shall be reported to the Board of Directors within 24 hours, and any such transactions that are executed shall be reported to the Membership/Margin Committee on a daily basis. Any costs or expenses, including losses, sustained by the Corporation in connection with transactions effected for its account pursuant to this paragraph shall be charged to the Liquidating Settlement Account of the suspended Clearing Member, and any gains realized on such transactions shall be credited to such Liquidating Settlement Account; provided, however, that (i) costs, expenses, and gains allocable to the hedging of positions in a Market-Maker's account or a customers' lien account shall be charged or credited, as the case may be, to that account, and only the excess, if any, of such costs and expenses over the funds available in that account shall be charged to the Liquidating Settlement Account, ~~and~~ (ii) costs, expenses, and gains allocable to the hedging of positions in a segregated futures account shall be charged or credited, as the case may be, to the Segregated Liquidating Settlement Account, and only the excess, if any, of such costs and expenses over the funds available in that account shall be charged to the Liquidating Settlement Account; and (iii) costs, expenses, and gains allocable to the hedging of positions in an internal non-proprietary cross-margining account shall

be charged or credited, as the case may be, to the Internal Non-Proprietary Cross-Margining Liquidating Settlement Account, and only the excess, if any, of such costs and expenses over the funds available in that account shall be charged to the Liquidating Settlement Account. Reasonable allocations of costs, expenses, and gains among accounts made by the Corporation for the purpose of implementing the proviso to the preceding sentence shall be binding on the Clearing Member and any persons claiming through the Clearing Member and their respective successors and assigns.

(g) [unchanged]

Exercised or Matured Contracts

RULE 1107. (a) Unless the Corporation stipulates otherwise in a particular case, exercised option contracts to which a suspended Clearing Member is a party (either as the exercising Clearing Member or as the assigned Clearing Member) and matured, physically-settled {stock}⁷ futures to which such Clearing Member is a party shall be disposed of as follows:

(1)-(5) [unchanged]

(6) All other exercised option contracts and matured, physically-settled stock futures to which the suspended Clearing Member was a party shall be closed through the buy-in and sell-out procedures provided in the Rules. All losses and gains on such buy-ins and sell-outs shall be paid from or credited to, as the case may be, the Liquidating Settlement Account of the suspended Clearing Member, provided, however, that; (i) all losses on such buy-ins and sell-outs in a Market-Maker's account or a customers' lien account shall first be paid from such account to the extent there are funds available in such account; and only the amount of any deficit therein shall be paid from the Liquidating Settlement Account; ~~and~~ (ii) all losses on such buy-ins and sell-outs in a segregated futures account shall first be paid from the Segregated Liquidating Settlement Account to the extent permitted by applicable law and to the extent that there are funds available in such account, and only the amount of any deficit shall be paid from the Liquidating Settlement Account; **and (iii) all losses on such buy-ins and sell-outs in an internal non-proprietary cross-margining account shall first be paid from the Internal Non-Proprietary Cross-Margining Liquidating Settlement Account to the extent permitted by applicable law and to the extent that there are funds available in such account, and only the amount of any deficit shall be paid from the Liquidating Settlement Account.**

(b)-(c) [unchanged]

⁷ OCC proposed to delete the word "stock" in the Original Filing, but proposes to retain it in the First Amended Filing.

