

considering inappropriate information that could lead to uneven or potentially discriminatory application of the eligibility requirements. The second set of guidelines set forth the factors to be considered by the MPC, pursuant to Interpretation .01, in determining whether to apply the eligibility requirements to fewer than all the option classes traded at a trading station. The second set of guidelines was eliminated by the CBOE in a subsequent amendment.<sup>32</sup>

The Commission believes that the proposals in Amendment No. 1 enhance the proposed rule change. For these reasons the Commission believes that good cause exists, consistent with Section 6(b)(5)<sup>33</sup> and Section 19(b)<sup>34</sup> of the Act, to accelerate approval of Amendment No. 1 to the proposed rule change.

In Amendment No. 2, the Exchange proposed to limit the application of the proposed rule to options classes identified as having market makers that trade an inordinate percentage of their trades on RAES. The Commission believes that allowing the Exchange to limit application of the proposal to only certain options classes will reduce the potential for undue burdens to be placed on those options classes that are trading without problems and that have market makers that are actively fulfilling their market making obligations. In addition, the Exchange further explained why it believes that its proposal sufficiently protects against the MPC discriminating against or in favor of any parties when exercising its discretion to exclude certain days from the percentage calculations. The Commission is satisfied that the proposal prevents the MPC from applying the eligibility requirements in a discriminatory fashion. In particular, the Commission believes that, because the data upon which the MPC will base its decision to exclude certain days from the calculation of the eligibility requirement will not identify individual market makers, the MPC will not be able to make such decisions based upon the businesses of the individual market makers on those days. For these reasons, the Commission believes that Amendment No. 2 is consistent with the Act and that good cause exists to accelerate its approval.

The Commission believes that good cause exists, pursuant to Section 6(b)(5)<sup>35</sup> and Section 19(b)<sup>36</sup> of the Act,

to accelerate approval of Amendment No. 3 to the proposed rule change. In Amendment No. 3, the Exchange proposed to exempt DPMs from the eligibility requirements. The Commission believes that in light of the additional responsibilities that DPMs must fulfill and due to the fact that these additional responsibilities are required by specific CBOE rules, that it is reasonable to exempt DPMs from the eligibility requirements.

The Commission believes that good cause exists, pursuant to Section 6(b)(5)<sup>37</sup> and Section 19(b)<sup>38</sup> of the Act, to accelerate approval of Amendment No. 4 to the proposed rule change. Amendment No. 4 was technical in nature and only sought to correct the proposed rule language submitted in Amendment No. 3 to make it consistent with the proposed rule language submitted in Amendment No. 2.

Finally, in Amendment No. 5, the Exchange deleted proposed factors that were no longer applicable after the submission of Amendment No. 2. Specifically, in Amendment No. 2, the Exchange proposed to only apply the percentage requirements to those options classes that had a demonstrated need for the limitations. The factors the Exchange proposes to delete in Amendment No. 5 were to be used by the MPC to determine if options classes should be exempt from the percentage requirements. Because the proposal now only applies the percentage requirements to those options classes with a demonstrated need, these factors are no longer appropriate. In addition, the Exchange proposed to add factors to be used by the MPC to determine which options classes should be subject to the percentage requirements. The Commission believes that the factors, as described above, provide the Exchange with appropriate discretion to determine which options should be subject to the limitations. Therefore, the Commission believes that good cause exists, pursuant to Section 6(b)(5)<sup>39</sup> and Section 19(b)<sup>40</sup> of the Act, to accelerate approval of Amendment No. 5.

#### V. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, 3, 4, and 5, including whether Amendment Nos. 1, 2, 3, 4 and 5 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary,

Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-97-37 and should be submitted by July 5, 2000.

#### VI. CONCLUSION

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>41</sup> that the amended proposed rule change (SR-CBOE-97-37) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>42</sup>

Margaret H. McFarland,

Deputy Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42900; File No. SR-OCC-00-03]

#### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend OCC's By-Laws Relating to Clearing Member Representatives

June 5, 2000.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on April 6, 2000, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

<sup>32</sup> See Amendment No. 5.

<sup>33</sup> 15 U.S.C. 78f(b)(5).

<sup>34</sup> 15 U.S.C. 78s(b).

<sup>35</sup> 15 U.S.C. 78ff(b)(5).

<sup>36</sup> 15 U.S.C. 78S(b).

<sup>37</sup> 15 U.S.C. 78f(b)(5).

<sup>38</sup> 15 U.S.C. 78s.

<sup>39</sup> 15 U.S.C. 78ff(b)(5).

<sup>40</sup> 15 U.S.C. 78s(b).

<sup>41</sup> 15 U.S.C. 78s(b)(2).

<sup>42</sup> 17 CFR 200.30-3(a)(12).

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

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change eliminates a requirement in OCC's By-Laws that requires clearing members to designate a specific individual (a "designee") as eligible for service as a member director or a member of the nominating committee. Instead, the amended By-Laws will provide that a member director or a member of the nominating committee must be a "representative" of a clearing member.

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

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

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

The purpose of the proposed rule change is to eliminate an OCC By-Law requirement that clearing members must designate a specific individual (a "designee") to be eligible for service as a member director or a member of the nominating committee. Instead, OCC believes that it would be more administratively efficient to require that a member director or a member of the nominating committee must be a "representative" of a clearing member. A "representative" is defined as a director, senior officer, principal or general partner of a clearing member. The term "designee" is being deleted from Article I, Section 1 of OCC's by-laws and conforming changes are being made to Section 2, 4, and 5 of Article II of OCC's By-Laws.

In addition, the term "elected members" as used with respect to the nominating committee is being deleted since all nominating committee members are elected. The term "members" is being used instead. This change is being made to Section 4, 5, and 12 of Article III and Section 3 of Article VII and to Sections 1, 2, and 3 of the Stockholders Agreement.

<sup>2</sup> The Commission has modified the text of the summaries prepared by OCC.

OCC also proposed to make other additional technical and non-substantive changes. Section 4 of Article III is being amended to provide that the terms of Class I of the nominating committee expire in odd numbered years and that the terms of Class II expire in even number years. Section 5 of Article III is also being amended to provide that OCC may transmit rather than mail the list of nominees to clearing members to accommodate other means of distribution.

OCC believes that the proposed rule change is consistent with Section 17a of the Act because the rule change eliminates administrative inefficiencies with no adverse impact to clearing member representation on OCC's Board of Directors.

### (B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impact or impose a 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iv)<sup>3</sup> of the Act and pursuant to Rule 19b-4(f)(4)<sup>4</sup> promulgated thereunder because the proposal effects a change in an existing service of an OCC service that does not adversely affect the safeguarding of securities or funds in OCC's custody or control and does not significantly affect the respective rights or obligations of OCC or persons using the service. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>5</sup>

## 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-00-03 and should be submitted by July 5, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Aviation Proceedings, Agreements Filed During the Week Ending May 26, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST-2000-7405

*Date Filed:* May 23, 2000

*Parties:* Members of the International

Air Transport Association

*Subject:*

CTC COMP 0280 dated 23 May 2000  
Expedited Composite Resolution 506  
Special Surcharge Resolution from

Japan

(Except USA/US Territories)

Intended effective date: 1 July 2000

*Docket Number:* OST-2000-7406

*Date Filed:* May 23, 2000

*Parties:* Members of the International

Air Transport Association

*Subject:*

CTC COMP 0281 dated 23 May 2000

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iv).

<sup>4</sup> 17 CFR 240.19b-4(f)(4).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>6</sup> 17 CFR 200.30-3(a)(12).