

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

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

Within thirty-five 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 ninety 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 such 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-FICC-2003-09. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 FICC and on FICC's Web site at <http://www.ficc.com>.

All submissions should refer to File No. SR-FICC-2003-09 and should be submitted by February 5, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49043; File No. SR-OCC-2003-02]

**Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Confidential Treatment of Certain Information**

January 8, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on June 3, 2003, 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 items have been prepared primarily by OCC. 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 amends as set forth in a policy statement OCC's obligation with regard to the confidential treatment of certain information provided to OCC by markets to which OCC provides clearing and settlement services.

**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*

OCC has recently entered into clearing agreements with Nasdaq LIFFE Markets, LLC ("NqLX")<sup>3</sup> and with Island Futures Exchange, LLC ("IFX")<sup>4</sup> in connection with security futures and in the case of NqLX, with futures and futures options on broad-based indexes traded on these participant markets. These agreements include confidentiality provisions protecting confidential information provided by one party from unauthorized use or disclosure by the other party. OCC has also entered into a clearing agreement with OneChicago, LLC ("OCX")<sup>5</sup> which does not contain confidentiality provisions. Similarly, there are no confidentiality provisions in the restated participant exchange agreement among OCC and the various options markets. OCC is currently discussing a clearing agreement with CBOE Futures Exchange, LLC, and CBOE has requested that confidentiality provisions be included.

In order to assure that all participant markets have the same rights protecting confidential information disclosed to OCC and to avoid the need to negotiate the terms of confidentiality agreements with current and future participant markets on a case by case basis, OCC proposes to publish a policy statement with regard to confidential information disclosed to it by participant markets ("Policy Statement"). The Policy Statement will not be incorporated into the by-laws. OCC intends that the Policy Statement be enforceable against OCC by the participant markets.

The Policy Statement reflects OCC's longstanding practice and express understanding with the various markets using its clearing services. OCC has always protected the confidentiality of new product information and other information provided to it by the markets, and the Policy Statement merely provides a uniform statement of that policy for the benefit of all markets. OCC's confidentiality obligations under the Policy Statement are substantially

<sup>2</sup> The Commission has modified parts of these statements.

<sup>3</sup> Securities Exchange Act Release No. 46722 (October 25, 2002), 67 FR 67230 (November 4, 2002) [File No. SR-OCC-2002-13].

<sup>4</sup> Securities Exchange Act Release No. 46058 (June 10, 2002), 67 FR 41287 (June 17, 2002) [File No. SR-OCC-2002-08].

<sup>5</sup> Securities Exchange Act Release No. 46653 (October 11, 2002), 67 FR 64689 (October 21, 2002) [File No. SR-OCC-2002-07].

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

the same as its confidentiality obligations under its clearing agreements with NqLX and IFX.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and will remove impediments to and perfect the mechanism of a national system for the clearance and settlement of securities transactions.

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

OCC does not believe that the proposed rule change would impose any material 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)(iii) of the Act<sup>6</sup> and Rule 19b-4(f)(4)<sup>7</sup> promulgated thereunder because the proposal effects a change in an existing service of OCC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (B) 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 the 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.

### **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.

Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-OCC-2003-02. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 will also be available for inspection and copying at the principal office of OCC and OCC's Web site at <http://www.theocc.com>. All submissions should refer to the File No. SR-OCC-2003-02 and should be submitted by February 5, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**J. Lynn Taylor,**  
Assistant Secretary.

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49045; File No. SR-OCC-2003-01]

### **Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exercise-by-Exception Policies**

January 8, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 23, 2003, 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 items have been prepared primarily by OCC. 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**

OCC is proposing to modify certain of its practices and policies with respect to exercise by exception processing of expiring equity options. Specifically, OCC is (1) modifying its methodology for extracting closing prices for underlying securities and (2) making explicit certain circumstances under which OCC will remove options on an underlying security from exercise by exception processing.

### **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 proposed rule change would modify OCC's practices and policies with respect to exercise by exception processing of expiring equity options.

#### **Exercise by Exception Processing**

Rule 805 sets forth OCC's procedures for processing expiring equity and index options. It provides for the use of "exercise by exception" processing<sup>3</sup> to expedite the exercise of such expiring options by clearing members. Under that procedure, expiring options that are in-the-money by a specified amount are exercised unless a clearing member instructs otherwise. Equity options are determined to be in-the-money based on the difference between the exercise price and the closing price of the underlying security on the last trading

<sup>2</sup> The Commission has modified parts of these statements.

<sup>3</sup> "Exercise by exception" processing is a procedural convenience extended to clearing members to relieve them of the operational burden of entering individual exercise instructions for every option contract to be exercised. It is not intended to obviate the need for customers to communicate exercise instructions to their brokers. OCC Rule 805, Interpretation & Policy .02.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(4).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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