

Commission designates the proposed rule change as effective and operative immediately upon filing with the Commission.¹⁷

At any time within 60-days after 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. 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-BSE-2006-09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSE-2006-09. 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, 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. 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-BSE-2006-09 and should be submitted on or before April 24, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Nancy M. Morris,

Secretary.

[FR Doc. E6-4755 Filed 3-31-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53556; File No. SR-NASD-2005-098]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to the Submission of SEC Rule 15c2-11 Information on Non-Nasdaq Securities

March 27, 2006.

On August 18, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission"), a proposed rule change to NASD Rule 6740 relating to the submission of SEC Rule 15c2-11 information on non-Nasdaq securities pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act");¹ and Rule 19b-4 thereunder.² On January 10, 2006, NASD submitted Amendment No. 1 to the proposed rule change.³ The Commission published the proposed rule change, as amended, for comment in the **Federal Register** on February 21, 2006.⁴ The Commission received no comments on the proposal.

NASD Rule 6740 prohibits a member from initiating or resuming the quotation of a non-Nasdaq security⁵ in

a quotation medium unless the member has demonstrated compliance with the requirements of SEC Rule 15c2-11 pertaining to the review and maintenance of specified information about the security and issuer. To demonstrate compliance with both NASD Rule 6740 and SEC Rule 15c2-11, a member must file with NASD a Form 211, together with the information required under SEC Rule 15c2-11(a), at least three business days before the quotation is published or displayed.

The proposed rule change, as amended, relieves members of the obligation to file with NASD copies of information that is electronically accessible through the SEC's EDGAR system. Although members will not be required to file the information with NASD, they will nonetheless remain obligated under NASD Rule 6740 to review and maintain information as required by SEC Rule 15c2-11. Further, where copies of documents are not submitted to NASD because they are available through EDGAR, members will continue to be required to provide on the Form 211 the type and date of each report or statement, as well as other information as may be requested by NASD relating to each report or statement for the reporting issuer that the member relied upon in satisfying its information review obligations under NASD Rule 6740 and SEC Rule 15c2-11(a).⁶

In addition, the proposed rule change, as amended, would except members from the requirements of NASD Rule 6740 where the Commission has granted an exemption to publish or submit any quotation under SEC Rule 15c2-11(h). To the extent that the Commission's exemption is subject to any terms and conditions, those same terms and conditions would apply to the exclusion under NASD Rule 6740.

Finally, the proposed rule change, as amended, replaces, as a technical change, several references in NASD Rule 6740 to "the Association" with the name "NASD."

NASD has stated that the effective date of the proposed rule change will be 30 days following publication of NASD's *Notice to Members* announcing Commission approval, and the Commission believes that this is reasonable.⁷

⁶ If information other than the type and date of the statement or report is required to be submitted by members under this proposed provision, NASD will provide notice of these additional requirements in a Notice to Members.

⁷ NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval.

¹⁷ For the purposes only of waiving the 30-day operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁸ 17 CFR 200.30-3(a)(12).

¹⁵ 5 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 made certain technical and clarifying changes to the original rule filing of August 18, 2005 and superseded and replaced the original rule filing in its entirety.

⁴ See Securities Exchange Act Release No. 53276 (February 13, 2006), 71 FR 8875 (February 21, 2006).

⁵ For purposes of this rule, "non-Nasdaq security" is defined in NASD Rule 6710(c) as "any equity security that is neither included in The Nasdaq Stock Market nor traded on any national securities exchange."

The Commission believes that the proposed rule change, as amended, should harmonize NASD Rule 6740 and SEC Rule 15c2-11, so that members are not required to review, maintain and file information under the NASD rule when they are not required to review and maintain such information under the SEC rule. NASD Rule 6740 seeks to ensure that members are in compliance with SEC Rule 15c2-11. Therefore, where the Commission has granted an exemption under Rule 15c2-11(h), it is appropriate that the same treatment apply under NASD Rule 6740. The Commission also believes that relieving members of the obligation to file with NASD copies of information that is electronically accessible through the EDGAR system will eliminate the administrative burden and cost imposed on members in furnishing such information to NASD while preserving the requirement that the members maintain and review information as required by SEC Rule 15c2-11.

For the above reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association⁸ and, in particular, the requirements of Section 15A of the Act⁹ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Sections 15A(b)(6) and 15A(b)(9) of the Exchange Act.¹⁰

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,¹¹ that the proposed rule change (SR-NASD 2005-098), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Nancy M. Morris,
Secretary.

[FR Doc. E6-4757 Filed 3-31-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53530; File No. SR-OCC-2006-02]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Definition of Non-Customer

March 21, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 14, 2006, 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 would clarify the definition of non-customer as it relates to member affiliates.

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.²

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

The proposed rule change clarifies that a broker-dealer member affiliate of a clearing member neither needs to consent to being treated as a non-customer nor to execute a non-conforming subordination agreement in order to be treated as a non-customer for purposes of OCC's By-Laws and Rules.

In File No. SR-OCC-99-5, OCC changed its rules to allow an affiliate of a clearing member to designate itself as a non-customer under the Commission's

hypothection rules and OCC's By-Laws and Rules in order for the affiliate's transactions and positions to be commingled in its clearing member's firm and/or proprietary cross-margin account, in order to make more favorable margin treatment of such positions possible.³ The purpose of File No. SR-OCC-99-5 was to conform OCC's Rules to the terms of a no-action letter issued by the Division of Market Regulation, which set forth requirements for a member affiliate to designate itself as a non-customer.⁴ Specifically, that letter required each non-broker-dealer member affiliate whose securities positions would be hypothecated to consent to being treated as a non-customer and to execute a non-conforming subordination agreement meeting certain criteria accompanied by an opinion of counsel regarding the legal authority of the member affiliate to so subordinate its claims. The requirement that a non-broker-dealer member affiliate provide its clearing member with an executed non-conforming subordination agreement was intended to ensure that such member affiliate would not be a customer for purposes of SEC Rule 15c3-3. Because broker-dealers are already excluded from the definition of customer in Rule 15c3-3, there was no need to require broker-dealer affiliates to execute such a subordination agreement. OCC is filing this rule change to clarify the definition of non-customer as it relates to member affiliates so that it more closely conforms to the terms of the no-action letter.

OCC believes that the proposed change is consistent with Section 17A of the Act because it clarifies an existing OCC rule to allow the positions of broker-dealer member affiliates to be included in a clearing member's firm account and/or proprietary cross-margining account, which will result in more favorable margin treatment and encourage participation in cross-margining. 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.

³ Securities Exchange Act Release No. 43668 (December 4, 2000), 66 FR 77413 (December 11, 2000).

⁴ Letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, to William H. Navin, EVP and General Counsel, OCC (June 15, 2000).

⁸ In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78o-3.

¹⁰ 15 U.S.C. 78o-3(b)(6) and (b)(9).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 12 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified parts of these statements.