

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

The proposed rule change amends OCC's rule 902, which obligates a delivering clearing member to deliver the underlying security or securities against payment of the aggregate purchase price on the designated delivery date.

## **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 III 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 modifies rule 902, which obligates a delivering clearing member to deliver the underlying security or securities against payment of the aggregate purchase price on the "delivery date."<sup>3</sup> The delivery date is the third business day following (1) the day on which an exercise notice is accepted by OCC (in the case of options) or (2) the maturity date (in the case of security futures). A different delivery date, however, may be designated by OCC for property that is deliverable following a contract adjustment or by the Board of Directors if such action is required in the public interest or to meet unusual conditions. The proposed rule change allows OCC's Board to delegate its authority to set a different delivery date to OCC's Chairman, Management Vice Chairman, or President or delegate of such officer.

The need to set a different delivery date will generally result from unexpected events such as trading suspensions or delistings that cause NSCC to temporarily remove the underlying security from its CNS System.<sup>4</sup> Delivery and payment

obligations that cannot be settled through NSCC must be settled on a broker-to-broker basis under OCC's rules. Delaying settlement in these instances allows for more time to gather and validate necessary relevant information (e.g., if and when NSCC will again make the underlying security CNS-eligible). Convening an emergency meeting of the Board on the same day that OCC learns of a suspension or delisting is very difficult if not impossible. Granting the designated individuals the authority to delay settlement would provide OCC with greater flexibility in responding to these and other unexpected or unusual events.

OCC believes that the proposed rule change is consistent with section 17A of the Act because it would provide OCC with greater flexibility to respond to unusual conditions in order to ensure the prompt and accurate 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 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. 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-2002-21. This file number should be included on the subject line if e-mail is used. To help us process and review 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

pursuant to arrangements between NSCC and OCC. OCC rule 913.

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 FICC. All submissions should refer to the File No. SR-OCC-2002-21 and should be submitted by May 1, 2003.

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

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(F).<sup>5</sup> Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with this requirement because it will improve OCC's ability to deal with unexpected events which effects the delivery and payment obligations of the underlying securities resulting from the exercise and assignment of option contracts. As a result, the proposed rule change should assist OCC in meeting its obligations to provide for the prompt and accurate clearance and settlement of securities transactions.

OCC has requested that the Commission approve this rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the 30th day after publication of notice because such approval would immediately give OCC the flexibility it needs to delay the delivery date to address unusual conditions.

## **V. Conclusion**

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-

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

<sup>3</sup> The delivery date is also referred to in OCC's rules as the "exercise settlement date." OCC rule 101E.(4).

<sup>4</sup> Settlement of exercised and assigned or matured contracts requiring the physical delivery of the underlying security generally occurs at NSCC

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(I).