

(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 NYSE Amendment No. 2 and NASD Amendment No. 2, including whether the amendments are consistent with the Exchange Act and whether there are any differences between the NYSE and NASD proposals that present compliance or interpretive issues.

On April 28, 2003, Commission Chairman William H. Donaldson, NASD Chairman and CEO Robert Glauber, NYSE Chairman and CEO Richard Grasso, and other regulators, announced the completion of enforcement actions against a number of the nation's largest investment banking firms.<sup>50</sup> The enforcement actions finalized a settlement in principle reached and announced by regulators last December.<sup>51</sup> The settlement followed joint investigations by the regulators of allegations of undue influence of investment banking interests on securities research at brokerage firms. The Commission notes that certain elements of the settlement cover areas addressed by the SROs in the Original Notice; however, the requirements are not identical. In light of the settlement, the Commission solicits additional comment on the NYSE and NASD rule changes that were proposed in the Original Notice.

In addition, the Commission specifically solicits comment on proposed NASD 2711(k) and proposed NYSE 472(m), which address small firms. In particular, the Commission requests comment on whether the proposed thresholds for the small firm exception are appropriate (ten or fewer investment banking services transactions as manager or co-manager and \$5 million or less in gross investment banking revenues from those transactions). Should the \$5 million limit apply to gross revenues from all investment banking services transactions rather than only to those for which the firm acted as manager or co-manager?

The Commission notes that, in addition to proposing rules to meet the requirements of the SOA and the small firm exception, in NYSE Amendment

No. 2 the Exchange also proposed an Interpretation relating to public appearances and the print media that would require members to make and keep records of information relating to public appearances. The NASD has not included a similar record-keeping requirement in NASD Amendment No. 2. The Commission requests comment on whether this record-keeping requirement is appropriate, and whether both SROs should adopt such a requirement.

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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 in 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of such filing will also be available for inspection and copying at the principal offices of the SROs. All submissions should refer to File Nos. SR-NYSE-2002-49 and SR-NASD-2002-154 and should be submitted by June 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>52</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47898; File No. SR-OCC-2002-11]

#### Self-Regulatory Organizations; the Options Clearing Corporation; Order Approving Proposed Rule Changes To Modify the Stock/Loan Hedge Program

May 21, 2003.

#### I. Introduction

On May 21, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on July 16 and September 26, 2002, amended proposed rule change SR-

OCC-2002-11 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on March 4, 2003.<sup>2</sup> For the reasons discussed below, the Commission is approving the proposed rule changes.

#### II. Description

The purpose of the proposed rule change is to modify OCC's Hedge Program, under which OCC operates a centralized facility for clearing stock loan/borrow transactions between OCC clearing members. In order to provide enhanced risk management while maintaining the flexibility of the current program, OCC proposes to establish: (i) Heightened financial requirements as a condition for clearing members to designate accounts as margin-ineligible; (ii) additional eligibility requirements for eligible securities; and (iii) limits on the notional value of the stock loan/borrow position that a clearing member may maintain in a single stock in a margin-ineligible account.

OCC's Hedge Program is intended to facilitate stock lending transactions among OCC's clearing members. Clearing members effecting stock loan/borrow transactions through the Hedge Program obtain the advantages of centralized clearing of those transactions as well as reduced credit risk through the substitution of OCC as the counterparty in all transactions. Unless a clearing member has designated an account as margin-ineligible for purposes of the Hedge Program, stock loan and borrow positions are margined by OCC's TIMS<sup>3</sup> margin system using the same basic risk assessment procedures that are used for positions in options or futures. For many clearing members, this results in an important advantage of the Hedge Program. By taking into consideration the reduction in risk where stock loan/borrow positions are on the opposite side of the market from option positions on the same underlying stock, the margin system will calculate a reduced margin requirement for the account containing the offsetting positions.<sup>4</sup>

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

<sup>2</sup> Securities Exchange Act Release No. 47402 (February 25, 2003), 68 FR 10291.

<sup>3</sup> The Theoretical Intermarket Margin System, known as TIMS, uses advanced portfolio theory to recognize economically and statistically reasonable hedges among various positions and to correctly assess the dollar risk of those positions.

<sup>4</sup> While similar offset may exist between positions in index options and a group of stock loan/borrow positions that are identified as baskets comprised of constituent securities in the index, the stock borrow basket/stock loan basket feature of the Hedge Program, although provided for in the OCC By-Laws and Rules, has not been placed into operation for

<sup>50</sup> SEC Press Release No. 2003-54 (April 28, 2003).

<sup>51</sup> SEC Press Release No. 2002-179 (December 20, 2002).

<sup>52</sup> 17 CFR 200.30-3(a)(12).