

section 15(b)(1) or (2) of the Act or fully registered as a futures commission merchant ("FCM") under section 4f(a)(1) of the Commodity Exchange Act ("CEA").³ A limited exception exists for a "non-U.S. securities firm" as defined in Article I of OCC's by-laws, which requires appropriate supervision by a non-U.S. regulatory body.⁴ OCC also requires clearing members to satisfy any additional registration requirements that may be applicable to the clearing member under the Act or the CEA as a result of the particular clearing activity conducted by the clearing member.

As currently drafted, Article V, Section 1, Interpretation and Policy .08 ("Interpretation"), which was adopted as part of OCC's rule filing permitting it to clear commodity futures,⁵ states that in order to clear options other than futures options a clearing member must be a fully registered broker dealer. Thus, the Interpretation would appear to require a non-U.S. securities firm that would not otherwise be required to register as a broker dealer to so register in order to clear securities options. This was not intended and is inconsistent with Article V, Section 1, which provides that a non-U.S. securities firm may become a clearing member. The very purpose of permitting non-U.S. securities firms, which by definition are not registered as broker dealers, to become clearing members was to allow them to clear securities options. Applying the Interpretation as written would frustrate that purpose.

As currently drafted, the Interpretation also states that in order to clear commodity futures and futures options, a clearing member must be a fully registered FCM, and in order to clear security futures products, a fully registered broker dealer must also be a fully registered FCM or notice-registered as an FCM under section 4f(a)(2) of the CEA. However, the CEA and the CFTC's regulations do not require a person engaged only in proprietary trading and clearing to register as an FCM, whether clearing conventional securities products or security futures products.⁶

OCC did not intend to require FCM registration where such registration is not mandated by the CEA or the CFTC's regulations. The restated Interpretation would eliminate any contrary implication.

Finally, as currently drafted, the Interpretation fails to account for the possibility that a non-U.S. securities firm might lawfully clear securities futures products for its own account without registration under either the Act or the CEA. The restated Interpretation makes clear that a firm qualifying as a non-U.S. securities firm under OCC's rules can clear any product through OCC without registration under U.S. laws so long as it would not be in violation of those laws in regulations in so doing.

OCC believes the proposed rule change is consistent with Section 17A of the Act because by specifically identifying the regulatory restrictions required for clearing members engaged in clearing particular products, it promotes the prompt and accurate clearance and settlement of securities transactions, fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, protects investors and the public interest.

(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.

orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market unless such person is registered with the CFTC as an FCM. In order to fall within the definition of an FCM in section 1a(20) of the CEA, a person must, in connection with the soliciting or accepting of orders for the purchase or sale of a futures contract on a contract market or derivatives transaction execution facility, accept money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result. A firm trading exclusively for its own account would not meet that definition. Moreover, CFTC Regulation 3.10(c) provides that a person trading solely for proprietary accounts, as defined in Regulation 1.3(v), is not required to register as an FCM. 17 CFR 3.10(c).

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)(i) of the Act⁷ and Rule 19b-4(f)(1)⁸ thereunder because it constitutes a stated policy, practice or interpretation with respect to the meaning, enforcement or administration of an existing rule. 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. All comment letters should refer to File No. SR-OCC-2002-24. 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 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. All submissions should refer to the File No. SR-OCC-2002-24 and should be submitted by February 18, 2003.

⁷ 15 U.S.C. 78s(b)(3)(A)(i).

⁸ 17 CFR 240.19b-4(f)(1).

³ 7 U.S.C. 1 et seq.

⁴ Article I, Definitions, of OCC's by-laws defines "non-U.S. securities firms" as a securities firm (1) formed and operating under the laws of a country other than the U.S., (2) with its principal place of business in that country, (3) that is subject to regulation in that country, and (4) that is not registered or required to be registered as a broker dealer. The proposed rule change adds the requirement that the firm not be registered or required to be registered as an FCM.

⁵ Securities Exchange Act Release No. 45946 (May 16, 2002), 67 FR 36056 (May 22, 2002) [OCC-2001-16].

⁶ Section 4d of the CEA makes it unlawful for any person to act as an FCM in soliciting or accepting