

continuing the 15-year exemption policy for closed-end funds pending further study and revision of the fees charged to closed-end funds generally. Given the new fee structure implemented for closed-end funds under this proposal and the other filings referred to herein, the Exchange has concluded that it is now appropriate to eliminate the 15-year exemption policy for closed-end funds consistent with the amendments made with respect to listed operating companies in December 2002.

The impact of the proposed continuing annual fee changes in their entirety on an individual fund will vary depending on a fund's shares outstanding and other circumstances. First of all, the Exchange states that its rule has, and will continue to have, an overall fund family fee cap of \$1 million per year. Of the 407 listed closed end funds, the Exchange states that 118 are in fund families covered by the \$1 million fee cap. Of the remaining 289 funds, factoring in the net effect of the change to the new per share rate from the existing five-tiered formula, the elimination of the 15-year exemption policy, and the increases in the fund family discounts, the Exchange's analysis (based on the information it currently has on fund shares outstanding) is that 55 funds would experience an increase in continuing annual fees, 150 would experience a decrease, and 84 would experience no net change. Of those that can be expected to experience an increase, the Exchange expects that the average increase would be 15.6% and the median increase 8.2%. The Exchange expects that the maximum increase for any one fund would be 73% (in that case, \$44,700). Of the 150 funds the Exchange expects to experience a decrease, the average decrease would be 25.4% and the median decrease would be 28.6%. The maximum decrease for any one fund would be 36% (in that case, \$12,000). While some funds would experience an increase in continuing annual fees and others a decrease, the overall impact on the Exchange would be a net decrease in continuing annual fees of approximately \$900,000.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)<sup>7</sup> that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Within 35 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 90 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 NYSE 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 amended proposal 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. 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 will also be available for inspection and copying at the principal office of the NYSE.

All submissions should refer to File No. SR-NYSE-2003-33 and should be submitted by December 24, 2003.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-48820; File No. SR-OCC-2002-23]**

### **Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Withdrawal of a Proposed Rule Change Relating to Physically-Settled Futures on Narrow-Based Stock Indexes**

November 21, 2003.

On September 30, 2002, The Options Clearing Corporation ("OCC") submitted to the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> that would allow OCC to provide clearance and settlement services for physically-settled futures on narrow-based stock indexes. The proposed rule change was published in the **Federal Register** on October 9, 2002.<sup>2</sup> No comment letters were received. On June 26, 2003, OCC withdrew the proposed rule change.<sup>3</sup>

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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

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

<sup>2</sup> Securities Exchange Act Release No. 46593 (October 2, 2002), 68 FR 63006.

<sup>3</sup> Letter from Jean M. Cawley, First Vice President and Deputy General Counsel, OCC, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (June 26, 2003).

<sup>4</sup> 17 CFR 200.30-3(a)(12).