

available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2001-61 and should be submitted by October 24, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-24702 Filed 10-2-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44848; File No. SR-OCC-2001-02]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Rule Change Relating to Deposits of Nasdaq SmallCap Securities as Margin Collateral Pursuant to Rule 604(d)

September 25, 2001.

On April 11, 2001, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-OCC-2001-02) 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 August 3, 2001.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### I. Description

The primary purpose of the filing is to allow securities traded in the Nasdaq

SmallCap market to be deposited as collateral pursuant to OCC Rule 604(d). The rule change also makes certain other technical changes to the rule.

In 1984, OCC received Commission approval to amend Rule 604(d) to allow the deposit of securities traded in the Nasdaq National Market System ("NMS") as a form of margin collateral.<sup>3</sup> Nasdaq formed the NMS market in 1982 to distinguish NMS securities as those securities that met the highest listing standards and that were subject to real-time sale price and volume reporting. Securities that did not meet NMS standards were termed "regular Nasdaq securities." While the eligibility criteria found in Rule 604(d) have remained relatively unchanged since 1984, the structure of the Nasdaq market has evolved substantially since then.

The Nasdaq market structure has had many notable changes. For example, in 1992, all Nasdaq securities became subject to real-time last sale price and volume reporting requirements, increasing the transparency for all Nasdaq issues (i.e., NMS and regular Nasdaq securities).<sup>4</sup> Then, in 1994, the Nasdaq Stock Market was created with two distinct tiers: the Nasdaq National Market® ("NNM," formerly the NMS market) and the SmallCap market (formerly the regular Nasdaq securities).<sup>5</sup> Later, in 1997, the qualification standards of both the NNM and the SmallCap market tiers were substantially upgraded.<sup>6</sup>

The upgraded qualification standards applicable to Nasdaq SmallCap issuers set forth minimum and ongoing financial criteria (e.g., assets, capitalization, and income), share float and price criteria, corporate governance (e.g., independent directors, audit

committee formation and activities, auditor peer review, and voting rights), and public disclosure (e.g., timely filing and distribution of annual and interim financial reports and annual meeting of shareholders).<sup>7</sup> These qualification criteria exceed the standards that governed the Nasdaq NMS securities at the time those securities were approved for margin purposes in 1984. The Nasdaq SmallCap qualification standards approximate American Stock Exchange ("Amex") listing criteria applicable to equity securities.<sup>8</sup> Such Amex listed equity securities are accepted by OCC for margin purposes. OCC therefore believes that the qualification standards that are applicable to SmallCap issues provide sufficient safeguards to address concerns about the quality of securities traded in that market tier.

The ten dollar minimum price per share requirement and concentration limit (i.e., the securities of any one issuer cannot exceed 10% of the margin requirement for any one clearing member account) of Rule 604(d) also provide additional safeguards to minimize issuer quality concerns. OCC has analyzed the market and liquidity risks associated with accepting SmallCap securities for margin purposes by utilizing daily price movements and volume statistics for the last four years. Average daily price movements and standard deviation of average daily price movements for the entire population of SmallCap securities as well as subset of that population having a price of greater than ten dollars per share were computed. For comparison, a similar computation was performed for NNM securities. A summary of this analysis is outlined below:

Class	Average range minimum (in percent)	Average range maximum (in percent)	Average move <sup>1</sup> (in percent)	Average standard deviation (in percent)
NNM (All) .....	- 24.5	+86.2	3.6	7.5
NNM (>\$10) .....	- 21.3	+29.9	3.2	4.8
SmallCap (All) .....	- 33.9	+128.2	5.0	10.7
SmallCap (>\$10) .....	- 21.1	+51.4	2.6	5.3

<sup>1</sup> Computed on the basis of the absolute value daily price movements.

<sup>9</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. 44608 (July 27, 2001), 66 FR 40764.

<sup>3</sup> Securities Exchange Act Release No. 20558 (January 18, 1984), 49 FR 2183 [File No. SR-OCC-83-17] (order approving an OCC rule change allowing clearing members to deposit certain common stocks not underlying options to satisfy their margin obligations).

<sup>4</sup> Securities Exchange Act Release No. 30569 (April 16, 1992), 57 FR 13396 [File No. SR-NASD-91-50] (order approving a rule change requiring real-time trade reporting of transactions in Nasdaq securities, except convertible debt, and allowing the NASD to publicly disseminate the information).

<sup>5</sup> Securities Exchange Act Release No. 34928 (November 9, 1994), 59 FR 55906 [File No. SR-NASD-94-48] (order clarifying the two tiers of the Nasdaq Stock Market as the Nasdaq SmallCap Market and the Nasdaq National Market).

<sup>6</sup> Securities Exchange Act Release No. 38961 (August 29, 1997), 62 FR 45895 [File No. SR-NASD-97-16] (order revising the listing and maintenance standards to increase the quality of companies listed on Nasdaq and raising the level of investor protection).

<sup>7</sup> NASD Rules 4310 and 4350.

<sup>8</sup> American Stock Exchange Company Guide, Sections 101, 102, and 120-132.

Based on this analysis, OCC has concluded that the average SmallCap security presents market risks similar to that of NNM securities especially for those securities that trade at a price greater than ten dollars per share.<sup>9</sup> This analysis also confirms that the current 70% valuation rate provides a sufficient cushion to protect against adverse market moves in SmallCap securities.

Finally, OCC performed a volume analysis to assess the liquidity of SmallCap securities over the same four-year period which confirmed that SmallCap securities are not as liquid as NNM securities.<sup>10</sup> However, the analysis also showed that a material portion of this average share volume is concentrated in a relatively small number of NNM issuers. For example, 20% of the NNM average share volume is attributable to the shares of five issuers. However, there are over 2,150 additional NNM securities that may be deposited for margin purposes. In light of the concentration within the NNM, OCC believes that there is sufficient liquidity in SmallCap issues over ten dollars to support their acceptance for margin purposes.

The proposed rule change also makes certain changes to Rule 604(d) to conform it to recent changes made elsewhere in OCC's By-Laws and Rules. As it has already done in other of its rules, OCC is deleting the term "primary market" from Rule 604(d).<sup>11</sup> Removing the term "primary market" has been prompted by recognition that the equity markets are becoming increasingly fragmented. Rule 604(d) currently provides that no security that has been suspended from trading or is subject to special margin requirements by its "primary market" may be deposited as margin. OCC is amending Rule 604(d) so that no security that has been suspended from trading or is subject to special margin requirements by the market that listed or qualified the issue for trading may be deposited as margin.

Rule 604(d) also currently defines the current market value of a stock or bond to be its closing price on the "primary market" for such stock or bond. In order

to avoid disputes over which market is a stock's primary market, OCC is amending the rule so that it has the discretion to designate the market whose closing price will serve as the benchmark.

Another conforming change concerns the time when a "closing price" is determined. To address any questions that may arise with the growth of after-hours trading, OCC is proposing to amend Rule 604(d) to provide that the closing price will be determined "at the close of regular trading hours (as determined by the Corporation). \* \* \*" This change allows OCC to avoid potential disputes by (i) eliminating any basis for arguing that the closing price should be determined based on after-hours trading and (ii) giving OCC the discretion to determine when "regular trading hours" end.

Finally, OCC is eliminating those provisions of Rule 604(d) that require stocks that are deposited as margin to be subject to last sales reporting. It is OCC's understanding that all exchange traded and Nasdaq Stock Market securities are now subject to last sales reporting, making the requirement unnecessary.

## II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the clearing agency's custody or control or for which it is responsible. In connection with this rule change, which allows OCC clearing members to deposit Nasdaq SmallCap market securities as margin collateral, OCC has done extensive market and liquidity analysis and is subjecting any deposits of Nasdaq SmallCap market securities to its existing margin deposit requirements (e.g., ten dollar per share minimum and ten percent issuer concentration prohibition). Therefore, the Commission finds that OCC's proposed rule change is consistent with Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

## III. 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 Section 17A of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. OCC-2001-02) be and hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-24657 Filed 10-2-01; 8:45 am]

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## SMALL BUSINESS ADMINISTRATION

### National Women's Business Council; Notice of Meeting

In accordance with the Women's Business Ownership Act, Public Law 106-554 as amended, the National Women's Business Council (NWBC) announces as forthcoming Council meeting. The meeting will cover action items worked on by the National Women's Business Council included by not limited to procurement, access to capital and training. The meeting will be held on October 18, 2001 at the U.S. Small Business Administration 409 Third Street, SW., Washington, DC in the Eisenhower Conference Room—A, 2nd Floor at 9 am to 11:30 am est.

Anyone wishing to make an oral presentation to the Board must contact Ms. Gilda Pressley, in writing by letter or by fax no later than October 12, 2001, in order to be put on the agenda. Gilda Pressley, Administrative Officer, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416. Telephone (202) 205-3850 or Fax (202) 205-6825.

**Steve Tupper,**

*Committee Management Officer.*

[FR Doc. 01-24644 Filed 10-2-01; 8:45 am]

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## SMALL BUSINESS ADMINISTRATION

### Region II Buffalo District Advisory Council; Public Meeting

The U.S. Small Business Administration Region II Advisory Council located in the geographical area of Buffalo, New York, will hold a public meeting at 10 a.m. eastern time on October 24, 2001, at the Erie County Industrial Development Agency, 275 Oak Street, Buffalo, New York to discuss such matters that may be presented by members, staff of the U.S. Small Business Administration, or others present.

Anyone wishing to make an oral presentation to the Board must contact Franklin J. Sciortino, District Director, in writing by letter or fax no later than October 15, 2001, in order to be put on

<sup>9</sup> Approximately 12% of SmallCap securities trade at over ten dollars per share.

<sup>10</sup> Average daily share volume of NNM securities trading over ten dollars per share was 594,632 while the average daily share volume of SmallCap securities trading above ten dollars was 15,005 shares.

<sup>11</sup> Securities Exchange Act Release Nos. 44652 (August 3, 2001), 66 FR 42580 [File No. SR-OCC-00-04] (order approving proposed rule change revising OCC's price determination rules); and 41089 (March 1, 1999), 64 FR 10051 [File No. SR-OCC-98-14] (order approving the revision of OCC Rules 805 with respect to closing prices in expiration processing).

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