

**SECURITIES AND EXCHANGE COMMISSION**

[Release Nos. 33-8560; 34-51417, File No. 265-23]

**Advisory Committee on Smaller Public Companies**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of first meeting of SEC Advisory Committee on Smaller Public Companies.

**SUMMARY:** The Securities and Exchange Commission Advisory Committee on Smaller Public Companies will hold its first meeting on Tuesday, April 12, 2005, in the William O. Douglas Room of the Commission's headquarters, 450 Fifth Street, NW., Washington, DC, beginning at 9:30 a.m. The meeting will be open to the public and webcast on the Commission's Web site at <http://www.sec.gov>. The public is invited to submit written statements to the Committee.

**DATES:** Written statements should be received on or before April 8, 2005.

**ADDRESSES:** Written statements may be submitted by any of the following methods:

*Electronic Statements*

- Use the Commission's Internet submission form (<http://www.sec.gov/info/smbus/acspc.shtml>); or
- Send an e-mail message to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 265-23 on the subject line; or

*Paper Statements*

- Send paper statements in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File No. 265-23. This file number should be included on the subject line if e-mail is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the Commission's Web site (<http://www.sec.gov/info/smbus/acspc.shtml>). Statements are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Kevin M. O'Neill, Special Counsel, at

(202) 942-2908, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0310.

**SUPPLEMENTARY INFORMATION:** In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.-App. 1, § 10(a), and the regulations thereunder, Gerald J. Laporte, Designated Federal Officer of the Committee, has ordered publication of this notice that the Advisory Committee will hold its first meeting on April 12, 2005, in the William O. Douglas Room at the Commission's headquarters, 450 Fifth Street, NW., Washington, DC, beginning at 9:30 a.m. The purpose of this meeting is to discuss general organizational matters, a Committee Agenda and a timetable for the Committee's work. The agenda for the meeting includes consideration of publishing a release in the **Federal Register** soliciting public comment on the Committee Agenda, which sets forth the proposed topics for consideration by the Committee over its entire term. Members of the public are not expected to be permitted to speak or orally address the Committee at this meeting, but are expected to be able to do so at some future meetings in accordance with guidelines to be adopted and published.

Dated: March 23, 2005.

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 05-6100 Filed 3-23-05; 4:59 pm]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51407; File No. SR-CBOE-2005-16]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Extend a Pilot Program Relating to Margin Requirements for Certain Complex Options Spreads**

March 22, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 7, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission ("Commission") the

proposed rule change as described in Items I and II below, which Items have been prepared primarily by the CBOE. Pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> CBOE has designated this proposal as non-controversial, which renders the proposed rule change effective immediately upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

CBOE proposes to extend, until February 7, 2006, a pilot program permitting an interpretation to CBOE Rule 12.3, *Margin Requirements*, relating to margin requirements for certain complex option spreads. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, CBOE 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 IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.<sup>5</sup>

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On August 8, 2003, the Commission approved on a one-year pilot basis ("Pilot") a CBOE Regulatory Circular setting forth an interpretation of CBOE's current margin requirements for certain complex option spreads.<sup>6</sup> CBOE subsequently submitted two additional filings relating to the Pilot—one to extend the Pilot for an additional six months,<sup>7</sup> which was effective upon

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> The Commission has modified parts of these statements.

<sup>6</sup> See Securities Exchange Act Release No. 48306 (August 8, 2003), 68 FR 48974 (approving SR-CBOE-2003-24). Regulatory Circular RG03-66 was issued by CBOE following the Commission's approval of SR-CBOE-2003-24.

<sup>7</sup> See SR-CBOE-2004-56.

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

<sup>2</sup> 17 CFR 240.19b-4.

filing with the Commission,<sup>8</sup> and another proposing permanent implementation of the margin requirements covered by the Pilot.<sup>9</sup> In this filing, CBOE has requested an additional extension of the Pilot, until February 7, 2006, or until such time as the Commission has approved CBOE's request for permanent implementation of the margin requirements on certain complex option spreads, whichever occurs sooner.

CBOE is proposing an extension of the Pilot so that it may continue in effect while the Commission considers CBOE's proposal for permanent implementation. As such, CBOE proposes to reissue the Regulatory Circular with the new Pilot expiration date. CBOE has received no negative comments concerning Regulatory Circulars RG03-66 or RG04-90 since they were issued, nor is CBOE aware of any negative consequences resulting from the application of the margin requirements permitted by the Regulatory Circulars.

## 2. Statutory Basis

CBOE represented that the proposed Regulatory Circular clarifies that CBOE's current margin rules extend to complex option spreads, thereby allowing investors to more efficiently implement these strategies. As such, CBOE believes that the proposed Regulatory Circular interpretation of CBOE Rule 12.3 is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

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

CBOE does not believe that the proposed rule change will 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

CBOE neither solicited nor received written comments with respect to the proposed rule change.

<sup>8</sup> See Securities Exchange Act Release No. 50164 (August 6, 2004), 69 FR 50405 (August 16, 2004) (approving SR-CBOE-2004-56). Regulatory Circular RG03-66 was reissued as Regulatory Circular RG04-90.

<sup>9</sup> See SR-CBOE-2004-53.

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

The foregoing proposed rule change has become effective upon filing on February 7, 2005, pursuant to Section 19(b)(3)(A)<sup>10</sup> of the Act and Rule 19b-4(f)(6)<sup>11</sup> thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.<sup>12</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>13</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. CBOE has requested that the Commission waive the 30-day operative waiting period to permit CBOE to continue the Pilot without interruption while the Commission determines whether to approve permanent implementation of the subject margin requirements.

The Commission, consistent with the protection of investors and the public interest, has waived the 30-day requirement that the proposed rule change not become operative for 30 days after the date it was filed.<sup>14</sup> The Commission believes that granting immediate effectiveness to the proposed rule change is appropriate because it will allow the Pilot to continue without interruption after it would otherwise have expired on February 7, 2005. At any time within 60 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,

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> As required under Rule 19b-4(f)(6)(iii), the CBOE provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

or otherwise in the furtherance of the purposes of the Act.<sup>15</sup>

### 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. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2005-16 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-CBOE-2005-16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2005-16 and should be submitted on or before April 18, 2005.

<sup>15</sup> 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-1365 Filed 3-25-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51390; File No. SR-OCC-2005-02]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Establishment of a Money-Only Settlement Service

March 17, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on March 2, 2005, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change establishes a money-only settlement service for OCC clearing members.

#### 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 IV 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

Clearing members have asked OCC to provide a facility that effects transfers of

daily money differences and claims between clearing members.<sup>3</sup> These money differences may result from such things as, among other things, transfers of accounts and commission billing for trade execution. Clearing members presently settle these differences through invoices and checks sent through the U.S. mail or by messenger deliveries. However, clearing members have advised OCC that items sent by either of these means are frequently lost, misdelivered, or delayed and ultimately are written off as uncollectible.

In response to these requests, OCC has determined to add a money-only settlement service that would be available for clearing member use through OCC's ENCORE system. This service, which will only be available for money differences arising from transactions cleared by OCC, will be governed by proposed new Rule 504.<sup>4</sup> Clearing members desiring to settle an open money item with another clearing member will initiate an instruction on any business day through the ENCORE system. OCC will specify a time by which instructions will have to be approved. If the clearing member receiving the instruction does not approve it by the deadline, the instruction will be deemed null and void and will be deleted from the system. If the instruction is approved,<sup>5</sup> OCC, as agent, would draft a paying clearing member's designated bank account at a time to be specified by OCC. OCC will similarly specify a time by which OCC, as agent, will pay to the collecting clearing member the amount specified in the instruction. Initially, OCC intends to effect money-only settlement on the business day after an instruction is approved. In the future, however, OCC may effect money-only settlement on the same business day that an instruction is approved. OCC will notify its clearing members before implementing a change with respect to settlement times.

OCC will withhold money-only settlement amounts owed to any clearing member if the clearing member has any unsatisfied payment obligation

<sup>3</sup> In making their request, clearing members advised OCC that other securities clearing agencies, including The Depository Trust Company ("DTC") and National Securities Clearing Corporation ("NSCC"), offer a comparable service to their participants. See DTC Rule 9(A), Transactions in Securities and Money Payments and NSCC Rule 41, Funds Only Settlement Service.

<sup>4</sup> Proposed Rule 504 is based on Rule 503 pursuant to which OCC, as agent, effects premium settlements between banks or depositories and clearing members with respect to their escrow depository receipt activity under Rule 613.

<sup>5</sup> Approval of an instruction by a clearing member will be detailed in an audit trail created and maintained by OCC.

to OCC. Any amounts withheld will be used to reduce the unpaid obligation.

In drafting a paying clearing member's bank account or in making payment to a collecting clearing member in connection with money-only settlement transactions, OCC may combine multiple transactions for which the clearing member is obligated to make payment or is entitled to receive payments. However, OCC will neither net money-only settlement amounts payable by a clearing member with any amounts payable to the clearing member by OCC with respect to any account maintained by the clearing member with OCC nor will OCC net money-only settlement amounts payable to a clearing member with amounts payable by the clearing member to OCC. Money-only settlement amounts will appear as a separate line item on a settlement report made available to clearing members on each business day.<sup>6</sup>

The money differences to be processed through the money-only settlement system are between clearing members, and OCC will accordingly only act as agent for each clearing member in facilitating their settlement. OCC will not guarantee money-only settlements and will not be obligated to make a money-only settlement payment unless it has collected the amount of the payment from the paying clearing member. If a clearing member is suspended by OCC pursuant to Chapter XI of the Rules, any pending instructions of such clearing member will be deemed null and void to the extent that the suspended clearing member is a paying clearing member.<sup>7</sup> OCC does not believe that the money-only settlement service will adversely affect its capacity to settle transactions in cleared securities because its cash settlement system has more than sufficient capacity to handle the anticipated daily volume of money-only settlements.

OCC believes that the proposed rule change is consistent with Section 17A of the Act because money-only settlement service will provide a more efficient means for clearing members to settle money differences relating to transactions or positions in cleared contracts, thereby improving the likelihood that these amounts will be collected by clearing members. The proposed rule change is not inconsistent with the existing rules of OCC,

<sup>6</sup> This report is made available to Clearing Members via OCC's on-line report inquiry service.

<sup>7</sup> OCC's determination not to guarantee money-only settlement items is consistent with NSCC Rule 41, Section 10.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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