Section 26(b) of the 1940 Act also provides that the Commission shall issue an order approving such substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

3. Applicants assert that the Contracts give Western Reserve the right, subject to Commission approval, to substitute shares of another open-end management investment company for shares of an open-end management investment company held by a subaccount of the relevant Account. Applicants also assert that the prospectuses for the Contracts and the Account contain appropriate disclosure of this right.

4. Applicants contend that the Substitute Portfolio will have lower or equal future expense ratios than the past expense ratios of the Replaced Portfolio. The Substitute Portfolio is substantially larger than the Replaced Portfolio, and the Substitute Portfolio has had more favorable expense ratios over the last two years than the Replaced Portfolio.

5. As of May 1, 1999, the Replaced Portfolio will no longer be available for new investment, and most likely will experience the net redemption of its shares from that date forward. Therefore, Applicants assert it is highly likely that in the near future the Replaced Portfolio's asset base will decrease and, accordingly, the Replaced Portfolio's expense ratio will increase.

6. Applicants state that the Substitute Portfolio has performed favorably over the past two years and since its inception compared to the Replaced Portfolio. Applicants therefore anticipate that after the proposed substitution, the Substitute Portfolio will provide Contract owners with more favorable or comparable overall investment results than would be the case if the proposed substitution does not take place.

7. Applicants represent that the Substitute Portfolio is a suitable and appropriate investment vehicle for Contract owners and that the Substitute Portfolio has substantially identical or similar investment objectives and policies to the Replaced Portfolio.

Conclusion

Applicants submit that, for all the reasons summarized above, the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–34400 Filed 12–28–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40815; File No. SR–OCC–98–16]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Index Options Escrow Deposits

December 21, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 23, 1998, 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 would eliminate the reference to List of Marginable OTC Securities (''OTC List'') in OCC Rule 1801 and in OCC's agreement with each of its approved escrow deposit banks.

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. 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.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

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

The proposed rule change would eliminate the reference to the OTC List in OCC Rule 1801.[3] Rule 1801 permits escrow deposits to be made with respect to short positions in put and call stock index options. For short put stock index options, an escrow deposit may only include cash and short-term U.S. Government securities. For short stock index call options, an escrow deposit may consist of any combination of cash, short-term U.S. Government securities, and common stocks listed on a national securities exchange or included in the current OTC List published by the Board of Governors of the Federal Reserve System (''Federal Reserve Board'').[4] This criterion is also incorporated in OCC's agreement with each of its approved escrow deposit banks.

Effective January 1, 1999, the Federal Reserve Board will cease publication of the OTC List and will remove the definition of OTC stock from Regulation T. Broker-dealers instead will be permitted to extend margin credit against all equity securities listed on the Nasdaq Stock Market. In light of the foregoing, OCC is proposing to eliminate the reference to the OTC List contained in Rule 1801 and to allow any common stock listed on the Nasdaq Stock Market to be included in escrow deposits with respect to short positions in index call options.

Upon the approval of the proposed rule change, OCC intends to send a notice to each of its custodian banks to advise them that, notwithstanding the reference to the OTC List in the Amended and Restated On-Line Escrow Deposit Agreement, all common stocks listed on the Nasdaq Stock Market will be permitted to be included in escrow deposits in respect to short index calls.

OCC believes that the proposed rule change is consistent with the purposes and requirement of Section 17A of the Act[5] because it would conform OCC's escrow deposit rules to a change being made by the Federal Reserve Board.

[3] The text of the proposed amendment to OCC Rule 1801 is set forth in OCC's filing, which is available for inspection and copying at the Commission's Public Reference Room and through OCC.

[4] The OTC List is composed of stocks traded over-the-counter (''OTC'') in the United States that qualify as margin securities under Regulation T. Accordingly, broker-dealers are permitted to extend margin credit against such OTC stocks.

[5] 15 U.S.C. 78q–1.

(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 were received.

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)(iii) of the Act [6] and pursuant to Rule 19b–4(e)(4) [7] thereunder because the proposal effects a change in an existing service of OCC that does not adversely affect the safeguarding of securities of funds in the custody or control of OCC or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. 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. 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 OCC. All submissions should refer to File No. SR–OCC–98–16 and should be submitted by January 19, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(e)(4).

[8] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–100a]

Implementation of WTO Recommendations Concerning the European Communities' Regime for the Importation, Sale and Distribution of Bananas

AGENCY: Office of the United States Trade Representative.

ACTION: Further request for comment.

SUMMARY: On or before January 21, 1999, the United States Trade Representative (USTR) intends to request authorization from the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) to suspend tariff concessions on certain products of the European Community (EC). The USTR is requesting comments on the possible inclusion of certain pork and certain olives in the request to the DSB.

DATES: Written comments from interested persons are due by noon on Wednesday, January 13, 1999 on the possible imposition of prohibitive (100% ad valorem) duties on certain pork provided for in subheading 0210.19.00 of the Harmonized Tariff System of the United States (HTS) and certain olives provided for in HTS subheading 2005.70.6050.

ADDRESSES: 600 17th Street, NW, Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Sybia Harrison, Staff Assistant to the Section 301 Committee (202) 395–3419; Joanna McIntosh, Associate General Counsel (202) 395–7305; or Ralph Ives, Deputy Assistant U.S. Trade Representative (202) 395–3320.

SUPPLEMENTARY INFORMATION: On September 25, 1997, the DSB adopted an Appellate Body report and panel report (as modified by the Appellate Body report) recommending that the EC bring its regime for the importation, sale, and distribution of bananas (banana regime) into conformity with the EC's obligations under the General Agreement on Tariffs and Trade 1994 and the General Agreement on Trade in Services (GATS). A WTO-appointed arbitrator subsequently determined that the ''reasonable period of time'' for the EC to fully implement the DSB recommendations and rulings would expire on January 1, 1999.

If the EC fails to bring its banana regime into compliance with its WTO obligations by January 1, 1999, Article 22 of the WTO Dispute Settlement Understanding (DSU) permits the United States on January 21, 1999 to seek authorization from the DSB to suspend the application of concessions or other obligations accruing to the EC under the WTO Agreement. Article 22.6 of the DSU provides that the DSB shall grant the requested authorization not later than thirty days after the expiration of the reasonable period, or by January 31 in this case. If, however, the EC objects to the level of suspension proposed or the application of the principles and procedures specified in Article 22.3 of the DSU in considering the types of concessions or obligations to suspend, the proposed suspension of concessions shall be referred to arbitration. The DSU requires that such arbitration proceedings be completed within sixty days after the expiration of the reasonable period of time, or by March 2 in this case. Following the completion of arbitration proceedings and upon request, the DSB must grant authorization to suspend concessions or other obligations consistent with the arbitrator's decision. The United States may not suspend concessions or other obligations during the course of the arbitration proceedings.

On or before January 21, 1999, the USTR intends to request authorization from the DSB to suspend tariff concessions on certain products of the EC should the EC fail to bring its banana regime into compliance with DSB recommendations within the prescribed reasonable period of time, which expires on January 1, 1999. On October 22, 1998 and November 10, 1998, the USTR published notices [63 FR 56687 and 63 FR 63099] describing and requesting comments and testimony on the United States proposed course of action to exercise its rights under Article 22 of the DSU.

The written comments received in response to the October 22 **Federal Register** notice primarily registered concerns that the EC's proposed changes to its banana regime would not bring the regime into compliance with the DSB's recommendations and rulings within