these provisions. In general, these filings met the requirements of IM–2210–5. However, the staff does not believe that it has received a sufficient number of filings to adequately evaluate the provisions' effectiveness. While there may be a number of reasons for the low number of filings, the staff believes that low investor demand for bond funds coupled with the strong promotion of equity mutual funds during much of the trial period may have contributed to the low level of filings. The staff believes that additional experience with these provisions is necessary to evaluate the effect on the delivery of accurate and useful information to investors concerning bond mutual fund volatility.

Accordingly, NASD Regulation is proposing to extend the expiration date of IM–2210–5 and Rule 2210(c)(3) for an additional two years, until August 31, 2003, to allow more filings to be made. Before this period expires, the staff will evaluate IM–2210–5 and Rule 2210(c)(3) and determine whether to recommend that they be eliminated, modified, or permanently approved as is. Further, NASD Regulation is proposing to amend IM–2210–5 to clarify that upon its expiration, Rule 2210(c)(3) will also expire.

2. Statutory Basis

Nasdaq believes that the proposed extension is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general to protect investors and the public interest. NASD Regulation believes that extending the expiration date of IM–2210–5 and Rule 2210(c)(3) will provide the additional experience necessary to filly analyze and evaluate the provisions.

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

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

[8] 15 U.S.C. 78o–3(b)(6).

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

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder. 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, or otherwise in furtherance of the purposes of the Act.

NASD Regulation has asked that the Commission accelerate the operative date. The Commission finds good cause to waive the 30-day operative waiting period, because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will ensure that the operation of the Rule will be uninterrupted by the expiration provision currently contained in IM–2210–5. For these reasons, the Commission finds good cause to waive the 30-day operative waiting period.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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 Association. All submissions should refer to file number SR–NASD–2001–49 and should be submitted by September 18, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). The NASD will announce the proposed rule change in a Notice To Members, to be published no later than 30 days after August 10, 2001, the date that NASD Regulation filed the proposed rule change.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44727; File No. SR–OCC–2001–07]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Amendments and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Clearing Security Futures

August 20, 2001.

I. Introduction

On June 29, 2001, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2001–07 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and on July 9,[2] August 13, and 17, 2001, amended the proposed rule change. Notice the proposal was published in the **Federal Register** on August 3, 2001.[3] No comment letters have been received to date. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

II. Description

A. Introduction

On June 15, 2001, the Commission approved amendments to OCC's By-Laws specifying the types of markets for which OCC would clear security futures and describing the general terms on which it would clear for those markets.[4] This order approves a comprehensive

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

[2] The purpose of the July 9 Amendment was to correct citations to the Act.

[3] Securities Exchange Act or Release No. 44610, (July 27, 2001), 66 FR 40766.

[4] Securities and Exchange Act Release No. 44434 (June 15, 2001), 66 FR 33283 [SR–OCC–2001–05].

set of rule changes under which OCC will be permitted to clear and settle transactions in security futures.

These rules are intended to be as generic as possible to cover any security futures product that may be developed by the markets clearing through OCC. Nevertheless, it may be necessary in the future for OCC to amend or supplement these rules to accommodate specific products that are developed by the markets.

B. Overview of Security Futures Rules

Amendments to the By-Laws and Rules are in the same general format that has previously been used for new products. The proposed rules will provide for clearance and settlement of nearly the full range of security futures products that can be traded under the Commodity Futures Modernization Act (''CFMA''). These include physically-settled futures on individual stocks as well as cash-settled futures on individual stocks and on narrow-based stock indices. A further rule change would be required in order for OCC to clear options on security futures.

The security futures provided for in this rule filing will have the same basic terms as futures contracts trading in the traditional futures markets under the jurisdiction of the CFTC. A futures contract is entered into at a ''contract price'' agreed upon between the buyer and seller in the futures market. The contract price represents the notional price or value at which the underlying stock or index will be purchased and sold at ''maturity'' of the contract if the contract has not been offset through an earlier closing transaction. The contracts will be marked to the daily closing price of the futures contract through ''variation payments'' that are passed through OCC from the buyer to the seller or vice versa depending upon the direction of the market movement. Intraday variation settlements are also provided for although it is OCC's present intention to effect intraday variation settlements only on an exception basis when market conditions or other factors make such settlements necessary or desirable. A deposit of ''original'' or ''risk'' margin will be required from both purchasers and sellers to cover the maximum anticipated variation payment that would likely be required based on the clearing member's positions. This calculation will be made based upon all of the positions in the particular account of the clearing member using OCC's TIMS system for portfolio margining.

At maturity of the contract, a ''final variation payment'' will be determined based on a ''final settlement price.'' The final settlement price will be the price or level of the underlying security at a specified point or interval in time, which could be either the closing price or a volume-weighted average price on the last day of trading of the futures contract or an opening price on the following day. In the case of cash-settled futures, all rights and obligations under the contract will be satisfied by the final variation payment. In the case of physically-settled security futures, delivery of and payment for the underlying stock will be effected pursuant to the same basic rules currently applicable to settlement of stock option exercises. The price to be paid by the purchaser is referred to as the ''aggregate purchase price'' and is equal to the final settlement price times the number of shares to be delivered. Effectively, delivery occurs at the current market price of the stock, but the net of the variation payments paid and received over the period that the futures contract was held puts the buyer and seller in the economic position of having purchased and sold the security at the original contract price.

Because a security future is both a ''security'' as defined in the Act and a ''contract for sale of a commodity for future delivery'' as defined in the Commodity Exchange Act (''CEA''), security futures are subject to the joint jurisdiction of the Commission and the CFTC. One result of this novel arrangement is that security futures may in certain circumstances be carried by clearing members for their customers in futures ''customer segregated funds'' accounts subject to the CEA and rules thereunder, and in other circumstances they may be carried in securities accounts subject to the Securities Investor Protection Act and Commission Rule 15c3–3 as well as other customer protection rules under the Act. When security futures are carried in segregated funds accounts at the member firm level, OCC has assumed that the CFTC will require that they also be carried in segregated funds accounts at the clearing level. Accordingly, OCC is adding a ''customer segregated funds'' account to the types of accounts that a clearing member is able to carry at OCC.

OCC also is permitting futures clearing organizations (''derivative clearing organizations'' registered as such under the CEA) to carry omnibus accounts at OCC for the purpose of clearing transactions in security futures on behalf of their clearing members that are not clearing members of OCC. A futures clearing organization could establish one such account for clearing its members' proprietary transactions and a second segregated funds account for members' customer transactions.

Set forth below is a more detailed description of specific changes and additions to the By-Laws and Rules. Some changes, however, seemed sufficiently obvious in their purpose and effect so that no further explanation has been provided.

C. Summary of By-Law Changes

1. Definitions

Because the various terms needed to describe security futures are used throughout the By-Laws and Rules, OCC is including all necessary new definitions in Article I of the By-Laws. Necessary terms have been adopted and defined to correspond as closely as possible to the terminology used in the existing futures markets while also being consistent with terminology in OCC's rules. Certain terms were included in SR–OCC–2001–05 and are referred to above. Others are added by this rule change, and various existing definitions are amended so that they apply to security futures as well as options. Most of these definitions are self-explanatory, but a few terms that are of particular significance are described below. Certain defined terms are discussed later in connection with the substantive provisions of the rules where they are used.

The terms ''class'' and ''series'' are amended in order to apply to futures even though such terms are not widely used, if at all, in the futures industry. Such terms are consistent with securities terminology and OCC's existing rules. As in the case of options, the term ''series'' is used to define a set of security futures contracts that are mutually identical and therefore fungible. The term ''series marker'' is used to describe a unique identifier that may be assigned to the particular market on which a series is traded. Because the series marker is considered a term of the security future, the effect of the marker is that contracts of a series bearing that unique series marker are not fungible with contracts traded on another exchange even if those contracts have otherwise identical terms. Whether or not a series of security futures will bear a series marker is a decision to be made by the market that trades the series.

The term ''contracts'' has been made lowercase to reflect a more generic definition. It is now used to refer to any ''cleared security,'' which includes security futures as well as broad-based index futures that are included in cross-margining arrangements. This broad usage is reflected primarily in the

margin rules in Chapter VI of OCC's Rules.

The definitions of ''nominated correspondent'' and ''nominating clearing member'' are being deleted as this particular agency relationship is no longer used. References to these terms are deleted throughout the By-Laws and Rules.

2. Clearing Members Qualifications

The Interpretations and Policies following Article V, Section 1 of the By-Laws are amended to adapt those requirements to clearing members that clear security futures. Because some of those clearing members may be futures commission merchants (''FCMs'') primarily regulated as such and only notice-registered as broker-dealers under Section 15(b)(11)(A) of the Act, it is necessary to provide alternative membership requirements in certain cases. For example, in the area of experience and competence, OCC has proposed to retain some flexibility in this regard by saying that such clearing members must meet ''such other non-discriminatory standards of experience and competence as the Corporation may prescribe.'' In addition, interpretation .06 under Section 1 provides that OCC may give expedited review and may waive certain non-financial criteria where appropriate in order to admit affiliates of existing clearing members for the sole purpose of clearing security futures. Some clearing members do their futures business through affiliates, and OCC believes that it is appropriate to give special consideration to such affiliates to the extent that their affiliation with an existing clearing member provides access to competent and experienced personnel able to assist the affiliate if necessary to enable the affiliate to meet OCC's operational requirements.

3. Accounts for Clearing Security Futures.

OCC is amending Article VI, Section 3 of the By-Laws to provide an additional account, the segregated futures account, for the clearance of transactions of ''futures customers,'' which are defined in Article I to mean persons whose positions are carried by an FCM in a futures account required to be segregated under Section 4d of the CEA. A clearing member might carry customer security futures positions in a futures account rather than a securities account either because it is primarily regulated as a FCM and does not carry securities accounts it is a dual registrant (fully registered both as an FCM and a broker-dealer) and the clearing member, or the clearing members and its customer, choose to carry security futures in a futures account.

The segregated futures account is essentially like a combined market-maker account in that the positions of different futures customers are commingled in it, and OCC's lien extends to all positions, margin, and other assets in the account. OCC can liquidate the account to a single net debt or credit in the event of a clearing member default and can therefore margin it on a net basis as it does a combined market-marker account. Unlike the regular customers' account, which is a securities account, there is no need to hold ''fully paid and excess margin securities'' free of any liens because the customers's futures account at the clearing firm level is not subject to Commission Rule 15c3–3.

4. General Clearance Rules

Provisions of Article VI, Section 3 relating to the ''firm account'' have been modified to provide that it may only be used for transactions of the firm itself and persons who are not customers either for purposes of the CEA and CFTC regulations or for purposes of the securities laws and regulations, principally Rule 15c3–3 and the hypothecation rules.[5] In addition to the foregoing changes, and largely unrelated to security futures, OCC is amending Section 3 to eliminate references to ''specialists,'' which references are rendered unnecessary by changes in the Article I definition of ''market-maker'' to include specialists. In addition, OCC is proposing to eliminate the stock specialist and registered trader accounts because such accounts are no longer used. The definition of a ''market-maker'' has been expanded to include all types of proprietary trading done pursuant to rules that are intended to ensure that such trading serves a market function. This change will allow positions of stock specialists and registered traders to be carried in a market-maker account.

Sections 4 through 9 of Article VI of the By-Laws are amended to make them applicable to security futures and to eliminate certain redundancies and unnecessary material. A new paragraph (4) has been added to Section 10, which relates to the establishment of terms of cleared securities and the opening of new series, in order to provide for security futures. In addition, the provisions setting deadlines for the various markets to notify OCC of the opening of new series in any cleared security have been updated and consolidated in a new paragraph (e), which permits OCC to announce such deadlines from time to time. The advance notice that is actually currently required by OCC is generally much shorter than the deadlines specified in Section 10 as a result of improvements in efficiency that make the longer notice periods unnecessary. Sections 11 through 18 are amended to apply to security futures.

Section 19 of Article VI, which relates to shortages of underlying securities, makes parallel provisions for physically-settled security futures. It is worth noting that in the case of security futures the economic result of the futures contract is primarily realized through the stream of variation payments and that the stock is delivered against current market value at maturity of the future. Accordingly, if a shortage of underlying securities makes delivery impossible or unduly burdensome, OCC may elect simply to terminate delivery and payment obligations and let the final variation payment completely satisfy all rights and obligations under the contract. If, for some reason, the circumstances suggest that the final settlement price should be adjusted in any way to reflect that no delivery will occur, the provisions of amended Section 19 give OCC the authority to do so.

5. New Article XII of the By-Laws

This article sets out some basic provisions for security futures, including both physically-settled and cash-settled security futures. The general rights and obligations of buyers and sellers of security futures, including the obligation to make and the right to receive variation payments, are set forth here.

Section 3 pertains to adjustments of the terms of outstanding security futures in response to certain events affecting the underlying securities that make adjustments necessary or appropriate in the interest of fairness to buyers and sellers. Section 3 sets out detailed adjustment rules for security futures while the detailed provisions for adjustment of narrow-based index futures are set forth in Section 4.

Adjustments to security futures will be necessary from time to time to reflect certain corporate events affecting the underlying stock. Such adjustments will be determined by OCC rather than by an ''adjustment panel'' under the provisions of existing Article VI, Section 11 of the By-Laws. However, the adjustment rules for security futures are substantially parallel to the adjustment rules for stock options, and the adjustment rules for stock options, and the adjustment rules in Section 4 for

[5] 17 CFR 240.8c–1, 15c2–1.

narrow-based index futures are parallel to the adjustment rules for index options. OCC anticipates a policy of coordinating discretionary adjustment determinations for consistency between adjustments of security futures and option contracts on the same underlying stock to the fullest extent practicable.

Futures contracts are ordinarily like European-style options in the sense that there is no opportunity to ''exercise'' or terminate the contract prior to its expiration or maturity date (other than through closing transactions in the market). There are currently no European-style options on individual stocks, and security futures may therefore be adjusted differently than options on the same securities. For example, where a warrant or right is distributed that expires before the maturity date of a security future or expiration date of a stock option, the security future may not be adjusted to reflect that distribution whereas an American-style option on the same security ordinarily would be adjusted.

Where the adjustment rules call for adjustment in the exercise price of an option, the corresponding adjustment rules for futures contracts call for a one-time-only adjustment in the last settlement price established before the adjustment is effective for use in determining the correct daily variation payment for the adjusted contracts. Cash-settled security futures ordinarily will be adjusted in accordance with the same rules as physically-settled security futures and options. Where physically-settled contracts are adjusted by adjusting the underlying to include distributed property, the appropriate adjustment to the cash-settled contract could be different if there is no public market in which the distributed property will be traded for purposes of establishing market values thereafter.

Article XII, Section 5, which anticipates situations in which a market price for an underlying stock or a current value of an underlying index might be unavailable or inaccurate, is essentially parallel to the provisions of Article XVII, Section, 4 which applies to index options. The rule applies not only to narrow-based index futures but also to cash-settled and physically-settled security futures. The reason for this is that security futures, unlike stock options, require a determination of ''final settlement price'' at maturity. Whereas settlement of an exercised stock option is effected by delivery of the stock against the exercise price of the option, settlement at maturity of a security futures involves a final variation payment based on the final settlement price, which is also the price against which the underlying stock is delivered if the future is physically-settled.

Section 6 of Article XII provides that the final settlement price for any security future at maturity is determined by a method approved by the market listing the security future. It could be based on a price or level of the underlying interest at a point in time, such as a closing value or opening value for a stock or index on the maturity date or the following business day, or it could be based on an average of prices, such as the volume-weighted average price for an underlying stock on the maturity date.

D. Rules

1. Financial Requirements for Clearing Members

Financial requirements are substantially the same for all clearing members, whether or not they clear transactions in security futures. However, because OCC will admit clearing members that are merely notice registered as broker-dealers under Section 15(b)(11)(A) of the Act and are primarily regulated as FCMs under the CEA and the rules of the CFTC, OCC financial requirements in Rule 301 that are based on Commission financial requirements are being supplemented to provide appropriate references to corresponding CFTC requirements. It will be OCC's policy as nearly as practicable to provide substantively identical requirements for all clearing members whether their primary regulator is the Commission or the CFTC.

2. Trade Reporting and Matching

Trade reporting and matching will occur for security futures in essentially the same way as for options. Rule 401 sets forth the information required to be specified in matched trade reports. As noted above, such information in the case of security futures may include, if a market so elects, a series marker that prevents contracts traded on that market from being treated as fungible (except for margin and expiration settlement purposes) with otherwise identical futures contracts traded on other markets cleared by OCC. Following the practice in the futures markets, OCC will not require that matched trade information submitted by a market identify each trade as opening or closing. OCC understands that some markets may not have systems capable of making such identifications. If a market elects to submit trade information without identification as whether the transaction is opening or closing, OCC will treat all transactions a opening transactions. Each clearing member must then submit gross position adjustment information at the end of the day to reduce its positions to reflect the actual open interest in accounts carried by the clearing member. Those procedures are consistent with current practice on many futures exchanges.

3. Variation Settlement

Daily variation settlements and final variation settlements will be netted by account with other daily cash settlements and settled in accordance with OCC's usual cash settlement procedures. Chapter V of OCC's rules is being renamed. ''Daily Premium and Futures Variation Settlement.'' The rules in Chapter V are being modified as necessary to include futures variation payments.

4. Margins

Rules 601 and 602 are being amended to include security futures in the calculation of the ''risk margin'' required for each account of a clearing member. The term ''risk margin'' is replacing the term ''additional margin'' for options as well as security futures because OCC believes it is more descriptive. Risk margin, which is sometimes known as ''initial margin'' in the futures markets, is the margin intended to cover one day's anticipated market movement. Security futures (whether physically-settled or cash-settled) will be margined under Rule 601, which is applicable to equity options. Narrow—based futures will be margined under Rule 602, which is applicable to index options and other non-equity options. Because OCC's margin systems already provide for risk-based margining of index futures contracts in cross-margining accounts, accordingly this rule change merely extends the margin rules to cover security futures and makes other minor changes to adapt the rule to security futures. There is no substantive change in the way in which margin will be calculated. Minor changes in other rules in Chapter VI are being made to adapt the rules for security futures.

OCC will not, at least initially, accept escrow deposits of underlying securities to collateralize positions in security futures. OCC has no present plans to include security futures in any cross-margining arrangement or to allow security futures to be pledged under Rule 614.

Because each long and short position in a futures contract represents both an asset and a liability, futures contracts should never be deemed to be ''fully

paid securities'' or ''excess margin securities'' within the meaning of Commission Rule 15c3–3. Therefore, neither long nor short positions in security futures will be required to be ''segregated'' under OCC Rule 611.[6]

5. Delivery of and Payment for Underlying Stock

The provisions of Chapter IX of OCC Rules relating to delivery and settlement in connection with exercises of stock options are being made applicable to physically-settled security futures without substantive change. As in the case of stock option exercises, delivery, and settlement of security futures will ordinarily take place through the National Securities Clearing Corporation (''NSCC''). The only significant difference is that in the case of security futures the stock will settle at the NSCC against the final settlement price, which will be essentially the current Market value of the stock as of the date when the futures contract matures. Because option exercises settle at the exercise price, which can be deep in the money, settlement of option exercises imposes risks on NSCC that have been covered in an elaborate collateral sharing arrangement known as the ''NSCC Accord.'' OCC anticipates that it will have a much simpler agreement with NSCC for stock settlements arising from security futures contracts. Delivery obligations arising from security futures will be netted, but they will not be netted with exercise settlements of option contracts because of the differences in the arrangement with NSCC under which the two types of transactions are settled.

The provisions in Chapter IX relating to stock settlements that cannot be completed through NSCC have been adapted to apply to settlements arising from security futures as well. Similarly, the same basic buy-in and sell-out rules have also been made applicable.

6. Clearing Fund Contributions

Security futures will be covered by the same clearing fund that stands behind all options cleared by OCC. Contributions of individual clearing members to the fund are based on the proportion that their average daily margin requirement bears to the average daily margin requirements of all clearing members, subject to a minimum contribution of $150,000. A special provision is being added to Rule 1001, however, to provide that an affiliate of an existing clearing member that becomes a clearing member of OCC for the purpose of clearing transactions in security futures will not be subject to the $150,000 minimum clearing fund contribution as long as the existing clearing member is in compliance with OCC clearing fund requirements and the affiliate is in compliance with its calculated clearing fund requirement. OCC believes that it would be inappropriate to require an additional $150,000 payment merely because a clearing member chooses, or may be forced because of systems or for other reasons, to clear security futures through an affiliate.

7. Suspension of Clearing Members and Liquidation of Accounts

The provisions of Chapter XI of OCC's rules will apply to clearing members carrying positions in security futures in essentially the same way as they apply to clearing members carrying positions in options. Security futures will be liquidated subject to the same basic rules as options. The proposed changes in the rules are intended to apply as precisely as possible the logic of the existing rules to the liquidation of security futures. This task is complicated by the fact that security futures are quite different from options in ways that have important consequences for the structure of these rules. For example, a security future is both an asset and a liability, and accordingly the ''seller'' of a security future, unlike the writer of an option, may be making rather than receiving a payment. Both short positions and long positions in security futures are treated as ''securities'' under these rules, and hence the proceeds from positions in security futures, whether resulting from a closing transaction or from a variation payment, are treated like premiums received on the closing sale of an option. Since, as noted above, futures in the (securities) customers' account are always ''unsegregated'' (for purposes of Rule 611), there is no need for rules relating to the disposition of ''segregated'' security futures.

OCC is also taking this opportunity to clarify in Rule 1105(d) that, where a charge is appropriately made against a market maker account, it will be made against that account and only any shortfall is to be charged against the Liquidating Settlement Account. This is not a substantive change as the rules and the provisions of the market maker account agreements have always been interpreted in this way.

8. New Chapter XIII

Following past practice for new products, OCC is adding a new chapter to its Rules relating to security futures. Rule 1301 sets forth the method for determining the amount of variation payments, including the final variation payment. It is anticipated that variation settlement will be affected only once each business day and that OCC would respond to unusually large intraday price moves by requiring additional risk margin. However, the proposed rules will give OCC the flexibility to effect an additional, intraday variation settlement if OCC deems such payments to be appropriate in unusual market conditions or to allow OCC to coordinate its actions with those of other clearing organizations.

Rule 1302 provides for delivery of stocks underlying physically-settled security futures that have reached maturity. This is accomplished primarily by cross-reference to the rules in Chapter IX. Rule 1303 provides that ''associate clearinghouses'' may clear transactions in security futures through OCC on an omnibus basis on behalf of their members that are not clearing members of OCC. Associate clearinghouses will be treated like any other clearing member for most purposes under the rules. OCC anticipates that one or more futures clearing organizations will become associate clearinghouses of OCC. The agreements under which these associate clearinghouses will operate have not yet been negotiated. There is precedent for such arrangements, however, in that OCC had such a relationship with the clearinghouse for the European Options Exchange (''EOE'') as a time when OCC-issued options were traded on EOE.[7]

E. Amendments

1. August 13, 2001, Amendment Submission

On August 13, 2001, OCC filed with the Commission several amendments to its proposed rule changes. OCC proposed changes to some definitions and added a new section to its By-Laws in effort to address risks related to clearing ''exchange for physical'' (''EFP'') transactions. OCC is reserving the right to reject such transactions in the event a clearing member that is a party to an EFP trade defaults on its

[6] Rule 611 allows clearing members to comply with Commission Rule 15c3–3 by holding customers' fully paid long option positions free of OCC's lien. (The rule allows clearing members to ''unsegregate'' long positions that are component of customer spreads, which has the effect of pledging those positions of OCC in exchange for reduced margin.)

[7] Securities Exchange Act Release No. 24832 (August 21, 1987), 52 FR 32377. The Commission notes that the order required OCC to file with the Commission under Rule 19b–4 of the Act any new international market agreement. The Commission expects OCC to undertake the same obligation with regard to future operating agreements it makes with any associate clearinghouse.

obligation to meet its initial variation payment on the contract.

A number of provisions are being added to provide for flexibly structured security futures, including a definition of ''flexibly structrued'' in Article I of OCC's By-Laws. The definition of ''index value determinant'' is modified to cover index futures as well as index options and is therefore relocated to Article I of the By-Laws.

OCC added a provision to Article V, Section 1 of the By-Laws stating that a clearing member registered as a broker-dealer under the notice registration provisions of Section 15(b)(11) of the Act may not clear transactions or carry positions in cleared securities other than securities futures.

OCC added an interpretation following Article V, Section 1 to reflect OCC's policy to allow stock clearing members to clear physically settled stock futures and index clearing members to clear cash-settled stock futures and index futures without further conditions if they have such status on the day that OCC commences clearing security futures. OCC believes that this ''grandfathering'' is an appropriate accommodation to such clearing members and that additional requirements are not needed.

OCC amended the new Sectio 3(f) of Article VI, Section 3 of the By-Laws to make explicit that funds and assets held by OCC with respect to the segregated futures account will be held in accordance with applicable provisions of the CEA and regulations of the CFTC thereunder.

At the request of the CFTC, OCC also added an interpretation following Rule 301. The interpretation merely notes applicable requirements under the CEA and does not represent any substantive change.

Rule 401 is being amended to provide that an exchange transaction in security futures may be identified by a security futures market in a report of matched trades as constituting a block trade or an EFP. The purpose of identifying trades in this way is to permit the security futures markets and clearing members to comply with the applicable provisions of the CEA and CFTC regulations and the rules of the security futures markets.

Included within its amendments, OCC filed with the Commission the security futures clearing agreement it proposes to enter into with the Nasdaq LIFFE, LLC (''NLX''). The agreement is functionally similar to the Restated Participant Exchange Agreement entered into between OCC and the exchanges that clear options through OCC, but it omits requirements relating to options registration and disclosure that do not apply to security futures. OCC anticipates that it will enter into substantially similar agreements with other markets for which it clears securities futures transactions and will file these agreements with the Commission when they have been negotiated.

OCC also filed with the Commission a revised form for use by an appointing clearing member that wants to appoint or that has an appointed clearing member to act for it in effecting settlements of underlying securities. OCC also filed a revised form for use by a Canadian clearing member that wants to appoint or that has appointed the Canadian Depository for Securities, Limited to act for it in effecting settlements of underlying securities. These forms have been amended merely to make them applicable to security futures.

2. August 17, 2001, Amendment Submission

On August 17, 2001, OCC filed with the Commission a third amendment to its proposed rule change. The main purpose of this amendment is to allow OCC to treat block trades in the same manner as it does EFP transactions due to the similar risks that both types of transactions present to OCC. Block trades are now referenced in OCC's definition of ''commencement time,'' and OCC will be allowed to reject a block trade in the event a clearing member that is a party to a block trade on its obligation to meet its initial variation payment on the contract. In addition, the amendment corrected certain non-substantive marking errors that were contained in OCC's original filing.

III. Discussion

Section 19(b)(2)(B) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. For the reasons set forth below, the Commission believes that OCC's proposed rule change is consistent with OCC's obligations under Section 17A(b)(3)(F) which requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[8]

In SR–OCC–2001–05 the Commission approved OCC's proposed rule change amending its By-Laws to allow it to clear and settle security futures effected on any national securities exchange or association registered under Section 6(a) or 15A(a) of the Act or on any ''designated contract market'' that is registered as a national securities exchange under Section 6(g) of the Act. The Commission's order stated that OCC would need to file a complete set of rules for clearing security futures before providing clearance and settlement services for those markets when trading in security futures begins on August 21, 2001. OCC's current proposed rule change is that complete set of rules.

The Commission believes OCC's proposed rule change is consistent with Section 17A(b)(3)(F) of the Act in that it should facilitate the prompt and accurate clearance and settlement of transactions in security futures by providing an efficient and reliable clearing facility with a comprehensive set of rules governing the clearance and settlement of these instruments.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing because approval prior to the thirtieth day after the date of publication of the notice of the filing will permit OCC to be ready to clear security futures on August 21, 2001, the date that principal-to-principal trading of security futures can begin under the CFMA. The Commission is approving the proposed rule change prior to the expiration of the comment period in order to permit OCC to be ready to clear security futures on August 21, 2001, the date that principal-to-principal trading of security futures can begin under the CFMA.

IV. 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. SR–OCC–2001–07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

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[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 200.30–3(a)(12).