and consistent with State, local, and tribal governmental regulatory and other functions

F. How Should Agencies Integrate These Intergovernmental Consultations into the Rulemaking Process?

It is important for agencies to integrate these consultation activities into the ongoing rulemaking process. The cost and benefit estimates, any additional viable suggestions received during the pre-notice consultations, and the agency plan to carry out intergovernmental consultation should be included in the preamble to the notice of proposed rulemaking. Publication of consultation plan in the Federal Register will assure that those governmental units that are not contacted directly will have access to the same cost and benefit estimates as those who were contacted directly, and have the opportunity to make their concerns known. Similarly, and consistent with E.O. 12875, any preamble transmitted to the Federal Register on or after October 2, 1995, should include, as of the particular stage of the ruleamking, the extent of the agency's prior consultations with representatives of affected State, local, and tribal governments, the nature of their concerns, any written communications submitted to the agency by such units of government, and the agency's position supporting the need to issue the regulation containing the mandate.

G. What Compliance Reports Should Agencies Submit to OMB?

Under Section 208 of the Act, OMB is required to submit a report to Congress on agency compliance with the requirements of Title II of the Act, which includes the intergovernmental consultation requirement, on or before March 22, 1996, and annually thereafter. Accordingly, agencies should provide the Administrator of the Office of Information and Regulatory Affairs, by January 15, 1996, and annually on that date thereafter, a written report of each agency's compliance with Title II of the Act. The report should include a description of the process established by the agency to ensure meaningful input, as well as a description of agency consultations with State, local, and tribal governments for each proposed and final rule "containing significant Federal intergovernmental mandates. As part of the report to be submitted by January 15, 1996, agencies should also describe the plans they have developed to consult with small governments, under Section 203 of Title II of the Act.

II. The Exemption From the Federal Advisory Committee Act

In order to facilitate the consultation process, section 204(b) of the Act provides an exemption from the Federal Advisory Committee Act ("FACA") (5 U.S.C. App.) "for the exchange of official views regarding the implementation of public laws requiring shared intergovernmental responsibilities or administration."4 This exemption applies to all Federal agencies subject to FACA, and is not limited to the intergovernmental consultations required by Section 204(a) but instead applies to the entire range of intergovernmental responsibilities or administration. In accordance with the legislative intent, the exemption should be read broadly to facilitate intergovernmental communications on responsibilities or administration.

This exemption applies to meetings between Federal officials and employees and State, local, or tribal governments, acting through their elected officers, officials, employees, and Washington representatives, at which "views, information, or advice" are exchanged concerning the implementation of intergovernmental responsibilities or administration, including those that arise explicitly or implicitly under statute, regulation, or Executive order.⁵

The scope of meetings covered by the exemption should be construed broadly to include any meetings called for any purpose relating to intergovernmental responsibilities or administration. Such meetings include, but are not limited to, meetings called for the purpose of seeking consensus; exchanging views, information, advice, and/or recommendations; or facilitating any other interaction relating to intergovernmental responsibilities or administration.

The guidance given above should help determine when a meeting qualifies under Section 204(b) of the Act for an exemption from the FACA. We also note that meetings that do not meet these guidelines for an exemption may nonetheless not be subject to the FACA in the first instance. Accordingly, to

determine whether there is even a need for an exemption from the FACA, agencies should also consult the FACA itself, as well as the General Service Administration's regulations at 41 CFR Subpart 101–6.10, and the court decisions construing the FACA.

It is important that agencies make their best efforts to implement these guidelines and instructions. As the Conference Report stated, "an important part of efforts to improve the Federal regulatory process entails improved communications with State, local, and tribal governments. Accordingly, this legislation will require Federal agencies to establish effective mechanisms for soliciting and integrating the input of such interests into the Federal decision-making process."

If agencies have any questions concerning these guidelines and instructions, they should contact the Administrator of the Office of Information and Regulatory Affairs, or her staff. OMB will provide additional guidance as experience and need dictate.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36272; File No. SR-OCC-95–01]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Withdrawal of a Proposed Rule Change

September 22, 1995.

On January 23, 1995, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), ¹ a proposed rule change clarifying OCC's Rules regarding the unavailability of current index values. Notice of the proposed rule was published in the Federal Register on March 17, 1995. ² On September 19, 1995, OCC filed a request that the proposed rule change be withdrawn. ³

 $^{^4\}mathrm{House}$ Conference Report 104–76 (March 13, 1995), p. 40.

⁵ Specifically, this exemption from FACA applies where—

[&]quot;(1) meetings are held exclusively between Federal officials and elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf), acting in their official capacities; and

[&]quot;(2) such meetings are solely for the purposes of exchanging information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration."

 $^{^6\}mathrm{House}$ Conference Report 104–76 (March 13, 1995), p. 40.

^{1 15} U.S.C. 78s(b)(1) (1988).

² Securities Exchange Act Release No. 35472 (March 10, 1995), 60 FR 14475 [File No. SR-OCC-95-01].

³Letter from James C. Yong, First Vice President and General Counsel, OCC, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission, (September 15, 1995).