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 GSCC. All submissions should refer to the file number SR–GSCC–95–05 and should be submitted by January 2, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34–36551; File No. SR–OCC–95–12]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Amending the Agreements Governing Non-Proprietary Cross-Margining Accounts of Market Professionals in the Cross-Margining Program Among The Options Clearing Corporation (''OCC''), the Intermarket Clearing Corporation (''ICC''), and the Chicago Mercantile Exchange, in the Cross-Margining Program Between OCC and ICC, and in the Cross-Margining Program Between OCC and the Kansas City Board of Trade Clearing Corporation

December 4, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 15, 1995, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–OCC–95–12) as described in Items I, II, and III below, which items have been prepared primarily by OCC. On September 12, 1995, and on October 11, 1995, OCC filed amendments to the proposed rule change to include in addition to proposed changes to the agreements governing non-proprietary cross-margining (''XM'') accounts in the XM program between OCC, The Intermarket Clearing Corporation (''ICC''), and the Chicago Mercantile Exchange (''CME''), proposed changes to the agreements governing non-proprietary XM accounts in the XM program between OCC and ICC and in the XM program between OCC and the Kansas City Board of Trade Clearing Corporation (''KCC''), respectively.[2] 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 purpose of the proposed rule change is to amend the agreements governing non-proprietary XM accounts of market professionals in the OCC/ICC/CME XM program, in the OCC/ICC XM program, and in the OCC/KCC XM program in order to implement the revised distributional scheme adopted by the Commodity Futures Trading Commission (''CFTC'') in the new appendix to the CFTC's bankruptcy rules.[3] The proposed rule change also seeks to revise the terms of the agreements government the proprietary and non-proprietary XM accounts in the OCC/KCC XM program to conform the terms of those agreements to the terms currently used in the forms of agreements in the OCC/ICC/CME XM program and in the OCC/ICC XM program.

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.[4]

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

The proposed rule change seeks to amend the agreements governing non-proprietary XM accounts of market professionals to correspond with the requirements of the distributional scheme adopted by the CFTC as a new appendix to its bankruptcy rules. The proposed rule change also seeks to conform the terms of the agreements governing the proprietary and non-proprietary XM accounts in the OCC/KCC XM program to make the terms of those agreements substantially identical to the terms currently used in the forms of agreements in the OCC/ICC/CME XM program and the OCC/ICC XM program.

In November 1991, the Commission and the CFTC approved non-proprietary cross-margining.[5] As part of the CFTC's approval, it required each futures commission merchant (''FCM'') participating in cross-margining to agree that all funds and property in a non-proprietary XM account would be treated as customer property subject to the segregation requirements of the Commodity Exchange Act[6] and to segregate such fund and property from that of non-XM customers. In addition, the CFTC required each market professional to subordinate its XM related claims to customer claims based on non-XM positions.

Pursuant to that subordination requirement, if a clearing member became insolvent, all non-XM customers of the FCM would be paid their pro-rata share of the combined segregated funds pool, including funds of XM market professionals, before the XM market professionals received any portion of their claims. The subordination was intended to insulate non-XM customers from losses arising from XM accounts. The subordination also ensured that the XM accounts of market professional would not be treated as accounts of securities customers subject to liquidation under the Securities Investors Protection Act of 1970[7] or the stock broker liquidation provisions of the Bankruptcy Code.[8] Therefore, the accounts could be liquidated as accounts of commodity customers under the commodity broker liquidation provisions of the Bankruptcy Code[9] and the CFTC's bankruptcy rules,[10] and both the

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[6] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letters from Jean M. Cawley, OCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (September 11, 1995, and October 10, 1995).

[3] The CFTC's distributional requirements are set forth in Appendix B to Part 190 of the CFTC's General Regulations. 17 CFR 190. The CFTC's distributional framework was adopted in April 1994. 59 FR 17468 (April 13, 1994).

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

[5] Securities Exchange Act Release Nos. 29991 (November 26, 1991), 56 FR 61458 (order approving OCC/CME non-proprietary XM program); 56 FR 61404 (Comm. F. T. Comm'n 1991) (order approving OCC/CME non-proprietary XM program); 30041 (December 5, 1991) 56 FR 64824 [File Nos. SR–OCC–90–04 and SR–ICC 90–03] (order approving OCC/ICC non-proprietary, market professional cross-margin program); and 56 FR 61406 (Comm. F. T. Comm'n 1991) (order approving OCC/ICC non-proprietary cross-margin program). In August 1993, the Commission approved expansion of the OCC/KCC XM program established in February of 1992 to include non-proprietary positions. Securities Exchange Act Release No. 32708 (August 2, 1993), 58 FR 42586 [File No. SR–OCC–93–13] (order approving OCC/KCC non-proprietary XM program).

[6] 7 U.S.C. § 6d(2) (1988) and 17 CFR 1.20 (1991).

[7] 15 U.S.C. §§ 78aaa–78*lll* (1988).

[8] 11 U.S.C. §§ 741–752 (1988).

[9] 11 U.S.C. §§ 761–766 (1988).

[10] 17 CFR 190.01–190.10.