

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60881; File No. SR-OCC-2009-16)

October 26, 2009

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change relating to its Market Loan Program to Allow Dividend Equivalent Payments to be Principally Effected Through The Depository Trust Company's Facilities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 28, 2009, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. OCC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>2</sup> and Rule 19b-4(f)(4)<sup>3</sup> thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

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

The proposed rule change would amend OCC's rules relating to its Market Loan Program to allow Dividend Equivalent Payments to be principally effected through The Depository Trust Company's ("DTC") facilities.

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

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>3</sup> 17 CFR 240.19b-4(f)(4).

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 these statements.<sup>4</sup>

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

With respect to a stock loan effected under OCC's Market Loan Program ("Market Loan"), OCC guarantees payments in lieu of cash dividends and distributions ("Dividend Equivalent Payments") that a lending clearing member is entitled to receive with respect to the loaned stock during the term of such Market Loan. OCC's guaranty is limited to the amount for which OCC has collected margin from the responsible borrowing clearing member prior to the expected payment date. Until now, OCC has effected collections and payments of Dividend Equivalent Payments between the relevant clearing members through its daily cash settlement system. However, clearing members participating in the Market Loan Program are now requesting that Dividend Equivalent Payments be made through DTC's Automatic Dividend Tracking Services ("Dividend Service"). In order to accommodate such request, OCC proposes to amend its Rules as described below.

OCC proposes to amend paragraph (a)(ii) of Rule 2206A so that Dividend Equivalent Payments would be effected through DTC's facilities on each payment date by transfers from and to the relevant clearing members with such transfers flowing through OCC's account at DTC

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<sup>4</sup> The Commission has modified the text of the summaries prepared by OCC.

in order to maintain anonymity between lenders and borrowers.<sup>5</sup> In order to provide reasonable assurance that there would not be any net settlement obligations against OCC's account at the end of any day, OCC is reserving the authority to remove a Market Loan from the Dividend Service and is reserving the authority to make null and void any obligation to effect such payments through DTC's facilities. Once such authority is exercised, Dividend Equivalent Payments for such Market Loans would no longer be settled through DTC's facilities. Instead, they would be settled through OCC's cash settlement system on the next business day to the extent that, as described above, OCC had already collected sufficient margin from the responsible borrowing clearing member. The new procedure for processing Dividend Equivalent Payments will be applied to Market Loans effected on and after October 2, 2009.

Although OCC will no longer serve as the primary channel through which collections and payments of Dividend Equivalent Payments are made, OCC will continue to collect margin with respect to such Dividend Equivalent Payments based on calculations provided by a loan market. Furthermore, OCC will continue to have no liability to a clearing member for errors in a loan market's calculations. Accordingly, OCC also proposes to amend Paragraph (a)(ii) of Rule 2206A to provide clarification with respect to such calculations and OCC's liability.

The proposed rule change is consistent with Section 17A of the Act,<sup>6</sup> as amended, because it will streamline the processing of Dividend Equivalent Payments thereby promoting the prompt and accurate clearance and settlement of securities lending transactions.

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<sup>5</sup> Preserving anonymity between lenders and borrowers is important to the operation of the Market Loan Program because the Market Loan Program is intended to provide a framework within which securities lending transactions will be executed, mostly on an anonymous basis, through electronic trading systems.

<sup>6</sup> 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 will have any impact or 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 relating to the proposed rule change were not and are not intended to be solicited or received. OCC will notify the Commission of any written comments received by OCC.

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

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(4)<sup>8</sup> thereunder because the proposed rule change effects a change in an existing service of OCC that: (i) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of OCC 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.

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(4).

#### 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-OCC-2009-16 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Secretary, Elizabeth M. Murphy, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2009-16. 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 Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filings also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at

[http://www.theocc.com/publications/rules/proposed\\_changes/sr\\_occ\\_09\\_16.pdf](http://www.theocc.com/publications/rules/proposed_changes/sr_occ_09_16.pdf). 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-OCC-2009-16 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).