

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61425; File No. SR-OCC-2009-18)

January 26, 2010

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change to Allow Members to Deposit Customer Fully Paid or Excess Margin Securities to the Extent Permitted by No-Action Relief or Interpretive Guidance from the Commission or Interpretive Guidance from a Self-Regulatory Organization

I. Introduction

On October 23, 2009, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-OCC-2009-18 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).¹ The proposed rule change was published for comment in the Federal Register on December 7, 2009.² No comment letters were received on the proposal. This order approves the proposal.

II. Description

The proposed rule change allows members to deposit customer fully paid or excess margin securities to the extent that activity is consistent with Rule 15c3-3³ under the Act and is permitted by no-action relief or interpretive guidance from the Commission or interpretive guidance from a Self-Regulatory Organization (“SRO”).

OCC rules currently prohibit members from depositing with OCC fully paid or excess margin securities that are carried for the account of a customer. This prohibition is intended to conform OCC’s treatment of customer fully paid and excess margin securities to the requirements of Rule 15c3-3.

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 61078 (November 30, 2009), 74 FR 64116.

³ 17 CFR 240.15c3-3.

Currently, a Commission no-action letter and related interpretive guidance from the New York Stock Exchange permit fully paid or excess margin securities carried in a customer account to be deposited with OCC in two circumstances. First, if a customer makes a specific deposit of fully paid or excess margin securities with a member to secure its obligations as an option writer⁴ then the member may in turn deposit the customer's securities with OCC.⁵ Second, any fully paid or excess margin securities held by a member to secure a customer's obligations may be posted as margin with OCC to the extent of 140% of the difference between the daily marking price deposits⁶ and the original proceeds of the customer's transaction.⁷ This proposed rule change permits members to deposit customer fully paid or excess margin securities in these two circumstances as well as in any future circumstances identified by no-action relief or interpretive guidance from the Commission or interpretive guidance from an SRO.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Commission believes that by amending its rules to allow members to deposit customer fully paid or excess margin securities to the extent that activity is consistent with Rule 15c3-3 under the Act and is permitted by no-action relief or interpretive guidance from the

⁴ OCC Rule 610(e)-(f).

⁵ New York Stock Exchange, New York Stock Exchange Rule Interpretations Handbook 505 (2004)(Interpretation 01 of Securities Exchange Act Rule 15c3-3(c) citing Chicago Board Options Exchange, Inc., SEC No-Action Letter (Feb. 19, 1975)).

⁶ As required by OCC of its member.

⁷ New York Stock Exchange, New York Stock Exchange Rule Interpretations Handbook 505 (2004)(Interpretation 020 of Securities Exchange Act Rule 15c3-3(c)).

Commission or interpretive guidance from an SRO, the proposal is consistent with the requirements of Section 17A(b)(3)(F),⁸ which requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act⁹ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (File No. SR-OCC-2009-18) be, and hereby is, approved.¹¹

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 15 U.S.C. 78q-1.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹² 17 CFR 200.30-3(a)(12).