

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69534; File No. SR-OCC-2013-03)

May 8 , 2013

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change to Add Provisions to the By-Laws to Facilitate the Use of the Stock Loan/Hedge Program by Canadian Clearing Members

I. Introduction

On March 8, 2013 The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-OCC-2013-03 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The proposed rule change was published for comment in the Federal Register on March 26, 2013.<sup>3</sup> The Commission received no comment letters. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The purpose of the proposed rule change is to add provisions to the By-Laws governing the OCC’s Stock Loan/Hedge Program to facilitate the use of the Stock Loan/Hedge Program by Canadian Clearing Members.

OCC’s Stock Loan/Hedge Program is provided for in Article XXI of the By-Laws and Chapter XXII of the Rules, and provides a means for OCC clearing members to submit broker-

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 34-69188 (March 20, 2013), 78 FR 18382 (March 26, 2013).

to-broker stock loan transactions<sup>4</sup> to OCC for clearance.<sup>5</sup>

Currently, for OCC clearing members to participate in OCC's Stock Loan/Hedge Program, they must be members of the Depository Trust Company ("DTC") and maintain accounts to facilitate Delivery Orders ("DOs") to approved counterparties for stock loan transactions. Canadian Clearing Members (who are otherwise eligible to participate in the Stock Loan/Hedge Program) are not participants of DTC. For purposes of settling transactions in U.S. equity securities, Canadian Clearing Members ordinarily rely on the services of CDS Clearing and Depository Services Inc. ("CDS"),<sup>6</sup> which provides a cross-border service to clear and settle trades with U.S. counterparties.<sup>7</sup>

OCC is amending Interpretation .07 to Section 1 of Article V of the By-Laws to allow participation by Canadian Clearing Members in the Stock Loan/Hedge Program by permitting

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<sup>4</sup> Broker-to-broker transactions are independently-executed stock loan transactions that are negotiated directly between two OCC clearing members.

<sup>5</sup> Where a stock loan transaction is submitted to, and accepted by, OCC for clearance, OCC substitutes itself as the lender to the borrower and the borrower to the lender, thus serving a function for the stock loan market similar to the one it serves within the listed options market. OCC thereby guarantees the future daily mark-to-market payments between the lending clearing member and borrowing clearing member, which are effected through OCC's cash settlement system, and the return of the loaned stock to the lending clearing member and the collateral to the borrowing clearing member, upon close-out of the stock loan transaction. OCC leverages the infrastructure of the DTC to transfer loaned stock and collateral between OCC clearing members.

<sup>6</sup> CDS is Canada's national securities depository, processing over 413 million trades annually. One of CDS's services enables its Canadian participants to clear and settle trades (which would include stock loan and borrow transactions) with U.S. counterparties through affiliations with DTC and the National Securities Clearing Corporation ("NSCC"). Under current OCC Rules 901(a) and (g), Canadian Clearing Members are able to effect settlement of deliver/receive obligations arising from exercised or assigned stock options and matured stock futures by appointing CDS to act as their agent through the arrangements with DTC and NSCC.

<sup>7</sup> OCC is not a party to such cross-border service arrangements.

them to appoint CDS to act as their agent in effecting DOs for stock loan transactions through DTC under arrangements similar to those used for deliveries under options and futures.<sup>8</sup> Upon such an appointment, a sponsored sub-account will be established on behalf of the Canadian Clearing Member in a CDS participant account at DTC, through which the Canadian Clearing Member can obtain access to similar DTC services used by U.S. clearing members who maintain participant accounts at DTC in respect to stock loan transactions. Through their identified sub-accounts within a CDS participant account at DTC, Canadian Clearing Members will be able to effect DOs for stock loan transactions to other DTC participants in the same manner as U.S. clearing members. The cross-border service offered by DTC and CDS will enable Canadian Clearing Members to transfer securities between their accounts held at CDS and the identified sub-accounts carried on their behalf in CDS participant accounts held at DTC to effect DOs for stock loan transactions.

Under the amended Interpretation .07 to Section 1 of Article V of the By-Laws, a Canadian Clearing Member that appoints CDS to act for it in connection with the Stock Loan/Hedge Program will be required to agree with OCC that the clearing member remains responsible to OCC in respect of its stock loan and borrow positions regardless of any non-performance by CDS, that OCC may treat any failure of CDS to complete delivery or payment required to close an open stock loan or borrow position as a failure by such Canadian Clearing Member, thereby triggering OCC's buy-in and sell-out procedures and such other procedures and remedies as are provided under OCC's Rules, including recourse to the collateral deposited by

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<sup>8</sup> Unlike settlement of deliver/receive obligations in respect of stock options and stock futures, stock loan and borrow transactions do not involve NSCC.

the clearing member. Accordingly, OCC believes that it will have no credit exposure to CDS as the result of a failure by CDS to perform. OCC will seek acknowledgement of CDS and DTC with respect to these arrangements. If, for any reason, CDS ceases to act for one or more Canadian Clearing Members,<sup>9</sup> OCC will have authority to require clearing members to close out open stock loan and borrow positions through buy-in and sell-out procedures, or any other procedures provided in the By-Laws or Rules, if necessary.

In order to accommodate the participation by Canadian Clearing Members in the Stock Loan/Hedge Program, OCC will make certain conforming changes to its Non-U.S. Clearing Member Agreement.<sup>10</sup> OCC also will make certain technical changes to its Non-U.S. Clearing Member Agreement for clarity and consistency with its U.S. Clearing Member Agreement.

Finally, for ease of reference throughout the proposed addition to Interpretation .07 to Section 1 of Article V of the By-Laws, OCC is amending Section 1 of Article I of the By-Laws to define a Canadian Clearing Member approved to participate in the Stock Loan/Hedge Program as a “Canadian Hedge Clearing Member.”

### III. Discussion

Section 19(b)(2)(C) of the Act<sup>11</sup> directs the Commission to approve a proposed rule

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<sup>9</sup> A Canadian Clearing Member will be obligated, under amended Interpretation .07 to Section 1 of Article V of the By-Laws, to promptly notify OCC in writing if it knew or reasonably expected CDS to cease acting on its behalf, or if CDS had ceased acting on its behalf, with respect to effecting DOs for stock loan and stock borrow transactions.

<sup>10</sup> As part of the application process to become a clearing member of OCC, any non-U.S. applicant must execute a copy of OCC’s Non-U.S. Clearing Member Agreement. In the agreement, the applicant makes certain representations with respect to, among other things, the types of transactions it will engage in as a Non-U.S. Clearing Member.

<sup>11</sup> 15 U.S.C. 78s(b)(2)(C).

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. Section 17A(b)(3)(F) of the Act<sup>12</sup> 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 and foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

By facilitating the inclusion of Canadian Clearing Members in OCC's Stock Loan/Hedge Program, the rule change serves to broaden the scope of OCC clearing members that are able to participate in stock loan transactions and thereby further promotes the prompt and accurate clearance and settlement of stock loan transactions, and also fosters cooperation and coordination with persons engaged in the clearance and settlement of stock loan transactions. The rule change achieves these objectives while also continuing to protect the clearing system against risk.

#### 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 Act<sup>13</sup> and the rules and regulations thereunder.

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<sup>12</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>13</sup> 15 U.S.C. 78q-1.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (File No. SR-OCC-2013-03) be and hereby is APPROVED.<sup>15</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 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).

<sup>16</sup> 17 CFR 200.30-3(a)(12).