

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58901; File No. SR-OCC-2008-06)

November 5, 2008

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a  
Proposed Rule Change Relating to the Stock Loan/Hedge Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on February 25, 2008, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) and on October 7, 2008, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons.

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

The proposed rule change would mitigate inconsistencies that may result under the Stock Loan/Hedge 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 these statements.<sup>2</sup>

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by OCC.

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

OCC has decided to take certain steps to provide for the continued growth and development of its Stock Loan/Hedge Program ("Program"). These include (1) elimination of the ability of clearing members to carry stock loan and borrow positions without depositing risk margin and (2) adjusting the amount of required risk margin where stock loan collateral provided by the borrower to the lender exceeds the value of the borrowed stock.

Background and General Description of the Proposed Rule Change

The Program is provided for in Article XXI of OCC's By-Laws and Chapter XXII of the Rules. It provides a means for OCC clearing members to submit certain stock loan/borrow transactions ("stock loan transactions") to OCC for clearance. The stock and the stock loan collateral move through the facilities of The Depository Trust Company from the lending clearing member ("lender") to the borrowing clearing member ("borrower"), and vice-versa when the stock is returned, in the same way that such transactions are ordinarily effected. Where the stock loan transaction is submitted to OCC for clearance, however, OCC is substituted as the lender to the borrower and the borrower to the lender. Thereafter, OCC guarantees performance of the stock loan transaction with respect to delivery and return of stock and collateral and the making of daily mark-to-market payments between the lender and borrower, which are effected through OCC's cash settlement system.

One advantage of submitting stock loan transactions to OCC is that the stock loan and borrow positions then reside in the clearing member's options accounts at OCC and to the extent that they offset the risk of options positions carried in the same account, may reduce the clearing member's margin requirement in the account. OCC's risk is, in turn, reduced by having the benefit of the hedge. Nevertheless, OCC currently permits qualified clearing members to elect to

submit stock loan and borrow transactions to OCC on a “margin ineligible basis,” meaning that the positions are excluded from OCC’s margin calculations for the account containing those positions. Margin-ineligible stock loan and borrow positions do not reduce the margin requirement for the account to reflect any offsetting value they might have, nor does OCC collect additional margin to reflect the risk of those positions. The election is made by each clearing member on an account-by-account basis so that all stock loan and borrow positions in a particular account are carried on a margin ineligible basis or none are. In order to carry stock loan and borrow positions on a margin ineligible basis, a clearing member must meet heightened standards of creditworthiness as set forth in Interpretation and Policy .06 under Section 1 of Article V of OCC’s By-Laws.

While OCC believes that the current credit-based risk management approach has been adequate to date given historical Program activity levels, OCC also believes that a more conservative approach is warranted to provide for further growth of the Program and greater market volatility. OCC therefore seeks to better manage the market risk resulting from open stock loan and borrow positions by applying its standard margining approach to all such positions.

Another potential exposure that OCC seeks to address arises from the stock loan market practice of requiring the borrower to overcollateralize a position by giving the lender cash collateral equal to 102% of the position's current market value. OCC’s rules provide that OCC’s guarantee of Program transactions extends to the full value of the collateral exchanged as part of a stock loan transaction. Therefore, if a lender were to fail, even if the stock could be sold out at 100% of the marking price, the borrower would be left with a 2% deficiency, for which OCC would be liable. Managing this potential exposure will be accomplished by (a) an additional

margin charge applied to lenders executing stock loans at 102% in an amount equal to the 2% excess collateral and (b) borrowers receiving receive a margin credit in an equal amount. These new margin charges/credits are independent of, and in addition to, the risk margin determined by the “STANS” margining system that will be collected and maintained from both lenders and borrowers.

In connection with the submission of this filing, OCC has confirmed with the Commission staff that the proposed rule change would not have adverse consequences to clearing members under Rule 15c3-1, the Commission’s net capital rule.<sup>3</sup> Specifically, where stock loan/borrow transactions are submitted to OCC for clearance through the Program, any additional amount of margin required to be deposited with OCC as a result of such transactions shall be treated the same as any other portion of the OCC margin deposit and shall therefore not constitute an unsecured receivable and shall not be required to be deducted from net capital.

In order to minimize any potential disruptive impact associated with these changes in the margin treatment of stock loan and borrow positions, OCC would utilize two initial phase-in periods. There would be a one-month grace period (beginning from the date of Commission approval of this rule filing) before the changes are applied to any positions. For the next two months, all new positions must be submitted on a margin-eligible basis and will be subject to the overcollateralization provisions, but positions that were carried on a margin-ineligible basis as of the date of the approval order will not be required to be margined or subject to the overcollateralization provisions. After the end of that initial three-month period, all stock loan and borrow positions in all accounts would be carried on a margin-eligible basis and would be subject to the overcollateralization provisions, regardless of when the positions were established.

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<sup>3</sup> 17 CFR 240.15c-3-1.

Rule Amendments Applicable to Changes in the Program.

OCC proposes the following amendments to its Rules to achieve the above-referenced initiative and accommodate and facilitate the continued growth and development of the Program.

1. Margin Requirements—Rule 601

OCC will amend Rule 601(e) to eliminate its current category of “margin-ineligible” accounts, and instead apply its standard margining approach to all Program positions using its “STANS” system. This change will become effective three months following the date of the Commission’s order approving this rule filing. In addition, a new interpretation .06 would be added to Rule 601 setting forth the additional margin charges and credits, and the implementation schedule, applicable to stock loan and borrow positions that have collateral set at 102%.

2. Instructions to the Corporation—Rule 2201

Rule 2201(a) is proposed to be amended to provide that, with respect to standing instructions that clearing members provide to OCC, the requirement to notify OCC of the fact that the clearing member is approved to maintain stock loan positions and stock borrow positions in its accounts on a non-margined basis, and the account or accounts that are to be margin-ineligible, shall become inapplicable three months from the SEC’s approval order. After that time, OCC will have eliminated the ability to carry any stock loan or borrow positions on a “margin-ineligible” basis.

3. Initiation of Stock Loans—Rule 2202

Rule 2202(f) is proposed to be amended to specify that, one month after the Commission's approval order, a member shall not be able to submit new stock loan transactions to OCC for clearance in a margin-ineligible account.

OCC believes that the proposed rule change is consistent with the purposes and requirements of the Act because it is designed to promote the prompt and accurate clearance and settlement of stock loan transactions, to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. It accomplishes this purpose by applying margin requirements designed to enhance OCC's protection against the risk of carrying stock loan and borrow positions. The proposed rule change is not inconsistent with the existing rules of OCC, including any rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any material burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period: (i) as the Commission may designate up to ninety days of such date if

it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### 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-2008-06 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-OCC-2008-06. 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 filing 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\\_08\\_06.pdf](http://www.theocc.com/publications/rules/proposed_changes/sr_occ_08_06.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-2008-06 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>4</sup>

Florence E. Harmon  
Acting Secretary

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<sup>4</sup> 17 CFR 200.30-3(a)(12).