

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55653; File No. SR-OCC-2006-09)

April 20, 2007

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Choice of Law and Forum Selection

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on May 22, 2006, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on December 12, 2006, amended the proposed rule change as 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 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 proposed rule change would provide for the addition of new general choice of law and forum selection provisions to OCC's By-Laws.

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.²

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified parts of these statements.

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

The proposed rule change would add new general choice of law and forum selection provisions to OCC's By-Laws. The purpose of the proposed rule change is to ensure there are appropriate choice of law and forum selection provisions governing all contractual relations between OCC and each of its clearing members. The proposed provisions should provide greater clarity, consistency, and predictability in the application of the law to all contractual relations between OCC and each of its clearing members and in the choice of forum in the event of litigation on such matters.

OCC's By-Laws and Rules each currently contain choice of law provisions that apply in somewhat limited circumstances. This approach is problematic as it could lead to inconsistencies between the two provisions or because it may fail to properly specify a governing law with respect to certain contractual relations altogether.

Article VI, Section 9(c) of OCC's By-Laws provides that Illinois law, specifically the Illinois Uniform Commercial Code, is the governing law with respect to cleared contracts. A "cleared contract" is defined in Article I, Section 1 of OCC's By-Laws as "a cleared security or commodity future or futures option that is cleared by [OCC]." A "cleared security" is defined as "an option contract (other than a futures option), a security future or a BOUND." However, OCC has interactions and relationships with clearing members not directly involving cleared contracts (e.g., membership and financial requirements). Accordingly, the choice of law provisions in Article VI, Section 9(c) are not comprehensive.

OCC Rule 614(m), which clarifies the limited obligations of OCC in connection with pledges of cleared securities, incorporates certain provisions of Article VI, Section 9 of the By-Laws by reference and also contains special provisions applicable in the event that,

notwithstanding the choice of law provisions of Article VI, Section 9(c), the laws of a jurisdiction that has not adopted the 1994 revisions to Article 8 and 9 of the UCC are applicable to security interests in pledged securities. However, all 50 U.S. States, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico have now adopted the 1994 revisions to Article 8 and 9 of the UCC, rendering the special provisions unnecessary.

Article V of OCC's By-Laws (Clearing Members), Section 3 (Conditions to Admission), subparagraph (k) provides that as a condition to admission as a clearing member non-U.S. securities firms must consent to the jurisdiction of Illinois courts and to the application of U.S. law in connection with any dispute with OCC arising from membership. However, this provision only applies to the limited context of disputes with OCC arising from membership.

The proposed rule change would add a general choice of law provision to OCC's By-Laws in order to provide consistency and predictability in the application of the law to all relations between OCC and its clearing members. This provision would be particularly useful with respect to collateral posted by non-U.S. clearing members where a clear choice of law provision could provide further assurance that OCC's interests in such collateral are properly perfected. Such a provision would also decrease the likelihood of an inadvertent inconsistency among provisions of the various Articles of the By-Laws.

Illinois law is the most logical choice to be the governing law under the proposed choice of law provision given OCC's location and OCC's familiarity with Illinois law. Selecting Illinois law, along with federal law, as governing law would also result in the greatest consistency with current provisions of OCC's By-Laws and Rules. In addition, selection of Illinois as the forum for resolving any claims or disputes arising out of or relating to OCC's By-

Laws or Rules would be most logical in light of the consistent application of Illinois law to relations between OCC and its clearing members.

The following proposed revisions to OCC's By-Laws and Rules are necessary to create a general choice of law provision:

(1) New Choice of Law Provision: OCC proposes to add a new Section 10 (General Choice of Law and Forum Selection) to Article IX (General Provisions) of its By-Laws. New Section 10 would specify Illinois law as the governing law with respect to OCC's By-Laws and Rules as well as any agreements between OCC and clearing members. It would also specify that any lawsuits between clearing members and OCC be brought in a federal court or in the absence of federal jurisdiction in a state court located in Chicago, Illinois. Existing Sections 10-12 of Article IX would be renumbered as Sections 11-13 but would otherwise remain unchanged.

(2) Amendments to Other Sections of the By-Laws: OCC proposes that Article VI, Section 9(c) of the By-Laws be removed in its entirety and replaced with a reference to the proposed Article IX, Section 10 of the By-Laws and with a notice provision that persons desiring to perfect security interests in cleared securities seek the advice of counsel.

(3) Amendments to Rules: OCC proposes to make conforming amendments to Rule 604(b)(3)(ii) and to Interpretation and Policy .01 under Rule 614. These amendments are necessary in light of the adoption of the general choice of law provision described above. OCC further proposes that language in Rule 614(m) providing for a contingency in the event of the application of the law of a jurisdiction that has not adopted the 1994 amendments to Articles 8 and 9 of the UCC be deleted as no longer necessary.

The proposed rule change is consistent with Section 17A of the Act because it is designed to assure the safeguarding of securities and funds which are in the custody or control of the OCC

or for which OCC is responsible, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and in general protects investors and the public interest by providing for clarity and predictability in the application of the law to all contractual relations between OCC and its clearing members, especially with respect to the perfection of interests in collateral. Other than as described in footnote 1 to Rule 604, the proposed rule change is not inconsistent with any other By-Laws or Rules of OCC, including those 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 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 35 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 90 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 the 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. Please include File Number SR-OCC-2006-09 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-OCC-2006-09. 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 Section, 100 F

Street, NE, Washington, DC 20549. 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 www.optionsclearing.com. 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-2006-09 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.³

Nancy M. Morris
Secretary

³ 17 CFR 200.30-3(a)(12).