

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66742; File No. SR-OCC-2012-05)

April 5, 2012

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Relating to Rescinding a Policy Interpretation Affecting Certain Adjustments

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder² notice is hereby given that on March 26, 2012, 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 proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(1)⁴ thereunder.

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

The proposed rule change would rescind a policy interpretation adopted by the OCC Securities Committee relating to the possible reclassification of recurrent cash dividends for adjustment purposes. A conforming change would also be made to the corresponding policy applicable to security futures.

II. Self-Regulatory Organization’s Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(1).

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.

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

Under Article VI, Section 11 of the OCC By-Laws, the Securities Committee ("Committee"), (which is comprised of representatives of all participant options exchanges and OCC) may adopt statements of policy or interpretations pertaining to adjustments to the terms of listed options in response to corporate events. All adjustments to particular options are determined on a case by case basis by adjustment panels of the Committee convened for that purpose.

Interpretation and Policy .01 ("Interpretation") under Article VI, Section 11A of OCC's By-Laws provides that cash dividends or distributions by the issuer of the underlying security that are "non-ordinary" will normally result in an adjustment to the terms of listed stock options. In 2010, an amendment (the "Amendment") was effected to the Interpretation, and to the corresponding interpretation under Section 3 of Article XII (applicable to security futures), under which the Committee could under certain conditions cease adjusting for recurring cash dividends previously deemed to be non-ordinary dividends based on subsequent facts suggesting that the dividends should be reclassified as "ordinary". (OCC and not the Committee determines adjustment made under Article XII, Section 3 although one of the criteria for OCC to use is "consistency with the actions of the Securities Committee in making adjustments to options on the same underlying interest".)

The Amendment set forth the conditions under which the Committee could cease

adjusting for non-ordinary cash dividends as: (i) the issuer discloses that it intends to pay such dividends or distributions on a quarterly or other regular basis, (ii) the issuer has paid such dividends or distributions for four or more consecutive months or quarters or two or more years after the initial payment whether or not the amounts paid were the same from period to period, or (iii) the Committee determines for other reasons that the issuer has a policy or practice of paying such dividends or distributions on a quarterly or other regular basis. In fairness to existing holders of open interest who may have assumed option positions with the belief that the Committee would continue to adjust for these recurring “special” dividends, the Amendment was made effective only for dividends and distributions announced after February 1, 2012.

The purpose of this rule change is to rescind the change in policy allowing reclassification of certain dividends that was to be implemented on February 1, 2012, under the aforementioned Amendment.

1. Background

The Amendment was prompted by a series of cash dividends declared by Diamond Offshore Corporation (“DO”). DO characterized these dividends as “special” and differentiated them from the company’s “regular” cash dividends. The “special” and “regular” DO dividends have customarily gone “ex-distribution” on the same date, and DO has declared a special dividend for every quarter since the fourth quarter of 2007. Initially, the Committee deemed these “special” dividends to be non-ordinary under the Interpretation and adjusted listed options in response. However, the frequent adjustment to DO listed options in response to the recurrent special dividends caused serious operational problems in terms of option symbol and series proliferation that in turn adversely affected liquidity for the adjusted series. (Volume tends to gravitate to the standard option symbol and series at the expense of the adjusted option symbol

and series.) The Committee and others felt that such DO dividends had been declared so consistently and predictably that they should no longer be considered “non-ordinary” for adjustment purposes. Accordingly, the Committee adopted the Amendment.

As the February 1, 2012, effective date approached, OCC and the Committee became aware of investor questions and concerns regarding the application of the reclassification policy. Consistent with other adjustment provisions, the Amendment was written to provide the Committee with discretion to respond to future events. Assuming the criteria referenced above are satisfied, the Amendment provides that the Committee may exercise its best judgment to determine on a case by case basis whether a “special” dividend will be reclassified as ordinary so that adjustments on the overlying options and futures would cease. However, in considering investor questions and concerns, OCC and the Committee became aware that investors sought more definitive guidance about the likelihood of individual decisions under the Amendment. For example, although the Amendment indicates the Committee *may* reclassify special dividends as ordinary, it does not express criteria that will aid investors in anticipating when the Committee *will* reclassify such dividends. The Committee considered a range of hypothetical cases and found it difficult to identify and articulate in advance clear, specific considerations that would lead to particular outcomes across the wide range of cases that the Committee may be called upon to consider. The Committee was also concerned that if the Amendment was further modified to make its applications “automatic” and thereby predictable, it could be “locked in” to actions it would otherwise deem inadvisable (for example, not adjusting for a dramatically large special dividend declared after adjustments “automatically” ceased). In addition, the Committee was informed that announcing decisions to cease adjusting for recurring special dividends at the time of the final adjustment, as was the intention under the Amendment and was announced in

OCC Information Memos, did not provide enough guidance to traders. (For example, traders of 2014 LEAPS options do not want to wait until the 2012 special dividend to learn whether the anticipated 2013 dividend would be reclassified as ordinary.)

In view of the uncertain application of the Amendment, the Committee decided to adjust for the February 2012 DO special dividend and to not take the opportunity afforded by the Amendment to cease adjusting for future DO special dividends. While the decision not to reclassify was within the discretion of the Committee as set forth in the Amendment and was explained in OCC information memoranda, it appears to have caused further investor confusion. Therefore, the Committee recommended to the Board of Directors of OCC that OCC seek approval to rescind the reclassification policy as provided in the Amendment.

2. Rationale for the Proposal to Amend the OCC By-Laws

OCC and the Committee especially note three factors which favor rescinding the reclassification policy: (1) An industry change to options symbology (implemented after the adoption of the rescission policy) has substantially alleviated the operational burdens associated with recurrent adjustments (especially option symbol proliferation), which were highlighted in the instance of DO (With this change in symbology, all adjusted series can normally be housed under the standard option symbol, dramatically reducing option symbol proliferation.); (2) OCC and the Committee believe alleviation of investor uncertainty is of paramount importance and have concluded that attempts to further modify the Amendment to provide more specific guidance about the application of the Amendment to particular cases may be complicated and thereby create even more uncertainty for investors; and (3) If the reclassification policy is rescinded, non-ordinary dividends which have occasioned adjustments in the past will ordinarily continue to occasion adjustments in the future and thus alleviate investor uncertainty.

The reclassification policy applied to listed options was discussed in and published in interpretative guidance, which will be updated to reflect its rescission.⁵ Clean and marked copies of the updated interpretative guidance are available as described below. The marked copy shows changes from the current language.

* * *

The proposed change is consistent with Section 17A of the Act because it facilitates the prompt and accurate clearance and settlement of securities transactions and the protection of investors and reduces unnecessary costs and burdens on investors and persons facilitating transactions on their behalf. It does so in response to investor feedback by reducing uncertainty regarding adjustments for certain cash dividends and distributions. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

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

OCC has not solicited and does not intend to solicit comments regarding this proposed rule change. OCC has not received any unsolicited written comments from interested parties.

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

The foregoing rule change was filed pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(1) of Rule 19b-4 thereunder and therefore became effective on filing although

⁵ See Exchange Act Release Nos. 34-58059 (June 30, 2008), 73 FR 36367 (July 9, 2008); 34-59442 (February 24, 2009), 74 FR 9654 (March 5, 2009); and 34-62879 (September 9, 2010), 75 FR 56631 (September 16, 2010). Consistent with past practice, the interpretative guidance will be available on OCC's public website but not incorporated into OCC's By-Laws and Rules.

OCC will delay the implementation of the rule change until it is deemed certified under CFTC Regulation §40.6. At any time within sixty days of the filing of such rule change, the Commission summarily may temporarily suspend 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.

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 may be submitted by using 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 No. SR-OCC-2012-05 on the subject line.
- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C., 20549-1090.

All submissions should refer to File Number SR-OCC-2012-05. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at

http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_12_05.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-2012-05 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.⁶

Kevin M. O'Neill
Deputy Secretary

⁶ 17 CFR 200.30-3(a)(12).