

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-NASD-2005-089 on the subject line.

#### Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-089. 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. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. 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-NASD-2005-089 and should be submitted on or before August 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52120; File No. SR-OCC-2005-10]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Certain Procedures With Respect to the OCC's Stock Loan/Borrow Program

July 25, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 7, 2005, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change codifies certain administrative procedures with respect to the OCC's stock loan/borrow 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>

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

The principal purpose of the proposed rule change is to add Interpretations and Policies reflecting changes in OCC's administrative procedures intended to provide hedge clearing members with the flexibility to allocate stock loan and stock borrow positions among their OCC accounts at any time during the business day. The proposed Interpretations also codify

certain existing policies with respect to OCC's Stock Loan/Hedge Program.

Clearing members participating in the stock loan program process loan and return transactions through The Depository Trust Company ("DTC") and designate them as eligible for clearance at OCC through use of special codes. DTC transmits a file containing stock loan transaction data to OCC each business day around 3:15 p.m. A clearing member's transactions are identified only by its depository account number which is translated by OCC's systems to an OCC clearing number. After processing this data, OCC permits clearing members to access its stock loan system between about 4:00 p.m. (CT) and about 7:00 p.m. (CT) ("allocation window") in order to allocate both existing and new positions among the clearing member's accounts. Any unallocated positions are posted to the clearing member's designated default account for this purpose.<sup>3</sup> Currently, clearing members are permitted to perform such allocations only with respect to accounts maintained under the OCC clearing number in which the stock loan/borrow positions were cleared.

As reflected in the proposed Interpretations and Policies to Rule 2201, OCC is changing its administrative procedures in two respects in order to address comments from clearing members. First, clearing members will now have the ability to make allocations of stock loan and stock borrow positions at any time during the day even though DTC has not yet reported the current day's transactions. Second, OCC will now permit a clearing member that is assigned more than one clearing member number to allocate stock loan and borrow positions to accounts across all of its clearing numbers.<sup>4</sup>

Clearing members have advised OCC that they are often aware of the specific stock loan/borrow activity taking place during the day and can predict with

<sup>3</sup> OCC permits some clearing members to carry stock loan and stock borrow positions in a designated account on a "margin ineligible" basis, meaning that the positions are excluded from the calculation of the margin requirement for that account. Stock loan and stock borrow positions carried on a margin ineligible basis will neither generate or increase a margin requirement nor reduce a margin requirement.

<sup>4</sup> Some clearing members have more than one clearing member number as a result of having acquired other clearing members or having requested separate numbers to identify particular divisions or sets of accounts for internal purposes. In other cases, OCC may assign additional clearing member numbers to a clearing member in order to permit the clearing member to maintain additional accounts that cannot be accommodated under the same number within OCC's system.

<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.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

reasonable accuracy the final loan position that will be available for allocation at the end of the day. Providing the requested functionality will enable clearing members to: (i) Perform all or a significant portion of their allocations earlier in the day, which makes it easier for OCC to begin stock loan/borrow processing at the scheduled time and (ii) apply stock loan and borrow positions to accounts maintained under other clearing numbers in order to more effectively reduce their margin requirements.

While clearing members will have the ability to review, verify, and change their allocations until a specified deadline, it is possible that the total number of loaned or borrowed shares that a clearing member has allocated may not match the clearing member's total end of day loan/borrow position in the DTC file. To address that possibility, clearing members will be required to give standing instructions specifying the order in which they prefer loaned and borrowed shares to be allocated to their accounts. In accordance with those instructions, OCC will allocate the inventory of loaned or borrowed shares to the account with the highest preference designated by the clearing member up to the number of shares that the clearing member allocated to that account. If there are remaining shares, OCC will allocate such shares to the next preferred account up to the amount allocated by the clearing member. OCC will continue this process until all shares have been allocated. Any shares in excess of the aggregate amount allocated by the clearing member will be applied to the clearing member's designated default account.

In order to process a return of fewer than all of the loaned/borrowed shares of a particular stock in the clearing member's inventory, OCC will first return shares from the least preferred account (as designated by the clearing member) up to the total amount of loaned/borrowed shares in that account. If additional shares are to be returned, OCC will return shares from the next priority account. OCC will continue this process until the entire amount of the return has been applied. Clearing members that participate on the Stock Loan Roundtable have endorsed the adoption of these allocation preference guidelines.

The Interpretations and Policies proposed to be added to Article XXI, Section 5 of OCC's By-laws merely clarifies the existing policy. A hedge clearing member is not permitted to allocate any stock loan or stock borrow position to any proprietary cross-margin account, non-proprietary cross-margin

account, internal non-proprietary cross-margining account, or segregated futures accounts. Although OCC anticipates that it will propose to change this policy in the future, the existing practice will apply until appropriate regulatory approvals are obtained.

The proposed change is consistent with Section 17A of the Act<sup>5</sup> and the rules and regulations thereunder applicable to OCC because the changes are designed to promote the prompt and accurate clearance and settlement of transactions and to assure safeguarding of securities and funds in the custody and control of OCC. The proposed rule change is not inconsistent with the By-laws and 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 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**

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and Rule 19b-4(f)(4)<sup>7</sup> thereunder because it effects a change that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate 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*

- 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-2005-10 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-OCC-2005-10. 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 <http://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-2005-10 and should be submitted on or before August 19, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b-4(f)(4).

<sup>8</sup> 17 CFR 200.30-3(a)(12).