

date, is no more than 1 percentage point greater than the Fund's average annual total return for the 5-year period ending on such date;<sup>6</sup> and

ii. The transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the Fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common stock as frequently as twelve times each year, and as frequently as distributions are specified by or determined in accordance with the terms of any outstanding preferred stock as such Fund may issue.

7. *Amendments to Rule 19b-1.* The requested order will expire on the effective date of any amendment to rule 19b-1 that provides relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

**Florence E. Harmon,**  
*Deputy Secretary.*

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BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60743; File No. SR-OCC-2009-15]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change to Revise the Minimum Eligibility Criteria for Common Stock Loaned Through Stock Loan Programs and Deposited as Margin Collateral

September 29, 2009.

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> notice is hereby given that on August 28, 2009, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") 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

<sup>6</sup> If the Fund has been in operation fewer than five years, the measured period will be immediately following the Fund's first public offering.

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

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

solicit comments on the proposed rule change from interested persons.

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

The proposed rule change would revise minimum eligibility criteria applicable to common stock loaned through OCC's Stock Loan Programs and deposited as margin collateral.

#### 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>3</sup>

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

The purpose of this rule change is to revise OCC's minimum eligibility requirements for stock borrows and loans accepted in the OCC's Stock Loan Programs and common stock accepted as margin collateral.<sup>4</sup>

##### Stock Loan Programs

OCC's clearing services involve common stock<sup>5</sup> in several ways. Stocks

<sup>3</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>4</sup> This proposal furthers OCC's continuing efforts to utilize its System for Theoretical Analysis and Numerical Simulations ("STANS") to its fullest risk-management potential resulting in lower risk to OCC while also increasing margin offset opportunities for OCC clearing members. Recent OCC rule filings with a similar objective include (i) a rule change eliminating the practice of allowing clearing members to carry stock loan and borrow positions without collecting risk margin and requiring instead that all such positions be included in the STANS margin calculation [Securities Exchange Act Release No. 59036 (December 12, 2006), 73 FR 74554 (December 8, 2008)] and (ii) a rule change ("Collateral in Margins") providing that common stock deposited as collateral be included in the STANS calculation rather than valuing the collateral at a current market price less an arbitrary 30% haircut [Securities Exchange Act Release No. 58158 (July 15, 2008), 73 FR 42646 (July 22, 2008)]. In addition, largely in response to market conditions, OCC recently reduced the minimum price for common stocks held as collateral from \$10 to \$3 and eliminated the 10% concentration test for certain ETFs held as collateral. Securities Exchange Act Release No. 59845 (April 29, 2009), 74 FR 21039 (May 6, 2009).

<sup>5</sup> The term "common stock" or "stock" is broadly used in this rule change to refer to different types of equity securities including ETFs but not preferred stock.

are: (i) Underlying securities for exchange-traded equity option contracts, (ii) constituent securities of stock indexes that underlie stock index options or of indexes on which underlying ETFs are based, (iii) constituent securities of ETFs that although are not underlying securities are based on indexes that underlie index options ("Index Option Related ETFs"), (iv) the subject of stock loan or borrow transactions cleared pursuant to OCC's Stock Loan Programs, and (v) deposited with OCC as margin collateral. Rationalizing the interrelationship among the criteria applied to stocks for these various purposes will maximize the potential for offsets and reduce risk in the clearing system.

Under OCC's Stock Loan Programs, only loans of stocks that are either underlying securities for options or futures or ETFs based on a stock index underlying an index option contract are eligible for clearance through OCC (collectively, "Options-Related Stocks"). OCC restricted stock loan activity to limit its risk to loans supporting short sales that might be serving as hedges for options transactions or helping to add liquidity to the options markets. At the time this criterion was implemented in 2002, OCC managed the risk of stock loan transactions for most clearing members on a credit basis—that is OCC did not collect margin on such transactions. As noted above, OCC now requires margin on all stock loan transactions thus reducing the risk associated with this activity. Accordingly, OCC believes that it is no longer necessary or appropriate to limit stock loan transactions to Options-Related Stocks.

In connection with the foregoing change, OCC is proposing to supplement its existing criteria for stock eligible for the Stock Loan Programs by requiring that in order to qualify as an "Eligible Stock" for purposes of the Stock Loan Programs a stock must be a "covered security" as defined in Section 18(b)(1) of the Securities Act of 1933.<sup>6</sup> By agreement with the options exchanges, OCC already requires that all underlying stocks meet this criterion, and OCC believes that it is an appropriate minimum assurance of quality. In addition, OCC is imposing a \$3 minimum share price requirement

<sup>6</sup> "Covered securities" are securities that are authorized for listing on the New York Stock Exchange, the American Stock Exchange, the National Market System of the Nasdaq Stock Market (collectively, "Exchanges"), or any other national securities exchange, or tiers thereof, that the Commission determines are substantially similar to the listing standards applicable to securities on the Exchanges. 15 U.S.C. 77r(b)(1).

that would be applicable only to stocks other than Options-Related Stocks.<sup>7</sup> OCC would, however, retain the ability to waive the \$3 minimum price where specified other factors suggest that the stock is nevertheless suitable for inclusion in the Stock Loan Programs.

#### Common Stock as Collateral

Under current OCC Rule 604(b)(4), clearing members can deposit common stocks that meet the following criteria: minimum price of \$3 per share and traded on a national securities exchange, or traded in the Nasdaq Global Market or the Nasdaq Capital Market. The aggregate value of margin attributed to a single stock cannot exceed 10% of a clearing member's total margin requirement. Stocks are haircut by 30% for margin valuation purposes. Stocks that have been suspended from trading by or are subject to special margin requirements under the rules of a listing market because of volatility, lack of liquidity, or similar characteristics are not eligible for deposit as margin.

Under the approved but not yet implemented Collateral in Margins program, any common stock that meets the above criteria except the minimum price requirement and that is deliverable upon exercise or maturity of a cleared contract (*i.e.*, is an underlying security), as well as index option related ETFs, will be afforded collateral value as determined by STANS. Moreover, the margin concentration requirement will be inapplicable to such deposits. Thus, upon implementation of the Collateral in Margins proposal, the minimum price requirement and margin concentration requirement would be eliminated for common stocks that are underlying securities or index option related ETFs. The minimum price requirement is being eliminated for these securities in order to provide a greater opportunity for members to hedge their equity options positions with pledges of the underlying securities. This decision also reflects OCC's judgment that the minimum price requirement is less important in the current environment where OCC is able to closely monitor collateral in the form of common stock and to apply the sophisticated risk management technique incorporated in STANS in order to determine the appropriate value to assign to such collateral. The concentration test requirement is being eliminated because STANS contains its own built-in

functionality that adequately handles concentrated options and collateral holdings.

*In anticipation of the implementation of the Collateral in Margins program, and effective with such implementation, OCC proposes to further amend Rule 604(b)(4)(i) as follows:*

(1) Replace the requirement of listing on a national securities exchange or specific Nasdaq markets with the requirement that all common stocks deposited as margin must be "covered securities" as described above;

(2) Provide that the \$3 minimum share price requirement will apply to deposits of common stocks that are not Options Related Stocks;

(3) permit OCC to waive the \$3 minimum share price if it determines that other factors, including trading volume, the number of shareholders, the number of outstanding shares, and current bid/ask spreads warrant such action;

(4) delete Interpretation and Policy .13, adopted in SR-OCC-2009-08, which made the 10% concentration test inapplicable to certain ETFs because the 10% test will be eliminated for all stocks (including ETFs) when Collateral in Margins is implemented.

In addition, OCC proposes to amend Rule 1001 to provide that the determination of "average aggregate daily margin requirement" and "daily margin requirement" would be performed without reference to any deposits of securities (*e.g.*, common stocks including fund shares) that were valued within STANS pursuant to Rule 601. This change ensures that contributions to the clearing fund will be determined without taking into account any reduction in margin requirements resulting from valuing deposits of such securities under STANS. Other proposed changes to Rule 1001 are conforming or clarifying in nature.

The changes proposed in this rule filing more closely align both the stock collateral and stock loan eligibility criteria with the criteria for selection of underlying equity securities. While some differences still exist, OCC believes that the proposed discretionary authority will provide OCC with sufficient flexibility to treat equity options, stock loan transactions, and stock collateral in a consistent manner when appropriate. For example, the \$3 minimum price requirement is similar or identical to requirements contained in the equity options listing criteria of the options exchanges. In addition, the factors that OCC proposes to be considered in determining whether an exception to the \$3 minimum may be

granted are consistent with those reflected in such criteria. These factors are widely regarded as among the most relevant in determining whether a stock is liquid.

STANS's functionality permits OCC to propose these changes. STANS considers a security's historical price volatility in generating its simulated market moves resulting in coverage parameters that vary based on the overall risk of a particular underlying security. STANS also identifies and addresses concentrated positions. By incorporating equity options positions, stock loan positions, and upon implementation of the Collateral in Margins changes common stock deposits within a single concentration analysis, OCC can identify where hedged positions exist and can also identify areas of cumulative exposure where additional collateral may be appropriate (*e.g.*, where a clearing member has long options, stock loan positions, and margin deposits all relating to the same security).

Upon Commission approval, OCC proposes to implement the changes to stock loan eligibility criteria immediately. OCC proposes that the changes in eligibility criteria for common stock deposited as margin be implemented concurrently with implementation of the Collateral in Margins program, which is currently scheduled for implementation in the fourth quarter 2009.

OCC believes the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act<sup>8</sup> and the rules and regulations thereunder because the proposed rule change will promote the prompt and accurate clearance and settlement of transactions in securities and safeguard assets within OCC's custody or control by facilitating appropriate offsets among equity options, stock loan and borrow positions, and stock collateral that are held in a single clearing member account thereby increasing market efficiency without increasing risk.

#### *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

<sup>7</sup> This minimum price requirement corresponds to the minimum price standard contained in the criteria used by the options exchanges for initial selection of underlying securities that are also "covered securities"

<sup>8</sup> 15 U.S.C. 78q-1.

have been received. OCC will notify the Commission of any written comments received by OCC.

### 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 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 Commissions 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-2009-15 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-2009-15. 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, D.C. 20549-1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of the OCC and on OCC's Web site at [http://www.optionsclearing.com/publications/rules/proposed\\_changes/sr\\_09\\_15.pdf](http://www.optionsclearing.com/publications/rules/proposed_changes/sr_09_15.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-2009-15 and should be submitted on or before October 27, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Florence E. Harmon,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60741; File No. SR-NYSEAmex-2009-45]

### Self-Regulatory Organizations; NYSE Amex LLC; Order Approving Proposed Rule Change Amending Rule 476A (Imposition of Fines for Minor Violation(s) of Rules)

September 29, 2009.

On July 29, 2009, NYSE Amex LLC ("NYSE Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change amending its Minor Rule Plan ("MRP") to incorporate additional violations into the MRP and to increase the fine levels for certain MRP violations. The proposed rule change was published for comment in the **Federal Register** on August 26, 2009.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

The Exchange proposes to amend its MRP to incorporate violations for opening transactions in restricted classes, failure to report position and account information, and failure to complete mandatory annual training.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 60520 (August 18, 2009), 74 FR 43176 ("Notice").

The Exchange proposes to implement a fine schedule for Amex Options Trading Permit ("ATP") Holders that effect opening transactions in restricted series of options, inconsistent with the terms of any such restriction, in violation of Rule 916 or 916C. This fine will consist of \$1,000 for the first violation during a rolling 24-month period, \$2,500 for a second violation within the same period, and \$5,000 for a third violation during the same period. The Exchange also proposes to incorporate violations for failing to accurately report position and account information to the Exchange on a Large Option Position Report ("LOPR") pursuant to Rules 906(a) and 906C(a). This fine will consist of \$1,000 for the first violation in a rolling 24-month period, \$2,500 for a second violation within the same period, and \$5,000 for a third violation within the same period. The Exchange believes that, in most cases, violations of trading in restricted classes and violations of LOPR reporting may be handled efficiently through the MRP. However, any egregious activity or activity that is believed to be manipulative will continue to be subject to formal disciplinary proceedings.<sup>4</sup> The Exchange also proposes to implement a fine schedule for individuals who fail to complete a mandatory regulatory training program in violation of Rule 50, Commentary .03-.04. This fine will consist of \$1,000 for the first violation in a rolling 24-month period, \$2,500 for a second violation within the same period, and \$5,000 for a third violation within the same period.

The Exchange also proposes to increase fines for violations of NYSE Amex Rules 933NY(a),<sup>5</sup> 935NY,<sup>6</sup> and 963NY<sup>7</sup> to \$1,000 for the first violation in a rolling 24-month period, \$2,500 for

<sup>4</sup> See Notice, *supra* note 3, 74 FR at 43177.

<sup>5</sup> NYSE Amex Rule 933NY(a) requires that a Floor Broker handling an order use due diligence to execute the order at the best price or prices available to him, in accordance with the Rules of the Exchange.

<sup>6</sup> NYSE Amex Rule 935NY states that users may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one second or (ii) the User has been bidding or offering on the Exchange for at least one second prior to receiving an agency order that is executable against such bid or offer.

<sup>7</sup> NYSE Amex Rule 963NY states that the highest bid/lowest offer shall have priority over all other orders. In the event there are two or more bids/offers for the same option contract representing the best price and one such bid/offer is displayed in the Consolidated Book, such bid shall have priority over any other bid at the post. In addition, if two or more bids/offers represent the best price and a bid/offer displayed in the Consolidated Book is not involved, priority shall be afforded to such bids in the sequence in which they are made. Rule 963NY also contains certain provisions related to split-price priority and priority of complex orders.