

structural changes to the Corporation's certificate of incorporation. These changes, however, do not impact the governance of the Exchange nor do they modify the relative ownership of the shareholders of the Corporation.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes any burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action**

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(6) thereunder.<sup>6</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange has argued that the proposed rule change is consistent with the protection of investors and the public interest because it would permit the Corporation to immediately amend its certificate of incorporation to facilitate the Corporation's IPO, and because the proposed amendments would not impact the ownership or governance of the Exchange.<sup>7</sup> The Exchange has stated that the Corporation's IPO may occur in the near future, and that the changes described in this proposal are a critical component of such IPO. The Exchange has represented that a waiver of the operative waiting period will allow the Corporation to promptly move forward with the IPO without delay. The Commission notes that the Exchange has also represented that the proposed

amendments to the Corporation's certificate of incorporation would not impact the Corporation's existing governance structure or ownership and voting limitations or the Exchange's self-regulatory functions. Therefore, the Commission believes that a waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. For this reason, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.<sup>8</sup>

At any time within 60 days of the filing of the proposed 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*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BYX-2012-007 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-BYX-2012-007. This file number should be included on the subject line if email 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 Web site 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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 publicly available. All submissions should refer to File Number SR-BYX-2012-007 and should be submitted on or before April 27, 2012.

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

**Elizabeth M. Murphy,**  
*Secretary.*

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**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66715; File No. SR-OCC-2012-04]

### **Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Stock Loan Buy-In and Sell-Out Rules**

April 2, 2012.

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 March 22, 2012, 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 solicit comments on the proposed rule change from interested persons.

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

The proposed rule change would make procedural changes to certain stock loan buy-in and sell-out rules.

<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>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>7</sup> See SR-BATS-2012-014, Item 7.

<sup>8</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

## 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 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.

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

As described below, OCC is proposing three procedural changes to certain rules relating to the Market Loan Program<sup>3</sup> and the Stock Loan/Hedge Program.<sup>4</sup>

First, OCC proposes to amend the buy-in and sell-out processes under the Market Loan Program. Under existing Rules, buy-in and sell-out transactions under the Market Loan Program would be executed by the relevant Loan Market using an independent broker. However, Clearing Members participating in the Market Loan Program have requested that the execution of such buy-in or sell-out transactions be left to the discretion of Lending Clearing Member or Borrowing Clearing Member, as applicable. OCC understands that Automated Equity Finance Markets, Inc. ("AQS"), the operator of the Loan Market supported by the Market Loan Program, supports the requested change and believes that allowing participants in the Market Loan Program to manage the buy-in and sell-out processes in the manner that they are accustomed to will foster the development of its marketplace. To accommodate such request, OCC proposes to amend Rule 2209A and Rule 2211A to update the buy-in and sell-out processes described therein and to redefine the respective rights, obligations, and responsibilities of OCC, Clearing Members and the relevant Loan Market in connection therewith.

More specifically, under existing rules where the Borrowing Clearing Member fails to return the specified quantity of

loaned stock (or where the Lending Clearing Member fails to pay the settlement price with respect to the specified quantity of loaned stock), the relevant Loan Market will instruct an independent broker to execute a buy-in (or sell-out) of the loaned stock, and OCC will determine in its sole discretion, as between OCC and the clearing members, whether the costs of the transaction are reasonable. Under the proposed rules, as is the more common practice in connection with securities lending, instead of an independent broker the Lending Clearing Member (or the Borrowing Clearing Member) would determine if and when to execute a buy-in (or sell-out) of the loaned stock. Because the Clearing Member would have sole discretion with respect to execution of the buy-in (or sell-out) transaction, such Clearing Member would be required to defend the timeliness of the transaction and the reasonableness of the costs if such matters were challenged. OCC would have no responsibility with respect to the resolution unless OCC had suspended the Clearing Member. In connection with the foregoing proposed changes, OCC and AQS would amend and restate the Agreement for Clearing and Settlement Services between the parties ("AQS Agreement"). A copy of the amended and restated AQS Agreement is attached to the proposed rule change.<sup>5</sup>

Second, OCC proposes to amend the Rules governing the Stock Loan/Hedge Program to add a sell-out process. Currently, Rule 2209, which governs regular termination of stock loans under the Stock Loan/Hedge Program, does not describe a sell-out process. Although a sell-out process is described in Rule 2211, the scope of its application is limited by the context of Rule 2211, which specifically governs the close-out of stock loan positions of suspended Clearing Members. Therefore, OCC proposes to amend Rule 2209 to add a sell-out process that would apply in the context of regular termination of stock loans and to amend Rule 2211 to update the buy-in and sell-out processes described therein and to redefine the respective rights, obligations, and responsibilities of OCC and Clearing Members in connection therewith. Rule

2209 would also be amended to clarify when stock loans are terminated, including codifying a long standing process which has permitted Clearing Members to a stock loan to certify to OCC that they have terminated the stock loan and transferred the settlement price between themselves.

Third, OCC proposes to amend the Rules governing the Stock Loan/Hedge Program to add a cash settlement process. Under the Market Loan Program, if the Lending Clearing Member is unable to complete a buy-in, OCC has the discretion to fix a cash settlement value for the quantity of the loaned stock not returned to the Lending Clearing Member, thereby facilitating the termination of the relevant stock loan [see Rule 2209A(b)(3)]. However, currently OCC does not have the same option available under the Stock Loan/Hedge Program. Therefore, OCC proposes to amend Rule 2209 and Rule 2211, as appropriate, to include a cash settlement process identical to the process available under the Market Loan Program.

Finally, in addition to the procedural changes described above, OCC proposes to amend Rule 2202(b) to clarify that with respect to a stock loan that has been novated by OCC under the Stock Loan/Hedge Program, any terms of the original stock loan (other than terms that establish congruence) and any representations, warranties, and covenants made by the parties to the original stock loan with respect to such loan, to the extent that they do not conflict with OCC's By-Laws and Rules, shall remain in effect as between such parties. This change clarifies that, for example, the agreements of the parties to the original stock loan transaction with respect to dividend and rebate payments (which are not guaranteed by OCC in the Stock Loan/Hedge Program) are not affected by the provisions of OCC's By-Laws and Rules.

The proposed changes to OCC's By-Laws and Rules are consistent with the purposes and requirements of Section 17A of the Act, as amended, because they are designed to promote the prompt and accurate clearance and settlement of stock loans by permitting Clearing Members to manage the buy-in and sell-out processes in the manner that they are accustomed to and by providing OCC with the additional option of closing out stock loans through a cash settlement process, thereby fostering cooperation and coordination with persons engaged in the clearance and settlement of stock loans, and removing impediments to and perfecting the mechanism of a national system for the prompt and

<sup>3</sup> The Market Loan Program, governed by Article XXIA of OCC's By-Laws and Chapter XXIIA of OCC's Rules, provides a framework that accommodates securities lending transactions executed through electronic trading systems ("Loan Markets").

<sup>4</sup> The Stock Loan/Hedge Program, governed by Article XXI of OCC's By-Laws and Chapter XXII of OCC's Rules, allows approved clearing members to register their privately negotiated securities lending transactions with OCC.

<sup>5</sup> Attached to the proposed rule change as Exhibit 5A is a marked copy showing the changes between the original and amended and restated AQS Agreement. These supporting changes to the AQS Agreement principally are technical in nature. Technical changes also have been made to reflect the use of DTC's Dividend Service to effect settlement of certain cash dividends. See Exchange Act Release No. 34-60881 (October 26, 2009), 74 F.R. 56253 (October 30, 2009) [SR-OCC-2009-16].

accurate clearance and settlement of stock loans. The proposed rule change is not inconsistent with any 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**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate 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 or disapprove 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 may be submitted by using the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>), or send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-OCC-2012-04 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, DC, 20549-1090.

All submissions should refer to File Number SR-OCC-2012-04. This file number should be included on the subject line if email 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 Web site 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 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at [http://www.optionsclearing.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_12\\_04.pdf](http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_12_04.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-2012-04 and should be submitted on or before April 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Elizabeth M. Murphy**,  
Secretary.

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66714; File No. SR-EDGA-2012-09]

### **Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to Rule 2.11 That Establish the Authority To Cancel Orders and Describe the Operation of an Error Account**

April 2, 2012.

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 March 22, 2012, EDGA Exchange, Inc. ("Exchange" or "EDGA") 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 by the Exchange. 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 Exchange proposes to amend Rule 2.11 to (1) add a new subparagraph (a)(6) that addresses the authority of the Exchange and its routing broker-dealer, Direct Edge ECN LLC d/b/a DE Route ("DE Route") to cancel orders if and when a systems, technical or operational issue (herein, each individually referred to as a "Systems Issue," and collectively referred to as "Systems Issues") occurs, and (2) amend subparagraph (a)(4) and add new subparagraph (a)(7) to describe the operation of an error account for DE Route. The text of the proposed rule change is available on the Exchange's Web site, at the Exchange's principal office and in the Public Reference Room of the Commission.

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

In its filing with the Commission, the Exchange 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. The self-regulatory organization 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 the Purpose of, and Statutory Basis for, the Proposed Rule Change*

###### 1. Purpose

The Exchange proposes to amend Rule 2.11 by adding subparagraph (a)(6) to address the authority of the Exchange and DE Route to cancel orders when a Systems Issue occurs, and by amending subparagraph (a)(4) and adding subparagraph (a)(7) to describe the conditions under which DE Route may maintain and use an error account.<sup>3</sup>

<sup>3</sup> DE Route is a facility of the Exchange. Accordingly, under Exchange Rule 2.11(a)(1), the Exchange is responsible for filing with the Commission rule changes and fees relating to DE Route's outbound router function. In addition, EDGA is using the phrase "the Exchange or DE Route" in this rule filing to reflect the fact that a decision to cancel orders affected by Systems Issue may be made by the Exchange or DE Route

<sup>6</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.