

*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-NYSE-2008-73. 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, 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 NYSE. 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-NYSE-2008-73 and should be submitted on or before September 9, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-19130 Filed 8-18-08; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58346; File No. SR-OCC-2008-08]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to its Facilities Management Agreements

August 12, 2008.

#### I. Introduction

On January 9, 2008, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2008-08 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the *Federal Register* on June 19, 2008.<sup>2</sup> No comment letters were received. This order approves the proposed rule change.

#### II. Description

The purpose of the proposed rule change is to provide an expedited process for reviewing a managed clearing member's request to operate without a facilities management agreement ("FMA").<sup>3</sup> Under OCC Rule 309(e), a managed clearing member that desires to terminate an FMA must withdraw from membership on the business day before the proposed termination unless the Membership/Risk Committee ("Committee") has determined in accordance with Article V, Section 1 of OCC's By-laws either that the managed clearing member has the operational capability, experience, and competence to perform the managed services required of a clearing member or that the managed clearing member has entered into another acceptable FMA that will be effective on or before such proposed termination.

From March, 2006 to February, 2008, the Committee reviewed three requests to terminate FMAs, all of which were

approved. In each case, the managed clearing member was required to defer terminating its FMA until the next regularly scheduled Committee meeting. To provide for a more timely review of certain FMA terminations, OCC is adopting a new Interpretation and Policy.<sup>4</sup> Under Rule 309. Under the new policy, a managed clearing member desiring to terminate its FMA will be permitted to request an expedited review. If OCC consents to an expedited review,<sup>4</sup> the Chairman, the Management Vice Chairman, or the President will be authorized to determine whether, as specified in Rule 309(e), a managed clearing member had the operational capability, experience, and competency to perform the managed services required of a clearing member, and to approve or disapprove the termination.

At the next regularly scheduled Committee meeting, the Committee will independently review *de novo* whether the managed clearing member has met the requirements of Rule 309(e) and determine whether or not to approve the FMA's termination. Notwithstanding that, if the Committee modifies or reverses the action taken by the Chairman, the Management Vice Chairman, or the President, any actions taken by OCC or the clearing member prior to the modification or reversal would not be invalidated, and no rights of any person arising out of such actions would be affected. In the unlikely event that the Committee disapproved of a termination previously approved by OCC, the clearing member would be given a reasonable time either to establish another FMA or to withdraw from membership.

This proposal is comparable to a process recently approved by the Commission which permits the expedited review of requests by operationally capable clearing members that desire to outsource certain of their clearing member obligations by entering into FMAs.<sup>5</sup> OCC believes that the rationale for giving senior management the authority to approve FMAs on an interim basis applies equally to FMA terminations. OCC believes the proposal strikes a reasonable balance between meeting the business requirements of clearing members and continuing to

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

<sup>2</sup> Securities Exchange Act Release No. 57963 (June 13, 2008), 73 FR 34969.

<sup>3</sup> Article V, Section 1 of OCC's By-laws, including the Interpretations and Policies thereunder, sets forth the requirements for membership. Interpretation and Policy.<sup>04</sup> permits an applicant for clearing membership ("managed clearing member") to meet specified membership requirements by entering into an FMA with another clearing member ("managing clearing member") pursuant to which the managing clearing member would perform certain of the applicant's obligations as a clearing member ("managed services"). An operationally capable clearing member also may elect to outsource certain of its obligations as a clearing member, and thereby, become a managed clearing member. OCC Rule 309(f).

<sup>4</sup> OCC would use the expedited review process for FMA terminations only in cases that present no significant or novel issues. Requests involving complex issues would be presented to the Committee at its next regularly scheduled meeting.

<sup>5</sup> Interpretation & Policy.01 to Rule 309. See also Securities Exchange Act Release No. 57535 (March 20, 2008), 73 FR 16086 (March 26, 2008) [SR-OCC-2008-01].

ensure appropriate review of their operational capabilities.

### III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.<sup>6</sup> The Commission finds the proposed rule change to be consistent with this requirement because the senior management has the experience and familiarity with clearing members to make such decisions and senior management's decision to approve the termination of FMAs prior to a scheduled Committee meeting are subject to the Committee's subsequent review at its next regularly scheduled meeting. Moreover, proposals for expedited review of an FMA termination would only occur where, in management's judgment, no significant or novel issues are raised by the termination.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-2008-08) be and hereby is approved.<sup>7</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-19115 Filed 8-18-08; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58347; File No. SR-OCC-2008-09]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Eligible Margin Assets

August 12, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(“Act”),<sup>1</sup> notice is hereby given that on May 15, 2008, 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 from interested persons.

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

The proposed rule change would eliminate foreign currencies and letters of credit denominated in a foreign currency as eligible margin assets.

#### 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 primary purpose of this rule change is to eliminate, as eligible forms of margin assets, foreign currency and letters of credit denominated in a foreign currency.

##### Background

The Philadelphia Stock Exchange, Inc. (“Phlx”) has delisted all physical delivery foreign currency and cross-rate foreign currency options (collectively, “currency options”) and has advised OCC that it does not presently plan to list contracts requiring foreign currency delivery. To support premium and exercise settlement for such currency options, OCC has maintained in various countries bank accounts that also have been used from time to time to hold margin deposits in foreign currencies. With the delisting of physical delivery currency options, these accounts are no longer needed for operational reasons. Few clearing members have deposited foreign currencies as margin with OCC and only then in de minimis amounts,

and no such deposits are currently held by OCC. In light of the limited and infrequent use of this margin asset class by clearing members, OCC has determined to close its foreign currency accounts for cost saving purposes. Closing these accounts means that OCC will no longer have the operational capability to accept foreign currency for margin purposes, and accordingly, OCC proposes to modify its rules to delete this asset class. Letters of credit denominated in a foreign currency have never been posted with OCC by clearing members, and their acceptance will be eliminated as well.

##### Rule Changes

To eliminate these forms of margin assets OCC would amend Rule 604. Specifically, references to deposits of foreign currencies would be deleted from paragraph (a), which relates to cash margin deposits. References to letters of credit denominated in a foreign currency would be deleted from paragraph (c). Other technical, conforming changes would be made to paragraph (c) to reflect such deletion. Because amended paragraph (c) would specify that letters of credit are to be denominated in U.S. dollars, specific references to U.S. dollar denominated letters of credit would be removed from Interpretations and Policies .03 and .08 under Rule 604. Interpretation and Policy .09 would be deleted in its entirety as it solely relates to deposits of letters of credit denominated in a foreign currency.

For rule transparency purposes, OCC also proposes to insert a notice at the beginning of the By-Law articles and Rule chapters that relate to physical delivery currency options (*i.e.*, Articles XV and XXI and Chapters XVI and XXII) to inform readers that such provisions are inoperative until further notice by OCC.

OCC believes that the proposed change is consistent with the Act because it removes the eligibility of asset classes for margin purposes that either are not currently used or have never been used by clearing members in order to reduce OCC's operating costs. 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 would impose any burden on competition.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<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.