

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58353; File No. SR-OCC-2008-16)

August 13, 2008

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a  
Proposed Rule Change Relating to the Cash Dividend Threshold

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on July 24, 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 mitigate inconsistencies that may result under the current policy for adjusting stock option contracts.

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>

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<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.

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

The purpose of the proposed rule change is to mitigate inconsistencies that may result under the current policy for adjusting stock option contracts. In February 2007, the Commission approved rule change SR-OCC-2006-01, which amended Section 11A of Article VI of the OCC By-Laws governing adjustments to options in response to cash dividends or distributions.<sup>3</sup> Under the new adjustment policy, cash dividends paid by a company otherwise than pursuant to a policy or practice of paying dividends on a quarterly or other regular basis would be deemed "special" and would normally trigger a contract adjustment provided the value of the adjustment is at least \$12.50 per option contract. This new adjustment policy will become effective for cash dividends announced on or after February 1, 2009.

However, certain inconsistencies may result when the threshold of "\$12.50 per option contract" is applied to all options on the affected underlying security. For example, if a \$.10 special cash dividend is declared, the standard-size 100 share option would not be adjusted (because the value is less than \$12.50). However, a previously adjusted 150 share option (reflecting a 3 for 2 split) would be adjusted (because the value is \$15 per contract). Adjusting some but not all options of the same class in response to the same dividend event, especially if the 100 share option is not adjusted, could be confusing to investors, and OCC's Securities Committee (consisting of representatives of each of the options exchanges and OCC) determined that this potential confusion should be avoided.

OCC considered modifying the threshold to specify \$.125 per share instead of \$12.50 per contract. This approach would address all standard-size (100 share) contracts that currently exist

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<sup>3</sup> Securities Exchange Act Release No. 55258 (February 8, 2007), 72 FR 7701 (February 16, 2007).

plus adjusted contracts that come into existence in response to splits, etc. However, exchanges have proposed to introduce "maxi" size contracts. Applying the same per share threshold to a 1,000 and 100 share option could sometimes result in significant value being left on the table in the case of the 1,000 share option. Taking the same example of a \$.10 per share special dividend, neither option would be adjusted if the threshold were \$.125 per share. This would result in a loss of only \$10 per contract for the 100 share option, but the loss would be \$100 per contract for the 1,000 share option. For this reason, a per share threshold is not being proposed.

Greater consistency across contracts of varying sizes can be achieved by retaining the \$12.50 per contract threshold in all cases but adding a qualification specifying that if a corresponding standard-size contract exists on the underlying security, previously adjusted contracts will be adjusted only if the corresponding standard-size contract is also adjusted. For example, if a 100 share option and a 150 share option (previously adjusted for a 3 for 2 split) exist, the 150 share option would be adjusted for a special cash dividend only if the 100 share standard option would also be adjusted for that dividend. Stated differently, OCC proposes to refer back to the preadjustment standard-size option (if any exist) in deciding whether or not to adjust a previously adjusted option. Thus a 150 share option that was derived from a 100 share option as a result of a 3 for 2 split would be referred back to the 100 share option. A 1,500 share option (previously adjusted for a 3 for 2 split) would be referred back to the 1,000 share option (the "standard" size option for a "maxi" contract). Thus, the qualification specifies "only if the corresponding standard-size option contract is also adjusted."

This qualification achieves greater consistency because in most cases all contracts on the same underlying security would be adjusted if the 100 share contract is adjusted. The qualification also would allow a 1,000 share "standard" contract to be adjusted independently of

a 100 share contract. Also, it could happen that an adjusted contract exists but *not* the corresponding standard contract, or a contract calling for delivery of fewer than 100 shares may exist (e.g., as a result of a spinoff adjustment). In these cases, the qualification would be inapplicable and a straightforward application of the \$12.50 threshold would determine whether an adjustment would be made. The following are examples of the qualification to the \$12.50 per contract threshold.

(A) If a corresponding standard size contract exists:

Shares	Contract	\$.09 Dividend (\$Value)	Adjust?	\$.13 Dividend (\$Value)	Adjust?
100	Standard	9.00	NO	13.00	YES
133	4/3 split	11.97	NO	17.29	YES
150	3/2 split	13.50	NO	19.50	YES
10	Spinoff	0.90	NO	1.30	NO
177	Merger	15.93	NO	23.01	YES
1000	Standard	90.00	YES	130.00	YES
1500	3/2 split	135.00	YES	195	YES

Shares	Contract	\$.02 Dividend (\$Value)	Adjust?	\$.01 Dividend (\$Value)	Adjust?
100	Standard	2.00	NO	1.00	NO
133	4/3 split	2.66	NO	1.33	NO
150	3/2 split	3.00	NO	1.50	NO
10	Spinoff	0.20	NO	0.10	NO
177	Merger	3.54	NO	1.77	NO
1000	Standard	20.00	YES	10.00	NO
1500	3/2 split	30.00	YES	15.00	NO

(B) If the 100 share standard size contract does not exist:

Shares	Option	\$.09 Dividend (\$Value)	Adjust?	\$.13 Dividend (\$Value)	Adjust?
133	4/3 split	11.97	NO	17.29	YES
150	3/2 split	13.50	YES	19.50	YES
10	Spinoff	0.90	NO	1.30	NO

177	Merger	15.93	YES	23.01	YES
1000	Standard	90.00	YES	130.00	YES
1500	3/2 split	135.00	YES	195	YES

The new adjustment policy approved in File No. SR-OCC-2006-01 will take effect beginning with dividends announced on and after February 1, 2009. OCC intends this proposed rule change to take effect at the same time, but these changes will not be implemented until the exchanges have conducted appropriate educational efforts and definitive copies of an appropriate supplement to the options disclosure document, Characteristics and Risks of Standardized Options, are available for distribution.

OCC believes that the proposed rule change is consistent with the purposes and requirements of the Act because it is designed to promote the prompt and accurate clearance and settlement of transactions in securities options, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. It accomplishes this by reducing inconsistencies in the adjustment of stock option contracts. The proposed rule change is not inconsistent with the existing 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 material 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 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 such 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 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-2008-16 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-2008-16. 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 10:00 am and 3:00 pm. 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.theocc.com/publications/rules/proposed\\_changes/sr\\_occ\\_08\\_16.pdf](http://www.theocc.com/publications/rules/proposed_changes/sr_occ_08_16.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-2008-16 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>4</sup>

Florence E. Harmon  
Acting Secretary

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<sup>4</sup> 17 CFR 200.30-3(a)(12).