

Corrected Version
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59294; File No. SR-OCC-2008-20)

January 23, 2009

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Establishing a Market Loan Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 23, 2008, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order 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 proposed rule change would create a framework for OCC to provide clearing services for stock loan and borrow transactions effected through electronic trading systems.

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 such statements.²

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified parts of these statements.

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

The purpose of this proposed rule change is to revise OCC's By-Laws and Rules to create a framework ("Market Loan Program") that can accommodate securities lending transactions proposed to be executed through electronic trading systems ("Loan Markets"), such as the market to be operated by Automated Equity Finance Markets, Inc. ("AQS"), a wholly-owned subsidiary of Quadriserv, Inc. The relationship between OCC and AQS will be governed by the Agreement for Clearing and Settlement Services ("AQS Agreement") included as Exhibit 5 to Filing No. SR-OCC-2008-20.

Securities lending contributes to the overall liquidity and efficiency of the equity and equity options markets. For options market participants, securities lending supports market making, arbitrage trading, and equity financing and assists participants in meeting deliveries resulting from options exercises and assignments. OCC's Stock Loan/Hedge Program, which allows approved Clearing Members to register their privately negotiated securities lending transactions with OCC, benefits OCC's Clearing Members and the industry by reducing the cost of credit, increasing operational efficiency, and providing stability through a central counterparty guarantee. OCC believes that it is important to keep pace with innovations in the securities lending markets and therefore proposes to launch the Market Loan Program.

The bulk of the proposed changes are based on procedures and protections that OCC has utilized in the operation of the Stock Loan/Hedge Program, with necessary modifications to account for those aspects of the Market Loan Program that are different from the Stock Loan/Hedge Program. OCC intends the provisions of its By-Laws and Rules governing the Market Loan Program and the provisions governing the Stock Loan/Hedge Program to be the

same substantively except where differences were clearly intended or where the context requires a different interpretation. For example, under the Market Loan Program OCC would create a process by which it will accept anonymously matched stock loan transactions from a Loan Market and then send instructions to The Depository Trust Company (“DTC”) to settle the transactions. In comparison, under the Stock Loan/Hedge Program OCC does not participate in a stock loan transaction until after two clearing members have transferred the securities and required collateral between themselves through the facilities of DTC. See below for a discussion of such differences.

B. Overview of the Proposed Market Loan Program

The Loan Market operated by AQS would be the first market supported by the proposed Market Loan Program. Additional markets that are operated in a manner similar to the AQS Loan Market could be included in the Market Loan Program in the future.

A Loan Market would provide a centralized source for price discovery and trade matching of stock loan transactions, for example, by implementing periodic auctions throughout the trading day. In the case of an auction-based market, participant lenders would provide the Loan Market with available inventory for auction, and participant borrowers would ordinarily compete on rebate rates with the lowest rate earning the trade. Lenders and borrowers would ordinarily be matched based on the Loan Market’s trade-matching algorithm. A Loan Market could also provide, as does AQS, for submission of privately negotiated transactions for processing through the Loan Market, including clearance and settlement through OCC. Such transactions will not be separately identified to OCC and will be treated by OCC like any other matched loan transactions submitted by the Loan Market.

Clearing Members would need to meet certain requirements in order to be approved for participation in the Market Loan Program. For example, Clearing Members would need to be active subscribers to a Loan Market that is supported by the Market Loan Program. Clearing Members would also be required to set their “Receiver Authorized Delivery” (“RAD”) Limits at DTC in respect of transactions with OCC as the counterparty to the highest limit permitted under DTC rules.³ For tax-related reasons, OCC presently intends to permit only U.S. Clearing Members to participate in the Market Loan Program, at least initially. Clearing Members approved for participation in the Market Loan Program would be referred to as “Market Loan Clearing Members.” When additional markets are included in the Market Loan Program in the future, a separate designation will be required for a Clearing Member’s participation in each Loan Market.

The Loan Market would submit matched loan transactions to OCC for clearance and settlement. OCC would then conduct routine validation processes before passing electronic instructions to DTC to move securities and cash between the Market Loan Clearing Members’ accounts at DTC. Because a Loan Market may, as does AQS, match lenders and borrowers on an anonymous basis, OCC and DTC would establish an account structure involving the transfer of securities and cash between the lender and the borrower through a DTC account owned by OCC (“OCC Account”), thereby permitting stock loan transactions originated through a Loan Market to be settled in a manner that preserves anonymity to both the lender and borrower.

³ The RAD Limit is a risk control mechanism which allows the DTC participant to set individual dollar limits against each contra participant so that deliveries with a settlement value exceeding the specified limit are not processed until the participant has reviewed and approved them. Clearing Members participating in the Market Loan Program are expected to comply with the requirement of setting their RAD Limits against OCC to the highest level permissible under DTC rules. However, DTC will not be asked to monitor or enforce this requirement.

Because OCC would substitute itself as the counterparty to all such DTC transactions, it is essential to OCC, from a risk management perspective, that there would never be a net settlement obligation against the OCC Account at the end of any day (i.e., OCC's obligations with respect to all completed DTC transactions to which the OCC Account was a party should net to zero both with respect to securities and cash). Avoidance of any net settlement obligation is essential both because OCC has no mechanism for funding such settlement obligations and for other operational reasons. In order to provide reasonable assurance that OCC will have no net settlement obligations, DTC will implement procedures intended to ensure that if one side of a loan transaction does not settle, the other side will be blocked as well. In addition, under current DTC rules, a DTC participant can return a delivery of securities ("Reclaim") to the original delivering party. DTC will block Reclaims against the OCC Account in order to prevent such Reclaims from resulting in a net settlement obligation in that account.⁴

Upon receiving the end of the day stock loan activity file from DTC showing settled stock loans (i.e., transfer of the loaned securities against the specified collateral) originated through a Loan Market, OCC would perform additional validation processes to confirm that the transactions match the instructions given by OCC before affirmatively accepting settled stock loans and substituting itself as counterparty to these transactions (such accepted stock loan transactions are defined as "Market Loans"). Upon OCC's acceptance of a Market Loan, the lending Market Loan Clearing Member would be a "Lending Clearing Member" and the borrowing Market Loan Clearing Member would be a "Borrowing Clearing Member" in respect of that Market Loan for all purposes of the By-Laws and Rules. Any stock loan transactions

⁴ DTC filed a proposed rule change (File No. SR-DTC-2008-15) with the Commission to describe proposed changes in its rules for purposes of supporting the Market Loan Program that is being approved simultaneously with this proposed rule change.

identified as originated through a Loan Market that are not ultimately confirmed and accepted by OCC would be rejected by OCC.

Upon acceptance of a Market Loan, OCC would create the stock loan position in the designated account of the Lending Clearing Member and the stock borrow position in the designated account of the Borrowing Clearing Member. Positions resulting from Market Loans would be maintained in the same manner as positions resulting from stock loans accepted by OCC under the Stock Loan/Hedge program (the latter are defined as “Hedge Loans” in the By-Laws and Rules⁵). However, positions resulting from Market Loans would be separately identified from, and would not be fungible with, positions resulting from Hedge Loans.

As with stock borrow or stock loan positions resulting from Hedge Loans, OCC would guarantee the daily mark-to-market payments generated by the open positions resulting from Market Loans. In addition, OCC would also provide a limited guaranty of payments in lieu of cash dividends and distributions (“dividend equivalent payments”) and stock loan rebates, in each case limited to the amount for which the Corporation has collected margins from the responsible Market Loan Clearing Member(s) prior to the payment date. The amount of these payments would be calculated by the relevant Loan Market, and OCC would effect the payments only as instructed by the Loan Market. OCC would have no responsibility to verify the accuracy of the Loan Market’s calculations and would not be liable to Clearing Members for any errors in such calculations. A Market Loan Clearing Member would be required to maintain margin with the Corporation in respect of any scheduled dividend equivalent payments and accrued rebate payments that such Clearing Member is obligated to make.

Termination of a Market Loan, in whole or in part, could be initiated by the Lending Clearing Member calling for the return of the loaned securities (a “recall”), or by the Borrowing Clearing Member indicating its intention to return the loaned securities (a “return”). The Loan Market would assign (randomly or by some other method) the recall to a participant who borrowed the same securities or the return to a participant who lent the same securities. Recalls/returns would be submitted to OCC and would be processed by OCC in the same manner as new stock loan transactions except that (i) the Loan Market would distinguish recalls/returns from new stock loan transactions; and (ii) if a recall/return were not settled by DTC and confirmed by OCC after a specified period of time, the Loan Market would instruct an independent broker to initiate the “buy-in” or “sell-out” process (described in more detail in Part C below), as applicable, in order to complete such recall/return.

A Loan Market would have the authority to direct OCC to terminate all or a portion of the outstanding Market Loans carried in the account(s) of a Clearing Member that were originated through that Loan Market. In addition, OCC would have the authority under Rule 305(a) to require a Clearing Member to reduce or eliminate stock loan or stock borrow positions, including positions resulting from Market Loans, upon a determination that circumstances warrant such action. In either case, OCC would give written notice to all affected Clearing Members specifying the date on which such termination would become effective. If any such termination were not settled by the specified time, the relevant Loan Market would instruct an independent broker to initiate the “buy-in” or “sell-out” process, as applicable, in order to

⁵ OCC proposes to introduce the term "Hedge Loan" to refer to stock loans accepted by OCC under the Stock Loan/Hedge Program. OCC proposes to amend the term “Stock Loan” to mean either a “Hedge Loan” or a “Market Loan” or both as the context requires.

complete the termination. Any such buy-in or sell-out would be for the account and liability of OCC, which would in turn have rights against the defaulting Market Loan Clearing Member.

In the event that OCC, a Loan Market, or DTC suspends a Market Loan Clearing Member, OCC would not accept any settled stock loan transaction to which the suspended Clearing Member is a party as a Market Loan after the time at which the Clearing Member was suspended. Finally, OCC would take action under proposed Rule 2211A and Chapter XI of the rules to close out the open stock loan and stock borrow positions carried in the suspended Clearing Member's account(s), using the "buy-in" or "sell-out" process or exercising setoff rights as appropriate. Temporary hedging transactions would also be permitted under the Chapter XI rules.

If a Market Loan Clearing Member were to believe that a Market Loan was executed on such Clearing Member's behalf in error or that a material term of the loan was erroneous, the Clearing Member would contact the relevant Loan Market to seek correction. Every determination as to whether a Market Loan was entered into in error would be within the sole discretion of the relevant Loan Market and would not be subject to review by OCC. OCC would have no liability to Clearing Members for any action taken, or any delay or failure to take any action, in reasonable reliance on information that OCC receives from a Loan Market or DTC.

C. Proposed Changes to the By-Laws and Rules

In order to provide clearing services for Market Loans, OCC proposes to (i) add a new Article XXIA to the By-Laws and a new Chapter XXIIA to the Rules that would govern the clearance of Market Loans, (ii) introduce new terms and amend the definitions of existing terms, and (iii) amend a few other provisions of the By-Laws and Rules in connection with the introduction of Market Loans.

Changes in Terminology – Article I, Section 1; Article XXI, Section 1; Article XXIA, Section 1

In Article I, Section 1, OCC proposes to introduce the terms “Hedge Loan,” “Loan Market,” “Market Loan,” “Market Loan Clearing Member” and “Market Loan Program.” The definition of “Eligible Stock” would be amended so that it will be applicable to the Market Loan Program. OCC also proposes to amend the term “Stock Loan” to refer to a Hedge Loan or a Market Loan or both, as the context requires, except that the term “Stock Loan” is redefined in Article XXI of the By-Laws so that, as used there and in Chapter XXII of the Rules, the term refers only to “Hedge Loans” and not to “Market Loans.”

The terms “Borrowing Clearing Member” and “Lending Clearing Member” are amended to encompass Market Loan Clearing Members that borrow or lend Eligible Stocks in Market Loans. The terms “stock borrow position,” and “stock loan position” will, where appropriate, apply to positions resulting from Market Loans without amendment.

In Article XXIA, Section 1, OCC proposes to introduce the terms “dividend equivalent payment,” “recall” and “return.” The terms “Collateral,” “Loaned Stock,” “mark-to-market payment” and “settlement price,” which are defined in Article XXI in the context of the Stock Loan/Hedge Program, would be redefined in Article XXIA to reflect their specific application in the context of a Market Loan. Finally, OCC proposes to introduce the term “rebate,” which refers to a periodic payment payable by the Lending Clearing Member or the Borrowing Clearing Member (depending on whether the rebate rate is positive or negative) in respect of a Market Loan.

Article XXI, Section 5

Paragraph (b) of Section 5 is being deleted to eliminate the existing requirement that a Clearing Member represent that the Loaned Stock does not constitute customer fully paid or

excess margin securities. The Commission's Rule 15c3-3 requires a broker-dealer to maintain possession and control of customer fully-paid and excess margin securities. Paragraph (b)(3) of Rule 15c3-3 sets forth conditions (which include customer consent, provision of specified collateral to the customer, etc.) under which a broker-dealer may borrow fully paid or excess margin securities from customers for its own use without violating the rule's possession or control requirement. The deletion of paragraph (b) will maintain consistency between the existing Stock/Loan Hedge rules and the Market Loan rules, where no such representation is proposed to be required. Rules 2202(e) and 2202A(f) require Clearing Members to represent that each stock loan is in compliance with Rule 15c3-3 and other customer protection rules, and OCC believes that this representation is sufficient without further specificity.

Qualifications for Designation as a Market Loan Clearing Member – Article V, Section 1

Interpretation .03(e) of Article V, Section 1 would be amended to clarify that a Clearing Member must be approved as a Market Loan Clearing Member before it can participate in the Market Loan Program. OCC proposes to add a new interpretation .06A which will set out the conditions that a Clearing Member must meet in order to be approved as a Market Loan Clearing Member.

OCC's Role with Respect to Market Loans – Article XXIA, Section 2

Upon acceptance of a Market Loan, OCC's role with respect to such Market Loan would be that of a principal and OCC would have the position of borrower to the Lending Clearing Member and the position of lender to the Borrowing Clearing Member. All rights and/or obligations of a Clearing Member in respect of a Market Loan would be against OCC, including the right and/or obligation to receive or make mark-to-market payments, dividend equivalent payments, and rebate payments and to deliver or receive the Loaned Stock or Collateral.

Agreement of the Borrowing Clearing Member and the Lending Clearing Member in respect of Market Loans – Article XXIA, Sections 3 and 4

Under Section 3, the Borrowing Clearing Member would represent that it would fulfill its obligations to OCC in respect of a Market Loan, including making required margin deposits, mark-to-market payments, dividend equivalent payments, rebate payments (in the case of a negative rebate), and delivering the Loaned Stock against Collateral upon the termination of the Market Loan, all in accordance with the By-Laws and Rules. The Lending Clearing Member would make reciprocal representations under Section 4.

Maintaining Stock Loan and Stock Borrow Positions Resulting from Market Loans in Accounts – Article XXIA, Section 5; Rule 2201A

Under Article XXIA, Section 5, upon the acceptance of a Market Loan, OCC would create the stock loan position in the Lending Clearing Member's designated account and the stock borrow position in the Borrowing Clearing Member's designated account. OCC would aggregate, separately for Market Loans effected through each Loan Market, all stock loan positions and stock borrow positions of a Clearing Member resulting from such Market Loans relating to the same Eligible Stock for position reporting purposes and would also net all such stock loan positions against such stock borrow positions for purposes of determining the Clearing Member's margin obligations to OCC (referring to the margin that a Clearing Member would be required to be deposited with OCC to cover OCC's risk that the market might move against a stock loan position or a stock borrow position on any day and that the Clearing Member might fail before making the required mark-to-market payment to OCC on the next business day). Positions resulting from Market Loans would be maintained in Clearing Members' accounts in the same manner as positions resulting from Hedge Loans. However, OCC would

separately identify stock loan and stock borrow positions resulting from Market Loans, and would not deem such positions to be fungible with positions resulting from Hedge Loans.

Rule 2201A would require each Market Loan Clearing Member to give OCC standing instructions in respect of Market Loans similar to the way in which Rule 2201 requires a Clearing Member participating in the Stock Loan/Hedge Program to give standing instructions in respect of Hedge Loans, the differences being that Rule 2201A: (i) would not include any references to margin-ineligible accounts because all positions resulting from Market Loans would be carried on a fully margined basis⁶, (ii) would not require a Market Loan Clearing Member to specify the Collateral requirement that will be applicable to its stock loan positions because such requirement will be specified by the relevant Loan Market when it submits the matched trades to OCC, and (iii) would not include any references to stock loan baskets or stock borrow baskets because such concepts will not apply to positions resulting from Market Loans.

Initiation of Market Loans - Rule 2202A

As described in Part B above, a Market Loan would be initiated when the Loan Market submits a matched trade to OCC. If the matched trade passes OCC's validation processes, OCC would instruct DTC to effect the transfer of Eligible Stock against Collateral between the accounts of two Market Loan Clearing Members, provided that such transfers would flow through OCC's account at DTC in order to maintain anonymity between the lender and borrower.

Only those settled stock loan transactions that are affirmatively accepted by OCC following receipt of the end-of-day stock loan activity file from DTC and OCC's validation

⁶ The Commission has approved in a separate rule change OCC's proposal to eliminate Clearing Members' ability to carry stock loan and stock borrow positions on a margin-eligible

processes would be deemed Market Loans. OCC would substitute itself as counterparty to the Borrowing Clearing Member and the Lending Clearing Member, respectively, in respect of each Market Loan. Any stock loan transactions purported to have originated through a Loan Market that are not accepted by OCC would be rejected by OCC and would have no further effect as regards OCC.

Paragraphs (d) and (e) of Rule 2202A would clarify the Lending Clearing Member's rights and obligations with respect to the Collateral posted and the Borrowing Clearing Member's rights and obligations with respect to the Loaned Stock. Under paragraph (f), a Market Loan Clearing Member would be required to represent to OCC that the Clearing Member's participation in each Market Loan is in compliance, and will continue to comply, with all applicable laws and regulations.

Margin Deposited with OCC in respect of Market Loans - Rule 2203A

As mentioned in the description of proposed Article XXIA, Section 5 above, a Market Loan Clearing Member would be required to meet its margin obligations to OCC with respect to its stock loan and stock borrow positions resulting from Market Loans. Rule 2203A would reiterate this obligation and clarify that margin calculation shall be determined pursuant to Rule 601.

Mark-to-Market Payments in respect of Market Loans - Rule 2204A

Rule 2204A would govern the calculation and payment of mark-to-market payments in respect of Market Loans. Using the same calculation method and collection/payment procedures that OCC practices with respect to Stock Loans, OCC would calculate on a daily basis the net amount owed by or to each Market Loan Clearing Member in respect of stock loan and stock

basis. However, the proposal will not be fully implemented until February 1, 2009. *See*

borrow positions resulting from Market Loans carried in a Clearing Member's accounts and collect such net amount from, or deposit such net amount to, as applicable, the Clearing Member's designated bank account.

Daily Reports - Rule 2205A

As mentioned in the description of proposed Article XXIA, Section 5 above, OCC would aggregate, separately for Market Loans effected through each Loan Market, all stock loan positions and stock borrow positions of a Clearing Member resulting from such Market Loans relating to the same Eligible Stock for position reporting purposes. Pursuant to Rule 2205A, OCC would make these position reports available to each Market Loan Clearing Member on a daily basis.

Dividends, Distributions and Rebates in respect of Market Loans - Rule 2206A

Paragraph (a) of Rule 2206A would clarify that a Lending Clearing Member will be entitled to receive all dividends and distributions made in respect of Loaned Stock on the record dates that occur during the term of a Market Loan and the Borrowing Clearing Member will be obligated to pay or deliver all such dividends and distributions. Because a Market Loan Clearing Member generally would not know the identity of the counterparty to a Market Loan, the Loan Market and OCC would facilitate the payment of dividend equivalents between Market Loan Clearing Members. The Loan Market would be solely responsible for calculating the dividend equivalent amounts that each Market Loan Clearing Member is entitled to receive or obligated to pay. On the expected payment date, OCC would guarantee and effect such payments between Market Loan Clearing Members as instructed by the Loan Market, in each instance up to the amount for which the Corporation has collected margins from the responsible Market Loan

Clearing Member(s) prior to the expected payment date. However, OCC would not be responsible for any errors in the Loan Market's calculations or instructions.

OCC would add non-cash dividends and distributions to the Loaned Stock and transfer them to the Lending Clearing Member upon termination of the Market Loan if OCC determines in its sole discretion that such transfer is legally permissible and can be made through DTC. The Loan Market could also determine to fix a cash settlement value with respect to any non-cash dividends and/or distributions that are not added to the Loaned Stock, in which case the Loan Market would instruct OCC to effect collection and payment of such cash settlement. With respect to any other non-cash dividend or distribution, the Lending Clearing Member would receive the benefit of the dividend or distribution only if it recalls the Loaned Stock in time to receive such dividend or distribution directly.

Paragraph (b) of Rule 2206A would govern the periodic payments of rebates to Market Loan Clearing Members. As in the case of dividend equivalent payments, the Loan Market would be solely responsible for calculating the amount of rebate payments that each Market Loan Clearing Member is entitled to receive or obligated to pay. On the specified settlement date, OCC would guarantee and effect such payments and collections as instructed by the Loan Market, in each instance up to the amount for which the Corporation has collected margin from the responsible Market Loan Clearing Member(s) prior to the specified settlement date. Again, OCC would not be responsible for any errors in the Loan Market's calculations or instructions. Rebate payments would be paid on at least a monthly basis. If a Market Loan Clearing Member were to be suspended, OCC would have the discretion to accelerate settlement of accrued rebate payments with respect to such suspended Clearing Member.

Correction of Erroneous Market Loans - Rule 2207A

If a Market Loan Clearing Member were to believe that a Market Loan was executed on such Clearing Member's behalf in error or that a material term of the loan was erroneous, the remedy available to the Clearing Member would be to contact the relevant Loan Market to request correction. The decision to void a Market Loan would be in the Loan Market's sole discretion and would not be subject to review by OCC. Furthermore, interpretation .01 to Rule 2207A would clarify that in carrying out OCC's role with respect to Market Loans, OCC would be entitled to rely on information provided by a Loan Market or DTC and would not be liable to Clearing Members for any actions taken in reliance of such information.

Indemnification by Borrowing Clearing Member - Rule 2208A

Rule 2208A would require a Borrowing Clearing Member in respect of a Market Loan to indemnify, defend, and hold harmless OCC from any consequences resulting from the Borrowing Clearing Member's use of the Loaned Stock.

Termination of Market Loans - Rule 2209A

Rule 2209A would govern the different ways that a Market Loan may be terminated. In the case of a recall or a return that is the subject of paragraph (a) of Rule 2209A, the transaction would be submitted by the Loan Market to OCC and would be processed by OCC in basically the same manner as a new stock loan transaction. The Loan Market would distinguish a recall/return from a new stock loan transaction so that upon OCC's confirmation that a recall/return was settled by DTC, OCC would extinguish the corresponding stock loan and stock borrow positions instead of creating new positions on its books.

If a recall fails to settle because the Borrowing Clearing Member fails to return the Loaned Stock within the timeframe specified in Rule 2209A, the relevant Loan Market would instruct an independent broker to initiate the "buy-in" process on the morning of the following

stock loan business day. The broker would be instructed to purchase the Loaned Stock in a commercially reasonable manner as promptly as practicable (and in any event, at or prior to the time when a buy-in would be required under applicable under applicable regulatory requirements). The buy-in would be for OCC's account and liability because of OCC's role as the principal to each Market Loan.

The buy-in procedures are intended to facilitate compliance by the Clearing Member with buy-in requirements under applicable rules of the Commission and self-regulatory organizations, including the requirements imposed by Regulation SHO. The ultimate responsibility for compliance with Regulation SHO rests with the Clearing Member, and OCC would not be liable for any Clearing Member's failure to comply with its obligations.

The bought-in Loaned Stock would ultimately be delivered to the Lending Clearing Member's account at DTC in exchange for the Collateral. Any difference between (i) the amount of the Collateral and (ii) the price paid on the buy-in plus any other costs, fees or interest incurred by the broker in connection with such buy-in and any penalties or charges that the Loan Market may assess against the Borrowing Clearing Member would be credited to or debited from the Borrowing Clearing Member's designated bank account.

If a return fails to settle because the Lending Clearing Member fails to return the Collateral within the timeframe specified in Rule 2209A, the relevant Loan Market would instruct an independent broker to initiate the "sell-out" process on the morning of the following stock loan business day. The sell-out process is essentially the inverse of the buy-in process. The broker would be instructed to sell the Loaned Stock for OCC's account and liability. The sale proceeds would ultimately be delivered to the Borrowing Clearing Member's account at DTC against delivery of the Loaned Stock. Any difference between (i) the sale proceeds and (ii)

the amount of the Collateral plus any other costs, fees or interest incurred by the broker in connection with such sell-out, and any penalties or charges that the Loan Market may assess against the Lending Clearing Member would be credited to or collected from the Lending Clearing Member's designated bank account.

Paragraph (c) of Rule 2009A would provide that OCC would have the authority to terminate Market Loans in circumstances where a Loan Market so directs OCC or where OCC deems such action warranted. In either case, OCC would give written notice to all affected Clearing Members specifying the date on which such termination would become effective. As with a recall or a return, if a Market Loan termination initiated by a Loan Market or OCC fails to settle by the specified time set forth in paragraph (c), the relevant Loan Market would instruct an independent broker to initiate the "buy-in" or "sell-out" process, as applicable, in order to complete the termination.

Suspension of Market Loan Clearing Members - Rule 2210A and 2211A

Under Rule 2010A, OCC would not accept any stock loans to which the suspended Clearing Member is a party as a Market Loan after the time at which the Clearing Member was suspended, and would instruct DTC to unwind any such transaction. Open stock loan and stock borrows positions of the suspended Clearing Member would be liquidated in accordance with Rule 2011A by an independent broker designated by OCC for such purposes.

Collection of Fees and Charges on Behalf of a Loan Market - Rule 209

OCC proposes to amend paragraph (b) of Rule 209 so that OCC would have the authority to withdraw from a Market Clearing Member's bank account the amount of any fees or charges that the Clearing Member owes to a Loan Market.

Certain Conforming Changes in the By-Laws and Rules – Article XXI, Section 2 and 5; Rule 1103, 2201, 2202, 2204, 2205 and 2210

Sections 2 and 5 of Article XXI of the By-Laws and Rule 1103, 2201, 2202, 2204, 2205 and 2210 would be amended to conform to the new Market Loan rules as appropriate.

D. Summary of Certain Provisions of the AQS Agreement

In connection with providing clearing and settlement services to AQS, OCC will enter into the AQS Agreement, which is similar in form to clearing agreements that OCC has entered into with futures markets. In addition to (i) defining each party's obligations in connection with the clearance and settlement of Market Loans, as discussed in Part B above, and (ii) identifying aspects of OCC's services that will be provided in accordance with the provisions of OCC's By-Laws and Rules, as discussed in Part C above, the AQS Agreement will set forth other terms and conditions that will govern the parties' relationship, including the following:

Regulatory Requirements

AQS will represent that (i) it will have obtained all necessary registrations, memberships, approvals or other consents that are required to have been obtained by it from any federal or state regulatory agencies or any self-regulatory organizations, (ii) it will have procedures (as amended from time to time, the "Market Procedures") that comply with the provisions of all applicable regulations and will have filed with the Commission the necessary information with respect to the Market Procedures, and (iii) it will have all requisite power and authority, whether arising under applicable federal or state law or the rules and regulations of any regulatory or self-regulatory organization to which AQS is subject, to enter into and perform its obligations under the AQS Agreement. OCC will make similar representations, and in addition will clarify that OCC's provision of clearing services in respect of Market Loans will depend on the Commission's approval of this proposed rule change.

AQS and OCC will each be required to notify the other party of any action taken by any regulatory body or agency that, in the judgment of the relevant party, has or will have a material adverse effect on such party's performance of its obligations under the AQS Agreement.

Fees for Clearing Services

OCC will establish fee structures for the services it performs for Clearing Members consistent with the provisions of its By-Laws. Fees charged to subscribers of AQS for services performed by OCC under the AQS Agreement shall not be greater than the fees charged by OCC in respect of substantially similar services performed for other markets in connection with Market Loan transactions; provided that OCC may offer alternative fee structures to such markets so long as it offers the same alternatives to AQS on substantially the same terms and so long as the alternative fee structure provides for the equitable allocation of reasonable dues, fees, and other charges among Clearing Members.

Indemnification

AQS will indemnify and hold harmless OCC and each of its directors, officers, committee members, agents, employees and any person or entity who controls OCC (as the term "control" is defined in Rule 405 of the Securities Act of 1933, as amended) from and against any and all losses, damages, liabilities, judgments, claims, expenses and amounts incurred and/or paid in settlement (collectively referred to as "Losses") arising out of or based on (i) any violation or alleged violation by AQS of any of the terms of the AQS Agreement or (ii) any violation or alleged violation by AQS of any law (including patent infringement or other intellectual property law violation) or governmental regulation. OCC will indemnify and hold harmless AQS and each of its directors, officers, committee members, agents, employees and any person or entity who controls the Market from and against any and all Losses arising out of

or based on (i) any violation or alleged violation by OCC of any of the terms of the AQS Agreement, (ii) any alleged default by OCC in performing its obligations in accordance with its By-Laws and Rules in respect of any Market Loans it has accepted for clearing, or (iii) any violation or alleged violation by OCC of any law (including patent infringement or other intellectual property law violation) or governmental regulation. The indemnifications provided by each party will include indemnification against any Losses arising out of or based on any allegation that any termination of a Market Loan transaction initiated by the indemnifying party was wrongful.

Term and Termination

The AQS Agreement may be terminated (i) by either party at any time upon giving a specified number of days' prior written notice to the other party, (ii) by a party upon giving notice to the other party if the other party has breached in any material respect the provisions of the AQS Agreement, or (iii) by OCC upon giving notice to AQS if, among other grounds, AQS has ceased to effect stock loan transactions or OCC's By-Laws or Rules have ceased to be in effect in a material respect. From the time that any notice of termination is given or any event of termination occurs until such time as all stock loan and borrow positions resulting from Market Loans have been closed or transferred to an alternative clearing organization, OCC and AQS will continue to provide all services and perform all of their respective obligations under the AQS Agreement and OCC's By-Laws and Rules to the extent necessary or appropriate to service open stock loan and borrow positions. Finally, in the event of a voluntary termination of the AQS Agreement, OCC will use reasonable efforts to effect transfer of the open positions to AQS' successor clearing organization subject to reasonable agreements with such successor clearing

organization, AQS and/or Clearing Members whose positions are being transferred, as appropriate, that protect the interests of OCC.

Dispute Resolution

If a dispute arises between AQS and OCC relating to the clearing services in respect of Market Loans, the AQS Agreement will provide that senior officers of AQS and OCC will endeavor in good faith to resolve the dispute and to mitigate its deleterious effects and will confer with each other to those ends.

Certain Loan Market Obligations

Schedule B of the AQS Agreement sets forth certain specific services that the Loan Market is required to perform to facilitate the performance by OCC of its obligations under its By-Laws and Rules. With respect to such obligations, the AQS Agreement provides that the Loan Market will be bound by the provisions of OCC's By-Laws and Rules to the extent that they impose obligations on the Market.

The proposed changes to OCC's Rules are consistent with the purposes and requirements of Section 17A of the Act because they are designed to promote the prompt and accurate clearance and settlement of stock loan transactions executed on an electronic marketplace, and to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, 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. The proposed rule change accomplishes these purposes by expanding the number of securities lending transactions that will be cleared and settled by OCC, which, in turn, benefits OCC's Clearing Members and the industry by reducing the cost of credit, increasing operational efficiency, and providing stability through a central counterparty

guarantee by applying many of the same rules and procedures to these transactions as OCC applies the Hedge Loan transactions. The proposed rule change is not inconsistent with the existing 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 Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).⁷ Section 17A(b)(3)(F) requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism for a national system for the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The proposed rule change is consistent with these requirements because while it allows OCC to expand its existing Stock Loan/Hedge Program to accommodate securities lending transactions executed through electronic trading systems, it addresses the differences between the Stock Loan/Hedge Program and the new Market Loan program by amending several provisions of OCC's Rules and entering into the AQS Agreement, both of which are designed to assure that OCC and its members comply with Commission rules

and to reduce the risk of operational disruption or financial loss to OCC or to its members.

OCC has requested that the Commission approve this rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because by so approving OCC may begin providing clearing services for stock loan and borrow transactions effected through the AQS Loan Market in time for its anticipated launch date of January 31, 2008.

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. Please include File Number SR-OCC-2008-20 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-OCC-2008-20. 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

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15 U.S.C. 78q-1(b)(3)(I).

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, 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_20.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-2008-20 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. 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 with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.⁸

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-2008-20) be, and hereby is, approved.

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

Florence E. Harmon
Deputy Secretary

⁸ In approving the proposed rule changes, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁹ 17 CFR 200.30-3(a)(12).