

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59442; File No. SR-OCC-2009-01)

February 24, 2009

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amended Interpretative Guidance on the New Methodology for Adjusting Option Contracts for Cash Dividends and Distributions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on January 6, 2009, 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. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act<sup>2</sup> and Rule 19b-4(f)(1) thereunder<sup>3</sup> so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change would amend previously adopted interpretative guidance regarding the administration and application of the new adjustment method for cash dividends and distributions (“New Methodology”).

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

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>3</sup> 17 CFR 240.19b-4(f)(1).

## 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>4</sup>

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

#### Background

In File No. SR-OCC-2008-10, OCC adopted interpretative guidance developed by the OCC's Securities Committee regarding the New Methodology.<sup>5</sup> In File No. SR-OCC-2008-16, OCC proposed a minor modification to the New Methodology, which was approved by the Commission on September 18, 2008.<sup>6</sup> The purpose of this rule change is to amend the interpretative guidance to address the approved modification to the New Methodology.

#### Amendment to Interpretative Guidance

Under the New Methodology, cash dividends paid by a company other than pursuant to a policy or practice of paying dividends on a quarterly or other regular basis would be deemed "special" and would ordinarily trigger a contract adjustment provided the value of the adjustment

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<sup>4</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>5</sup> Securities Exchange Act Release No. 55258 (February 8, 2007), 72 FR 7701 (February 16, 2007).

<sup>6</sup> Securities Exchange Act Release No. 58586 (September 18, 2008), 73 FR 55582 (September 25, 2008).

is at least \$12.50 per option contract.<sup>7</sup> 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, OCC's Securities Committee (consisting of representatives of each of the options exchanges and OCC) determined that this potential confusion should be avoided.

OCC's Securities Committee believed that greater consistency across contracts of varying sizes could be achieved by retaining the \$12.50 per contract threshold in all cases but subjects the threshold amount to a qualification providing 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. This qualification was the subject of File No. SR-OCC-2008-16. Implementation of the qualification will take effect at the same time the New Methodology is effective.

OCC's previously adopted interpretative guidance regarding the New Methodology has been amended to address the application of the qualified \$12.50 per contract threshold, including examples of how the threshold will work in practice. The amended interpretative guidance is attached to the proposed rule change as Exhibit 5, and will be posted on OCC's public website,

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<sup>7</sup> The New Methodology took effect beginning with dividends announced on and after February 1, 2009, other than for certain grandfathered options.

made available in an information memorandum accessible to clearing members, or otherwise made available in hard copy form on request.<sup>8</sup>

The proposed rule change is consistent with the requirements of Section 17A of the Act<sup>9</sup> and the rules and regulations thereunder applicable to OCC because it provides market participants with interpretative guidance on the application of the New Methodology which will be applied to adjustments for cash dividends and distributions. 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.

(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 foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act<sup>10</sup> and Rule 19b-4(f)(1)<sup>11</sup> thereunder because the proposal constitutes an interpretation with respect to the meaning, administration, or enforcement of an existing rule of OCC. At any time within sixty days of the filing of such rule change, the Commission may

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<sup>8</sup> The proposed rule change, including Exhibit 5, can be found on OCC's website at [http://www.theocc.com/publications/rules/proposed\\_changes/sr\\_occ\\_09\\_01.pdf](http://www.theocc.com/publications/rules/proposed_changes/sr_occ_09_01.pdf).

<sup>9</sup> 15 U.S.C. 78q-1.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>11</sup> 17 CFR 240.19b-4(f)(1).

summarily abrogate 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2009-01 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-2009-01. 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. The text of the proposed rule change is available at OCC, the Commission's Public Reference Room, and [http://www.theocc.com/publications/rules/proposed\\_changes/sr\\_occ\\_09\\_01.pdf](http://www.theocc.com/publications/rules/proposed_changes/sr_occ_09_01.pdf). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2009-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Florence E. Harmon  
Deputy Secretary

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