

of any problems related to the trading of instruments that have qualified under the other markets' lower holder and distribution requirements.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Instead, the proposed rule change will allow Nasdaq to list securities that can already be listed on other exchanges, thereby increasing competition with other national securities exchanges.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup>

The Exchange has requested the Commission to waive the 30-day operative delay period to allow the proposed rule change to become operative upon filing.<sup>17</sup> The Commission believes it is consistent with the public interest to waive the 30-day operative delay. The proposed rule change is substantially similar in all material respects to Section 703.19 of the NYSE Listed Company Manual and Section 107A(b) of the NYSE MKT Listed Company Guide, and each policy issue raised by the proposed rule change (i) has been considered by the Commission in approving the other exchanges' rules and (ii) is resolved in a manner generally consistent with the approved rules. As such, the

Commission believes that the proposal presents no novel regulatory issues. Waiver of the operative delay will allow the Exchange to list certain securities that can already be listed and traded on other exchanges without undue delay. Therefore, the Commission grants such waiver and designates the proposal operative upon filing.<sup>18</sup>

At any time within 60 days of the filing of such 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 No. SR-NASDAQ-2012-131 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 No. SR-NASDAQ-2012-131. 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 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. 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 No. SR-NASDAQ-2012-131 and should be submitted on or before December 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68288 File No. SR-OCC-2012-22]

### **Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Clarify the Use of Certain Amounts Credited to the Liquidating Settlement Account To Settle Mark-to-Market Payments Arising From Stock Loan and Borrow Positions Carried in the Customers' Account**

November 26, 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 November 13, 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 the Terms of Substance of the Proposed Rule Change**

OCC proposes to make certain changes to Rule 1104 in order to eliminate potential ambiguity as to OCC's right, in connection with the suspension of a clearing member, to use

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the 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.

<sup>18</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).

<sup>19</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.

margin and other amounts credited to the Liquidating Settlement Account pursuant to Rule 1104, to settle mark-to-market payments arising from stock loan and borrow positions carried in the clearing member's customers' account, notwithstanding that such payments are required by OCC's Rules to be settled in the clearing member's firm account or its combined market makers' account. In addition, OCC proposes to amend Rule 1104 to provide that any proceeds from stock loan and borrow positions carried in the customers' account could be applied only to obligations arising in such account.

## 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.<sup>3</sup>

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

The purpose of the proposed rule changes is to eliminate potential ambiguity as to OCC's right to use margin and other amounts credited to the Liquidating Settlement Account pursuant to Rule 1104 to settle mark-to-market payments arising from stock loan and borrow positions carried in the clearing member's customers' account even though such payments are required by OCC's Rules to be settled in the clearing member's firm account or its combined market makers' account. In addition, a proposed amendment to Rule 1104 would provide that any proceeds from stock loan and borrow positions carried in the customers' account could be applied only to obligations arising in such account as is the case with margin assets deposited in respect of that account.

#### Background

OCC's By-Laws currently provide that stock loan and borrow positions (collectively, "Stock Loan Positions") may be carried at OCC in any eligible account of a clearing member, including the firm, market-maker, and customers'

accounts. More specifically, under Section 5 of Articles XXI and XXIA of the By-Laws, and notwithstanding the provisions of Section 3 of Article VI of the By-Laws (requiring separation of firm and customer positions), clearing members have discretion as to which Stock Loan Positions may be carried in which eligible accounts, subject only to the clearing member's general representations under Rules 2202(e) and 2202A(f) that the clearing member's participation in the lending and borrowing activity is in compliance with all applicable laws and regulations. However, Rules 2201(a) and 2201A(a) provide that a clearing member must designate either its firm account or its combined market-makers' account as the account to or from which all stock loan mark-to-market payments are to be made, regardless of the account in which particular Stock Loan Positions may be held.

Rule 1104 generally provides that, upon suspension of a clearing member, OCC shall promptly liquidate, in the most orderly manner practicable, all margins deposited with OCC by such clearing member in all accounts (excluding securities held in a specific deposit or escrow deposit) and all of such clearing member's contributions to the clearing fund, subject to certain conditions. Under Rule 1104, in general, these and all other funds of the suspended clearing member subject to the control of OCC (except proceeds of segregated long positions, funds disposed of pursuant to Rules 1105 through 1107, and funds held in or payable to a segregated futures account) shall be credited by OCC to a special account, to be known as the Liquidating Settlement Account, in the name of the suspended clearing member, for the purposes specified in Chapter 11.

Under Rule 1104, therefore, in general, proceeds of all margin (other than margin held in segregated futures accounts) including margin in a clearing member's securities customers' account, are credited to the Liquidating Settlement Account. However, for purposes of administration of the liquidation, the margin does not lose its identity as being derived from the customers' account. Rules 2210 and 2210A (relating to the Stock Loan/Hedge Program and Market Loan Program, respectively) provide that net proceeds from, or amounts due in respect of, the termination of Stock Loan Positions shall be credited to or withdrawn from the Liquidating Settlement Account. The Liquidating Settlement Account will include any mark-to-market payments received that day. In addition, Rule 1104 provides that the proceeds

from the liquidation of securities, or from drawing on letters of credit, held as margin in a restricted lien account (such as the customers' account) may be withdrawn and applied to the closing out of pending transactions, open positions, and exercised or matured contracts in such accounts pursuant to Rules 1105, 1106, and 1107, respectively.<sup>4</sup> To the extent that the proceeds derived from assets maintained in accounts subject to OCC's restricted lien exceed the proceeds used from such accounts for that purpose, such proceeds must be remitted by the Corporation to the suspended clearing member or its representative for distribution to the persons entitled thereto in accordance with applicable law.

#### Description of Rule Change

For the avoidance of doubt, OCC proposes to insert an interpretation indicating that when mark-to-market payments are owed with respect to Stock Loan Positions maintained in a clearing member's customers' account, proceeds of margin and unsegregated long positions, and all other amounts credited to the Liquidating Settlement Account in respect of the customers' account, may be used to satisfy the mark-to-market obligations arising from the Stock Loan Positions in such customers' account, even though such mark-to-market payments may settle in the clearing member's firm account or its combined market makers' account.

OCC's By-Laws clearly provide that Stock Loan Positions may be included in the customers' account and that such positions will be margined in that account along with positions in options and other cleared contracts in the account. It would therefore be inconsistent to conclude that margin required under OCC's Rules to be deposited in the customers' account to margin Stock Loan Positions cannot be used to settle mark-to-market payments

<sup>4</sup> The term "restricted lien account" is defined in Article I, Section 1 of OCC's By-Laws as follows: "any account of a Clearing Member with the Corporation over which the Corporation has a restricted lien with respect to specified assets (including any proceeds thereof) in such account." The term "restricted lien" is defined in Article I, Section 1 of OCC's By-Laws as follows: a security interest of the Corporation in specified assets (including any proceeds thereof) in an account of a Clearing Member with the Corporation as security for the Clearing Member's obligations to the Corporation arising from such account or, to the extent so provided in the By-Laws or Rules, a specified group of accounts that includes such account including, without limitation, obligations in respect of all Exchange transactions effected through such account or group of accounts, short positions maintained in such account or group of accounts, and exercise notices assigned to such account or group of accounts."

<sup>3</sup> The Commission has modified the text of the summaries prepared by OCC.

in respect of those positions if the clearing member is suspended. The proposed rule changes are intended to eliminate any doubt in that regard.

In addition, as noted above, the liquidation rules for Stock Loan Positions in Rules 2210 and 2210A provide that any net proceeds of closing out Stock Loan Positions shall be credited to the Liquidating Settlement Account and that any net amounts payable in respect of such close-outs may be withdrawn from such account. However, Rule 1104 as currently drafted does not limit the use of proceeds of Stock Loan Positions carried in a restricted lien account to obligations arising from that restricted lien account as it does in the case of proceeds from a restricted lien account that are credited pursuant to Rules 1105 through 1107. While such a restriction might be implied from the fact that the Stock Loan Positions themselves are subject to a restricted lien and not a general lien pursuant to Section 3(e) of Article VI of the By-Laws, OCC believes that Rule 1104 should be amended to make this restriction explicit. Because margin and other proceeds from a restricted lien account that are credited to the Liquidating Settlement Account may be applied to mark-to-market payments owed in respect of Stock Loan Positions in the restricted lien account, any proceeds of such positions should be subject to the same restriction applicable to proceeds from other positions in the restricted lien account that are credited to the Liquidating Settlement Account. They should be applied only to obligations arising from that restricted lien account. OCC therefore also proposes to amend Rule 1104 to include references to Rules 2210 and 2210A to clearly provide that margin and other proceeds from the customers' account that are credited to the Liquidating Settlement Account may be applied to amounts payable with respect to Stock Loan Positions in the customers' account and that proceeds from Stock Loan Positions in such customers' account may be applied *only* to obligations arising in that account.

OCC believes that the proposed changes are consistent with Section 17A of the Act, because they would help assure that the Rules of OCC are designed to safeguard securities and funds which are in the custody or control of the Corporation or for which it is responsible, and would protect investors and the public interest by eliminating potential ambiguity as to OCC's right, in connection with the suspension of a clearing member, to use the collateral held in a clearing member's customers' account to settle

mark-to-market payments arising from Stock Loan Positions carried in the clearing member's customers' account, notwithstanding that such payments are required by OCC's Rules to be settled in the clearing member's firm account or its combined market makers' account. The proposed changes are not inconsistent with the existing rules of OCC.

*(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 not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

**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*

- Use the Commissions 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-OCC-2012-22 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-2012-22. 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 Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 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\\_22.pdf](http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_12_22.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-2012-22 and should be submitted on or before December 21, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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<sup>5</sup> 17 CFR 200.30-3(a)(12).