

Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members. In addition, the rebates provided result, in part, from lower administrative costs associated with higher volume. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

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

The proposed rule change does not impose any burden on competition that is 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*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act<sup>6</sup> and Rule 19b-4(f)(2)<sup>7</sup> thereunder. 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EDGX-2010-13 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-EDGX-2010-13. 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,<sup>8</sup> 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-EDGX-2010-13 and should be submitted on or before November 4, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>8</sup> The text of the proposed rule change is available on Exchange's Web site at <http://www.directedge.com>, on the Commission's Web site at <http://www.sec.gov>, at EDGX, and at the Commission's Public Reference Room.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63066; File No. SR-OCC-2010-13]

#### **Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Allow for Adjustments to the Settlement Price of Exchange-Designated Security Futures for All Cash Dividends or Distributions Paid by the Issuer of the Underlying Security**

October 8, 2010.

#### **I. Introduction**

On August 19, 2010, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2010-13 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> On August 25, 2010, OCC amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on September 7, 2010.<sup>2</sup> The Commission received no comment letters in response to the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

#### **II. Description**

The primary purpose of this proposed rule change is to revise OCC's By-Laws to allow OCC to make adjustments to the settlement price of exchange-designated security futures for all cash dividends or distributions paid by the issuer of the underlying security. Under its current rules, OCC makes such adjustments only for "non-ordinary" dividends. However, OneChicago, LLC ("OneChicago") has informed OCC that it believes there is a demand for security futures that would be adjusted in response to all cash dividends or distributions. Accordingly, OCC is amending Section 3 of Article XII of its By-Laws to permit exchanges to designate certain security futures that will be adjusted for ordinary as well as "non-ordinary" cash dividends and distributions. Exchanges can continue to trade security futures that will be adjusted only in the event of a "non-ordinary" dividend or distribution.

For security futures subject to adjustment for all cash dividends or distributions, it will be the exchange's responsibility to inform OCC of the issuance of a cash dividend or

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

<sup>2</sup> Securities Exchange Act Release No. 62801 (August 31, 2010), 75 FR 54410.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 19b-4(f)(2).

distribution and of the appropriate adjustment amount. Provided that such information (including any corrections thereto) is reported to OCC before an OCC-designated cut-off time prior to the ex-date, OCC will make the appropriate adjustment to the settlement price of the security futures contract. Such adjustments will be effective before the opening of business on the ex-date.<sup>3</sup> If the exchange fails to report dividend or distribution information to OCC on a timely basis or reports incorrect dividend or distribution information to OCC, then the exchange will be able to report such information or corrected information to OCC on the ex-date, and OCC will effect the adjustment as soon as practicable thereafter.<sup>4</sup> In the event the exchange already opened trading in the security futures contracts affected thereby, the exchange will provide OCC with direction on whether such trades should be cleared or disregarded as provided for in Article VI, Section 7 of OCC's By-Laws. Pursuant thereto, disregarded transactions will be deemed null and void and given no effect. These procedures are intended not only to preserve OCC's ability to initiate and conduct nightly processing on a timely basis but also to provide the exchange with the opportunity to report to OCC dividend or distribution information that was not available to it before OCC's processing cut-offs or to correct erroneously reported information so that there is an appropriate adjustment to the settlement price for the affected contracts.

In connection with OneChicago's proposal, OneChicago and OCC also have agreed to amend the Security Futures Agreement for Clearing and Settlement Services, dated April 1,

<sup>3</sup> The standard method for adjusting futures contracts in response to cash distributions is to decrease the prior day's settlement price by the amount of the dividend. This adjustment is effective at the opening of business on the ex-distribution date and parallels the adjustment made to the price of the underlying stock by the securities exchanges on the ex-distribution date. It is intended to ensure that no futures mark-to-the-market attributable to the adjustment made to the stock price for the dividend will occur.

<sup>4</sup> OCC also proposes to add Interpretation and Policy .10 to Article XII, Section 3 to provide that officially reported settlement prices will not be adjusted (other than as provided for in the By-Laws and Rules) except in extraordinary circumstances. The Interpretation further provides that in no event will a completed settlement be adjusted due to errors discovered thereafter. This latter provision is intended to preserve the finality of money settlements should it later be determined that an officially reported settlement price was erroneous. The new Interpretation is based on existing provisions of OCC's By-Laws. See, e.g., Article XIV, Section 6, Interpretation and Policy .01; Article XVI, Section 4, Interpretation and Policy .01; and Article XVII, Section 4, Interpretation and Policy .01.

2002, ("Clearing Agreement") by entering into Amendment No. 1 thereto.<sup>5</sup> Amendment No. 1 would amend Section 5 of the Clearing Agreement to permit OneChicago to designate those security futures contracts for which adjustments will be made in response to all cash dividends or distributions of the underlying securities and to set forth OneChicago's obligation to furnish OCC with notice of all relevant information regarding such dividends or distributions so that OCC can adjust the settlement price of the affected security future as described above. Amended Section 5 further extends the current indemnification provided by OneChicago to OCC to cover losses resulting from OCC's adjustment of the settlement prices of security futures in accordance with dividend or distribution information supplied by OneChicago or OCC's failing to adjust in the event OneChicago did not supply OCC with information regarding such an adjustment.

### III. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of security transactions and generally to protect investors and the public interest.<sup>6</sup> The Commission believes that OCC's rule change is consistent with this Section because the rule change should better enable OCC to promptly and accurately clear and settle security futures contracts for which an exchange has designated that the settlement prices will be adjusted to reflect the issuance of all cash dividends or distributions on the underlying security.

### 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. In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation.

<sup>5</sup> Amendment No. 1 will be executed after the effectiveness of this filing.

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

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-2010-13) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63063; File No. SR-NASDAQ-2010-126]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make a Conforming Change to NASDAQ Rules

October 7, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 1, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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

NASDAQ proposes to make a conforming change to Rule 4758 to reflect prior effectiveness of filings allowing routing of orders to a facility of an exchange that is an affiliate of NASDAQ. NASDAQ proposes to implement the rule change concurrent with the launch of cash equity trading on NASDAQ OMX PSX, which is currently scheduled to occur on October 8, 2010. The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at NASDAQ's principal office, and at the Commission's Public Reference Room.

<sup>7</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.