

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61911; File No. SR-OCC-2010-06]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Revise Certain By-Laws and Rules Related to the Stock Loan/Hedge and Market Loan Programs

April 15, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on March 26, 2010, 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. OCC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>2</sup> and Rule 19b-4(f)(4)<sup>3</sup> thereunder 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 persons.

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

The purpose of the proposed rule change is to revise certain by-laws and rules related to the Stock Loan/Hedge and Market Loan Programs.

#### 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>4</sup>

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

OCC proposes three changes to certain by-laws and rules related to its stock

lending programs known as Stock Loan/Hedge and Market Loan.<sup>5</sup> First, OCC would amend the existing definition of "marking price" used in connection with "loaned stock". Marking price for a loaned stock is currently defined as the closing price on the primary market for a loaned stock on the preceding trading day or if the loaned stock did not trade on the previous trading day the highest reported asked quotation for such stock at or about the close of trading on the preceding trading day. OCC however recently determined that its pricing vendor for marking prices does not provide the highest reported asked quotation for stocks that did not trade on the previous trading day.<sup>6</sup> To reconcile the difference between the vendor's reporting practice and the current marking price definition, as well as to address other potentially related price reporting issues, OCC proposes applying its general definition of marking price that is found in Article I, Section 1 of its By-laws.<sup>7</sup>

Second, with respect to OCC's Market Loan Program, Automated Equity Finance Markets, Inc. ("AQS")<sup>8</sup> asked OCC to develop functionality to accept instructions from AQS to cancel Market Loan transactions that are pending settlement at The Depository Trust Company ("DTC"). AQS advised that this functionality would address situations of obvious error and facilitate its market operations. OCC would amend Rule 2204A to allow it to accept instruction from a Loan Market to cancel a previously-reported transaction that is pending settlement at DTC. When so instructed by a Loan Market, OCC already has authority to unwind settled Market Loan transactions that were erroneously executed.<sup>9</sup> OCC therefore believes this proposed ability to cancel pending transactions would be a minor extension of existing authority.

Finally, and also with respect to the Market Loan Program, AQS asked OCC to process dividend equivalent payments that are not covered by DTC's automatic dividend tracking services ("Dividend Service") and to do so

without removing a Market Loan from the Dividend Service. In October 2009, OCC amended its rules so that dividend equivalent payments are principally effected through DTC's Dividend Service. However, OCC retained authority to effect such payments through its cash settlement system if a Market Loan is removed by OCC from the Dividend Service.<sup>10</sup>

Since the time of that rule change by OCC, AQS determined that certain dividend equivalent payments are not tracked by DTC and therefore are not covered by its Dividend Service. In such situations, AQS requested that OCC allow a Loan Market to instruct OCC to use its cash settlement system to transfer these "non-tracked" dividend equivalent payments from a borrower to a lender without removing a Market Loan from the Dividend Service. OCC would amend Rule 2206A to accommodate this request. Guaranty of dividend equivalent payments by OCC would remain limited to the amount of margin OCC collects prior to the expected dividend payment date from any responsible Borrowing Clearing Member.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>11</sup> and the rules and regulations thereunder applicable to OCC because the proposed rule change promotes efficiencies in the clearance and settlement of securities transactions by modifying OCC's by-laws and rules to (i) revise the definition of the term "marking price" used in its Stock Loan/Hedge and Market Loan programs, (ii) permit cancellation of Market Loan transactions prior to settlement at DTC, and (iii) permit OCC to settle dividend equivalent payments that are not tracked through DTC's Dividend Service without removing a Market Loan from the Dividend Service.

##### (B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have any impact or 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 relating to the proposed rule change have not yet been solicited or received. OCC will notify

<sup>5</sup> The proposed changes to OCC's By-laws and Rules can be found in Exhibit 5 to proposed rule change SR-OCC-2010-06 at [http://www.dtcc.com/downloads/legal/rule\\_filings/2010/nsc/2010-02.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2010/nsc/2010-02.pdf).

<sup>6</sup> The vendor provides a marking price that is the mid-point between the bid and ask for such stocks.

<sup>7</sup> Article I, Section 1 of OCC's By-laws states, "[t]he term 'marking price' \* \* \* means the most recent market value reasonably ascertainable (or the most recent reasonably ascertainable contract price, in the case of a future), as determined by [OCC] in its discretion \* \* \*".

<sup>8</sup> AQS is a Loan Market as defined in the OCC's Market Loan Program rules.

<sup>9</sup> OCC Rule 2207A.

<sup>10</sup> Securities Exchange Act Release No. 34-60881 (October 26, 2009), 74 FR 56253 (October 30, 2009) File No. SR-OCC-2009-16.

<sup>11</sup> 15 U.S.C. 78q-1.

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

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

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

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

the Commission of any written comments received by OCC.

### 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)(A)(iii) of the Act<sup>12</sup> and Rule 19b-4(f)(4)<sup>13</sup> thereunder because the proposed rule change effects a change in an existing service of a registered clearing agency that: (i) Does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may 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

- Electronic comments may be submitted by using 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 No. SR-OCC-2010-06 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-2010-06. 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 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 a.m. and 3 p.m. Copies of such filings also will 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\\_10\\_06.pdf](http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_10_06.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-2010-06 and should be submitted on or before May 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. 2010-9272 Filed 4-22-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61937; File No. SR-NYSEArca-2010-23]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Modify NYSE Arca Trades Fees, To Establish the NYSE Arca BBO Service and Related Fees, and To Provide an Alternative Unit-of-Count Methodology for Those Services

April 16, 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 April 1, 2010, the NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), 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 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

NYSE Arca proposes: (A) To modify the professional subscriber fees for its NYSE Arca Trades Service; (B) to establish the NYSE Arca BBO Service, a service that will make available the Exchange's best bids and offers; (C) to establish fees for the NYSE Arca BBO Service; and (D) to provide an alternative unit-of-count methodology for the NYSE Arca Trades and BBO Services. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, on the Commission's Web site at <http://www.sec.gov>, at NYSE Arca, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

##### 1. Purpose

##### a. NYSE Arca Trades Fees and Unit-of-Count Methodology

On March 18, 2009, the Commission approved the NYSE Arca Trades Service and its fees.<sup>3</sup> NYSE Arca Trades is a NYSE Arca-only market data service that allows a vendor to redistribute on a real-time basis the same last sale information that the Exchange reports under the CTA Plan and the "Nasdaq/UTP Plan"<sup>4</sup> for inclusion in those plans' consolidated data streams and certain other related data elements ("NYSE Arca Last Sale Information").

The Commission approved two professional subscriber fees for the NYSE Arca Trades Service. It approved a fee of \$5 per month per display device

<sup>3</sup> See Release No. 34-59598; 74 FR 12919 (March 25, 2009); File No. SR-NYSEArca-2009-05.

<sup>4</sup> Formally referred to as "the Reporting Plan for Nasdaq/National Market System Securities Traded on an Exchange on an Unlisted or Listed Basis."

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(4).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>27</sup> 17 CFR 240.19b-4.