

### *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**

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>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>10</sup> However, Rule 19b-4(f)(6)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission has considered the Exchange's request to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary

interruption in the pilot program.<sup>12</sup> For this reason, the Commission designates the proposed rule change to be operative upon filing.

At any time within 60 days of the filing of the 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or 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, as amended, 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-ISE-2011-17 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-ISE-2011-17. 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 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 such filing also will be available for inspection and copying at the principal offices 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-ISE-2011-17, and should be submitted on or before May 2, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-64181; File No. SR-OCC-2010-19]

### **Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to Stock Loan Programs**

April 5, 2011.

#### **I. Introduction**

On December 16, 2010, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The proposed rule change clarifies the regulatory treatment under Rule 15c3-1<sup>2</sup> of collateral and margin posted by clearing members participating in stock loan transactions through OCC's Stock Loan/Hedge Program or Market Loan Program. The proposed rule change was published for comment in the **Federal Register** on January 5, 2011.<sup>3</sup> No comment letters were received. This order approves the proposed rule change.

#### **II. Description of the Proposal**

##### *A. Background*

OCC's Stock Loan/Hedge Program, provided for in Article XXI of OCC's By-

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). When filing a proposed rule change pursuant to Rule 19b-4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and 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. The Commission notes that the Exchange has satisfied this requirement.

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> *Id.*

<sup>12</sup> For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.15c3-1.

<sup>3</sup> Securities Exchange Act Release No. 63623 (Dec. 30, 2010), 76 FR 0602.

Laws and Chapter XXII of OCC's Rules, provides a means for OCC clearing members to submit broker-to-broker stock loan transactions to OCC for clearance. Broker-to-broker transactions are independently-executed stock loan transactions that are negotiated directly between two OCC clearing members. OCC's Market Loan Program, provided for in Article XXIA of OCC's By-Laws and Chapter XXIIA of OCC's Rules, accommodates securities loan transactions executed through electronic trading platforms that match lenders and borrowers on an anonymous basis. Anonymous stock loan transactions are initiated when a lender or borrower, which is either an OCC clearing member participating in the Market Loan Program or a non-clearing member that has a clearing relationship with an OCC clearing member participating in the Market Loan Program, accepts a bid/offer displayed on a trading platform.<sup>4</sup>

When a stock loan transaction is submitted to and accepted by OCC for clearance, OCC substitutes itself as the lender to the borrower and as the borrower to the lender thus serving a function for the stock loan market similar to the one it serves for the listed options market. OCC guarantees the future daily mark-to-market payments, which are effected through OCC's cash settlement system, between the lending clearing member and borrowing clearing member and guarantees the return of the loaned stock to the lending clearing member and the return of the collateral to the borrowing clearing member upon close-out of the stock loan transaction.<sup>5</sup> One advantage of submitting stock loan transactions to OCC is that the stock loan and stock borrow positions then reside in the clearing member's options account at OCC and, to the extent that they offset the risk of options positions carried in the same account, may reduce the clearing member's margin requirement in the account. OCC's risk is, in turn, reduced by having the benefit of the hedge.

One of the tools that OCC uses to manage its exposure to stock loan transactions is the margin that OCC calculates and collects with respect to

each account of a clearing member.<sup>6</sup> Such margin consists of a mark-to-market component that is based on the net asset value of the account (*i.e.*, the cost to liquidate the account at current prices). A second component of such margin is the risk component ("Risk Margin") determined by OCC's proprietary margin system based on the net risk of all open positions carried in the account, including stock loan positions as well as options positions.<sup>7</sup> An additional margin requirement ("Additional Margin"), which is solely applicable to stock loan transactions, arises where the collateral provided by the borrowing clearing member is greater than the current market value of the loaned stock. For example, in a stock loan transaction where the borrowing clearing member is required to provide collateral equal to 102% of the current market value of the loaned stock, OCC will charge the corresponding lending clearing member an Additional Margin amount equal to the 2% excess collateral and will credit the borrowing clearing member an equal amount. The Additional Margin charge/credit is designed to provide OCC with resources so it can fully compensate a party to a stock loan transaction in the event of a counterparty default where the loaned stock or collateral held by the non-defaulting party is worth less than the value of the collateral or loaned stock exchanged.

### B. Description of Rule Change

In December 2008, the Commission approved an OCC proposed rule change that memorialized OCC's understanding that where stock loan transactions are submitted to OCC for clearance through the Stock Loan/Hedge Program, any Additional Margin that a clearing member is required to deposit with OCC will be treated the same as any other portion of the OCC margin deposit requirement and therefore will not constitute an unsecured receivable that would otherwise be required to be deducted from such clearing member's net capital for purposes of Rule 15c3-1.<sup>8</sup>

Pursuant to this rule change, OCC is expanding the prior interpretive relief to make clear that: (i) clearing members are not required to take a net capital

deduction with respect to any excess of the collateral over the market value of the loaned stock and (ii) the interpretive relief also applies to stock loan transactions submitted to OCC for clearance through the Market Loan Program. As explained above, any over-collateralization of the loaned stock will be secured and offset by Additional Margin charges/credits applied by OCC. Therefore, any such excess collateral on loaned stock also would not be deemed to constitute an unsecured receivable for purposes of Rule 15c3-1.

In connection with the above-referenced initiatives, OCC will amend Interpretation .05 to OCC Rule 601 to reflect the regulatory treatment under Rule 15c3-1 of collateral and margin posted by clearing members participating in stock loan transactions through the Stock Loan/Hedge Program and/or Market Loan Program.<sup>9</sup>

### III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed 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.<sup>10</sup> OCC's rule change to provide additional interpretive relief with respect to the net capital treatment of stock loan transactions extends OCC's previous changes to its Stock Loan/Hedge Program<sup>11</sup> and is similarly designed to enhance OCC's ability to assure that it has collected sufficient margin from its members in relation to such members' activity. The new interpretive relief should continue to provide OCC with the ability to manage the risk of a clearing member's stock loan activity and should continue to enable OCC to protect itself and its members from potential losses associated with the stock loan program. Accordingly, the Commission finds that the proposed rule change is designed to assure the safeguarding of securities and funds which are in OCC's custody or control or for which OCC is responsible.

### 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<sup>12</sup> and the rules and regulations thereunder.

<sup>4</sup> A clearing member participating in the Market Loan Program is obligated to OCC as principal with respect to transactions effected by its customers that are non-clearing members of a trading platform.

<sup>5</sup> With respect to both the Stock Loan/Hedge Program and the Market Loan Program, the loaned securities are moved to the account of the borrower against cash collateral (normally 102%) through the facilities of The Depository Trust Company ("DTC"). DTC notifies OCC that the movement has occurred at the time the transaction is submitted for clearance. The securities are returned to the lender against return of the cash collateral through the same mechanism.

<sup>6</sup> This OCC margin requirement is in addition to the cash collateral that is transferred to the stock lender and may be deposited in any form constituting acceptable margin collateral under OCC Rule 604.

<sup>7</sup> OCC does not calculate risk margin on stock loan positions and stock borrow positions separately from risk margin on options positions carried in the same account.

<sup>8</sup> Securities Exchange Act Release No. 59036 (Dec. 1, 2008), 73 FR 74554 (Dec. 8, 2008).

<sup>9</sup> The text of the proposed amendment to Interpretation .05 can be found at [http://www.optionsclearing.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_10\\_19.pdf](http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_10_19.pdf).

<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>11</sup> *Supra* note 8.

<sup>12</sup> 15 U.S.C. 78q-1.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (File No. SR–OCC–2010–19) be and hereby is approved.<sup>14</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64192; File No. SR–FINRA–2011–015]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Effective Date of the Trading Pause Pilot

April 5, 2011.

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 March 30, 2011, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend FINRA Rule 6121 (Trading Halts Due to Extraordinary Market Volatility) to extend the effective date of the single stock circuit breaker pilot program until the earlier of August 11, 2011 or the date on which a limit up/down mechanism to address extraordinary market volatility, if adopted, applies to the pilot securities.

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

FINRA proposes to amend FINRA Rule 6121.01 to extend the effective date of the pilot by which such rule operates, which is currently scheduled to expire on April 11, 2011, until the earlier of August 11, 2011 or the date on which a limit up/down mechanism to address extraordinary market volatility, if adopted, applies to the pilot securities.

FINRA Rule 6121.01 provides that if a primary listing market has issued an individual stock trading pause under its rules, FINRA will halt trading otherwise than on an exchange in that security until trading has resumed on the primary listing market. The pilot was developed and implemented as a market-wide initiative by FINRA and other self-regulatory organizations (“SROs”) in consultation with Commission staff, and is currently applicable to the S&P 500® Index,<sup>3</sup> the Russell 1000® Index and a pilot list of Exchange Traded Products,<sup>4</sup> together, the “pilot securities.”

The extension proposed herein would allow the pilot to continue to operate without interruption while FINRA and the other SROs further assess the effect of the pilot on the marketplace and whether other initiatives should be adopted in lieu of the current pilot.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that the pilot can continue to operate without

interruption for the benefit of the marketplace and the investing public.

###### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>5</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

Additionally, extension of the pilot until the earlier of August 11, 2011 or the date on which a limit up/down mechanism to address extraordinary market volatility, if adopted, applies to the pilot securities, would allow the pilot to continue to operate without interruption while FINRA and the other SROs further assess the effect of the pilot on the marketplace and whether other initiatives should be adopted in lieu of the current pilot.

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

FINRA 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.

##### 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>6</sup> and Rule 19b–4(f)(6) thereunder.<sup>7</sup>

<sup>5</sup> 15 U.S.C. 78o–3(b)(6).

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

<sup>7</sup> 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the

Continued

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> In approving the proposed rule change, the Commission considered the proposal’s impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>15</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.

<sup>3</sup> See Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (Order Approving File No. SR–FINRA–2010–025).

<sup>4</sup> See Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (Order Approving File No. SR–FINRA–2010–033).