

option is in the money. The present rule filing addresses two unrelated points concerning "other binary options."

The first issue addressed in this filing relates to the description of the fixed exercise settlement amount. CBOE's proposed rules for binary options on broad-based indexes define the fixed exercise settlement amount as the product of the multiplier for that option and another fixed value, both established by CBOE at or before the opening of trading in a series of binary options. In contrast, the fixed exercise settlement amount for binary options currently traded on Amex is defined without reference to a multiplier. Since "multiplier" is defined in Section I of Article XIV of OCC's By-Laws only with respect to premiums and not exercise settlement amounts, OCC wishes to clarify through a new interpretation to Article XIV, Section 2B of OCC's By-Laws that some exchanges are permitted to describe the fixed exercise settlement amount as being the product of a multiplier times another fixed value.

Secondly, OCC proposes to clarify through an amendment to Rule 1506 that escrow deposits, like other deposits in lieu of margin, are not permitted with respect to binary options. The clarification will state that neither Rule 610 and Rule 613 shall not apply to binary options.

OCC states that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>5</sup> because it will promote the prompt and accurate clearance and settlement of transactions in binary options by clarifying the consistent application of OCC's By-Laws and Rules to binary options notwithstanding differences in the manner in which different listing exchanges define the exercise settlement amount for these options. OCC further states that the proposed rule change is not inconsistent with the rules of OCC, including those 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*

OCC did not solicit or receive written comments with respect to the proposed rule change.

### **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) of the Act<sup>6</sup> and Rule 19b-4(f)(1)<sup>7</sup> thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such proposed 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*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to [rule-comment@sec.gov](mailto:rule-comment@sec.gov). Please include File No. SR-OCC-2008-15 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.
- All submissions should refer to File No. SR-OCC-2008-15. 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 a.m. to 3 p.m. Copies of such filing also will be available for inspection and copying at OCC's principal office and on OCC's Web site at [http://www.theocc.com/publications/rules/proposed\\_changes/proposed\\_changes.jsp](http://www.theocc.com/publications/rules/proposed_changes/proposed_changes.jsp). 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. OCC-2008-15 and should be submitted on or before September 9, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58352; File No. SR-OCC-2008-17]

### **Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Permit the Clearance and Settlement of Options on the Realized Variance and Realized Volatility of an Index**

August 13, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 30, 2008, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change from interested parties.

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

OCC is seeking to clear and settle options on the realized variance and realized volatility of an index.

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

<sup>7</sup> 17 CFR 240.19b-4(f)(1).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(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>2</sup>

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

The purpose of proposed rule change is to permit OCC to clear and settle options on the realized variance and realized volatility of an index. Such options are referred to respectively as "realized variance options" and "realized volatility options," and collectively as "realized variance/volatility options." The Chicago Board Options Exchange ("CBOE") has received Commission approval to trade realized variance/volatility options on the S&P 500.<sup>3</sup> This rule change will permit OCC to clear these options as well as any other realized variance/volatility options proposed to be traded by an exchange for which OCC provides clearing services.

OCC currently clears options traded by CBOE on the CBOE S&P 500 Volatility Index, the CBOE Nasdaq 100 Volatility Index, the CBOE Dow Jones Industrial Volatility Index, and the CBOE Russell 2000 Volatility Index, each of which measures the implied volatility of the applicable stock index by deriving implied volatilities using real-time bid/ask quotations for options on the reference index. These indexes measure the predicted future volatility of the reference index. The underlying index for a realized variance/volatility option, in contrast, measures the actual historical variability of an index for a specified period.

The realized volatility/variance options described herein would be cleared by OCC under the same basic rules that apply to other index options. For purposes of the clearing process, the nature of the underlying index is largely irrelevant because the same basic procedures are applicable to clearance

and settlement of all index options. The rule changes proposed in this filing would add additional terms specifically applicable to realized volatility/variance options and clarify how certain provisions would be applied to such options. In addition, the proposed rule changes are intended to provide guidance as to which options products are subject to the provisions of Article XVII of the By-Laws and Chapter XVIII (Index Options) of the Rules and to create greater consistency in the use of defined terms.

### *By-Law Amendments Applicable to Realized Variance/Volatility Options*

In order to alleviate any confusion regarding what types of products are covered by Article XVII of OCC's By-Laws and Chapter XVIII of OCC's Rules, OCC proposes to add language to the introductory paragraph of Article XVII explicitly stating that it and Chapter XVIII of the Rules are applicable to options on stock indexes; indexes measuring the realized or predicted volatility or variance of a "reference index;" and indexes measuring the return of an investment strategy such as a buy-write index. To accommodate realized variance/volatility options, OCC proposes to add a defined term "reference index," which is used to refer to the index whose volatility or variance is measured by the underlying variance or volatility index. The new term is defined by cross-reference to the more general term "reference variable" that is defined in Article I of the By-Laws. OCC proposes to amend the definition of "index security" in Article XVII, Section 1 of the By-Laws to include securities included in a reference index, as well as securities included in an underlying index. The term "reporting authority" would also be amended to encompass the official source for a reference index.

Article XVII, Section 3(b) would be amended to replace the term "underlying securities" with the defined term "index securities" in two places in order to improve the consistency of terminology within the By-Laws and Rules. For the same reason, the term "index group" would be deleted from the Introduction, Section 3(b), and Section 5(a), as it is not used elsewhere in Article XVII.

Similarly, OCC is proposing to amend Section 3(c) of Article XVII of the By-Laws to use the defined term "index securities" rather than the undefined term "constituent securities."<sup>4</sup> The term

"reference index" is also included in this paragraph to clarify that OCC has the ability to modify outstanding index options if the index securities of either the underlying index or the reference index are changed in a manner which creates a discontinuity in the underlying index. OCC is also proposing to modify Article XVII, Section 3(d) of the By-Laws to provide that OCC has the authority to substitute a successor index for a reference index under the same circumstances under which it may substitute a successor index for an underlying index.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>5</sup> and the rules and regulations thereunder applicable to OCC because it is designed to promote the prompt and accurate clearance and settlement of transactions in, including exercises of, realized variance/volatility options, and to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. The proposed rule change accomplishes this by applying substantially the same rules and procedures to these transactions in variance/volatility options as OCC applies to similar transactions in other index options.

### *(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

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 securities transactions.<sup>6</sup> The Commission finds that OCC's

"index securities" is used instead of "component securities" of an index.

<sup>5</sup> 15 U.S.C. 78q-1.

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>3</sup> Securities Exchange Act Release No. 58171 (July 16, 2008), 73 FR 42841 (July 23, 2008) [SR-CBOE-2008-31].

<sup>4</sup> A comparable change is being made to Section 4(a) of Article XVII. In this instance, however,

proposed rule change is consistent with this obligation under the Act because it designed to promote the prompt and accurate clearance and settlement of transactions in realized variance/volatility options by applying substantially the same rules and procedures to these transactions as OCC applies to similar transactions in other index options.

OCC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication because CBOE's rule filing for realized variance/volatility options has been approved by the Commission, but CBOE will not be able to commence trading realized variance/volatility options until OCC's rule change is approved.<sup>7</sup> However, OCC will delay implementation of this rule change until distribution of a supplement addressing realized/variance volatility options to the options disclosure document, Characteristics and Risks of Standardized Options, is distributed.

#### 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-OCC-2008-17 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-OCC-2008-17. 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 inspection and copying 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 filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at <http://www.theocc.com>. 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-2008-17 and should be submitted on or before September 9, 2008.

#### V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-OCC-2008-17) be and hereby is approved on an accelerated basis.

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

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58353; File No. SR-OCC-2008-16]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Cash Dividend Threshold

August 13, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 24, 2008, 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. The Commission is publishing this notice to solicit comments from interested persons.

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

The proposed rule change would mitigate inconsistencies that may result under the current policy for adjusting stock option contracts.

#### 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>2</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 change is to mitigate inconsistencies that may result under the current policy for adjusting stock option contracts. In February 2007, the Commission approved rule change SR-OCC-2006-01, which amended Section 11A of Article VI of the OCC By-Laws governing adjustments to options in response to cash dividends or distributions.<sup>3</sup> Under the new adjustment policy, cash dividends paid by a company otherwise than pursuant to a policy or practice of paying dividends on a quarterly or other regular basis would be deemed "special" and would normally trigger a contract adjustment provided the value of the adjustment is at least \$12.50 per option contract. This new adjustment policy will become effective for cash dividends announced on or after February 1, 2009.

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>3</sup> Securities Exchange Act Release No. 55258 (February 8, 2007), 72 FR 7701 (February 16, 2007).

<sup>7</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

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

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