

application of odd-lot trading practices and Rules.

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

The Exchange does not believe that the proposed rule change will 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*

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 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date 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 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 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-NYSE-2008-116 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-NYSE-2008-116. 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. 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-NYSE-2008-116 and should be submitted on or before December 17, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-28042 Filed 11-25-08; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58977; File No. SR-OCC-2008-09]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Eligible Margin Assets

November 19, 2008.

#### I. Introduction

On May 15, 2008, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2008-09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on August 19, 2008.<sup>2</sup> No comment letters were received. For

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 58347 (August 12, 2008), 73 FR 48419.

the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description

The primary purpose of this rule change is to eliminate, as eligible forms of margin assets, foreign currency and letters of credit denominated in a foreign currency.

#### *Background*

The Philadelphia Stock Exchange, Inc. ("Phlx") has delisted all physical delivery foreign currency and cross-rate foreign currency options (collectively, "currency options") and has advised OCC that it does not presently plan to list contracts requiring foreign currency delivery. To support premium and exercise settlement for such currency options, OCC has maintained in various countries bank accounts that also have been used from time to time to hold margin deposits in foreign currencies. With the delisting of physical delivery currency options, these accounts are no longer needed for operational reasons. Few clearing members have deposited foreign currencies as margin with OCC and only then in de minimis amounts, and no such deposits are currently held by OCC. In light of the limited and infrequent use of this margin asset class by clearing members, OCC has determined to close its foreign currency accounts for cost saving purposes. Closing these accounts means that OCC will no longer have the operational capability to accept foreign currency for margin purposes, and accordingly, OCC is modifying its rules to delete this asset class. Letters of credit denominated in a foreign currency have never been posted with OCC by clearing members, and their acceptance will be eliminated as well.

#### *Rule Changes*

To eliminate these forms of margin assets, OCC is amending Rule 604. Specifically, references to deposits of foreign currencies are being deleted from paragraph (a), which relates to cash margin deposits. References to letters of credit denominated in a foreign currency are being deleted from paragraph (c). Other technical, conforming changes will be made to paragraph (c) to reflect such deletion. Because amended paragraph (c) specifies that letters of credit are to be denominated in U.S. dollars, specific references to U.S. dollar denominated letters of credit are being removed from Interpretations and Policies .03 and .08 under Rule 604. Interpretation and Policy .09 is being deleted in its entirety as it solely relates to deposits of letters

of credit denominated in a foreign currency.

For rule transparency purposes, OCC is also inserting a notice at the beginning of the By-Law articles and Rule chapters that relate to physical delivery currency options (*i.e.*, Articles XV and XXI and Chapters XVI and XXII) to inform readers that such provisions are inoperative until further notice by OCC.

### 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 its custody or control or for which it is responsible.<sup>3</sup> The Commission finds the proposed rule change to be consistent with this requirement because it eliminates a margin asset class that was seldom used by clearing members for margin deposits. In addition, having foreign currencies on deposit is no longer required operationally for OCC to support premium and exercise settlement due to the delisting of all physical delivery currency options. Accordingly, the proposed rule should not affect OCC's obligation to assure the safeguarding of securities and funds which are in its custody or control or for which it 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 and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-2008-09) be and hereby is approved.<sup>4</sup>

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

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-28044 Filed 11-25-08; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58988; File Nos. SR-OCC-2008-18 and SR-NSCC-2008-09]

### Self-Regulatory Organizations; The Options Clearing Corporation and National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to Amendment No. 2 to the Third Amended and Restated Options Exercise Settlement Agreement

November 20, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on November 17, 2008, The Options Clearing Corporation ("OCC") and the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I and II, and III below, which items have been prepared primarily by OCC and NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant approval of the proposals.

#### I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes would amend the Third Amended and Restated Options Exercise Settlement Agreement between OCC and NSCC as described herein.

#### II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, OCC and NSCC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. OCC and NSCC have 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 Organizations' Statements of the Purpose of, and Statutory Basis for the Proposed Rule Changes

The purpose of the proposed rule changes is to reduce the burden on

clearing members of OCC that are also members of NSCC that results from duplicative margin requirements relating to option exercises and assignments and to allow clearing members to use stock deposited as margin with OCC to meet settlement obligations at NSCC.

OCC and NSCC are parties to a Third Amended and Restated Options Exercise Settlement Agreement dated as of February 16, 1995, as amended ("OCC/NSCC Accord"), which provides for a two-way guaranty between OCC and NSCC of the mark-to-market amounts for which NSCC has guaranteed settlement. Through these rule changes, OCC and NSCC seek approval for an Amendment No. 2 to the OCC/NSCC Accord ("Amendment") that would address the matters stated above.

Under the OCC/NSCC Accord currently in effect, OCC guarantees to NSCC the performance by NSCC members of settlement obligations resulting from exercise and assignment ("E&A") positions, with the amount guaranteed by OCC with respect to the performance of an NSCC member's settlement obligation equal to the smaller of the "Net Member Debit to NSCC" and the "Calculated Margin Requirement" with respect to the NSCC member. OCC can make this guarantee because it continues to margin E&A activity through the settlement date.<sup>3</sup> Similarly, NSCC guarantees to OCC the smaller of the "Net Member Debit to OCC" and the "Calculated Margin Credit." NSCC can make this guarantee because it collects risk-based margin on the member's entire portfolio of E&A activity.<sup>4</sup>

Both OCC and NSCC collect margin with respect to E&A positions through settlement, calculated utilizing risk-based margining methodologies which include volatility charges. OCC collects risk margin to cover (i) the risk that NSCC might decline to settle a defaulting member's pending E&A activity<sup>5</sup> thereby forcing OCC to guarantee buy-ins and sell-outs and (ii) the risk that the market might move against E&A positions accepted by NSCC for settlement thereby increasing OCC's potential liability to NSCC under the OCC/NSCC Accord. NSCC collects a

<sup>3</sup> In the case of E&A activity resulting from exercises at expiration ("Expiration E&A Activity"), the settlement date is normally the Wednesday after expiration.

<sup>4</sup> Because OCC marks E&A activity to the market and guarantees that amount to NSCC, NSCC does not mark E&A positions to the market. However, it does collect VAR margin to cover potential losses in liquidating E&A positions.

<sup>5</sup> Under its rules, NSCC's guaranty does not attach until midnight on T+1. For exercises on expiration weekend, T+1 is normally the following Monday.

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

<sup>4</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>5</sup> 17 CFR 200.30-3(a)(12).

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

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