

File No. SR-OCC-2004-09

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 19b-4

Proposed Rule Change
by

THE OPTIONS CLEARING CORPORATION

**Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934**

Item 1. Text of the Proposed Rule Change

The Options Clearing Corporation (“OCC”) proposes to amend its by-laws as set forth below. Underlining indicates material proposed to be added and brackets indicate material proposed to be deleted.

THE OPTIONS CLEARING CORPORATION

BY-LAWS

ARTICLE I

Definitions

Definitions

SECTION 1. Unless the context requires otherwise (or except as otherwise specified in the By-Laws), the terms defined herein shall, for all purposes of these By-Laws and the Rules of the Corporation, have the meanings herein specified.

A. - D. [unchanged]

E.

(1) – (2) [unchanged]

Eligible Stock

(3) The term “Eligible Stock” means any security that is eligible for lending in the Stock Loan/Hedge Program. A security shall be eligible for lending in the Stock Loan/Hedge Program if and only if (i) the security is an equity security that the Depository has determined is eligible for deposit at the Depository, (ii) the security is an underlying security for options, and (iii) the Corporation has not determined to terminate all outstanding Stock Loans in respect of such security pursuant to the By-Laws. The restriction set forth in clause (ii) of the preceding sentence shall not apply to: (x) [to] Stock Loans that were accepted by the Corporation prior to its implementation, [or] (y) [to] loans of securities that are deliverable upon exercise of an outstanding option, or (z) loans of a fund share that tracks an index underlying outstanding index options whether or not the fund share is itself an underlying security.

(4) – (12) [unchanged]

F. – Z. [unchanged]

* * *

Item 2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of OCC at a meeting held on March 5, 2004.

Questions regarding the proposed rule change should be addressed to Jean M. Cawley, First Vice President and Deputy General Counsel, at (312) 322-6269.

Item 3. 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 amend the eligibility requirements for securities that may be the subject of stock loan/borrow transactions cleared through OCC's Stock Loan/Hedge Program ("Hedge Program").

Background

In 2002, OCC proposed an additional eligibility criterion for equity securities that may be loaned in the Hedge Program. (See File No. SR-OCC-2002-11)¹. Specifically, OCC proposed to require that a loaned security be an underlying security for options unless: (x) the loan was accepted by OCC prior to the implementation of the new requirement, or (y) the security was deliverable upon the exercise of an outstanding option.² OCC's intention in adding this requirement was to more closely align the Hedge Program with its intended objective of recognizing intermarket hedges between a clearing member's equity and options positions.

¹ File No. SR-OCC-2002-11 also proposed other Hedge Program changes that are not relevant to this filing.

² The existing criteria required that a security loaned in the Hedge Program be an equity security eligible for deposit at DTC and that OCC had not terminated all loans in respect of that security. These requirements are still in effect.

The Commission approved File No. SR-OCC-2002-11 on May 21, 2003 (See Release 34-47898). OCC, with the Commission's consent, deferred implementing this new standard pending completion of system enhancements by DTC and Loanet which would permit them to confirm that securities loaned in a transaction meet OCC's criteria and, therefore, the transaction would be eligible for clearance at OCC.³ These system enhancements are scheduled for implementation in June, 2004.

Discussion

During the deferment period, OCC took the opportunity to reassess its eligibility criteria as approved by the Commission, and determined that the criteria would preclude the lending of shares of certain exchange-traded funds ("ETFs"). There are a number of ETFs that track indexes underlying OCC-issued options, but are not themselves underlying securities for options. These ETFs are often used as hedges against the related index options. Without a change in the eligibility criteria, OCC would have to disqualify such ETFs from being loaned in the Hedge Program. OCC believes that excluding such ETFs would be inconsistent with the purpose of the Hedge Program⁴ (i.e., the recognition of intermarket hedges between equity and options positions). Accordingly, OCC is making a technical change to its securities eligibility criteria to permit loans of an ETF that tracks an index underlying an outstanding index option whether or not the ETF itself is an underlying security for options.

³ Loanet is a service bureau used by broker dealers, including OCC clearing members, involved in stock loan transactions. Clearing members either on their own, or through Loanet, enter into stock loan transactions via DTC systems and through use of a special code designate them as eligible for clearance at OCC.

⁴ Five such ETFs account for nearly \$673 million in loans outstanding in the Hedge Program as of May, 2004.

* * *

This proposed rule change is consistent with the purposes and requirements of Section 17A of the Exchange Act (“Exchange Act”) because it will promote the prompt and accurate clearance and settlement of securities transactions, foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, remove impediments to the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions, and assure the safeguarding of securities and funds in the custody or control of OCC.

Item 4. Self-Regulatory Organization’s Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

Item 5. 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.

Item 6. Extension of Time Period for Commission Action

Not applicable.

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

OCC has filed this rule change for immediate effectiveness pursuant to Section 19(b)(3) of the Exchange Act and Rule 19b-4(f)(4) thereunder because it is effecting a change in an existing service of a clearing agency that: does not (i) adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which OCC is responsible, or (ii) significantly affect the respective rights or obligations of OCC or its clearing members.

Because OCC deferred implementing the revised securities eligibility criteria for the Stock Loan program, OCC currently accepts loans of an ETF that tracks an index underlying outstanding index options notwithstanding that the ETF is not itself an underlying security. This rule change permits OCC to continue to accept loan transactions involving such ETFs to further the purposes of the Hedge Program. The proposed rule change does not substantively affect the manner in which OCC safeguards securities or funds or the current rights or obligations of clearing members.

Item 8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on a rule of another self-regulatory organization or of the Commission.

Item 9. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, The Options Clearing Corporation has caused this filing to be signed on its behalf by the undersigned hereunto duly authorized.

THE OPTIONS CLEARING CORPORATION

By: _____
Jean M. Cawley
First Vice President and
Deputy General Counsel

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____ ; File No. SR-OCC-2004-09

SELF-REGULATORY ORGANIZATION

Proposed Rule Change By
The Options Clearing Corporation

Relating to Eligible Securities
For OCC's Stock/Loan Hedge Program

Comments requested within ____ days
after the date of this publication.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. '78s(b)(1), notice is hereby given that on _____, 2004, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 amend the eligibility requirements for securities that may be the subject of stock loan/borrow transactions cleared through OCC's Stock Loan/Hedge Program ("Hedge Program").

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

The purpose of the proposed rule change is to amend the eligibility requirements for securities that may be the subject of stock loan/borrow transactions cleared through OCC's Stock Loan/Hedge Program ("Hedge Program").

Background

In 2002, OCC proposed an additional eligibility criterion for equity securities that may be loaned in the Hedge Program. (See File No. SR-OCC-2002-11)¹. Specifically, OCC proposed to require that a loaned security be an underlying security for options unless: (x) the loan was accepted by OCC prior to the implementation of the new requirement, or (y) the security was deliverable upon the exercise of an outstanding

¹ File No. SR-OCC-2002-11 also proposed other Hedge Program changes that are not relevant to this filing.

option.² OCC's intention in adding this requirement was to more closely align the Hedge Program with its intended objective of recognizing intermarket hedges between a clearing member's equity and options positions.

The Commission approved File No. SR-OCC-2002-11 on May 21, 2003 (See Release 34-47898). OCC, with the Commission's consent, deferred implementing this new standard pending completion of system enhancements by DTC and Loanet which would permit them to confirm that securities loaned in a transaction meet OCC's criteria and, therefore, the transaction would be eligible for clearance at OCC.³ These system enhancements are scheduled for implementation in June, 2004.

Discussion

During the deferment period, OCC took the opportunity to reassess its eligibility criteria as approved by the Commission, and determined that the criteria would preclude the lending of shares of certain exchange-traded funds ("ETFs"). There are a number of ETFs that track indexes underlying OCC-issued options, but are not themselves underlying securities for options. These ETFs are often used as hedges against the related index options. Without a change in the eligibility criteria, OCC would have to disqualify such ETFs from being loaned in the Hedge Program. OCC believes that excluding such ETFs would be inconsistent with the purpose of the Hedge Program⁴

² The existing criteria required that a security loaned in the Hedge Program be an equity security eligible for deposit at DTC and that OCC had not terminated all loans in respect of that security. These requirements are still in effect.

³ Loanet is a service bureau used by broker dealers, including OCC clearing members, involved in stock loan transactions. Clearing members either on their own, or through Loanet, enter into stock loan transactions via DTC systems and through use of a special code designate them as eligible for clearance at OCC.

⁴ Five such ETFs account for nearly \$673 million in loans outstanding in the Hedge Program as of May, 2004.

(i.e., the recognition of intermarket hedges between equity and options positions).

Accordingly, OCC is making a technical change to its securities eligibility criteria to permit loans of an ETF that tracks an index underlying an outstanding index option whether or not the ETF itself is an underlying security for options.

* * *

This proposed rule change is consistent with the purposes and requirements of Section 17A of the Exchange Act (“Exchange Act”) because it will promote the prompt and accurate clearance and settlement of securities transactions, foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, remove impediments to the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions, and assure the safeguarding of securities and funds in the custody or control of OCC.

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

OCC has filed this rule change for immediate effectiveness pursuant to Section 19(b)(3) of the Exchange Act and Rule 19b-4(f)(4) thereunder because it is effecting a

change in an existing service of a clearing agency that: (i) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which OCC is responsible, or (ii) significantly affect the respective rights or obligations of OCC or its clearing members.

Because OCC deferred implementing the revised eligibility criteria for securities that may be the subject of stock loan transactions, OCC is accepting loans involving an ETF that tracks an underlying index of outstanding index options notwithstanding the ETF is not an underlying security for an option. This rule change merely makes a technical change that will permit OCC to continue to accept for clearance loan transactions involving such ETFs to further the purposes of the Hedge Program. The proposed rule change does not substantively affect the manner in which OCC safeguards securities or funds or the current rights or obligations of clearing members.

At any time within 60 days of the filing of this 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 Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by _____.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Secretary

Dated: _____