

File No. SR-OCC-2006-09

**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

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Form 19b-4

Proposed Rule Change  
by

THE OPTIONS CLEARING CORPORATION

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

OFFICE OF THE SECRETARY

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**Item 1. Text of the Proposed Rule Change**

The Options Clearing Corporation (“OCC”) proposes to amend its By-Laws and Rules as set forth below in order to add general and comprehensive choice of law and forum selection provisions to OCC’s By-Laws, specifying the laws of the state of Illinois and the federal law of the United States as governing law, and to remove the somewhat limited choice of law provisions currently part of OCC’s By-Laws and Rules. Material proposed to be added is underlined and material proposed to be deleted is bracketed. Certain material proposed to be transferred from Article VI, Section 9 to Article IX, Section 10 has been double-bracketed where it is proposed to be removed and double-underlined where it is proposed to be inserted. Article IX, Section 10 is otherwise entirely new and has not been underlined to enhance readability.

**THE OPTIONS CLEARING CORPORATION**

**BY-LAWS**

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**ARTICLE VI**

**Clearance of Exchange Transactions**

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**General Rights and Obligations of Holders and Writers**

SECTION 9. (a)-(b) [No change.]

(c) Governing Law; Ownership and Security Interests.

(1) Choice of law rules governing, among other things, the rights and obligations of the Corporation and Clearing Members with respect to ownership and transfer of, and the creation, attachment, perfection and priority of security interests in, cleared securities, commodity futures contracts and futures options contracts are set forth in Article IX, Section 10 of the By-Laws.

[(1) Subject to the provisions of the By-Laws and the Rules, [[the rights and obligations of the Corporation and Clearing Members with respect to ownership and transfer of, and the creation, attachment, perfection and priority of security interests in, cleared securities shall be governed by Articles 8 and 9 of the Uniform Commercial Code of Illinois (the "Code"),]] including the conflict of laws rules provided therein. [[For the purposes of Articles 8 and 9 of the Uniform Commercial Code, all cleared securities are "financial assets" and not "securities;" the rights and property interest of a Clearing Member in a cleared security is a "security entitlement;" the "entitlement holder" is the Clearing Member in whose account with the Corporation the cleared security is carried; and the Corporation is the "securities intermediary." In the case of a cleared security carried in an account with a Clearing Member on behalf of a customer or any person other than the Clearing Member, the rights and property interest of such customer or person in the cleared security is a "security entitlement;" the "entitlement holder" is the customer or person in whose account with the Clearing Member the cleared security is carried; and the Clearing Member is the "securities intermediary."]]]

(2) Persons desiring to perfect security interests in cleared securities should obtain the advice of counsel as to applicable legal requirements.

[(2) Subject to the provisions of the By-Laws and Rules, [[the rights and obligations of the Corporation and Clearing Members with respect to the creation, attachment, perfection and priority of security interests in commodity futures contracts and futures options contracts shall be governed by Article 9 of the Uniform Commercial Code]], including the conflict of laws rules provided therein. [[For purposes of Article 9, all such contracts are "commodity contracts" and the Corporation is the "commodity intermediary."]]]

**...Interpretations and Policies:**

.01 [No change.]

[.02 Notwithstanding the first sentence of subsection (c)(1) above, questions regarding the creation, attachment, perfection or priority of security interests in cleared securities may be governed by laws other than the law of Illinois, depending on whether the relevant jurisdiction has adopted the 1994 amendments to Articles 8 and 9 of the Uniform Commercial Code and on applicable conflict of laws rules. Persons desiring to perfect security interests in cleared securities should obtain the advice of counsel as to applicable legal requirements.]

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## ARTICLE IX

### General Provisions

\* \* \*

#### Choice of Law and Forum Selection

SECTION 10. (a) The By-Laws and the Rules of the Corporation constitute a contract between the Corporation and each Clearing Member.

(b) The laws of the State of Illinois and the federal law of the United States of America, without regard to conflicts of law principles, shall govern the application and interpretation of the By-Laws and the Rules of the Corporation, as well as all other agreements between the Corporation and Clearing Members, except to the extent that the Corporation has expressly agreed otherwise in writing.

(c) The rights and obligations of the Corporation and Clearing Members with respect to ownership and transfer of, and the creation, attachment, perfection and priority of security interests in, cleared securities shall be governed by Articles 8 and 9 of the Uniform Commercial Code of Illinois, without regard to the conflict of laws rules provided therein. For the purposes of Articles 8 and 9 of the Uniform Commercial Code, all cleared securities are "financial assets" and not "securities;" the rights and property interest of a Clearing Member in a cleared security is a "security entitlement;" the "entitlement holder" is the Clearing Member in whose account with the Corporation the cleared security is carried; and the Corporation is the "securities intermediary." In the case of a cleared security carried in an account with a Clearing Member on behalf of a customer or any person other than the Clearing Member, the rights and property interest of such customer or person in the cleared security is a "security entitlement;" the "entitlement holder" is the customer or person in whose account with the Clearing Member the cleared security is carried; and the Clearing Member is the "securities intermediary."

(d) The rights and obligations of the Corporation and Clearing Members with respect to the creation, attachment, perfection and priority of security interests in commodity futures contracts and futures options contracts shall be governed by Article 9 of the Uniform Commercial Code of Illinois, without regard to the conflict of laws rules provided therein. For purposes of Article 9 of the Uniform Commercial Code, all such contracts are "commodity contracts" and the Corporation is the "commodity intermediary."

(e) For purposes of resolving any controversy or claim between a Clearing Member and the Corporation arising out of or relating to the By-Laws or Rules of the Corporation or the transactions contemplated thereby, the Corporation and the Clearing Member shall be deemed to have consented to the personal jurisdiction of any state or federal court located in Chicago, Illinois, and any lawsuit or other legal proceeding brought by a Clearing Member against the Corporation or by the Corporation against a Clearing Member shall be brought in a United States

federal court located in the City of Chicago or, if the federal courts lack diversity or subject matter jurisdiction over the matter, in a court of the State of Illinois located in the City of Chicago.

### **Separability**

SECTION 11[10]. In the event any provision of the By-Laws or Rules should be held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect any other provision of the By-Laws or Rules, which shall remain in full force and effect in accordance with the terms thereof and shall be construed as if such invalid or unenforceable provision had not been contained therein.

### **Certificates for Shares**

SECTION 12[11]. Certificates representing shares of the Corporation shall be in such form and shall bear such legends as may be determined by the Board of Directors. Such certificates shall be signed by the Chairman, the Management Vice Chairman, President or a Vice-President and by the Secretary or an Assistant Secretary and shall be sealed with the seal of the Corporation. All certificates for shares shall be consecutively numbered or otherwise identified. The name of the person to whom the shares represented thereby are issued, with the number of shares and the date of issue, shall be entered on the books of the Corporation. All certificates surrendered to the Corporation for transfer shall be canceled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and canceled, except that in the case of a lost, destroyed or mutilated certificate a new one may be issued therefor upon such terms and indemnity to the Corporation as the Board of Directors may prescribe.

### **Transfers of Shares**

SECTION 13[12]. Transfers of shares of the Corporation shall be made only on the books of the Corporation by the holder of record thereof or by his legal representative, who shall furnish proper evidence of authority to transfer, or by his attorney thereunto authorized by power of attorney duly executed and filed with the secretary of the Corporation, and on surrender for cancellation of the certificate for such shares. The person in whose name shares stand on the books of the Corporation shall be deemed the owner thereof for all purposes as regards the Corporation.

**RULES**

\* \* \*

**CHAPTER VI**

**Margins**

\* \* \*

**Forms of Margin<sup>1</sup>**

RULE 604. [No change.]

(a) [No change.]

(b) Securities. The types of securities specified in subparagraphs (1) - (4) of this paragraph (b) may be deposited with the Corporation in the manner specified for each.

(1) – (2) [No change.]

(3) Money Market Fund Shares. (i) [No change.]

(ii) Prior to the deposit of MMF Shares as margin pursuant to this subparagraph (b)(3), the Clearing Member must have entered into an agreement with the Corporation and the Fund and/or its transfer agent, or shall have made other arrangements acceptable to the Corporation to perfect the Corporation's security interest in the MMF Shares through "control," as that term is defined in Articles 8 and 9 of the Uniform Commercial Code as in effect in [the applicable jurisdictions]the state of Illinois.

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**Pledge Program**

RULE 614. (a) – (l) [No change.]

(m) Effect of Pledge; No Guarantee by Corporation. The Corporation shall have no obligation in respect of any pledge pursuant to this Rule except as provided in the By-Laws and the Rules. The Corporation does not guarantee payment of any amounts owing by the Clearing

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<sup>1</sup> Minor conforming changes were made to Rule 604 (including to its title) in File No. SR-OCC-2004-20, but the implementation of that filing has been delayed pending the installation of related system changes. (File No. SR-OCC-2004-20 proposed a new margin methodology.) Rule 604 will be entitled "Form of Margin Assets" when Filing No. SR-OCC-2004-20 is implemented. The change in title is the only change proposed in File No. SR-OCC-2004-20 that is relevant to this rule change. In the event that File No. SR-OCC-2004-20 is implemented before this rule change is approved, the title to Rule 604 for purposes of this rule change should be "Form of Margin Assets".

Member, nor does the Corporation give any warranty as to the value (if any) of the cleared security being pledged or as to the validity, perfection, or priority (except, in each instance, as against the Corporation) of any security interest resulting from a pledge pursuant to this Rule. By its participation in the Pledge Program pursuant to this Rule, each Pledgee represents and warrants that it has conducted its own individual inquiry into the legal classification of any security interest resulting from pledges pursuant to this Rule. [In the event that, notwithstanding the provisions of Article VI, Section 9(c)(1) of the By-Laws, the law of a jurisdiction that has not adopted the 1994 amendments to Articles 8 and 9 of the Uniform Commercial Code shall be applicable to the security interests created under this Rule 614, the following shall also apply: a pledge pursuant to this Rule shall constitute a "registered pledge" for the purposes of the 1977 version of Article 8 of the Uniform Commercial Code (the "Code"); provided that by accepting a pledge pursuant to this Rule, a Pledgee shall be deemed conclusively to have waived all rights that it may have against the Corporation under said Article 8 (including, without limitation, rights under "§§8-207, 8-401, and 8-408) and under Article 9 of the Code to the extent that such rights are inconsistent with, or in addition to, the rights conferred upon Pledgees by the By-Laws and the Rules.]

(n) – (p) [No change.]

**...Interpretations and Policies:**

.01 Pledgees should consult with counsel as to the legal requirements for perfecting security interests in cleared securities. See [Interpretation .02 to]Article VI, Section 9(c)(2) of the By-Laws.

**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 2, 2006.

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**

**Introduction**

The proposed amendments would provide for the addition of new general choice of law and forum selection provisions to OCC's By-Laws. The purpose of this change is to

ensure there are appropriate choice of law and forum selection provisions governing all contractual relations between OCC and every Clearing Member, and to provide greater clarity, consistency and predictability in the application of the law to all contractual relations between OCC and its Clearing Members and the choice of forum in the event of litigation on such matters.

### **Background**

Currently, OCC's By-Laws and Rules contain choice of law provisions which apply in somewhat limited circumstances. This approach is problematic as it could lead to inconsistencies between individual choice of law provisions or may fail to properly specify a governing law with respect to certain contractual relations altogether.

Article VI, Section 9(c) of OCC's By-Laws provides that Illinois law, specifically the Illinois Uniform Commercial Code, is the governing law with respect to cleared contracts. OCC Rule 604(m) also incorporates certain provisions of Article VI, Section 9 by reference. However, these provisions only apply to a "cleared contract," defined in Article I, Section 1 of OCC's By-Laws as "a cleared security or commodity future or futures option that is cleared by [OCC]." OCC has interactions and relationships with Clearing Members not directly involving cleared contracts – e.g., membership and financial requirements.

OCC Rule 614(m), which clarifies the limited obligations of OCC in connection with pledges of cleared securities, currently contains special provisions applicable in the event that, notwithstanding the choice of provision in current Article VI, Section 9(c)(1) of OCC's By-Laws, the laws of a jurisdiction that has not adopted the 1994 revisions to Article 8 and 9 of the UCC are applicable to security interests in pledged securities. These provisions provide that by accepting pledges under OCC's pledge program, pledgees waive rights that may have been



deemed to exist under the version of the UCC in effect in any such jurisdiction. However, all 50 U.S. States, the District of Colombia, the U.S. Virgin Islands and Puerto Rico have now adopted these amendments, rendering this language unnecessary.

Article V, Section 3(k) of OCC's By-Laws requires non-U.S. securities firms to consent, as a condition to admission as a Clearing Member, to the jurisdiction of Illinois courts and to the application of United States law in connection with any dispute with OCC arising from membership. However, this provision only applies to the limited context of disputes with OCC arising from membership.

The addition of a general choice of law provision to OCC's By-Laws would provide consistency and predictability in the application of the law to all relations between OCC and its Clearing Members. This provision could be particularly useful with respect to collateral posted by non-U.S. Clearing Members, where a clear choice of law provision could provide further assurance that OCC's interests in such collateral are properly perfected. Such a provision would also decrease the likelihood of an inadvertent inconsistency among provisions of the various Articles of the By-Laws. Illinois law is the most logical choice to be the governing law under such a provision given OCC's location and OCC's familiarity with Illinois law. Selecting Illinois law, along with United States federal law, as governing law would also result in the greatest consistency with current provisions of OCC's By-Laws and Rules. In addition, selection of Illinois as the forum for resolving any claims or disputes arising out of or relating to OCC's By-Laws or Rules would be most logical in light of the consistent application of Illinois law to relations between OCC and its Clearing Members.

**OCC's Proposed Rule Changes**

The following proposed revisions to OCC's By-Laws and Rules are necessary to create a general choice of law provision:

**New Choice of Law Provision:** OCC proposes to add a new general choice of law provision as Article IX, Section 10 of its By-Laws specifying Illinois law as the governing law with respect to OCC's By-Laws and Rules as well as any agreements between OCC and Clearing Members. OCC also proposes to add a forum selection clause specifying that any lawsuits between Clearing Members and OCC be brought in a federal court, or, in the absence of federal jurisdiction, a state court, located in Chicago, Illinois. OCC proposes that Article IX, Sections 10-12 of the current OCC By-Laws be renumbered as Sections 11-13 but otherwise remain unchanged.

**Amendments to the By-Laws:** OCC proposes that Article VI, Section 9(c) of the By-Laws be removed in its entirety and replaced with a reference to the new Article IX, Section 10 of the By-Laws, and a notice provision that persons desiring to perfect security interests in cleared securities seek the advice of counsel.

**Other Amendments:** OCC proposes to make conforming amendments to Rule 604(b)(3)(ii) and Rule 614's Interpretation and Policies necessary in light of the adoption of the general choice of law provision described above. OCC further proposes that language in Rule 614(m) providing for a contingency in the event of the application of the law of a jurisdiction that has not adopted the 1994 amendments to Articles 8 and 9 of the UCC be deleted as no longer necessary.

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The proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934, as amended (“Exchange Act”) because it helps 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, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general protects investors and the public interest by providing for clarity and predictability in the application of the law to all contractual relations between OCC and its Clearing Members, especially with respect to the perfection of interests in collateral. Other than as described in footnote 1 to Rule 604, the proposed rule change is not inconsistent with any other By-Laws or Rules of OCC, including those proposed to be amended.

**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 Organizations 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**

OCC does not consent to an extension of the time period specified in Section 19(b)(2) of the Exchange Act.

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

Not applicable.

**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.

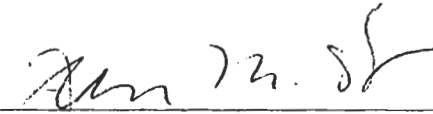
**Item 9. Exhibits**

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, as amended, 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:   
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Jean M. Cawley  
First Vice President and  
Deputy General Counsel