

THE OPTIONS CLEARING CORPORATION

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WILLIAM H. NAVIN

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November 15, 2006

VIA E-MAIL

Ms. Eileen A. Donovan  
Acting Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

**Re: Rule Filing SR-OCC-2006-21 Rule Certification**

Dear Acting Secretary Donovan:

Attached is a copy of the above-referenced rule filing, which The Options Clearing Corporation ("OCC") is submitting pursuant to the self-certification procedures of Commission Regulation 40.6. This rule filing has been, or is concurrently being, submitted to the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934 (the "Exchange Act").

In conformity with the requirements of Regulation 40.6(a)(3), OCC states the following: The text of the rule is set forth at Item 1 of the enclosed filing. The date of implementation of the rule is the first date when the proposed rule has been approved by the SEC. No substantive opposing views were expressed to OCC by governing board or committee members, clearing members of OCC, or market participants, that were not incorporated into the rule.

OCC hereby certifies that the rule set forth at Item 1 of the enclosed filing complies with the Commodity Exchange Act and the Commission's regulations thereunder.

Ms. Eileen A. Donovan  
Page Two  
November 15, 2006

Should you have any questions regarding this matter, please do not hesitate to contact the undersigned at (312) 322-1817.

Sincerely,

A handwritten signature in cursive script that reads "William H. Navin".

William H. Navin

Attachments

cc: CFTC Central Region (w/ enclosure)  
525 West Monroe Street, Suite 1100  
Chicago, IL 60661  
Attn: Frank Zimmerle

2006-21 cftc.ltr

**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

**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. Material to be added is marked by underlining. Material to be deleted is enclosed in brackets.

**THE OPTIONS CLEARING CORPORATION**

**BY-LAWS**

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**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. – B. (unchanged)

C.

(1) – (6) (unchanged)

**CDS**

(7) The term "CDS" means the [Canadian Depository for Securities Limited] CDS Clearing and Depository Services Inc. or any successor thereto.

(8) – (34) (unchanged)

D. – Z. (unchanged)

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ARTICLE V  
Clearing Members  
Qualifications

SECTION 1. (unchanged)

*...Interpretations and Policies:*

.01 - .02 (unchanged)

.03 *Experience and Competence*

The Membership/Risk Committee will not recommend the approval of any application for clearing membership if:

a. – c. (unchanged)

(The text of Interpretation and Policy .03 from clause c. to clause d. is unchanged.)

In addition, the Membership/Risk Committee will not recommend the approval of any application for clearing membership unless:

d. at least two key operations employees of the applicant who shall be full-time employees of such applicant have attended all applicable OCC operations readiness review sessions and successfully completed any applicable OCC operational and financial examinations for operations employees, provided that the Membership/Risk Committee may, upon the applicant's written request, waive the requirement that the operations employees be full-time employees of the applicant if the applicant's daily operations are conducted by staff employed on a full-time basis by an entity affiliated with the applicant; and

e. (unchanged)

(The remainder of Interpretation and Policy .03 is unchanged.)

.04 - .09 (unchanged)

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## **RULES**

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### **Chapter III**

#### **Financial Responsibility**

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#### **Managing Clearing Members and Managed Clearing Members**

**RULE 309.** (a) – (d) (unchanged)

(e) In the event that a facilities management agreement is to be terminated, the Managed Clearing Member will be required to withdraw from membership in [OCC]the Corporation, effective as of the business day immediately preceding the termination date of the agreement, unless the Membership/Risk Committee has determined in accordance with Article V, Section 1 of the By-Laws either that the Managed Clearing Member has the operational capability, experience and competence to perform the managed services required of a Clearing Member or that the Managed Clearing Member has entered into a facilities management agreement, which is in a form approved by [OCC]the Corporation, which provides for the performance of the managed services and which will become effective on or before such termination date.

(f) In the event that a Clearing Member proposes to become a Managed Clearing Member by entering into a facilities management agreement with a Managing Clearing Member, such Clearing Member shall not implement such agreement until the Membership/Risk Committee has determined that the agreement is in a form approved by the Corporation and otherwise meets the requirements of Article V, Section 1, Interpretation and Policy .04 of the By-Laws.

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### **Chapter IX**

#### **Delivery and Payment**

#### **Settlement Through Correspondent Clearing Corporation**

**RULE 901.** (a) – (e) (unchanged)

(f) An Appointing Clearing Member may, in lieu of being a participant of the correspondent clearing corporation, appoint, in such manner as the Corporation shall from time to time prescribe, an Appointed Clearing Member to act on its behalf with respect to the settlement of all exercised or matured cleared securities in the accounts of the Appointing Clearing Member which are settled through the correspondent clearing corporation pursuant to this Rule 901. An appointment pursuant to this subparagraph shall become effective as of the second business day following the day on which the Corporation shall receive written notice, in such form as the Corporation shall from time to time prescribe, from the Appointed Clearing Member of its acceptance of the appointment, or such later date as may be specified by the Appointed Clearing Member, and (unless the Corporation shall terminate the appointment at an earlier time) shall remain effective until the close of [the third] business on the thirtieth calendar day [following the day on which] after the Corporation shall have received, from either the Appointing Clearing Member or the Appointed Clearing Member, written notice of revocation of the appointment, and shall remain effective thereafter, with respect to each obligation to make delivery or payment in respect of exercised or matured cleared securities directed to the Appointed Clearing Member for settlement prior to the effective date of the revocation, until settlement of such obligation is completed. During the effectiveness of such an appointment, the Corporation shall report each obligation of the Appointing Clearing Member to make delivery or payment in respect of an exercised or matured cleared security to the correspondent clearing corporation, and the Appointed Clearing Member shall be deemed to be the Delivering Clearing Member or the Receiving Clearing Member, as the case may be, in respect of each such contract for all purposes under this Rule 901. For purposes of Rule 208, any report made available to an Appointed Clearing Member shall be deemed to have been made available to the Appointing Clearing Member at the time that it is made available to the Appointed Clearing Member.

(g) A Canadian Clearing Member on behalf of which CDS maintains an identifiable subaccount in a CDS account at the correspondent clearing corporation may appoint, in such manner as the Corporation shall from time to time prescribe, CDS to act on its behalf with respect to the settlement of all exercised or matured cleared securities in the accounts of the Canadian Clearing Member which are settled through the correspondent clearing corporation pursuant to this Rule 901. An appointment pursuant to this subparagraph shall become effective as of the second business day following the day on which the Corporation shall receive written notice of the appointment from the Canadian Clearing Member, or such later date as may be specified by the Canadian Clearing Member, and (unless the Corporation shall terminate the appointment at an earlier time) shall remain effective until the close of [the third] business on the thirtieth calendar day [following the day on which]after the Corporation shall have received, from either the Canadian Clearing Member or CDS, written notice of revocation of the appointment, and shall remain effective thereafter, with respect to each obligation to make delivery or payment in respect of exercised or matured cleared securities directed to CDS for

settlement prior to the effective date of the revocation, until settlement of such obligation is completed. During the effectiveness of an appointment pursuant to this subparagraph, the Corporation shall report each obligation of the Canadian Clearing Member to make delivery or payment in respect of an exercised or matured cleared security to the correspondent clearing corporation.

(h) (unchanged)

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**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 July 25, 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**

The purpose of this rule change is to make minor modifications to certain by-law and rule provisions relating to membership requirements in order to improve their effectiveness or otherwise clarify their meaning. Specifically, OCC is proposing to amend:

- Interpretation and Policy .03 to Article V, Section 1 of the by-laws to permit the Membership/Risk Committee (the "Committee") to waive the requirement that an applicant employ two key operations employees on a full-time basis if the daily operations of the applicant are conducted by staff employed on a full-time basis by an entity affiliated with such applicant.
- Rule 309 to clarify that if an operationally capable clearing member proposes to become a managed clearing member, the Committee must review and approve the related facilities



management agreement before it is implemented.

- Rule 901 to provide that a clearing member's appointment of another clearing member or CDS Clearing and Depository Services Inc. ("CDS")<sup>1</sup>, as applicable, for purposes of effecting settlements of exercised or matured cleared securities may not be terminated until after the 30<sup>th</sup> calendar day following notice to OCC of such termination.

### Interpretation and Policy .03

Interpretation and Policy .03 to Article V, Section 1 of the by-laws requires applicants for membership to employ two key operations employees on a full-time basis. This requirement is intended to ensure that an applicant maintains sufficient staff to discharge its obligations as a clearing member. However, several recent applicants for clearing membership have had difficulty meeting this requirement because their entire staff was employed by an affiliate of the applicant (i.e., a parent or related organization), rather than by the applicant itself. While these applicants entered into employee leasing arrangements in order to comply with OCC's policy, OCC decided to reevaluate the policy in light of the fact that it had proved burdensome to a number of applicants.

OCC understands that it is not at all uncommon for members of an affiliated corporate group to outsource certain (or all) functions to another group member and let the latter be the sole employer of the people who perform those functions. In situations of that nature, OCC has concluded that there is not the same reason to be concerned about whether the applicant will have adequate staffing as in cases where the applicant relies on an unaffiliated third party for

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<sup>1</sup> CDS is the successor organization to Canadian Depository for Securities Ltd. The by-law definition of CDS has been amended to reflect this organizational change.

staffing. OCC therefore has decided to modify its policy to provide greater flexibility to recognize this alternative employment structure. Accordingly, OCC is amending Interpretation and Policy .03 to Article V, Section 1 to permit the Committee to waive the full-time employment requirement where an applicant's staffing is supplied by full-time employees of an affiliated entity. The Committee's authority to waive such requirement is consistent with its existing authority to waive the requirement that an applicant employ at least one full-time person who is registered as a "Limited Principal – Financial and Operations" (or comparable registration requirement, as applicable).

Rule 309

Rule 309 is being amended to clarify that if an operationally capable clearing member proposes to become a managed clearing member – i.e., outsource certain of its obligations as a clearing member to another clearing member (a "managing clearing member"), the applicant must obtain prior approval from the Committee. As currently drafted, Interpretation and Policy .04 primarily contemplates the use of facilities management agreements by applicants for membership rather than existing clearing members. Nonetheless, OCC has always interpreted its by-laws and rules as requiring prior Committee review and approval of all facilities management agreements, including those proposed to be entered into by operationally

capable clearing members. The proposed amendment to Rule 309 makes this interpretation explicit.

### Rule 901

Rule 901 is being amended to provide that a clearing member's appointment of another clearing member or CDS, as applicable, for purposes of effecting settlements of exercised or matured cleared securities at NSCC may not be terminated until the close of business on the thirtieth calendar day after OCC has received notice of such termination.<sup>2</sup> Currently, clearing members are required to provide three business days' notice of the termination of such appointments. However, three business days may be insufficient for OCC to determine whether or not the clearing member has made appropriate alternative settlement arrangements. Accordingly, OCC is proposing to change the notice period to be consistent with the notice period required to advise OCC of the termination of a facilities management agreement. Conforming changes have been made to the related appointment forms, which are attached hereto as Exhibits 5A and 5B.

\* \* \*

The proposed change is consistent with Section 17A of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), because it amends certain rule provisions

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<sup>2</sup> OCC surveyed appointed clearing members that effect NSCC settlements for non-affiliated clearing members as well as CDS to ascertain their views regarding the proposed change in the notice period for terminating such appointments. There were no objections to the change.

relating to membership requirements in order to improve their effectiveness or otherwise clarify their meaning, thereby promoting the prompt and accurate clearance and settlement of derivative contracts and transactions. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules 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 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**

OCC does not consent to an extension of the time period for Commission action on the proposed rule change.

**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**

Not applicable.

**Item 9. Exhibits**

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

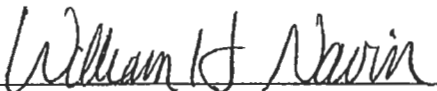
Exhibit 5A. Appointment of Appointed Clearing Member and Acceptance of Appointment as Appointed Clearing Member.

Exhibit 5B. Appointment of CDS Clearing and Depository Services Inc. and CDS Acknowledgement of Appointment.

**SIGNATURE**

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:   
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**William H. Navin**  
**Executive Vice President and**  
**General Counsel**