



THE OPTIONS CLEARING  
CORPORATION

RECEIVED  
SECRET.

MAR 19 11 1:45

FD. OF THE SECRETARIAT

March 19, 2009

**VIA E-MAIL**

Mr. David A. Stawick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

**Re: Rule Filing SR-OCC-2009-05 Rule Certification**

Dear Mr. Stawick:

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 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.

JEAN M. CAWLEY

SENIOR VICE PRESIDENT AND DEPUTY GENERAL COUNSEL

ONE N. WACKER DRIVE, SUITE 500 CHICAGO, ILLINOIS 60606 TEL 312.322.6269 FAX 312.322.6280

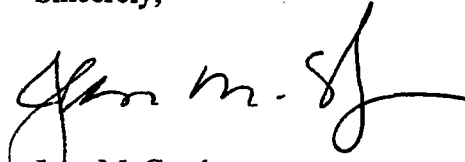
JCAWLEY@THEOCC.COM WWW.OPTIONSCLEARING.COM



Mr. David A. Stawick  
Page Two  
March 19, 2009

Should you have any questions regarding this matter, please do not hesitate to contact the undersigned at (312) 322-6269.

Sincerely,



Jean M. Cawley

**Attachments**

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

OCC-2009-05 cftc.ltr

**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” or the “Corporation”) proposes to amend its By-Laws and Rules as set forth below for the purpose of accommodating a change in the terms of flexibly structured options traded on the Chicago Board Options Exchange, Incorporated (“CBOE”).

Material proposed to be added to OCC’s By-Laws and Rules as currently in effect is underlined and material proposed to be deleted is enclosed in bold brackets.

**THE OPTIONS CLEARING CORPORATION**

**BY-LAWS**

\* \* \*

**ARTICLE I**

**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. – E.**

[No change]

**F.**

(1) – (3) [No change]

**Flexibly Structured Options**

(4) The term "flexibly structured option" means an option having [an expiration date, an exercise price, an exercise style, an index value determinant (in the case of an index option), and a cap interval (in the case of a capped option)] variable terms that are negotiated between the parties to an Exchange transaction pursuant to Exchange Rules and that do not correspond to the variable terms of any series of non-flexibly structured options previously opened for trading on the Exchange (other than a series of quarterly options or short term options) [reported to the Corporation by an Exchange pursuant to Section 7 of Article VI of the By-Laws and Rule 401]. Once a series of non-flexibly structured options (other than a series of quarterly options or short term options) is opened for trading on an Exchange, any existing flexibly structured option contracts that have identical variable terms shall be fully fungible with options in such series, and shall cease to be flexibly structured options.

(5) – (12) [No change]

G. – U.

[No change]

V.

**Variable Terms**

(1) The term “variable terms” in respect of a series of option contracts means the name of the underlying interest, the exercise price (or, in respect of a series of delayed start options that does not yet have a set exercise price, the exercise price setting formula and exercise price setting date), the index value determinant and the index multiplier (in the case of a flexibly structured index option), the cap interval (in the case of a capped option) and [the expiration month of such option contract and, in the case of an option contract that has an expiration date as defined in Section 1.E.(2)(iii) of Article XV or Article XX,] the expiration date of such option contract. “Variable terms,” when used in respect of a series of futures means the name of the underlying interest, the maturity date, the method of determining the final settlement price, and the series marker, if any, and in the case of a flexibly structured [index option or] index future, the index value determinant and the index multiplier.

G. – Z.

[No change]

\* \* \*

**Article XVII**

**Index Options**

**Definitions**

**SECTION 1.**

A. – E

[No change]

F.

**[Flexibly Structured Options]**

(1) The term “flexibly structured option” in respect of index options means an index option having an expiration date, an exercise price, an exercise style, an index value determinant, and, in the case of a capped option a cap interval, that are reported to the Corporation by an Exchange pursuant to Section 7 of Article VI of the By-Laws and Rule 401.]

Reserved.

H. – Z.

[No change]

\* \* \*

**Item 2. Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by OCC's Board of Directors at a meeting held on March 3, 2009.

Questions regarding the proposed rule change should be addressed to Jean M. Cawley, Senior 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 ChangeBackground**

Flexibly structured options are options that give investors the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. At present, exchanges generally do not permit flexibly structured options to be customized to expire on the same expiration date as any series of non-flexibly structured options that is listed for trading.<sup>1</sup> However, pursuant to a recent rule change that has been approved by the Commission, CBOE is eliminating this restriction so that the parties to a flexibly structured option transaction can choose an expiration date that coincides with that of a series of non-flexibly structured options.<sup>2</sup> As a result of the elimination of the expiration date restriction, it

---

<sup>1</sup> There are exceptions to this general prohibition. Subject to certain aggregation requirements for cash-settled options, CBOE permits flexibly structured options to expire on the same day as non-flexibly structured quarterly options and non-flexibly structured weekly options. Non-flexibly structured weekly options are called "short term options" in OCC's By-Laws and Rules. See CBOE Rules 24A.7(d) and 24B.7(d).

<sup>2</sup> See Securities Exchange Act Release 59417 (February 18, 2009).

will be possible for any new flexibly structured options to become fungible with a series of non-flexibly structured options subsequently listed for trading. Therefore, moving forward, CBOE will permit flexibly structured options to be traded as such before (but not after) identical options are listed for trading as non-flexibly structured options. Once an option series is listed on CBOE for trading as a non-flexibly structured option series, (i) all existing flexibly structured options having identical terms as the non-flexibly structured option series will be fully fungible with options in such series, and (ii) any further trading in such series would be as non-flexibly structured options. As an exception to the foregoing, flexibly structured options will not become fungible with subsequently introduced non-flexibly structured quarterly options or short term options.

#### **Description of Proposed Rule Changes**

In order to continue to clear and settle flexibly structured options traded on CBOE in a manner that is consistent with CBOE's rules, as amended, OCC proposes to amend its By-Laws and Rules in the following manner.

The definition of "flexibly structured option" in Article I of the By-Laws would be amended to emphasize that an option will be classified as a flexibly structured option only if its variable terms do not correspond to the variable terms of any series of non-flexibly structured options listed for trading (other than a series of quarterly options or short term options).

Furthermore, existing flexibly structured options will be fungible with options in a subsequently listed non-flexibly structured option series (other than quarterly options or short term options) that has identical variable terms, and will cease to be classified as flexibly structured options.

The definition of "flexibly structured option" in Article XVII, Section 1 would be deleted as it is redundant. OCC also proposes to amend the definition of "variable terms" in Article I of the By-

Laws to clarify that the expiration date is a variable term for all types of options. Other parts of the definition would also be revised to group together, respectively, variable terms of option contracts and variable terms of futures contracts.

OCC's Rules currently provide that an expiring flexibly structured index option with an exercise settlement amount of \$1.00 or more will be automatically exercised on its expiration date. In comparison, an expiring non-flexibly structured index option with an exercise settlement amount of \$1.00 or more (except quarterly options or short term options) is subject to the "exercise-by exception" procedures under which the option will be exercised on its expiration date if the option holder does not give contrary exercise instructions. As stated above, flexibly structured options that become fungible with non-flexibly structured options will cease to be classified as flexibly structured options. Such options will therefore cease to be subject to automatic exercise at expiration and will instead be subject to exercise by exception like the non-flexibly structured options with which they have become fungible.

\* \* \*

The proposed changes to OCC's By-Laws and Rules are consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934, as amended, because they are designed to promote the prompt and accurate clearance and settlement of transactions in, including exercises of, flexibly structured 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. It accomplishes this purpose by maintaining consistency between OCC's By-Laws and Rules and CBOE's rules as applied to the clearance and settlement of flexibly



structured options. The proposed rule change is not inconsistent with the existing By-Laws and Rules of OCC, including any 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 material impact 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 has 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 Act.

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

OCC is filing the proposed rule change for immediate effectiveness pursuant to Section 19(b)(3) of the Exchange Act and Rule 19b-4(f)(4) thereunder on the basis that the proposed rule change effects a change in OCC's existing service of clearing flexibly structured options that does not (i) adversely affect the safeguarding of securities or funds in OCC's custody or control or for which OCC is responsible or (ii) significantly affect the respective rights or obligations of OCC or persons using the service.

**Item 8. Proposed Rule Change Based on Rules of Another Regulatory Organization or of the Commission**

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

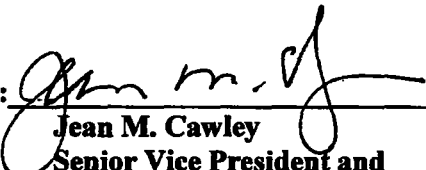
**Item 9. Exhibits**

Exhibit 1 Completed notice of the 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 duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

**THE OPTIONS CLEARING CORPORATION**

By:   
\_\_\_\_\_  
**Jean M. Cawley**  
**Senior Vice President and**  
**Deputy General Counsel**