



March 26, 2012

VIA ELECTRONIC MAIL

David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Rule Filing SR-OCC-2012-05 Rule Certification

Dear Secretary Stawick:

Enclosed 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. The date of implementation of the rule is 10 business days following receipt by the Commission. 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"). The text of the rule is set forth at Item 1 of the enclosed filing.

In conformity with the requirements of Regulation 40.6(a)(7), OCC states the following:

Explanation and Analysis

OCC hereby incorporates by reference Item 3 of the enclosed rule filing, which sets forth an explanation and analysis of the operation, purpose and effect of the proposed rule amendment. In pertinent part, the rule filing rescinds a policy interpretation adopted by OCC's Securities Committee which permitted, but did not require, the Securities Committee to cease adjusting listed equity options for recurring cash dividends previously deemed to be non-ordinary based on subsequent facts suggesting that the dividends should be reclassified as ordinary under the relevant by-law provisions. In addition, the filing rescinds the corresponding policy under Section 3 of Article XII of OCC's by-laws, which is applicable to security futures. OCC, not the Securities

THE FOUNDATION FOR SECURE MARKETS

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Committee, determines adjustments made under Section 3, Article XII, although one of the criteria used by OCC in making such determinations is consistency with the actions of the Securities Committee with respect to adjustments relating to the same underlying interest.

Opposing Views

OCC hereby incorporates by reference Item 5 of the enclosed rule filing, which sets forth a description of any written comments on the rule filing, including any such comments expressing opposing views that were not incorporated into the proposed rule.

Notice of Pending Rule Certification

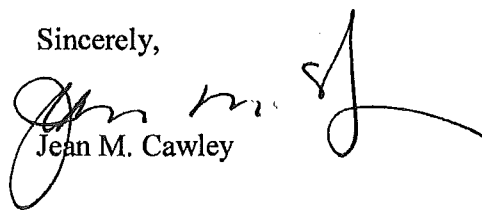
OCC hereby certifies that notice of this rule filing has been given to Clearing Members of OCC in compliance with Regulation 40.6(a)(2) by posting a copy of the submission on OCC's website concurrently with the filing of this submission.

Certification

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.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,


Jean M. Cawley

Enclosure

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

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 (“By-Laws”) as set forth below. Material proposed to be deleted is marked by bold brackets.

THE OPTIONS CLEARING CORPORATION

BY-LAWS

* * *

ARTICLE VI

Clearance of Exchange Transactions

* * *

Adjustments for Stock Option Contracts

SECTION 11A. [unchanged]

...Interpretations and Policies:

.01 With respect to events announced on or prior to January 31, 2009, cash dividends or distributions by the issuer of the underlying security in an aggregate amount per dividend or distribution which does not exceed 10% of the market value (as of the close of trading on the declaration date) of the underlying security outstanding will, as a general rule, be deemed to be “ordinary cash dividends or distributions” within the meaning of paragraph (c) of this Section 11A; provided, however, that in the case of grandfathered series, the provisions of this sentence shall apply regardless of the date when an event is announced. With respect to events announced on or after February 1, 2009 (except in the case of grandfathered series), cash dividends or distributions (regardless of size) by the issuer of the underlying security which the Corporation believes to have been declared pursuant to a policy or practice of paying such dividends or distributions on a quarterly or other regular basis will, as a general rule, be deemed to be “ordinary cash dividends or distributions” within the meaning of paragraph (c) of Section 11A. Stock dividends or distributions by the issuer of the underlying security (i) in an aggregate amount per dividend or distribution which does not exceed 10% of the number of shares or other units of the underlying security outstanding as of the close of trading on the declaration date, and (ii) which the Corporation believes to have been declared pursuant to a policy or practice of paying such dividends or distributions on a quarterly basis, will, as a general rule, be deemed to

be "ordinary stock dividends or distributions" within the meaning of paragraph (c) of Section 11A. The Securities Committee will determine on a case-by-case basis whether other dividends or distributions are "ordinary distributions" or whether they are dividends or distributions for which an adjustment should be made. Where the Securities Committee determines to adjust for a dividend or distribution, the adjustment shall be made in accordance with paragraph (f) of Section 11A. Any issue as to whether a particular dividend or distribution was declared pursuant to a policy of paying such dividends or distributions on a quarterly or (where applicable) other regular basis shall be referred to the Securities Committee for a determination.

In making such determinations, the Securities Committee may take into account such factors as it deems appropriate, including, without limitation, the issuer's stated dividend payment policy, the issuer's characterization of a particular dividend or distribution as "regular" or "special," whether the dividend can be differentiated from other dividends (if any) paid on a quarterly or other regular basis, and the issuer's dividend payment history. Normally, the Securities Committee shall classify a dividend or distribution as non-ordinary when it believes that similar dividends or distributions will not be paid on a quarterly or other regular basis. [Notwithstanding that the Securities Committee has classified a dividend or distribution as non-ordinary, it may, with respect to events announced on or after February 1, 2012, classify subsequent dividends or distributions of a similar nature as ordinary if (i) the issuer discloses that it intends to pay such dividends or distributions on a quarterly or other regular basis, (ii) the issuer has paid such dividends or distributions for four or more consecutive months or quarters or two or more years after the initial payment, whether or not the amounts paid were the same from period to period, or (iii) the Securities Committee determines for other reasons that the issuer has a policy or practice of paying such dividends or distributions on a quarterly or other regular basis.]

.02 - .10 [unchanged]

* * *

ARTICLE XII

Futures, Futures Options and Commodity Options

Adjustments to Futures and Futures Options

SECTION 3. (a) - (k) [unchanged]

... *Interpretations and Policies:*

.01 (a) Cash dividends or distributions by the issuer of the underlying security that the Corporation believes to have been declared pursuant to a policy or practice of paying such dividends or distributions on a quarterly or other regular basis will, as a general rule, be deemed to be “ordinary distributions” within the meaning of paragraph (c) of Section 3. The Corporation will determine on a case-by-case basis whether other dividends or distributions are “ordinary distributions” or whether they are dividends or distributions for which an adjustment should be made.

In making such determinations, the Corporation may take into account such factors as it deems appropriate, including, without limitation, the issuer’s stated dividend payment policy, the issuer’s characterization of a particular dividend or distribution as “regular” or “special,” whether the dividend can be differentiated from other dividends (if any) paid on a quarterly or other regular basis, and the issuer’s dividend payment history. Normally, the Corporation shall classify a dividend or distribution as non-ordinary when it believes that similar dividends or distributions will not be paid on a quarterly or other regular basis. [Notwithstanding that the Corporation has classified a dividend or distribution as non-ordinary, it may, with respect to events announced on or after February 1, 2012, classify subsequent dividends or distributions of a similar nature as ordinary if (i) the issuer discloses that it intends to pay such dividends or distributions on a quarterly or other regular basis, (ii) the issuer has paid such dividends or distributions for four or more consecutive months or quarters or two or more years after the initial payment, whether or not the amounts paid were the same from period to period, or (iii) the Corporation determines for other reasons that the issuer has a policy or practice of paying such dividends or distributions on a quarterly or other regular basis.]

(b) – (c) [unchanged]

.02 - .10 [unchanged]

* * *

Item 2. Procedures of the Self-Regulatory Organization

The proposed rule filing was approved by OCC’s Board of Directors at a meeting held on March 2, 2012. OCC’s stockholders also unanimously approved the revisions to Article VI, Section 11A on that same date.

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 Change

Under Article VI, Section 11A of the OCC By-Laws, the Securities Committee (the "Committee", comprised of representatives of all participant options exchanges and OCC) may adopt statements of policy or interpretations pertaining to adjustments to the terms of listed options in response to corporate events. All adjustments to particular options are determined on a case by case basis by adjustment panels of the Committee convened for that purpose.

Interpretation and Policy .01 (the "Interpretation") under Article VI, Section 11A of OCC's By-Laws provides that cash dividends or distributions that are non-ordinary will normally result in an adjustment to the terms of listed stock options. In 2010, an amendment (the "Amendment") was effected to the Interpretation, and to the corresponding policy under Section 3 of Article XII (applicable to security futures), under which the Committee could, under certain conditions, cease adjusting for recurring cash dividends previously deemed to be non-ordinary dividends based on subsequent facts suggesting that the dividends should be reclassified as "ordinary". (OCC, and not the Securities Committee, determines adjustment made under Article XII, Section 3, although one of the criteria for OCC to use is "consistency with the actions of the Securities Committee in making adjustments to options on the same underlying interest".)

The Amendment stated the conditions under which the Committee could cease adjusting for non-ordinary cash dividends: (i) the issuer discloses that it intends to pay such dividends or distributions on a quarterly or other regular basis, (ii) the issuer has paid such dividends or distributions for four or more consecutive months or quarters or two or more years after the initial payment, whether or not the amounts paid were the same from period to period, or (iii) the Committee determines for other reasons that the issuer has a policy or practice of paying such dividends or distributions on a quarterly or other regular basis. In fairness to existing holders of open interest who may have assumed option positions with the belief that the Committee would continue to adjust for these recurring “special” dividends, the Amendment was made effective only for dividends and distributions announced after February 1, 2012.

The purpose of this rule change is to rescind the change in policy allowing re-classification of certain dividends which was to be implemented on February 1, 2012 under the aforementioned Amendment.

Background

The Amendment was prompted by a series of cash dividends declared by Diamond Offshore Corporation (“DO”). DO characterized these dividends as “special” and differentiated them from the company’s “regular” cash dividends. The “special” and “regular” DO dividends customarily go “ex-distribution” on the same date, and DO has declared a special dividend for every quarter since the fourth quarter of 2007. Initially, the Committee deemed these “special” dividends to be non-ordinary under the Interpretation and adjusted listed options in response. However, the frequent adjustment to DO in response to the recurrent special dividends caused

serious operational problems in terms of option symbol and series proliferation which, in turn, adversely affected liquidity for the adjusted series (volume tends to gravitate to the standard option symbol and series at the expense of the adjusted option symbol and series). The Committee and others felt that such DO dividends had been declared so consistently and predictably that they should no longer be considered “non-ordinary” for adjustment purposes. Accordingly, the Committee adopted the Amendment.

As the February 1, 2012 effective date approached, OCC and the Committee became aware of investor questions and concerns regarding the application of the re-classification policy. Consistent with other adjustment provisions, the Amendment was written to provide the Committee with discretion to respond to future events. Assuming the criteria referenced above are satisfied, the Amendment provides that the Committee may exercise its best judgment to determine on a case by case basis whether a “special” dividend will be re-classified as ordinary so that adjustments on the overlying options and futures would cease. However, in considering investor questions and concerns, OCC and the Committee became aware that investors sought more definitive guidance about the likelihood of individual decisions under the Amendment. For example, although the Amendment indicates the Committee *may* re-classify special dividends as ordinary, it does not express criteria that will aid investors in anticipating when the Committee *will* re-classify such dividends. The Securities Committee considered a range of hypothetical cases and found it difficult to identify and articulate in advance clear, specific considerations that would lead to particular outcomes across the wide range of cases it may be called upon to consider. The Securities Committee was also concerned that if the Amendment was further

modified to make its applications “automatic” (thereby predictable), it may be “locked in” to actions it would otherwise deem inadvisable (for example, not adjusting for a dramatically large special dividend declared after adjustments “automatically” ceased). In addition, the Securities Committee was informed that announcing decisions to cease adjusting for recurring special dividends at the time of the final adjustment, as was the intention under the Amendment (and was announced in OCC Information Memos), did not provide enough guidance to traders. (For example, traders of 2014 LEAPS options do not want to wait for the final adjustment for a 2012 special dividend to learn the anticipated 2013 dividend will be re-classified as ordinary.)

In view of the uncertain application of the Amendment, the Securities Committee decided to adjust for the February 2012 DO special dividend and not take the opportunity afforded by the Amendment to cease adjusting for future DO special dividends. While the decision not to re-classify was within the discretion of the Securities Committee as set forth in the Amendment and was explained in OCC information memoranda, it appears to have caused further investor confusion. Therefore, the Securities Committee recommended to the Board of Directors of OCC that OCC seek approval to rescind the re-classification policy as provided in the Amendment.

Rationale for the Proposal to Amend the OCC By-Laws

OCC and the Securities Committee especially note three factors which favor rescinding the re-classification policy: (1) An industry change to options symbology (implemented after the adoption of the rescission policy) has substantially alleviated the operational burdens associated with recurrent adjustments (especially option symbol

proliferation) which were highlighted in the instance of DO. (With this change in symbology, all adjusted series can normally be housed under the standard option symbol, dramatically reducing option symbol proliferation.) (2) OCC and the Committee believe alleviation of investor uncertainty is of paramount importance and have concluded that attempts to further modify the Amendment to provide more specific guidance about the application of the Amendment to particular cases may be complicated and thereby create even more uncertainty for investors. (3) If the re-classification policy is rescinded, non-ordinary dividends which have occasioned adjustments in the past will ordinarily continue to occasion adjustments in the future, thus alleviating investor uncertainty.

The reclassification policy applied to listed options was discussed in published interpretative guidance, which will be updated to reflect its rescission.¹ Clean and marked copies of the updated interpretative guidance are attached as Exhibit 5. The marked copy shows changes from the current language.

* * *

The proposed change is consistent with Section 17A of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), because it facilitates the prompt and accurate clearance and settlement of securities transactions and the protection of investors and reduces unnecessary costs and burdens on them and persons facilitating transactions on their behalf. It does so in response to investor feedback by reducing uncertainty regarding adjustments for

¹ See Release Nos. 34-58059 (June 30, 2008), 34-59442 (February 24, 2009) and 34-62879 (September 9, 2010). Consistent with past practice, the interpretative guidance will be available on OCC's public website, but not incorporated into OCC's By-Laws and Rules.

certain cash dividends and distributions. 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)

Pursuant to Section 19(b)(3)(A) and Rule 19b-4(f)(1), the proposed rule change is filed for immediate effectiveness inasmuch as it constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

Notwithstanding the foregoing, implementation of this rule change will be delayed until this rule change is deemed certified under CFTC Regulation §40.6.

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

Not applicable.

Item 9. Exhibits

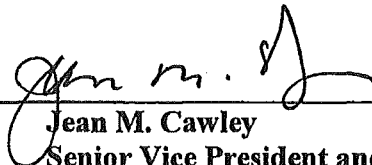
Exhibit 1. Completed Notice of Proposed Rule Change for publication in the
Federal Register.

Exhibit 5. Changes to Cash Dividend Adjustment Policies – Guidelines –
Additional Information.

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: 

Jean M. Cawley
Senior Vice President and
Deputy General Counsel

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____ ; File No. SR-OCC-2012-05

SELF-REGULATORY ORGANIZATION

Proposed Rule Change By
The Options Clearing Corporation

Relating to Rescinding a Policy
Interpretation Affecting Certain
Adjustments

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 _____, 2012, 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 proposed rule change would rescind a policy interpretation adopted by the OCC Securities Committee relating to the possible reclassification of recurrent cash dividends for adjustment purposes. A conforming change would also be made to the corresponding policy applicable to security futures.

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

Under Article VI, Section 11A of the OCC By-Laws, the Securities Committee (the "Committee", comprised of representatives of all participant options exchanges and OCC) may adopt statements of policy or interpretations pertaining to adjustments to the terms of listed options in response to corporate events. All adjustments to particular options are determined on a case by case basis by adjustment panels of the Committee convened for that purpose.

Interpretation and Policy .01 (the "Interpretation") under Article VI, Section 11A of OCC's By-Laws provides that cash dividends or distributions that are non-ordinary will normally result in an adjustment to the terms of listed stock options. In 2010, an amendment (the "Amendment") was effected to the Interpretation, and to the corresponding policy under Section 3 of Article XII (applicable to security futures), under which the Committee could, under certain conditions, cease adjusting for recurring cash dividends previously deemed to be non-ordinary dividends based on subsequent facts suggesting that the dividends should be reclassified as "ordinary". (OCC, and not the Securities Committee, determines adjustment made under Article

XII, Section 3, although one of the criteria for OCC to use is “consistency with the actions of the Securities Committee in making adjustments to options on the same underlying interest”.)

The Amendment stated the conditions under which the Committee could cease adjusting for non-ordinary cash dividends: (i) the issuer discloses that it intends to pay such dividends or distributions on a quarterly or other regular basis, (ii) the issuer has paid such dividends or distributions for four or more consecutive months or quarters or two or more years after the initial payment, whether or not the amounts paid were the same from period to period, or (iii) the Committee determines for other reasons that the issuer has a policy or practice of paying such dividends or distributions on a quarterly or other regular basis. In fairness to existing holders of open interest who may have assumed option positions with the belief that the Committee would continue to adjust for these recurring “special” dividends, the Amendment was made effective only for dividends and distributions announced after February 1, 2012.

The purpose of this rule change is to rescind the change in policy allowing re-classification of certain dividends which was to be implemented on February 1, 2012 under the aforementioned Amendment.

Background

The Amendment was prompted by a series of cash dividends declared by Diamond Offshore Corporation (“DO”). DO characterized these dividends as “special” and differentiated them from the company’s “regular” cash dividends. The “special” and “regular” DO dividends customarily go “ex-distribution” on the same date, and DO has declared a special dividend for every quarter since the fourth quarter of 2007. Initially, the Committee deemed these “special”

dividends to be non-ordinary under the Interpretation and adjusted listed options in response. However, the frequent adjustment to DO in response to the recurrent special dividends caused serious operational problems in terms of option symbol and series proliferation which, in turn, adversely affected liquidity for the adjusted series (volume tends to gravitate to the standard option symbol and series at the expense of the adjusted option symbol and series). The Committee and others felt that such DO dividends had been declared so consistently and predictably that they should no longer be considered “non-ordinary” for adjustment purposes. Accordingly, the Committee adopted the Amendment.

As the February 1, 2012 effective date approached, OCC and the Committee became aware of investor questions and concerns regarding the application of the re-classification policy. Consistent with other adjustment provisions, the Amendment was written to provide the Committee with discretion to respond to future events. Assuming the criteria referenced above are satisfied, the Amendment provides that the Committee may exercise its best judgment to determine on a case by case basis whether a “special” dividend will be re-classified as ordinary so that adjustments on the overlying options and futures would cease. However, in considering investor questions and concerns, OCC and the Committee became aware that investors sought more definitive guidance about the likelihood of individual decisions under the Amendment. For example, although the Amendment indicates the Committee *may* re-classify special dividends as ordinary, it does not express criteria that will aid investors in anticipating when the Committee *will* re-classify such dividends. The Securities Committee considered a range of hypothetical cases and found it difficult to identify and articulate in advance clear, specific considerations that

would lead to particular outcomes across the wide range of cases it may be called upon to consider. The Securities Committee was also concerned that if the Amendment was further modified to make its applications “automatic” (thereby predictable), it may be “locked in” to actions it would otherwise deem inadvisable (for example, not adjusting for a dramatically large special dividend declared after adjustments “automatically” ceased). In addition, the Securities Committee was informed that announcing decisions to cease adjusting for recurring special dividends at the time of the final adjustment, as was the intention under the Amendment (and was announced in OCC Information Memos), did not provide enough guidance to traders. (For example, traders of 2014 LEAPS options do not want to wait for the final adjustment for a 2012 special dividend to learn the anticipated 2013 dividend will be re-classified as ordinary.)

In view of the uncertain application of the Amendment, the Securities Committee decided to adjust for the February 2012 DO special dividend and not take the opportunity afforded by the Amendment to cease adjusting for future DO special dividends. While the decision not to re-classify was within the discretion of the Securities Committee as set forth in the Amendment and was explained in OCC information memoranda, it appears to have caused further investor confusion. Therefore, the Securities Committee recommended to the Board of Directors of OCC that OCC seek approval to rescind the re-classification policy as provided in the Amendment.

Rationale for the Proposal to Amend the OCC By-Laws

OCC and the Securities Committee especially note three factors which favor rescinding the re-classification policy: (1) An industry change to options symbology

(implemented after the adoption of the rescission policy) has substantially alleviated the operational burdens associated with recurrent adjustments (especially option symbol proliferation) which were highlighted in the instance of DO. (With this change in symbology, all adjusted series can normally be housed under the standard option symbol, dramatically reducing option symbol proliferation.) (2) OCC and the Committee believe alleviation of investor uncertainty is of paramount importance and have concluded that attempts to further modify the Amendment to provide more specific guidance about the application of the Amendment to particular cases may be complicated and thereby create even more uncertainty for investors. (3) If the re-classification policy is rescinded, non-ordinary dividends which have occasioned adjustments in the past will ordinarily continue to occasion adjustments in the future, thus alleviating investor uncertainty.

The reclassification policy applied to listed options was discussed in published interpretative guidance, which will be updated to reflect its rescission.¹ Clean and marked copies of the updated interpretative guidance are attached as Exhibit 5. The marked copy shows changes from the current language.

* * *

The proposed change is consistent with Section 17A of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), because it facilitates the prompt and accurate clearance and settlement of securities transactions and the protection of investors and reduces unnecessary costs and burdens on them and persons facilitating transactions on their behalf. It

¹ See Release Nos. 34-58059 (June 30, 2008), 34-59442 (February 24, 2009) and 34-62879 (September 9, 2010). Consistent with past practice, the interpretative guidance will be available on OCC's public website, but not incorporated into OCC's By-Laws and Rules.

does so in response to investor feedback by reducing uncertainty regarding adjustments for certain cash dividends and distributions. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b-4 thereunder, although OCC will delay the implementation of the rule change until it is deemed certified under CFTC Regulation §40.6. At any time within 60 days of the filing of the proposed rule change, the Commission may temporarily suspend 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 Act.

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. Please include File Number SR-OCC-2012-05 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-OCC-2012-05. 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 Section, 100F Fifth Street, N.E., Washington, D.C. 20549-1090. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory

organization. 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-OCC-2012-05 in the caption above and should be submitted on or before [insert date 21 days from publication in the Federal Register.] _____.

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

Secretary

Dated: _____

INTERPRETATIVE GUIDANCE ON THE NEW ADJUSTMENT POLICY FOR CASH DIVIDENDS AND DISTRIBUTIONS

Frequently Asked Questions

Disclaimer: The OCC Securities Committee has reviewed the questions and answers presented below and believes they provide useful guidelines for how the new adjustment policy will be applied in practice. However, as indicated several times below, all adjustments are individually determined by an adjustment panel of the Securities Committee on a case by case basis, and adjustment panels may make exceptions to general rules, interpretations, and policies in cases where they determine such exceptions to be appropriate. In no instance are the examples provided below meant to determine in advance the decisions that any adjustment panel will make in the future.

Overview of the New Adjustment Policy

Q. Who decides if an option adjustment shall be made?

A. All adjustments are determined on a case by case basis by an adjustment panel of the OCC Securities Committee. Each adjustment panel is comprised of two representatives from each exchange that trades the option in question, plus an OCC representative. The OCC member only casts a vote to break a tie. The adjustment panel decides whether an adjustment is called for and how it should be done.

Q. What cash dividends call for an adjustment?

A. "Ordinary" cash dividends do not call for adjustments. An "ordinary" cash dividend is defined as one paid "pursuant to a policy or practice of paying such dividend on a quarterly or other regular basis". A cash dividend which is considered to be *outside* this regular policy is non-ordinary. Assuming a given dividend is non-ordinary according to this definition, a size test is also imposed: the value of the dividend must be at least \$12.50 per option contract. Thus, if the dividend is non-ordinary and yields at least \$12.50 per option contract, then an adjustment will be made.

Q. What's the rationale for this approach?

A. In general, dividends declared pursuant to a policy or practice of a company can be anticipated and priced into option premiums according to standard models. Non-ordinary dividends declared outside the normal policy of the company cannot be anticipated and integrated into pricing with the same degree of assurance. Thus, when such dividends are announced, if no adjustment is made, the only way a call holder can capture the dividend is through exercise prior to the ex-dividend date. When this happens, significant option time value can be lost and financial losses due to operational error in submitting exercises may occur. The intention is to allow such dividends to accrue to the benefit of call holders without requiring them to exercise their options.

- Q. So any dividend that can't be *anticipated* will be deemed a non-ordinary dividend?
- A. No. Although such dividends may be unanticipated, the important criterion is whether a dividend is paid pursuant to a program or policy of paying dividends on a quarterly or other regular basis. In some cases, the dividends of a company paid according to such a policy may be highly variable and subject to increases or decreases that some may consider "unanticipated". Nevertheless, these dividends would not normally be deemed non-ordinary.

Examples: What if...?

- Q. Can you give an example of how the \$12.50 adjustment threshold will work in practice?
- A. In order for an option to be adjusted, the value of the dividend must be at least \$12.50 per option contract. However, if the security on which the dividend is paid underlies option contracts with more than one contract size – e.g., as a result of adjustments for previous splits – then the nonstandard contracts would be adjusted only if the value of the dividend on the nonstandard contract is at least \$12.50 *and* the standard-size contract (normally 100 shares) would also be adjusted.

For example, suppose an option covers 100 shares of stock and a \$0.10 special cash dividend is declared. This dividend, although non-ordinary, would yield only \$10.00 in value for this option contract. Therefore, no adjustment would be made.

A second example: Suppose an option covers 100 shares of stock and another option covers 150 shares of the same stock (as the result of a previous adjustment for a 3 for 2 split). A \$0.10 special dividend is declared. The dividend would yield \$10.00 in value for the 100 share option and \$15.00 for the other. However, in this case, since the standard-size (100 share) contract would not be adjusted (the \$12.50 threshold not being met), the 150 share option would also *not* be adjusted.

A third: Suppose an option covers 100 shares of stock and another option covers 50 shares of the same stock (as a result of a previous adjustment for a 1 for 2 reverse split). A \$0.15 special dividend is declared. The dividend would yield \$15.00 in value for the 100 share option and \$7.50 for the 50 share option. In this case, the standard-size (100 share) option would be adjusted, but the 50 share option would *not* be adjusted because the value of the dividend per contract would be only \$7.50, and a nonstandard option is not adjusted if the value of the dividend per contract is less than \$12.50 even if the standard-size option is adjusted.

These examples also illustrate that, in general, the \$12.50 threshold is applied at the *option contract* level – *not* per share.¹

¹ A threshold of .125 per share is used in determining contract adjustments for capital gains and other distributions for fund shares, as described in Interpretation .08 to Article VI, Section 11A of the OCC By-Laws

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- A. The adjustment panels of the OCC Securities Committee will make this determination. In doing so, adjustment panels may consider the company’s characterization of the dividend but the company’s characterization is not binding on adjustment panels. Adjustment panels may take into account other factors deemed appropriate including, but not limited to, the company’s stated dividend policy and payment history, prior option adjustments, and factors bearing on the maintenance of a fair and orderly market.
- Q. What if a company that previously paid no dividends initiates a regular dividend program – would the initial dividend be considered “non-ordinary” and therefore adjustable?
- A. No. The initial dividend would be paid pursuant to a policy under which the company intends to pay dividends on a regular basis. Therefore, it would not be deemed “non-ordinary” and adjustable.
- Q. What if a company announced a dramatic increase in a regular dividend? For example, what if a company’s last quarterly dividend was \$.20 and the current quarterly dividend was bumped to \$1.00 – wouldn’t that be a “non-ordinary”, one-time event that would call for an adjustment?
- A. No – most likely not. As mentioned earlier, we would start with the company’s description of its dividend. If the company has a quarterly dividend program and the company says this quarter’s dividend is \$1.00, then we anticipate the adjustment panel would deem the dividend to be ordinary and not adjustable. However, as mentioned, the decisions of the adjustment panels are always made on a case by case basis, in light of the circumstances and facts as understood at the time.
- Q. What about REITs, natural resource trusts, and similar companies that pay very irregular dividends? Such companies could pay no dividends for many months and then suddenly pay a dividend. Would that be considered a “non-ordinary”, adjustable dividend?
- A. No – most likely not. The kinds of companies mentioned in the question often have very regular dividend *policies* but will *actually* pay dividends only when certain conditions are met, or in response to market conditions. REITs, for example, are generally required to pay out profits to shareholders when and if profits are realized. They may determine dividends monthly, although the cash amount available for distribution may actually be zero in any given month. Thus, although the dividend payouts of such companies may be irregular, insofar as they occur *pursuant to the policy of the company*, they would be considered ordinary and not adjustable.
- Q. What if a company is reorganizing itself into a REIT and is required to pay out accumulated profits in a large dividend as it commences a dividend program. You said

before that *initial* dividends would not normally call for adjustment. Would you adjust in this case?

A. In our experience, companies reorganizing themselves into REITS or income trusts often designate this initial required pay-out as a “special” dividend. Precedent exists for adjusting for such dividends under OCC’s existing adjustment rules, and it is likely that they will be adjusted for under the new rules. Even if the company did not specifically characterize such a dividend as “special”, the adjustment panels could decide to deem them special and adjust.

Q. Fund share or ETF options have previously been adjusted in response to special dividends declared with respect to component securities of the fund. The most notable instance was the Microsoft \$3.00 special dividend in 2004. How will these kinds of distributions be handled?

A. If a fund (ETF, HOLDR, etc.) is making a cash distribution which is identified (in whole or part) by the fund as attributable to a special dividend on a component security, then the appropriate amount of the cash distribution will also be considered a special, adjustable distribution. For example, if an ETF is making a \$1.00 quarterly cash distribution, \$.25 of which is attributable to a special dividend on a component security, the adjustment panel will normally consider \$0.25 of the aggregate distribution as a special dividend and adjust for \$25.00 per option contract (assuming a 100 share option).

Note: The \$.125 threshold test will be applied: the portion of the distribution attributable to the component security’s special dividend must yield \$.125 value per share before an adjustment is done.

Q. What if a company declares a non-ordinary dividend which is ex-distribution on the same date that a regular dividend is “ex”? Would these be considered one event or two separate events?

A. Two separate events.

Q. What if a company’s regular quarterly dividend is a “return of capital”? Would that make it a special, adjustable dividend?

A. No. Insofar as the dividend is still a regular quarterly dividend, it would not call for an adjustment. Ordinarily, the source of cash to be paid will not be determinative of the adjustment decision. In the past, however, adjustment panels have determined to adjust for any dividends paid pursuant to a plan of liquidation – even regular dividends of the company included in the plan. They may follow this precedent in the future as well for companies undergoing liquidation.

Operational Matters

Q. Will we have to wait until the official declaration date of a dividend before a decision is made about option adjustment?

A. Not necessarily. The adjustment panels will be motivated to make their adjustment decisions as soon as practicable. The panels may decide it is appropriate to base a decision on the company's press release or similar announcement, in advance of the formal declaration date. Of course, if this is done, the adjustment decision would be appropriately conditional. For example, "if declared and paid as described in the press release, then...."

For example, suppose a company announces its intention in a press release to pay a special dividend, but this dividend is contingent on shareholder approval or other conditions. Until the conditions are met, it will not be officially declared. Under the new policy, it will be easy to see if the dividend meets the size criterion: would it yield \$12.50 per contract? If "yes", then if the adjustment panel determines it is a non-ordinary dividend, investors will immediately know an adjustment will occur if the dividend is actually declared.

Q. If an adjustment is called for, *how* will it be done?

A. There will be no changes to the *methods* of adjustment. There are two methods of adjustment: 1) simply reduce the strike prices by the amount of the dividend. This is the preferred method and will normally be used if the exact dividend amount is known in advance of the ex-date. 2) If the exact dividend amount is not known or if strike reduction would result in a strike of zero or less, then the amount of the dividend will be added as a cash component to the option deliverable. When this is done, an option symbol change normally occurs.

Adjustments will continue to be made on the ex-date for the cash dividend as determined by the appropriate market.

ALL CLEARING MEMBERS ARE REQUESTED TO IMMEDIATELY ADVISE ALL BRANCH OFFICES AND CORRESPONDENTS ON THE ABOVE.

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INTERPRETATIVE GUIDANCE ON THE NEW ADJUSTMENT POLICY FOR CASH DIVIDENDS AND DISTRIBUTIONS

Frequently Asked Questions

Disclaimer: The OCC Securities Committee has reviewed the questions and answers presented below and believes they provide useful guidelines for how the new adjustment policy will be applied in practice. However, as indicated several times below, all adjustments are individually determined by an adjustment panel of the Securities Committee on a case by case basis, and adjustment panels may make exceptions to general rules, interpretations, and policies in cases where they determine such exceptions to be appropriate. In no instance are the examples provided below meant to determine in advance the decisions that any adjustment panel will make in the future.

Overview of the New Adjustment Policy

- Q. Who decides if an option adjustment shall be made?
- A. All adjustments are determined on a case by case basis by an adjustment panel of the OCC Securities Committee. Each adjustment panel is comprised of two representatives from each exchange that trades the option in question, plus an OCC representative. The OCC member only casts a vote to break a tie. The adjustment panel decides whether an adjustment is called for and how it should be done.
- Q. What cash dividends call for an adjustment?
- A. "Ordinary" cash dividends do not call for adjustments. An "ordinary" cash dividend is defined as one paid "pursuant to a policy or practice of paying such dividend on a quarterly or other regular basis". A cash dividend which is considered to be *outside* this regular policy is non-ordinary. Assuming a given dividend is non-ordinary according to this definition, a size test is also imposed: the value of the dividend must be at least \$12.50 per option contract. Thus, if the dividend is non-ordinary and yields at least \$12.50 per option contract, then an adjustment will be made.
- Q. What's the rationale for this approach?
- A. In general, dividends declared pursuant to a policy or practice of a company can be anticipated and priced into option premiums according to standard models. Non-ordinary dividends declared outside the normal policy of the company cannot be anticipated and integrated into pricing with the same degree of assurance. Thus, when such dividends are announced, if no adjustment is made, the only way a call holder can capture the dividend is through exercise prior to the ex-dividend date. When this happens, significant option time value can be lost and financial losses due to operational error in submitting exercises may occur. The intention is to allow such dividends to accrue to the benefit of call holders without requiring them to exercise their options.
- Q. So any dividend that can't be *anticipated* will be deemed a non-ordinary dividend?

- A. No. Although such dividends may be unanticipated, the important criterion is whether a dividend is paid pursuant to a program or policy of paying dividends on a quarterly or other regular basis. In some cases, the dividends of a company paid according to such a policy may be highly variable and subject to increases or decreases that some may consider “unanticipated”. Nevertheless, these dividends would not normally be deemed non-ordinary.

Examples: What if...?

- Q. Can you give an example of how the \$12.50 adjustment threshold will work in practice?
- A. In order for an option to be adjusted, the value of the dividend must be at least \$12.50 per option contract. However, if the security on which the dividend is paid underlies option contracts with more than one contract size – e.g., as a result of adjustments for previous splits – then the nonstandard contracts would be adjusted only if the value of the dividend on the nonstandard contract is at least \$12.50 *and* the standard-size contract (normally 100 shares) would also be adjusted.

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- Q. What if a company announced a dramatic increase in a regular dividend? For example, what if a company’s last quarterly dividend was \$.20 and the current quarterly dividend was bumped to \$1.00 – wouldn’t that be a “non-ordinary”, one-time event that would call for an adjustment?
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- Q. Fund share or ETF options have previously been adjusted in response to special dividends declared with respect to component securities of the fund. The most notable instance was the Microsoft \$3.00 special dividend in 2004. How will these kinds of distributions be handled?
- A. If a fund (ETF, HOLDR, etc.) is making a cash distribution which is identified (in whole or part) by the fund as attributable to a special dividend on a component security, then the appropriate amount of the cash distribution will also be considered a special, adjustable distribution. For example, if an ETF is making a \$1.00 quarterly cash distribution, \$.25 of which is attributable to a special dividend on a component security, the adjustment panel will normally consider \$0.25 of the aggregate distribution as a special dividend and adjust for \$25.00 per option contract (assuming a 100 share option).

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- A. Two separate events.
- ~~Q. The Diamond Offshore (DO) special dividends present an interesting case. DO has paid a series of special dividends on a quarterly basis, alongside their regular quarterly dividend. Some investors feel these special dividends have demonstrated such consistency over time that they should be deemed ordinary and should no longer occasion adjustments. How will the Securities Committee approach such a situation?~~
- ~~A. Even though the adjustment panels may have previously adjusted for a series of non-ordinary dividends, they have the authority to stop adjusting for such dividends if the panels believe the issuer has a policy or practice of paying such dividends or distributions on a quarterly or other regular basis, or the issuer has paid such dividends or distributions for four or more consecutive months or quarters or two or more years after the initial payment. The panels could make this determination whether or not the amounts paid were the same from period to period. The adjustment panels would announce decisions to no longer adjust for each affected option. Such determinations would be made on a case by case basis.~~

- ~~Q. How and when will the Securities Committee provide notification of decisions to cease adjusting for recurring non-ordinary dividends on existing options?~~
- ~~A. Notification will be provided in an OCC Information Memo. In most cases, it is anticipated that notification from the Securities Committee will be given when an option's final adjustment for recurring non-ordinary dividends is made and will generally be included in the final adjustment information memo. For example, if XYZ Stock has announced its 4th recurring non-ordinary quarterly dividend, an information memo will be published indicating an adjustment will occur for the 4th dividend. In addition, this memo will also include the Securities Committee's decision that subsequent non-ordinary quarterly dividends will not be adjusted for.~~
- ~~Q. What if the underlying security on a newly listed option has a history of recurring non-ordinary dividends? Will options be adjusted for subsequent non-ordinary dividends since there have been no previous adjustments?~~
- ~~A. No, generally not. In a case involving a newly listed option for which no prior dividend adjustments have occurred, adjustments will generally not be made for recurring non-ordinary dividends because a consistent pattern of non-ordinary dividends exists for the underlying security. In such a situation, recurring non-ordinary dividends typically will not result in an adjustment for the newly listed option, even though no prior notification has been given that no adjustment would be made.~~
- Q. What if a company's regular quarterly dividend is a "return of capital"? Would that make it a special, adjustable dividend?
- A. No. Insofar as the dividend is still a regular quarterly dividend, it would not call for an adjustment. Ordinarily, the source of cash to be paid will not be determinative of the adjustment decision. In the past, however, adjustment panels have determined to adjust for any dividends paid pursuant to a plan of liquidation – even regular dividends of the company included in the plan. They may follow this precedent in the future as well for companies undergoing liquidation.

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