

C.F.T.C.  
OFFICE OF THE SECRETARIAT

File No. SR-OCC-2009 -15  
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**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” or the “Corporation”) proposes to amend its By-Laws and Rules as set forth below in order to revise its minimum eligibility requirements for (1) stock eligible for lending under the Stock Loan/Hedge and Market Loan Programs (collectively, “Stock Loan Programs”), and (2) common stock eligible for deposit as margin collateral in connection with implementing the Collateral in Margins program.<sup>1</sup>

Material proposed to be added is underlined, and material proposed to be deleted is enclosed in bold brackets.

**THE OPTIONS CLEARING CORPORATION****BY-LAWS**

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**ARTICLE I****Definitions****SECTION 1. [no change]****A. – D. [no change]****E.**

(1) – (2) [no change]

**Eligible Stock**

(3) The term “Eligible Stock” means any security that is eligible for lending in the Stock Loan/Hedge Program and the Market Loan Program. A security shall be eligible for lending in the Stock Loan/Hedge Program and the Market Loan Program if and only if (i) the security is an equity security that the Depository has determined is eligible for deposit at the Depository, (ii) [the security is an underlying security for options, and (iii)] the Corporation has not determined to terminate all outstanding Stock Loans and/or Market Loans in respect of such

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<sup>1</sup> For a description of the Collateral in Margins program, see OCC-2007-20 (approved by the SEC in Release No. 34-58158).

security pursuant to the By-Laws, (iii) the security is a “covered security” within the meaning of Section 18(b)(1) of the Securities Act of 1933, (iv) in the case of securities which are neither underlying securities nor fund shares that have as their reference index an index that underlies any cleared contract, the security is trading at a market price of at least \$3 per share, as determined by the Corporation. The Corporation may waive requirement (iv) at its discretion upon a determination that other factors, including trading volume, the number of shareholders, the number of outstanding shares, and current bid/ask spreads warrant such result. However, should the market price for a security for which the Corporation has not waived requirement (iv) fall below \$3, no new Stock Loan or Market Loan transactions may be submitted for clearance, but existing positions may be maintained. [The restriction set forth in clause (ii) of the preceding sentence shall not apply to: (x) Stock Loans that were accepted by the Corporation prior to its implementation, (y) loans of securities that are deliverable upon exercise of an outstanding option, or (z) loans of a fund share that tracks an index underlying outstanding index options whether or not the fund share is itself an underlying security.]

\* \* \*  
**RULES**  
 \* \* \*  
**CHAPTER VI**  
**Margins**  
 \* \* \*  
**Forms of Margin**

Rule 604. (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) - (3) [No change]

(4) *Equity and Debt Issues*. (i) Clearing Members may deposit, as hereinafter provided, common and preferred stocks[, including fund shares (collectively, “stocks”)], and corporate bonds which meet the standards prescribed below. In order to be eligible for deposit, preferred stocks must have a market value greater than [\$3 per share (\$10 per share [in the case of preferred stocks])]. [and] Common stocks (including fund shares) must be [traded on a national securities exchange, provided that Nasdaq-traded securities must be traded in the Nasdaq Global Market or the Nasdaq Capital Market] “covered securities” within the meaning of Section 18(b)(1) of the Securities Act of 1933. Corporate bonds must (A) be listed on a national securities exchange and not in default, (B) have a current market value that is readily determinable on a daily basis, and (C) be rated in one of the four highest rating categories by a nationally recognized statistical rating organization. [Notwithstanding the foregoing, the \$10 per share market value requirement will not apply to: (x) securities that are deliverable upon the exercise or maturity of any cleared contract, or (y) fund shares that have as their reference any index that underlies any cleared contract, regardless of whether such fund shares are deliverable upon the exercise or maturity of any cleared contract.] Common stocks which are neither underlying securities nor fund shares that have as their reference index an index that underlies

any cleared contract must have a market value of at least \$3 per share, as determined by the Corporation; provided, however, that the Corporation may waive this requirement at its discretion upon a determination that other factors, including trading volume, the number of shareholders, the number of outstanding shares, and current bid/ask spreads warrant such result. An issue that is suspended from trading by, or subject to special margin requirements under the rules of, the market that listed or qualified the issue for trading because of volatility, lack of liquidity or similar characteristics, may not be deposited as margin with the Corporation. If the issue is listed or traded on more than one market and the markets do not take the same action, the Corporation will use its discretion to determine which market's actions will be definitive for purposes of this Rule. Each deposit pursuant to this Rule 604 (b)(4) shall be made with respect to a designated account of the Clearing Member. Deposited stocks and bonds shall be valued on a daily basis at 70% of current market value or such lower value as the Membership/Risk Committee of the Corporation may prescribe from time to time with respect to such stocks or bonds, or any of them. In valuing any stock or bond for the purposes of this Rule 604 (b)(4), its current market value shall be deemed to be its price at the close of regular trading hours (as determined by the Corporation) on such national securities exchange or other domestic security market as the Corporation shall determine during the preceding trading day. If such stock or bond was not traded on such market during regular trading hours, the current market value shall be deemed to be the lowest reported bid quotation for such stock or bond at or about the close of regular trading hours on such day. [Stocks] A single issue, i.e., equity or debt with the same CUSIP number, shall not be valued at an amount in excess of 10% of the margin on deposit in the account for which such securities are deposited; provided that this 10% limit shall not apply to: [(x) securities that are deliverable upon the exercise or maturity of any cleared contract, or (y)] common stock (including fund shares)[ fund shares that have as their reference any index that underlies any cleared contract, regardless of whether the fund share is deliverable upon the exercise or maturity of any cleared contract]. Common stocks deposited pursuant to Rule 610 shall have no value as margin for the purposes of this Rule 604(b)(4).<sup>2</sup>

(ii) – (iii) [No change]

(5) [No change]

(c) – (f) [No change]

***Interpretations and Policies:***

.01 - .11 [No change]

.12 In the case of any account that is divided into sub-accounts, the Corporation will calculate the 10% limitation on the value of [equity and debt] an issue[s] of any one issuer as

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<sup>2</sup> Note that Rule 604(b)(i) and the Interpretations and Policies under Rule 604 are presented as giving effect to (i) OCC-2007-20, which was approved by the SEC (Release No. 34-58158), but which has not yet been implemented by OCC and (ii) OCC-2009-14, which is a pending rule change. In the event OCC-2009-14 remains pending at the time this filing is approved, Exhibit 5 hereto contains the text of Rule 604(b)(i) and the Interpretations and Policies under Rule 604, as proposed to be amended by this filing, but without giving effect to the changes proposed in OCC-2009-14. OCC would file an appropriate amendment to OCC-2009-14 to reflect the Rule's updated text.

described in subparagraph (b)(4) of this Rule 604 separately for the parent account and any sub-account that is margin and collateral enabled. Neither the margin requirement nor margin excess of any sub-account that is margin enabled, nor the collateral in any sub-account that is collateral enabled, will be considered in connection with such calculation for any other sub-account or for the parent account.

[.13 The 10% concentration requirement set forth in Rule 604(b)(4) shall not apply to fund shares traded under the following symbols: SPY, QQQQ, IWM, and DIA. The Membership/Risk Committee may, in its sole discretion, waive the 10% concentration requirement with regard to other fund shares that (1) are based upon liquid, broad-based equity indexes and (2) have a margin interval equal to or less than 30%, as determined by OCC's margin system. This interpretation .13 will be superseded in its entirety when OCC implements the "Collateral in Margins" program that was filed in SR-OCC-2007-20.]<sup>3</sup>

.1[4]3 [renumbered, but otherwise no change]

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## CHAPTER X

### Clearing Fund Contributions

#### Amount of Contribution

RULE 1001. (a) The contribution to the Clearing Fund of each Clearing Member (except recently admitted Clearing Members whose contributions are fixed pursuant to Article VIII of the By-Laws) for each calendar month shall be the greater of (x) the minimum clearing fund contribution specified in paragraph (b) of this Rule or (y) such Clearing Member's proportionate share of an amount equal to 5%, or such greater percentage as the Board of Directors shall from time to time prescribe by resolution, of the average aggregate margin requirement in respect of positions outstanding during the preceding calendar month. [For purposes of the calculations described in this Rule 1001, all stock loan positions and stock borrow positions shall be deemed to be margin-eligible.] Notwithstanding clause (x) of this paragraph (a), an entity that is an affiliate of a Clearing Member and that also becomes a Clearing Member solely for the purpose of clearing transactions in security futures, commodity futures, futures options, and/or commodity options shall be deemed to be in compliance with the \$150,000 minimum contribution if its contribution is equal to the amount specified in clause (y) of this paragraph and the earlier-admitted Clearing Member is in compliance with the minimum requirement under clause (x).

(b) – (d) [No change.]

(e) For purposes of this Rule, the average daily aggregate margin requirement and daily margin requirement shall be determined without reference to margin deposits in the form of securities

<sup>3</sup> This interpretation has not been implemented by OCC as the related system changes have not yet been completed.

that were included in the calculation of the minimum expected liquidating value of a Clearing Member account (including sub-account thereof) pursuant to Rule 601.

*...Interpretations and Policies:*

.01 The Board of Directors of the Corporation has prescribed that, at the present time, the percentage amount referred to in paragraphs (a) and (b) of this Rule 1001 shall be not less than 6% and not greater than 7% of the average daily aggregate margin requirement with respect to [stock] options and futures contracts, BOUNDS, [and] stock loan and borrow positions, and [non-equity securities option contracts,] basket stock loan and borrow positions, respectively. In the event that a percentage amount of 6% produces a Clearing Fund of less than \$1 billion dollars, then the percentage amount shall be increased until a percentage amount of 7% or a Clearing Fund of \$1 billion is reached

[.02 The special minimum clearing fund requirement for Execution-Only Clearing Members shall be effective as of October 1, 2004.]

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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 22, 2008.

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**

The principal purpose of this rule change is to revise OCC's minimum eligibility requirements for (1) stock borrows and loans accepted in the Stock Loan Programs and (2) common stock accepted as margin collateral. This proposal furthers OCC's continuing efforts to utilize its STANS risk management system to its fullest potential, resulting in lower risk to OCC while also increasing margin offset opportunities for OCC clearing members. Recent OCC rule filings with a similar objective include (i) a rule change eliminating the practice of allowing

clearing members to carry stock loan and borrow positions without collecting risk margin and requiring instead that all such positions be included in the STANS margin calculation<sup>4</sup> and (ii) a rule change (the “Collateral in Margins” filing) providing that common stock deposited as collateral be included in the STANS calculation rather than valuing the collateral at a current market price less a somewhat arbitrary 30% haircut.<sup>5</sup> In addition, largely in response to market conditions, OCC recently reduced the minimum price for common stocks held as collateral from \$10 to \$3 and eliminated the 10% concentration test for certain ETFs held as collateral.<sup>6</sup> The present rule change reflects additional changes that are based upon the capabilities of the STANS system.

## **BACKGROUND**

OCC’s clearing services involve common stock<sup>7</sup> in several ways. Stocks are: (1) underlying securities for exchange-traded equity option contracts, (2) constituent securities of stock indexes that underlie stock index options or of indexes on which underlying ETFs are based, (3) constituent securities of ETFs that, although they are not underlying securities, are based on indexes that underlie index options (“index option related ETFs”), (4) the subject of stock loan or borrow transactions cleared pursuant to OCC’s Stock Loan Programs, and (5) deposited with OCC as margin collateral. Rationalizing the interrelationship among the criteria applied to stocks for these various purposes will maximize the potential for offsets and reduce risk in the clearing system.

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<sup>4</sup> See SR-OCC-2008-06, approved in Release No. 34-59036.

<sup>5</sup> See SR-OCC-2007-20; approved in Release No. 34-58158 (not yet implemented).

<sup>6</sup> See SR-OCC-2009-08; approved in Release No. 34-59845.

<sup>7</sup> The term “common stock” or “stock” is broadly used in this rule change to refer to different types of equity securities including ETFs, but not preferred stock.

**DESCRIPTION OF AMENDMENTS**

Eligibility Criteria for Stock Loan Programs. Under OCC's Stock Loan Programs, only loans of stocks that are either underlying securities for options or futures or ETFs based on a stock index underlying an index option contract are eligible for clearance through OCC (collectively, "options-related stocks"). The rationale for so restricting stock loan activity was to limit OCC's risk to loans supporting short sales that might be serving as hedges for options transactions or helping to add liquidity to the options markets. At the time this criterion was implemented in 2002, OCC managed the risk of stock loan transactions for most clearing members on a credit basis; *i.e.*, OCC did not collect margin on such transactions. As noted above, OCC now requires margin on all stock loan transactions, thus greatly reducing the risk associated with this activity. Accordingly, OCC believes that it is no longer necessary or appropriate to limit stock loan transactions to options-related stocks.

Notwithstanding the foregoing, and in connection with the foregoing change, OCC is supplementing its existing criteria for stock eligible for the stock loan programs by requiring that a stock, in order to qualify as an "Eligible Stock" for purposes of the Stock Loan Programs, must be a "covered security" as defined in Section 18(b)(1) of the Securities Act of 1933. "Covered securities" are those securities that are listed on the New York Stock Exchange and certain other markets, or "tiers" thereof, that are considered to have reasonably strict listing standards. By agreement with the options exchanges, OCC already requires that all underlying stocks meet this criterion, and OCC believes that it is an appropriate minimum assurance of quality. In addition, OCC is imposing a \$3 minimum share price requirement that would be applicable only to stocks other than options-related stocks. This minimum price requirement corresponds to the minimum price standard contained in the criteria used by the options exchanges for initial selection of



underlying securities that are also “covered securities” (*see, e.g.*, CBOE Rule 5.3.01). OCC would, however, retain the ability to waive the \$3 minimum price where specified other factors suggest that the stock is nevertheless suitable for inclusion in the stock loan programs.

Common Stock Accepted as Collateral. Under current OCC Rule 604(b)(4), clearing members can deposit common stocks which meet the following criteria: minimum price of \$3 per share and traded on a national securities exchange, or traded in the Nasdaq Global Market, or traded in the Nasdaq Capital Market.<sup>8</sup> The aggregate value of margin attributed to a single stock cannot exceed 10% of a clearing member’s total margin requirement. Stocks are haircut by 30% for margin valuation purposes. Stocks that have been suspended from trading by, or are subject to special margin requirements under the rules of, a listing market because of volatility, lack of liquidity or similar characteristics are not eligible for deposit as margin.

Under the approved, but not yet implemented, Collateral in Margins program, any common stock that meets the above criteria, except the minimum price requirement, and that is deliverable upon exercise or maturity of a cleared contract (*i.e.*, is an underlying security) as well as index option related ETFs, will be afforded collateral value as determined by STANS. Moreover, the margin concentration requirement will be inapplicable to such deposits. Thus, upon implementation of the Collateral in Margins proposal, the minimum price requirement and margin concentration requirement would be eliminated for common stocks that are underlying securities or index option related ETFs. The minimum price requirement is being eliminated for these securities in order to provide a greater opportunity for members to hedge their equity options positions with pledges of the underlying securities. This decision also reflects OCC’s

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<sup>8</sup> Clearing members may also deposit preferred stocks which meet the applicable standards specified in Rule 604(b)(4). At this time, OCC is not proposing to change the eligibility criteria applied to preferred stock, but may recommend such changes at a later date once additional enhancements are made to STANS.

judgment that the minimum price requirement is less important in the current environment where OCC is able to closely monitor collateral in the form of common stock and apply the sophisticated risk management technique incorporated in STANS in order to determine the appropriate value to assign to such collateral. The concentration test requirement is being eliminated because STANS contains its own built-in functionality that adequately handles concentrated options and collateral holdings.

In anticipation of the implementation of the Collateral in Margins program, and effective with such implementation, OCC proposes to further amend Rule 604(b)(4)(i) as follows:

- Replace the requirement of listing on a national securities exchange or specific Nasdaq markets with the requirement that all common stocks deposited as margin must be “covered securities” as described above.
- Provide that the \$3 minimum share price requirement (lowered from \$10 in SR-OCC-2009-08) will no longer apply to deposits of common stocks except for stocks that are neither underlying securities nor index-option related ETFs.
- Permit OCC to waive the \$3 minimum share price if it determines that other factors, including trading volume, the number of shareholders, the number of outstanding shares, and current bid/ask spreads warrant such action.
- Delete Interpretation and Policy .13, adopted in SR-OCC-2009-08, which made the 10% concentration test inapplicable to certain ETFs, because the 10% test will be eliminated for all stocks (including ETFs) when Collateral in Margins is implemented.

In addition, OCC proposes to amend Rule 1001 to provide that the determination of “average aggregate daily margin requirement” and “daily margin requirement” would be

performed without reference to any deposits of securities, e.g., common stocks (including fund shares), that were valued within STANS pursuant to Rule 601. This change ensures that contributions to the clearing fund will be determined without taking into account any reduction in margin requirements resulting from valuing deposits of such securities under STANS. Other proposed changes to Rule 1001 are conforming or clarifying in nature.

Summary. The changes proposed in this rule filing more closely align both the stock collateral and stock loan eligibility criteria with the criteria for selection of underlying equity securities. While some differences still exist, OCC believes that the proposed discretionary authority will provide OCC with sufficient flexibility to treat equity options, stock loan transactions, and stock collateral in a consistent manner when appropriate. For example, the \$3 minimum price requirement is similar or identical to requirements contained in the equity options listing criteria of the options exchanges. In addition, the factors that OCC proposes to be considered in determining whether an exception to the \$3 minimum may be granted are consistent with those reflected in such criteria. These factors are widely regarded as among the most relevant in determining whether a stock is liquid.

OCC's confidence in making these proposed changes stems in large part from the capabilities afforded OCC under STANS. STANS considers a security's historical price volatility in generating its simulated market moves resulting in coverage parameters that vary based on the overall risk of a particular underlying. OCC's confidence was reinforced by the performance of STANS through the recent period of extreme market volatility. STANS also identifies and addresses concentrated positions. By incorporating equity options positions, stock loan positions, and, upon implementation of the Collateral in Margins changes, common stock deposits within a single concentration analysis, OCC can identify where hedged positions exist

and can also identify areas of cumulative exposure where additional collateral may be appropriate (e.g., where a clearing member has long options, stock loan positions and margin deposits all relating to the same security).

In the eligibility criteria for both the Stock Loan program and stocks deposited as margin, OCC proposes to retain the \$3 minimum share price requirement for stocks that are not options-related stocks. If OCC's experience ultimately leads it to determine that the minimum price requirement is of little value, OCC will consider eliminating it entirely.

### **IMPLEMENTATION SCHEDULE**

OCC proposes to implement the changes to stock loan eligibility criteria immediately upon obtaining Commission approval of this rule filing. OCC proposes that the changes in eligibility criteria for common stock deposited as margin be implemented concurrently with implementation of the Collateral in Margins program, which is currently scheduled for fourth quarter 2009.

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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 accurate and efficient clearance and settlement of transactions in securities and to safeguard assets within OCC's custody or control. They accomplish this purpose by facilitating appropriate offsets among equity options, stock loan and borrow positions, and stock collateral that are held in a single clearing member account using the advanced risk management and valuation techniques of OCC's STANS system, thereby increasing market efficiency without increasing risk. The proposed rule changes are not inconsistent with the existing 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 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 Rules of Another Regulatory Organization or of the Commission**

Not applicable.

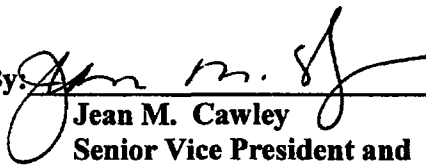
**Item 9. Exhibits**

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

**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-2009-15

**SELF-REGULATORY ORGANIZATION**

Proposed Rule Change By  
The Options Clearing Corporation

Relating to Stock Loan Programs and  
Collateral in Margins Program

Comments requested within days  
after the date of this publication.

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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 \_\_\_\_\_, 2009, 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 the Substance of the Proposed Rule Change**

The proposed rule change would revise minimum eligibility criteria applicable to common stock loaned through OCC's Stock Loan Programs and deposited as margin collateral.

## **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

### **A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

The principal purpose of this rule change is to revise OCC's minimum eligibility requirements for (1) stock borrows and loans accepted in the Stock Loan Programs and (2) common stock accepted as margin collateral. This proposal furthers OCC's continuing efforts to utilize its STANS risk management system to its fullest potential, resulting in lower risk to OCC while also increasing margin offset opportunities for OCC clearing members. Recent OCC rule filings with a similar objective include (i) a rule change eliminating the practice of allowing clearing members to carry stock loan and borrow positions without collecting risk margin and requiring instead that all such positions be included in the STANS margin calculation<sup>1</sup> and (ii) a rule change (the "Collateral in Margins" filing) providing that common stock deposited as collateral be included in the STANS calculation rather than valuing the collateral at a current market price less a somewhat arbitrary 30% haircut.<sup>2</sup> In addition, largely in response to market conditions, OCC recently reduced the minimum price for common stocks held as collateral from

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<sup>1</sup> See SR-OCC-2008-06, approved in Release No. 34-59036.

<sup>2</sup> See SR-OCC-2007-20; approved in Release No. 34-58158 (not yet implemented).



\$10 to \$3 and eliminated the 10% concentration test for certain ETFs held as collateral.<sup>3</sup> The present rule change reflects additional changes that are based upon the capabilities of the STANS system.

## **BACKGROUND**

OCC's clearing services involve common stock<sup>4</sup> in several ways. Stocks are: (1) underlying securities for exchange-traded equity option contracts, (2) constituent securities of stock indexes that underlie stock index options or of indexes on which underlying ETFs are based, (3) constituent securities of ETFs that, although they are not underlying securities, are based on indexes that underlie index options ("index option related ETFs"), (4) the subject of stock loan or borrow transactions cleared pursuant to OCC's Stock Loan Programs, and (5) deposited with OCC as margin collateral. Rationalizing the interrelationship among the criteria applied to stocks for these various purposes will maximize the potential for offsets and reduce risk in the clearing system.

## **DESCRIPTION OF AMENDMENTS**

Eligibility Criteria for Stock Loan Programs. Under OCC's Stock Loan Programs, only loans of stocks that are either underlying securities for options or futures or ETFs based on a stock index underlying an index option contract are eligible for clearance through OCC (collectively, "options-related stocks"). The rationale for so restricting stock loan activity was to limit OCC's risk to loans supporting short sales that might be serving as hedges for options transactions or helping to add liquidity to the options markets. At the time this criterion was implemented in 2002, OCC managed the risk of stock loan transactions for most clearing

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<sup>3</sup> See SR-OCC-2009-08; approved in Release No. 34-59845.

<sup>4</sup> The term "common stock" or "stock" is broadly used in this rule change to refer to different types of equity securities including ETFs, but not preferred stock.

members on a credit basis; *i.e.*, OCC did not collect margin on such transactions. As noted above, OCC now requires margin on all stock loan transactions, thus greatly reducing the risk associated with this activity. Accordingly, OCC believes that it is no longer necessary or appropriate to limit stock loan transactions to options-related stocks.

Notwithstanding the foregoing, and in connection with the foregoing change, OCC is supplementing its existing criteria for stock eligible for the stock loan programs by requiring that a stock, in order to qualify as an “Eligible Stock” for purposes of the Stock Loan Programs, must be a “covered security” as defined in Section 18(b)(1) of the Securities Act of 1933. “Covered securities” are those securities that are listed on the New York Stock Exchange and certain other markets, or “tiers” thereof, that are considered to have reasonably strict listing standards. By agreement with the options exchanges, OCC already requires that all underlying stocks meet this criterion, and OCC believes that it is an appropriate minimum assurance of quality. In addition, OCC is imposing a \$3 minimum share price requirement that would be applicable only to stocks other than options-related stocks. This minimum price requirement corresponds to the minimum price standard contained in the criteria used by the options exchanges for initial selection of underlying securities that are also “covered securities” (*see, e.g.*, CBOE Rule 5.3.01). OCC would, however, retain the ability to waive the \$3 minimum price where specified other factors suggest that the stock is nevertheless suitable for inclusion in the stock loan programs.

Common Stock Accepted as Collateral. Under current OCC Rule 604(b)(4), clearing members can deposit common stocks which meet the following criteria: minimum price of \$3 per share and traded on a national securities exchange, or traded in the Nasdaq Global Market, or

traded in the Nasdaq Capital Market.<sup>5</sup> The aggregate value of margin attributed to a single stock cannot exceed 10% of a clearing member's total margin requirement. Stocks are haircut by 30% for margin valuation purposes. Stocks that have been suspended from trading by, or are subject to special margin requirements under the rules of, a listing market because of volatility, lack of liquidity or similar characteristics are not eligible for deposit as margin.

Under the approved, but not yet implemented, Collateral in Margins program, any common stock that meets the above criteria, except the minimum price requirement, and that is deliverable upon exercise or maturity of a cleared contract (*i.e.*, is an underlying security) as well as index option related ETFs, will be afforded collateral value as determined by STANS. Moreover, the margin concentration requirement will be inapplicable to such deposits. Thus, upon implementation of the Collateral in Margins proposal, the minimum price requirement and margin concentration requirement would be eliminated for common stocks that are underlying securities or index option related ETFs. The minimum price requirement is being eliminated for these securities in order to provide a greater opportunity for members to hedge their equity options positions with pledges of the underlying securities. This decision also reflects OCC's judgment that the minimum price requirement is less important in the current environment where OCC is able to closely monitor collateral in the form of common stock and apply the sophisticated risk management technique incorporated in STANS in order to determine the appropriate value to assign to such collateral. The concentration test requirement is being eliminated because STANS contains its own built-in functionality that adequately handles concentrated options and collateral holdings.

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<sup>5</sup> Clearing members may also deposit preferred stocks which meet the applicable standards specified in Rule 604(b)(4). At this time, OCC is not proposing to change the eligibility criteria applied to preferred stock, but may recommend such changes at a later date once additional enhancements are made to STANS.

In anticipation of the implementation of the Collateral in Margins program, and effective with such implementation, OCC proposes to further amend Rule 604(b)(4)(i) as follows:

- Replace the requirement of listing on a national securities exchange or specific Nasdaq markets with the requirement that all common stocks deposited as margin must be “covered securities” as described above.
- Provide that the \$3 minimum share price requirement (lowered from \$10 in SR-OCC-2009-08) will no longer apply to deposits of common stocks except for stocks that are neither underlying securities nor index-option related ETFs.
- Permit OCC to waive the \$3 minimum share price if it determines that other factors, including trading volume, the number of shareholders, the number of outstanding shares, and current bid/ask spreads warrant such action.
- Delete Interpretation and Policy .13, adopted in SR-OCC-2009-08, which made the 10% concentration test inapplicable to certain ETFs, because the 10% test will be eliminated for all stocks (including ETFs) when Collateral in Margins is implemented.

In addition, OCC proposes to amend Rule 1001 to provide that the determination of “average aggregate daily margin requirement” and “daily margin requirement” would be performed without reference to any deposits of securities, e.g., common stocks (including fund shares), that were valued within STANS pursuant to Rule 601. This change ensures that contributions to the clearing fund will be determined without taking into account any reduction in margin requirements resulting from valuing deposits of such securities under STANS. Other proposed changes to Rule 1001 are conforming or clarifying in nature.

Summary. The changes proposed in this rule filing more closely align both the stock collateral and stock loan eligibility criteria with the criteria for selection of underlying equity

securities. While some differences still exist, OCC believes that the proposed discretionary authority will provide OCC with sufficient flexibility to treat equity options, stock loan transactions, and stock collateral in a consistent manner when appropriate. For example, the \$3 minimum price requirement is similar or identical to requirements contained in the equity options listing criteria of the options exchanges. In addition, the factors that OCC proposes to be considered in determining whether an exception to the \$3 minimum may be granted are consistent with those reflected in such criteria. These factors are widely regarded as among the most relevant in determining whether a stock is liquid.

OCC's confidence in making these proposed changes stems in large part from the capabilities afforded OCC under STANS. STANS considers a security's historical price volatility in generating its simulated market moves resulting in coverage parameters that vary based on the overall risk of a particular underlying. OCC's confidence was reinforced by the performance of STANS through the recent period of extreme market volatility. STANS also identifies and addresses concentrated positions. By incorporating equity options positions, stock loan positions, and, upon implementation of the Collateral in Margins changes, common stock deposits within a single concentration analysis, OCC can identify where hedged positions exist and can also identify areas of cumulative exposure where additional collateral may be appropriate (*e.g.*, where a clearing member has long options, stock loan positions and margin deposits all relating to the same security).

In the eligibility criteria for both the Stock Loan program and stocks deposited as margin, OCC proposes to retain the \$3 minimum share price requirement for stocks that are not options-related stocks. If OCC's experience ultimately leads it to determine that the minimum price requirement is of little value, OCC will consider eliminating it entirely.

## **IMPLEMENTATION SCHEDULE**

OCC proposes to implement the changes to stock loan eligibility criteria immediately upon obtaining Commission approval of this rule filing. OCC proposes that the changes in eligibility criteria for common stock deposited as margin be implemented concurrently with implementation of the Collateral in Margins program, which is currently scheduled for fourth quarter 2009.

\* \* \*

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 accurate and efficient clearance and settlement of transactions in securities and to safeguard assets within OCC's custody or control. They accomplish this purpose by facilitating appropriate offsets among equity options, stock loan and borrow positions, and stock collateral that are held in a single clearing member account using the advanced risk management and valuation techniques of OCC's STANS system, thereby increasing market efficiency without increasing risk. The proposed rule changes are not inconsistent with the existing rules of OCC, including any 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**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

**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](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2009-15 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-2009-15. 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-2009-15 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: \_\_\_\_\_



**Exhibit 5 to File No. SR-OCC-2009-15 shows the text of Rule 604(b)(i) and the Interpretations and Policies under Rule 604 with the changes proposed herein, but without giving effect to the changes proposed in OCC-2009-14 (see highlighted text).**

## RULES

### CHAPTER VI

#### Margins

\* \* \*

#### Forms of Margin

Rule 604. (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) - (3) [No change]

(4) *Equity and Debt Issues*. (i) Clearing Members may deposit, as hereinafter provided, common and preferred stocks[, including fund shares (collectively, “stocks”)], and corporate bonds which meet the standards prescribed below. In order to be eligible for deposit, preferred stocks must have a market value greater than [\$3 per share (\$10 per share [in the case of preferred stocks]). [and] Common stocks (including fund shares) must be [traded on a national securities exchange, provided that Nasdaq-traded securities must be traded in the Nasdaq Global Market or the Nasdaq Capital Market] “covered securities” within the meaning of Section 18(b)(1) of the Securities Act of 1933. Corporate bonds must (A) be listed on a national securities exchange and not in default, (B) have a current market value that is readily determinable on a daily basis, and (C) be rated in one of the four highest rating categories by a nationally recognized statistical rating organization. [Notwithstanding the foregoing, the \$10 per share market value requirement will not apply to: (x) securities that are deliverable upon the exercise or maturity of any cleared contract, or (y) fund shares that have as their reference any index that underlies any cleared contract, regardless of whether such fund shares are deliverable upon the exercise or maturity of any cleared contract.] Common stocks which are neither underlying securities nor fund shares that have as their reference index an index that underlies any cleared contract must have a market value of at least \$3 per share, as determined by the Corporation; provided, however, that the Corporation may waive this requirement

at its discretion upon a determination that other factors, including trading volume, the number of shareholders, the number of outstanding shares, and current bid/ask spreads warrant such result. An issue that is suspended from trading by, or subject to special margin requirements under the rules of, the market that listed or qualified the issue for trading because of volatility, lack of liquidity or similar characteristics, may not be deposited as margin with the Corporation. If the issue is listed or traded on more than one market and the markets do not take the same action, the Corporation will use its discretion to determine which market's actions will be definitive for purposes of this Rule. Each deposit pursuant to this Rule 604 (b)(4) shall be made with respect to a designated account of the Clearing Member. Deposited stocks and bonds shall be valued on a daily basis at 70% of current market value or such lower value as the Membership/Risk Committee of the Corporation may prescribe from time to time with respect to such stocks or bonds, or any of them. In valuing any stock or bond for the purposes of this Rule 604 (b)(4), its current market value shall be deemed to be its price at the close of regular trading hours (as determined by the Corporation) on such national securities exchange or other domestic security market as the Corporation shall determine during the preceding trading day. If such stock or bond was not traded on such market during regular trading hours, the current market value shall be deemed to be the lowest reported bid quotation for such stock or bond at or about the close of regular trading hours on such day. Stocks and debt issues of any one issuer shall not be valued at an amount in excess of 10% of the margin on deposit in the account for which such securities are deposited; provided that this 10% limit shall not apply to: [(x) securities that are deliverable upon the exercise or maturity of any cleared contract, or (y)] common stock (including fund shares)[ fund shares that have as their reference any index that underlies any cleared contract, regardless of whether the fund share is deliverable upon the exercise or maturity of any cleared contract]. Common stocks deposited pursuant to Rule 610 shall have no value as margin for the purposes of this Rule 604(b)(4).

(ii) – (iii) [No change]

(5) [No change]

(c) – (f) [No change]

***Interpretations and Policies:***

.01 - .11 [No change]

.12 In the case of any account that is divided into sub-accounts, the Corporation will calculate the 10% limitation on the value of [equity and debt] an issue[s] of any one issuer as described in subparagraph (b)(4) of this Rule 604 separately for the parent account and any sub-account that is margin and collateral enabled. Neither the margin requirement nor margin excess of any sub-account that is margin enabled, nor the

collateral in any sub-account that is collateral enabled, will be considered in connection with such calculation for any other sub-account or for the parent account.

[.13 The 10% concentration requirement set forth in Rule 604(b)(4) shall not apply to fund shares traded under the following symbols: SPY, QQQQ, IWM, and DIA. The Membership/Risk Committee may, in its sole discretion, waive the 10% concentration requirement with regard to other fund shares that (1) are based upon liquid, broad-based equity indexes and (2) have a margin interval equal to or less than 30%, as determined by OCC's margin system. This interpretation .13 will be superseded in its entirety when OCC implements the "Collateral in Margins" program that was filed in SR-OCC-2007-20.]

