



THE OPTIONS CLEARING  
CORPORATION

December 23, 2008

**VIA E-MAIL**

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

SECRETARIAT  
23 AM 10:57

**Re: Rule Filing SR-OCC-2008-20 Rule Certification**

Dear Mr. Stawick:

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

In conformity with the requirements of Regulation 40.6(a)(3), OCC states the following: The text of the rule is set forth at Item 1 of the enclosed filing. The date of implementation of the rule is set forth in footnote 4 of the filing. No substantive opposing views were expressed to OCC by governing board or committee members, clearing members of OCC, or market participants, that were not incorporated into the rule.

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

JEAN M. CAWLEY

SENIOR VICE PRESIDENT AND DEPUTY GENERAL COUNSEL

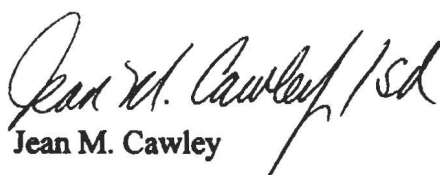
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Should you have any questions regarding this matter, please do not hesitate to contact the undersigned at (312) 322-6269.

Sincerely,

  
Jean M. Cawley

**Attachments**

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

2008-20 cftc.ltr

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

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Form 19b-4

Proposed Rule Change  
by

**THE OPTIONS CLEARING CORPORATION**

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

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

In order to provide clearing services for stock loan and borrow transactions effected through electronic trading systems, The Options Clearing Corporation (“OCC” or the “Corporation”) proposes to amend and supplement its By-Laws and Rules as set forth below. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in bold brackets.

**THE OPTIONS CLEARING CORPORATION**

**BY-LAWS**

\* \* \*

**ARTICLE I**

**Definitions**

**SECTION 1.** Unless the context requires otherwise (or except as otherwise specified in the By-Laws), the terms defined herein shall, for all purposes of these By-Laws and the Rules of the Corporation, have the meanings herein specified.

A. [No change]

B.

(1) – (2) [No change]

**Borrowing Clearing Member**

(3) The term "Borrowing Clearing Member" means any Hedge Clearing Member or Market Loan Clearing Member that borrows Eligible Stock in a Stock Loan.

C. – 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 in respect of such security pursuant to the By-Laws. 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.

(4) – (22) [No change]

**F. – G.** [No change]

**H.**

(1) [No change]

**Hedge Loan**

(2) The term "Hedge Loan" means a matched pair of securities contracts for the loan of Eligible Stock made through the Stock Loan/Hedge Program, with one such securities contract being between the Lending Clearing Member and the Corporation as the borrower and the second such securities contract being between the Corporation as the lender and the Borrowing Clearing Member.

(2) [Renumbered as (3); otherwise no change]

**I. – K.** [No change]

**L.**

(1) [No change]

**Lending Clearing Member**

(2) The term "Lending Clearing Member" means any Hedge Clearing Member or Market Loan Clearing Member that lends Eligible Stock in a Stock Loan.

(3) – (4) [No change]

**Loan Market**

(5) The term "Loan Market" means an electronic platform included in the Corporation's Market Loan Program that supports securities lending and borrowing transactions by matching lenders and borrowers based on loan terms that each party is willing to accept.

(5) [Renumbered as (6); otherwise no change]

**M.**

**Market Loan**

(5) The term "Market Loan" means a loan of Eligible Stock that was effected through a Loan Market and accepted by the Corporation in accordance with the By-Laws and Rules.

**Market Loan Clearing Member**

(6) The term "Market Loan Clearing Member" means a Stock Clearing Member approved to participate in the Market Loan Program.

**Market Loan Program**

(7) The term "Market Loan Program" means the Corporation's program for processing and maintaining stock loan positions originated through a Loan Market and effecting required payments in respect of such positions, all as further described in the By-Laws and Rules.

(5) – (11) [Renumbered as (8) – (14); otherwise no change]

**N. – P.** [No change]

S.

(1) – (19) [No change]

**Stock Loan**

(20) The term "Stock Loan" means [a matched pair of securities contracts for the loan of Eligible Stock made through the Stock Loan/Hedge Program, with one such securities contract being between the Lending Clearing Member and the Corporation as the borrower and the second such securities contract being between the Corporation as the lender and the Borrowing Clearing Member] either a "Hedge Loan" or a "Market Loan" or both as the context requires.

(21) – (25) [No change]

T. – Z. [No change.]

\* \* \*

**ARTICLE V**

**Clearing Members**

**Qualifications**

**SECTION 1.** (a) - (b) [No change]

***...Interpretations and Policies:***

**.01 – .02** [No change]

**.03** Experience and Competence

a. – d. [No change]

e. if the applicant has not applied for authorization to clear all types of transactions (i.e., customer transactions, firm transactions, market-maker and JBO Participant transactions), or all kinds of transactions (e.g., transactions in stock options, Treasury securities options, foreign currency options, cross-rate foreign currency options, cash-settled options, futures

options and futures), or has not applied to carry positions in its accounts on a routine basis, or has not applied to be a Market Loan Clearing Member or a Hedge Clearing Member, the applicant shall have undertaken to apply to the Membership/Risk Committee for further approval before commencing to clear any type or kind of transaction for which approval is not currently being sought, before carrying positions in its accounts on a routine basis, or before participating in the Market Loan Program or the Stock Loan/Hedge Program, as applicable.

In the event that expedited treatment is requested for an application submitted pursuant to clause (e) above, the Chairman, the Management Vice Chairman, or the President shall have the authority to approve or disapprove such application on a temporary basis. Thereafter, at the next scheduled meeting of the Membership/Risk Committee, the Membership/Risk Committee shall independently review the submitted application and shall determine de novo whether to approve or disapprove such application. Should the Membership/Risk Committee's determination result in the modification or reversal of the action taken by the Chairman, the Management Vice Chairman, or the President, any acts taken by the Corporation prior to such modification or reversal shall not be invalidated nor shall any rights of any person arising out of such acts be affected.

.04 – .06 [No change]

**.06A Designation as a Market Loan Clearing Member**

In order to be designated as a Market Loan Clearing Member with respect to a particular Loan Market, a Clearing Member must be a Hedge Clearing Member and (i) be a U.S. Clearing Member, (ii) be a subscriber to such Loan Market with full access to services provided by the Loan Market, (iii) be a member of the Depository that has provided the Depository with written authorization to honor instructions issued by the Corporation against such Clearing Member's account at the Depository, (iv) set and maintain such Clearing Member's RAD limit at the Depository in respect of transactions with the Corporation as the counterparty at the highest level permitted under the Depository's rules and (v) execute such agreements and other documents as the Corporation may prescribe. A separate designation is required for each Loan Market in which a Clearing Member participates. A Market Loan Clearing Member shall continue to comply with all conditions referred to in (i) – (v) above until the Clearing Member has terminated all open stock borrow and loan positions resulting from Market Loans.

.07 – .09 [No change]

\* \* \*



**ARTICLE VIII**

**Clearing Fund**

**Making Good of Charges to Clearing Fund**

**SECTION 6.** Whenever an amount is paid out of the Clearing Fund contribution of a Clearing Member, whether by proportionate charge or otherwise, such Clearing Member shall be liable promptly to make good the deficiency in its contribution resulting from such payment. Notwithstanding the foregoing and except as provided for below, if the payment is made as a result of a proportionate charge, a Clearing Member will not be liable to make good more than an additional 100% of the amount of its then required contribution if (i) within five business days following such proportionate charge the Clearing Member notifies the Corporation in writing that it is terminating its status as a Clearing Member, (ii) no opening purchase transaction or opening writing transaction is submitted for clearance through any of the Clearing Member's accounts and (if the Clearing Member is a Market Loan Clearing Member or a Hedge Clearing Member) no Stock Loan is initiated through any of the Clearing Member's accounts after the giving of such notice, and (iii) the Clearing Member closes out or transfers all of its open positions with the Corporation, in each case as promptly as practicable after the giving of such notice; provided that a Clearing Member which so terminates its status as a Clearing Member shall be ineligible to be readmitted to such membership unless the Clearing Member agrees to such reimbursement of the persons who were Clearing Members at the time of such termination as the Board of Directors deems fair and equitable in the circumstances. In the event a Clearing Member notifies the Corporation of its intent to terminate its status as a Clearing Member in accordance with the preceding sentence, and such Clearing Member's computed contribution is less than its minimum required contribution, then the Clearing Member shall also make good 100% of the amount equal to its minimum required contribution less its computed contribution to the Clearing Fund.

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**ARTICLE XXI**

**Stock Loan/Hedge Program**

**Definitions**

**SECTION 1.**

A. – R. [No change]

S.

(1) – (2) [No change]

**Stock Loan**

(3) The term “Stock Loan” as used in this Article XXI of the By-Laws and in Chapter XXII of the Rules refers only to “Hedge Loans” and not to “Market Loans” (as those terms are defined in Article I of the By-Laws).

(3) [Renumbered as (4); otherwise no change]

T. – Z. [No change]

[Section 1 of this Article adds certain definitions relevant to the Stock Loan/Hedge Program.]

**Role of the Corporation**

**SECTION 2.** (a) Commencing at the time at which the Corporation accepts a Stock Loan as described in Rule 2202, the role of the Corporation in respect of the Stock Loan shall be that of a principal, and the Corporation shall have the position of borrower to the Lending Clearing Member and lender to the Borrowing Clearing Member. Without limiting the generality of the foregoing: (i) the rights of the two Clearing Members that are parties to a Stock Loan to receive mark-to-market payments, and their obligations to make mark-to-market payments, shall be as against the Corporation, and not as against each other; and (ii) in the event of a termination of a Stock Loan in accordance with the Rules, the right of the Lending Clearing Member to receive the Loaned Stock and the obligation of the Lending Clearing Member to pay the settlement price shall be as against the Corporation, and the obligation of the Borrowing Clearing Member to deliver the Loaned Stock and the right of the Borrowing Clearing Member to receive the settlement price shall be as against the Corporation. [Notwithstanding] In addition to the foregoing [however]:

(1) [a] stock loan positions of a Clearing Member established as a result of [a particular] Stock Loans relating to the same Eligible Stock in which the Clearing Member is the Lending Clearing Member shall be aggregated for position reporting purposes, but shall not be netted against any stock borrow position which the Clearing Member may be carrying [as the result of any other Stock Loan] relating to the same Eligible Stock for any purpose other than (i) as described in Rule 601 with respect to determining the Clearing Member's

margin obligations to the Corporation and (ii) as may be permitted pursuant to the Rules with respect to suspended Clearing Members; and

(2) [a] stock borrow positions of a Clearing Member established as the result of [a particular] Stock Loans relating to the same Eligible Stock in which the Clearing Member is the Borrowing Clearing Member shall be aggregated for position reporting purposes, but shall not be netted against any stock loan position which the Clearing Member may be carrying [as the result of any other Stock Loan] relating to the same Eligible Stock for any purpose other than (i) as described in Rule 601 with respect to determining the Clearing Member's margin obligations to the Corporation and (ii) as may be permitted pursuant to the Rules with respect to suspended Clearing Members.

(b) Upon acceptance of a Stock Loan, the Corporation shall create a stock loan position in the account designated by the Lending Clearing Member, identifying the Eligible Security that is the subject of the Stock Loan, the number of shares loaned, the amount of Collateral received from the Borrowing Clearing Member and the identity of the Borrowing Clearing Member, and shall create a stock borrow position in the account designated by the Borrowing Clearing Member, identifying the Eligible Security that is the subject of the Stock Loan, the number of shares borrowed, the amount of Collateral delivered to the Lending Clearing Member and the identity of the Lending Clearing Member. The Corporation shall identify stock loan and stock borrow positions resulting from Hedge Loans separately from positions resulting from Market Loans.

(c) [No change]

*...Interpretations and Policies:* [No change]

#### **Maintaining Stock Loan and Stock Borrow Positions in Accounts**

**SECTION 5.** [(a)] Notwithstanding the provisions of Section 3 of Article VI of the By-Laws, stock loan positions and stock borrow positions resulting from Stock Loans may be maintained in any of a Hedge Clearing Member's accounts with the Corporation [except as otherwise provided in this Section]. For the purposes of Section 3 of Article VI of the By-Laws, stock loan positions resulting from Stock Loans shall be deemed to be "securities" and stock borrow positions resulting from Stock Loans shall be deemed to be "funds," and the authority of the Corporation to close out "positions" in any account shall include the authority to close out such stock loan positions and stock borrow positions.

[(b)] An instruction to the Corporation (including a standing instruction described in Rule 2201) that a stock loan position is to be carried in an account shall constitute a representation to

the Corporation that none of the Loaned Stock to which the stock loan position relates is either a "fully paid security" or an "excess margin security" within the meaning of SEC Rule 15c3-3.]

[Section 5 of this Article supplements Section 3 of Article VI of the By-Laws.]

*...Interpretations and Policies:*

.01 Until such time as the Corporation determines that appropriate regulatory approvals have been obtained, a Hedge Loan Clearing Member is not permitted to allocate stock loan or stock borrow positions resulting from Stock Loans to any proprietary X-M account, non-proprietary X-M account, internal non-proprietary cross-margining account or segregated futures account.

\* \* \*

**ARTICLE XXIA<sup>1</sup>**

**Market Loan Program**

**Introduction**

By-Laws in this Article are applicable only to the Market Loan Program. In addition, the By-Laws in Articles I-XI are also applicable to the Market Loan Program, in some cases supplemented by one or more By-Laws in this Article, except for By-Laws that have been replaced in respect of the Market Loan Program by one or more By-Laws in this Article and except where the context otherwise requires. Whenever a By-Law in this Article supplements or, for purposes of this Article, replaces one or more By-Laws in Articles I-XI and Section 1 of Article XXI, that fact is indicated in brackets following the By-Law in this Article.

**Definitions**

**SECTION 1.**

A. – B. [Reserved]

C.

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<sup>1</sup> This entire Article is proposed to be added. For ease of review, it is not underlined.

**Collateral**

(1) The term "Collateral" means, in respect of a Market Loan, the amount in U.S. dollars a Borrowing Clearing Member is required to transfer to the Corporation's account at the Depository, which the Corporation in turn instructs the Depository to transfer to the Lending Clearing Member, as security for the obligations of the Borrowing Clearing Member in respect of the Market Loan, as such amount may be adjusted from time to time through mark-to-market payments made by the Borrowing Clearing Member and the Lending Clearing Member pursuant to Rule 2204A. The Collateral requirement applicable to a Market Loan shall be the mark-to-market value of the Loaned Stock multiplied by a percentage (no less than 100%) specified by the relevant Loan Market.

**D.**

**Depository**

(1) The term "Depository" shall have the meaning given to it in Article XXI of the By-Laws.

**Dividend Equivalent Payment**

(2) The term "dividend equivalent payment" means, in respect of a Market Loan, a payment to be made by the Borrowing Clearing Member to the Lending Clearing Member to reflect any cash dividend or distribution made with respect to the Loaned Stock during the term of a Market Loan.

**E. – K. [Reserved]**

**L.**

**Loaned Stock**

(1) The term "Loaned Stock" means, in respect of a Market Loan, Eligible Stock that is the subject of the Market Loan and any securities issued in exchange for such Eligible Stock by reason of a reorganization, recapitalization, merger, consolidation or other corporate action of the issuer, and any non-cash distributions described in Rule 2206A in respect of the Loaned Stock.

**M.**

**Mark-to-Market Payment**

(1) The term "mark-to-market payment," as used in respect of any Market Loan, means a payment made by a Lending Clearing Member or Borrowing Clearing Member to the Corporation or by the Corporation to a Lending Clearing Member or Borrowing Clearing Member pursuant to Rule 2204A.

**Marking Price**

(2) The term "marking price" shall have the meaning given to it in Article XXI of the By-Laws.

N. – Q. [Reserved]

R.

**Rebate**

(1) The term "rebate," as used in respect of any Market Loan, means a fee payable from the Lending Clearing Member to the Borrowing Clearing Member (or, if the rebate rate is negative, from the Borrowing Clearing Member to the Lending Clearing Member), expressed as a rate based on the amount of cash Collateral held by the Lending Clearing Member.

**Recall**

(2) The term "recall," as used in respect of any Market Loan, means the process by which the Lending Clearing Member may initiate the termination of the Market Loan, or any portion thereof, by submitting a notice to the applicable Loan Market calling for the return of all or any portion of the Loaned Stock.

**Return**

(3) The term "return," as used in respect of any Market Loan, means the process by which the Borrowing Clearing Member may initiate the termination of the Market Loan, or any portion thereof, by submitting a notice to the Loan Market indicating its intention to return all or any portion of the Loaned Stock.

S.

**Settlement Price**

(1) The term "settlement price," as used in respect of a Market Loan, means the amount of Collateral specified in the instructions submitted by the Corporation to the Depository to effect such Market Loan. The term "settlement price," in respect of the termination of a Market Loan or portion thereof, means the amount of Collateral required to be returned by the Lending Clearing Member on the settlement date.

#### **Stock Loan Business Day**

(1) The term "stock loan business day" shall have the meaning given to it in Article XXI of the By-Laws.

**T. – Z.** [No change.]

[Section 1 of this Article adds certain new definitions relevant to the Market Loan Program and replaces, for purposes of Market Loans, the definitions of the same terms in Article I, Section 1 and Article XXI, Section I of the By-Laws.]

#### **Role of the Corporation**

**SECTION 2.** Commencing at the time at which the Corporation accepts a Market Loan as described in Rule 2202A, the role of the Corporation in respect of such Market Loan shall be that of a principal, and the Corporation shall have the position of borrower to the Lending Clearing Member and lender to the Borrowing Clearing Member. Without limiting the generality of the foregoing: (i) the rights and/or obligations of a Clearing Member that is party to such Market Loan to receive and/or pay mark-to-market payments, dividend equivalent payments and rebate payments shall be as against the Corporation; and (ii) in the event of termination of such Market Loan in accordance with the Rules, the right of the Lending Clearing Member to receive the Loaned Stock and the obligation of the Lending Clearing Member to pay the settlement price shall be as against the Corporation, and the obligation of the Borrowing Clearing Member to deliver the Loaned Stock and the right of the Borrowing Clearing Member to receive the settlement price shall be as against the Corporation.

#### **Agreement of Borrowing Clearing Member**

**SECTION 3.** The Clearing Member that is the Borrowing Clearing Member in respect of a Market Loan agrees with the Corporation that: (i) upon the acceptance of the Market Loan by the Corporation, the resulting stock borrow position of the Borrowing Clearing Member shall be created and subsequently maintained in accordance with Section 5 of this Article XXIA, (ii) so long as such stock borrow position is thereafter maintained, the Borrowing Clearing

Member shall make all required payments to the Corporation including margin deposits, mark-to-market payments, dividend equivalent payments and rebate payments (in the case of a negative rebate), all in accordance with the By-Laws and Rules, and (iii) in the event that the Market Loan is terminated, the Borrowing Clearing Member shall deliver the Loaned Stock, against payment of the settlement price, in accordance with the By-Laws and Rules.

#### **Agreement of Lending Clearing Member**

**SECTION 4.** The Clearing Member that is the Lending Clearing Member in respect of a Market Loan agrees with the Corporation that: (i) upon the acceptance of the Market Loan by the Corporation, the resulting stock loan position of the Lending Clearing Member shall be created and subsequently maintained in accordance with Section 5 of this Article XXIA, (ii) so long as such stock loan position is thereafter maintained, the Lending Clearing Member shall make all required payments to the Corporation including margin deposits, mark-to-market payments and rebate payments (in the case of a positive rebate), all in accordance with the By-Laws and Rules, and (iii) in the event that the Market Loan is terminated, the Lending Clearing Member shall pay the settlement price, against delivery of the Loaned Stock, in accordance with the By-Laws and Rules.

#### **Maintaining Stock Loan and Stock Borrow Positions in Accounts**

**SECTION 5.** (a) Upon acceptance of a Market Loan as described in the Rules, the Corporation shall create a stock loan position in the account designated by the Lending Clearing Member, identifying the Eligible Stock that is the subject of the Market Loan, the number of shares loaned and the amount of Collateral received, and shall create a stock borrow position in the account designated by the Borrowing Clearing Member, identifying the Eligible Security that is the subject of the Market Loan, the number of shares borrowed and the amount of Collateral delivered. The Corporation shall identify stock loan and stock borrow positions resulting from Market Loans separately from stock loan and stock borrow positions resulting from Hedge Loans. In addition to the foregoing:

(1) stock loan positions of a Clearing Member established as a result of Market Loans relating to the same Eligible Stock in which the Clearing Member is the Lending Clearing Member shall be aggregated (separately for Market Loans effected through each Loan Market) for position reporting purposes, but shall not be netted against any stock borrow position which the Clearing Member may be carrying relating to the same Eligible Stock for any purposes other than (i) as described in Rule 601 with respect to determining the Clearing Member's margin obligations to the Corporation and (ii) as may be permitted pursuant to the Rules with respect to suspended Clearing Members; and



(2) stock borrow positions of a Clearing Member established as the result of Market Loans relating to the same Eligible Stock in which the Clearing Member is the Borrowing Clearing Member shall be aggregated (separately for Market Loans effected through each Loan Market) for position reporting purposes, but shall not be netted against any stock loan position which the Clearing Member may be carrying relating to the same Eligible Stock for any purpose other than (i) as described in Rule 601 with respect to determining the Clearing Member's margin obligations to the Corporation and (ii) as may be permitted pursuant to the Rules with respect to suspended Clearing Members.

(b) Notwithstanding the provisions of Section 3 of Article VI of the By-Laws, stock loan and stock borrow positions resulting from Market Loans may be maintained in any of a Market Loan Clearing Member's accounts with the Corporation. For the purposes of Section 3 of Article VI of the By-Laws, stock loan positions resulting from Market Loans shall be deemed to be "securities" and stock borrow positions resulting from Market Loans shall be deemed to be "funds," and the authority of the Corporation to close out "positions" in any account shall include the authority to close out such stock loan and stock borrow positions.

[Section 5 of this Article supplements Section 3 of Article VI of the By-Laws.]

*. . . Interpretations and Policies:*

.01 Until such time as the Corporation determines that appropriate regulatory approvals have been obtained, a Market Loan Clearing Member is not permitted to allocate stock loan or stock borrow positions resulting from Market Loans to any proprietary X-M account, non-proprietary X-M account, internal non-proprietary cross-margining account or segregated futures account.

\* \* \*

**RULES**

\* \* \*

**CHAPTER II**

**Miscellaneous Requirements**

**Payment of Fees and Charges**

**RULE 209.** (a) [No change]

(b) The Corporation shall be authorized to withdraw from each Clearing Member's bank account established with respect to its firm account, on the fifth business day following the end of each calendar month, (i) an amount equal to the amount of any fees and charges owing to the Corporation, [and] (ii) an amount equal to the amount of any fees due to an Exchange for whom the Corporation has agreed to collect such fees and (iii) if the Clearing Member is a Market Loan Clearing Member, an amount equal to the amount of any fees and charges owing to any Loan Market for which the Corporation has agreed to collect such fees and charges.

\* \* \*

**CHAPTER XI**

**Miscellaneous Requirements**

**Notice of Suspension of Clearing Members**

**RULE 1103.** Upon the suspension of a Clearing Member, the Corporation shall as soon as possible notify all Clearing Members of the suspension. Such notice shall state, in general terms, how pending transactions, open positions, [and (if the suspended Clearing Member is a Hedge Clearing Member)] stock loan and borrow positions, exercised option contracts, matured futures and other pending matters will be affected and what steps are to be taken in connection therewith.

\* \* \*

**CHAPTER XXII**

**Stock Loan/Hedge Program**

**Introduction**

The Rules in this Chapter are applicable only to the Stock Loan/Hedge Program. In addition, the Rules in Chapters I through XII are also applicable to the Stock Loan/Hedge Program, in some cases supplemented by one or more Rules in this Chapter, except for Rules

that have been replaced in respect of the Stock Loan/Hedge Program by one or more Rules in this Chapter and except where the context otherwise requires. Whenever a Rule in this Chapter supplements or, for purposes of this Chapter, replaces one or more of the By-Laws or Rules in Chapters I through XII, that fact is indicated in brackets following the Rule in this Chapter. The term “Stock Loan” as used in this Chapter of the Rules and in Article XXI of the By-Laws refers only to “Hedge Loans” and not to “Market Loans” (as those terms are defined in Article I of the By-Laws.

### **Instructions to the Corporation**

**RULE 2201.** (a) In respect of stock loan and stock borrow transactions which are intended for inclusion in the Stock Loan/Hedge Program and stock loan and stock borrow positions resulting from such transactions, a [A] Hedge Clearing Member shall provide standing instructions to the Corporation with respect to matters identified by the Corporation from time to time, including but not limited to (i) the account number of each account with the Depository in which stock loan and stock borrow transactions are to be effected, (ii) the account or accounts with the Corporation in which stock loan positions and stock borrow positions are to be carried, (iii) if the Hedge Clearing Member has been approved to maintain stock loan positions and stock borrow positions in its accounts with the Corporation on a non-margined basis, the account or accounts (if any) with the Corporation that are to be margin-ineligible, (iv) the account with the Corporation (which may be the Clearing Member’s firm account or its combined Market-Makers’ account) from and to which mark-to-market payments are to be made, and (v) the Collateral requirement that will be applicable to the stock loan positions of the Hedge Clearing Member (expressed as a percentage of the mark-to-market value of the Eligible Stocks [Securities] that are the subject of the stock loan positions, which percentage may be set at 100% or 102%). The Corporation may also permit a Hedge Clearing Member to provide standing instructions with respect to other aspects of the Clearing Member’s participation in the Stock Loan/Hedge Program. If a Hedge Clearing Member is authorized by the Corporation to create stock loan baskets and stock borrow baskets, the Clearing Member may also provide standing instructions as to whether its stock loan positions or stock borrow positions are to be classified, respectively, in stock loan baskets or stock borrow baskets and, if its stock loan positions or stock borrow positions are to be so classified, as to the index class group in which such positions are to be classified. A Hedge Clearing Member may revise its standing instructions, subject to the Corporation’s notice requirements as in effect from time to time.

(b) [No change]

... *Interpretations and Policies:*

.01 At any time on any business day prior to the deadline specified by the Corporation, an eligible Hedge Clearing Member may allocate all or any portion of its stock loan and stock borrow positions resulting from Stock Loans (including positions resulting from that day's activity) among its accounts. In order to be eligible to allocate such stock loan and borrow positions, a Hedge Clearing Member must maintain at least one margin-eligible account with the Corporation. Each Hedge Clearing Member shall give standing instructions specifying the sequence in which stock loan and stock borrow positions are to be allocated among its accounts if it allocates more or fewer shares of a particular stock than its end-of-day loan or borrow position in that stock. If the total loan or borrow position in any stock allocated by the Clearing Member exceeds the total end of day loan or borrow position in that stock reported by the Depository to the Corporation, the Corporation will allocate the positions to each account up to the number of shares allocated to that account by the Clearing Member in accordance with the Clearing Member's preferred sequence of accounts. If the total loan or borrow position in any stock allocated by the Clearing Member is less than the total end of day loan or borrow position in that stock reported by the Depository to the Corporation, any excess shares will be allocated to the Clearing Member's default account.

.02 If a Hedge Clearing Member has identified a preferred account sequence for allocation of stock loan and stock borrow positions resulting from Stock Loans on any business day, then in processing a return of fewer than all of the loaned shares of a particular stock in a Clearing Member's accounts, the Corporation will first return shares from the least preferred account (as designated by the Clearing Member) up to the total amount of loaned shares in that account and so on in accordance with the preferred account sequence.

.03 - .04 [No change]

### **Initiation of Stock Loans**

**RULE 2202.** (a) – (d) [No change.]

(e) Each lending of Loaned Stock by a Lending Clearing Member, and each borrowing of Loaned Stock by a Borrowing Clearing Member, shall constitute a representation and covenant by the Clearing Member to the Corporation that its participation in such lending or borrowing is in compliance, and will comply, with all applicable laws and regulations, including without limitation Rule 15c3-3 and all other applicable rules and regulations of the Securities and Exchange Commission, any applicable provisions of Regulation T of the Board of Governors of the Federal Reserve System, and the rules of the Financial Industry Regulatory Authority [the National Association of Securities Dealers, Inc., ] and any other regulatory or self-

regulatory organization to which the Clearing Member is subject[, any applicable provisions of Regulation T of the Board of Governors of the Federal Reserve System, and all applicable requirements of the New York Stock Exchange and of any other stock exchange to the requirements of which it may be subject, and is not and will not be in violation of any of the foregoing].

(f) [No change.]

### **Mark-To-Market Payments**

**RULE 2204.** (a) [No change]

(b) On each business day, the Corporation shall net the mark-to-market payments, if any, owed by and to each Hedge Clearing Member in respect of its stock loan and borrow positions resulting from Stock Loans. At or before 9:00 A.M. Central Time (10:00 A.M. Eastern Time) on each business day, each Hedge Clearing Member shall be obligated to pay to the Corporation any net mark-to-market payment amount owed to the Corporation in respect of such positions carried in the Clearing Member's accounts, and the Corporation shall be authorized to withdraw from the Clearing Member's bank account established in respect of the account identified by the Clearing Member as its account from and to which mark-to-market payments are to be made an amount equal to such net amount, provided that the Corporation may, but shall not be required to, offset against any such net amount any credit balance which may be due from the Corporation in the same account.

(c) At or before 10:00 A.M. Central Time (11:00 A.M. Eastern Time) on each business day, the Corporation shall be obligated to deposit in the designated bank account of each Hedge Clearing Member (provided the Clearing Member has deposited all margin required to be deposited pursuant to Chapter VI of the Rules and has deposited the full amount of any net daily premium due to the Corporation under Rule 502) any net mark-to-market payment amount owed by the Corporation to the Hedge Clearing Member on such day in respect of its stock loan and stock borrow positions resulting from Stock Loans. From and after such time, full settlement shall be deemed to have been made in respect of mark-to-market payments for such day, and the Corporation shall have no further obligation in respect thereof.

### **Daily Reports**

**RULE 2205.** Prior to such time on each business day as the Corporation may from time to time establish, the Corporation shall make available to each Hedge Clearing

Member one or more reports listing all stock loan positions and stock borrow positions resulting from Stock Loans carried by the Clearing Member.

#### **Dividends and Distributions**

**RULE 2206.** (a) The Lending Clearing Member shall be entitled to receive all dividends and distributions made on or in respect of Loaned Stock the record dates for which are during the term of the Stock Loan of such Loaned Stock, to the full extent it would have been so entitled if the Stock Loan had not been made, and the Borrowing Clearing Member shall be obligated to pay or deliver all such dividends and distributions. Such dividends and distributions shall include, but not be limited to: (i) all property, (ii) all cash dividends and distributions, (iii) all stock dividends, (iv) all securities received as a result of split-ups of the Loaned Stock and distributions in respect thereof, [and] (v) all rights to purchase additional securities, and any cash or other considerations paid or provided by the issuer of such security in exchange for any vote, consent or the taking of any similar action in respect of such security (regardless whether the record date for such vote, consent or other action falls during the term of the Stock Loan). Each cash dividend or distribution shall be paid by the Borrowing Clearing Member directly to the Lending Clearing Member promptly following the payment date of such cash dividend or distribution. Non-cash dividends and distributions received by the Borrowing Clearing Member shall be added to the Loaned Stock, shall be considered such for all purposes, and shall be delivered to the Corporation by the Borrowing Clearing Member and by the Corporation to the Lending Clearing Member upon any termination of the Stock Loan.

(b) [No change.]

#### **Suspension of Hedge Clearing Member – Pending and Open Stock Loans**

**RULE 2210.** (a) [No change]

(b) Open stock loan and borrow positions resulting from Stock Loans of a suspended Hedge Clearing Member shall, except as hereinafter provided, be terminated in accordance with the provisions of Rule 2211 or in such other manner as the Corporation determines to be the most orderly manner practicable in the circumstances. Any net proceeds from the Termination of such stock loan and borrow positions in the accounts of the suspended Clearing Member shall be credited by the Corporation to the Liquidating Settlement Account of such Clearing Member established pursuant to Rule 1104. Any net amounts payable in respect of the termination of such stock loan and borrow positions in any of the accounts of the suspended Clearing Member shall be withdrawn by the Corporation from the Clearing Member's Liquidating Settlement Account. The suspended Clearing Member or its representative shall be

notified as promptly as possible of any termination of stock loan and borrow positions pursuant to this Rule.

(c) [No change]

[Rule 2210 supplements Rules 1105 and 1106.]

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## CHAPTER XXIIA<sup>2</sup>

### Market Loan Program

#### Introduction

The Rules in this Chapter are applicable only to the Market Loan Program. In addition, the Rules in Chapters I through XII are also applicable to the Market Loan Program, in some cases supplemented by one or more Rules in this Chapter, except for Rules that have been replaced in respect of the Market Loan Program by one or more Rules in this Chapter and except where the context otherwise requires. Whenever a Rule in this Chapter supplements or, for purposes of this Chapter, replaces one or more of the By-Laws or Rules in Chapters I through XII, that fact is indicated in brackets following the Rule in this Chapter.

#### Instructions to the Corporation

**RULE 2201A.** (a) In respect of stock loan and stock borrow transactions originated through a Loan Market and stock loan and stock borrow positions resulting from such transactions, a Market Loan Clearing Member shall provide standing instructions to the Corporation with respect to matters identified by the Corporation from time to time, including but not limited to (i) the account number of each account with the Depository in which such stock loan and stock borrow transactions are to be effected, (ii) the account or accounts with the Corporation in which such stock loan and stock borrow positions are to be carried, and (iii) the account with the Corporation (which may be the Market Loan Clearing Member's firm account or its combined Market-Makers' account) from and to which mark-to-market payments, dividend equivalent payments and rebate payments are to be made. The Corporation may also permit a

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<sup>2</sup> This entire Chapter is proposed to be added. For ease of review, it is not underlined.

Market Loan Clearing Member to provide standing instructions with respect to other aspects of the Clearing Member's participation in the Market Loan Program. A Market Loan Clearing Member may revise its standing instructions, subject to the Corporation's notice requirements as in effect from time to time.

(b) A Market Loan Clearing Member may give the Corporation specific instructions from time to time which are contrary to its standing instructions with respect to the account in which a particular stock loan or stock borrow position (either a new position or an existing position which the Clearing Member wishes to transfer to a different account) is to be carried.

**. . . Interpretations and Policies:**

**.01** In respect of stock loan and stock borrow positions resulting from Market Loans, at any time on any business day prior to the deadline specified by the Corporation, an eligible Market Loan Clearing Member may allocate all or any portion of such positions (including positions resulting from that day's activity) among its accounts. Each Market Loan Clearing Member shall give standing instructions specifying the sequence in which such stock loan and stock borrow positions are to be allocated among its accounts if it allocates more or fewer shares of a particular stock than its end-of-day loan or borrow position in that stock. If the total loan or borrow position in any stock allocated by the Clearing Member exceeds the total end of day loan or borrow position in that stock reported by the Depository to the Corporation, the Corporation will allocate the positions to each account up to the number of shares allocated to that account by the Clearing Member in accordance with the Clearing Member's preferred sequence of accounts. If the total loan or borrow position in any stock allocated by the Clearing Member is less than the total end of day loan or borrow position in that stock reported by the Depository to the Corporation, any excess shares will be allocated to the Clearing Member's default account.

**.02** In respect of stock loan and stock borrow positions resulting from Market Loans, if a Market Loan Clearing Member has identified a preferred account sequence for allocation of such stock loan and stock borrow positions on any business day, then in processing a return of fewer than all of the loaned shares of a particular stock in the Clearing Member's accounts, the Corporation will first attribute returned shares to positions carried in the least preferred account (as designated by the Clearing Member) up to the total amount of loaned shares represented by positions carried in that account and so on in accordance with the preferred account sequence.

**Initiation of Market Loans**



**RULE 2202A.** (a) A stock loan which is intended for inclusion in the Market Loan Program is initiated when a lender is matched with a borrower through a Loan Platform and the Loan Market sends details of the matched transaction to the Corporation. If the matched transaction passes the Corporation's validation process (designed to detect errors in data submitted), the Corporation shall create and send to the Depository a pair of delivery orders – one order instructing the Depository to transfer a specified number of shares of a specified Eligible Stock from a Market Loan Clearing Member to the Corporation's account against transfer of Collateral from the Corporation's account to such Clearing Member, and the other order instructing the Depository to simultaneously transfer such Eligible Stock from the Corporation's account to a second Market Loan Clearing Member against the transfer of Collateral from such second Clearing Member to the Corporation's account.

(b) Upon receipt of the end of the day stock loan activity file from the Depository showing completed stock loans that purportedly have originated through the Market Loan Program, the Corporation shall (subject to Rule 2210A) accept such stock loans as Market Loans, unless the Corporation determines that a stock loan is not in accordance with the By-Laws and Rules, or that one or both account numbers are invalid for Market Loans, or that the information provided by the Depository contains unresolved errors or omissions, in which case the Corporation shall reject such stock loan. Upon the Corporation's affirmative acceptance of a Market Loan, the following shall automatically occur: (i) the matched stock loan transaction submitted by the Loan Market that initiated the Market Loan shall be extinguished and replaced in its entirety by (1) a congruent contract between the lending Market Loan Clearing Member, as stock lender, and the Corporation, as stock borrower, and (2) an identical congruent contract between the Corporation, as stock lender, and the borrowing Market Loan Clearing Member, as stock borrower, (ii) such pair of contracts shall constitute the Market Loan, (iii) the lending Market Loan Clearing Member shall be the Lending Clearing Member and the borrowing Market Loan Clearing Member shall be the Borrowing Clearing Member in respect of such Market Loan for all purposes of the By-Laws and Rules, and (iv) the Corporation shall create the stock loan position and the stock borrow position in accordance with Article XXIA, Section 2 of the By-Laws. For purposes of the foregoing, a replacement stock loan contract shall be "congruent" to the stock loan contract replaced if and only if the contracts agree with respect to the identity of the Eligible Stock that is to be lent, the number of shares that are to be lent, the Collateral requirement, the rebate rate and the settlement price.

(c) On each stock loan business day, any stock loan transactions originated through a Loan Market that fail to pass the validation process referred to in paragraph (a) of this Rule or that are not ultimately confirmed and accepted by the Corporation as described in

paragraph (b) of this Rule shall be rejected by the Corporation and shall have no further effect as regards the Corporation.

(d) Subject only to the provisions of paragraph (f) of this Rule and such obligations in respect of the Collateral as the Lending Clearing Member may have by agreement with the person for whose account the Loaned Stock is held, the Lending Clearing Member may use or invest the Collateral as it may deem fit at its own risk and for its own account and shall retain any income and profits therefrom and bear all losses therefrom. The sole obligations of the Lending Clearing Member in respect of the Collateral shall be (i) repaying an amount equal to the Collateral (as adjusted from time to time by mark-to-market payments made pursuant to Rule 2204A) as instructed by the Corporation, or otherwise disposing of the Collateral in such other manner as the Corporation may direct, if and when the Market Loan is terminated as provided in the Rules; and (ii) making periodic rebate payments to the Corporation (in the case of a Market Loan with a positive rebate) in accordance with Rule 2206A.

(e) Until such time as a Market Loan is terminated as provided in the Rules, the Borrowing Clearing Member shall have all incidents of ownership of the Loaned Stock, including without limitation the right to transfer the Loaned Stock to others; provided, however, that (i) the Borrowing Clearing Member shall be obligated to make mark-to-market payments to the Corporation and receive mark-to-market payments from the Corporation with respect to the Loaned Stock as provided in Rule 2204A; and (ii) the Borrowing Clearing Member shall be obligated to make all dividend equivalent payments and all periodic rebate payments to the Corporation (in the case of a Market Loan with a negative rebate) pertaining to the Loaned Stock in accordance with Rule 2206A.

(f) Each lending of Loaned Stock by a Lending Clearing Member, and each borrowing of Loaned Stock by a Borrowing Clearing Member, shall constitute a representation and covenant by the Clearing Member to the Corporation that its participation in such lending or borrowing is in compliance, and will continue to comply, with all applicable laws and regulations including without limitation Rule 15c3-3 and all other applicable rules and regulations of the Securities and Exchange Commission, any applicable provisions of Regulation T of the Board of Governors of the Federal Reserve System, and the rules of the Financial Industry Regulatory Association and any other regulatory or self-regulatory organization to which the Clearing Member is subject.

#### **Margin Deposited with the Corporation**

**RULE 2203A.** Each Market Loan Clearing Member shall be required to maintain margin with the Corporation in respect of its stock loan and stock borrow positions resulting

from Market Loans, including any dividend equivalent payments and accrued rebate payments that the Clearing Member is obligated to make in accordance with the Rules. The amount of margin assets required to be deposited shall be as determined pursuant to Rule 601.

### **Mark-To-Market Payments**

**RULE 2204A.** (a) In order to adjust the amount of the Collateral securing a Market Loan for changes in the market value of the Eligible Stock that is the subject of the Market Loan, Borrowing and Lending Clearing Members shall be required to make mark-to-market payments to the Corporation, and the Corporation shall be required to make mark-to-market payments to such Clearing Members, on each business day with respect to each Market Loan until such loan has been terminated in accordance with the Rules. The amount of any mark-to-market payment to be made on any business day shall represent the increase or decrease, as applicable, in the value of the stock loan position and stock borrow position relating to such Market Loan. The increase or decrease in value of a stock borrow position shall be deemed to be equal to: (i) in the case of a stock borrow position that was established on the preceding business day, the result of subtracting the marking price on such day from the settlement price; and (ii) in the case of any other stock borrow position, the result of subtracting the marking price on the preceding business day from the marking price on the second preceding business day, in each case multiplied by a percentage specified by the relevant Loan Market. The increase or decrease in value of a stock loan position shall be deemed to be equal to: (1) in the case of a stock loan position that was established on the preceding business day, the result of subtracting the settlement price from the marking price on such day; and (2) in the case of any other stock loan position, the result of subtracting the marking price on the second preceding business day from the marking price on the preceding business day, in each case multiplied by a percentage specified by the relevant Loan Market. No mark-to-market payment shall be required in respect of any stock loan or stock borrow position on and after the business day following the day on which such position was extinguished.

(b) On each business day, the Corporation shall net the mark-to-market payments, if any, owed by and to each Market Loan Clearing Member in respect of its stock loan and borrow positions resulting from Market Loans. At or before 9:00 A.M. Central Time (10:00 A.M. Eastern Time) on each business day, each Market Loan Clearing Member shall be obligated to pay to the Corporation any net mark-to-market payment amount owed to the Corporation in respect of such positions carried in the Market Loan Clearing Member's accounts, and the Corporation shall be authorized to withdraw from the Market Loan Clearing Member's bank account established in respect of the account from and to which mark-to-market payments are to be made an amount equal to such net amount, provided that the Corporation

may, but shall not be required to, offset against any such net amount any credit balance which may be due from the Corporation in the same account.

(c) At or before 10:00 A.M. Central Time (11:00 A.M. Eastern Time) on each business day, the Corporation shall be obligated to deposit in the designated bank account established in respect of each account of each Market Loan Clearing Member (provided the Market Loan Clearing Member has deposited all margin required to be deposited pursuant to Chapter VI of the Rules and has deposited the full amount of any net daily premium due to the Corporation under Rule 502) any net mark-to-market payment amount owed by the Corporation to the Market Loan Clearing Member on such day in respect of its stock loan and borrow positions resulting from Market Loans. From and after such time, full settlement shall be deemed to have been made in respect of mark-to-market payments for such day, and the Corporation shall have no further obligation in respect thereof.

#### **Daily Reports**

**RULE 2205A.** Prior to such time on each business day as the Corporation may from time to time establish, the Corporation shall make available to each Market Loan Clearing Member one or more reports listing all stock loan and stock borrow positions resulting from Market Loans carried by the Clearing Member.

#### **Dividends and Distributions; Rebates**

**RULE 2206A.** (a) (i) Subject to the provisions of paragraph (a)(ii) of this Rule, the Lending Clearing Member shall be entitled to receive all dividends and distributions made in respect of Loaned Stock on the record dates that occur during the term of a Market Loan, to the full extent it would have been so entitled if the Market Loan had not been made, and the Borrowing Clearing Member shall be obligated to pay or deliver all such dividends and distributions. Such dividends and distributions shall include, but not be limited to: cash and all other property; stock dividends; securities received as a result of split-ups of the Loaned Stock and distributions in respect thereof; interest payments; all rights to purchase additional securities; and any cash or other considerations paid or provided by the issuer of such security in exchange for any vote, consent or the taking of any similar action in respect of such security (regardless whether the record date for such vote, consent or other action falls during the term of the Market Loan).

(ii) Notwithstanding the foregoing, the Loan Market shall be solely responsible for calculating, in respect of Market Loans originated through such Loan Market, the amount of dividend equivalent payments that each Market Loan Clearing Member is entitled to receive or

obligated to pay on each expected payment date. The Corporation shall effect collection and payment of such amounts as instructed by the Loan Market from Clearing Members on the expected payment date, provided that the Corporation shall guarantee a dividend equivalent payment only to the extent that the Corporation has collected margin equal to such dividend equivalent payment from the responsible Market Loan Clearing Member(s) prior to the time that any such Market Loan Clearing Member defaults. The Corporation shall have no responsibility to verify the accuracy of the Loan Market's calculations and shall not be liable to Clearing Members for any errors in such calculations. In the event that the Loan Market subsequently confirms that dividend equivalent payments were not distributed on the expected payment date, the Loan Market shall instruct the Corporation to reverse the collections and payments following the same process as described herein.

(iii) If the Corporation determines that the non-cash dividends and distributions received by the Borrowing Clearing Member are legally transferable and the transfers can be effected through the Depository, then such non-cash dividends and distributions shall be added to the Loaned Stock (as reflected by appropriate adjustments to the Corporation's records), shall be considered such for all purposes, and shall be delivered to the Corporation by the Borrowing Clearing Member and by the Corporation to the Lending Clearing Member upon any termination of the Market Loan. Every such determination by the Corporation shall be within the sole discretion of the Corporation and shall be conclusive and binding on all Clearing Members and not subject to review. In the event that the Loan Market determines in its discretion to fix a cash settlement value with respect to any non-cash dividends and/or distributions that are not added to the Loaned Stock as provided in the preceding sentence, the Loan Market may instruct the Corporation to effect collection and payment of such cash settlement as provided in paragraph (b)(ii) of this Rule.

(b) On a monthly basis, or at such more frequent intervals as may be specified by the Corporation, the Corporation shall effect collection and payment of rebate payments as instructed by a Loan Market from Market Loan Clearing Members, provided that the Corporation shall guarantee the payment of accrued rebate payments only up to the amount for which the Corporation has collected margin from the responsible Market Loan Clearing Member(s) prior to the specified settlement date. The Loan Market shall be solely responsible for calculating, in respect of Market Loans originated through such Loan Market, the amount of rebate payments that each Market Loan Clearing Member is entitled to receive or obligated to pay on each settlement date. The Corporation shall have no responsibility to verify the accuracy of the Loan Market's calculations and shall not be liable to Clearing Members for any errors in such calculations. In the event the Corporation suspends a Clearing Member, the Corporation

shall be entitled to settle rebate payments with respect to such suspended Clearing Member at an earlier settlement time to be determined by the Corporation in its discretion.

*. . . Interpretations and Policies:*

.01 With respect to a non-cash dividend or distribution that is not added to the Loaned Stock and for which the Loan Market does not fix a cash settlement value pursuant to the provisions of paragraph (b)(iii) of this Rule, the Lending Clearing Member would receive the benefit of such dividend or distribution only if it recalls the Loaned Stock in time to receive the dividend or distribution directly.

**Erroneous Transactions**

**RULE 2207A.** (a) If a Market Loan Clearing Member believes that a Market Loan was executed on the Clearing Member's behalf in error or that a material term of such Market Loan is erroneous, the Clearing Member should contact the relevant Loan Market and seek to have such transaction voided in accordance with the terms of such Loan Market's error transaction correction policy. Every determination as to whether a Market Loan was entered into in error shall be within the sole discretion of the relevant Loan Market and shall not be subject to review by the Corporation.

(b) In the event that the Loan Market determines to void a Market Loan, it shall notify the Corporation and the Corporation shall instruct the Depository to return the Loaned Stock to the Lending Clearing Member and the Collateral to the Borrowing Clearing Member. Upon confirmation that the Depository has effected the returns as instructed, the Corporation shall extinguish in its records the stock loan position of the Lending Clearing Member and the stock borrow position of the Borrowing Clearing Member in respect of the voided Market Loan.

*. . . Interpretations and Policies:*

.01 The Corporation's role with respect to Market Loans requires it to act on information that it receives from a Loan Market and from the Depository, including, without limitation, information regarding the identities of lenders and borrowers, dividend equivalent payment amounts, rebate rates, status of transactions submitted to the Depository, etc. The Corporation shall not be liable to Clearing Members for any acts or omissions taken or made in reliance on such information.

**Indemnification by Borrowing Clearing Member**

**RULE 2208A.** The Borrowing Clearing Member in respect of a Market Loan agrees to indemnify, defend, hold and save harmless the Corporation from any claims, actions, demands, or lawsuits of any kind whatsoever arising in any way out of any use that the Borrowing Clearing Member makes of the Loaned Stock.

#### **Termination of Market Loans**

**RULE 2209A.** (a) The termination of a Market Loan, or any portion thereof, may be initiated by (i) the Borrowing Clearing Member, by giving a return notice to the relevant Loan Market indicating its intention to return a specified quantity of the Loaned Stock, or (ii) the Lending Clearing Member, by giving a recall notice to the relevant Loan Market calling for the return of a specified quantity of the Loaned Stock.

(1) Upon matching a return request with an open stock loan position, or a recall request with an open stock borrow position, the Loan Market shall send details of the matched return/recall transaction to the Corporation. If a matched return/recall transaction passes the Corporation's validation process, the Corporation shall create and send to the Depository a pair of delivery orders – one order instructing the Depository to transfer a specific quantity of the Loaned Stock from the Borrowing Clearing Member to the Corporation's account against transfer of Collateral from the Corporation's account to the Borrowing Clearing Member, and the other order instructing the Depository to simultaneously transfer such Loaned Stock from the Corporation's account to the Lending Clearing Member against the transfer of Collateral from the Lending Clearing Member to the Corporation's account.

(2) Upon receipt of the end of the day stock loan activity file from the Depository showing that return/recall delivery orders have been completed, the Corporation shall treat those Market Loans as terminated and reduce the respective Clearing Members' open stock loan and stock borrow positions accordingly.

(3) On each stock loan business day, any return/recall transactions originated through a Loan Market that are not settled by the Depository and confirmed by the Corporation shall have no further effect as to the Corporation; provided, however, that the Loan Market shall resubmit to the Corporation any return/recall transaction that was not completed, and the Corporation in turn shall resubmit its instructions to the Depository on the next stock loan business day. If (i) a recall transaction fails to settle on the third stock loan business day following the day that the transaction was first submitted, or (ii) a return transaction fails to settle on the stock loan business day on which it was submitted, the relevant Loan Market shall initiate on the morning of the next stock loan business day the "buy-in" or "sell-out" process, as applicable, set forth in paragraphs (b) and (c) of this Rule, respectively. For purposes of clause

(ii) of the preceding sentence, a return transaction submitted after a cutoff time specified by the Loan Market shall be deemed to have been submitted on the following stock loan business day.

(b) *Buy-In.* (1) Where the Borrowing Clearing Member fails to return the specified quantity of Loaned Stock, the Loan Market shall instruct an independent broker (such broker shall be a Market Loan Clearing Member) to purchase the Loaned Stock. The broker shall be instructed to effect the buy-in in a commercially reasonable manner as promptly as practicable and in any event at or prior to the latest time when a buy-in is required to be effected under applicable regulatory requirements. The buy-in shall be for the account and liability of the Corporation. Notwithstanding the foregoing, the Corporation shall not be held liable for any Clearing Member's failure to comply with its responsibilities and obligations under the federal and state securities laws, including, but not limited to, Regulation SHO, or any applicable rules of any exchange or self-regulatory organization. After execution of a buy-in, the broker shall immediately give written notice to the Corporation and the Loan Market as to the quantity of the Loaned Stock purchased and the price paid. As between the Corporation and the Borrowing Clearing Members, every determination by the Corporation with respect to the reasonableness of a buy-in price shall be within the sole discretion of the Corporation and shall be conclusive and binding on all Clearing Members and not subject to review.

(2) After execution of a buy-in, the Loan Market shall notify the Corporation to instruct the Depository to transfer the bought-in Loaned Stock from the account of the broker to the Corporation's account against transfer of Collateral from the Corporation's account to the broker, and simultaneously transfer the bought-in Loaned Stock from the Corporation's account to the Lending Clearing Member against the transfer of Collateral from the Lending Clearing Member to the Corporation's account. The Borrowing Clearing Member shall be responsible to the Corporation for the price paid on the buy-in, any costs, fees or interest incurred by the broker in connection with such buy-in (all such costs, the "Buy-In Transaction Cost"), and any penalties or charges that the Loan Market may assess against the Borrowing Clearing Member. Notwithstanding the foregoing, if the returned Collateral exceeds the sum of the price paid and the Buy-In Transaction Cost, the broker shall receive only an amount equal to the sum of the price paid and the Buy-In Transaction Cost. The Corporation shall apply the excess to cover any penalties or charges assessed by the Loan Market and credit any remaining amount to the Borrowing Clearing Member. If the returned Collateral is insufficient to cover the price paid, the Buy-In Transaction Cost and/or any penalties or charges assessed by the Loan Market, the Corporation shall pay the amount of the deficiency to the broker and/or the Loan Market, as appropriate, and charge such amount to the Borrowing Clearing Member.



(3) Notwithstanding the preceding provisions of this Rule, if the broker is unable to complete the buy-in within a reasonable time or such time as may be required under applicable law or the rules of a self-regulatory organization, the Corporation, in consultation with the Loan Market, shall fix a cash settlement value for the Loaned Stock that was not returned to the Lending Clearing Member. The value fixed by the Corporation shall be final and not subject to review. If the Collateral held by the Lending Clearing Member exceeds such cash settlement value, the Lending Clearing Member shall retain collateral equal in value to the cash settlement price and pay the excess to the Corporation and the Corporation shall pay the excess to the Borrowing Clearing Member. If the Collateral is less than such cash settlement value, the Lending Clearing Member shall retain the full amount of the Collateral, and the Corporation shall pay the amount of the deficiency to the Lending Clearing Member and collect such amount from the Borrowing Clearing Member. These payments shall be made through the Corporation's daily cash settlement system and may be netted against other cash settlements at the discretion of the Corporation.

(4) Notwithstanding any other provision of the By-Laws or Rules, from and after the time that a buy-in is executed or, in the case where the broker fails to complete the buy-in, a cash settlement value is determined, the Borrowing Clearing Member shall have no further right or obligation to deliver to the Corporation the Loaned Stock, and no delivery of Loaned Stock by the Borrowing Clearing Member shall satisfy the obligation of the Borrowing Clearing Member under this paragraph (b).

(c). *Sell-Out.* (1) Where the Lending Clearing Member fails to return the Collateral, the Loan Market shall instruct an independent broker (such broker shall be a Market Loan Clearing Member) to sell the Loaned Stock. The broker shall be instructed to effect the sell-out in a manner that is both commercially reasonable and in compliance with all applicable laws and regulations, as promptly as practicable and in any event at or prior to the latest time when a sell-out is required to be effected under applicable regulatory requirements. The sell-out shall be for the account and liability of the Corporation. However, the Corporation shall not be held liable for any Clearing Member's failure to comply with its responsibilities and obligations under the federal and state securities laws, including, but not limited to, Regulation SHO, or any applicable rules of any exchange or self-regulatory organization. After execution of a sell-out, the broker shall immediately give written notice to the Corporation and the Loan Market as to the quantity of the Loaned Stock sold and the price received. As between the Corporation and the Lending Clearing Members, every determination by the Corporation with respect to the reasonableness of a sell-out price shall be within the sole discretion of the Corporation and shall be conclusive and binding on all Clearing Members and not subject to review.

(2) After execution of a sell-out, the Loan Market shall notify the Corporation to instruct the Depository to transfer the sale proceeds from the broker to the Corporation's account against transfer of the Loaned Stock from the Corporation's account to the broker, and simultaneously transfer the sale proceeds from the Corporation's account to the Borrowing Clearing Member against the transfer of the Loaned Stock from the Borrowing Clearing Member to the Corporation's account. The Lending Clearing Member shall be responsible to the Corporation for the full amount of the Collateral, any costs, fees or interest incurred by the broker in connection with such sell-out (all such costs, the "Sell-Out Transaction Cost"), and any penalties or charges that the Loan Market may assess against the Lending Clearing Member. Notwithstanding the foregoing, if the sale proceeds exceed the Collateral, the Borrowing Clearing Member shall only receive an amount equal to the Collateral. The Corporation shall apply the excess to cover the Sell-Out Transaction Cost incurred by the broker and any penalties or charges assessed by the Loan Market, and credit any remaining amount to the Lending Clearing Member. If the sales proceeds are insufficient to cover the Collateral, the Sell-Out Transaction Cost and/or any penalties or charges assessed by the Loan Market, the Corporation shall pay the amount of the deficiency to the Borrowing Clearing Member, the broker and/or the Loan Market, as appropriate, and collect such amount from the Lending Clearing Member.

(d) The Corporation shall terminate all or a portion of the outstanding Market Loans carried in the account(s) of a Market Loan Clearing Member upon being directed by the relevant Loan Market to do so. The Corporation may also at any time terminate the outstanding Market Loans relating to one or more particular Eligible Stocks upon a determination by the Corporation, in its sole discretion, that such action is warranted by reason of the lack of substantial volume in such Market Loans, the impending termination of business on the part of the Corporation, the inability of the Corporation from time to time to maintain in effect satisfactory arrangements with the Depository, or other circumstances in which the Corporation in its sole discretion determines that such action is necessary or appropriate for the protection of the Corporation, its Clearing Members or the public. The Corporation may effect a termination pursuant to this paragraph (d) by giving written notice thereof to all affected Market Loan Clearing Members specifying the date on which such termination is to become effective, which date shall be a stock loan business day at least three stock loan business days after the date of such notice. If any such termination fails to settle on the specified termination date, the relevant Loan Market shall initiate on the morning of the next stock loan business day the "buy-in" or "sell-out" process described in this Rule, as applicable.

(e) From and after the time when termination of a Market Loan, or a portion thereof, is completed in accordance with this Rule, the Corporation shall extinguish the stock loan position of the Lending Clearing Member and the stock borrow position of the Borrowing

Clearing Member in respect of the terminated Market Loan, or such portion thereof. The Corporation shall be discharged from its obligations as borrower to the Lending Clearing Member and lender to the Borrowing Clearing Member, and shall have no further obligation in respect of the terminated Market Loan, or such portion thereof.

(f) Notwithstanding that the termination of a Market Loan, or a portion thereof, has been initiated, the Lending Clearing Member and the Borrowing Clearing Member shall continue to make and receive daily mark-to-market payments, dividend equivalent payments and rebate payments and to deposit margins with the Corporation, all in accordance with the Rules, up to and including the date on which settlement of the termination of the Market Loan is completed.

#### **Suspension of Market Loan Clearing Members – Pending and Open Market Loans**

**RULE 2210A.** (a) If the Corporation, a Loan Market or the Depository suspends a Market Loan Clearing Member prior to the time at which the Corporation otherwise would have accepted a stock loan to which the suspended Clearing Member is a party as a Market Loan, then, notwithstanding any other provision of the By-Laws and Rules, the Corporation shall have no obligation to accept, and shall not accept, the stock loan. In such situation, the Corporation shall notify the Depository and the Loan Market that the Corporation has rejected such stock loan as a Market Loan.

(b) If a Market Loan Clearing Member is suspended by the Corporation, a Loan Market or the Depository, open stock loan and borrow positions of such Clearing Member that originated through the Market Loan Program shall, except as hereinafter provided, be terminated in accordance with the provisions of Rule 2211A or in such other manner as the Corporation determines to be the most orderly manner practicable in the circumstances. Any net proceeds from the termination of such stock loan and borrow positions in any of the accounts of the suspended Clearing Member (including any net dividend equivalent payments and/or rebate payments that the suspended Clearing Member is entitled to receive in accordance with the Rules) shall be credited by the Corporation to the Liquidating Settlement Account of such Clearing Member established pursuant to Rule 1104. Any net amounts payable in respect of the termination of such stock loan and borrow positions (including any net dividend equivalent payments and/or rebate payments that the suspended Clearing Member is obligated to pay in accordance with the Rules) in any of the accounts of the suspended Clearing Member shall be withdrawn by the Corporation from the Clearing Member's Liquidating Settlement Account. The suspended Clearing Member or its representative shall be notified as promptly as possible of any termination of stock loan and stock borrow positions pursuant to this Rule.

(c) Notwithstanding the preceding provisions of this Rule, the Corporation may exercise the authority described in Rules 1106(d) and 1106(e) in respect of open stock loan and borrow positions resulting from Market Loans. For purposes of applying such paragraphs to open stock loan and borrow positions, references to "positions," "unsegregated long positions or short positions," and "underlying interests" therein shall be deemed to be references to "stock loan and borrow positions," "stock loan positions or stock borrow positions," and "Eligible Stock," respectively.

[Rule 2210A supplements Rules 1105 and 1106.]

#### **Suspension of Market Loan Clearing Members – Buy-In and Sell-Out Procedures**

**RULE 2211A.** If a Market Loan Clearing Member shall be suspended by the Corporation, the Corporation may direct an independent broker (such broker shall be a Market Loan Clearing Member) to buy in or sell out, as applicable, the Loaned Stock for the account and liability of the Corporation with respect to each open stock borrow or loan position of the suspended Clearing Member that originated through the Market Loan Program. The buy-in or sell-out shall be effected in accordance with the applicable procedures set forth in Rule 2209A, except that any amount to be credited to or collected from the suspended Clearing Member shall be credited to or withdrawn from the suspended Clearing Member's Liquidating Settlement Account.

#### **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 May 20, 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**

**A. Purpose of the Proposed Rule Change**

The purpose of this proposed rule change is to revise OCC's By-Laws and Rules to create a framework (the "Market Loan Program") that can accommodate securities lending transactions proposed to be executed through electronic trading systems ("Loan Markets"), such as the market to be operated by Automated Equity Finance Markets, Inc. ("AQS"), a wholly-owned subsidiary of Quadriserv, Inc. The relationship between OCC and AQS will be governed by the Agreement for Clearing and Settlement Services (the "AQS Agreement") attached hereto as Exhibit 5.

Securities lending contributes to the overall liquidity and efficiency of the equity and equity options markets. For options market participants, securities lending supports market making, arbitrage trading, and equity financing and assists participants in meeting deliveries resulting from options exercises and assignments. OCC's Stock Loan/Hedge Program, which allows approved Clearing Members to register their privately negotiated securities lending transactions with OCC, benefits OCC's Clearing Members and the industry by reducing the cost of credit, increasing operational efficiency, and providing stability through a central counterparty guarantee. OCC believes that it is important to keep pace with innovations in the securities lending markets and therefore proposes to launch the Market Loan Program.

The bulk of the proposed changes are based on procedures and protections that OCC has utilized in the operation of the Stock Loan/Hedge Program, with necessary

modifications to account for those aspects of the Market Loan Program that are different from the Stock Loan/Hedge Program. OCC intends the provisions of its By-Laws and Rules governing the Market Loan Program and the provisions governing the Stock Loan/Hedge Program to be the same substantively except where differences were clearly intended or where the context requires a different interpretation. For example, under the Market Loan Program OCC would create a process by which it will accept anonymously matched stock loan transactions from a Loan Market and then send instructions to The Depository Trust Company (the "Depository") to settle the transactions. In comparison, under the Stock Loan/Hedge Program OCC does not participate in a stock loan transaction until after two clearing members have transferred the securities and required collateral between themselves through the facilities of the Depository. See below for a discussion of such differences.

**B. Overview of the Proposed Market Loan Program**

The Loan Market operated by AQS would be the first market supported by the proposed Market Loan Program. Additional markets that are operated in a manner similar to the AQS Loan Market could be included in the Market Loan Program in the future.

A Loan Market would provide a centralized source for price discovery and trade matching of stock loan transactions, for example, by implementing periodic auctions throughout the trading day. In the case of an auction-based market, participant lenders would provide the Loan Market with available inventory for auction, and participant borrowers would ordinarily

compete on rebate rates with the lowest rate earning the trade. Lenders and borrowers would ordinarily be matched based on the Loan Market's trade-matching algorithm. A Loan Market could also provide, as does AQS, for submission of privately negotiated transactions for processing through the Loan Market, including clearance and settlement through OCC. Such transactions will not be separately identified to OCC and will be treated by OCC like any other matched loan transactions submitted by the Loan Market.

Clearing Members would need to meet certain requirements in order to be approved for participation in the Market Loan Program. For example, Clearing Members would need to be active subscribers to a Loan Market that is supported by the Market Loan Program. Clearing Members would also be required to set their "Receiver Authorized Delivery" ("RAD") Limits at the Depository in respect of transactions with OCC as the counterparty to the highest limit permitted under Depository rules.<sup>3</sup> For tax-related reasons, OCC presently intends to permit only U.S. Clearing Members to participate in the Market Loan Program, at least initially. Clearing Members approved for participation in the Market Loan Program would be referred to as "Market Loan Clearing Members." When additional markets are included in the Market Loan Program in the future, a separate designation will be required for a Clearing Member's

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<sup>3</sup> The RAD Limit is a risk control mechanism which allows the Depository participant to set individual dollar limits against each contra participant so that deliveries with a settlement value exceeding the specified limit are not processed until the participant has reviewed and approved them. Clearing Members participating in the Market Loan Program are expected to comply with the requirement of setting their RAD Limits against OCC to the highest level permissible under Depository rules. However, the Depository will not be asked to monitor or enforce this requirement.

participation in each Loan Market.

The Loan Market would submit matched loan transactions to OCC for clearance and settlement. OCC would then conduct routine validation processes before passing electronic instructions to the Depository to move securities and cash between the Market Loan Clearing Members' accounts at the Depository. Because a Loan Market may, as does AQS, match lenders and borrowers on an anonymous basis, OCC and the Depository would establish an account structure involving the transfer of securities and cash between the lender and the borrower through a Depository account owned by OCC (the "OCC Account"), thereby permitting stock loan transactions originated through a Loan Market to be settled in a manner that preserves anonymity to both the lender and borrower.

Because OCC would substitute itself as the counterparty to all such Depository transactions, it is essential to OCC, from a risk management perspective, that there would never be a net settlement obligation against the OCC Account at the end of any day (*i.e.*, OCC's obligations with respect to all completed Depository transactions to which the OCC Account was a party should net to zero both with respect to securities and cash). Avoidance of any net settlement obligation is essential both because OCC has no mechanism for funding such settlement obligations and for other operational reasons. In order to provide reasonable assurance that OCC will have no net settlement obligations, the Depository will implement procedures intended to ensure that if one side of a loan transaction does not settle, the other side



will be blocked as well. In addition, under current Depository rules, a Depository member can return a delivery of securities (a “Reclaim”) to the original delivering party. The Depository will block Reclaims against the OCC Account in order to prevent such Reclaims from resulting in a net settlement obligation in that account.<sup>4</sup>

Upon receiving the end of the day stock loan activity file from the Depository showing settled stock loans (*i.e.*, transfer of the loaned securities against the specified collateral) originated through a Loan Market, OCC would perform additional validation processes to confirm that the transactions match the instructions given by OCC before affirmatively accepting settled stock loans and substituting itself as counterparty to these transactions (such accepted stock loan transactions are defined as “Market Loans”). Upon OCC’s acceptance of a Market Loan, the lending Market Loan Clearing Member would be a “Lending Clearing Member” and the borrowing Market Loan Clearing Member would be a “Borrowing Clearing Member” in respect of that Market Loan for all purposes of the By-Laws and Rules. Any stock loan transactions identified as originated through a Loan Market that are not ultimately confirmed and accepted by OCC would be rejected by OCC.

Upon acceptance of a Market Loan, OCC would create the stock loan position in the designated account of the Lending Clearing Member and the stock borrow position in the

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<sup>4</sup> The Depository will submit a rule filing with the Commission to describe proposed changes in its rules for purposes of supporting the Market Loan Program. OCC will not begin to provide clearing services for Market Loans until the Depository’s rule filing is approved by the Commission.

designated account of the Borrowing Clearing Member. Positions resulting from Market Loans would be maintained in the same manner as positions resulting from stock loans accepted by OCC under the Stock Loan/Hedge program (the latter are defined as “Hedge Loans” in the By-Laws and Rules<sup>5</sup>). However, positions resulting from Market Loans would be separately identified from, and would not be fungible with, positions resulting from Hedge Loans.

As with stock borrow or stock loan positions resulting from Hedge Loans, OCC would guarantee the daily mark-to-market payments generated by the open positions resulting from Market Loans. In addition, OCC would also provide a limited guaranty of payments in lieu of cash dividends and distributions (“dividend equivalent payments”) and stock loan rebates, in each case limited to the amount for which the Corporation has collected margins from the responsible Market Loan Clearing Member(s) prior to the payment date. The amount of these payments would be calculated by the relevant Loan Market, and OCC would effect the payments only as instructed by the Loan Market. OCC would have no responsibility to verify the accuracy of the Loan Market’s calculations and would not be liable to Clearing Members for any errors in such calculations. A Market Loan Clearing Member would be required to maintain margin with the Corporation in respect of any scheduled dividend equivalent payments and accrued rebate payments that such Clearing Member is obligated to make.

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<sup>5</sup> OCC proposes to introduce the term “Hedge Loan” to refer to stock loans accepted by OCC under the Stock Loan/Hedge Program. OCC proposes to amend the term “Stock Loan” to mean either a “Hedge Loan” or a “Market Loan” or both as the context requires.

Termination of a Market Loan, in whole or in part, could be initiated by the Lending Clearing Member calling for the return of the loaned securities (a “recall”), or by the Borrowing Clearing Member indicating its intention to return the loaned securities (a “return”). The Loan Market would assign (randomly or by some other method) the recall to a participant who borrowed the same securities or the return to a participant who lent the same securities. Recalls/returns would be submitted to OCC and would be processed by OCC in the same manner as new stock loan transactions except that (i) the Loan Market would distinguish recalls/returns from new stock loan transactions; and (ii) if a recall/return were not settled by the Depository and confirmed by OCC after a specified period of time, the Loan Market would instruct an independent broker to initiate the “buy-in” or “sell-out” process (described in more detail in Part C below), as applicable, in order to complete such recall/return.

A Loan Market would have the authority to direct OCC to terminate all or a portion of the outstanding Market Loans carried in the account(s) of a Clearing Member that were originated through that Loan Market. In addition, OCC would have the authority under Rule 305(a) to require a Clearing Member to reduce or eliminate stock loan or stock borrow positions, including positions resulting from Market Loans, upon a determination that circumstances warrant such action. In either case, OCC would give written notice to all affected Clearing Members specifying the date on which such termination would become effective. If any such termination were not settled by the specified time, the relevant Loan Market would

instruct an independent broker to initiate the “buy-in” or “sell-out” process, as applicable, in order to complete the termination. Any such buy-in or sell-out would be for the account and liability of OCC, which would in turn have rights against the defaulting Market Loan Clearing Member.

In the event that OCC, a Loan Market or the Depository suspends a Market Loan Clearing Member, OCC would not accept any settled stock loan transaction to which the suspended Clearing Member is a party as a Market Loan after the time at which the Clearing Member was suspended. Finally, OCC would take action under proposed Rule 2211A and Chapter XI of the rules to close out the open stock loan and stock borrow positions carried in the suspended Clearing Member’s account(s), using the “buy-in” or “sell-out” process or exercising setoff rights as appropriate. Temporary hedging transactions would also be permitted under the Chapter XI rules.

If a Market Loan Clearing Member were to believe that a Market Loan was executed on such Clearing Member’s behalf in error or that a material term of the loan was erroneous, the Clearing Member would contact the relevant Loan Market to seek correction. Every determination as to whether a Market Loan was entered into in error would be within the sole discretion of the relevant Loan Market and would not be subject to review by OCC. OCC would have no liability to Clearing Members for any action taken, or any delay or failure to take any action, in reasonable reliance on information that OCC receives from a Loan Market or the

Depository.

**C. Proposed Changes to the By-Laws and Rules**

In order to provide clearing services for Market Loans, OCC proposes to (i) add a new Article XXIA to the By-Laws and a new Chapter XXIIA to the Rules that would govern the clearance of Market Loans, (ii) introduce new terms and amend the definitions of existing terms, and (iii) amend a few other provisions of the By-Laws and Rules in connection with the introduction of Market Loans.

*Changes in Terminology – Article I, Section 1; Article XXI, Section 1; Article XXIA, Section 1.*

In Article I, Section 1, OCC proposes to introduce the terms “Hedge Loan,” “Loan Market,” “Market Loan,” “Market Loan Clearing Member” and “Market Loan Program.” The definition of “Eligible Stock” would be amended so that it will be applicable to the Market Loan Program. OCC also proposes to amend the term “Stock Loan” to refer to a Hedge Loan or a Market Loan or both, as the context requires, except that the term “Stock Loan” is redefined in Article XXI of the By-Laws so that, as used there and in Chapter XXII of the Rules, the term refers only to “Hedge Loans” and not to “Market Loans.”

The terms “Borrowing Clearing Member” and “Lending Clearing Member” are amended to encompass Market Loan Clearing Members that borrow or lend Eligible Stocks in Market Loans. The terms “stock borrow position,” and “stock loan position” will, where appropriate, apply to positions resulting from Market Loans without amendment.

In Article XXIA, Section 1, OCC proposes to introduce the terms “dividend equivalent payment,” “recall” and “return.” The terms “Collateral,” “Loaned Stock,” “mark-to-market payment” and “settlement price,” which are defined in Article XXI in the context of the Stock Loan/Hedge Program, would be redefined in Article XXIA to reflect their specific application in the context of a Market Loan. Finally, OCC proposes to introduce the term “rebate,” which refers to a periodic payment payable by the Lending Clearing Member or the Borrowing Clearing Member (depending on whether the rebate rate is positive or negative) in respect of a Market Loan.

Article XXI, Section 5

Paragraph (b) of Section 5 is being deleted to eliminate the existing requirement that a Clearing Member represent that the Loaned Stock does not constitute customer fully paid or excess margin securities. The Commission’s Rule 15c3-3 contains no absolute prohibition against lending customer fully paid or excess margin securities, but effectively permits such securities to be loaned in compliance with the requirements of Rule 15c3-3(b)(3) (which include customer consent, provision of specified collateral to the customer, etc.). The deletion of paragraph (b) will maintain consistency between the existing Stock/Loan Hedge rules and the Market Loan rules, where no such representation is proposed to be required. Rules 2202(e) and 2202A(f) require Clearing Members to represent that each stock loan is in compliance with Rule 15c3-3 and other customer protection rules, and OCC believes that this representation is

sufficient without further specificity.

Qualifications for Designation as a Market Loan Clearing Member – Article V, Section 1

Interpretation .03(e) of Article V, Section 1 would be amended to clarify that a Clearing Member must be approved as a Market Loan Clearing Member before it can participate in the Market Loan Program. OCC proposes to add a new interpretation .06A which will set out the conditions that a Clearing Member must meet in order to be approved as a Market Loan Clearing Member.

OCC's Role in respect of Market Loans – Article XXIA, Section 2

Upon acceptance of a Market Loan, OCC's role in respect of such Market Loan would be that of a principal and OCC would have the position of borrower to the Lending Clearing Member and the position of lender to the Borrowing Clearing Member. All rights and/or obligations of a Clearing Member in respect of a Market Loan would be against OCC, including the right and/or obligation to receive or make mark-to-market payments, dividend equivalent payments, and rebate payments and to deliver or receive the Loaned Stock or Collateral.

Agreement of the Borrowing Clearing Member and the Lending Clearing Member in respect of Market Loans – Article XXIA, Sections 3 and 4

Under Section 3, the Borrowing Clearing Member would represent that it would fulfill its obligations to OCC in respect of a Market Loan, including making required margin deposits, mark-to-market payments, dividend equivalent payments, rebate payments (in the case

of a negative rebate), and delivering the Loaned Stock against Collateral upon the termination of the Market Loan, all in accordance with the By-Laws and Rules. The Lending Clearing Member would make reciprocal representations under Section 4.

*Maintaining Stock Loan and Stock Borrow Positions Resulting from Market Loans in Accounts – Article XXIA, Section 5; Rule 2201A*

Under Article XXIA, Section 5, upon the acceptance of a Market Loan, OCC would create the stock loan position in the Lending Clearing Member's designated account and the stock borrow position in the Borrowing Clearing Member's designated account. OCC would aggregate, separately for Market Loans effected through each Loan Market, all stock loan positions and stock borrow positions of a Clearing Member resulting from such Market Loans relating to the same Eligible Stock for position reporting purposes and would also net all such stock loan positions against such stock borrow positions for purposes of determining the Clearing Member's margin obligations to OCC (referring to the margin that a Clearing Member would be required to be deposited with OCC to cover OCC's risk that the market might move against a stock loan position or a stock borrow position on any day and that the Clearing Member might fail before making the required mark-to-market payment to OCC on the next business day). Positions resulting from Market Loans would be maintained in Clearing Members' accounts in the same manner as positions resulting from Hedge Loans. However, OCC would separately identify stock loan and stock borrow positions resulting from Market Loans, and would not deem such positions to be fungible with positions resulting from Hedge Loans.



Rule 2201A would require each Market Loan Clearing Member to give OCC standing instructions in respect of Market Loans similar to the way in which Rule 2201 requires a Clearing Member participating in the Stock Loan/Hedge Program to give standing instructions in respect of Hedge Loans, the differences being that Rule 2201A: (i) would not include any references to margin-ineligible accounts because all positions resulting from Market Loans would be carried on a fully margined basis<sup>6</sup>, (ii) would not require a Market Loan Clearing Member to specify the Collateral requirement that will be applicable to its stock loan positions because such requirement will be specified by the relevant Loan Market when it submits the matched trades to OCC, and (iii) would not include any references to stock loan baskets or stock borrow baskets because such concepts will not apply to positions resulting from Market Loans.

Initiation of Market Loans - Rule 2202A

As described in Part B above, a Market Loan would be initiated when the Loan Market submits a matched trade to OCC. If the matched trade passes OCC's validation processes, OCC would instruct the Depository to effect the transfer of Eligible Stock against Collateral between the accounts of two Market Loan Clearing Members, provided that such transfers would flow through OCC's account at the Depository in order to maintain anonymity between the lender and borrower.

Only those settled stock loan transactions that are affirmatively accepted by OCC

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<sup>6</sup> The Commission has approved in a separate rule change OCC's proposal to eliminate Clearing Members' ability to

following receipt of the end-of-day stock loan activity file from the Depository and OCC's validation processes would be deemed Market Loans. OCC would substitute itself as counterparty to the Borrowing Clearing Member and the Lending Clearing Member, respectively, in respect of each Market Loan. Any stock loan transactions purported to have originated through a Loan Market that are not accepted by OCC would be rejected by OCC and would have no further effect as regards OCC.

Paragraphs (d) and (e) of Rule 2202A would clarify the Lending Clearing Member's rights and obligations with respect to the Collateral posted and the Borrowing Clearing Member's rights and obligations with respect to the Loaned Stock. Under paragraph (f), a Market Loan Clearing Member would be required to represent to OCC that the Clearing Member's participation in each Market Loan is in compliance, and will continue to comply, with all applicable laws and regulations.

*Margin Deposited with OCC in respect of Market Loans - Rule 2203A*

As mentioned in the description of proposed Article XXIA, Section 5 above, a Market Loan Clearing Member would be required to meet its margin obligations to OCC with respect to its stock loan and stock borrow positions resulting from Market Loans. Rule 2203A would reiterate this obligation and clarify that margin calculation shall be determined pursuant to Rule 601.

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carry stock loan and stock borrow positions on a margin-eligible basis. However, the proposal will not be fully

Mark-to-Market Payments in respect of Market Loans - Rule 2204A

Rule 2204A would govern the calculation and payment of mark-to-market payments in respect of Market Loans. Using the same calculation method and collection/payment procedures that OCC practices with respect to Stock Loans, OCC would calculate on a daily basis the net amount owed by or to each Market Loan Clearing Member in respect of stock loan and stock borrow positions resulting from Market Loans carried in a Clearing Member's accounts and collect such net amount from, or deposit such net amount to, as applicable, the Clearing Member's designated bank account.

Daily Reports - Rule 2205A

As mentioned in the description of proposed Article XXIA, Section 5 above, OCC would aggregate, separately for Market Loans effected through each Loan Market, all stock loan positions and stock borrow positions of a Clearing Member resulting from such Market Loans relating to the same Eligible Stock for position reporting purposes. Pursuant to Rule 2205A, OCC would make these position reports available to each Market Loan Clearing Member on a daily basis.

Dividends, Distributions and Rebates in respect of Market Loans - Rule 2206A

Paragraph (a) of Rule 2206A would clarify that a Lending Clearing Member will be entitled to receive all dividends and distributions made in respect of Loaned Stock on the record dates that occur during the term of a Market Loan and the Borrowing Clearing Member will be

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implemented until February 1, 2009. See Securities Exchange Act Release 58901 (December 1, 2008).

obligated to pay or deliver all such dividends and distributions. Because a Market Loan Clearing Member generally would not know the identity of the counterparty to a Market Loan, the Loan Market and OCC would facilitate the payment of dividend equivalents between Market Loan Clearing Members. The Loan Market would be solely responsible for calculating the dividend equivalent amounts that each Market Loan Clearing Member is entitled to receive or obligated to pay. On the expected payment date, OCC would guarantee and effect such payments between Market Loan Clearing Members as instructed by the Loan Market, in each instance up to the amount for which the Corporation has collected margins from the responsible Market Loan Clearing Member(s) prior to the expected payment date. However, OCC would not be responsible for any errors in the Loan Market's calculations or instructions.

OCC would add non-cash dividends and distributions to the Loaned Stock and transfer them to the Lending Clearing Member upon termination of the Market Loan if OCC determines in its sole discretion that such transfer is legally permissible and can be made through the Depository. The Loan Market could also determine to fix a cash settlement value with respect to any non-cash dividends and/or distributions that are not added to the Loaned Stock, in which case the Loan Market would instruct OCC to effect collection and payment of such cash settlement. With respect to any other non-cash dividend or distribution, the Lending Clearing Member would receive the benefit of the dividend or distribution only if it recalls the Loaned Stock in time to receive such dividend or distribution directly.

Paragraph (b) of Rule 2206A would govern the periodic payments of rebates to Market Loan Clearing Members. As in the case of dividend equivalent payments, the Loan Market would be solely responsible for calculating the amount of rebate payments that each Market Loan Clearing Member is entitled to receive or obligated to pay. On the specified settlement date, OCC would guarantee and effect such payments and collections as instructed by the Loan Market, in each instance up to the amount for which the Corporation has collected margin from the responsible Market Loan Clearing Member(s) prior to the specified settlement date. Again, OCC would not be responsible for any errors in the Loan Market's calculations or instructions. Rebate payments would be paid on at least a monthly basis. If a Market Loan Clearing Member were to be suspended, OCC would have the discretion to accelerate settlement of accrued rebate payments with respect to such suspended Clearing Member.

*Correction of Erroneous Market Loans - Rule 2207A*

If a Market Loan Clearing Member were to believe that a Market Loan was executed on such Clearing Member's behalf in error or that a material term of the loan was erroneous, the remedy available to the Clearing Member would be to contact the relevant Loan Market to request correction. The decision to void a Market Loan would be in the Loan Market's sole discretion and would not be subject to review by OCC. Furthermore, interpretation .01 to Rule 2207A would clarify that in carrying out OCC's role with respect to Market Loans, OCC would be entitled to rely

on information provided by a Loan Market or the Depository and would not be liable to Clearing Members for any actions taken in reliance of such information.

Indemnification by Borrowing Clearing Member - Rule 2208A

Rule 2208A would require a Borrowing Clearing Member in respect of a Market Loan to indemnify, defend, and hold harmless OCC from any consequences resulting from the Borrowing Clearing Member's use of the Loaned Stock.

Termination of Market Loans - Rule 2209A

Rule 2209A would govern the different ways that a Market Loan may be terminated. In the case of a recall or a return that is the subject of paragraph (a) of Rule 2209A, the transaction would be submitted by the Loan Market to OCC and would be processed by OCC in basically the same manner as a new stock loan transaction. The Loan Market would distinguish a recall/return from a new stock loan transaction so that upon OCC's confirmation that a recall/return was settled by the Depository, OCC would extinguish the corresponding stock loan and stock borrow positions instead of creating new positions on its books.

If a recall fails to settle because the Borrowing Clearing Member fails to return the Loaned Stock within the timeframe specified in Rule 2209A, the relevant Loan Market would instruct an independent broker to initiate the "buy-in" process on the morning of the following stock loan business day. The broker would be instructed to purchase the Loaned Stock in a commercially reasonable manner as promptly as practicable (and in any event, at or prior to the time when a buy-in

would be required under applicable under applicable regulatory requirements). The buy-in would be for OCC's account and liability because of OCC's role as the principal to each Market Loan.

The buy-in procedures are intended to facilitate compliance by the Clearing Member with buy-in requirements under applicable rules of the Commission and self-regulatory organizations. These include requirements imposed by Rule 204T of Regulation SHO, which generally requires participants of a registered clearing agency to deliver securities on all long and short sales of equity securities by regular settlement date, and further requires participants of a registered clearing agency to immediately "close out" all fails to deliver at a registered clearing agency by borrowing or purchasing securities by no later than the beginning of regular trading on the settlement day following the regular settlement date; provided that, if the participant can demonstrate that its fail to deliver position was caused by a long sale, then such fail must be closed out by purchasing securities by the opening of regular trading on the third consecutive settlement day following the settlement date. In the event a Lending Clearing Member effects a long sale of Loaned Stock and initiates a recall, Rule 2209A requires that the stock be returned by the third stock loan business day—which would be sufficient time for the Lending Clearing Member to meet its settlement obligations on the long sale.<sup>7</sup> However, the failure of a Borrowing Clearing Member to return the stock in a timely manner could result in the Lending Clearing Member having a failure to

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<sup>7</sup> If the fail had been related to a short sale rather than a long sale, of course, Rule 2209A would not be implicated because the short seller would need to initiate a new stock borrow transaction. If the stock borrow transaction is effected through the Loan Market, it would ordinarily settle on the following business day. If the stock borrow

deliver that could trigger a close-out requirement under Rule 204T. The Lending Clearing Member would meet its Rule 204T close-out requirement through the relevant Loan Market instructing an independent broker to initiate the “buy-in” process on the morning of the following stock loan business day. The Loan Market is required to provide information concerning the buy-in to the Lending Clearing Member, so that the Lending Clearing Member will be able to demonstrate compliance with the Rule 204T close-out requirement. Similarly, the Loan Market is required to notify the Lending Clearing Member when the independent broker is unable to execute a buy-in, so that the Lending Clearing Member would be able to comply with the requirements of Rule 204T(b), which would restrict the Lending Clearing Member from accepting or effecting short sales in that security until the independent broker executed the buy-in, and that purchase settles. The ultimate responsibility for compliance with Rule 204T rests with the Clearing Member, and OCC would not be liable for any Clearing Member’s failure to comply with its obligations.

The bought-in Loaned Stock would ultimately be delivered to the Lending Clearing Member’s account at the Depository in exchange for the Collateral. Any difference between (i) the amount of the Collateral and (ii) the price paid on the buy-in plus any other costs, fees or interest incurred by the broker in connection with such buy-in and any penalties or charges that the Loan Market may assess against the Borrowing Clearing Member would be credited to or debited from the Borrowing Clearing Member’s designated bank account.

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transaction fails to settle, however, the result is simply that no stock borrow position is created at OCC and the



If a return fails to settle because the Lending Clearing Member fails to return the Collateral within the timeframe specified in Rule 2209A, the relevant Loan Market would instruct an independent broker to initiate the “sell-out” process on the morning of the following stock loan business day. The sell-out process is essentially the inverse of the buy-in process. The broker would be instructed to sell the Loaned Stock for OCC’s account and liability. The sale proceeds would ultimately be delivered to the Borrowing Clearing Member’s account at the Depository against delivery of the Loaned Stock. Any difference between (i) the sale proceeds and (ii) the amount of the Collateral plus any other costs, fees or interest incurred by the broker in connection with such sell-out, and any penalties or charges that the Loan Market may assess against the Lending Clearing Member would be credited to or collected from the Lending Clearing Member’s designated bank account.

Paragraph (c) of Rule 2009A would provide that OCC would have the authority to terminate Market Loans in circumstances where a Loan Market so directs OCC or where OCC deems such action warranted. In either case, OCC would give written notice to all affected Clearing Members specifying the date on which such termination would become effective. As with a recall or a return, if a Market Loan termination initiated by a Loan Market or OCC fails to settle by the specified time set forth in paragraph (c), the relevant Loan Market would instruct an

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Clearing Member would need to borrow or buy in the stock within the time frame required by Rule 204T.

independent broker to initiate the “buy-in” or “sell-out” process, as applicable, in order to complete the termination.

*Suspension of Market Loan Clearing Members - Rule 2210A and 2211A*

Under Rule 2010A, OCC would not accept any stock loans to which the suspended Clearing Member is a party as a Market Loan after the time at which the Clearing Member was suspended, and would instruct the Depository to unwind any such transaction. Open stock loan and stock borrows positions of the suspended Clearing Member would be liquidated in accordance with Rule 2011A by an independent broker designated by OCC for such purposes.

*Collection of Fees and Charges on Behalf of a Loan Market - Rule 209*

OCC proposes to amend paragraph (b) of Rule 209 so that OCC would have the authority to withdraw from a Market Clearing Member’s bank account the amount of any fees or charges that the Clearing Member owes to a Loan Market.

*Certain Conforming Changes in the By-Laws and Rules – Article XXI, Section 2 and 5; Rule 1103, 2201, 2202, 2204, 2205 and 2210.*

Sections 2 and 5 of Article XXI of the By-Laws and Rule 1103, 2201, 2202, 2204, 2205 and 2210 would be amended to conform to the new Market Loan rules as appropriate.

**D. Summary of Certain Provisions of the AQS Agreement**

In connection with providing clearing and settlement services to AQS, OCC will enter into the AQS Agreement, which is similar in form to clearing agreements that OCC has

entered into with futures markets. In addition to (i) defining each party's obligations in connection with the clearance and settlement of Market Loans, as discussed in Part B above, and (ii) identifying aspects of OCC's services that will be provided in accordance with the provisions of OCC's By-Laws and Rules, as discussed in Part C above, the AQS Agreement will set forth other terms and conditions that will govern the parties' relationship, including the following:

Regulatory Requirements

AQS will represent that (i) it will have obtained all necessary registrations, memberships, approvals or other consents that are required to have been obtained by it from any federal or state regulatory agencies or any self-regulatory organizations, (ii) it will have procedures (as amended from time to time, the "Market Procedures") that comply with the provisions of all applicable regulations and will have filed with the Commission the necessary information with respect to the Market Procedures, and (iii) it will have all requisite power and authority, whether arising under applicable federal or state law or the rules and regulations of any regulatory or self-regulatory organization to which AQS is subject, to enter into and perform its obligations under the AQS Agreement. OCC will make similar representations, and in addition will clarify that OCC's provision of clearing services in respect of Market Loans will depend on the Commission's approval of this proposed rule change.

AQS and OCC will each be required to notify the other party of any action taken by any regulatory body or agency that, in the judgment of the relevant party, has or will have a

material adverse effect on such party's performance of its obligations under the AQS Agreement.

Fees for Clearing Services

OCC will establish fee structures for the services it performs for Clearing Members consistent with the provisions of its By-Laws. Fees charged to subscribers of AQS for services performed by OCC under the AQS Agreement shall not be greater than the fees charged by OCC in respect of substantially similar services performed for other markets in connection with Market Loan transactions; provided that OCC may offer alternative fee structures to such markets so long as it offers the same alternatives to AQS on substantially the same terms and so long as the alternative fee structure provides for the equitable allocation of reasonable dues, fees, and other charges among Clearing Members.

Indemnification

AQS will indemnify and hold harmless OCC and each of its directors, officers, committee members, agents, employees and any person or entity who controls OCC (as the term "control" is defined in Rule 405 of the Securities Act of 1933, as amended) from and against any and all losses, damages, liabilities, judgments, claims, expenses and amounts incurred and/or paid in settlement (collectively referred to as "Losses") arising out of or based on (i) any violation or alleged violation by AQS of any of the terms of the AQS Agreement or (ii) any violation or alleged violation by AQS of any law (including patent infringement or other intellectual property law violation) or governmental regulation. OCC will indemnify and hold

harmless AQS and each of its directors, officers, committee members, agents, employees and any person or entity who controls the Market from and against any and all Losses arising out of or based on (i) any violation or alleged violation by OCC of any of the terms of the AQS Agreement, (ii) any alleged default by OCC in performing its obligations in accordance with its By-Laws and Rules in respect of any Market Loans it has accepted for clearing, or (iii) any violation or alleged violation by OCC of any law (including patent infringement or other intellectual property law violation) or governmental regulation. The indemnifications provided by each party will include indemnification against any Losses arising out of or based on any allegation that any termination of a Market Loan transaction initiated by the indemnifying party was wrongful.

Term and Termination

The AQS Agreement may be terminated (i) by either party at any time upon giving a specified number of days' prior written notice to the other party, (ii) by a party upon giving notice to the other party if the other party has breached in any material respect the provisions of the AQS Agreement, or (iii) by OCC upon giving notice to AQS if, among other grounds, AQS has ceased to effect stock loan transactions or OCC's By-Laws or Rules have ceased to be in effect in a material respect. From the time that any notice of termination is given or any event of termination occurs until such time as all stock loan and borrow positions resulting from Market Loans have been closed or transferred to an alternative clearing

organization, OCC and AQS will continue to provide all services and perform all of their respective obligations under the AQS Agreement and OCC's By-Laws and Rules to the extent necessary or appropriate to service open stock loan and borrow positions. Finally, in the event of a voluntary termination of the AQS Agreement, OCC will use reasonable efforts to effect transfer of the open positions to AQS' successor clearing organization subject to reasonable agreements with such successor clearing organization, AQS and/or Clearing Members whose positions are being transferred, as appropriate, that protect the interests of OCC.

Dispute Resolution

If a dispute arises between AQS and OCC relating to the clearing services in respect of Market Loans, the AQS Agreement will provide that senior officers of AQS and OCC will endeavor in good faith to resolve the dispute and to mitigate its deleterious effects and will confer with each other to those ends.

Certain Loan Market Obligations

Schedule B of the AQS Agreement sets forth certain specific services that the Loan Market is required to perform to facilitate the performance by OCC of its obligations under its By-Laws and Rules. With respect to such obligations, the AQS Agreement provides that the Loan Market will be bound by the provisions of OCC's By-Laws and Rules to the extent that they impose obligations on the Market.

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The proposed changes to OCC's Rules are consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934, as amended, because they are designed to promote the prompt and accurate clearance and settlement of stock loan transactions executed on an electronic marketplace, and to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. They accomplish these purposes expanding the number of securities lending transactions that will be cleared and settled by OCC, which, in turn, benefits OCC's Clearing Members and the industry by reducing the cost of credit, increasing operational efficiency, and providing stability through a central counterparty guarantee by applying many of the same rules and procedures to these transactions as OCC applies the Hedge Loan transactions. The proposed rule change is 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 specified in Section 19(b)(2) of the Securities Exchange Act of 1934.

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

OCC requests that the Commission approve this filing no later than January 23, 2009 in order to allow OCC to support the proposed launch of the AQS securities lending platform. OCC believes there is good cause for such accelerated effectiveness because of the benefits to the securities markets that AQS expects to provide through its marketplace. The AQS platform would provide subscribers the ability to effect stock loan transactions through a regulated securities lending marketplace that is expected to provide greater transparency and enhanced price discovery to the stock loan market. OCC believes that its role as the central counterparty to stock loan transactions effected through the AQS market would reduce systemic risk.



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

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

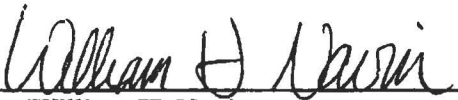
**Item 9. Exhibits**

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