



November 13, 2012

**VIA ELECTRONIC MAIL**

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

**Re: Rule Filing SR-OCC-2012-22 Rule Certification**

Dear Secretary Stawick:

Enclosed is a copy of the above-referenced rule filing, which The Options Clearing Corporation ("OCC") is submitting pursuant to the self-certification procedures of Commodity Futures Trading Commission (the "CFTC" or "Commission") Regulation 40.6. The date of implementation of the rule is the later of 10 business days following receipt of the rule filing by the CFTC hereof or the date the proposed rule is approved by the Securities and Exchange Commission (the "SEC") or otherwise becomes effective under the Securities Exchange Act of 1934 (the "Exchange Act"). This rule filing has been, or is concurrently being, submitted to the SEC under the Exchange Act. The text of the amended rule filing is set forth at Item 1 of the enclosed filing.

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

**Explanation and Analysis**

The purpose of the proposed rule change is to eliminate potential ambiguity as to OCC's right to use margin and other amounts credited to the Liquidating Settlement Account pursuant to Rule 1104 to settle mark-to-market payments arising from stock loan and borrow positions carried in the clearing member's customers' account even though such payments are required by OCC's Rules to be settled in the clearing member's firm account or its combined market makers' account. In addition, a proposed amendment to Rule 1104 would provide that any proceeds from stock loan and borrow positions carried in the customers' account could be applied only to obligations arising in such account as is the case with margin assets deposited in respect of that account.

### Background

OCC's By-Laws currently provide that stock loan and borrow positions (collectively, "stock loan positions") may be carried at OCC in any eligible account of a clearing member, including the firm, market-maker and customers' accounts. More specifically, under Section 5 of Articles XXI and XXIA of the By-Laws, and notwithstanding the provisions of Section 3 of Article VI of the By-Laws (requiring separation of firm and customer positions), clearing members have discretion as to which loan and borrow positions may be carried in which eligible accounts, subject only to the clearing member's general representations under Rules 2202(e) and 2202A(f) that the clearing member's participation in the lending and borrowing activity is in compliance with all applicable laws and regulations. However, Rules 2201(a) and 2201A(a) provide that a clearing member must designate either its firm account or its combined market-makers' account as the account to or from which all stock loan mark-to-market payments are to be made, regardless of the account in which particular loan and borrow positions may be held.

Rule 1104 generally provides that, upon suspension of a clearing member, OCC shall promptly liquidate, in the most orderly manner practicable, all margins deposited with OCC by such clearing member in all accounts (excluding securities held in a specific deposit or escrow deposit) and all of such clearing member's contributions to the clearing fund, subject to certain conditions. Under Rule 1104, in general, these and all other funds of the suspended clearing member subject to the control of OCC (except proceeds of segregated long positions, funds disposed of pursuant to Rules 1105 through 1107, and funds held in or payable to a segregated futures account) shall be credited by OCC to a special account, to be known as the Liquidating Settlement Account, in the name of the suspended clearing member, for the purposes specified in Chapter 11.

Under Rule 1104, therefore, in general, proceeds of all margin (other than margin held in segregated futures accounts) including margin in a clearing member's securities customers' account, are credited to the Liquidating Settlement Account. However, for purposes of administration of the liquidation, the margin does not lose its identity as being derived from the customers' account. Rules 2210 and 2210A (relating to the Stock Loan/Hedge Program and Market Loan Program, respectively) provide that net proceeds from, or amounts due in respect of, the termination of stock loan and borrow positions shall be credited to or withdrawn from the Liquidating Settlement Account. The Liquidating Settlement Account will include any mark-to-market payments received that day. In addition, Rule 1104 provides that the proceeds from the liquidation of securities, or from drawing on letters of credit, held as margin in a restricted lien account (such as the customers' account) may be withdrawn and applied to the closing out of pending transactions, open positions, and exercised or matured contracts in such accounts pursuant to Rules 1105, 1106 and 1107, respectively. To the extent that the proceeds derived from assets maintained in accounts subject to OCC's restricted lien exceed the proceeds used from such accounts for that purpose, such proceeds must be remitted by the Corporation to the suspended clearing member or its representative for distribution to the persons entitled thereto in accordance with applicable law.

### Description of Rule Change

For the avoidance of doubt, OCC proposes to insert an interpretation indicating that when mark-to-market payments are owed with respect to stock loan positions maintained in a clearing

member's customers' account, proceeds of margin and unsegregated long positions, and all other amounts credited to the Liquidating Settlement Account in respect of the customers' account, may be used to satisfy the mark-to-market obligations arising from the stock loan positions in such customers' account, even though such mark-to-market payments may settle in the clearing member's firm account or its combined market makers' account.

OCC's By-Laws clearly provide that stock loan positions may be included in the customers' account and that such positions will be margined in that account along with positions in options and other cleared contracts in the account. It would therefore be inconsistent to conclude that margin required under OCC's Rules to be deposited in the customers' account to margin stock loan positions cannot be used to settle mark-to-market payments in respect of those positions if the clearing member is suspended. The proposed rule changes are intended to eliminate any doubt in that regard.

In addition, as noted above, the liquidation rules for stock loan positions in Rules 2210 and 2210A provide that any net proceeds of closing out stock loan positions shall be credited to the Liquidating Settlement Account and that any net amounts payable in respect of such close-outs may be withdrawn from such account. However, Rule 1104 as currently drafted does not limit the use of proceeds of stock loan positions carried in a restricted lien account to obligations arising from that restricted lien account as it does in the case of proceeds from a restricted lien account that are credited pursuant to Rules 1105 through 1107. While such a restriction might be implied from the fact that the stock loan positions themselves are subject to a restricted lien and not a general lien pursuant to Section 3(e) of Article VI of the By-Laws, OCC believes that Rule 1104 should be amended to make this restriction explicit. Because margin and other proceeds from a restricted lien account that are credited to the Liquidating Settlement Account may be applied to mark-to-market payments owed in respect of stock loan positions in the restricted lien account, any proceeds of such positions should be subject to the same restriction applicable to proceeds from other positions in the restricted lien account that are credited to the Liquidating Settlement Account. They should be applied only to obligations arising from that restricted lien account. OCC therefore also proposes to amend Rule 1104 to include references to Rules 2210 and 2210A to clearly provide that margin and other proceeds from the customers' account that are credited to the Liquidating Settlement Account may be applied to amounts payable with respect to stock loan and borrow positions in the customers' account and that proceeds from stock loan and borrow positions in such customers' account may be applied only to obligations arising in that account.

The proposed rule change is designed to eliminate potential ambiguity as to OCC's right to use margin and other amounts credited to the Liquidating Settlement Account pursuant to Rule 1104 to settle mark-to-market payments arising from stock loan and borrow positions carried in the clearing member's customers' account and to provide that any proceeds from stock loan and borrow positions carried in the customers' account could be applied only to obligations arising in such account as is the case with margin assets deposited in respect of that account. This change is consistent with DCO Core Principle D (Risk Management), which, in relevant part, requires a DCO to ensure that it possesses the ability to manage the risks associated with discharging the responsibilities of the DCO through the use of appropriate tools and procedures. The proposed rule change is also consistent with DCO Core Principle G (Default Rules and Procedures), which, in relevant part, requires a DCO to adopt rules and procedures designed to allow for the efficient,

David Stawick  
November 13, 2012  
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fair and safe management of events during which clearing members become insolvent or default on the obligations of such clearing members to the DCO.

Opposing Views

No opposing views were expressed related to the rule amendments.

Notice of Pending Rule Certification

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

Certification

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

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

Sincerely,



Stephen Szarmack

Enclosure

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

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

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**Form 19b-4**

**Proposed Rule Change**  
**by**

**THE OPTIONS CLEARING CORPORATION**

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

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

The Options Clearing Corporation (“OCC” or the “Corporation”) proposes to make certain changes to Rule 1104 in order to eliminate potential ambiguity as to OCC’s right, in connection with the suspension of a clearing member, to use margin and other amounts credited to the Liquidating Settlement Account pursuant to Rule 1104, to settle mark-to-market payments arising from stock loan and borrow positions carried in the clearing member’s customers’ account, notwithstanding that such payments are required by OCC’s Rules to be settled in the clearing member’s firm account or its combined market makers’ account. In addition, OCC proposes to amend Rule 1104 to provide that any proceeds from stock loan and borrow positions carried in the customers’ account could be applied only to obligations arising in such account. Material proposed to be added to OCC’s Rules as currently in effect is underlined. Material proposed to be deleted is enclosed in bold brackets.

**THE OPTIONS CLEARING CORPORATION****RULES**

\* \* \*

**CHAPTER XI****Suspension of a Clearing Member**

\* \* \*

**Creation of a Liquidating Settlement Account**

**RULE 1104.** (a) Upon the suspension of a Clearing Member, the Corporation shall promptly liquidate, in the most orderly manner practicable, including, but not limited to, a private auction, all margins deposited with the Corporation by such Clearing Member in all accounts (excluding securities held in a specific deposit or escrow deposit) and all of such Clearing Member’s contributions to the Clearing Fund; provided, however, that (i) cash derived

from margin deposited in respect of segregated futures accounts (including any segregated futures professional account) shall not be commingled with any other cash, and may be applied only to the obligations of such segregated futures accounts, and (ii) if the issuer of a letter of credit deposited by such Clearing Member pursuant to Rule 604(c) shall agree in writing to extend the irrevocability of its commitment thereunder in a manner satisfactory to the Corporation, the Corporation may, in lieu of demanding immediate payment of the face amount of such letter of credit, but reserving its right thereto, demand only such amounts as it may from time to time deem necessary to meet anticipated disbursements from the Liquidating Settlement Accounts provided for below. These and all other funds of the suspended Clearing Member subject to the control of the Corporation, except proceeds of segregated long positions, funds disposed of pursuant to Rules 1105 through 1107, and funds held in or payable to a segregated futures account, shall be placed by the Corporation in a special account, to be known as the Liquidating Settlement Account, in the name of the suspended Clearing Member, for the purposes hereinafter specified. Funds held in or payable to segregated futures accounts, and only such funds, shall be placed by the Corporation in a separate special account, to be known as the Segregated Liquidating Settlement Account, in the name of the suspended Clearing Member, for the purposes herein specified. Funds obtained from the issuer of a letter of credit shall be disbursed only after all other funds contained in the Liquidating Settlement Account, with the exception of funds derived from the suspended Clearing Member's contributions to the Clearing Fund, have been exhausted, or in the case of a letter of credit indicating on its face that it is being deposited to serve as margin for a segregated futures account, only after all other funds contained in the Segregated Futures Liquidating Settlement Account, have been exhausted. In the event the sum of (i) the proceeds from any restricted letter of credit held in a restricted lien account, (ii) the proceeds from the closing out of positions and securities in a restricted lien account over which the Corporation has a restricted lien as provided in Article VI, Section 3 of the By-Laws, (iii) the proceeds from the closing out of exercised option contracts, matured futures and expired BOUNDS in such restricted lien account, and (iv) the proceeds from the liquidation of securities held as margin in such restricted lien account should exceed the amount withdrawn by the Corporation from the Liquidating Settlement Account pursuant to Rules 1105 through 1107 and Rules 2210 and 2210A in respect of transactions or positions in such restricted lien account, the excess shall be remitted by the Corporation to the suspended Clearing Member or its representative for distribution to the persons entitled thereto in accordance with applicable law. In the event the sum of (i) the proceeds from any restricted letter of credit held in segregated futures accounts, (ii) any variation payments received from closing out long or short positions in futures in segregated futures accounts, and (iii) the proceeds from the closing out of matured futures and long futures options and commodity options positions in segregated futures accounts should exceed the amount withdrawn by the Corporation from the Segregated Liquidating Settlement Account pursuant to Rules 1105 through 1107 in respect of transactions or positions in all segregated futures accounts, the excess shall be remitted by the Corporation to the suspended Clearing Member or its representative for distribution to the persons entitled thereto in accordance with applicable law. Notwithstanding the foregoing provisions of this rule, margin and all other funds of a suspended Clearing Member in respect of sets of X-M accounts (other than such Clearing Member's contributions to the Clearing Fund) shall be subject to Rule 707 and the applicable Participating CCO Agreement and not to this Rule.

(b) – (f) [No Change.]

*...Interpretations and Policies:*

.01 - .02 [No change.]

.03 [*proposed Interpretation & Policy .03 is pending approval as a part of File No. SR-OCC-2012-14*].

.04 For the avoidance of doubt, for purposes of this Chapter XI of the Rules, when mark-to-market payments are owed with respect to stock loan (borrow) positions maintained in a Clearing Member's customers' account, proceeds of margin and unsegregated long positions, and all other amounts credited to the Liquidating Settlement Account in respect of the customers' account, may be used to satisfy the mark-to-market obligations arising from the stock loan (borrow) positions in such customers' account, notwithstanding that such mark-to-market payments may settle in another account as provided for in Rules 2201(a) and 2201A(a).

\* \* \*

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

The proposed rule change was approved by the Board of Directors of OCC at a meeting held on July 24, 2012.

Questions regarding the proposed rule change should be addressed to Stephen Szarmack, Vice President and Associate General Counsel, at (312) 322-4802.

**Item 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

The purpose of the proposed rule change is to eliminate potential ambiguity as to OCC's right to use margin and other amounts credited to the Liquidating Settlement Account pursuant to Rule 1104 to settle mark-to-market payments arising from stock loan and borrow positions carried in the clearing member's customers' account even though such payments are required by OCC's Rules to be settled in the clearing member's firm account or its combined market makers' account. In addition, a proposed amendment to Rule 1104 would provide that any proceeds from stock loan and borrow positions carried in the customers' account could be



applied only to obligations arising in such account as is the case with margin assets deposited in respect of that account.

### **Background**

OCC's By-Laws currently provide that stock loan and borrow positions (collectively, "stock loan positions") may be carried at OCC in any eligible account of a clearing member, including the firm, market-maker and customers' accounts. More specifically, under Section 5 of Articles XXI and XXIA of the By-Laws, and notwithstanding the provisions of Section 3 of Article VI of the By-Laws (requiring separation of firm and customer positions), clearing members have discretion as to which loan and borrow positions may be carried in which eligible accounts, subject only to the clearing member's general representations under Rules 2202(e) and 2202A(f) that the clearing member's participation in the lending and borrowing activity is in compliance with all applicable laws and regulations. However, Rules 2201(a) and 2201A(a) provide that a clearing member must designate either its firm account or its combined market-makers' account as the account to or from which all stock loan mark-to-market payments are to be made, regardless of the account in which particular loan and borrow positions may be held.

Rule 1104 generally provides that, upon suspension of a clearing member, OCC shall promptly liquidate, in the most orderly manner practicable, all margins deposited with OCC by such clearing member in all accounts (excluding securities held in a specific deposit or escrow deposit) and all of such clearing member's contributions to the clearing fund, subject to certain conditions. Under Rule 1104, in general, these and all other funds of the suspended clearing member subject to the control of OCC (except proceeds of segregated long positions, funds disposed of pursuant to Rules 1105 through 1107, and funds held in or payable to a

segregated futures account) shall be credited by OCC to a special account, to be known as the Liquidating Settlement Account, in the name of the suspended clearing member, for the purposes specified in Chapter 11.

Under Rule 1104, therefore, in general, proceeds of all margin (other than margin held in segregated futures accounts) including margin in a clearing member's securities customers' account, are credited to the Liquidating Settlement Account. However, for purposes of administration of the liquidation, the margin does not lose its identity as being derived from the customers' account. Rules 2210 and 2210A (relating to the Stock Loan/Hedge Program and Market Loan Program, respectively) provide that net proceeds from, or amounts due in respect of, the termination of stock loan and borrow positions shall be credited to or withdrawn from the Liquidating Settlement Account. The Liquidating Settlement Account will include any mark-to-market payments received that day. In addition, Rule 1104 provides that the proceeds from the liquidation of securities, or from drawing on letters of credit, held as margin in a restricted lien account (such as the customers' account) may be withdrawn and applied to the closing out of pending transactions, open positions, and exercised or matured contracts in such accounts pursuant to Rules 1105, 1106 and 1107, respectively.<sup>1</sup> To the extent that the proceeds derived

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<sup>1</sup> The term "restricted lien account" is defined in Article I, Section 1 of OCC's By-Laws as follows: "any account of a Clearing Member with the Corporation over which the Corporation has a restricted lien with respect to specified assets (including any proceeds thereof) in such account." The term "restricted lien" is defined in Article I, Section 1 of OCC's By-Laws as follows: "a security interest of the Corporation in specified assets (including any proceeds thereof) in an account of a Clearing Member with the Corporation as security for the Clearing Member's obligations to the Corporation arising from such account or, to the extent so provided in the By-Laws or Rules, a specified group of accounts that includes such account including, without limitation, obligations in respect of all Exchange transactions effected through such account or group of accounts, short positions maintained in such account or group of accounts, and exercise notices assigned to such account or group of accounts."

from assets maintained in accounts subject to OCC's restricted lien exceed the proceeds used from such accounts for that purpose, such proceeds must be remitted by the Corporation to the suspended clearing member or its representative for distribution to the persons entitled thereto in accordance with applicable law.

**Description of Rule Change**

For the avoidance of doubt, OCC proposes to insert an interpretation indicating that when mark-to-market payments are owed with respect to stock loan positions maintained in a clearing member's customers' account, proceeds of margin and unsegregated long positions, and all other amounts credited to the Liquidating Settlement Account in respect of the customers' account, may be used to satisfy the mark-to-market obligations arising from the stock loan positions in such customers' account, even though such mark-to-market payments may settle in the clearing member's firm account or its combined market makers' account.

OCC's By-Laws clearly provide that stock loan positions may be included in the customers' account and that such positions will be margined in that account along with positions in options and other cleared contracts in the account. It would therefore be inconsistent to conclude that margin required under OCC's Rules to be deposited in the customers' account to margin stock loan positions cannot be used to settle mark-to-market payments in respect of those positions if the clearing member is suspended. The proposed rule changes are intended to eliminate any doubt in that regard.

In addition, as noted above, the liquidation rules for stock loan positions in Rules 2210 and 2210A provide that any net proceeds of closing out stock loan positions shall be credited to the Liquidating Settlement Account and that any net amounts payable in respect of such close-outs may be withdrawn from such account. However, Rule 1104 as currently drafted

does not limit the use of proceeds of stock loan positions carried in a restricted lien account to obligations arising from that restricted lien account as it does in the case of proceeds from a restricted lien account that are credited pursuant to Rules 1105 through 1107. While such a restriction might be implied from the fact that the stock loan positions themselves are subject to a restricted lien and not a general lien pursuant to Section 3(e) of Article VI of the By-Laws, OCC believes that Rule 1104 should be amended to make this restriction explicit. Because margin and other proceeds from a restricted lien account that are credited to the Liquidating Settlement Account may be applied to mark-to-market payments owed in respect of stock loan positions in the restricted lien account, any proceeds of such positions should be subject to the same restriction applicable to proceeds from other positions in the restricted lien account that are credited to the Liquidating Settlement Account. They should be applied only to obligations arising from that restricted lien account. OCC therefore also proposes to amend Rule 1104 to include references to Rules 2210 and 2210A to clearly provide that margin and other proceeds from the customers' account that are credited to the Liquidating Settlement Account may be applied to amounts payable with respect to stock loan and borrow positions in the customers' account and that proceeds from stock loan and borrow positions in such customers' account may be applied *only* to obligations arising in that account.

\* \* \*

The proposed changes are consistent with Section 17A of the Securities Exchange Act of 1934, as amended (the "Exchange Act"),<sup>2</sup> because they would help assure that the Rules of OCC are designed to safeguard securities and funds which are in the custody or control of the

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<sup>2</sup> 15 U.S.C. 78q-1

Corporation or for which it is responsible, and to protect investors and the public interest<sup>3</sup> by eliminating potential ambiguity as to OCC's right, in connection with the suspension of a clearing member, to use the collateral held in a clearing member's customers' account to settle mark-to-market payments arising from stock loan and borrow positions carried in the clearing member's customers' account, notwithstanding that such payments are required by OCC's Rules to be settled in the clearing member's firm account or its combined market makers' account.

The proposed changes are not inconsistent with the existing rules of OCC.

**Item 4. Self-Regulatory Organization's Statement on Burden on Competition**

OCC believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

**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 Exchange Act.<sup>4</sup>

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

Not applicable.

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<sup>3</sup> 15 U.S.C. 78q-1(b)(3)(F)

<sup>4</sup> 15 U.S.C. 78s (b)(2)

**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. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**Item 11. Exhibits**

Exhibit 1 Completed notice of the proposed rule change for publication in the Federal Register.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, The Options Clearing Corporation has caused this filing to be signed on its behalf by the undersigned hereunto duly authorized.

**THE OPTIONS CLEARING CORPORATION**

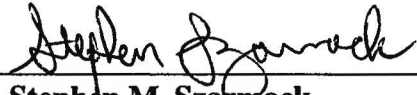
By:   
\_\_\_\_\_  
**Stephen M. Szarmack**  
**Vice President and**  
**Associate General Counsel**

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-\_\_\_\_\_; File No. SR-OCC-2012-22)

November 13, 2012

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change to Clarify Use of Certain Amounts Credited to the Liquidating Settlement Account to Settle Mark-to-Market Payments Arising from Stock Loan and Borrow Positions Carried in the Customers' Account.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder notice is hereby given that on November 13, 2012, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to make certain changes to Rule 1104 in order to eliminate potential ambiguity as to OCC's right, in connection with the suspension of a clearing member, to use margin and other amounts credited to the Liquidating Settlement Account pursuant to Rule 1104, to settle mark-to-market payments arising from stock loan and borrow positions carried in the clearing member's customers' account, notwithstanding that such payments are required by OCC's Rules to be settled in the clearing member's firm account or its combined market makers' account. In addition, OCC proposes to amend Rule 1104 to provide that any proceeds from stock loan and borrow positions carried in the customers' account could be applied only to

<sup>1</sup> 15 U.S.C. 78s(b)(1)

<sup>2</sup> 15 U.S.C. 240.19b-4



obligations arising in such account. Material proposed to be added to OCC's Rules as currently in effect is underlined. Material proposed to be deleted is enclosed in bold brackets.

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

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

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule changes is to eliminate potential ambiguity as to OCC's right to use margin and other amounts credited to the Liquidating Settlement Account pursuant to Rule 1104 to settle mark-to-market payments arising from stock loan and borrow positions carried in the clearing member's customers' account even though such payments are required by OCC's Rules to be settled in the clearing member's firm account or its combined market makers' account. In addition, a proposed amendment to Rule 1104 would provide that any proceeds from stock loan and borrow positions carried in the customers' account could be applied only to obligations arising in such account as is the case with margin assets deposited in respect of that account.

**Background**

OCC's By-Laws currently provide that stock loan and borrow positions (collectively, "stock loan positions") may be carried at OCC in any eligible account of a clearing member, including the firm, market-maker and customers' accounts. More specifically, under Section 5

of Articles XXI and XXIA of the By-Laws, and notwithstanding the provisions of Section 3 of Article VI of the By-Laws (requiring separation of firm and customer positions), clearing members have discretion as to which loan and borrow positions may be carried in which eligible accounts, subject only to the clearing member's general representations under Rules 2202(e) and 2202A(f) that the clearing member's participation in the lending and borrowing activity is in compliance with all applicable laws and regulations. However, Rules 2201(a) and 2201A(a) provide that a clearing member must designate either its firm account or its combined market-makers' account as the account to or from which all stock loan mark-to-market payments are to be made, regardless of the account in which particular loan and borrow positions may be held.

Rule 1104 generally provides that, upon suspension of a clearing member, OCC shall promptly liquidate, in the most orderly manner practicable, all margins deposited with OCC by such clearing member in all accounts (excluding securities held in a specific deposit or escrow deposit) and all of such clearing member's contributions to the clearing fund, subject to certain conditions. Under Rule 1104, in general, these and all other funds of the suspended clearing member subject to the control of OCC (except proceeds of segregated long positions, funds disposed of pursuant to Rules 1105 through 1107, and funds held in or payable to a segregated futures account) shall be credited by OCC to a special account, to be known as the Liquidating Settlement Account, in the name of the suspended clearing member, for the purposes specified in Chapter 11.

Under Rule 1104, therefore, in general, proceeds of all margin (other than margin held in segregated futures accounts) including margin in a clearing member's securities customers' account, are credited to the Liquidating Settlement Account. However, for purposes of administration of the liquidation, the margin does not lose its identity as being derived from the

customers' account. Rules 2210 and 2210A (relating to the Stock Loan/Hedge Program and Market Loan Program, respectively) provide that net proceeds from, or amounts due in respect of, the termination of stock loan and borrow positions shall be credited to or withdrawn from the Liquidating Settlement Account. The Liquidating Settlement Account will include any mark-to-market payments received that day. In addition, Rule 1104 provides that the proceeds from the liquidation of securities, or from drawing on letters of credit, held as margin in a restricted lien account (such as the customers' account) may be withdrawn and applied to the closing out of pending transactions, open positions, and exercised or matured contracts in such accounts pursuant to Rules 1105, 1106 and 1107, respectively.<sup>3</sup> To the extent that the proceeds derived from assets maintained in accounts subject to OCC's restricted lien exceed the proceeds used from such accounts for that purpose, such proceeds must be remitted by the Corporation to the suspended clearing member or its representative for distribution to the persons entitled thereto in accordance with applicable law.

#### **Description of Rule Change**

For the avoidance of doubt, OCC proposes to insert an interpretation indicating that when mark-to-market payments are owed with respect to stock loan positions maintained in a clearing

<sup>3</sup> The term "restricted lien account" is defined in Article I, Section 1 of OCC's By-Laws as follows: "any account of a Clearing Member with the Corporation over which the Corporation has a restricted lien with respect to specified assets (including any proceeds thereof) in such account." The term "restricted lien" is defined in Article I, Section 1 of OCC's By-Laws as follows: "a security interest of the Corporation in specified assets (including any proceeds thereof) in an account of a Clearing Member with the Corporation as security for the Clearing Member's obligations to the Corporation arising from such account or, to the extent so provided in the By-Laws or Rules, a specified group of accounts that includes such account including, without limitation, obligations in respect of all Exchange transactions effected through such account or group of accounts, short positions maintained in such account or group of accounts, and exercise notices assigned to such account or group of accounts."

member's customers' account, proceeds of margin and unsegregated long positions, and all other amounts credited to the Liquidating Settlement Account in respect of the customers' account, may be used to satisfy the mark-to-market obligations arising from the stock loan positions in such customers' account, even though such mark-to-market payments may settle in the clearing member's firm account or its combined market makers' account.

OCC's By-Laws clearly provide that stock loan positions may be included in the customers' account and that such positions will be margined in that account along with positions in options and other cleared contracts in the account. It would therefore be inconsistent to conclude that margin required under OCC's Rules to be deposited in the customers' account to margin stock loan positions cannot be used to settle mark-to-market payments in respect of those positions if the clearing member is suspended. The proposed rule changes are intended to eliminate any doubt in that regard.

In addition, as noted above, the liquidation rules for stock loan positions in Rules 2210 and 2210A provide that any net proceeds of closing out stock loan positions shall be credited to the Liquidating Settlement Account and that any net amounts payable in respect of such close-outs may be withdrawn from such account. However, Rule 1104 as currently drafted does not limit the use of proceeds of stock loan positions carried in a restricted lien account to obligations arising from that restricted lien account as it does in the case of proceeds from a restricted lien account that are credited pursuant to Rules 1105 through 1107. While such a restriction might be implied from the fact that the stock loan positions themselves are subject to a restricted lien and not a general lien pursuant to Section 3(e) of Article VI of the By-Laws, OCC believes that Rule 1104 should be amended to make this restriction explicit. Because margin and other proceeds from a restricted lien account that are credited to the Liquidating Settlement Account may be

applied to mark-to-market payments owed in respect of stock loan positions in the restricted lien account, any proceeds of such positions should be subject to the same restriction applicable to proceeds from other positions in the restricted lien account that are credited to the Liquidating Settlement Account. They should be applied only to obligations arising from that restricted lien account. OCC therefore also proposes to amend Rule 1104 to include references to Rules 2210 and 2210A to clearly provide that margin and other proceeds from the customers' account that are credited to the Liquidating Settlement Account may be applied to amounts payable with respect to stock loan and borrow positions in the customers' account and that proceeds from stock loan and borrow positions in such customers' account may be applied *only* to obligations arising in that account.

\* \* \*

The proposed changes are consistent with Section 17A of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), because they would help assure that the Rules of OCC are designed to safeguard securities and funds which are in the custody or control of the Corporation or for which it is responsible, and to protect investors and the public interest by eliminating potential ambiguity as to OCC's right, in connection with the suspension of a clearing member, to use the collateral held in a clearing member's customers' account to settle mark-to-market payments arising from stock loan and borrow positions carried in the clearing member's customers' account, notwithstanding that such payments are required by OCC's Rules to be settled in the clearing member's firm account or its combined market makers' account. The proposed changes are not inconsistent with the existing rules of OCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2012-22 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2012-22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street, N.E., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at <http://www.theocc.com/about/publications/bylaws.jsp>

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-OCC-2012-22 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated Authority.<sup>4</sup>

Kevin M. O'Neill  
Deputy Secretary

Action as set forth recommended herein  
APPROVED pursuant to authority delegated by  
the Commission under Public Law 87-592.  
For: Division of Trading and Markets

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

<sup>4</sup> CFR 200.3-3(a)(12)