Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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–NYSEALTR–2008–06 and should be submitted on or before December 29, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act [9] in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Commission notes that the proposal would retroactively apply the RSP to cure a lapse that occurred in the program from October 1, 2008 to November 13, 2008, but would not introduce any changes to the RSP program.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that it previously approved a similar proposal by the Exchange to retroactively cure an earlier lapse in the Exchange's RSP program.[10] The previous retroactive proposal was subject to the full comment period and did not generate any comments. Since this proposal is substantively the same as the previous retroactive proposal and in light of the hardship that the Exchange states members may face on account of the lapse of the RSP, the Commission believes that there is good cause to approve the proposal on an accelerated basis.

[8] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* Securities Exchange Act Release No. 57794 (May 7, 2008), 73 FR 27582 (May 13, 2008) (SR–Amex–2008–34) (retroactively extending RSP from January 1, 2008 through March 17, 2008).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSEALTR–2008–06) is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–28955 Filed 12–5–08; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59036; File No. SR–OCC–2008–06]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Stock Loan/Hedge Program

December 1, 2008.

I. Introduction

On February 25, 2008, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') and on October 7, 2008, amended proposed rule change File No. SR–OCC–2008–06 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on November 17, 2008.[2] No comment letters have been received to date. This order approves the proposed rule change on an accelerated basis.

II. Description

OCC has decided to take certain steps to provide for the continued growth and development of its Stock Loan/Hedge Program (''Program''). These include (1) elimination of the ability of clearing members to carry stock loan and borrow positions without depositing risk margin and (2) adjusting the amount of required risk margin where stock loan collateral provided by the borrower to the lender exceeds the value of the borrowed stock.

Background and General Description of the Proposed Rule Change

The Program is provided for in Article XXI of OCC's By-Laws and Chapter XXII of the Rules. It provides a means for OCC clearing members to submit certain stock loan/borrow transactions (''stock loan transactions'') to OCC for clearance. The stock and the stock loan collateral move through the facilities of The Depository Trust Company from the lending clearing member (''lender'') to the borrowing clearing member (''borrower''), and vice versa when the stock is returned, in the same way that such transactions are ordinarily effected. Where the stock loan transaction is submitted to OCC for clearance, however, OCC is substituted as the lender to the borrower and the borrower to the lender. Thereafter, OCC guarantees performance of the stock loan transaction with respect to delivery and return of stock and collateral and the making of daily mark-to-market payments between the lender and borrower, which are effected through OCC's cash settlement system.

One advantage of submitting stock loan transactions to OCC is that the stock loan and borrow positions then reside in the clearing member's options accounts at OCC and to the extent that they offset the risk of options positions carried in the same account, may reduce the clearing member's margin requirement in the account. OCC's risk is, in turn, reduced by having the benefit of the hedge. Nevertheless, OCC currently permits qualified clearing members to elect to submit stock loan and borrow transactions to OCC on a ''margin ineligible basis,'' meaning that the positions are excluded from OCC's margin calculations for the account containing those positions. Margin-ineligible stock loan and borrow positions do not reduce the margin requirement for the account to reflect any offsetting value they might have, and OCC does not collect additional margin to reflect the risk of those positions. The election is made by each clearing member on an account-by-account basis so that all stock loan and borrow positions in a particular account are carried on a margin ineligible basis or none are. In order to carry stock loan and borrow positions on a margin ineligible basis, a clearing member must meet heightened standards of creditworthiness as set forth in Interpretation and Policy .06 under Section 1 of Article V of OCC's By-Laws.

While OCC believes that the current credit-based risk management approach has been adequate to date given historical Program activity levels, OCC also believes that a more conservative approach is warranted to provide for further growth of the Program and greater market volatility. OCC therefore seeks to better manage the market risk resulting from open stock loan and

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 58901 (November 5, 2008), 73 FR 67918.

borrow positions by applying its standard margining approach to all such positions.

Another potential exposure that OCC seeks to address arises from the stock loan market practice of requiring the borrower to overcollateralize a position by giving the lender cash collateral equal to 102% of the position's current market value. OCC's rules provide that OCC's guarantee of Program transactions extends to the full value of the collateral exchanged as part of a stock loan transaction. Therefore, if a lender were to fail, even if the stock could be sold out at 100% of the marking price, the borrower would be left with a 2% deficiency for which OCC would be liable. Managing this potential exposure will be accomplished by (a) an additional margin charge to lenders executing stock loans at 102% in an amount equal to the 2% excess collateral and (b) borrowers receiving a margin credit in an equal amount. These new margin charges/credits are independent of and in addition to the risk margin determined by the ''STANS'' margining system that will be collected and maintained from both lenders and borrowers.

In connection with the submission of this filing, OCC has confirmed with the Commission staff that the proposed rule change would not have adverse consequences to clearing members under Rule 15c3–1, the Commission's net capital rule.[3] Specifically, where stock loan/borrow transactions are submitted to OCC for clearance through the Program, any additional amount of margin required to be deposited with OCC as a result of such transactions shall be treated the same as any other portion of the OCC margin deposit and therefore shall not constitute an unsecured receivable and shall not be required to be deducted from net capital.

In order to minimize any potential disruptive impact associated with these changes in the margin treatment of stock loan and borrow positions, OCC will utilize a two-step implementation plan. There will be a one-month grace period (beginning from the date of Commission approval of this rule filing) before the changes are applied to any positions. For the next two months, all new positions must be submitted on a margin-eligible basis and will be subject to the overcollateralization provisions, but positions that were carried on a margin-ineligible basis as of the date of the approval order will not be required to be margined or subject to the overcollateralization provisions. After the end of that initial three-month period, all stock loan and borrow positions in all accounts will be carried on a margin-eligible basis and will be subject to the overcollateralization provisions regardless of when the positions were established.

Rule Amendments Applicable to Changes in the Program

OCC proposes the following amendments to its Rules to achieve the above-referenced initiative and accommodate and facilitate the continued growth and development of the Program.

1. Margin Requirements—Rule 601

OCC will amend Rule 601(e) to eliminate its current category of ''margin-ineligible'' accounts and instead will apply its standard margining approach to all Program positions using its ''STANS'' system. This change will become effective three months following the date of the Commission's order approving this rule filing. In addition, a new interpretation .06 will be added to Rule 601 setting forth the additional margin charges and credits and the implementation schedule applicable to stock loan and borrow positions that have collateral set at 102%.

2. Instructions to the Corporation—Rule 2201

Rule 2201(a) will be amended to provide that with respect to standing instructions that clearing members provide to OCC, the requirement to notify OCC of the fact that the clearing member is approved to maintain stock loan positions and stock borrow positions in its accounts on a non-margined basis and the account or accounts that are to be margin-ineligible shall become inapplicable three months from the date of this order. After that time, OCC will have eliminated the ability to carry any stock loan or borrow positions on a ''margin-ineligible'' basis.

3. Initiation of Stock Loans—Rule 2202

Rule 2202(f) is being amended to specify that one month after the date of this order a member shall not be able to submit new stock loan transactions to OCC for clearance in a margin-ineligible account.

III. Discussion

Section 19(b)(2)(B) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[4] The proposed rule change eliminates the ability of members to carry stock loan/borrow positions on a ''margin ineligible'' basis which should enhance OCC's ability to assure that it has collected sufficient margin from its members in relation to such members' Program activity. This approach enhances OCC's ability to manage the risk of a clearing member's Program activity in relation to its general clearance and settlement activities and should better enable OCC to protect itself and its members from potential losses associated with the Program. The addition of implementation period should alleviate any potential disruptive effects for members in connection with the proposal. Accordingly, the Commission finds that the proposed rule change is designed to assure the safeguarding of securities and funds which are in OCC's custody or control or for which OCC is responsible.

OCC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after publication of notice and prior to the expiration of the comment period because such approval will permit OCC to implement a risk-reduction proposal without unnecessary delay.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.[5]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2008–06) be and hereby is approved on an accelerated basis.

[3] 17 CFR 240.15c–3–1.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] In approving the proposed rule changes, the Commission considered the proposals' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59031; File No. SR–SCCP–2008–02]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Collection of Financial Industry Regulatory Authority Section 3 Regulatory Fees

December 1, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 3, 2008, Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by SCCP. SCCP filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act[2] and Rule 19b–4(f)(2) thereunder[3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

SCCP proposes to amend the SCCP fee schedule to accommodate the collection of fees by the Financial Industry Regulatory Authority (''FINRA'')[4] pursuant to Section 3 of Schedule A to the FINRA By-Laws (''Section 3 Fees'') from certain SCCP Margin Members that are also FINRA members (''Joint Members'') through an agreement (''Agreement'') that will be entered into among SCCP, FINRA and The NASDAQ OMX Group, Inc. (''NASDAQ'').

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(i).

[3] 17 CFR 240.19b–4(f)(1).

[4] FINRA is a national securities association pursuant to 15 U.S.C. 78o–3.

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

In its filing with the Commission, SCCP 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. SCCP has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[5]

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

1. Purpose

The purpose of the proposed rule change is to amend the SCCP fee schedule to allow SCCP to collect Section 3 Fees from the Joint Members. Rule 31[6] under Section 31 of the Act[7] requires national securities associations and national securities exchanges to pay transaction fees (''Section 31 Fees'') to the Commission that are designed to recover the costs related to the government's supervision and regulation of the securities markets and security professionals. Currently SCCP members submit transactions to SCCP for clearance of equity trades executed through XLE, which is the equity trading system of NASDAQ OMX PHLX, Inc., (''PHLX''). Because all SCCP members' transactions executed on XLE must be submitted to SCCP for trade recording and confirmation,[8] SCCP creates and transmits to PHLX a monthly billing file of the Section 31 Fees for the SCCP members based on the ''covered sales'' executed through PHLX XLE.[9] As a result of the acquisition of PHLX by NASDAQ,[10] XLE will cease operations as of October 24, 2008.[11] Because certain SCCP Members who clear through SCCP will no longer be able to use XLE, they have decided to become members of FINRA. FINRA obtains the funds used to pay Section 31 Fees from its membership in accordance with Section 3 of Schedule A to the FINRA By-Laws. FINRA's Section 3 Fees apply to ''covered sales'' transactions effected otherwise than on a national securities exchange. FINRA members are required to report transactions subject to Section 3 Fees to FINRA in an automated manner using FINRA facilities, including among others, the FINRA/NASDAQ Trade Reporting Facility (''FINRA/NASDAQ TRF'').[12] FINRA uses the transaction data reported to its automated facilities to bill member firms at the self-clearing and clearing firm level. However, SCCP is not a member firm of FINRA. Therefore, SCCP, FINRA and NASDAQ will enter into the Agreement allowing FINRA to obtain Section 3 fees from certain Joint Members by debiting SCCP's omnibus account at the National Securities Clearing Corporation (''NSCC'') on a monthly basis for the aggregate amount of covered sales reported to the FINRA/NASDAQ TRF by such Joint Members. Because the Section 3 Fees are ultimately obligations of the Joint Member and not SCCP, the proposed rule filing will allow SCCP to recover the Section 3 Fees obtained by FINRA from SCCP's NSCC omnibus account directly from the Joint Member based on the transaction data reported to the FINRA/NASDAQ TRF.

2. Statutory Basis

SCCP believes that its proposal is consistent with Section 17A of the Act[13] in general, and with Section 17A(b)(3)(D) of the Act,[14] which requires that the rules of a registered clearing agency provide for the equitable allocation of reasonable fees and other charges among its participants. The filing will allow SCCP to provide a mechanism for collecting and remitting to FINRA the Section 3 Fees that FINRA charges to Joint Members.

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

SCCP does not believe that the proposed rule change will impose any burden on competition not necessary or

[5] The Commission has modified the text of the summaries prepared by SCCP.

[6] 17 CFR 240.31.

[7] 15 U.S.C. 7ee.

[8] *See* SCCP Rule 6, Trade Recording and Confirmation of Transactions.

[9] ''Covered sales'' means a sale of a security, other than an exempt sale or a sale of a security future, occurring on a national securities exchange or by or through any member of a national securities association otherwise than on a national securities exchange. 17 CFR 31(6).

[10] *See* Securities Exchange Act Release Nos. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) [SR–Phlx–2008–31]; 58180 (July 17, 2008), 73 FR 42890 (July 23, 2008) [SR–SCCP–2008–01]; and 58183 (July 17, 2008), 73 FR 42850 (July 23, 2008) [SR–NASDAQ–2008–035].

[11] *See* Securities Exchange Act Release No. 58613 (September 22, 2008), 73 FR 57181 (October 1, 2008) [SR–Phlx–2008–65].

[12] *See generally* Securities Exchange Act Release No. 53977 (June 12, 2006), 71 FR 34976 (June 16, 2006) [SR–NASD–2006–055]. Also, in limited instances FINRA members may report trades to FINRA using Form T.

[13] 15 U.S.C. 78q–1.

[14] 15 U.S.C. 78q–1(b)(3)(D).