



THE OPTIONS CLEARING CORPORATION

#27649

[Back to Infomemo Search](#)

DATE: SEPTEMBER 2, 2010

**SUBJECT: Amendment to Adjustment Policy for Cash Dividends
Effective date: February 1, 2012**

The Securities and Exchange Commission has approved an amendment to Interpretation .01 to Article VI, Section 11(a) of OCC's By-Laws. Under that Interpretation, cash dividends or distributions of an issuer which are deemed by the Securities Committee to be non-ordinary will usually occasion an adjustment to the terms of listed stock options. Under the amendment, the Securities Committee will be allowed under certain conditions to cease adjusting for recurring cash dividends previously deemed to be non-ordinary dividends.

The amendment was prompted by a series of cash dividends declared by Diamond Offshore Corporation (DO) and by associated dividends declared by Oil Service HLDRS Trust (OIH) which contains DO as a component security. DO characterized these dividends as "special" and differentiated them from the company's "regular" cash dividends. Initially, the Securities Committee deemed these "special" dividends to be non-ordinary under Interpretation .01, and appropriately adjusted listed options in response. Since Interpretation .01, Section 11A, was revised effective February 1, 2009, DO and OIH options have been adjusted for seven successive quarterly "special" dividends. Notwithstanding that these dividends were characterized by DO as "special" dividends and clearly differentiated from the company's "regular" dividends, OCC and the options exchanges have received strong feedback from investors that such dividends have been declared so consistently, and thereby have achieved such predictability, that they should no longer be considered "non-ordinary" for adjustment purposes.

The amended Interpretation .01, Section 11A, enumerates factors that the Securities Committee may take into account in determining whether a dividend is "ordinary." Importantly, it allows the Securities Committee to re-classify as "ordinary" dividends previously deemed "non-ordinary". The conditions under which this may occur are as follows: (i) the issuer discloses that it intends to pay such dividends or distributions on a quarterly or other regular basis, (ii) the issuer has paid such dividends or distributions for four or more consecutive months or quarters or two or more years after the initial payment, whether or not the amounts paid were the same from period to period, or (iii) the Securities Committee determines for other reasons that the issuer has a policy or practice of paying such dividends or distributions on a quarterly or other regular basis.

The amended Interpretation allowing for such re-classification will become **effective February 1, 2012**. Although the amended Interpretation .01 allows the Securities Committee to re-classify as “ordinary” dividends previously deemed “non-ordinary”, any decision to do so would be made on a case by case basis and appropriate advance notice would be given. Furthermore, although the amended Interpretation was prompted by dividends declared by DO and OIH, the Securities Committee has **not** made any decision to cease adjusting for any given dividend declared by these or any other issuers. Such a decision, if and when made, would not occur before February 1, 2012.

See also OCC Information Memo **27648** for examples of how the new Interpretation may be implemented.

The amended Interpretation .01 reads as follows (new language underlined):

.01

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

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

For questions regarding this memo, call 1-88-OPTIONS or email options@theocc.com.