

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65338; File No. SR-OCC-2011-12)

September 14, 2011

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing of Proposed Rule Change to Adopt Fitness Standards for Directors, Clearing Members, and Others

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> notice is hereby given that on August 31, 2011, The Options Clearing Corporation (“OCC”) 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 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

The purpose of the proposed rule change is to established fitness standards for directors, clearing members, and others.

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.

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

<sup>2</sup> 17 CFR 240.19b-4.

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

The purpose of this proposed rule change is to facilitate compliance by OCC with new core principles ("Core Principles") applicable to derivatives clearing organizations ("DCOs") that are set forth in the CEA, as amended by the Dodd-Frank Act. In particular, new DCO Core Principle O requires DCOs to establish fitness standards for directors, clearing members and certain other individuals.

**Background**

The Core Principles for DCOs are set forth in the CEA and consist of a number of governing principles to which a DCO is required to adhere. OCC is registered as a DCO with the Commodity Futures Trading Commission (the "CFTC") under Section 5b of the CEA, and clears commodity futures and commodity options traded on five futures exchanges subject to the CFTC's jurisdiction. Title VII of the Dodd-Frank Act amended the CEA to expand existing Core Principles and to add certain new Core Principles. The applicable Dodd-Frank amendments to the CEA become effective July 16, 2011. In January 2011, the CFTC published proposed rules (the "Proposed Rules") to implement the Core Principles, as amended and expanded by the Dodd Frank Act. The Proposed Rules propose certain minimum criteria for complying with the Core Principles, and propose certain clarifications of the more ambiguous provisions of the Core Principles. The Proposed Rules have not been adopted and will not be effective until 60 days following the date on which the CFTC publishes final rules implementing the Core Principles.

Core Principle O provides that each DCO must: (i) establish governance arrangements that are transparent (I) to fulfill public interest requirements and (II) to permit the consideration

of the views of both owners and participants, and (ii) establish and enforce appropriate fitness standards for (I) directors, (II) members of any disciplinary committee, (III) members of the DCO, (IV) any other individual or entity with direct access to the settlement or clearing activities of the DCO, and (V) any party affiliated with any of the above. OCC's existing governance arrangements satisfy the transparency requirements of subparagraph (i) of Core Principle O. OCC is proposing to adopt the Fitness Standards in order to assure compliance with subparagraph (ii) of Core Principle O.

### **Description of Proposed Fitness Standards**

The proposed Fitness Standards, which are attached as Exhibit 5 to this rule filing, comply with Core Principle O by establishing minimum standards for directors and clearing members, as well as affiliates of such directors and clearing members.<sup>3</sup> The proposed Fitness Standards are generally similar to fitness standards adopted by the Depository Trust and Clearing Corporation.

The Fitness Standards incorporate the Proposed Rule's minimum fitness standards for directors and clearing members, including the bases for refusal to register a person under Section 8a(2) of the CEA and, for directors only, the absence of a significant history of serious disciplinary offences, such as those that would be disqualifying under Section 1.63 of the CFTC's regulations. The Fitness Standards do not establish criteria for members of the disciplinary committee or for persons "with direct access to the settlement or clearing activities" of OCC ("Access Persons"). In OCC's case, all members of disciplinary committees<sup>4</sup> are directors of the Corporation and will be subject to the Fitness Standards as such. With respect to

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<sup>3</sup> Pursuant to a conversation among OCC, the Commission and the CFTC, the CFTC has indicated that the proposed rule change may become effective after July 16, 2011 without impacting OCC's status as a DCO.

<sup>4</sup> OCC has no standing disciplinary committee. Disciplinary committees are formed on an ad hoc basis. See OCC Rule 1202(a).

Access Persons, neither the CEA nor the Proposed Rules provide any explicit guidance as to the persons intended to be included in the phrase “any other individual or entity with direct access to the settlement or clearing activities of the [DCO].” Similarly, the term “direct access” is not defined in the CEA or the Proposed Rules. However, Core Principle O is closely modeled on existing designated contract market (“DCM”) Core Principle 14, which also requires that fitness standards be established for directors, members and “any other persons with direct access to the facility.” The CFTC has previously issued guidance on DCM Core Principle 14 and interpreted “persons with direct access to the facility” to include “non-member market participants who are not intermediated and do not have [member] privileges, obligations, responsibilities or disciplinary authority.” This interpretation suggests that “access” is intended to mean the type of access that a member would have. OCC believes that by analogy “persons with direct access to the settlement or clearing activities” of a DCO, as used in Core Principle O, is intended to refer to persons with access to submit transactions for clearing or to give instructions to OCC regarding accounts or transactions or otherwise have access to the clearing system in a manner similar to the access that a Clearing Member would have. OCC also does not read “any other individual or entity with direct access to the settlement or clearing activities of the [DCO]” to include OCC employees or service providers such as settlement banks. Accordingly, OCC believes that there are presently no persons with “direct access” to the settlement and clearing activities of OCC other than clearing members.

### **Proposed By-Law Changes**

Article III (Board of Directors) and Article V (Clearing Members) set forth qualifications for directors and clearing members, respectively. The Interpretations and Policies under the

appropriate sections of both Articles are being amended to incorporate the applicable Fitness Standards by reference.

OCC believes that the proposed changes to its By-Laws and Rules are consistent with the purposes and requirements of Section 17A of the Exchange Act, because they are designed to permit OCC to perform clearing services for products that are subject to the jurisdiction of the CFTC without adversely affecting OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of securities investors and the public interest. The proposed rule change is not inconsistent with any rules of OCC.

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

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

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

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

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

Within 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, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commissions 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-2011-12 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-2011-12. 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, D.C. 20549, on official business days between the hours of 10:00 a.m. and 3:00 pm. Copies of such filings will also be available for inspection and copying at the principal office of OCC and on OCC's website at [http://www.optionsclearing.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_11\\_12.pdf](http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_11_12.pdf).

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-2011-12 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>5</sup>

Elizabeth M. Murphy  
Secretary

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<sup>5</sup> 17 CFR 200.30-3(a)(12).