



THE OPTIONS CLEARING  
CORPORATION

March 22, 2012

**By E-Mail**

Ms. Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: File Number 4-645: Comment Request for Study Regarding Financial Literacy  
Among Investors

Dear Ms. Murphy:

This letter is submitted by The Options Clearing Corporation (“OCC”) in response to the Commission’s recent release (the “Release”)<sup>1</sup> requesting public comment in connection with a study regarding financial literacy among investors, as mandated by Section 917 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”).<sup>2</sup> Section 917 requires the Commission to conduct a study to identify, *inter alia*, (i) methods to improve the timing, content, and format of disclosures to investors with respect to investment products, and (ii) the most useful and understandable relevant information that retail investors need to make informed financial decisions before purchasing an investment product that is typically sold to retail investors. In this regard, OCC believes that one such disclosure document for which the content and format could be improved is the options disclosure document (“ODD”). As further discussed herein, we believe that the options disclosure regime can and should be improved, and that the ODD should be modeled after the risk disclosure statement (“RDS”) mandated by Rule 1.55 under the Commodity Exchange Act (the “CEA”).<sup>3</sup> In addition, OCC believes that Rule 9b-1 under the Securities Exchange Act of 1934 (the “Exchange Act”)<sup>4</sup> should be amended to confirm that availability of the ODD on the websites of OCC and the exchanges constitutes sufficient distribution.

OCC Background

Founded in 1973, OCC is currently the world’s largest clearing organization for equity derivatives. OCC is registered with the Commission as a securities clearing agency pursuant to Section 17A of the Exchange Act<sup>5</sup> and with the U.S. Commodity Futures Trading Commission

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<sup>1</sup> 77 FR 3294 (January 23, 2012).

<sup>2</sup> Pub. L 111-203.

<sup>3</sup> 17 CFR 1.55.

<sup>4</sup> 17 CFR 240.9b-1.

<sup>5</sup> 15 USC 78q-1.

JEAN M. CAWLEY

SENIOR VICE PRESIDENT - DEPUTY GENERAL COUNSEL - CHIEF COMPLIANCE OFFICER  
ONE N. WACKER DRIVE, SUITE 500 CHICAGO, ILLINOIS 60606 TEL 312.322.6269 FAX 312.322.6280  
JCAWLEY@THEOCC.COM WWW.OPTIONSCLEARING.COM

(the “CFTC”) as a derivatives clearing organization under Section 5b of the CEA.<sup>6</sup> OCC clears securities options, security futures and other securities contracts subject to the Commission’s jurisdiction, and commodity futures and commodity options subject to the CFTC’s jurisdiction. OCC clears derivatives for all nine U.S. securities options exchanges and five futures exchanges.<sup>7</sup>

Options Disclosure Regime under Rule 9b-1 under the Exchange Act

Rule 9b-1(d) under the Exchange Act<sup>8</sup> prohibits a broker-dealer from accepting an order from a customer to purchase or sell an option contract unless the broker-dealer “furnishes or has furnished to the customer a copy of the definitive options disclosure document.” Moreover, if the ODD is amended or supplemented, broker-dealers are required to “promptly send a copy” of the amendment or supplement to each customer whose account is approved for trading a class of options to which the amendment or supplement relates. Rule 9b-1(c) under the Exchange Act<sup>9</sup> specifies the content of the ODD, and has been interpreted to date as requiring extensive discussion of the terms of specific kinds of options and the disclosure of risks, including risks that derive from the nature of the underlying interests rather than the terms of the options themselves. Although Rule 9b-1 was “intended to enhance investor understanding of standardized options by representing all essential information about options in a more readable Exchange Act disclosure document”<sup>10</sup> in the form of “a simplified [ODD] that requires infrequent updating,”<sup>11</sup> we do not believe that the current form of the ODD facilitates these objectives. Rather, the current ODD:

- Is lengthy and complex, and thus highly unlikely to be fully read and understood by most investors (the current version of the ODD, including the various supplements thereto, is over 150 pages in length);
- Requires frequent amendment/supplementation for new products developed by the options exchanges and other changes in OCC’s by-laws and rules, resulting in significant additional distribution costs;
- Becomes even more unreadable because of the need for multiple supplements that cannot be incorporated into the document because reprinting the entire document each time an amendment is required would be prohibitively expensive;

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<sup>6</sup> 7 USC 7a-1.

<sup>7</sup> The participating options exchanges are BATS Exchange, Inc., C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, LLC, NASDAQ Stock Market, LLC, NYSE Amex LLC and NYSE Arca, Inc. OCC clears futures products traded on CBOE Futures Exchange, LLC, ELX Futures, LP, NASDAQ OMX Futures Exchange and NYSE Liffe US, as well as security futures contracts traded on OneChicago Exchange and options on futures contracts traded on NYSE Liffe US.

<sup>8</sup> 17 CFR 240.9b-1(d).

<sup>9</sup> 17 CFR 240.9b-1(c).

<sup>10</sup> See Release No. 34-19055 (September 16, 1982).

<sup>11</sup> *Id.*

- Is technologically outmoded, in that a printed document cannot take advantage of “links” and other techniques that make online reference information more accessible and efficient;
- Requires OCC and the exchanges to deploy an inordinate amount of legal and other professional resources to prepare and review; and
- Requires similarly unreasonable amounts of resources for the Commission staff to review and comment on the frequent amendments/supplements to the document.

#### Proposed Changes in Form, Content and Delivery Method of ODD

In June 2009, President Obama asked the Commission and the CFTC to recommend changes to statutes and regulations that would eliminate differences with respect to similar types of financial instruments.<sup>12</sup> Subsequently, the two regulators held joint meetings in September 2009 to address the harmonization of regulation, and issued a joint report on October 16, 2009 summarizing their discussions (the “Joint Report”).<sup>13</sup> Among other things, the Joint Report recommended that the Commission and the CFTC “provide greater consistency in their customer risk disclosure documents.”<sup>14</sup> Specifically, the Joint Report addressed the discrepancy in the amount of disclosure the CFTC and the Commission provide in their respective disclosure documents (the former is between two to three pages in length, whereas the latter, as noted above, is over 150 pages), noting that the CFTC’s disclosure document was cited at the September meetings as “a model to follow because of [its] brevity and accessibility.”<sup>15</sup>

The current RDS, as set forth in Appendix A to CFTC Rule 1.55, is a simple, generic document that sets forth general risks of trading in futures and options and that can be delivered electronically. Moreover, the RDS was designed to satisfy requirements in multiple jurisdictions and, as such, meets the risk disclosure requirements of certain foreign regulators, such as the United Kingdom Securities and Futures Authority (“SFA”) with respect to futures, options on futures, commodity options and options on equities.

Consistent with the recommendation from the Joint Report, OCC would propose to streamline the ODD to provide for a significantly simplified, truncated version, written in plain English, with a level of disclosure similar to the CFTC’s RDS. OCC believes that doing so would be consistent with Rule 9b-1’s original intent of providing investors with a simple, useful document that customers may read in its entirety and comprehend. Such revised ODD also will not require frequent updating, and would also conform to a more global standard of options disclosure for investors based on current options disclosure provided by the CFTC and the SFA. A simplified ODD would focus on risk disclosure and not include detailed product information;

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<sup>12</sup> Financial Regulatory Reform – A New Foundation: Rebuilding Financial Supervision and Regulation (June 17, 2009).

<sup>13</sup> A Joint Report of the SEC and the CFTC on Harmonization of Regulation (October 16, 2009).

<sup>14</sup> *Id.* at 12.

<sup>15</sup> *Id.* at 91.

such information could be accessed on the website(s) of the applicable exchange(s), thereby allowing investors to make targeted inquiries.

To accommodate a revised ODD similar to the CFTC's RDS, it would likely be necessary to amend Rule 9b-1 under the Exchange Act to modify/limit the specific content requirements to permit a more simplified, generic disclosure statement, and to make other changes. The actual text of the revised ODD could be incorporated in the amended rule, similar to the CFTC's approach in Rule 1.55 under the CEA. Alternatively, the revised ODD could be set forth in the rules of a self-regulatory organization, which would be filed with, and approved by, the Commission as a rule change. OCC, in consultation with the options exchanges, would be pleased to provide more detailed suggestions for amending Rule 9b-1 under the Exchange Act if requested, once the basic elements of the revised ODD have been determined.

Finally, OCC believes that Rule 9b-1 under the Exchange Act should be amended to confirm that availability of the ODD on the websites of OCC and the exchanges constitutes sufficient distribution.<sup>16</sup> The Commission has long accepted electronic delivery/availability of information required under the federal securities laws, including electronic delivery of the ODD by broker-dealers required under Rule 9b-1(d) under the Exchange Act, as a means of delivering such information to investors, subject to certain "Notice," "Access" and "Evidence of Delivery" requirements as set forth in related Commission guidance.<sup>17</sup> In addition, availability of the ODD on the websites of OCC and the exchanges would be consistent with other Commission efforts to modernize delivery duties, including the 2005 securities offering reform rules accepting an "access equals delivery" principle, in which the Commission determined that the electronic filing of prospectuses which become immediately available to the public via the Commission's website satisfies the delivery requirement.<sup>18</sup> Further, in connection with its 2010 proposals for changes to the offering process, disclosure and reporting for asset-backed securities under Regulation AB, the Commission reminded "issuers of the importance of providing disclosure in compliance with [the Commission's] plain English rules"<sup>19</sup> and stated that "technological advances and expanded use of the internet have enabled the Commission to adopt additional rules incorporating electronic communications. The Commission continues to recognize that ... the Internet can present a cost-effective alternative or supplement to traditional disclosure methods,"<sup>20</sup> citing

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<sup>16</sup> Rule 9b-1(d)(1) under the Exchange Act currently provides that a broker-dealer must furnish to the customer a copy of the ODD, and Rule 9b-1(d)(2) provides that each broker-dealer shall promptly send a copy of any amendment or supplement to the ODD.

<sup>17</sup> See Release Nos. 34-36345 (October 6, 1995) (the "1995 Release"), 34-37182 (May 9, 1996) (the "1996 Release") and 34-42728 (April 28, 2000). In its 1995 Release, the Commission stated that "[e]xamples of procedures evidencing satisfaction of the delivery requirements include ... obtaining an informed consent from an investor to receive the information through a particular electronic medium coupled with assuring appropriate notice and access, as [further discussed in the 1995 Release]." The Commission specifically applied this concept in its 1996 Release to broker-dealers, transfer agents and investment advisers to allow them to satisfy certain of their information delivery obligations through the use of electronic media, including a broker-dealer's obligation under Rule 9b-1 under the Exchange Act.

<sup>18</sup> See Release No. 34-52056 (July 19, 2005).

<sup>19</sup> See Release No. 33-9117 (April 7, 2010).

<sup>20</sup> *Id.*

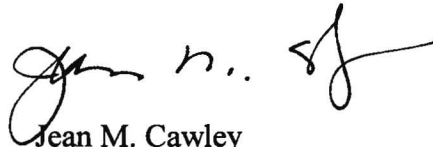
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internet availability of proxy materials and availability of premium/discount information for exchange-traded funds on a website as examples. OCC believes that posting the ODD on the OCC's and the exchanges' websites and applying an "access equals delivery" standard would present such a cost-effective alternative to the current disclosure regime, as it would help reduce the costs associated with furnishing the ODD to investors significantly.

### Conclusion

In summary, OCC believes that an electronically accessible ODD that is more akin to the CFTC's RDS will facilitate the policy objectives underlying Section 917 of the Dodd-Frank Act, Rule 9b-1 under the Exchange Act, and the recommendations of the Joint Report. The revised version of the ODD would improve the content and format of disclosures to investors and present relevant information in an useful and easily understandable fashion, thereby focusing the investor on the most essential disclosures. We would be pleased to discuss any of the above issues with you further. Please feel free to contact me (312-322-6269) or OCC's outside counsel at Sidley Austin LLP, James R. McDaniel (312-853-2665) or Kevin J. Campion (202-736-8084).

Sincerely,

A handwritten signature in black ink, appearing to read "Jean M. Cawley", with a stylized flourish at the end.

Jean M. Cawley  
Senior Vice President and  
Deputy General Counsel

cc: LOD Committee Members  
Michael E. Cahill, OCC  
James E. Brown, OCC  
Gina McFadden, OCC  
Stephen Szarmack, OCC  
James R. McDaniel, Sidley Austin LLP  
Kevin J. Campion, Sidley Austin LLP