

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65990; File No. SR-OCC-2011-17)

December 16, 2011

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Novation of Trades at OCC

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ notice is hereby given that on December 12, 2011, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“the Commission”) the proposed rule change as described in Items I and II below, which items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act² and Rule 19b-4(f)(4) thereunder³ 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 persons.

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

The proposed rule change would make clarifying amendments to provisions of OCC’s By-Laws relating to the timing of OCC’s acceptance or “novation” of exchange transactions in order to provide clearing members with certainty as to when their credit exposure to the original counterparty to a trade is terminated and OCC becomes obligated with respect to such trades.⁴

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A)(iii).

³ 17 CFR 240.19b-4(f)(4).

⁴ The proposed rule change neither alters the rights of members nor the timing of OCC’s novation. Telephone conference between Steve Szarmack, Vice President and Associate General Counsel, OCC, and Pamela Kesner, Special Counsel, Securities and Exchange Commission Division of Trading and Markets on December 14, 2011.

II. Self-Regulatory Organization's Statement of 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 such statements.

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

Recently, certain OCC clearing members have expressed uncertainty as to the time when an exchange transaction is accepted for clearing and the “novation” of such transaction occurs under OCC's By-Laws and Rules. The purpose of this proposed rule change is to make clarifying amendments to provisions of OCC's By-Laws relating to the timing of OCC's acceptance or “novation” of exchange transactions in order to provide clearing members with certainty as to when their credit exposure to the original counterparty to a trade is terminated and OCC becomes obligated with respect to such trades.

Background

Article VI, Section 5 of OCC's By-Laws generally establishes that exchange transactions (i.e., matched trades in an option, future, or other cleared contract) are deemed to be accepted by OCC for clearing at the “commencement time” for such transactions, or in the case of a future, when a matched trade has been properly reported to OCC. The definition of “commencement time” in Article I of OCC's By-Laws contains substantive provisions establishing specific times when exchange transactions are deemed accepted for clearing for the majority of exchange transactions (i.e., commencement time is when daily position reports are made available to

clearing members) as well as exceptions establishing different commencement times for cross-rate currency options, FX Index Options and certain non-competitively executed transactions in cleared futures. However, neither Section 5 of Article VI nor the definition of “commencement time” expressly state that OCC’s “novation” of trades occurs at this time, and the term “novation” is used only once in OCC’s By-Laws — in an interpretation following Section 6 of Article IV (Issuance of Cleared Contracts).

Confusion may also arise from the fact that Article VI, Section 5 of the By-Laws states that futures contracts are accepted for clearing when they are properly reported to OCC, rather than at the commencement time of such transactions. This provision appears to give futures contracts more favorable treatment than options, although there is no such result as a practical matter. Section 8 of Article VI provides that, except with respect to trades in certain narrow categories of options, OCC generally has no right to reject any exchange options transaction due to the failure of the purchasing clearing member to pay any amount due to OCC at or before the settlement time.⁵ Accordingly, exchange transactions in most option products will inevitably be accepted for clearing and novated under the rules at the commencement time of such transactions simply due to the passage of time. Prior to the 1987 crash, OCC reserved the right to reject trades in options due to non-payment of premiums. However, OCC subsequently gave up that right (with limited exceptions) in order to create greater certainty for clearing members.⁶

⁵ The exceptions are contained in the Articles governing specific products. For example, Section 5 of Article XX (addressing cross-rate foreign currency options and Section 7 of Article XXIII (addressing FX Index Options) condition OCC’s acceptance of trades in those products for clearing on the completion of settlement payments in respect of such trades. These exceptions apply because settlements involving foreign currencies in different time zones create heightened exposure to OCC if a Clearing Member were to default.

⁶ The staff notes that this change was adopted in filing SR-OCC-90-05. See Securities Exchange Act Release No. 29853 (October 25, 1991), 56 FR 55968 (October 30, 1991).

Therefore, the right to reject an exchange transaction for non-payment is now the exception rather than the rule. When OCC began clearing futures, it was deemed appropriate to state in the By-Laws that futures contracts would be accepted when properly reported because futures do not require premium payments.⁷

Proposed By-Law Changes

OCC proposes to amend the definition of “commencement time” in Article I of the By-Laws to (i) remove the substantive provisions establishing the specific times when exchange transactions in various products are deemed accepted for clearing (as such provisions should be placed in the Articles governing those products), and (ii) add a cross reference within the definition that will direct the reader to the locations within the By-Laws where the specific times can be found. In connection therewith, OCC proposes to amend Section 5 of Article VI, Section 7 of Article XII, Section 1 of Article XX and Section 1 of Article XXIII to establish the specific commencement times for transactions in various products. OCC also proposes to amend Section 5 of Article VI (i) to expressly state that novation occurs when exchange transactions are accepted for clearing by OCC, and (ii) to delete the language that appears to give futures contracts more favorable treatment than options. Finally, OCC proposes to amend the bracketed language following the definitions in Section 1 of Article XX and Section 1 of Article XXIII to eliminate unnecessary complexity and conform such language stylistically to similar language elsewhere in the By-laws (e.g., the bracketed language following the definitions in Section 1 of Article XXII).

OCC believes that the proposed changes to OCC’s By-Laws are consistent with the

⁷ Article XII, Section 7 of the By-Laws makes an exception for non-competitively executed futures trades. Because such trades may be executed away from the market price, OCC does not accept them until the initial variation payment is made.

purposes and requirements of Section 17A of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), because they are clarifying amendments that do not adversely affect 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.⁸ 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 will have any impact or impose any burden on competition.

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

OCC has not solicited or received written comments relating to the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(4)¹⁰ and became effective on filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

⁸ The staff notes that Rule 19b-4(f)(4) provides that a proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Exchange Act if the change does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service.

⁹ Supra note 2.

¹⁰ Supra note 3.

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 Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-OCC-2011-17 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 No. SR-OCC-2011-17. 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 Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at OCC's principal office and OCC's website (http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_11_17.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 No. SR-OCC-2011-17 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.¹¹

Kevin M. O'Neill
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).