

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66081; File No. SR-OCC-2011-18)

January 3, 2012

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to DCO 60 Day Regulations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 20, 2011, Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this Notice and Order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

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

The Options Clearing Corporation (“OCC” or the “Corporation”) proposes to amend its By-Laws and Rules as set forth below in order to ensure OCC’s technical compliance with final regulations promulgated by the Commodity Futures Trading Commission (“CFTC”) applicable to derivatives clearing organizations (“DCOs”). Material proposed to be added to OCC’s By-Laws and Rules as currently in effect is underlined and material proposed to be deleted is enclosed in bold brackets.

THE OPTIONS CLEARING CORPORATION

BY-LAWS

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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ARTICLE VI**CLEARANCE OF EXCHANGE TRANSACTIONS**

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General Clearance Rule**SECTION 1.** [no change]**..Interpretations and Policies****.01 - .02** [no change]

.03 (a) Except as otherwise provided in the By-Laws or Rules (including Chapter XI thereof), the Corporation will promptly transfer all or any portion of a carrying Clearing Member's segregated futures customer account maintained in accordance with Section 3(f) of this Article VI or segregated futures professional account maintained in accordance with Section 3(j) of this Article VI, and will, at the same time, transfer related funds (if any) upon the request of the carrying Clearing Member and the confirmation of the receiving Clearing Member that it will accept such transfer, provided that the request for transfer and confirmation of transfer are received by the Corporation in accordance with the procedures and within such timeframes as required by the Corporation.

(b) Any transfer effected pursuant to this Interpretation and Policy .03 shall be subject to such policies and procedures as the Corporation determines are reasonably necessary for the protection of the Corporation, other Clearing Members, customers and the general public and the Corporation may refuse any transfer request that does not comply with such policies and procedures.

(c) Any carrying Clearing Member requesting a transfer pursuant to this Interpretation and Policy .03 shall be deemed to have represented to the Corporation that: (1) such transfer is being made upon the instruction of the customer of the carrying Clearing Member to make such transfer, (2) the customer instructing the carrying Clearing Member to transfer its positions is not currently in default to the carrying Clearing Member, and (3) any remaining positions of the customer will have appropriate margin at the carrying Clearing Member.

(d) Any receiving Clearing Member consenting to a transfer of positions in accordance with Interpretation and Policy .03 shall be deemed to have represented to the Corporation that the transferred positions will have appropriate margin at the receiving Clearing Member.

(e) No transfer of positions between Clearing Members pursuant to this Interpretation and Policy .03 shall require the close-out or re-booking of the positions.

(f) The Corporation may refuse to effect a transfer pursuant to this Interpretation and Policy .03 if doing so would result in any account of the carrying or receiving Clearing Member having margin assets less than the Corporation deems necessary.

(g) Any transfer effected pursuant to this Interpretation and Policy .03 shall be deemed to have been completed at such time as (1) position reports provided to the receiving Clearing Member indicate that the transferred position(s) is/are in the appropriate account of the receiving Clearing Member and (2) the transfer of any related funds has been finalized.

RULES

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CHAPTER VI

MARGINS

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Form of Margin Assets**RULE 604.** (a) – (c) [no change]

(d) Funds and securities held by or subject to the instructions of the Corporation as margin shall, subject to the rights of the Corporation in respect thereof, remain the property of the respective Clearing Members for whose accounts such funds and securities are held. Funds and securities deposited in respect of a segregated futures account shall be held in accordance with the provisions of Section 4d of the Commodity Exchange Act and regulations thereunder. All other funds held by the Corporation as margin (other than funds invested by the Corporation pursuant to subsection (a) of this Rule and funds credited by the Corporation to a Liquidating Settlement Account pursuant to Chapter XI) shall be deposited to the credit of the Corporation in an account or accounts, designated as Clearing Member [trust] margin accounts, with such banks, trust companies or other depositories as the Board of Directors may select. Such funds shall not be commingled with funds of the Corporation or used by the Corporation as working capital. To the extent that funds held by the Corporation as margin are invested by the Corporation in securities pursuant to subsection (a) of this Rule, the Corporation shall maintain records clearly identifying such securities as held in trust for Clearing Members. The Corporation shall have the right to commingle funds and securities held as margin for the account of any Clearing Member with funds and securities held as margin for other Clearing Members.

(e) – (f) [no change]

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CHAPTER XI

SUSPENSION OF A CLEARING MEMBER

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Notice to Corporation

Rule 1101. A Clearing Member that is unable to meet its obligations, [or] is insolvent, or becomes the subject of a bankruptcy petition, receivership proceeding, or the equivalent shall immediately notify the Corporation by telephone of such event [that it is unable to meet its obligations or is insolvent]. Such notice shall be confirmed in writing promptly by said Clearing Member.

Suspension

Rule 1102. (a) The Board of Directors or the Chairman of the Corporation may summarily suspend any Clearing Member which: (i) has been and is expelled or suspended from any self-regulatory organization (as defined in Section 3(a) of the Securities Exchange Act of 1934, as amended, but not including the Municipal Securities Rulemaking Board, or as defined in the rules of the Commodity Futures Trading Commission); (ii) [is in default of] fails to make any delivery of [funds or] cash, securities or other property to the Corporation in a timely manner as required by the By-Laws or Rules; (iii) [is in default of] fails to make any delivery of funds or securities to another Clearing Member required pursuant to the By-Laws or Rules; (iv) [is in default of] fails to make any delivery of funds or securities to the correspondent clearing corporation in a timely manner, has appointed an Appointed Clearing Member to act on its behalf and such Appointed Clearing Member [is in default of] fails to make any delivery of funds or securities to the correspondent clearing corporation in a timely manner or effects settlement at the correspondent clearing corporation through an identifiable subaccount in an account of CDS at the correspondent clearing corporation and CDS [is in default of] fails to make any delivery of

funds or securities to the correspondent clearing corporation in a timely manner; (v) is in such financial or operating difficulty that the Board of Directors or the Chairman of the Corporation determines and so notifies the appropriate regulatory agency for such Clearing Member (or, in the case of a Non-U.S. Clearing Member, the appropriate Non-U.S. Regulatory Agency) and the Securities and Exchange Commission or the Commodity Futures Trading Commission that suspension is necessary for the protection of the Corporation, other Clearing Members, or the general public; or (vi) in the case of a Non-U.S. Clearing Member, has been and is expelled or suspended by its Non-U.S. Regulatory Agency or any securities exchange or clearing organization of which it is a member. In addition, the Corporation may summarily suspend any Clearing Member in accordance with Rule 707. In the event that any Clearing Member is suspended, the Corporation shall cease to act for it except as hereinafter specified.

(b) [no change]

...Interpretations and Policies

.01 The occurrence of any of the events described in Rule 1102 shall constitute an event of “default” with respect to a Clearing Member.

Creation of Liquidating Settlement Account

Rule 1104.

(a) – (d) [no change]

(e) For the avoidance of doubt, any margin assets in the firm lien account of a Clearing Member that has been suspended pursuant to Rule 1102 may be applied to cover losses with respect to such Clearing Member’s segregated futures account(s) if the assets in such segregated futures accounts are insufficient to cover a shortfall in such accounts.

(f) For the avoidance of doubt, nothing in this Chapter XI or in any other provision of the By-Laws or Rules of the Corporation shall prevent the Corporation from transferring positions, cash, securities or other property carried in a segregated futures account of a defaulting Clearing Member to a non-defaulting Clearing Member at the direction of or with the consent of the transferring Clearing Member's representative or pursuant to an order of a court of competent jurisdiction.

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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 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 III 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

The purpose of the proposed changes to OCC's By-Laws and Rules is to ensure technical compliance with final regulations of the Commodity Futures Trading Commission ("CFTC") applicable to derivatives clearing organizations ("DCOs") that become effective on January 9, 2012. The CFTC's final regulations implement many of the core principles applicable to DCOs under the Commodity Exchange Act.

The Final DCO Regulations

On October 18, 2011, the CFTC held an open meeting at which it issued final regulations implementing many of the new statutory core principles for DCOs enacted under the Dodd-

Frank Act. While certain of these final regulations go into effect on May 7, 2012 and November 8, 2012, the majority of the final regulations go into effect on January 9, 2012. While OCC is already in compliance with most of the final regulations that go into effect on January 9, 2012, OCC believes it appropriate to clarify certain of its rules to ensure technical compliance with the CFTC's rules as described herein.

Safekeeping of Funds

CFTC Rule 39.15(c) requires each DCO to "hold funds and assets belonging to clearing members and their customers in a manner which minimizes the risk of loss or of delay in the access by the derivatives clearing organization to such funds and assets." OCC Rule 604(d) provides that funds held by OCC as margin, other than funds and securities deposited in a segregated futures account, funds invested by OCC under Rule 604(a) and funds credited by OCC to a liquidating settlement account) "shall be deposited to the credit of the Corporation in an account or accounts, designated as Clearing Member trust accounts, with such banks, trust companies or other depositories as the Board of Directors may select." The designation of such accounts as "trust accounts" was originally intended to clarify that funds and securities held as margin remain the property of the depositing clearing member, subject to OCC's security interest in such assets, and that those assets, unlike clearing fund deposits, cannot be applied to defaults of other clearing members. However, as the term "trust" could potentially cause uncertainty and delay in obtaining the release of these assets to OCC, OCC is amending Rule 604(d) to replace the word "trust" with the word "margin."

Transfer of Customer Positions

CFTC Rule 39.15(d) requires a DCO to have "rules providing that the derivatives clearing organization will promptly transfer all or a portion of a customer's portfolio of positions

and related funds at the same time from the carrying clearing member of the derivatives clearing organization to another clearing member of the derivatives clearing organization, without requiring the close-out and re-booking of the positions prior to the requested transfer, subject to the following conditions: (1) The customer has instructed the carrying clearing member to make the transfer; (2) The customer is not currently in default to the carrying clearing member; (3) The transferred positions will have appropriate margin at the receiving clearing member; (4) Any remaining positions will have appropriate margin at the carrying clearing member; and (5) The receiving clearing member has consented to the transfer.” Although OCC Interpretation and Policy .01(a) currently provides that “it is the policy of the Corporation to permit a Clearing Member to submit adjustments to its positions with the Corporation to (1) effect a transfer of accounts between Clearing Members,” no provision of OCC’s bylaws or rules specifically addresses the technical requirements of CFTC Rule 39.15(d) with respect to futures customer positions. In order to avoid any doubt about OCC’s compliance with this rule, OCC is proposing to add an additional Interpretation and Policy .03 to Section 1 of Article VI of its By-Laws to address the technical requirements of the referenced CFTC Rule.

Default Provisions

CFTC Rule 39.16(c)(2) requires each DCO to “adopt rules that set forth its default procedures, including . . . (i) [t]he derivatives clearing organization’s definition of a default [and] (ii) [t]he actions that the derivatives clearing organization may take upon a default, which shall include the prompt transfer, liquidation, or hedging of the customer or house positions of the defaulting clearing member, as applicable.” Although OCC Rule 1102(a) provides a list of the grounds for suspension of a clearing member, those grounds are not expressly referred to as events of “default,” and OCC’s By-Laws and Rules do not define the term “default.” OCC is

therefore proposing to amend Rule 1102 to remove the word “default” from such rule and replace it with substantive provisions indicating the specific grounds for suspension of a clearing member, as well as to adopt a new Interpretation and Policy .01 that would expressly define the events listed in Rule 1102 as events of “default” with respect to a Clearing Member. In addition, OCC is proposing to add a new Rule 1104(f) to expressly provide that customer positions may be transferred in the event of a clearing member default.

Use of House Funds to Cover Customer Defaults

CFTC Rule 39.16(c)(2)(vi) requires each DCO to adopt rules including a “provision that the excess house funds and assets of a defaulting clearing member shall be applied to cover losses with respect to a customer default, if the relevant customer funds and assets are insufficient to cover the shortfall.” While it is true that assets of a clearing member in a clearing member’s firm lien account may be so applied under OCC’s existing By-Laws and Rules, there is no provision in OCC’s Rules relating to the liquidation of a suspended clearing member that specifically mirrors the language of CFTC Rule 39.16(c)(2)(vi). OCC is therefore adding a new paragraph (e) to Rule 1104 to more closely track the requirement of the CFTC rule.

Notice of Clearing Member Insolvency

CFTC Rule 39.16(d) requires each DCO to “adopt rules that require a clearing member to provide prompt notice to the derivatives clearing organization if it becomes the subject of a bankruptcy petition, receivership proceeding, or the equivalent.” Although OCC Rule 1101 requires a clearing member that is “unable to meet its obligations or is insolvent [to] immediately notify the Corporation,” it is possible for a clearing member to become the subject of a bankruptcy petition without being unable to meet its obligations or actually being insolvent. OCC is therefore proposing to amend Rule 1101 to require a clearing member to notify OCC if

the clearing member is the subject of a bankruptcy, receivership or equivalent proceeding.

* * *

The proposed changes are consistent with Section 17A of the Securities Exchange Act of 1934, as amended, because they are designed to permit OCC to perform clearing services for certain 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. In addition, as a CFTC-registered DCO, OCC is required to comply with the CFTC's core principles applicable to DCOs. 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. 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 may be submitted by using 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-2011-18 on the subject line.

- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C., 20549-1090.

All submissions should refer to File Number SR-OCC-2011-18. 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 filing also will be available for inspection and copying at the principal office of OCC. 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-2011-18 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

In its filing, OCC requested that the Commission approve this request on an accelerated basis for good cause shown. OCC cites the reason for granting this request on an accelerated basis as OCC's operations as a DCO, subject to regulation by the CFTC under the CEA and that

these rule changes are being made according to regulations promulgated by the CFTC, which were previously subject to notice and comment. Not approving this request on an accelerated basis will have a significant impact on OCC's operations as a DCO.

Section 19(b) of the Act³ 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. The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act,⁴ and the rules and regulations thereunder applicable to OCC. Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act which requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions because it should allow OCC to comply with new CFTC regulatory requirements, thereby promoting the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions.⁵

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁶ for approving the proposed rule change prior to the 30th day after the date of publication of notice in the Federal Register because as a registered DCO OCC is required to comply with the new CFTC regulations by the time they become effective on January 9, 2012.

³ 15 U.S.C. 78s(b).

⁴ 15 U.S.C. 78q-1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-OCC-2011-18) is approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁷

Kevin M. O'Neill
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).