

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71646; File No. SR-OCC-2014-03)

March 4, 2014

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change to Comply With Recently Adopted Commodity Futures Trading Commission Requirements for Derivatives Clearing Organizations That Accept Deposits of Futures Customer Funds

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 February 19, 2014, The 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. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(4)(ii)⁴ thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change by OCC would amend OCC’s By-Laws and Rules to allow OCC to comply with recently adopted Commodity Futures Trading Commission (“CFTC”) requirements for derivatives clearing organizations (“DCOs”), such as OCC, that accept deposits of futures customer funds from futures commission merchants (“FCMs”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4)(ii).

II. Clearing Agency'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.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

OCC is proposing to modify its rules to allow it to comply with new CFTC requirements imposed on depositories that accept deposits of futures customer funds from FCMs. Recent amendments to CFTC Regulation §1.20⁵ require that FCMs only deposit futures customer funds with depositories that agree to grant the CFTC's Division of Swap Dealer and Intermediary Oversight ("DSIO") and the CFTC's Division of Clearing and Risk, as well as representatives of the FCM's designated self-regulatory organization, certain access and examination rights ("CFTC Access and Examination Rights").⁶ OCC, as a CFTC-registered DCO, functions as a

⁵ 17 CFR 1.20.

⁶ CFTC Regulation §1.20(d)(3) (17 CFR 1.20(d)(3)) also provides that FCMs may only deposit futures customer funds with depositories that agree to provide the director of the DSIO with "direct, read-only electronic access to transaction and account balance information" for the futures customer accounts. Based on discussions with staff from the CFTC's Division of Clearing and Risk on December 16, 2013 and subsequently confirmed via e-mail, it is OCC's understanding that, as a DCO that serves as a depository with respect to deposits of futures customer funds by its clearing members that are FCMs, it will not be required to provide this direct electronic access, because the CFTC did not intend for the requirement set forth in §1.20(d)(3) to apply to a DCO that has submitted to the CFTC rules that provide for the segregation of customer funds in accordance with all relevant provisions of the Commodity Exchange Act and the rules and orders promulgated thereunder. Consequently, OCC is not including this direct

depository with respect to any futures customer funds deposited by clearing members that are FCMs. Consequently, for these FCM clearing members to continue to use OCC as their DCO, OCC must agree to comply with the CFTC Access and Examination Rights. Pursuant to CFTC Regulation §1.20(d)(1),⁷ OCC and the clearing member may make this agreement either by providing a written acknowledgment letter to the clearing member with respect to each segregated futures account and segregated futures professional account containing futures customer funds or by adopting rules that provide for the segregation of futures customer funds in accordance with the Commodity Exchange Act and all relevant CFTC regulations and orders promulgated thereunder.

In Sections 3(f) and 3(j) of Article VI of OCC's By-Laws, OCC already states that it agrees to comply with applicable regulations of the CFTC pertaining to the holding of segregated funds by clearing organizations of contract markets with respect to its segregated futures accounts and segregated futures professional accounts. OCC proposes to amend the language in both provisions to incorporate OCC's agreement to comply with the Commodity Exchange Act itself and all applicable CFTC orders, and to more precisely conform to the exact language requirements of CFTC Regulation §1.20(d)(1). In order to provide certainty to its clearing members that are FCMs, OCC is proposing to add Interpretation and Policy .10 to Section 3 of Article VI of OCC's By-Laws,⁸ so that OCC also explicitly agrees to comply with the CFTC Access and Examination Rights set forth in newly adopted CFTC Regulation §1.20(d)(5) and (6)

electronic access requirement among the other CFTC Access and Examination Rights addressed in this Rule Change.

⁷ 17 CFR 1.20(d)(1).

⁸ OCC intends to publish an Information Memo to inform its clearing members of the filing of this rule change.

with respect to all segregated futures accounts and segregated futures professional accounts.⁹ Additionally, Interpretation and Policy .10 will provide that all clearing members that open segregated futures accounts or segregated futures professional accounts have authorized and directed OCC's compliance with the CFTC Access and Examination Rights without further notice or consent. To this same end, OCC also proposes to amend Interpretation and Policy .11 to OCC Rule 604 to clarify that any cash deposited as margin in a segregated futures professional account will be handled in the same manner as OCC currently handles cash deposited as margin in a segregated futures account – *i.e.*, if such funds are invested, they will be invested in accordance with CFTC Regulations §§ 1.25, 1.26 and 1.27 and any other CFTC rules pertaining to a DCO's investment of futures customer funds. Not previously mentioning “segregated futures professional accounts” alongside “segregated futures accounts” in this Interpretation and Policy was an unintentional oversight, and OCC proposes to make this change in the interest of completeness – it does not reflect a change in policy regarding its handling of futures customer funds deposited in segregated futures professional accounts.

2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,¹⁰ and the rules and regulations thereunder, including Rule 17Ad-22(d)(3),¹¹ because it is intended to protect investors and the public interest by ensuring OCC holds futures customer funds in a manner that minimizes the risk of loss and delay in access to such funds. As described above, the proposed rule change is designed to address OCC's handling of futures customer

⁹ 17 CFR 1.20(d)(5)-(6).

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

¹¹ 17 CFR 240.17Ad-22(d)(3).

funds related to its performance of clearing services for products that are subject to the jurisdiction of the CFTC. The proposed change will ensure that OCC holds futures customers funds in accordance with new requirements promulgated by the CFTC designed to protect futures customers and provide for safer futures markets. The proposed change will not adversely affect OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions. The proposed rule change is not inconsistent with any rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the Act¹² because it relates solely to OCC's activities relating to the clearing of commodity futures products subject to the exclusive jurisdiction of the CFTC and therefore would not have any impact or impose any burden on competition in securities markets or any other market governed by the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change 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

Because the proposed rule change primarily affects the clearing operations of OCC with respect to products that are not securities and does not significantly affect any securities clearing operations of OCC or any rights or obligations of OCC with respect to securities clearing or persons using such securities-clearing service, the foregoing rule change has become effective

¹² 15 U.S.C. 78q-1(b)(3)(I).

pursuant to Section 19(b)(3)(A)¹³ of the Act and Rule 19b-4(f)(4)(ii) thereunder.¹⁴ At any time within 60 days of the filing of such 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.¹⁵

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 Number SR-OCC-2014-03 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-2014-03. 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 of submission. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(4)(ii). OCC has indicated that it will delay the implementation of the rule change until it is deemed certified under CFTC Regulation § 40.6.

¹⁵ 15 U.S.C. 78s(b)(3)(C).

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, 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 and on OCC's website at

http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_03.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-2014-03 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.¹⁶

Kevin M. O'Neill
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).