

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55686; File No. SR-OCC-2006-21)

May 1, 2007

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Membership Requirements

I. Introduction

On November 15, 2006, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹ and Rule 19b-4 thereunder² a proposed rule change to modify certain OCC By-Laws and Rules relating to membership requirements. The proposed rule change was published for comment in the Federal Register on January 12, 2007.³ No comment letters were received. This order approves the proposal.

II. Description of the Proposal

A. Interpretation and Policy .03

Prior to this rule change, Interpretation and Policy .03 to Article V, Section 1, of OCC’s By-Laws required applicants for membership to employ two key operations employees on a full-time basis. This requirement was intended to ensure that an applicant maintains sufficient staff to fulfill its obligations as a clearing member. However, several recent applicants for clearing membership have had difficulty meeting this requirement because their entire staff was employed by an affiliate of the applicant (i.e., a parent or related organization) rather than by the applicant itself. While these applicants entered into employee leasing arrangements in order to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 55047 (Jan. 5, 2007), 72 FR 1571.

comply with OCC's policy, OCC decided to reevaluate the policy in light of the fact that it had proved burdensome to a number of applicants.

OCC understands that it is not uncommon for some entities of an affiliated corporate group to outsource certain or all functions to another entity of the corporate group and let the latter be the sole employer of the people who perform those functions. In situations of that nature, OCC concluded that there is not the same reason to be concerned about whether the applicant will have adequate staffing as in cases where the applicant relies on an unaffiliated third party for staffing. OCC therefore is modifying its policy in order to provide greater flexibility to recognize this alternative employment structure by amending Interpretation and Policy .03 to Article V, Section 1, to permit the Membership/Risk Committee ("Committee") to waive the requirement that an applicant employ two key operations employees on a full-time basis if the daily operations of the applicant are conducted by staff employed on a full-time basis by an entity affiliated with such applicant. OCC believes that the Committee's authority to waive such requirement is consistent with its existing authority to waive the requirement that an applicant employ at least one full-time person who is registered as a "Limited Principal – Financial and Operations" or comparable registration requirement, as applicable.

2. Rule 309

OCC is also amending Rule 309 by adding new paragraph (f) to clarify that if an operationally capable clearing member proposes to become a managed clearing member (i.e., outsource certain of its obligations as a clearing member to another clearing member ["managing clearing member"]), the applicant must obtain prior approval from the Committee. Prior to this rule change, Interpretation and Policy .04 to Rule 309 primarily contemplated the use of facilities management agreements by applicants for membership rather than by existing clearing members.

Nonetheless, OCC has always interpreted its By-Laws and Rules as requiring prior Committee review and approval of all facilities management agreements, including those proposed to be entered into by operationally capable clearing members. The amendment to Rule 309 makes this interpretation explicit.

3. Rule 901

OCC is amending Rule 901 to provide that a clearing member's appointment of another clearing member or CDS Clearing and Depository Services Inc. ("CDS")⁴ for purposes of effecting settlements of exercised or matured cleared securities may not be terminated until after the 30th calendar day following notice to OCC of such termination.⁵ Prior to this rule change, clearing members were required to provide three business days notice of terminating such appointments. However, OCC concluded that three business days was insufficient time for OCC to determine whether or not the clearing member has made appropriate alternative settlement arrangements. Accordingly, OCC is changing the notice period to be consistent with the notice period required to advise OCC of the termination of a facilities management agreement.⁶

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Commission believes the proposal is consistent with the requirements of Section

⁴ CDS is the successor organization to Canadian Depository for Securities Ltd. OCC's By-Law definition of CDS is being amended to reflect this organizational change.

⁵ OCC surveyed appointed clearing members that effect NSCC settlements for nonaffiliated clearing members and CDS to ascertain their views regarding the proposed change in the notice period for terminating such appointments. There were no objections to the proposed change.

⁶ Conforming changes have been made to the related appointment forms, which are attached as Exhibits 5A and 5B to the proposed rule filing.

17A(b)(3)(F),⁷ which, among other things, requires the rules of a clearing agency to assure the safeguarding of securities and funds that are in the custody or control of the clearing agency or for which it is responsible. Although OCC is giving the Membership/Risk Committee the ability to waive the requirement that an applicant employ two key operations employees on a full-time basis, the revised requirement that allows an applicant to have full-time operational staff employed by an affiliate of the applicant should provide OCC with the practical flexibility to permit such arrangements and still have reasonable assurance that its members are operationally sound. Moreover, specifying that a clearing member's appointment of another clearing entity to effect settlement on its behalf can not be terminated until after the 30th calendar day following notice to OCC of such termination should provide OCC with an appropriate amount of time in which to determine that the clearing member has made alternative settlement arrangements.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act⁸ and the rules and regulations thereunder.

⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸ 15 U.S.C. 78q-1.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-2006-21) be, and hereby is, approved.⁹

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

⁹ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹⁰ 17 CFR 200.30-3(a)(12).