

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64167; File No. SR-OCC-2011-03)

April 1, 2011

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change to Allow for an Expansion of OCC's Internal Cross-Margining Program to Include the Ability of a Pair of Affiliated Clearing Members to Establish an Internal Non-Proprietary Cross-Margining Account

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder² notice is hereby given that on March 17, 2011, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change would expand OCC’s internal cross-margining program to permit a pair of affiliated clearing members to establish a cross-margining account (“Internal Non-Proprietary Cross-Margining Account”) in which securities and security futures that are cleared by OCC in its capacity as a securities clearing agency may be cross-margined with commodity futures and options on such futures that are cleared by OCC in its capacity as a derivatives clearing organization (“DCO”) registered with the Commodity Futures Trading Commission (“CFTC”) under the Commodity Exchange Act (“CEA”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization'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.³

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

In 2004, the CFTC and the Commission⁴ approved OCC's proposal to create an "internal cross-margining" program under which an OCC clearing member could elect to cross-margin a non-proprietary futures account of a "market professional" (as defined in OCC's By-Laws)⁵ with a non-proprietary securities account containing positions of the same market professional. At OCC, the securities and futures positions of all market professionals with cross-margined accounts at the clearing member are combined in a single Internal Non-Proprietary Cross-Margining Account of the clearing member at OCC. The existing program, which has operated successfully since 2004, requires that the same clearing member clear the securities and

³ The Commission has modified the text of the summaries prepared by OCC.

⁴ Securities Exchange Act Release No. 34-50509 (October 8, 2004), 69 FR 61289 (October 15, 2004).

⁵ A market professional could be a market-maker, specialist or person acting in a similar capacity on a securities exchange, or a member of a futures exchange trading for its own account. A non-proprietary market professional is any market professional that is required to be treated as a "customer" under the CEA, and therefore excludes any market professional that is affiliated with the carrying clearing member in a way that would cause its account to be treated as a "proprietary account" under Section 1.3(y) of the CFTC's regulations.

futures positions. In contrast, the existing cross-margining programs between OCC and other DCOs such as the clearing division of the Chicago Mercantile Exchange (“CME”) and ICE Clear U.S. permit cross-margining where the member of the futures clearing organization is a different entity from its affiliate that is an OCC clearing member. The purpose of this proposed rule change is to expand the existing internal cross-margining program in an analogous way so that it would permit an Internal Non-Proprietary Cross-Margining Account to be maintained at OCC jointly by a pair of affiliated clearing members that clear transactions in securities options and in futures products through two different entities. In order to participate, both OCC clearing members would have to be affiliates of one another and would have to be registered as both a futures commission merchant under the CEA and as a broker-dealer under the Act.

OCC’s current internal cross-margining program does not provide for internal cross-margining accounts to be carried jointly by a pair of affiliated clearing members because OCC did not believe in 2004 that there was any clearing member demand for such a service. Recently, however, OCC has learned that there is demand for such a service. Under OCC’s current proposal, two affiliated clearing members could jointly maintain an Internal Non-Proprietary Cross-Margining Account. The clearing member that normally clears transactions in securities options would submit transactions in eligible securities options to the account for clearance, and the clearing member that normally clears transactions in futures products would submit transactions in eligible futures products to the account for clearance.

OCC proposes to amend its current By-Laws and Rules governing internal cross-margining to create rules similar to the rules of the long-standing cross-margining program for affiliated clearing members between OCC and CME, for example. In the case of the cross-margining programs between OCC and other DCOs, there are two accounts at the clearing

level—one at each of the participating clearing organizations. In the internal cross-margining program, there is no need for two separate accounts, which would in any event be margined together and for which the affiliated clearing members would in any event be jointly and severally liable as they are for the two accounts in the case of the OCC-CME program.

Article VI, Section 25(b) of OCC's By-Laws currently requires clearing members to obtain a "Market Professional's Agreement for Internal Cross-Margining" from each market professional whose positions are included in an Internal Non-Proprietary Cross-Margining Account. OCC proposes to use a modified form of this agreement for an account held jointly by a pair of affiliated clearing members. The proposed form of the agreement, titled "Market Professional's Agreement for Internal Cross-Margining (Affiliated Clearing Members)" is attached as Exhibit 5A to this proposed rule change filing. The existing "Market Professional's Agreement for Internal Cross-Margining" applicable to the internal cross-margining program for single clearing members has been retitled "Market Professional's Agreement for Internal Cross-Margining (Single Clearing Member)" and is attached as Exhibit 5B to this proposed rule change filing. In addition to modifying the title to the form of the agreement applicable to single clearing members, a sentence has been added at the end of paragraph seven of that agreement to conform it to the corresponding provision in the form of the agreement for affiliated clearing members. OCC does not intend to require current participants in the internal cross-margining program to obtain reexecuted agreements in updated form because the modifications are clarifications only and not substantive changes.

As in the case of the existing internal cross-margining program, the Internal Non-Proprietary Cross-Margining Account would be treated as a segregated futures account under Section 4d of the CEA and, in accordance with Appendix B to Part 190 of the CFTC's

regulations, would be separately segregated from the regular segregated futures account that an OCC clearing member may maintain under Article VI, Section 3(f) of OCC's By-Laws. In order to expand the internal cross-margining program to include accounts carried by pairs of affiliated clearing members, OCC is requesting that the CFTC either issue a new or amended order under Section 4d of the CEA.

Since it granted approval of the first cross-margining program in 1988,⁶ the Commission has found that cross-margining programs are consistent with clearing agency responsibilities under Section 17A of the Act⁷ and highly beneficial to the clearing organization, its clearing members and the public. OCC believes that cross-margining programs enhance clearing member and systemic liquidity, resulting in lower initial margin deposits. They reduce the risk that a clearing member will become insolvent in a distressed market and the corresponding risk that one insolvency could lead to multiple insolvencies in a ripple effect, and they enhance the security of the clearing system.⁸

OCC would not implement the internal cross-margining program for affiliated clearing members until such time after the CFTC has issued an order or amended order under Section 4d of the CEA as discussed above.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on

⁶ Securities Exchange Act Release No. 34-26153 (October 3, 1988), 53 FR 39567 (October 7, 1988).

⁷ 15 U.S.C. 78q-1.

⁸ Securities Exchange Act Release No. 34-32708 (August 2, 1993), 58 FR 42586 (August 10, 1993).

competition.

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

Written comments relating to the proposed rule change have not been solicited or received. OCC will notify the Commission of any written comments received by OCC.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-2011-03 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-2011-03. 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. 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 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 filings will also be available for inspection and copying at the principal office of OCC and on OCC's website at http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_11_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-2011-03 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.⁹

Cathy H. Ahn
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).