

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71571; File No. SR-OCC-2013-23)

February 19, 2014

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change, As Modified by Amendment No. 1, to Provide OCC With Authority in Emergency Circumstances to Waive, Suspend, or Extend the Time for Compliance With Its By-Laws, Rules, Policies and Procedures, or any Other Rules Issued by OCC

I. Introduction

On December 27, 2013, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-OCC-2013-23 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder.² On January 8, 2014, OCC filed Amendment No. 1 to the proposed rule change.³ The proposed rule change was published for comment in the Federal Register on January 15, 2014.⁴ The Commission received no comments concerning the proposed rule change. For the reasons set forth below, the Commission is approving the proposed rule change.

II. Description

The rule change, as approved, amends OCC’s by-laws to provide OCC with authority in emergency circumstances, subject to certain conditions, to waive or suspend the operation of its by-laws, rules, policies and procedures, or any other rules issued by OCC (collectively, “Rules”) or to extend any time fixed thereby for the doing of any act

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, OCC clarified its ability to extend the time fixed in certain Rules for the doing of any act or acts in emergency situations, and made other technical changes.

⁴ Securities Exchange Act Release No. 71268 (January 9, 2014), 79 FR 2739 (January 15, 2014) (SR-OCC-2013-23).

or acts. OCC previously sought action by the Division of Trading and Markets on an ad hoc basis whenever OCC needed to temporarily waive or suspend certain of its Rules, or extend the time for doing any act or acts specified by its Rules, in order to help facilitate the national system for the prompt and accurate clearance and settlement of securities transactions.⁵ The rule change generally aligns OCC's Rules with those of other registered clearing agencies, which allow those clearing agencies to waive or suspend their rules, or extend the time fixed thereby for performing any act or acts, in similar circumstances.

Under the rule change, as approved, OCC's Board of Directors, Chairman,⁶ Management Vice Chairman, or President is authorized either to waive or suspend the Rules or extend any time fixed by the Rules for the doing of any act or acts if it is believed that an emergency exists and such extension, waiver, or suspension is necessary or advisable to protect OCC or allow it to continue to facilitate the prompt and accurate clearance and settlement of confirmed transactions and to provide its services in a safe and sound manner. If a determination to invoke these emergency powers is made by anyone other than by the Board of Directors, the Board of Directors must be notified as soon as practicable.

⁵ For instance, in one case, OCC needed to waive certain of its rules temporarily to facilitate the transfer and assignment of the correspondent securities-clearing business of one of its clearing members to another. The Division of Trading and Markets issued a No-Action Letter advising OCC that the Division would not recommend an enforcement action if OCC waived its rules under those circumstances. The Options Clearing Corporation, SEC No-Action Letter, (June 4, 2012), *available at* <http://www.sec.gov/divisions/marketreg/mr-noaction/2012/occ060412.pdf>.

⁶ Pursuant to Article IV, Section 6 of OCC's By-Laws, the Chairman of the Board is also the Executive Chairman.

The rule change, as approved, requires OCC to notify the Commission and the CFTC within two hours after exercising its emergency powers.⁷ OCC is further required to provide the Commission and the CFTC as soon as practicable, but not later than three calendar days after exercising its emergency powers, with a report setting out the nature of the emergency, the identity of the person or persons who invoked OCC's emergency powers, and the rationale for doing so.

OCC is permitted to continue the emergency action for up to thirty calendar days unless the Commission or the CFTC, as applicable, objects in writing. If OCC wishes to continue the emergency action beyond the thirty-day period, then OCC is required to file a corresponding proposed rule change with the Commission, the CFTC, or both during this thirty-day period. In that case, the emergency action would remain in effect while the agency or agencies review the corresponding proposed rule change. If either the Commission or the CFTC objects to the proposed rule change in writing, OCC is required to discontinue the emergency extension, waiver, or suspension of its rules.

III. Discussion

Section 19(b)(2)(C) of the Act⁸ directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act⁹ requires that the rules of a registered clearing agency be designed

⁷ The Commission's approval of this rule change does not relieve OCC of its obligation to submit a filing to the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act when appropriate. *See* 12 U.S.C. 5465(e)(1).

⁸ 15 U.S.C. 78s(b)(2)(C).

⁹ 15 U.S.C. 78q-1(b)(3)(F).

to, among other things, promote the prompt and accurate clearance and settlement of securities transactions, as well as foster cooperation and coordination amongst other persons engaged in the clearance and settlement of securities transactions.

The Commission believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to OCC. By giving OCC the ability to respond promptly in the event of an emergency, the proposed rule change will help to minimize the risk of a disruption to OCC's clearance and settlement services. This will help facilitate the prompt clearance and settlement of securities transactions, and will also enable OCC to coordinate its actions with those of other clearing agencies that already possess emergency powers similar to those at issue here. Further, the proposed rule change circumscribes OCC's emergency powers by requiring it to notify the Commission and the CFTC whenever OCC invokes those powers, and by further requiring OCC to discontinue any changes made under those powers if the Commission or the CFTC, as applicable, objects. These procedural safeguards will help to ensure that OCC exercises its emergency powers only in a manner that is consistent with the requirements of the Act and the rules and regulations thereunder.

IV. Conclusion

On the basis of the foregoing, the Commission concludes that the proposal is consistent with the requirements of the Act, particularly the requirements of Section 17A of the Act¹⁰ and the rules and regulations thereunder.

¹⁰ 15 U.S.C. 78q-1.

It is therefore ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that proposed rule change SR-OCC-2013-23, as amended, be and hereby is APPROVED.¹²

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹³

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Deputy Secretary

¹¹ 15 U.S.C. 78s(b)(2).

¹² 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).

¹³ 17 CFR 200.30-3(a)(12).