

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73257; File No. SR-OCC-2014-806)

September 30, 2014

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice of and No Objection to The Options Clearing Corporation's Proposal to Enter a New Credit Facility Agreement

Notice is hereby given that, on September 11, 2014, The Options Clearing Corporation ("OCC") filed an advance notice with the Securities and Exchange Commission ("Commission") pursuant to Section 806(e) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act,<sup>1</sup> entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Payment, Clearing, and Settlement Supervision Act"), and Rule 19b-4(n)(1)(i) of the Securities Exchange Act of 1934 ("Exchange Act").<sup>2</sup> The advance notice is described in Items I and II below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments from interested persons, and to provide notice that the Commission has no objection to the changes set forth in the advance notice and authorizes OCC to implement those changes earlier than 60 days after the filing of the advance notice.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is filed by OCC in connection with a proposed change to its operations to replace an existing credit facility OCC maintains for the purposes of meeting obligations arising out of the default or suspension of a clearing member, in anticipation of a

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<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010). OCC was designated as a systemically important financial market utility by the Financial Stability Oversight Council on July 18, 2012. See Financial Stability Oversight Council 2012 Annual Report, Appendix A, <http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf>. Therefore, OCC is required to comply with Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

<sup>2</sup> 17 CFR 240.19b-4(n)(1)(i).

potential default by a clearing member, or the failure of a bank or securities or commodities clearing organization to perform its obligations due to its bankruptcy, insolvency, receivership or suspension of operations.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. 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 and B below, of the most significant aspects of these statements.

A. Clearing Agency's Statement on Comments on the Advance Notice Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the advance notice and none have been received.

B. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act

(i) Description of Change

This advance notice is being filed in connection with a proposed change in the form of the replacement of a credit facility that OCC maintains for the purposes of meeting obligations arising out of the default or suspension of a clearing member, in anticipation of a potential default by a clearing member, or the failure of a bank or securities or commodities clearing organization to perform its obligations due to its bankruptcy, insolvency, receivership or suspension of operations. OCC's existing credit facility (the "Existing Facility") was implemented on October 10, 2013 through the execution of a Credit Agreement among OCC, JPMorgan Chase Bank, N.A. ("JPMorgan"), as administrative agent, and the lenders that are

parties to the agreement from time to time, which provides short-term secured borrowings in an aggregate principal amount of \$2 billion and may be increased to \$3 billion.<sup>3</sup>

The Existing Facility is set to expire on October 9, 2014 and OCC is therefore currently negotiating the terms of a new credit facility (the “New Facility”) on substantially similar terms as the Existing Facility, except that enhancements are being added for a back-up administrative agent in case the primary administrative agent is unable to perform its obligations and to allow OCC to request borrowings directly from individual lenders. A back-up administrative agent would provide OCC with additional safety and stability in the event the primary administrative agent is not able to perform its duties under the new Facility. On September 5, 2014, OCC received a Commitment Letter with regard to the New Facility from: JPMorgan, the administrative agent, collateral agent, and a lender for the New Facility; J.P. Morgan Securities LLC (“JPMorgan Securities”), the joint lead arranger for the New Facility; Merrill Lynch, Pierce, Fenner & Smith Incorporated (“MLPF&S”), the joint lead arranger for the New Facility; and Bank of America, N.A. (“BANA”), the syndication agent and a lender for the New Facility.

The terms and conditions applicable to the New Facility are set forth in the Summary of Terms and Conditions attached to this filing as Exhibit 3. The conditions to the availability of the new facility include the execution and delivery of (i) a credit agreement between OCC, JPMorgan, BANA and the various lenders under the New Facility, (ii) a pledge agreement

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<sup>3</sup> On May 12, 2014, OCC executed an amendment to the Existing Facility regarding its ability to pledge Canadian Government securities to support borrowings. To hold Canadian Government securities and Canadian dollars pledged by OCC, JPMorgan established at its London branch a securities and a deposit account in the name of JPMorgan, as administrative agent for the Existing Facility. OCC and JPMorgan executed an English law governed charge agreement pursuant to which OCC pledged the securities and cash at any time deposited in such accounts. A new English law governed charge agreement is expected to be entered into in connection with the New Facility.

between OCC and JPMorgan, and (iii) a custodian agreement between OCC and JPMorgan which OCC anticipates will occur on or before October 7, 2014.

Upon the successful syndication of the New Facility, a syndicate of banks, financial institutions and other entities will make loans to OCC on request. The aggregate amount of loans available under the facility, subject to the value of eligible collateral, is up to \$2 billion. During the term of the New Facility, the amount of the New Facility may be increased to up to \$3 billion if OCC so requests and if sufficient commitments from lenders are received and accepted.<sup>4</sup>

The Existing Facility included a tranche that could be drawn on in dollars or euros and a dollar-only tranche. The dollar equivalent of the total loans denominated in euros under the euro/dollar tranche of the Existing Facility could not exceed \$100 million. The New Facility does not contain a euro/dollar tranche, the ability to borrow in euros or a euro administrative agent because OCC no longer has any euro-denominated product lines. Additionally, the Existing Facility provided OCC with the ability to make test borrowings, which become due and payable on the day after such borrowings are made, in an amount not greater than \$10,000,000 for the purpose of testing communication and draw procedures. Under the New Facility, the \$10,000,000 cap on test borrowings will be removed so that test draws can more closely simulate the dollar amount of an actual draw and to be consistent with other credit facilities in the marketplace that do not have caps on test draws.

The New Facility is available on a revolving basis for a 364-day term. OCC may request a loan under the New Facility on any business day by providing a notice to JPMorgan, as administrative agent, which will then notify the lenders, who will be required to fund their *pro*

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<sup>4</sup> OCC is in the process of finalizing an additional \$1 billion of liquidity with a non-bank provider to promote observance of its minimum liquidity requirements.

*rata* share of any requested loan within a specified period of time after receiving notice from JPMorgan. The funding deadline is designed to permit OCC to obtain funds on the date of the request, subject to a cutoff time after which funding will occur on the next business day. Each loan issued pursuant to the New Facility matures and is payable 30 days after the borrowing date, except for test borrowings under the facility, which mature and are payable one business day after the borrowing date. Proceeds of loans under the New Facility must be used to meet the obligations of OCC arising out of the default or suspension of a clearing member, in anticipation of a potential default by a clearing member, or the failure of a bank or securities or commodities clearing organization to perform its obligations to OCC. In order to obtain a loan under the facility, OCC must pledge as collateral U.S. dollars or securities issued or guaranteed by the U.S. Government or the Government of Canada that are margin deposits of suspended members or that are held in OCC's clearing fund, and in either case the administrative agent must have a valid and enforceable first priority perfected lien and security interest in such collateral under the applicable laws of the United States or other applicable jurisdiction. Securities issued by the Government of Canada will only be eligible to be pledged as collateral if they have a minimum rating of AAA/Aaa as determined by S&P or Moody's. OCC has the authority to pledge these assets in connection with borrowings under Section 5(e) of Article VIII of its By-Laws and Rule 1104(b).

The amount available under the New Facility at any given point in time is equal to the lesser of (i) \$2 billion, or the increased size of the facility, if applicable, and (ii) the sum of (A) 90% of the value of OCC's clearing fund that is not subject to liens or encumbrances granted by OCC other than in connection with the New Facility and (B) 90% of the value of unencumbered margin deposits of suspended clearing members that are not subject to liens or encumbrances

granted by OCC other than in connection with the New Facility. If the aggregate principal amount of loans under the New Facility exceeds the amount available under this formula, OCC must prepay loans, obtain the release of liens and/or require additional margin and/or clearing fund deposits to cure the deficiency. A condition to the making of any loan under the New Facility is that, after giving effect to the loan, the dollar value of the aggregate loans under the New Facility may not exceed the "borrowing base." The borrowing base is determined by adding the value of all collateral pledged in connection with all loans under the New Facility, after applying "haircuts" to U.S. and Canadian Government securities based on their remaining maturity. If the borrowing base is less than the sum of 100% of the outstanding loans under the New Facility, OCC must repay loans or pledge additional collateral to cure the deficiency. There are additional customary conditions to the making of any loan under the New Facility, including that OCC is not in default. Importantly, however, the absence of a material adverse change affecting OCC is not a condition to the making of a loan. Loans may be prepaid at any time without penalty.

Events of default by OCC under the New Facility include, but are not limited to, non-payment of principal, interest, fees or other amounts when due; non-compliance with a daily borrowing base when loans are outstanding; material inaccuracy of representations and warranties; bankruptcy events; fundamental changes; and failure to maintain a first priority perfected security interest in collateral. In the event of a default, the interest rate applicable to outstanding loans would increase by 2.00%. The New Facility also includes customary defaulting lender provisions, including provisions that restrict the defaulting lender's voting rights, permit set-offs of payments against the defaulting lender and suspend the defaulting lender's right to receive commitment fees.

The New Facility involves a variety of customary fees payable by OCC, including: (1) a one-time arrangement fee payable to JPMorgan Securities and MLPF&S; (2) a one-time administrative and collateral agent fee payable to JPMorgan if the New Facility closes; (3) upfront commitment fees payable to the lenders based on the amount of their commitments; and (4) an ongoing quarterly commitment fee based on the unused amount of the New Facility.

(ii) Anticipated Effect on and Management of Risk

Overall, the New Facility reduces the risks to OCC, its clearing members and the options market in general because it will allow OCC to obtain short-term funds to address liquidity demands arising out of the default or suspension of a clearing member, in anticipation of a potential default or suspension of clearing members or the insolvency of a bank or another securities or commodities clearing organization. The existence of the New Facility could enable OCC to minimize losses in the event of such a default, suspension or insolvency, by allowing it to obtain funds on extremely short notice to ensure that the clearance and settlement of transactions in options and other contracts occurs without interruption. By drawing on the facility OCC would be able to avoid liquidating margin or clearing fund assets in what would likely be volatile market conditions, which would preserve funds available to cover any losses resulting from the failure of a clearing member, bank or another clearing organization. OCC's entering into the New Facility will not increase the risks associated with its clearing function because it is entered into on substantially the same terms as the Existing Facility.

Two additional features carried through from the Existing Facility to the New Facility will enhance OCC liquidity and reduce risk. The inclusion of Canadian Government securities as eligible collateral will increase the amount of OCC collateral that can be pledged to support borrowings under the New Facility, resulting in increased availability of loans. The clarification

that OCC may borrow under the New Facility in anticipation of a potential default by or suspension of a clearing member may be subject to a requirement that OCC provide JPMorgan with documentation supporting its authorization to do so.

While the New Facility will, in general, reduce the risks associated with OCC's clearing function, like any lending arrangement the New Facility involves risks. One of the primary risks to OCC and its clearing function associated with the New Facility is the risk that a lender fails to fund when OCC requests a loan, because of the lender's insolvency or otherwise. This risk is mitigated through the use of a syndicated facility, which does not depend on the creditworthiness of a small number of lenders. In addition, the New Facility has lender default provisions designed to discourage lenders from failing to fund loans. Moreover, OCC has the ability under the New Facility to replace a defaulting lender. Finally, in the event a particular lender fails to fund its portion of the requested loan, the New Facility includes provisions pursuant to which OCC may request "covering" loans from non-defaulting lenders to make up the shortfall. Alternatively, OCC may simply make a second borrowing request for the shortfall amount that lenders are committed to make, subject to OCC's satisfying the borrowing conditions for the second loan, although in either case the total amount available for borrowing under the New Facility would be reduced by the unfunded commitment of the defaulting lender. The failure by one or more lenders to fund the first loan does not relieve the lenders of their commitment to fund the second loan.

A second risk associated with the New Facility is the risk that OCC is unable to repay a loan within 30 days, which would allow the lenders to seize the pledged collateral and liquidate it, potentially at depressed prices that would result in losses to OCC. OCC believes that this risk is at a manageable level, because 30 days should be an adequate period of time to allow OCC to



generate funds to repay the loans under the New Facility, such as by liquidating clearing fund assets other than those pledged to secure the loans. As provided in Section 5(e) of Article VIII of its By-Laws, if the loans have not been repaid within 30 days, the amount of clearing fund assets used to secure the loans will be considered to be an actual loss to the clearing fund, which will be allocated in accordance with Section 5 of Article VIII, and the proceeds of such allocation can be used to repay the loans.

(iii) Consistency with the Payment, Clearing, and Settlement Supervision Act

OCC believes that the proposed change is consistent with Section 805(b) of the Payment, Clearing and Settlement Supervision Act<sup>5</sup> because it will promote robust risk management.<sup>6</sup> The New Facility would provide OCC with an additional source of liquidity to meet its settlement obligations while at the same time being structured to address certain risks, as described above, that arise in connection with the New Facility. The New Facility could also enable OCC to minimize losses in the event of a default, suspension or insolvency, by allowing it to obtain funds on extremely short notice to ensure that the clearance and settlement of transactions in options and other contracts occurs without interruption. Moreover, the New Facility would permit OCC to avoid liquidating margin or clearing fund assets in what would likely be volatile market conditions and preserve sufficient financial resources to cover any losses resulting from the failure of a clearing member, bank or other clearing organization.

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<sup>5</sup> 12 U.S.C. 5464(b).

<sup>6</sup> 12 U.S.C. 5464(b)(1).

(iv) Accelerated Commission Action Requested

Pursuant to Section 806(e)(1)(I) of the Payment, Clearing and Settlement Supervision Act,<sup>7</sup> OCC requests that the Commission notify OCC that it has no objection to the change no later than September 30, 2014, which is one week prior to the October 7, 2014 effective date of the New Facility. OCC requests Commission action one week in advance of the effective date to ensure that there is no period of time that OCC operates without a credit facility, given the importance of the borrowing capacity in connection with OCC's risk management.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

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<sup>7</sup> 12 U.S.C. 5465(e)(1)(I).

The clearing agency shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2014-806 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2014-806. 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>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed change that are filed with the Commission, and all written communications relating to the proposed 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\\_806.pdf](http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_806.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-2014-806 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Commission's Findings and Notice of No Objection

Section 806(e)(1)(G) of the Payment, Clearing, and Settlement Supervision Act<sup>8</sup> provides that a designated financial market utility may implement a change if it has not received an objection from the Commission within 60 days of the later of (i) the date that the Commission receives notice of the proposed change or (ii) the date the Commission receives any further information it requests for consideration of the notice. A designated financial market utility may implement a proposed change in less than 60 days from the date of receipt of the notice of the change by the Commission, or the date the Commission receives any further information it requested, if the Commission notifies the designated financial market utility in writing that it does not object to the proposed change and authorizes the designated financial market utility to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

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<sup>8</sup> 12 U.S.C. 5465(e)(1)(G).

In its filing with the Commission, OCC requested that the Commission notify OCC that it has no objection to the change no later than September 30, 2014, which is one week before the October 7, 2014 effective date of the New Facility. OCC requested Commission action by this date to ensure that there is no period of time that OCC operates without a credit facility, given the importance of the borrowing capacity in connection with OCC's risk-management framework.

The Commission does not object to the proposed change. Ensuring that OCC has uninterrupted access to a credit facility will promote the safety and soundness of the broader financial system by providing OCC with an additional source of liquidity to meet its clearance and settlement obligations in the event of the failure of a clearing member, bank, or clearing organization doing business with OCC. Having access to a credit facility will help OCC minimize losses in the event of such a failure by allowing it to access funds on extremely short notice, and without having to liquidate assets at a time when market prices could be falling precipitously.

VI. Conclusion

Pursuant to Section 806(e)(1)(I) of the Payment, Clearing, and Settlement Supervision Act,<sup>9</sup> the Commission does not object to the proposed change, and authorizes OCC to implement the change (SR-OCC-2014-806) as of the date of this Order.

By the Commission.

Kevin M. O'Neill  
Deputy Secretary

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<sup>9</sup> 12 U.S.C. 5465(e)(1)(I).