

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68535; File No. SR-OCC-2012-24)

December 26, 2012

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Its By-Laws and Rules Consistent with Recent System Changes to the Stock Loan/Hedge Program and Market Loan Program and Delete Certain Terms and Provisions No Longer Applicable

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 December 13, 2012, The Options Clearing Corporation (“OCC” or the “Corporation”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II and III below, which items have been prepared primarily by OCC. OCC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act,³ and Rule 19b-4(f)(4)(i)⁴ thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this Notice to solicit comments on the proposed rule change from interested persons.

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

OCC is amending its By-Laws and Rules to make them consistent with recent system changes to the Stock Loan/Hedge Program and Market Loan Program and delete certain terms and provisions that are no longer applicable.

II. Self-Regulatory Organization’s Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(4)(i).

and basis for the 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 such statements.⁵

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

The purpose of the rule change is to make certain technical changes to the By-Laws and Rules governing OCC's Stock Loan/Hedge Program and Market Loan Program (collectively, the "Programs") in order to make them consistent with recent system changes to the Programs and to delete certain terms and provisions that are no longer applicable.

Background

OCC's Stock Loan/Hedge Program is provided for in Article XXI of the By-Laws and Chapter XXII of the Rules, and provides a means for OCC clearing members to submit broker-to-broker stock loan transactions to OCC for clearance. Broker-to-broker transactions are independently-executed stock loan transactions that are negotiated directly between two OCC clearing members. OCC's Market Loan Program, provided for in Article XXIA of the By-Laws and Chapter XXIIA of the Rules, accommodates securities loan transactions executed through electronic trading platforms that match lenders and borrowers on an anonymous basis.

Anonymous stock loan transactions are initiated when a lender or borrower, who is either an OCC clearing member participating in the Market Loan Program or a non-clearing member who has a clearing relationship with an OCC clearing member participating in the Market Loan Program, accepts a bid/offer displayed on a trading platform. A clearing member participating in the Market Loan Program will be obligated to OCC as principal with respect to transactions

⁵ The Commission has modified the text of the summaries prepared by OCC.

effected by its customers that are non-clearing members of a trading platform.

Where a stock loan transaction is submitted to, and accepted by, OCC for clearance, OCC substitutes itself as the lender to the borrower and the borrower to the lender, thus serving a function for the stock loan market similar to the one it serves within the listed options market. OCC thereby guarantees the future daily mark-to-market payments between the lending clearing member and borrowing clearing member, which are effected through OCC's cash settlement system, and the return of the loaned stock to the lending clearing member and the collateral to the borrowing clearing member upon close-out of the stock loan transaction. OCC leverages The Depository Trust Company's ("DTC" or the "Depository") infrastructure to transfer loaned stock and collateral between OCC clearing members.

Recently, OCC performed a series of procedural changes and system enhancements designed to automate processes that had previously been performed manually and improve the allocation process for stock loan and borrow positions of OCC members who participate in the Stock Loan/Hedge Program and the Market Loan Program. For example, OCC has simplified the process in which stock loan positions are allocated or transferred across a clearing member's account structure. Clearing members now specify a "default" account into which stock loan and borrow positions are automatically allocated, and from which transfers and returns are processed, unless otherwise specified in an instruction submitted by the clearing member. Additionally, OCC now has the functionality to receive messages from DTC in real-time, including reclaim requests (i.e., requests submitted by a lender or borrower to DTC to reverse an initial delivery order). Although OCC had previously processed such messages on a manual basis, system changes now enable OCC to automatically process reclaim requests received from DTC on a real-time basis throughout the day. As such, clearing members may now view their positions in

real-time, and perform transfers throughout the day based on real-time position information. OCC system changes also provide clearing members with additional mark-to-market rounding flexibility, allowing clearing members to now round their mark-to-market pay and collect amounts to decimals. Finally, the system changes provide clearing members the ability to use sub-accounting functionality that already exists for other products cleared by OCC. In particular, the use of sub-accounting functionality allows a clearing member to segregate individual accounts within its customer, firm, or market-maker ranges, providing greater flexibility in how the clearing member manages individual account positions and margin requirements.

While these system changes and procedural changes increase the efficiency and accuracy of the processes by which stock loan and borrow transactions are processed and positions are maintained, OCC believes they have no impact on the substantive rights or obligations of OCC or any clearing member.

Description of Rule Change

1. Designation of Accounts For Stock Loan Transactions And Transfers Between Accounts

The current versions of Rules 2201(a) and 2201A(a) describe a process by which clearing members provide OCC with standing instructions designating one or more accounts in which the clearing member's stock loan and borrow positions may be carried. OCC is amending these provisions to conform with recent system changes to the Programs, as described in the Background section above. Under the system changes, clearing members are required to designate one default account, which can be any of the clearing member's accounts or sub-accounts thereof (e.g., Customers', Firm, or Market Maker) that are eligible under Article XXI, Section 5, Interpretation .01 of the By-Laws to hold stock loan and borrow positions, to which the Corporation can allocate new stock loan and borrow positions in the absence of executable

instructions from the clearing member to allocate the new positions to a different account. When a clearing member effects a new loan or borrow, the clearing member can designate an account (or a sub-account thereof) to which the position is to be allocated. If, however, there is no such designation, or the designation is invalid for any reason, the position is allocated to the default account. The clearing member may thereafter transfer stock loan or borrow positions among eligible accounts by submitting an appropriate instruction to OCC.

Interpretation .01 under each of Rule 2201 and Rule 2201A provides details of the process by which a clearing member may transfer existing stock loan or borrow positions (in whole or in part) among its accounts and permits the clearing member to specify a sequence of accounts for the allocation by OCC of its positions if the clearing member attempts to transfer more or fewer shares than its end-of-day loan or borrow position. Under the new system, in connection with a transfer of an existing stock loan or borrow position, shares are taken from the account or sub-account specified by the clearing member. If there are not enough shares in a stock loan or borrow position in that account, the transfer instruction will be rejected. The Corporation is revising Interpretation .01 under Rules 2201 and 2201A to make it consistent with this new system for processing transfers among accounts.

Interpretation .01 to each of Rule 2201 and Rule 2201A also currently uses the term “allocated” when describing how a clearing member can move positions among its accounts. The Corporation is changing the term “allocate” to “transfer” as “transfer” is a more accurate description that distinguishes the process from the initial “allocation” of a transaction to a designated account.

With respect to returns of stock, Interpretation .02 under each of Rule 2201 and Rule 2201A describes the current system which relies in part upon the sequence of accounts specified

by a clearing member (referred to in the preceding paragraph) to allocate returns among the clearing member's accounts with stock loan or borrow positions in the returned stock. Under the new system, returns are reflected in the clearing member's account or sub-account specified on the original delivery order submitted by DTC. If there are not enough shares in the position in that account, the excess shares to be returned are reflected in the clearing member's default account. If there are not enough shares in the applicable position in the default account, the remaining shares are rejected and the return instruction is void to that extent. If no account is designated in the DTC delivery order, then shares are taken from the clearing member's default account and any excess shares are rejected and the return instruction is void to that extent. The Corporation is amending Interpretation .02 under Rules 2201 and 2201A to reflect the new process.

2. Reclaim Transactions

Reclaim transactions are submitted to DTC by either the borrower (to reclaim new loans) or the lender (to reclaim returns) to reverse initial Delivery Orders ("DO") for a variety of reasons (e.g., DK, wrong quantity, wrong security, wrong money). When DTC receives a reclaim for a previously submitted Stock Loan/Hedge transaction, DTC attempts to match the reclaim to a DO from the same day. Previously, this process occurred throughout the day at DTC, and OCC received only a final positions file after all transactions were processed. As such, the end-of-day file received by OCC did not contain information about reclaims.

OCC now receives messages in real-time from DTC, which include reclaim transactions. Although OCC previously handled reclaim transactions automatically, OCC's system changes now enable OCC to process reclaims systemically. More specifically, OCC system changes enable OCC to begin processing intra-day real-time messages, rather than end-of-day batch files.

Under the new process: (i) if OCC receives a reclaim message, the system will attempt to match it to a new loan, borrow or return that occurred that same day and, if a match is found, the system will void the original transaction; (ii) OCC will reject any attempted reclaim of a new loan, borrow or return done on a previous day; and (iii) OCC will reject reclaims that create excess shares (i.e., not enough shares in the account to reduce). Rejected reclaims will not be processed, but will be provided to the clearing member through an on-demand report listing rejected reclaims, along with the basis for the rejection. In connection with reclaim transactions, OCC proposes to include provisions in the Rules to provide certain protections for OCC in the situation where DTC sends a notice to OCC to reverse an initial DO. Specifically, the Corporation is adding to Rule 2202(b) a provision that, if OCC determines that it is able to process a reclaim, OCC may disregard the initial DO and such DO shall be deemed null and void and given no effect for purposes of OCC's By-Laws and Rules. In addition, amended Rule 2202(b) would provide that OCC shall have no obligation or liability to any clearing member in acting, or failing to act, pursuant to a DTC notification to reverse an initial DO. OCC may not process a reclaim for various reasons, including but not limited to: (i) securities that are not eligible for stock loan transactions; (ii) invalid clearing member; or (iii) reclaim is received not on the same day as the initial delivery order. Finally, the Corporation is adding Interpretation .01 to Rule 2202 to provide that although the Corporation now makes updated stock loan and borrow position information available to each clearing member during a business day, such updated position information is considered provisional and informational only and is subject to revision at any time, and that only the official daily position report may be relied upon as definitely reflecting a clearing member's final stock loan and borrow positions because positions may be altered during the day, for example, to reflect reclaim transactions.

3. Margin-Ineligible Accounts and Stock Loan and Borrow Baskets

The current By-Laws and Rules contain references to “margin-ineligible” and “margin-eligible” accounts. As there are no longer any margin-ineligible accounts (i.e., all stock loan and borrow positions are now included in margin calculations),⁶ the Corporation is removing references to “margin-ineligible” and “margin-eligible” accounts from the By-Laws and Rules.

The By-Laws and Rules also currently contain references to “stock loan baskets” and “stock borrow baskets.” As OCC no longer allows these products,⁷ the Corporation is removing references to “stock loan baskets” and “stock borrow baskets” from the By-Laws and Rules.

4. Receiver Authorized Delivery Processing

DTC has made changes to its systems such that transactions that OCC submits to DTC via the Market Loan Program will no longer be subject to DTC’s Receiver Authorized Delivery (“RAD”) processing.⁸ To ensure that deliveries in the Market Loan Program flowed through to OCC unimpeded, Interpretation .07A under Article V, Section 1 of the By-Laws requires each clearing member that is a Market Loan Participant to set its RAD limit to the highest level permitted under DTC’s rules. DTC has made system changes such that transactions that OCC submits to DTC via the Market Loan Program will no longer be subject to RAD processing. Accordingly, all transactions will flow through unimpeded without the need for Market Loan

⁶ Securities Exchange Act Release No. 59036 (Dec. 1, 2008), 73 FR 74554 (Dec. 8, 2008) (SR-OCC-2008-06).

⁷ Securities Exchange Act Release No. 34-47898 (May 21, 2003), 68 FR 32164 (May 29, 2003) (SR-OCC-2002-11).

⁸ Securities Exchange Act Release No. 66179 (Jan. 18, 2012), 77 FR 3531 (Jan. 24, 2012) (SR-DTC-2011-08). RAD is generally a control mechanism of DTC that allows users to review and either approve or cancel incoming deliveries before they are processed to avoid reclamations. DTC’s system establishes a minimum RAD limit of \$15 million for delivery orders, and each firm is responsible for setting its own RAD limits for each counterparty.

Participants to set RAD limits.⁹ As a result, OCC is removing Interpretation .07A under Article V, Section 1 of the By-Laws.

OCC believes the rule change is consistent with the purposes and requirements of Section 17A of the Act because they are designed to promote the prompt and accurate clearance and settlement of stock loan and borrow transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions¹⁰ by automating processes that had previously been performed manually and improving the allocation process for stock loan and borrow positions of OCC members. The rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)¹¹ of the Act and Rule 19b-4(f)(4)(i)¹² thereunder on the basis that the rule change effect a change

⁹ Exclusion of Market Loan Program transactions from RAD limits will in no way impede OCC's ability to manage risk of stock loan and borrow positions because OCC never relied on the DTC RAD limits as a risk management tool.

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. OCC will delay the implementation of the rule change until it is deemed certified under CFTC Regulation § 40.6. At any time within 60 days of the filing of the 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.¹³

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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 No. SR-OCC-2012-24 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, D.C., 20549-1090.

¹² 17 CFR 240.19b-4(f)(4)(i).

¹³ 15 U.S.C. 78s(b)(3)(C).

All submissions should refer to File Number SR-OCC-2012-24. 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 rule change that are filed with the Commission, and all written communications relating to the 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 Room, 100 F Street, NE, 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_12_24.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-2012-24 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.¹⁴

Kevin M. O’Neill
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).