

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70092; File No. SR-OCC-2013-11)

August 1, 2013

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to: (i) Provide Clarification Regarding the Applicability of Certain Provisions of OCC's By-Laws and Rules to Certain U.S. Dollar-Settled Gold Futures Designed to Replicate Positions in the Spot Market; and (ii) Remove Provisions Applicable Only to the Now-Discontinued U.S. Dollar-Settled Gold Futures That Were Based on the Value of Gold in the Spot Market With an Additional Daily Cost of Carry Feature

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 July 25, 2013, The Options Clearing Corporation ("OCC") 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 proposed rule change pursuant to Section 19(b)(3)(A)(iii)³ of the Act and Rule 19b-4(f)(4)(ii)⁴ thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to do the following: (i) provide clarification regarding the applicability of certain provisions of OCC's By-Laws and Rules to certain U.S. dollar-settled gold futures designed to replicate positions in the spot market ("GLN 10 oz. Gold Futures")⁵ proposed to be

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)(ii).

⁵ "GLN" will be the ticker symbol for these futures contracts.

traded by NASDAQ OMX Futures Exchange, Inc. (“NFX”); and (ii) remove provisions applicable only to the now-discontinued U.S. dollar-settled gold futures that were based on the value of gold in the spot market with an additional daily cost of carry feature that was designed to reflect the difference between the overnight lease rate for gold and the overnight interest rate for the U.S. dollar, which were also traded by NFX (“Swap Point Gold Futures”).

II. Clearing Agency’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.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC is proposing to modify its rules to provide clarification regarding the applicability of certain provisions of OCC’s By-Laws and Rules to the clearance and settlement of GLN 10 oz. Gold Futures, which are proposed to be traded by NFX. A GLN 10 oz. Gold Future is a U.S. dollar-settled futures contract that tracks spot gold prices using a single contract month for a particular year. OCC’s existing By-Laws and Rules already adequately accommodate OCC’s clearing and settlement of GLN 10 oz. Gold Futures. However, OCC is proposing certain amendments in order to eliminate any potential confusion regarding the applicability of certain provisions that were specific to the now-discontinued Swap Point Gold Futures contracts. GLN 10 oz. Gold Futures differ from Swap Point Gold Futures, which previously were but are no longer cleared by OCC, in that they do not include a Cost of Carry Payment (defined below).

Swap Point Gold Futures were U.S. dollar-settled futures contracts based on the value of gold with an additional daily cost of carry/interest payment feature that was designed to reflect the difference between the overnight lease rate for gold and the overnight interest rate for the U.S. dollar (the “Cost of Carry Payment”). NFX has advised OCC that it has no present intention to clear swap point contracts in the future.

(i) OCC’s Proposed By-Laws and Rules Changes

OCC proposes to delete paragraph (f) of Rule 1301, which provided for OCC’s determination of the Cost of Carry Payment to be paid or received by buyers and sellers of outstanding spot futures contracts. GLN 10 oz. Gold Futures do not possess this Cost of Carry Payment feature, and therefore Rule 1301(f) is not applicable to them. Swap Point Gold Futures – the only product previously cleared by OCC that possessed the Cost of Carry Payment feature – are no longer cleared by OCC, and Rule 1301(f) therefore is no longer needed, and OCC proposes to delete the provision from its Rules. Accordingly, the defined terms “cost of carry payment” and “spot future,” which were only utilized in the context of the cost of carry payment, are both superfluous, and OCC proposes to delete them from Article I of the By-Laws. OCC also proposes to delete a reference in Section 2(a) of Article XII of OCC’s By-Laws to the applicability of the cost of carry payment provisions of Rule 1301 to buyers and sellers of spot futures.

(ii) OCC’s Amendment to the Clearing Agreement and Schedule C

OCC performs the clearing function for NFX pursuant to the Clearing Agreement. The Clearing Agreement provides that NFX will provide settlement prices to OCC and indemnify OCC in the event that OCC uses an incorrect settlement price provided by NFX. Additionally, it provides that NFX will provide certain additional data necessary for the calculating of the Cost

of Carry Payment (“Swap Point Data”) and indemnify OCC in the event OCC uses incorrect Swap Point Data provided by NFX. As OCC will no longer be clearing Swap Point Gold Futures, there is no need for the Clearing Agreement to address NFX’s providing Swap Point Data, or for NFX to indemnify OCC for its use of such Swap Point Data. Therefore, OCC proposes to enter into an amendment to the Clearing Agreement deleting these provisions. The Clearing Agreement will continue to provide for NFX’s indemnification of OCC in the event that OCC uses an incorrect settlement price provided by NFX. A copy of the proposed amendment to the Clearing Agreement is attached hereto as Exhibit 3A.

Pursuant to the terms of the Clearing Agreement, OCC has agreed to clear the specific types of contracts enumerated in the Agreement and may agree to clear additional types through the execution by both parties of a new “Schedule C” to the Agreement. A copy of the proposed new Schedule C providing for the clearance of GLN 10 oz. Gold Futures is attached hereto as Exhibit 3B.

(iii) Effect on Clearing Members

The proposed rule change relates to the clearing of a new product and will affect clearing members and their customers to the extent that they seek to trade GLN 10 oz. Gold Futures. The change will affect all such clearing members equally and should not impose any compliance burdens on clearing members, because GLN 10 oz. Gold Futures will be cleared using existing systems and will be margined similarly to other existing products.

The proposed changes to OCC’s By-Laws and Rules are consistent with the purposes and requirements of Section 17A(b)(3)(A) of the Securities Exchange Act of 1934, as amended (the “Exchange Act” or “Act”)⁶, because they are designed to permit OCC to perform clearing

⁶ 15 U.S.C. 78q-1.

services for products that are subject to the jurisdiction of the Commodity Futures Trading Commission (the “CFTC”) without adversely affecting OCC’s obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of securities investors and the public interest. They accomplish this purpose by providing clarification regarding the applicability of certain provisions of OCC’s By-Laws and Rules to GLN 10 oz. Gold Futures, and remove provisions of OCC’s By-Laws and Rules that are only applicable to Swap Point Gold Futures, a discontinued product. The proposed rule change is not inconsistent with any rules of OCC, including any rules proposed to be amended.

(B) Clearing Agency’s Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the Act because it relates solely to a commodity futures product subject to the exclusive jurisdiction of the Commodity Futures Trading Commission and therefore will not have any impact, or impose any burden, on competition in securities markets or any other market governed by the Act.

(C) Clearing Agency’s Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

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

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

This proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A)(iii) of the Act⁷ and Rule 19b-4(f)(4)(ii)⁸ thereunder. Pursuant to Rule 19b-

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(4)(ii).

4(f)(4)(ii),⁹ a rule change may take effect upon filing if it primarily affects the clearing operations of the clearing agency with respect to products that are not securities and does not significantly affect any securities clearing operations of the clearing agency or any rights or obligations of the clearing agency with respect to securities clearing or persons using such securities-clearing service. As described above, this proposed rule change concerns futures products that are subject to the primary jurisdiction of the CFTC and does not adversely affect OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of securities investors and the public interest. Notwithstanding the foregoing, OCC will delay its implementation of this rule change until it is deemed certified under Regulation § 40.6¹⁰ of the CFTC.

At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend this 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.¹¹

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

⁹ *Id.*

¹⁰ 17 CFR Part 40.

¹¹ 15 U.S.C. 78s(b)(3)(C).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2013-11 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-2013-11. 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 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 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_13_11.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-2013-11 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.¹²

Kevin M. O'Neill
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).