

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-71505; File No. SR-OCC-2014-02)

February 7, 2014

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Accommodate the Clearing of Physically-Settled Single Stock Futures for Which Delivery Would Occur on the First Business Day After the Maturity Date

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on January 28, 2014, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I and II below, which Items have been prepared primarily by OCC. OCC has filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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

This proposed rule change would accommodate the clearing of physically-settled single stock futures (“SSFs”) for which delivery would occur on the first, rather than the third, business day after the maturity date of each such SSF.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 87s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), OCC provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed change, or such shorter time as designated by the Commission.

Initially, OneChicago, LLC (“OCX”) is proposing to list SSFs for which delivery would occur on the first business day after maturity. In connection therewith, OCC is proposing to enter into an amendment (the “Amendment”) to the Amended and Restated Security Futures Agreement for Clearing and Settlement Services dated May 15, 2012, between OCC and OCX (the “Clearing Agreement”), in order to provide for OCX’s indemnification of OCC for claims arising from representations OCX may make to buyers and sellers of security futures contracts, including SSFs, regarding the tax treatment of their purchase or sale.

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

1. Purpose

**Proposed Changes to OCC’s Rules**

OCC is proposing to modify its rules to accommodate the clearing of a physically-settled SSF for which the delivery date would be the first business day following the maturity date (“T+1 SSFs”) rather than the third business day following the maturity date (“T+3 SSFs”). Currently, OCC only clears T+3 SSFs. In order to accommodate this different delivery schedule, OCC proposes to amend the definition of delivery date in Rule 1302 for physically-settled stock

futures as well as to modify references to the timing of the delivery date for security futures in the broker-to-broker settlement procedures in Rule 903.

Settlement of physically-settled SSFs is ordinarily effected through the National Securities Clearing Corporation (“NSCC”), pursuant to NSCC’s rules and OCC Rule 901 regarding transactions in physically-settled stock futures. OCC has confirmed with NSCC that NSCC can operationally accommodate T+1 SSFs.<sup>5</sup> As is the case for stock futures already cleared by OCC for which NSCC provides physical delivery settlement services, and in accordance with OCC Rule 601, OCC will collect risk margin from its clearing members on deliveries of T+1 SSFs for one business day following the maturity date and release such risk margin to its clearing members on the second business day following the maturity date. OCC understands that, consistent with NSCC’s rules, NSCC would also collect margin based on the mark-to-market of the unsettled stock in the morning of the first business day following maturity in connection with receipt of the stock trade from OCC. This will result in a temporary double-margining of T+1 SSFs. As with existing physically-settled SSFs cleared by OCC, T+1 SSFs are futures and therefore not covered by the Third Amended and Restated Options Exercise Settlement Agreement dated as of February 16, 1995, between OCC and NSCC. OCC and NSCC will have no obligation to turn over to the other margin deposited by a clearing member that has been suspended.

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<sup>5</sup> In the event the security underlying a T+1 SSF is not eligible for physical delivery settlement at NSCC – for example, due to trading suspensions or delistings– OCC would instruct physical delivery settlement to occur on a broker-to-broker basis in accordance with the applicable provisions of Chapter IX of its Rules. As noted above, OCC proposes to modify Rule 903 to accommodate the one-day delivery date for T+1 SSFs.

## **OCX's New Product and Amendment to the Clearing Agreement**

### *OCX's New Product*

OCX is proposing to list weekly maturity T+1 SSFs [sic].<sup>6</sup> OCX has de-listed its weekly maturity T+3 SSFs prior to the launch of weekly maturity T+1 SSFs, and will initially list weekly maturity T+1 SSFs on five to ten underlyings.<sup>7</sup>

### *Amendment to the Clearing Agreement*

OCC performs the clearing function for OCX pursuant to the Clearing Agreement, under which OCX agrees to indemnify and hold harmless OCC against any and all liabilities and costs in settlement in connection with any proceeding that arises out of, or is based upon, any violation or alleged violation by OCX of any law or governmental regulation. OCC and OCX have agreed to the proposed Amendment, which expands and clarifies this indemnification to include OCX's indemnification of OCC for claims that arise from any representations that OCX makes regarding the tax treatment of any futures product cleared pursuant to the Clearing Agreement, including SSFs.

OCC believes the additional indemnification described above is appropriate because OCX has designed its proposed weekly maturity T+1 SSFs with the intention that investors may enter into an "exchange for physical" transaction involving weekly maturity T+1 SSFs and receive the same tax treatment as parties to a stock loan transaction under Section 1058 of the Internal Revenue Code (the "Code"). While stock loan transactions involve the transfer of a stock, which potentially could trigger recognition of a gain or loss under the Code, under Code Section 1058 a transfer of securities under a stock lending arrangement satisfying certain

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<sup>6</sup> The Commission Staff notes that this filing (SR-OCC-2014-02) does not encompass any proposal by OCX's to list weekly maturity T+1 SSFs.

<sup>7</sup> OCC understands that OCX's monthly maturity SSFs will continue to be T+3 SSFs.

conditions is generally not considered a recognition event. The Amendment is intended to provide for OCX's indemnification of OCC for any claims arising from the representations, if any, that OCX may make regarding the SSFs' eligibility for this tax treatment.

Prior to the launch of the T+1 SSFs, OCC will send to clearing members and also post on its public web site an Information Memo describing the features of T+1 SSFs, as described above.

## 2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,<sup>8</sup> because it will modify OCC's Rules in a manner that will promote the prompt and accurate clearance and settlement of derivative agreements for which OCC is responsible. By amending its rules to accommodate T+1 SSFs, in addition to T+3 SSFs, OCC will be able to clear and facilitate settlement of SSFs that will settle more promptly than SSFs currently cleared by OCC, thereby reducing systemic risk. In addition, and also consistent with Section 17A(b)(3)(F) of the Act, the proposed rule change will continue to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions<sup>9</sup> because, as with T+3 SSFs, both OCC and NSCC will facilitate the settlement of T+1 SSFs. The proposed rule change is not inconsistent with the existing rules of OCC, including any other 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 purposes of the Act.<sup>10</sup> With

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<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>9</sup> *Id.*

<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(I).

respect to any burden on competition among clearing agencies, OCC is the only registered clearing agency that performs central counterparty services for the security futures markets.

Changes to the rules of a clearing agency may have an impact on the participants in a clearing agency and the markets that the clearing agency serves. This proposed rule change primarily affects security futures clearing members and OCC believes that the proposed modifications would not unfairly inhibit access to OCC's services, or disadvantage or favor any particular user in relationship to another user, because the changes will affect all clearing members equally, T+1 SSFs will be cleared using existing systems and T+1 SSFs will be margined similarly to existing products.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impose a burden on competition that is unnecessary or inappropriate in furtherance of the purposes of 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

Because the foregoing rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest,

the proposed change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>12</sup>

At any time within 60 days of the filing of such 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.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2014-02 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-2014-02. 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

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<sup>11</sup> 15 U.S.C 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii). Notwithstanding the foregoing, OCC has indicated that implementation of this rule change will be delayed until this rule change is deemed certified under CFTC Regulation §40.6.

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\\_14\\_02.pdf](http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_02.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-2014-02 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.<sup>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).