

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68618; File No. SR-OCC-2012-801)

January 10, 2013

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice, as Modified by Amendment No. 1 Thereto, in Connection with a Proposed Change to Enter into an Unsecured, Committed Credit Agreement

Pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 (“Clearing Supervision Act”)¹ and Rule 19b-4(n)(1)(i),² notice is hereby given that on December 18, 2012, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the advance notice described below. On December 21, 2012, OCC filed Amendment No. 1 to the advance notice.³ The advance notice as amended by Amendment No. 1 is described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the advance notice and Amendment No. 1 from interested persons.

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

OCC is filing this advance notice in connection with a change to its operations (the “Change”) in the form of entering into an unsecured, committed credit agreement (the “Agreement” or the “Facility”). The Facility would provide OCC with access to additional liquidity for working capital needs and general corporate purposes. The Facility would also help

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b-4(n)(i).

³ Amendment No. 1 corrects Item 2 of OCC’s Form 19b-4 to indicate that “[t]he proposed change was approved by the Board of Directors of OCC at a meeting held on July 24, 2012,” rather than September 25, 2012.

satisfy the liquidity requirement of the Commodity Futures Trading Commission's ("CFTC") regulation Section 39.11(e)(2).

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), (B), and (C) below, of the most significant aspects of these statements.⁴

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

Description of Change

The proposed Change would provide OCC with access to an unsecured, committed credit facility in an aggregate principal amount not to exceed \$25 million. The Facility would be designed to provide OCC with access to additional liquidity for working capital needs and general corporate purposes. The Facility will also satisfy the liquidity requirement of CFTC regulation Section 39.11(e)(2).⁵ OCC also does not expect any need to draw funds against the Facility. OCC's principal reason for entering into the Facility is to provide OCC additional

⁴ The Commission has modified the text of the summaries prepared by OCC.

⁵ For clarity concerning the scope of the proposed Change, OCC notes that the Commission recently published a notice of no objection to an OCC advance notice filing through which OCC replaced a separate credit facility that is maintained for the purpose of meeting obligations that may arise out of the default or suspension of an OCC clearing member or the failure of a bank or securities or commodities clearing organization to perform its obligations due to bankruptcy, insolvency, receivership, or suspension of operations. Securities Exchange Act Release No. 34-68002 (October 5, 2012); 77 FR 62308 (October 12, 2012).

flexibility in managing its liquid assets while ensuring continued compliance with the liquidity requirements of the CFTC regulations cited above.

Among other things, CFTC regulation Section 39.11(a)(2) requires a derivatives clearing organization (“DCO”) to hold an amount of financial resources that, at a minimum, exceeds the total amount that would enable the DCO to cover its operating costs for a period of at least one year, calculated on a rolling basis.⁶ In turn, CFTC regulation Section 39.11(e)(2) provides that these financial resources must include unencumbered, liquid financial assets (i.e., cash and/or highly liquid securities), equal to at least six months’ operating costs and that if any portion of such financial resources is not sufficiently liquid, the DCO may take into account a committed line of credit or similar facility for the purpose of meeting this requirement.⁷ Accordingly, under the proposed Change, OCC would enter into a credit agreement for the Facility with BMO Harris Bank N.A. (“Lender”) having a maximum aggregate principal loan amount not to exceed \$25 million.

One of the conditions of OCC’s access to the Facility is the execution of credit agreement documents between OCC and the Lender. OCC anticipates that the parties will finalize the forms of the credit agreement documents in early 2013. Ongoing conditions governing OCC’s ability to access the Facility would include that no default or event of default by OCC may exist before or during an extension of credit by the Lender to OCC through the Facility and that certain representations of OCC must remain true and correct. Events of default would include, but not be limited to, failure to pay any interest, principal, fees or other amounts when due, default under any covenant or agreement in any loan document, materially inaccurate or false

⁶ 17 CFR 39.11(a)(2).

⁷ 17 CFR 39.11(e)(2).

representations or warranties, cross default with other material debt agreements, insolvency, bankruptcy, dissolution or termination of the existence of OCC, and unsatisfied judgments.

The Facility would be available to OCC on a revolving basis for a 364-day term. Upon notice by OCC to the Lender of a request for funds, whether in writing or by telephone, the Lender would disburse loaned funds to OCC in U.S. dollars. The date of any loan would be required to be a business day, and the loans would be unsecured and made and evidenced by a promissory note provided by OCC. Under the terms of OCC's Agreement with the Lender, any loan proceeds would be required to be used by OCC to finance its working capital needs or for OCC's general corporate purposes. OCC's ability to draw against the Facility, even though no such draw is actually made, would contribute to OCC's compliance with the liquidity requirements prescribed by CFTC regulation Section 39.11(e)(2).

OCC would have the ability to terminate the Facility at any time. Termination within the first six months of the Facility would trigger a termination fee. After six months from the date of entering the Agreement with the Lender to establish the terms of the Facility, OCC would be permitted to cancel the Facility with no termination fee. Upon five days written notice during the term of the Facility, OCC would also be permitted to reduce the overall size of the Facility at any time. Any such reductions would be required to be made in an initial amount of at least \$2.5 million. Thereafter, reductions would be able to be made in multiples of \$1 million. In no event, however, would OCC be permitted to reduce the size of the Facility to an amount that is less than the greater of either its aggregate principal amount of indebtedness outstanding with respect to loans from the Facility or \$15 million.⁸

⁸ In the event that OCC seeks to terminate or reduce the overall size of the Facility, OCC will first file an advance notice with the Commission.

The outstanding principal balance of all loans made to OCC through the Facility will accrue interest equal to a base rate (generally equal to a Prime Rate, a Federal Funds Rate, or a LIBOR rate), as in effect from time to time, plus a certain applicable margin. Regardless of which method applies to a particular portion of OCC's total outstanding loan balance, in an event of a default the calculation of the amount of interest would be subject a 2.00% increase above the otherwise applicable rate.

The Facility would involve a variety of customary fees payable by OCC to the Lender, including, but not limited to: (1) a one-time upfront fee payable at closing to the Lender calculated as a percentage of the total commitment amount of the Facility; (2) commitment fees payable quarterly in arrears on the average daily unused amount of the Facility; (3) reasonable out-of-pocket costs and expenses of the Lender in connection with the negotiation, preparation, execution, and delivery of the Facility and loan documentation, and costs and expenses in connection with any default, event of default, or enforcement of the Facility; and (4) termination fees if OCC elects to terminate the Facility prior to six months from the date of the credit agreement underlying the Facility.

Anticipated Effect on and Management of Risk

OCC believes that any impact of the Facility on the risks presented by OCC would be to reduce such risks by providing an additional source of liquidity for the protection of OCC, its clearing members, and the options market in general. OCC also believes it would provide OCC with additional liquidity for working capital needs and general corporate purposes and thereby assist OCC in satisfying the CFTC's requirements with respect to liquidity under CFTC regulation Section 39.11.

Like any lending arrangement, OCC notes there is a risk that the Lender would fail to fund when OCC requests a loan, because of the Lender's insolvency, operational deficiencies, or otherwise. Even if OCC were to draw on the Facility for liquidity purposes, which it does not anticipate, OCC believes that the potential funding risk associated with the Facility is mitigated in several ways. First, the Lender is a national banking association that is subject to oversight by prudential banking regulators with respect to its safety and soundness and its ability to meet its lending obligations. Furthermore, the \$25 million size of the Facility would be relatively small when compared to the total resources available to OCC. Therefore, if the Facility proved unavailable to OCC for any reason, OCC believes that it readily would be able to access, or arrange for access, to other sources of liquidity if necessary.

According to OCC, a second risk associated with the Facility is the risk that OCC would default on its obligation to make timely payment of principal or interest. OCC believes the benefits of the Facility outweigh this risk. Finally, because the Facility would be an unsecured lending arrangement, OCC would not be at risk in an event of default of the Lender potentially liquidating OCC assets that are used to secure loaned funds.

(B) 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.

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

The clearing agency may implement the proposed change pursuant to Section 806(e)(1)(G) of the Clearing Supervision Act⁹ if it has not received an objection to the proposed

⁹ 12 U.S.C. 5465.

change within 60 days of the later of (i) the date that the Commission received the advance notice or (ii) the date the Commission receives any further information it requests for consideration of the notice. The clearing agency shall not implement the proposed changes contained in the advance notice if the Commission objects 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 of receipt of the advance notice, or the date the Commission receives any further information it requested, 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.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed. The clearing agency shall post notice on its website of proposed changes that are implemented.

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. Please include File Number SR-OCC-2012-801 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-2012-801. 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice 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 filings also will be available for inspection and copying at the principal office of OCC and on OCC's website at <http://www.theocc.com/about/publications/bylaws.jsp>

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-2012-801 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

By the Commission.

Kevin O'Neill
Deputy Secretary