

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69955; File No. SR-OCC-2013-804)

July 10, 2013

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of an Advance Notice in Connection With a Proposed Change to its Operations in the Form of a Private Offering by OCC of Senior Unsecured Debt Securities

Pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 (“Clearing Supervision Act”)<sup>1</sup> and Rule 19b-4(n)(1)(i)<sup>2</sup> of the Securities Exchange Act of 1934 (“Exchange Act”) notice is hereby given that on June 10, 2013, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the advance notice as described in Items I and II below, which Items have been substantially prepared by OCC.<sup>3</sup> The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

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

OCC is proposing to change its operations in the form of a private offering of senior unsecured debt securities (“Offering”).

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

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

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

<sup>3</sup> OCC is a designated financial market utility and is required to file advance notices with the Commission. See 12 U.S.C. 5465(e).

in Item IV below. The clearing agency has prepared summaries, set forth in section A below, of the most significant aspects of such statements.<sup>4</sup>

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

Description of Change

OCC states that the proposed Offering would provide OCC with access to additional liquidity for working capital needs and general corporate purposes. The aggregate principal amount of the senior unsecured debt securities placed in the Offering is expected to be up to \$100 million. The proceeds of the Offering would be among the financial resources used to satisfy the requirements applicable to OCC under CFTC regulations.

Among other things, OCC states that CFTC regulation Section 39.11(a)(2)<sup>5</sup> 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. In turn, CFTC regulation Section 39.11(e)(2)<sup>6</sup> 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. OCC states that the Offering is intended to contribute to OCC’s compliance with the financial resources requirement under CFTC

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<sup>4</sup> The Commission has modified the text of the summaries prepared by the clearing agency.

<sup>5</sup> 17 CFR 39.11(a)(2).

<sup>6</sup> 17 CFR 39.11(e)(2).

regulation Section 39.11(a)(2)<sup>7</sup> and the liquidity requirements prescribed by CFTC regulation Section 39.11(e)(2).<sup>8</sup> OCC states that the proceeds of the offering would be invested in instruments such as reverse repurchase agreements in which working capital may be invested under OCC's By-Laws.

Under the proposal, OCC would issue senior unsecured debt securities through the Offering, which would be structured as a private placement for which a broker-dealer registered with the Securities and Exchange Commission under the Exchange Act would act as the exclusive placement agent. Under the terms of the Offering, OCC would be required to use any capital raised to finance its working capital needs or for general corporate purposes.

According to OCC, one of the conditions of OCC's proposed Offering is the execution of definitive agreements. These agreements are expected to include a number of conditions related to OCC's performance under such agreements including, without limitation, certain covenants and default provisions.

OCC states that the Offering would involve a variety of customary fees and expenses payable by OCC to the placement agent and the noteholders, including but not limited to: (1) a placement agent fee calculated as a percentage of the aggregate principal amount of debt securities sold in the Offering; and (2) other costs and expenses incurred by the placement agent in relation to its activities in connection with the Offering including, but not limited to, travel expenses and reasonable fees of counsel. These fees and expenses may be paid out of the proceeds of the Offering.

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<sup>7</sup> 17 CFR 39.11(a)(2).

<sup>8</sup> 17 CFR 39.11(e)(2).

### Anticipated Effect on and Management of Risk

OCC states that any impact of the Offering 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 states that the Offering 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.<sup>9</sup>

OCC states that, like any debt offering, the Offering would involve risks. According to OCC, one risk associated with the Offering relates to the need for OCC to maintain sufficient cash flow to support ongoing interest payments to the noteholders. OCC states this risk is mitigated by its conservative fiscal practices under which clearing and other fees are assessed at a level designed to ensure that OCC has more than sufficient funds to operate and satisfy liabilities, and refunds are paid to clearing members only when it is clear that excess funds are available. Clearing member refunds would be effectively subordinated to interest payments on the notes sold in the Offering.

OCC states that the Offering involves a risk of OCC's defaulting by failing to make timely payment of principal or interest or to comply with financial covenants, which would allow the noteholders to take legal action against OCC to recover any losses resulting from a default. However, OCC states that the risk of default from a payment failure is mitigated because, as discussed above, OCC does not expect to have difficulty making interest payments. Similarly, OCC states that the tests included in the financial covenants will be established at reasonable levels, making it unlikely that OCC would default by violating these covenants. In addition, because the Offering would involve the

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<sup>9</sup> 17 CFR 39.11.

issuance of unsecured notes, OCC states that it would not be at risk of the noteholders' liquidating OCC assets in the event of OCC's default.

The agreement with noteholders also requires OCC to make the noteholders "whole" in the event OCC elects to prepay any outstanding principal. According to OCC, this "make-whole" covenant poses risk to the extent OCC is unable to immediately pay the outstanding interest payments. OCC would mitigate the risk of having to make a large make-whole payment by either electing not to call the notes prior to termination or by waiting to call the notes until the make-whole premium has been reduced by the passage of time to a smaller amount. OCC expects to need the additional liquidity for the term of the notes and to issue the notes at a time of favorable market conditions, and accordingly OCC does not expect to call the notes prior to termination.

According to OCC, one risk of obtaining capital through the Offering as opposed to an unsecured line of credit is that OCC will incur more expense in connection with the Offering given that it must pay interest expense on the entire outstanding note balance as opposed to a comparatively smaller commitment fee on a line of credit. However, OCC states that this risk is justified by the difficulty in obtaining an unsecured line of credit of a size comparable to that of the Offering. Moreover, OCC states the risk is mitigated by OCC's investment of the proceeds, which generates income to offset the interest expense. In addition, by obtaining capital through the Offering OCC avoids the funding risk associated with a line of credit.

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

OCC may implement the proposed change pursuant to Section 806(e)(1)(G) of the Clearing Supervision Act<sup>10</sup> if it has not received an objection to the proposed 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 requested for consideration of the notice. 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 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 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.<sup>11</sup>

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<sup>10</sup> 12 U.S.C. 5465(e)(1)(G).

<sup>11</sup> OCC also filed the proposals contained in this advance notice as a proposed rule change under Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder. See supra note 3.

#### 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-2013-804 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-2013-804 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 am and 3:00 pm. Copies of

the filing also will be available for inspection and copying at the principal office of OCC and on OCC's website (<http://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-2013-804 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

By the Commission.

Kevin M. O'Neill  
Deputy Secretary