

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54784; File No. SR-OCC-2006-17)

November 20, 2006

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Definition of Fund Share and Options on Commodity Pool ETFs

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 21, 2006, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as 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 proposed rule change from interested persons.

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

The proposed rule change would permit OCC to issue, clear, and settle options on equity interests issued by exchange-traded funds ("ETFs") that trade directly or indirectly in commodity futures products and are therefore subject to regulation by the Commodity Futures Trading Commission ("CFTC") as commodity pools.

II. Self-Regulatory Organization'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

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

significant aspects of such statements.<sup>2</sup>

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

The proposed rule change would amend the definition of “fund share” to include options on equity interests issued by ETFs that trade directly or indirectly in commodity futures products and are therefore subject to regulation by the CFTC as commodity pools. The Commission recently approved a proposed rule change filed by the American Stock Exchange to list and trade options on (1) interests ( “Interests”) issued by the DB Commodity Index Tracking Fund (“DBC Fund”), whose value is intended to track the performance of the “Deutsche Bank Liquid Commodity Index™ - Excess Return” ( “Index”),<sup>3</sup> and (2) units (“Units”) issued by the United States Oil Fund, L.P. (“Oil Fund”), whose value is intended to track the spot price of West Texas Intermediate light, sweet crude oil delivered to Cushing, Oklahoma, less Oil Fund expenses (“Benchmark”).<sup>4</sup>

The DBC Fund is a “feeder fund” that invests substantially all of its assets in the DB Commodity Index Tracking Master Fund (“Master Fund”), and the Master Fund in turn maintains a portfolio of exchange-traded futures on aluminum, gold, corn, wheat, heating oil and light, sweet crude oil. The Index is derived from the prices of those futures contracts. The Master Fund’s portfolio is managed on an ongoing basis by DB Commodity Services LLC, a registered commodity pool operator and commodity trading advisor so that the value of the portfolio closely tracks the value of the Index over time.

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<sup>2</sup> The Commission has modified parts of these statements.

<sup>3</sup> Securities Exchange Act Release No. 54450 (September 14, 2006) 71 FR 55230 (September 21, 2006) [File No. SR-AMEX-2006-44].

<sup>4</sup> Securities Exchange Act Release No. 53582 (March 31, 2006) 71 FR 17510 (April 6, 2006) [File No. SR-AMEX-2005-127].

Unlike the DBC Fund, the Oil Fund does not invest through a master fund but rather trades directly in futures on crude and heating oil, natural gas, gasoline, and other petroleum-based fuels; in options on such futures contracts; in forward contracts for oil; and in other over-the-counter derivatives based on the price of oil, other petroleum-based fuels, the futures contracts described above, and indexes based on any of the foregoing. The Oil Fund's portfolio is managed by Victoria Bay Asset Management LLC with the aim of tracking the Benchmark.

The Interests and the Units are freely transferable and may be bought and sold like any other ETF interest or other exchange-listed security. In addition to options on the Interests and the Units, there may be other similar options on ETFs regulated as commodity pools ("Pool ETFs") that OCC may be asked to issue, clear, and settle in the future.

The proposed rule change is needed to permit OCC to issue, clear, and settle options on Pool ETFs. The definition of "fund share" in Article I of OCC's By-Laws is currently limited to shares in entities "holding portfolios or baskets of securities." However, the Oil Fund invests directly in commodity futures contracts. Additionally, although as a technical matter the DBC Fund invests exclusively in securities (the units issued by the Master Fund), entities such as the DBC Fund that invest in the securities issued by a commodity pool are themselves deemed to be commodity pools because they represent an indirect investment in commodity futures contracts. OCC is therefore proposing to amend the definition of "fund share" in Article I of its By-Laws to specifically refer to interests in an entity that is a commodity pool. The definition would also be revised to make it clear that (i) it includes entities with actively managed portfolios, (ii) it includes feeder funds, and (iii) it applies only to entities principally engaged in holding portfolios or baskets of securities or currencies and not entities that do so as an incident to some other business.

The proposed rule change will not be implemented until definitive copies of an appropriate supplement to the options disclosure document, Characteristics and Risks of Standardized Options, are available for distribution.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act, because it is designed to promote the prompt and accurate clearance and settlement of securities transactions, to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. The proposed 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 proposed rule change would impose any burden on competition.

(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 proposed rule change, and none have been received.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### 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-2006-17 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2006-17. 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 Web site (<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 inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at [www.optionsclearing.com](http://www.optionsclearing.com).

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-2006-17 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

Nancy M. Morris  
Secretary

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<sup>5</sup> 17 CFR 200.30-3(a)(12).