

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67782; File No. SR-OCC-2012-12)

September 5, 2012

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change to Amend OCC's By-Laws to Allow the Corporation to Approve OCC's Form of Clearing Member Application and Form of Clearing Agreement

I. Introduction

On July 16, 2012, The Options Clearing Corporation ("OCC" or the "Corporation") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2012-12 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ The proposed rule change was published for comment in the Federal Register on August 1, 2012.² The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change would amend OCC's By-Laws to allow the Corporation to approve OCC's form of clearing member application and form of clearing agreement. The proposed rule change also amends the Agreement for OCC Services to reflect operational changes OCC made since OCC first created the agreement.

A. Background

Currently, OCC's Board of Directors must approve the form of OCC's clearing member application and form of clearing agreement. OCC requires applicants for clearing membership at OCC to complete an application and, once an applicant becomes a clearing member, requires clearing members to enter into a clearing member agreement. OCC's By-Laws and Rules set

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 34-67506 (July 26, 2012), 77 FR 45702 (August 1, 2012).

forth the qualifications and requirements for clearing membership at OCC. The clearing member application is designed to elicit relevant information from an applicant for clearing membership in order for OCC to determine if the applicant meets OCC's qualifications for clearing membership. The clearing member agreement is a contract between OCC and a clearing member whereby the clearing member agrees to meet all of the requirements of clearing membership at OCC. The By-Laws require OCC's Board of Directors to approve both the form of clearing member application and the form of clearing member agreement.

In addition to the clearing member agreement, clearing members may also enter into an Agreement for OCC Services. The Agreement for OCC Services sets forth certain ancillary services OCC provides to its clearing members that are in addition to those services set forth in the By-Laws and Rules. The Agreement for OCC Services is set up as a master agreement. Clearing members may then choose the specific ancillary services they desire and then execute the appropriate ancillary services supplement. Such ancillary services may include, for example, access to OCC's Data Distribution Services, internet access to OCC information and data systems, and OCC's theoretical profit and loss values service.

B. Proposed By-Law and Rule Changes

OCC proposes to amend the applicable provisions of its By-Laws to state that both the form of clearing member application and the form of clearing member agreement be specified by OCC generally, rather than its Board of Directors. The requirement that the Board of Directors approve the form of such documents is overly ministerial given that OCC's By-Laws specify the substantive requirements of both the clearing member application and the clearing member agreement.

OCC also proposes to amend its Agreement for OCC Services to reflect operational changes OCC made since OCC first created the agreement. These changes include broader references to “clearing services” provided by OCC and not only to “options” clearing services. Advanced notice of 90 days of fee changes would be eliminated because fee changes to the ancillary services program are filed as rule changes and are infrequent in nature. Language would be added to the Agreement for OCC Services such that the clearing member authorizes OCC to withdraw funds from the clearing member’s firm account, on or after the fifth business day following the end of the calendar month. This language conforms to OCC Rules. In addition, a provision referring to the exclusivity of the warranties set forth in the Agreement for OCC Services would be eliminated because the agreement contains no warranty provisions. Any applicable warranty provisions would be contained within the ancillary supplements to the Agreement for OCC Services.

III. Discussion

Section 19(b)(2)(C) of the Act³ directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act⁴ requires, among other things, that the rules of a clearing agency are designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

³ 15 U.S.C. 78s(b)(2)(C).

⁴ 15 U.S.C. 78q-1(b)(3)(F).

The Commission believes that these changes are consistent with the requirements of Section 17A of the Act⁵ and the rules and regulations thereunder applicable to OCC. The changes to OCC's By-Laws eliminate inefficient and burdensome administrative procedures which unnecessarily require OCC's Board approval for the form of clearing member application and agreement. The changes to the Agreement for OCC Services are designed to reflect operational changes OCC made since creating the agreement.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act⁶ and the rules and regulations thereunder.

⁵ 15 U.S.C. 78q-1.

⁶ Id.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (File No. SR-OCC-2012-12) be, and hereby is, approved.⁸

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁹

Kevin M. O’Neill
Deputy Secretary

⁷ 15 U.S.C. 78s(b)(2).

⁸ In approving the proposed rule change, the Commission considered the proposal’s impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁹ 17 CFR 200.30-3(a)(12).