

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68445; File No. SR-OCC-2012-19)

December 14 , 2012

Self-Regulatory Organizations; Options Clearing Corporation; Order Approving Proposed Rule Change to Revise the Method for Determining the Minimum Clearing Fund Size to Include Consideration of the Amount Necessary to Draw on Secured Credit Facilities

I. Introduction

On October 18, 2012, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change SR-OCC-2012-19 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> The proposed rule change was published for comment in the Federal Register on November 7, 2012.<sup>3</sup> The Commission received no comment letters. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

On September 23, 2011, the Commission approved a proposed rule change by OCC to establish the size of OCC’s clearing fund as the amount that is required, within a confidence level selected by OCC, to sustain the maximum anticipated loss under a defined set of scenarios

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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> Securities Exchange Act Release No. 68130 (November 1, 2012), 77 FR 66900 (November 7, 2012). OCC also filed an advance notice relating to these proposed changes. See Securities Exchange Act Release No. 68225 (November 14, 2012), 77 FR 69668 (November 20, 2012). The Commission did not receive any comments on this publication.

as determined by OCC, subject to a minimum clearing fund size of \$1 billion.<sup>4</sup> OCC implemented this change in May 2012. Until that time, the size of OCC's clearing fund was calculated each month as a fixed percentage of the average total daily margin requirement for the preceding month, provided that the calculation resulted in a clearing fund of \$1 billion or more.<sup>5</sup>

Under the formula that is implemented for determining the size of the clearing fund as a result of the May 2012 change, OCC's Rules provide that the amount of the fund is equal to the larger of the amount of the charge to the fund that would result from (i) a default by the single "clearing member group"<sup>6</sup> whose default would be likely to result in the largest draw against the clearing fund or (ii) an event involving the near-simultaneous default of two randomly-selected "clearing member groups" in each case as calculated by OCC with a confidence level selected by OCC.<sup>7</sup> The size of the clearing fund continues to be recalculated monthly, based on a monthly averaging of daily calculations for the previous month, and it is subject to a requirement that its minimum size may not be less than \$1 billion.

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<sup>4</sup> Securities Exchange Act Release No. 34-65386 (September 23, 2011), 76 FR 60572 (September 29, 2011) (SR-OCC-2011-10).

<sup>5</sup> If the calculation did not result in a clearing fund size of \$1 billion or more, then the percentage of the average total daily margin requirement for the preceding month that resulted in a fund level of at least \$1 billion would be applied. However, in no event was the percentage permitted to exceed 7%. With the rule change approved in September 2011, this 7% limiting factor on the minimum clearing fund size was eliminated.

<sup>6</sup> The term "clearing member group" is defined in OCC's By-Laws to mean a clearing member and any member affiliates of the clearing member.

<sup>7</sup> The confidence levels employed by OCC in calculating the charge likely to result from a default by OCC's largest "clearing member group" and the default of two randomly-selected "clearing member groups" were approved by the Commission at 99% and 99.9%, respectively. However, the Commission approval order notes that OCC retains discretion to employ different confidence levels in these calculations provided that OCC will not employ confidence levels of less than 99% without first filing a proposed rule change.

## B. Proposed Rule Change

The proposed rule change will implement a minimum clearing fund size equal to 110% of the amount of committed credit facilities secured by the clearing fund so that the amount of the clearing fund likely will exceed the required collateral value that would be necessary for OCC to be able to draw in full on such credit facilities. OCC's clearing fund is primarily intended to provide a high degree of assurance that market integrity will be maintained in the event that one or more clearing members, settlement banks, or banks that issue letters of credit on behalf of clearing members as a form of margin fails to meet its obligations.<sup>8</sup> This includes the potential use of the clearing fund as a source of liquidity should it ever be the case that OCC is unable to obtain prompt delivery of, or convert promptly to cash, any asset credited to the account of a suspended clearing member.

OCC's committed credit facilities are secured by assets in the clearing fund and certain margin deposits of the suspended clearing member. In light of the uncertainty regarding the amount of margin assets of a suspended clearing member that might be eligible at any given point to support borrowing under the secured credit facilities, OCC has considered the availability of funds based on a consideration of the amount of the clearing fund deposits

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<sup>8</sup> Under Article VIII, Section 1 of OCC's By-Laws, the clearing fund may be used to pay losses suffered by OCC: (1) as a result of the failure of a clearing member to perform its obligations with regard to any exchange transaction accepted by OCC; (2) as a result of a clearing member's failure to perform its obligations in respect of an exchange transaction or an exercised/assigned options contract, or any other contract or obligations in respect of which OCC is liable; (3) as a result of the failure of a clearing member to perform its obligations in respect of stock loan or borrow positions; (4) as a result of a liquidation of a suspended clearing member's open positions; (5) in connection with protective transactions of a suspended clearing member; (6) as a result of a failure of any clearing member to make any other required payment or to render any other required performance; or (7) as a result of a failure of any bank or securities or commodities clearing organization to perform its obligations to OCC.

available as collateral. As an example, for OCC to draw on the full amount of its current credit facilities secured by the clearing fund, the size of the clearing fund likely would need to be approximately \$2.2 billion. The \$2.2 billion figure reflects a 10% increase above the total size of such credit facilities, which is meant to account for the percentage discount applied to collateral pledged by OCC in determining the amount available for borrowing.

Based on monthly recalculation information, the size of OCC's clearing fund during the period from July 2011 to July 2012 was less than \$2.2 billion on eight occasions. Therefore, to reduce the risk that the assets in the clearing fund might at any time be insufficient to enable OCC to meet potential liquidity needs by accessing the full amount of its committed credit facilities that are secured by the clearing fund, OCC is amending the current minimum clearing fund size requirement of \$1 billion by providing instead that the minimum clearing fund size is the greater of either \$1 billion or 110% of the amount of such committed credit facilities. OCC is denoting the credit facility component of the minimum clearing fund requirement as a percentage of the total amount of the credit facilities that OCC actually secures with clearing fund assets because OCC negotiates these credit facility agreements, including size and other terms, on an annual basis and the total size is therefore subject to change.

### III. Discussion

Section 17A(b)(3) (F) of the Act<sup>9</sup> requires that, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, and to safeguard securities and funds in its custody or control or for which it is

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<sup>9</sup> 15 U.S.C. 78q-1(b)(3) (F)

responsible. The proposed rule change will further these ends by requiring a minimum clearing fund size that is designed to enable OCC to draw in full on its committed credit facilities that are secured by the clearing fund.

#### 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 Act<sup>10</sup> and the rules and regulations thereunder.

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<sup>10</sup> 15 U.S.C. 78q-1.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (File No. SR-OCC-2012-19) be and hereby is APPROVED<sup>12</sup> as of the date of this order or the date of the “Notice of No Objection to Advance Notice Filing to Revise the Method for Determining the Minimum Clearing Fund Size to Include Consideration of the Amount Necessary to Draw on Secured Credit Facilities ”(File No. AN-OCC-2012-04), whichever is later.

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>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 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).

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