

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70289; File No. SR-OCC-2013-10)

August 29, 2013

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change to Amend its Policy Statement Adopted Under Rule 205 Entitled “Back-up Communication Channel to Internet Access”

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> notice is hereby given that on August 23, 2013, The Options Clearing Corporation (“OCC” or “Corporation”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to make certain changes to its Policy Statement adopted under Rule 205 entitled “Back-up Communication Channel to Internet Access” requiring clearing members that use the Internet as their primary means to access OCC’s information and data systems to maintain a secure back-up means of communication in order to provide for business continuance in the event of an Internet outage.

II. Clearing Agency’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

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

<sup>2</sup> 17 CFR 240.19b-4.

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 such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

OCC Rule 205 prescribes that OCC clearing members are required to submit instructions, notices, reports, data and other items to the Corporation electronically in accordance with procedures prescribed by the Corporation. The Rule is designed to promote operational efficiency and effectiveness and reduce input errors. Position-related post-trade (e.g., exercise notices, position adjustments) and collateral transactions are common examples of instructions submitted by clearing members electronically.

OCC supports the submission of these instructions through use of an Internet connection to OCC's secured website. In 2006, OCC adopted a Policy Statement under Rule 205 requiring clearing members that primarily use the Internet to access OCC's systems to maintain a secure back-up means of communication as a contingency to perform on a timely basis critical business activities in the event of an Internet outage, as well as to maintain service arrangements with two independent internet service providers.<sup>3</sup>

The Policy Statement adopted at the time required clearing members to maintain: (i) separate service agreements with two (2) independent service providers, and (ii) an OCC-approved method for accessing OCC's information and data systems even in the case of an Internet outage (the "Back-Up Communication Channel").

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<sup>3</sup> Securities Exchange Act Release No. 53980 (June 14, 2006), 71 FR 36155 (June 23, 2006)(SR-OCC-2006-04).

Guidelines were established so that the Back-Up Communication Channel authorized for a particular clearing member was determined in accordance with the firm's business profile using certain criteria. For example, a clearing member that: (i) ranked among the top twenty-five of cleared volume during a calendar year; (ii) cleared more than one account type as defined in OCC's By-Laws and Rules; (iii) cleared two or more product types; (iv) conducted Clearing Member Trade Assignment ("CMTA") business; (v) input a high volume of daily post-trade activity; (vi) generally utilized multiple forms of collateral; (vii) utilized most ancillary services offered by OCC; (viii) used a lease line for data transmissions, would generally be designated as a "Category A" firm. "Category A" firms were required to maintain a T1 line as an acceptable form of back-up communication channel.

A clearing member that: (i) transacted mid-level cleared volume during a calendar year; (ii) cleared only one or more account types as defined in OCC's By-Laws and Rules; (iii) cleared one or more product types; (iv) input a moderate to small volume of post-trade activity; (v) generally utilized one or two forms of collateral; (vi) may have utilized a lease line for data transmissions, were generally designated as a "Category B" firm. Under the Policy Statement, "Category B" firms were provided the option to either maintain a T1 line or ISDN connection as acceptable forms of a back-up communication channel.

A clearing member that: (i) transacted low-level cleared volume during a calendar year; (ii) cleared no more than one account type as defined in OCC's By-Laws and Rules; (iii) cleared no more than one product type; (iv) generally utilized one or two forms of collateral; (v) input minimal amounts of post-trade activity, would generally be designated as a "Category C" firm. "Category C" firms were given the option to maintain an ISDN connection, utilize OCC equipment if the clearing member was located in or near a city where OCC maintains operational center(s), or rely upon fax transmission in the event an internet connection was not available.

Recent denial of service attacks on financial institutions, along with changes in technology since the Policy Statement was first adopted, have prompted OCC to reassess the risk to operations should Internet connections supporting clearing member access to OCC's information and data systems be interrupted. Through this assessment, OCC has determined that its existing policy should be modified to ensure it is easily understood and properly implemented by the clearing membership.

OCC is now proposing to make updates to the Policy Statement intended to simplify the criteria applied to a given firm in determining the appropriate Back-Up Communication Channel. Instead of having three categories of Business Profiles that include several criteria to be applied, and offering multiple communication options available to a particular firm, the updated Policy Statement will contain two profiles. Clearing Members that rank in the top-25 of cleared volume during a calendar year or act as a facilities manager to one or more Clearing firms will be designated as a "Category A" firm, and will be required to maintain a T1 line as its Back-Up Communication Channel. All other firms will be designated as "Category B" firms, and will be required to maintain a T1 line or utilize a fax line, telephone or have ready access to an OCC office location.

OCC believes the proposed changes will present minimal to no impact to clearing members. In particular, all firms that were previously designated as "Category A" firms under the former policy will continue to be designated as "Category A" firms under the revised policy being proposed, and they will still be required to maintain a T1 line, as previously required. Those firms that will be designated as Category B firms under the proposed policy will now have increased flexibility under the back-up options being made available to them, in that they can select between a T1 Line, fax, telephone, or use an OCC office if they are located in a city where OCC maintains an operational center. In preparation for the revisions to the Policy Statement, OCC has acquired new fax servers that have increased bandwidth to

support multiple users that may select facsimile transmission as their available back-up communication method. Meanwhile, the telephone features used by OCC's Member Service staff are equipped so that calls are automatically routed to an available representative in the event a firm's designated contact is unavailable. Finally, OCC has confirmed that: (i) the number of Category B firms who are located in a city where OCC maintains an office; and (ii) do not currently maintain a T1 line, is sufficiently small enough so that OCC will be able to accommodate those firms who may need to utilize OCC's equipment in the event of an internet outage.

OCC also proposes to clarify the Policy Statement by expressly adding a requirement for each clearing member to provide OCC with an annual statement that the Clearing Member: (i) has been and continues to be in compliance with the Policy Statement; (ii) has successfully tested its ability to access OCC's information and data systems using its Back-Up Communication Channel since the last reporting period; and (iii) will notify OCC within a reasonable period of any changes to their Internet Service Providers since the date of the last notice provided to OCC. While OCC believes that the existing policy reasonably and fairly implies that clearing members would not only remain in compliance with its requirements, but that clearing members would perform periodic testing of its Back-Up Communication Channel, we believe that the proposed modifications eliminate any ambiguity that may exist and help ensure that OCC has sufficient information to troubleshoot in case of an Internet outage, thereby helping to ensure that critical business activities can still be performed in a timely manner in such instances.

## (2) Statutory Basis

The proposed changes to OCC's Rules are consistent with the purposes and requirements of Section 17A(b)(3)(F) of the Securities Exchange Act of 1934 ("Act")<sup>4</sup>

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<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

and the rules and regulations thereunder because they are designed to promote the prompt and accurate clearance and settlement of securities transactions by simplifying the criteria used to determine the authorized Back-Up Communication Channel(s) that may be used by a given clearing member in the event the Internet is not available, and reducing the administrative oversight associated with making such determinations. The updates to OCC's Policy Statement further clarify the means by which clearing members are required to notify OCC of the Back-Up Communication Channel(s) adopted by each clearing member, along with the internet service providers being used, and confirmation that each clearing member has successfully tested its ability to access OCC's systems, thereby helping to ensure that critical business activities can still be performed in a timely manner even in the event of an Internet outage. The proposed rule change is not inconsistent with the existing rules of OCC, including any rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

OCC believes that the proposed rule change will impose little to no burden on competition and in no way impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. While the updates to the Policy Statement now expressly provide for clearing members to: (i) notify OCC of the Back-Up Communication Channel(s) adopted by each clearing member; (ii) provide OCC with the names of its internet service providers, and (iii) confirm for OCC that it has successfully tested its ability to access OCC's systems, OCC believes that each of these measures impose little to no burden on competition, individually or collectively, and any such burden imposed will facilitate the prompt and accurate clearance and settlement of securities transactions at all times.

In particular, Clearing Members are already required to maintain a secure back-up means of communication under OCC's existing Policy Statement, as well as,

maintain service arrangements with two independent internet service providers. Clearing Members are also already required under OCC Rule 215 to provide information as OCC may from time to time require. As such, OCC believes that requiring Clearing Members to provide OCC with information they are already required to maintain imposes little to no additional burden on competition.

In addition, while the updated Policy Statement now expressly requires Clearing Members to confirm that it has successfully tested its ability to access OCC's systems, OCC also believes that such requirement imposes little to no additional burden on competition and is consistent with existing regulatory requirements pertaining to business continuity planning and disaster recovery. First, OCC believes that the testing requirement itself was already implied in the existing Policy Statement to ensure the Back-Up Communication Channel was effective and operational, so the only additional requirement being imposed is an obligation to notify OCC. Again, given Clearing Members' existing obligation to provide information that OCC may request, OCC believes such requirement imposes little to no additional burden on competition. Second, to the extent a particular Clearing Member may not have understood the existing Policy Statement to include an obligation to test its Back-Up Communication Channel, then OCC believes the Policy Statement clarifies the obligations applicable to all Clearing Members and is consistent with existing regulatory requirements pertaining to business continuity planning and disaster recovery applicable to Clearing Members.

Collectively, the updates to the Policy Statement are consistent with requirements of the Act applicable to clearing agencies and are designed to promote the prompt and accurate clearance and settlement of securities transactions at all times. The updates ensure that OCC has sufficient information to troubleshoot in case of an Internet outage, and clarifies Clearing Members' obligations to confirm their ability to successfully access OCC's information and data systems using their Back-Up

Communication Channel in the event of an Internet outage. Accordingly, OCC believes that that [sic] updates will impose little to no burden on competition and in no way impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency'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 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate 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 or disapprove such 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-2013-10 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-2013-10. 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 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 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 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-2013-10 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

Kevin M. O'Neill  
Deputy Secretary

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