

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79094; File No. SR-OCC-2016-009)

October 13, 2016

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Concerning The Options Clearing Corporation's Escrow Deposit Program

On August 15, 2016, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2016-009 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder.² The proposed rule change was published for comment in the Federal Register on August 31, 2016.³ The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

I. Description of the Proposed Rule Change

A. Background

OCC is the sole clearing agency for the U.S. listed options markets and a systemically important financial market utility. In this role, OCC seeks to manage risks that could cause a financial loss or settlement disruption and, therefore, threaten the stability of the U.S. financial system, by collecting collateral to protect against potential losses stemming from the default of a clearing member or its customers through margin

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 78675 (August 25, 2016), 81 FR 60099 (August 31, 2016) (SR-OCC-2016-009) ("Notice").

from its clearing members or from deposits in lieu of margin of clearing members' customers through OCC's escrow deposit program.

According to OCC, users of its escrow deposit program are customers of clearing members who, through the escrow deposit program, are permitted to collateralize eligible positions directly with OCC (instead of with the relevant clearing member who will, in turn, deposit margin at OCC). When a customer of a clearing member makes a deposit in lieu of margin through OCC's escrow deposit program, the relevant positions are excluded from the clearing member's margin requirement at OCC. OCC states that the escrow deposit program therefore provides users of OCC's services with a means to more efficiently use cash or securities they may have available.

B. The Proposed Rule Change

The proposed rule change seeks to improve the resiliency of OCC's escrow deposit program by effecting the following changes. First, The proposed rule change would increase OCC's visibility into and control over collateral deposits made under the escrow deposit program. As described in the Notice, securities deposits in the escrow deposit program ("specific deposits") are currently held at either the Depository Trust Company ("DTC") or custodian banks, and cash deposits in the escrow deposit program ("escrow deposits") are held at custodian banks. While OCC currently can verify the value of the securities deposited at DTC through DTC's systems, it lacks similar visibility into cash and securities held in custodian bank accounts, relying instead on the custodian banks to verify the value of such collateral. The proposed changes require securities in the escrow deposit program to be held at DTC, providing OCC with increased visibility into the collateral, as OCC will be able to view, validate, and value the collateral in real

time and perform the controls currently performed by custodian banks. As stated in the Notice, banks participating in the escrow deposit program (“Tri-Party Custodian Banks”) will also provide OCC with online view access to each customer’s cash account designated for the escrow deposit program, allowing visibility into transactional activity and account balances without having to rely upon a third party to value or validate the existence of the collateral.

Second, the proposed changes will provide more specificity concerning the manner in which OCC will take possession of collateral in OCC’s escrow deposit program in the event of a clearing member or custodian bank default. As described in the Notice, proposed Rules 610A(b), 610B(f), 610C(q), and 610C(r) will provide that in the event of a clearing member or custodian bank default, OCC will have the right to direct DTC to deliver the securities included in a member specific deposit, third-party specific deposit or escrow deposit to OCC’s DTC participant account for the purpose of satisfying the obligations of the clearing member or reimbursing itself for losses incurred as a result of the failure. Similarly, proposed Rules 610C(q) and 610C(r) will give OCC the right in the event of a Tri-Party Custodian Bank default to take possession of cash included within an escrow deposit for the same purposes. Further, Rule 1106(b)(2) will be amended to provide that OCC may close out a short position of a suspended clearing member covered by a member specific, third-party specific or escrow deposit, subject to the ability of the suspended clearing member or its representative to transfer the short position to another clearing member under certain circumstances.

Third, the proposed changes will clarify clearing members’ rights to collateral in the escrow deposit program in the event of a customer default to the clearing member.

According to the Notice, Proposed Rules 610B(c) and 610C(f) will provide for the grant of a security interest by the customer to the clearing member with respect to any given third-party specific deposit and escrow deposit, as applicable, with the clearing member's right subordinate to OCC's interest. Proposed Rules 610C(d), 610C(o), 610C(p) and 610C(s), relating to escrow deposits, and proposed Rules 610B(d) and 610B(e), relating to third-party specific deposits, will provide that, in the event of a customer default to a clearing member, the clearing member will have the right to request a "hold" on a deposit, which will prevent the withdrawal of deposited securities or cash by a custodian bank or the release of a deposit that will otherwise occur in the ordinary course. OCC states that placing the "hold" instruction gives a clearing member the right to request that OCC direct delivery of the deposit to the clearing member through DTC's systems, in the case of securities, or an instruction to the Tri-Party Custodian Bank in the case of cash. OCC believes that providing clearing members with transparent instructions regarding how to place a hold instruction on and direct delivery of a deposit in the escrow deposit program will be a significant enhancement to the current escrow deposit program.

Fourth, the proposed changes will improve the readability of the rules governing OCC's escrow deposit program by consolidating all such rules into a single location in OCC's Rulebook. Upon implementation of the proposed changes, all securities collateral in OCC's escrow deposit program will be held at DTC, and custodian banks will only be allowed to hold cash collateral.

Fifth, the proposed rule change will consolidate all of the rules concerning the escrow deposit program, including the provisions of the Escrow Deposit Agreement ("EDA"), which also contains substantive provisions governing the program, into Rules

610, 610A, 610B and 610C. OCC believes that consolidating the many rules governing the escrow deposit program into a single location will significantly enhance the understandability and transparency of the rules concerning the escrow deposit program for current users of the program as well as any persons that may be interested in using the program in the future. As part of the consolidation efforts, the proposed rule change would also rename certain existing terminologies used in the escrow deposit program.⁴

Finally, OCC will eliminate the EDA and replace it with a streamlined agreement entitled the “Participating Escrow Bank Agreement.” The Participating Escrow Bank Agreement will provide that custodian banks are subject to all terms of the rules governing the revised escrow deposit program, as they may be amended from time to time.⁵ The Participating Escrow Bank Agreement will contain eligibility requirements for custodian banks, including representations regarding the custodian bank’s Tier 1 Capital, and provide OCC with express representations concerning the bank’s authority to enter into the Participating Escrow Bank Agreement.

Additionally, Proposed Rule 610C(b) will require customers wishing to deposit cash collateral and custodian banks holding escrow deposits comprised of cash to enter into a tri-party agreement involving OCC, the customer and the applicable custodian bank. While cash collateral pledged in the escrow deposit program will continue to be

⁴ See Notice, supra note 3, 81 FR at 60100.

⁵ Under the Participating Escrow Bank Agreement, however, OCC will agree to provide custodian banks with advance notice of material amendments to the rules relating to deposits in lieu of margin and custodian banks will have the opportunity to withdraw from the escrow deposit program if they object to the amendments. OCC states that, as a general matter, the Participating Escrow Bank Agreement will not be negotiable, although OCC may determine to vary certain non-material terms in limited circumstances.

facilitated through existing interfaces, OCC states that pledges will be required to be made in the customer's account at the Tri-Party Custodian Bank. OCC states that the Tri-Party Agreement will govern the customer's use of cash in the program, confirm the grant of a security interest in the customer's account to OCC and the relevant clearing member (as set forth in proposed Rule 610C(f)), and cause customers of clearing members to be subject to all terms of the Rules governing the revised escrow deposit program. Each custodian bank entering into the Tri-Party Agreement will also agree to follow the directions of OCC with respect to cash escrow deposits without further consent by the customer.

II. Discussion and Commission Findings

Exchange Act Section 19(b)(2)(C)⁶ directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the rule change, as proposed, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.

The Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Exchange Act, which requires, among other things, that the rules of a clearing agency assure the safeguarding of securities and funds that are in the custody or control of the clearing agency or for which it is responsible.⁷ As described above, the proposed rule change will enhance OCC's ability to validate and value escrow deposit program deposits in real time and enhance its ability to expeditiously take possession of such deposits in the event of a default. These enhancements will enable OCC to better

⁶ 15 U.S.C. 78s(b)(2)(C).

⁷ 15 U.S.C. 78q-1(b)(3)(F).

ensure that it monitors and maintains adequate financial resources in the event of a clearing member default and thereby assure the safeguarding of securities and funds in OCC's custody or control or for which it is responsible.

Additionally, the Commission finds that the proposed rule change is consistent with Exchange Act Rules 17Ad-22(d)(1), (3), and (11). Exchange Act Rule 17Ad-22(d)(1) requires clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide a well-founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions.⁸ Through the proposed change, OCC will provide clarity to clearing members, their customers, and potential users of OCC's escrow deposit program regarding the operations of the escrow deposit program and the rights of OCC, clearing members and customers upon a clearing member or customer default. For example, the proposed change will better codify OCC's and clearing members' rights to collateral in the escrow deposit program the event of a clearing member or customer default and provide greater transparency regarding the operational steps involved in taking possession of such collateral. Moreover, consolidating the rules governing the escrow deposit program and terms previously located in the EDA into a single location will enhance the transparency of the applicable rules. As such, the Commission believes the proposed change is consistent with Exchange Act Rule 17Ad-22(d)(1).⁹

In addition, the Commission believes that the proposed change is consistent with Exchange Act Rule 17Ad-22(d)(3), which requires clearing agencies to, among other

⁸ 17 CFR 240.17Ad-22(d)(1).

⁹ Id.

things, establish, implement, maintain and enforce written policies and procedures reasonably designed to hold assets in a manner that minimizes risk of loss or delay in its access to them.¹⁰ As described above, all non-cash collateral in the escrow deposit program will be held at DTC, allowing OCC to validate and value collateral in real time and quickly obtain possession of deposited securities in an event of default without involving custodian banks by issuing a transfer instruction through DTC's systems. The proposed change will also codify OCC's right to take possession of cash collateral within an escrow account upon a clearing member or custodian bank default and provide OCC with online view access to each customer's cash account at the custodian bank. Together, these changes will allow OCC to monitor the adequacy of collateral in the escrow deposit program and be able to more quickly take possession of such collateral in the event of a clearing member default, which will, thereby, reduce potential losses to OCC, other clearing members and market participants.

Finally, the Commission believes that the proposed change is consistent with Exchange Act Rule 17Ad-22(d)(11), which requires clearing agencies to, among other things, establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of their default procedures publicly available.¹¹ The Commission believes that the proposed change is consistent with Rule 17Ad-22(d)(11) because it will incorporate the substantive terms of the escrow deposit program, and specifically the rules concerning default management, into OCC's Rules, which are publicly available on OCC's website, rather than in private agreements.

¹⁰ 17 CFR 240.17Ad-22(d)(3).

¹¹ 17 CFR 240.17Ad-22(d)(11).

III. 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 Act¹² and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,¹³ that the proposed rule change (SR-OCC-2016-009) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Robert W. Errett
Deputy Secretary

¹² In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).