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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65648; File No. SR-OCC-2011-12)

October 27, 2011

Self-Regulatory Organizations; Options Clearing Corporation; Order Approving Proposed Rule Change to Adopt Fitness Standards for Directors, Clearing Members, and Others

I. Introduction

On August 31, 2011, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-OCC-2011-12 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder.² The proposed rule change was published for comment in the Federal Register on September 19, 2011.³ No comment letters were received. This order approves the proposed rule change.

II. Description

The purpose of this rule change is to facilitate compliance by OCC with new core principles (“Core Principles”) applicable to derivatives clearing organizations (“DCOs”) that are set forth in the Commodity Exchange Act (“CEA”), as amended by the Dodd-Frank Act. In particular, new DCO Core Principle O requires DCOs to establish fitness standards for directors, clearing members and certain other individuals.

Background

The Core Principles for DCOs are set forth in the CEA and consist of a number of governing principles to which a DCO is required to adhere. OCC is registered as a DCO with

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 65338 (September 14, 2011); 76 FR 58061 (September 19, 2011).

the Commodity Futures Trading Commission (the “CFTC”) under Section 5b of the CEA, and clears commodity futures and commodity options traded on five futures exchanges subject to the CFTC’s jurisdiction. Title VII of the Dodd-Frank Act amended the CEA to expand existing Core Principles and to add certain new Core Principles. The applicable Dodd-Frank amendments to the CEA become effective July 16, 2011. In January 2011, the CFTC published proposed rules (the “Proposed Rules”) to implement the Core Principles, as amended and expanded by the Dodd Frank Act.⁴ The Proposed Rules propose certain minimum criteria for complying with the Core Principles, and propose certain clarifications of the more ambiguous provisions of the Core Principles. The Proposed Rules have not been adopted and will not be effective until 60 days following the date on which the CFTC publishes final rules implementing the Core Principles.

Core Principle O provides that each DCO must: (i) establish governance arrangements that are transparent (I) to fulfill public interest requirements and (II) to permit the consideration of the views of both owners and participants, and (ii) establish and enforce appropriate fitness standards for (I) directors, (II) members of any disciplinary committee, (III) members of the DCO, (IV) any other individual or entity with direct access to the settlement or clearing activities of the DCO, and (V) any party affiliated with any of the above. OCC believes that its existing governance arrangements satisfy the transparency requirements of subparagraph (i) of Core Principle O. OCC proposed to adopt the Fitness Standards⁵ in order to assure compliance with subparagraph (ii) of Core Principle O.

⁴ See 76 FR 722 (January 6, 2011).

⁵ This rule change adds Interpretations and Policies entitled “Fitness Standards” to Sections 2, 6, 6A, and 7 of Article III and Section 1 of Article V of OCC’s By-Laws.

Description of Fitness Standards

OCC believes that its Fitness Standards comply with Core Principle O by establishing minimum standards for directors and clearing members, as well as affiliates of such directors and clearing members.⁶ The Fitness Standards are generally similar to fitness standards adopted by the Depository Trust and Clearing Corporation.

OCC believes that the Fitness Standards incorporate the Proposed Rule's minimum fitness standards for directors and clearing members, including the bases for refusal to register a person under Section 8a(2) of the CEA and, for directors only, the absence of a significant history of serious disciplinary offences, such as those that would be disqualifying under Section 1.63 of the CFTC's regulations. The Fitness Standards do not establish criteria for members of the disciplinary committee or for persons "with direct access to the settlement or clearing activities" of OCC ("Access Persons"). In OCC's case, all members of disciplinary committees⁷ are directors of the Corporation and will be subject to the Fitness Standards as such. With respect to Access Persons, neither the CEA nor the Proposed Rules provide any explicit guidance as to the persons intended to be included in the phrase "any other individual or entity with direct access to the settlement or clearing activities of the [DCO]." Similarly, the term "direct access" is not defined in the CEA or the Proposed Rules. However, Core Principle O is closely modeled on existing designated contract market ("DCM") Core Principle 14, which also requires that fitness standards be established for directors, members and "any other persons with direct access to the facility." The CFTC has previously issued guidance on DCM Core Principle 14 and

⁶ OCC has noted that in a prior discussion with the CFTC staff, the CFTC staff indicated that the proposed rule change may become effective after July 16, 2011 without impacting OCC's status as a DCO.

⁷ OCC has no standing disciplinary committee. Disciplinary committees are formed on an ad hoc basis. See OCC Rule 1202(a).

interpreted “persons with direct access to the facility” to include “non-member market participants who are not intermediated and do not have [member] privileges, obligations, responsibilities or disciplinary authority.” This interpretation suggests that “access” is intended to mean the type of access that a member would have. OCC believes that by analogy “persons with direct access to the settlement or clearing activities” of a DCO, as used in Core Principle O, is intended to refer to persons with access to submit transactions for clearing or to give instructions to OCC regarding accounts or transactions or otherwise have access to the clearing system in a manner similar to the access that a Clearing Member would have. OCC also does not read “any other individual or entity with direct access to the settlement or clearing activities of the [DCO]” to include OCC employees or service providers such as settlement banks. Accordingly, OCC believes that there are presently no persons with “direct access” to the settlement and clearing activities of OCC other than clearing members.

By-Law Changes

Article III (Board of Directors) and Article V (Clearing Members) set forth qualifications for directors and clearing members, respectively. The Interpretations and Policies under the appropriate sections of both Articles are being amended to incorporate the applicable Fitness Standards by reference.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Sections 17A(b)(3)(A) and (C) of the Act.⁸ Section 17A(b)(3)(A) of the Act requires that a clearing agency is so organized to facilitate the prompt and accurate clearance and settlement of

⁸ 15 U.S.C. 78q-1(b)(3)(A) and (C).

securities transactions and derivative agreements, contracts, and transactions for which it is responsible. The proposed rule change establishes Fitness Standards for the purpose of permitting OCC to comply with new Core Principle O, applicable to DCOs under the CEA. The proposed rule change is consistent with 17A(b)(3)(A) because it is designed to assure that OCC has the governance structure in place to clear and settle the transactions that it clears and settles as DCO. Furthermore, the Commission notes that the proposed rule change does not affect OCC's governance structure with respect to the fair representation of its shareholders and participants in the selection of its directors and administration of its affairs. Accordingly, OCC's rules should continue to assure the fair representation of its shareholders and participants as required by Section 17A(b)(3)(C).

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 Act⁹ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (File No. SR-OCC-2011-12) be, and hereby is, approved.¹¹

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

⁹ 15 U.S.C. 78q-1.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ In approving this proposed rule change the Commission has considered the proposed rule's impact of efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

authority.¹²

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Deputy Secretary

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¹² 17 CFR 200.30-3(a)(12).