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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67018; File No. SR-OCC-2012-03)

May 18, 2012

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change to More Closely Align OCC's By-Laws and Rules with Regulatory Requirements Related to "Statutory Disqualifications"

I. Introduction

On March 15, 2012, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2012-03 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 April 4, 2012.² On May 15, 2012, OCC filed an amendment to the proposed rule change.³ 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 will more closely align OCC's By-Laws and Rules with applicable regulatory requirements related to "statutory disqualifications" under the Act in order to reduce the overall administrative burden on OCC associated with addressing the statutory disqualification of OCC clearing members ("Clearing Members") and applicants for clearing membership ("Applicants") and will provide guidance to Clearing Members and Applicants as to

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 34-66676 (March 29, 2012), 77 FR 20472 (April 4, 2012).

³ The amendment made changes to OCC's "Fitness Standard for Directors, Clearing Members and Others" to conform it to the recent changes made to OCC's By-Laws pursuant to File No. SR-OCC-2012-01, which was approved by the Commission on March 9, 2012. As such, the amendment was technical in nature and did not require republication of notice.

OCC's policies with respect to statutory disqualifications. The proposed rule change will amend OCC's "Fitness Standards for Directors, Clearing Members and Others" ("Fitness Standards") to bring such standards into conformity with the proposed amendments to OCC's By-Laws. The Fitness Standards were submitted to the Commission in proposed rule change SR-OCC-2011-12 and were approved by the Commission on October 27, 2011.⁴

A. Background

Persons who have engaged in certain types of misconduct are subject to "statutory disqualification," as defined by Section 3(a)(39) of the Act, and must undergo a review by the Commission under Rule 19h-1 of the Act in order to enter or continue in membership in a self-regulatory organization ("SRO"). Section 17A(b)(4)(A) of the Act provides that a registered clearing agency may and in cases in which the Commission so orders must deny participation to any person subject to a statutory disqualification. This provision further requires a registered clearing agency to provide the Commission with 30-days' notice before admitting a statutorily disqualified person to clearing membership. Rule 19h-1 of the Act implements these statutory provisions by requiring notice to the Commission if a registered clearing agency proposes either to admit to membership or to continue as a member a person subject to a statutory disqualification. Notably, unlike in the case of a national securities exchange or registered securities association, the rule does not require a registered clearing agency to file such a notice with respect to statutory disqualifications of associated persons of a Clearing Member or Applicant. A registered clearing agency is required to file such a notice only when the Clearing Member or Applicant itself is subject to the disqualification.

⁴ Securities Exchange Act Release No. 34-65648 (October 27, 2011), 76 FR 68236 (November 3, 2011).

Article V of OCC's By-Laws establishes the qualifications required of Clearing Members and sets forth the procedures for admitting persons to clearing membership, including those that are or become subject to a statutory disqualification. Currently, Interpretation and Policy .03 of Article V, Section 1 of OCC's By-Laws provides that the Membership/Risk Committee ("Committee") will not recommend the approval of an application for membership if the Applicant or an associated person is subject to a statutory disqualification unless the Committee makes a finding that "special circumstances" exist warranting a waiver of the statutory disqualification. The requirements of this By-Law are more stringent than those applied to registered clearing agencies by the Act or Commission rules because they require the Committee to (i) make specific findings of "special circumstances" before recommending membership approval and (ii) address statutory disqualifications of associated persons. The By-Laws therefore impose additional administrative burdens on OCC that are not required under any statute or rule administered by the Commission.

Neither Article V of the By-Laws nor OCC's Rules currently contain procedures for notice to OCC that an Applicant or Clearing Member is subject to a statutory disqualification, which provides insufficient guidance to Applicants and Clearing Members and exposes OCC to the risk that such notice may be given on a delayed basis. OCC's By-Laws and Rules are also silent as to the procedures to be followed by a Clearing Member when it becomes subject to a statutory disqualification even though Rule 19h-1 requires a registered clearing agency to file a notice if it intends to permit such a firm to remain a Clearing Member.

As a registered derivatives clearing organization ("DCO"), OCC is also subject to the jurisdiction of the Commodity Futures Trading Commission ("CFTC"). OCC's By-Laws also address statutory disqualification under Section 8a(2)-(4) of the Commodity Exchange Act

(“CEA”), which allows the CFTC to refuse to register or to suspend the registration of futures commission merchants and other entities required to register under the CEA. Neither the CEA nor the CFTC’s regulations require DCOs to file a notice similar to that required by Rule 19h-1, and OCC therefore is not proposing to amend Article V or the Rules to specifically address statutory disqualifications under the CEA other than to clarify that if a principal of a futures commission merchant is subject to a statutory disqualification, the Membership/Risk Committee has discretion to not recommend the approval of such futures commission merchant’s application for membership pursuant to Section 8a(2) of the CEA or to determine not to permit such a futures commission merchant to continue in Clearing Membership.

In addition to being consistent with the Commission’s regulations, OCC’s Fitness Standards, as described above, were constructed in part to comply with core principles (“Core Principles”) applicable to DCOs as these core principles were amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act and as are set forth in the CEA. The Fitness Standards establish certain minimum fitness criteria for directors, Clearing Members, and their affiliates sufficient to comply with Core Principle O as set forth in the CEA.⁵ However, the Fitness Standards were also drafted to conform to OCC’s existing qualification standards for Clearing Members, which standards OCC is now proposing to revise. Accordingly, OCC proposes to amend the Fitness Standards to conform them to the proposed amendments to the qualification standards for Applicants and Clearing Members in OCC’s By-Laws.

B. Proposed By-Law Changes

Article V (Clearing Members) sets forth the qualifications for Clearing Members. OCC proposes to amend the current Article V provisions addressing statutory disqualifications to

⁵ Commodity Exchange Act § 5b(c)(2)(O); 7 U.S.C § 7a-1(c)(2)(O).

eliminate provisions that require unnecessary Committee action and to add provisions designed to ensure that OCC receives appropriate notice of a statutory disqualification in order to discharge its obligations as an SRO. The proposed amendments are generally based on similar rules of the National Securities Clearing Corporation and the Chicago Board Options Exchange. OCC proposes to amend Article V, Section 1, Interpretation and Policy .03 (Experience and Competence) to:

1. Eliminate the requirement that the Committee must find “special circumstances” warranting the waiver of a statutory disqualification in order to recommend an Applicant’s approval for clearing membership providing instead that the Committee may in its discretion consider a statutory disqualification in determining whether or not to recommend approval.
2. Eliminate the requirement that the Committee address the status of associated persons who are subject to statutory disqualifications.
3. Establish procedures requiring Clearing Members and Applicants to provide notice of a statutory disqualification.
4. Eliminate the second paragraph of subsection c. The definition of statutory disqualification in subsection a. includes the conduct covered by Section 15(b)(4)(B) of the Act, making the second paragraph of subsection c. redundant.

OCC proposes to amend Chapter II and Chapter XII of its Rules to:

1. Establish procedures applicable to Clearing Members who are or become subject to a statutory disqualification to provide that: (i) OCC has the discretion not to permit any such Clearing Member to continue in Clearing Membership, (ii) such Clearing Member must notify OCC of any statutory disqualification and may seek

to continue in Clearing Membership, (iii) a failure to notify OCC of a statutory disqualification may be deemed a violation of OCC's rules, (iv) OCC may convene a Disciplinary Committee to conduct a hearing concerning a Clearing Member's statutory disqualification, (v) OCC has discretion to waive such provisions if another self-regulatory organization is conducting a proceeding addressing a Clearing Member's statutory disqualification with respect to the same matter, and (vi) OCC has discretion to waive the hearing provisions if OCC intends to grant the Clearing Member's application to continue in Clearing Membership in certain circumstances.

2. Add Interpretation and Policy .01 to Rule 1201 in order to clarify that a decision to suspend or expel a Clearing Member after a disciplinary proceeding under Chapter XII of the Rules would be grounds for summary suspension under Chapter XI of the Rules.

OCC also proposes to amend its Fitness Standards to conform them to the proposed amendments to OCC's By-Laws.

III. Discussion

Section 19(b)(2)(C) of the Act⁶ 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 Act⁷ requires, among other things, that the rules of a

⁶ 15 U.S.C. 78s(b)(2)(C).

⁷ 15 U.S.C. 78q-1(b)(3)(F).

clearing agency are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency.

The proposed changes to OCC's By-Laws are designed to more closely align OCC's By-Laws and Rules with applicable regulatory requirements, to establish standard notification and other procedures, to provide Clearing Members with guidance as to OCC's policies regarding statutory disqualifications, to facilitate the timely filing of notices pursuant to Rule 19h-1 should OCC determine to admit to membership or continue in membership any person subject to a statutory disqualification. The proposed changes are not designed to permit unfair discrimination in the admission of participants or among participants in the use of OCC. As a result, the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.

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 Act⁸ and the rules and regulations thereunder.

⁸ 15 U.S.C. 78q-1.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change, as amended, (File No. SR-OCC-2012-03) be, and hereby is, approved.¹⁰

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Kevin O'Neill
Deputy Secretary

[FR Doc. 2012-12547 Filed 05/23/2012 at 8:45
am; Publication Date: 05/24/2012]

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 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).

¹¹ 17 CFR 200.30-3(a)(12).