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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70935; File No. SR-OCC-2013-20)

November 25, 2013

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clarify OCC's Existing Policy Regarding Use of Clearing Fund Assets in Anticipation of a Clearing Member Default

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 November 15, 2013, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i)<sup>3</sup> of the Act and Rule 19b-4(f)(4)(1)<sup>4</sup> thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

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

The purpose of this proposed rule change is to clarify OCC’s existing policy regarding use of clearing fund assets in anticipation of a clearing member default. Specifically, OCC proposes to add an interpretation and policy to Article VIII, Section 5 of OCC’s By-Laws to make clear that OCC has the authority to use cash or securities

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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> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

deposited by clearing members in OCC's clearing fund to borrow, or to otherwise obtain, funds from third parties in anticipation of a potential default by, or suspension of, a clearing member.

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 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 these statements.

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

(1) Purpose

The purpose of this proposed rule change is to clarify OCC's existing policy regarding use of clearing fund assets in anticipation of a clearing member default. Specifically, OCC is proposing to add an interpretation and policy to Article VIII, Section 5 of its By-Laws to provide greater transparency for clearing members and others regarding an existing by-law and to clarify its authority to use cash or securities deposited by clearing members in OCC's clearing fund to borrow, or otherwise obtain, funds from third parties in anticipation of a clearing member default.<sup>5</sup>

Article VIII, Section 5 of OCC's By-Laws concerns application of OCC's clearing fund. Section 5(e)(i) permits OCC to use assets in the clearing fund to borrow,

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<sup>5</sup> OCC, in connection with the renewal of its credit facility, represented to the Commission that it will add such a clarification to its By-Laws. *See* Exchange Act Release No. 34-70596 (October 2, 2013), 78 FR 62719 (October 22, 2013), (SR-OCC-2013-806).

or otherwise obtain, funds from third parties in the event that OCC deems it necessary or advisable to meet obligations arising out of the default or suspension of a Clearing Member or any action taken by OCC pursuant to Chapter XI of the Rules or otherwise.<sup>6</sup> OCC has interpreted Article VIII, Section 5(e)(i) to provide OCC with the authority to use clearing fund assets to borrow, or otherwise obtain, funds from third parties in anticipation of a clearing member default or suspension should OCC deem such use of assets necessary or advisable to meet obligations that may arise from such potential clearing member default or suspension.<sup>7</sup> However, OCC believes that it would be helpful to clarify such authority and, accordingly, proposes to add Interpretation and Policy .06 to Article VIII, Section 5. Interpretation and Policy .06 will clarify that OCC's authority under Section 5(e)(i) of Article VIII applies to both situations in which a clearing member default or suspension that has already occurred, and in anticipation of potential default or suspension of a clearing member.

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<sup>6</sup> Chapter XI sets out rules pertaining to suspension of OCC Clearing Members.

<sup>7</sup> OCC has long believed that it should not have to make the decision to suspend a clearing member as a precondition to borrowing against the clearing fund. Accordingly, in 2004, OCC amended Article VIII, Section 5(e) to clarify that OCC may use clearing fund assets as collateral for loans whenever OCC deems such borrowings to be necessary or advisable in order to meet obligations arising out of the default or suspension of a clearing member or any action taken by OCC in connection therewith pursuant to Chapter XI of its Rules *or otherwise* (emphasis added). OCC has consistently interpreted the "or otherwise" language in the preceding sentence that was added to the By-Laws in 2004 to allow OCC to borrow against the clearing fund prior to a clearing member default or suspension. *See* Securities Exchange Act Release No. 34-50526 (October 13, 2004), 69 FR 61701 (October 20, 2004), (SR-OCC-2004-13).

## (2) Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act<sup>8</sup> and the rules and regulations thereunder because it will increase the protection of investors and the public interest by allowing OCC to use clearing fund assets to borrow or otherwise obtain funds from third parties in anticipation of a clearing member default or suspension, in addition to a default or suspension that actually occurred, and thereby limit systemic risk. In addition, OCC believes that the proposed rule is consistent with Rule 17Ad-22(b)(3)<sup>9</sup> because by providing additional flexibility with respect to the timing of borrowings it will enhance OCC's ability to maintain sufficient financial resources to withstand a significant clearing member default. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

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

OCC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.<sup>10</sup> This proposed rule change clarifies long standing policy regarding the conditions under which OCC may use securities or cash that clearing members deposit in OCC's clearing fund, and will apply to all clearing members. Accordingly, OCC believes that the proposed modifications would not disadvantage or favor any particular user in relationship to another user.

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<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>9</sup> 17 CFR 240.17Ad-22(b)(3).

<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(I).

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impose a burden on competition that 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 on the proposed rule change 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

Pursuant to Section 19(b)(3)(A)(i) of the Act<sup>11</sup> and Rule 19b-4(f)(1)<sup>12</sup> thereunder, the proposed rule change is filed for immediate effectiveness because it constitutes a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule. Notwithstanding the foregoing, implementation of this rule change will be delayed until it is deemed certified under CFTC Regulation § 40.6. At any time within 60 days of the filing of such rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>13</sup>

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>12</sup> 17 CFR 240.19b-4(f)(1).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(C).

#### 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-2013-20 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-2013-20. 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 of submission.

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 Section, 100 F Street, N.E., Washington, DC 20549, on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of such 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/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_13\\_20.pdf](http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_13_20.pdf).

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-2013-20 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>14</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).