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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76821; File No. SR-OCC-2015-805)

January 4, 2016

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice Filing, as Modified by Amendment Nos. 1, 2 and 3, Concerning The Options Clearing Corporation's Non-Bank Liquidity Facility

On November 5, 2015, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the advance notice SR-OCC-2015-805 pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 (“Payment, Clearing and Settlement Supervision Act”)¹ and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 (“Exchange Act”).² On November 11, 2015, OCC filed Amendment No.1 to the advance notice, which amended and replaced in its entirety the advance notice as originally submitted on November 5, 2015. On November 17, 2015, OCC filed Amendment No. 2 to the advance notice, which partially amended the advance notice as submitted on November 11, 2015. On November 24, 2015, OCC filed Amendment No. 3 to the advance notice, which amends and replaces in its entirety the advance notice as submitted on November 11, 2015, and amended on November 17, 2015. The advance notice was published for comment in the

¹ 12 U.S.C. 5465(e)(1). The Financial Stability Oversight Council designated OCC a systemically important financial market utility (“FMU”) on July 18, 2012. See Financial Stability Oversight Council 2012 Annual Report, Appendix A, <http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf>. Therefore, OCC is required to comply with the Payment, Clearing, and Settlement Supervision Act and file advance notices with the Commission. See 12 U.S.C. 5465(e).

² 17 CFR 240.19b-4(n)(1)(i).

Federal Register on December 18, 2015.³ The Commission did not receive any comments on the advance notice publication. This publication serves as a notice that the Commission does not object to the changes set forth in the advance notice.

I. Description of the Advance Notice

OCC filed this advance notice to renew its non-bank liquidity facility (“Non-Bank Liquidity Facility”) with certain proposed changes. Specifically, OCC is proposing to: (i) extend the existing confirmation (“Existing Confirmation”)⁴ for one year under the Master Repurchase Agreement (“MRA”) with the same terms and conditions; (ii) enter into a second confirmation (“Second Confirmation,” and collectively with the Existing Confirmation, “Confirmations”) under the MRA, also on the same terms and conditions except with a June 2016 expiration date; and (iii) maintain, between the Confirmations, an aggregate commitment amount of no less than \$1 billion and no greater than \$1.5 billion under the Non-Bank Liquidity Facility with the existing institutional investor (“Counterparty”) and its agent.⁵ According to OCC, the Second Confirmation has the

³ Securities Exchange Act Release No. 76641 (December 14, 2015), 80 FR 79114 (December 18, 2015) (SR-OCC-2015-805).

⁴ The Existing Confirmation is the original \$1 billion Master Confirmation executed under the Master Repurchase Agreement, as described in Securities Exchange Act Release No. 73979 (January 2, 2015), 80 FR 1062 (January 8, 2015) (SR-OCC-2014-809).

⁵ OCC represents that it intends for the commitment amount of the extended Existing Confirmation to be \$500 million and the commitment amount of the Second Confirmation to be \$500 million. OCC states that it will have the flexibility to change the commitment amount of each Confirmation at each renewal provided that at all times OCC would maintain the aggregate commitment level between the two Confirmations under the Non-Bank Liquidity Facility at no less than \$1 billion and no greater than \$1.5 billion. According to OCC, the MRA and any effective Confirmation(s) constitute the Non-Bank Liquidity Facility.

same terms, conditions, operations, and mechanics as the Existing Confirmation, except for the expiration date and commitment amount.

OCC also has requested that the Commission not object to its proposal to renew the Existing Confirmation and the Second Confirmation annually on the same terms and conditions⁶ with the same Counterparty without filing an advance notice, provided that there has been no negative change to the Counterparty's credit profile or the Counterparty has not experienced a material adverse change (as defined below) since entering into the Confirmations or the latest renewal of the either Confirmation, whichever is later.

Background

OCC's overall liquidity plan includes access to a diverse set of liquidity funding sources, which include bank borrowing arrangements (i.e., OCC's syndicated credit facility⁷) and the Non-Bank Liquidity Facility. OCC states that the Non-Bank Liquidity Facility is designed to reduce the concentration of OCC's counterparty exposure in its overall liquidity plan by diversifying its lender base among banks and non-bank, non-clearing member institutional investors, such as pension funds or insurance companies.

The currently-approved Non-Bank Liquidity Facility is comprised of two parts: the MRA and the Existing Confirmation, which contains certain individualized terms and conditions of transactions executed between OCC, an institutional investor and its agent. The MRA is structured like a typical repurchase arrangement in which the buyer (i.e., the

⁶ For the purposes of clarity, OCC states that it will not consider changes to the costs of entering into a Confirmation, or the rate of a transaction permitted under a Confirmation, to be a change to a term or condition that will require the filing of a subsequent advance notice filing provide that such costs or rate is at the then prevailing market rate.

⁷ See Securities Exchange Act Release No. 76062 (October 1, 2015), 80 FR 64028 (October 22, 2015) (SR-OCC-2015-803).

Counterparty) purchases from OCC, from time to time, United States government securities (“Eligible Securities”).⁸

Under the arrangement, OCC, as the seller, transfers Eligible Securities to the buyer in exchange for a payment by the buyer to OCC in immediately available funds (“Purchase Price”). The buyer will simultaneously agree to transfer the purchased securities back to OCC at a specified later date (“Repurchase Date”) or on OCC’s demand against the transfer of funds by OCC to the buyer in an amount equal to the outstanding Purchase Price plus the accrued and unpaid price differential (together, “Repurchase Price”), which is the interest component of the Repurchase Price.

The Confirmations establish tailored provisions of the actual repurchase transactions permitted under the MRA. OCC provides that, by entering into the Confirmation, the Counterparty is obligated to enter repurchase transactions even if OCC experiences a material adverse change,⁹ to make funds available to OCC within 60 minutes of OCC’s delivery of eligible securities, and to not rehypothecate purchased securities.¹⁰ The Confirmations also set forth the terms and maximum dollar amounts of the transaction permitted under the MRA.

⁸ OCC states that it will use United States government securities that are included in clearing fund contributions by clearing members and margin deposits of any clearing member that has been suspended by OCC for the repurchase arrangements. Article VIII, Section 5(e) of OCC’s By-Laws and OCC Rule 1104(b) authorize OCC to obtain funds from third parties through securities repurchases using these sources. The officers who may exercise this authority include the Executive Chairman and the President.

⁹ OCC represents that, in this context, a “material adverse change” is defined as a change that would have a materially adverse effect on the business or financial condition of a company.

¹⁰ See Securities Exchange Act Release No. 73979 (January 2, 2015), 80 FR 1062 (January 8, 2015) (SR-OCC-2014-809).

Extension of the Existing Confirmation

To provide continued access to liquidity resources, OCC proposes to extend the Existing Confirmation under the Non-Bank Liquidity Facility. OCC represents that the extended Existing Confirmation will have the same terms, conditions, operations, and mechanics as the Existing Confirmation entered into under the Non-Bank Liquidity Facility, but for the expiration date, which will be January 2017, and the commitment amount, which will be \$500 million.

According to OCC, the extended Existing Confirmation will continue to state that OCC is entitled to receive funds from the Non-Bank Liquidity Facility within 60 minutes of requesting such monies and delivering eligible securities. OCC also states that the buyer will not be able to rehypothecate eligible securities sold to it in a Non-Bank Liquidity Facility transaction, and OCC will be able to substitute eligible securities held by the buyer. Additionally, OCC represents that it will have early termination rights for any transaction entered into under the Non-Bank Liquidity Facility as well as have additional protections in the case of “material adverse changes” to OCC. For example, OCC states that it will require that material adverse changes to OCC, such as the failure of a clearing member, will not be deemed a default event. OCC believes this provision is important because it provides OCC with certainty of funding, even in adverse or difficult market conditions. According to OCC, this commitment to provide funding will be a key distinction from ordinary repurchase arrangements and a key requirement for OCC.

Second Confirmation

OCC proposes to enter into the Second Confirmation that will permit transactions of up to \$500 million and will expire in June 2016. According to OCC, the Second

Confirmation will have the same terms, conditions, operations, and mechanics as the Existing Confirmation of the Non-Bank Liquidity Facility, but for the commitment amount and the term.

OCC believes that the Second Confirmation, with a June 2016 expiration date, will help ensure continued access to a minimum amount of liquidity to OCC by staggering the expiration of the committed liquidity funding sources. OCC's current committed liquidity funding sources, which are its syndicated credit facility¹¹ and the Existing Confirmation, currently expire each year in October and January, respectively. OCC believes that staggering the expiration dates of Confirmations under the Non-Bank Liquidity Facility in relationship to each other and in relationship to the other liquidity funding source in OCC's overall liquidity plan will mitigate the risk of a precipitous decrease in OCC's access to liquidity as a result of a an unsuccessful renewal of any one funding source.

Aggregate Commitment Amount under the Non-Bank Liquidity Facility

OCC's current aggregate committed funding available under its Non-Bank Liquidity Facility (\$1.0 billion) and its bank syndicated credit facility (\$2.0 billion) is \$3.0 billion. OCC proposes to maintain the aggregate commitment amount under the Non-Bank Liquidity Facility at no lower than \$1.0 billion and no higher than \$1.5 billion, so that the aggregate total funding available is between \$3.0 billion and \$3.5 billion. OCC believes that this will provide it with the flexibility to: (i) react to shifting liquidity needs in a swift manner within funding parameters approved by the Commission, and (ii) reallocate the amount of funding available under the Confirmations at the time either of

¹¹ See Securities Exchange Act Release No. 76062 (October 1, 2015), 80 FR 64028 (October 22, 2015) (SR-OCC-2015-803).

the Confirmations is to be renewed to manage liquidity needs and enhance its ability to ensure continual liquidity resources.

OCC states that it will continue to evaluate the aggregate commitment amount of the Non-Bank Liquidity Facility so that OCC's available liquidity resources remain properly calibrated to its activities and settlement obligations, and to the extent: (i) OCC determines its liquidity needs merit funding levels below the \$1.0 billion or above the \$1.5 billion thresholds for the Non-Bank Liquidity Facility, (ii) OCC should seek to change the terms and conditions of the Non-Bank Liquidity Facility, or (iii) the Counterparty has experienced a negative change to its credit profile or a material adverse change since entering into the Confirmations or the latest renewal of the either Confirmation, OCC will submit a proposal with the Commission for approval first.

II. Discussion and Commission Findings

Although the Payment, Clearing and Settlement Supervision Act does not specify a standard of review for an advance notice, its stated purpose is instructive.¹² The stated purpose is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important FMUs and strengthening the liquidity of systemically important FMUs.¹³ Section 805(a)(2) of the Payment, Clearing and Settlement Supervision Act¹⁴ authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in

¹² See 12 U.S.C. 5461(b).

¹³ Id.

¹⁴ 12 U.S.C. 5464(a)(2).

designated activities for which it is the Supervisory Agency or the appropriate financial regulator. Section 805(b) of the Payment, Clearing and Settlement Supervision Act¹⁵ states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Payment, Clearing and Settlement Supervision Act¹⁶ and the Exchange Act (“Clearing Agency Standards”).¹⁷ The Clearing Agency Standards require registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.¹⁸ Therefore, it is appropriate for the Commission to review advance notices against these Clearing Agency Standards and the objectives and principles of these risk management standards as described in Section 805(b) of the Payment, Clearing and Settlement Supervision Act.¹⁹

¹⁵ 12 U.S.C. 5464(b).

¹⁶ 12 U.S.C. 5464(a)(2).

¹⁷ See Exchange Act Rule 17Ad-22. 17 CFR 240.17Ad-22. Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7-08-11).

¹⁸ Id.

¹⁹ 12 U.S.C. 5464(b).

The Commission believes that the proposal in the advance notice is consistent with the Clearing Agency Standards, in particular, Exchange Act Rule 17Ad-22(d)(11).²⁰ Exchange Act Rule 17Ad-22(d)(11)²¹ requires that registered clearing agencies “establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable . . . establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default.” The proposal will allow OCC to obtain short-term funds to address liquidity demands arising out of the default or suspension of a clearing member, in anticipation of a potential default or suspension of clearing members or the insolvency of a bank or another securities or commodities clearing organization. The changes should help OCC minimize losses in the event of such a default, suspension, or insolvency, by allowing it to obtain funds on extremely short notice to ensure clearance and settlement of transactions in options and other contracts without interruption. Therefore, the Commission believes that the proposal is consistent with Exchange Act Rule 17Ad-22(d)(11).²²

By ensuring that OCC has continued access to its Non-Bank Liquidity Facility, the Commission believes the proposal contained in the Advance Notice is consistent with the objectives and principles described in Section 805(b) of the Act,²³ including that it is consistent with promoting robust risk management, and promoting safety and soundness.

²⁰ 17 CFR 240.17Ad-22(d)(11).

²¹ Id.

²² Id.

²³ 12 U.S.C. 5464(b).

The Commission believes that the proposal is consistent with promoting robust risk management because it allows OCC to maintain access to a committed liquidity resource to help meet its settlement obligations in a manner that is timely and does not increase OCC's counterparty exposure to clearing members or clearing member affiliated commercial banking institutions. In addition, the proposal will provide OCC the ability to adjust the aggregate commitment level of its Non-Bank Liquidity Facility – to no lower than \$1 billion and no greater than \$1.5 billion – to meet changing liquidity demands. The Commission also believes that the proposal is consistent with promoting safety and soundness of OCC. As stated above, the Non-Bank Liquidity Facility now will include two Confirmations with staggered expiration dates, which should mitigate the risk of a precipitous decrease in liquidity resources in the event OCC is unable to renew any one of its committed liquidity sources.

For these reasons, stated above, the Commission does not object to the advance notice.

VI. Conclusion

IT IS THEREFORE NOTICED, pursuant to Section 806(e)(1)(I) of the Payment, Clearing and Settlement Supervision Act,²⁴ that the Commission DOES NOT OBJECT to the proposed change, and authorizes OCC to implement the change in the advance notice (SR-OCC-2015-805) as of the date of this notice.

By the Commission.

Robert W. Errett
Deputy Secretary

²⁴ 12 U.S.C. 5465(e)(1)(I).

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