SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68935; File No. SR-OCC-2012-801)

February 14, 2013

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice Filing, as Modified by Amendment No. 1 thereto, to Enter into an Unsecured, Committed Credit Agreement

I. Introduction

On December 18, 2012, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") advance notice SR-OCC-2012-801 pursuant to Section 806(e) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"),[1] entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Title VIII" or "Clearing Supervision Act"). On December 21, 2012, OCC filed Amendment No. 1 to advance notice SR-OCC-2012-801.[2] The advance notice, as amended by Amendment No. 1, was published in the Federal Register on January 16, 2013.[3] The Commission did not receive comments on the advance notice publication. This publication serves as a notice of no objection to the advance notice.

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1 Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

2 Amendment No. 1 clarifies the date the proposed change was approved by the OCC Board of Directors.

3 Notice of Filing of Advance Notice, as Modified by Amendment No. 1 Thereto, in Connection with a Proposed Change to Enter into an Unsecured, Committed Credit Agreement, Securities Exchange Act Release No. 34-68618 (January 10, 2013), 78 FR 3483 (January 16, 2013) "(Notice of Filing of Advance Notice").

II. Description of Proposed Rule Change

OCC filed this advance notice to permit it to enter into an unsecured, committed credit agreement ("Facility") in an aggregate principal amount not to exceed $25 million. The Facility is designed to satisfy the Commodity Futures Trading Commission's ("CFTC") liquidity requirement contained in Regulation 39.11(e)(2) and also to provide OCC with access to additional liquidity for working capital needs and general corporate purposes.

Among other things, CFTC Regulation 39.11(a)(2) requires a derivatives clearing organization ("DCO") to hold an amount of financial resources that, at a minimum, exceeds the total amount that would enable the DCO to cover its operating costs for a period of at least one year, calculated on a rolling basis.[4] In turn, CFTC Regulation 39.11(e)(2) provides that these financial resources must include unencumbered, liquid financial assets (i.e., cash and/or highly liquid securities), equal to at least six months' operating costs and that if any portion of such financial resources is not sufficiently liquid, the DCO may take into account a committed line of credit or similar facility for the purpose of meeting this requirement.[5] Accordingly, OCC would enter into a credit agreement for the Facility with BMO Harris Bank N.A. ("Lender") having a maximum aggregate principal loan amount not to exceed $25 million.

A condition of OCC's access to the Facility is the execution of credit agreement documents between OCC and the Lender. OCC anticipates that the parties will finalize the forms of the credit agreement documents in early 2013. Ongoing conditions governing OCC's ability to access the Facility include that no default or event of default by OCC may exist before or during an extension of credit by the Lender to OCC through the Facility and that certain

4 17 CFR 39.11(a)(2).

5 17 CFR 39.11(e)(2).

representations of OCC must remain true and correct. Events of default would include, but not be limited to, failure to pay any interest, principal, fees or other amounts when due, default under any covenant or agreement in any loan document, materially inaccurate or false representations or warranties, cross default with other material debt agreements, insolvency, bankruptcy, dissolution or termination of the existence of OCC, and unsatisfied judgments.

OCC anticipates that the Facility would be available to OCC on a revolving basis for a 364-day term. According to OCC, upon notice by OCC to the Lender of a request for funds, whether in writing or by telephone, the Lender would disburse loaned funds to OCC in U.S. dollars. The date of any loan would be required to be a business day, and the loans would be unsecured and made and evidenced by a promissory note provided by OCC. Any loan proceeds would be required to be used by OCC to finance its working capital needs or for OCC's general corporate purposes. According to OCC, its ability to draw against the Facility, even though no such draw is actually made, would contribute to OCC's compliance with the liquidity requirements prescribed by CFTC Regulation 39.11(e)(2).

OCC stipulates that it would have the ability to terminate the Facility at any time.[6] Termination within the first six months of the Facility would trigger a termination fee; termination after six months from the date of entering into the Facility does not trigger a termination fee. Upon five days written notice during the term of the Facility, OCC would also be permitted to reduce the overall size of the Facility at any time. Any such reductions would be required to be made in an initial amount of at least $2.5 million. Thereafter, reductions would be able to be made in multiples of $1 million. In no event, however, would OCC be permitted to

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6 In the event that OCC seeks to terminate or reduce the overall size of the Facility, OCC will first file an advance notice with the Commission pursuant to Dodd-Frank Act Section 806(e). <u>See</u> Notice of Filing of Advance Notice.

reduce the size of the Facility to an amount that is less than the greater of either its aggregate principal amount of indebtedness outstanding with respect to loans from the Facility or $15 million.

The outstanding principal balance of all loans made to OCC through the Facility will accrue interest equal to a base rate (generally equal to a Prime Rate, a Federal Funds Rate, or a LIBOR rate), as in effect from time to time, plus a certain applicable margin. Regardless of which method applies to a particular portion of OCC's total outstanding loan balance, in an event of a default the calculation of the amount of interest would be subject to a 2.00% increase above the otherwise applicable rate.

The Facility would involve a variety of customary fees payable by OCC to the Lender, including, but not limited to: (1) a one-time upfront fee payable at closing to the Lender calculated as a percentage of the total commitment amount of the Facility; (2) commitment fees payable quarterly in arrears on the average daily unused amount of the Facility; (3) reasonable out-of-pocket costs and expenses of the Lender in connection with the negotiation, preparation, execution, and delivery of the Facility and loan documentation, and costs and expenses in connection with any default, event of default, or enforcement of the Facility; and (4) termination fees if OCC elects to terminate the Facility prior to six months from the date of the credit agreement underlying the Facility.

OCC believes that any impact of the Facility on the risks presented by OCC would be to reduce such risks by providing an additional source of liquidity for the protection of OCC, its clearing members, and the options market in general. OCC also believes the Facility would provide OCC with additional liquidity for working capital needs and general corporate purposes and thereby assist OCC in satisfying the CFTC's requirements with respect to liquidity under CFTC Regulation 39.11.

Like any lending arrangement, OCC notes there is a risk that the Lender would fail to fund when OCC requests a loan, because of the Lender's insolvency, operational deficiencies, or otherwise. Even if OCC were to draw on the Facility for liquidity purposes, which it does not anticipate, OCC believes that the potential funding risk associated with the Facility is mitigated in several ways. OCC notes that the Lender is a national banking association that is subject to oversight by prudential banking regulators with respect to its safety and soundness and its ability to meet its lending obligations. Furthermore, OCC notes that the $25 million size of the Facility is relatively small when compared to the total resources available to OCC. Therefore, if the Facility proved unavailable to OCC for any reason, OCC believes that it readily would be able to access, or arrange for access, to other sources of liquidity if necessary.

According to OCC, a second risk associated with the Facility is the risk that OCC would default on its obligation to make timely payment of principal or interest. OCC believes the benefits of the Facility outweigh this risk. Finally, because the Facility would be an unsecured lending arrangement, OCC believes that it would not be at risk in an event of default of the Lender potentially liquidating OCC assets that are used to secure loaned funds.

III. Analysis of Advance Notice

Although Title VIII does not specify a standard of review for an Advance Notice, Commission staff believes that the stated purpose of Title VIII is instructive.[7] The stated purpose of Title VIII is to mitigate systemic risk in the financial system and promote financial

[7] 12 U.S.C. 5461(b).

stability by, among other things, promoting uniform risk management standards for systemically-important financial market utilities ("FMU") and providing an enhanced role for the Federal Reserve Board in the supervision of risk management standards for systemically-important FMUs.[8]

Section 805(a)(2) of the Clearing Supervision Act[9] authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the supervisory agency or the appropriate financial regulator. Section 805(b) of the Clearing Supervision Act[10] 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 adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act on October 22, 2012 ("Clearing Agency Standards").[11] The Clearing Agency Standards became effective on January 2, 2013 and require clearing agencies that perform central counterparty services to establish, implement, maintain, and enforce written

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8 Id.

9 12 U.S.C. 5464(a)(2).

10 12 U.S.C. 5464(b).

11 Clearing Agency Standards, Securities Exchange Act Release No. 34-68080 (October 22, 2012), 77 FR 66219 (November 2, 2012).

policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[12] As such, the Commission believes it is appropriate to review Advance Notices against these risk management standards that the Commission promulgated under Section 805(a) and the objectives and principles of these risk management standards as described in Section 805(b).

OCC states that its principal reason for entering into the Facility is to help ensure that OCC is in compliance with a CFTC requirement to hold an amount of financial resources that, at a minimum, exceeds the total amount that would enable OCC to cover its operating costs for a period of at least one year, calculated on a rolling basis, and to provide OCC with additional flexibility in managing its liquid assets while ensuring continued compliance with this requirement.[13] The size of the Facility ($25 million) is unlikely to raise risk concerns commonly associated with additional leverage. The Facility allows OCC to manage its general business risks and help ensure that it has sufficient liquid assets to cover operational costs that may arise. Consistent with Section 805(a), this added liquidity should promote the safety and soundness of OCC, reduce systemic risks to OCC members, and, as a result, support the stability of the broader financial system.

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12 The Clearing Agency Standards are substantially similar to the risk management standards established by the Board of Governors governing the operations of designated FMUs that are not clearing entities and financial institutions engaged in designated activities for which the Commission or the Commodity Futures Trading Commission is the Supervisory Agency. See Financial Market Utilities, 77 FR 45907 (Aug. 2, 2012).

13 See Notice of Filing of Advance Notice.

Furthermore, Rule 17Ad-22(d)(4),[14] adopted as part of the Clearing Agency Standards, requires clearing agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures; implement systems that are reliable, resilient and secured, and have adequate, scalable capacity; and have business continuity plans that allow for timely recovery of operations and fulfillment of a clearing agency's obligations. The Facility should help ensure that OCC holds an amount of financial resources that, at a minimum, exceeds the total amount that would enable OCC to cover its operating costs for a period of at least one year and, as a result, should contribute to minimizing operational risk. For these reasons, the Commission does not object to the advance notice.

IV. Conclusion

IT IS THEREFORE NOTICED, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[15] that, the Commission DOES NOT OBJECT to the advance notice (File No. SR-OCC-2012-801).

By the Commission.

Kevin M. O'Neill
Deputy Secretary

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14 17 CFR 240.17Ad-22(d)(4).

15 12 U.S.C. 5465(e)(1)(I).