

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70704; File No. SR-OCC-2013-10)

October 17, 2013

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change to Amend Policy Statement Adopted Under Rule 205 Entitled “Back-up Communication Channel to Internet Access”

I. Introduction

On August 23, 2013, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-OCC-2013-10 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 5, 2013.³ The Commission received no comment letters regarding the proposed rule change. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

OCC is making certain changes to its Policy Statement adopted under OCC Rule 205⁴ entitled “Back-up Communication Channel to Internet Access” requiring clearing members that use the internet as their primary means to access OCC’s information and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Exchange Act Release No. 34-70289 (August 29, 2013), 78 FR 54707 (September 5, 2013).

⁴ OCC Rule 205, in relevant part, prescribes that clearing members shall submit instructions, notices, reports, data, and other items to the Corporation by electronic data entry in accordance with procedures prescribed or approved by the OCC. OCC supports the submission of these instructions, notices, reports, data and other items through use of an Internet connection to OCC’s secured website.

data systems to maintain a secure back-up means of communication in order to provide for business continuance in the event of an internet outage.

In 2006, OCC adopted a Policy Statement under Rule 205 requiring clearing members that primarily use the internet to access OCC's systems to maintain: (i) an OCC-approved method for accessing OCC's information and data systems in order to perform, on a timely basis, critical business activities in the event of an internet outage ("Back-Up Communication Channel"), and (ii) separate service arrangements with two independent internet service providers.⁵

Guidelines were established so that the Back-Up Communication Channel authorized for a particular clearing member was determined in accordance with the firm's business profile using certain criteria. OCC believes that the existing Policy Statement gives OCC the ability to designate a clearing member within a particular Back-Up Communication Channel category, if the clearing member meets any of the criteria that are enumerated under the particular category.⁶ For example, a clearing member that: (i) ranked among the top twenty-five clearing members by cleared volume during a calendar year; (ii) cleared more than one account type as defined in OCC's By-Laws and Rules; (iii) cleared two or more product types; (iv) conducted Clearing Member Trade

⁵ Securities Exchange Act Release No. 53980 (June 14, 2006), 71 FR 36155 (June 23, 2006)(SR-OCC-2006-04).

⁶ Email from Bruce Kelber, Vice President and Associate General Counsel, OCC, to Wyatt Robinson, Attorney Adviser, Division of Trading and Markets, Securities and Exchange Commission (October 15, 2013) (stating that the criteria used to determine whether a particular firm should be designated as a Category A firm, Category B firm, or Category C firm under OCC's existing policy statement is intended to be interpreted as "or" statements.) OCC believes that the same interpretation will apply to the Policy Statement after changes pursuant to the proposed rule change are implemented. Id.

Assignment (“CMTA”) business; (v) input a high volume of daily post-trade activity; (vi) generally utilized multiple forms of collateral; (vii) utilized most ancillary services offered by OCC; or (viii) used a lease line for data transmissions, would generally be designated as a “Category A” firm. “Category A” firms were required to maintain a T1 line as an acceptable form of Back-Up Communication Channel.

A clearing member that: (i) transacted mid-level cleared volume during a calendar year; (ii) cleared one or more account types as defined in OCC’s By-Laws and Rules; (iii) cleared one or more product types; (iv) input a moderate to small volume of post-trade activity; (v) generally utilized one or two forms of collateral; or (vi) may have utilized a lease line for data transmissions, were generally designated as a “Category B” firm.

Under the Policy Statement, “Category B” firms had the option to either maintain a T1 line or ISDN connection as acceptable forms of a Back-Up Communication Channel.

A clearing member that: (i) transacted low-level cleared volume during a calendar year; (ii) cleared no more than one account type as defined in OCC’s By-Laws and Rules; (iii) cleared no more than one product type; (iv) generally utilized one or two forms of collateral; or (v) input minimal amounts of post-trade activity, would generally be designated as a “Category C” firm. “Category C” firms were given the option to maintain an ISDN connection, utilize OCC equipment if the clearing member was located in or near a city where OCC maintains operational center(s), or rely upon fax transmission in the event an internet connection was not available.

According to OCC, recent denial of service attacks on financial institutions, along with changes in technology since the Policy Statement was first adopted, have prompted OCC to reassess the potential risks to operations should internet connections supporting

clearing member access to OCC's information and data systems be interrupted. Through this assessment, OCC has determined that its existing policy should be modified to ensure that it is easily understood and properly implemented by the clearing membership.

OCC is now updating the Policy Statement to simplify the criteria applied to a given firm in determining the appropriate Back-Up Communication Channel. Instead of having three categories of business profiles that include several criteria to be applied, and offering multiple communication options available to a particular firm, the updated Policy Statement will contain two profiles. Clearing members that rank in the top-25 of cleared volume during a calendar year, or act as a facilities manager to one or more clearing firms, will be designated as a "Category A" firm, and will be required to maintain a T1 line as its Back-Up Communication Channel. All other firms will be designated as "Category B" firms, and will be required to maintain a T1 line or utilize a fax line, telephone or have ready access to an OCC office location.

OCC believes the proposed changes will present minimal to no impact to clearing members. According to OCC, all firms that were previously designated as "Category A" firms under the former policy will continue to be designated as "Category A" firms under the revised policy, and they will still be required to maintain a T1 line. Those firms that will be designated as Category B firms under the revised policy will now have increased flexibility under the back-up options being made available to them, in that they can select between a T1 Line, fax, telephone, or use an OCC office if they are located in a city where OCC maintains an operational center.⁷

⁷ In preparation for the revisions to the Policy Statement, OCC has acquired new fax servers that have increased bandwidth to support multiple users that may

OCC is also clarifying the Policy Statement by expressly adding a requirement for each clearing member to provide OCC with an annual statement that the clearing member: (i) has been and continues to be in compliance with the Policy Statement since the last reporting period; (ii) has successfully tested its ability to access OCC's information and data systems using its Back-Up Communication Channel since the last reporting period; and (iii) will notify OCC within a reasonable period of any changes to their internet service providers since the date of the last notice provided to OCC. OCC believes that this modification will help eliminate any ambiguity that may exist with respect to responsibility of clearing members to comply with the Policy Statement and help ensure that OCC has sufficient information to troubleshoot in case of an internet outage, thereby helping to ensure that critical business activities can still be performed in a timely manner.

III. Discussion

Section 19(b)(2)(C) of the Act⁸ directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

select facsimile transmission as their available back-up communication method. Meanwhile, the telephone features used by OCC's Member Service staff are equipped so that calls are automatically routed to an available representative in the event a firm's designated contact is unavailable. Finally, OCC has confirmed that: the number of Category B firms located in a city where OCC maintains an office that do not currently maintain a T1 line is sufficiently small enough so that OCC will be able to accommodate those firms who may need to utilize OCC's equipment in the event of an internet outage.

⁸ 15 U.S.C. 78s(b)(2)(C).

applicable to such organization. Section 17A(b)(3)(F) of the Act⁹ requires that the rules of a registered clearing agency be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions.

The Commission finds that the rule change is consistent with Section 17A(b)(3)(F) of the Act¹⁰ because revising the Policy Statement to simplify the criteria used to determine the authorized Back-Up Communication Channel(s) that may be used by a given clearing member should reduce the administrative oversight by OCC and clearing members associated with making such determinations, freeing up resources otherwise directed to this purpose. Furthermore, OCC's requirement that a clearing member confirm its ability to access OCC's systems through testing should help to ensure that critical business activities can still be performed in a timely manner even in the event of an internet outage.

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 Act¹¹ and the rules and regulations thereunder.

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ Id.

¹¹ 15 U.S.C. 78q-1.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (File No. SR-OCC-2013-10) be and hereby is APPROVED.¹³

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹² 15 U.S.C. 78s(b)(2).

¹³ 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).

¹⁴ 17 CFR 200.30-3(a)(12).