

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85779; File No. SR-OCC-2019-003)

May 6, 2019

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change to Require that an Actionable Identifier be Included on Customer and Non-Customer Securities Options Trades Other than Market Maker Trades

I. INTRODUCTION

On March 20, 2019, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-OCC-2019-003 (“Proposed Rule Change”) pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4² thereunder to propose changes to amend OCC Rule 401 to require that an “Actionable Identifier” (described below) be included on certain securities options trades submitted to OCC for processing.³ The Proposed Rule Change was published for public comment in the Federal Register on April 3, 2019,⁴ and the Commission received no comments regarding the Proposed Rule Change. This order approves the Proposed Rule Change.

II. BACKGROUND

OCC facilitates several processes by which a broker may automatically transfer an executed trade into a Clearing Member’s accounts. Such transferred positions could, in certain circumstances, affect the Clearing Member’s margin requirements. Currently, such a transfer may occur without the provision of information regarding the person for whom such a trade was

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing infra note 4, 84 FR 13075.

⁴ Securities Exchange Act Release No. 85441 (Mar. 28, 2019), 84 FR 13075 (Apr. 3, 2019) (SR-OCC-2019-003) (“Notice of Filing”).

executed.

First, OCC's Clearing Member Trade Assignment ("CMTA") process allows a Clearing Member that executes a securities options trade (i.e., the Executing Clearing Member) to send the trade directly through OCC to another Clearing Member for clearance and settlement (i.e., the Carrying Clearing Member).⁵ Under the CMTA process, an Executing Clearing Member may send options trades directly to a Carrying Clearing Member's omnibus accounts at OCC for clearance and settlement without providing information identifying the specific accounts to which the trade should be assigned. Second, in the "give-up" process, a broker may execute a transaction on an exchange and then assign that transaction to a Clearing Member's omnibus account. Specifically, for customer transactions, a broker who is not an OCC Clearing Member may execute a customer's trade and then "give-up" the trade to the customer's clearing broker, which must be an OCC Clearing Member, without identifying the customer for whom the transaction was executed. Similarly, a trading desk within a Clearing Member Group may execute a non-customer trade and send it to a Clearing Member's omnibus firm account without clearly identifying the account to which the trade should be allocated.⁶ Finally, a broker-dealer who participates in a joint back office arrangement with a Clearing Member could execute a non-customer trade that then clears directly in a Clearing Member's omnibus firm account.

⁵ See OCC Rule 407. An "Executing Clearing Member" is defined in Article I, Section 1.E.(12) of OCC's By-Laws as "a Clearing Member, on its own behalf or as the Clearing Member of an Introducing Broker that has been authorized by a Carrying Clearing Member to direct confirmed trades to be transferred to a designated account of the Carrying Clearing Member pursuant to such Clearing Members' CMTA arrangement." A "Carrying Clearing Member" is defined in Article I, Section 1.C.(12) of OCC's By-Laws as "a Clearing Member that has authorized an Executing Clearing Member to direct the transfer of a confirmed trade to a designated account of such Carrying Clearing Member pursuant to a CMTA arrangement."

⁶ See Notice of Filing, 84 FR at 13077.

Transactions executed in this way, as part of a joint back office arrangement with a Clearing Member, could result in a Clearing Member's receipt of a non-customer trade in its omnibus firm account without a clear indication of the account to which the Clearing Member should assign the trade.

According to OCC, Clearing Members have raised concerns regarding the timely account identification for trades that a Clearing Member receives through the CMTA, give-up, and joint back office processes.⁷ OCC proposes to require the inclusion of an "Actionable Identifier" for all transactions related to a customer account or a non-customer account, other than Market-Maker transactions,⁸ which OCC believes would allow Clearing Members to more timely identify trades as attributable to a particular customer or non-customer account.⁹ As defined in the proposed amendment to Rule 401, the Actionable Identifier would consist of either a name, series of numbers, or other identifying information related to the account for which the transaction was executed. OCC would also require that each Clearing Member establish and maintain policies and procedures reasonably designed to include sufficient information in the Actionable Identifier regarding the account that originated the trade to allow the other Clearing Member to promptly clear the transaction.¹⁰ OCC would enforce the Actionable Identifier related requirements through: (1) an annual Clearing Member certification process; and (2) a

⁷ See Notice of Filing, 84 FR at 13076-77.

⁸ OCC is not proposing the inclusion of an Actionable Identifier for Market-Maker transactions because OCC understands that such trades already include information that allows a Clearing Member to assign the trades to individual Market-Maker accounts. See Notice of Filing, 84 FR at 13076, n. 6.

⁹ See Notice of Filing, 84 FR at 13078.

¹⁰ OCC does not, however, propose to make the inclusion of an Actionable Identifier a prerequisite for trade acceptance.

review of Actionable Identifier policies and procedures during OCC's periodic Clearing Member examinations.

In its proposal, OCC described a three-phase implementation schedule for changes pertaining to the Actionable Identifier.¹¹ During the first 12 months after approval of the Proposed Rule Change, the following would not constitute a violation of OCC's rules: (i) failure to include an Actionable Identifier for transactions, or (ii) failure to maintain policies and procedures to provide that sufficient information is included in the Actionable Identifier. Second, from 13 months to 18 months after approval of the Proposed Rule Change, failure to maintain policies and procedures to provide that sufficient information is included in the Actionable Identifier would not constitute a violation of OCC's rules. Finally, beginning 19 months after approval of the Proposed Rule Change, failure to comply with any part of the rule would constitute a violation of OCC's rules, subject to the manner in which OCC enforces such violations pursuant to Rule 1201.

OCC also proposes three changes to improve the language of its Rule 401. First, OCC proposes to add the words "in this rule" to the last sentence of paragraph (a) of Rule 401 to clarify the scope of the sentence. Second, OCC proposes to replace the phrase "the security type" with the "the product type" in paragraphs (a)(1)(G) and (a)(2)(G) of Rule 401 to accurately describe the requirements of the rule. Finally, OCC proposes to replace the phrase "the Give-Up Clearing Member" with "the Given-Up Clearing Member" for consistency with the definition provided in Article I, Section 1.G.(3) of OCC's By-Laws.

III. DISCUSSION AND COMMISSION FINDINGS

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed

¹¹ See Notice of Filing, 84 FR at 13078.

rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.¹² After carefully considering the Proposed Rule Change, the Commission believes the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission believes that the proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act.¹³

A. Consistency with Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires that the rules of a clearing agency be designed to, among other things, (i) promote the prompt and accurate clearance and settlement of securities transactions, and (ii) foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and (iii) in general, to protect investors and the public interest.¹⁴ Based on its review of the record, the Commission believes that the proposed rule changes related to the Actionable Identifier are designed to promote the prompt and accurate clearance and settlement of securities transactions and foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions for the reasons set forth below.

The Actionable Identifier, as proposed, must include sufficient information regarding the account that originated a trade to allow a Clearing Member to promptly clear and settle the transaction in the appropriate account. Additionally, the Actionable Identifier would support the interactions between those firms executing transactions and those firms clearing transactions by

¹² 15 U.S.C. 78s(b)(2)(C).

¹³ 15 U.S.C. 78q-1(b)(3)(F).

¹⁴ Id.

providing information about the account to which such transactions are attributable. In this way, the proposed rule changes are designed to promote the prompt and accurate clearance and settlement of securities transactions and foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Exchange Act.

Further, the Commission believes that the proposed changes to improve the language of its Rule 401 are designed to in general, to protect investors and the public interest for the following reasons. As a general matter, enhancing the clarity of a clearing agency's rules would be in the public interest because doing so could provide information that may facilitate public interaction with the clearing agency. OCC's rules describe, in part, certain obligations of an individual submitting a trade to OCC by defining, for example, the information necessary for acceptance of such a trade. As described above, OCC proposes to revise the language of its Rule 401 to clarify the scope of the rule, more accurately state the requirements of the rule, and ensure internal consistency across OCC's rules.

Accordingly, and for the reasons stated above, the Commission believes that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Exchange Act.¹⁵

¹⁵

Id.

IV. CONCLUSION

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act¹⁶ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,¹⁷ that the Proposed Rule Change (SR-OCC-2019-003) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Eduardo A. Aleman
Deputy Secretary

¹⁶ In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).