

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87774; File No. SR-OCC-2019-011)

December 17, 2019

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Concerning an Agreement for Clearing and Settlement Services Between The Options Clearing Corporation and Small Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 6, 2019, 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 by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(4)(ii)⁴ thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

OCC is proposing to execute an Agreement for Clearing and Settlement Services (“Clearing Agreement”) between OCC and Small Exchange, Inc. (“Small”) in connection with Small’s intention to operate as a designated contract market (“DCM”) regulated by

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4)(ii).

the Commodity Futures Trading Commission (“CFTC”). There are no proposed changes to OCC’s By-Laws or Rules.

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

OCC is proposing to provide clearance and settlement services to Small pursuant to the terms set forth in the Clearing Agreement. Small has applied for designation as a DCM by the CFTC.⁵ The purpose of this proposed rule change is to adopt a new Clearing Agreement so that OCC may begin providing clearing and settlement services for Small after Small has received the requisite regulatory approvals.

Clearing Agreement Proposal

On December 4, 2018, Small applied for designation as a DCM by the CFTC.⁶ Contingent on the CFTC approving Small’s application, OCC is now proposing to provide the clearance and settlement services as described in the Clearing Agreement.

⁵ See <https://www.cftc.gov/filings/documents/2018/orgsmfecoverletter181212.pdf>.

⁶ Id.

The terms of the Clearing Agreement are based on the terms of the Agreement for Clearing and Settlement Services entered into with Nasdaq Futures, Inc. (“NFX Clearing Agreement”), which has been approved by the Commission.⁷ The Clearing Agreement is substantially similar to the NFX Clearing Agreement with several differences discussed in more detail below.

The Clearing Agreement includes new provisions that are designed to protect OCC and the holders of outstanding contracts listed on Small. These new provisions would enable OCC to better manage the risks associated with a clearing relationship with a DCM such as the one OCC proposes to enter into with Small. More specifically, the following provisions would be added:

- Section 12 of the Clearing Agreement, “Information Sharing by Market,” would be revised to require Small to provide OCC with audited financial statements (i) on an annual basis and (ii) upon request by OCC. OCC believes this reporting will enable OCC to better monitor the financial resources of Small.⁸
- Section 18(d) of the Clearing Agreement, “Financial Resources or Agreement with Another Exchange,” would be added to require that Small either (i) maintain at all times at least one year of projected operating expenses, as updated on an

⁷ See Securities Exchange Act Release No. 74747 (April 16, 2015), 80 FR 22591 (April 22, 2015) (SR-OCC-2015-03).

⁸ Section 12 of the NFX Clearing Agreement provided that the rights and obligations of purchasers and sellers of contracts subject to that agreement are as set forth in the By-Laws and Rules of OCC. This is a reiteration of provisions that already exist in OCC’s By-Laws and OCC therefore determined to replace it with the provision noted above in the proposed Clearing Agreement. See, e.g., Article XII, Section 2(a).

annual basis⁹ or (ii) maintain an arrangement with another DCM to provide a listing and trading venue for contracts that would be listed by Small and cleared by OCC in the event Small becomes unavailable to provide a trading venue for its contracts.¹⁰ OCC believes this will better enable it to manage the potential risk of Small not being available to provide a trading venue for contracts listed on the exchange.

In addition to the above, the Clearing Agreement would include several other differences from the NFX Clearing Agreement, which include:

- Section 3 “Selection of Underlying Interests; Classes and Series of Commodity Contracts” would be revised to clearly reflect that security futures would not be cleared by OCC pursuant to the Clearing Agreement, as Small is not planning to list such contracts.
- Section 3 would also be revised to: (i) add the condition that OCC be satisfied that it is able to appropriately process contracts proposed for clearing by Small using commercially reasonable efforts, (ii) describe the manner in which Small initially would notify OCC of proposed new products, (iii) require Small to submit a certificate to OCC detailing certain information on a new product as specified in Section 3(c) no later than ten trading days before Small plans to commence trading the product, and (iv) specify expectations around the clearance and

⁹ OCC notes that 17 CFR 38.1101(a) requires a DCM to maintain minimum financial resources “equal to a total amount that would enable the designated contract market, or applicant for designation as such, to cover its operating costs for a period of at least one year, calculated on a rolling basis.”

¹⁰ It is anticipated that any such DCM would be cleared by OCC.

settlement of a contract with a new maturity or expiration date not set forth in the certificate described in Section 3(c).

- Section 5(a) of the Clearing Agreement, “Confirmed Trade Reports,” would be amended to eliminate the reference to exchange-for-physical transactions, as the exchange is not planning to provide for such transactions in its rules. Section 26 from NFX Clearing Agreement also would be deleted for this reason as well as the fact that Article XII, Section VII of OCC’s By-Laws already contains provisions regarding block trades that mirror what was in Section 26.
- Section 10 of the Clearing Agreement, “Margin Requirements of Corporation,” would be revised to clarify that OCC maintains the exclusive right to enforce its margin requirements with respect to its Clearing Members, but will maintain good faith communications with Small concerning OCC’s establishment and communication of margin requirements. Section 10 also would be revised to remove a provision that would have required the exchange’s consent prior to a listed product being made fungible with other products.
- Section 11 of the Clearing Agreement, “Financial Requirements for Clearing Members,” would be revised to provide that OCC would have the exclusive authority to establish in its By-Laws and Rules financial responsibility standards with which its Clearing Members must comply.
- Section 13 of the Clearing Agreement, “Fees for Clearing Services and Changes Related to Commodity Contracts,” would be revised to clarify that in the future, OCC would have the ability to charge Small fees reasonably related to OCC’s costs to make any change(s) necessary to clear a product for Small, with the

condition that prior to imposing any such fee, OCC would provide Small with advance written notice of the fee.¹¹

- Section 15(c) of the Clearing Agreement, “Indemnification in Respect of Intellectual Property,” would be amended to provide that only Small would indemnify OCC if Small were alleged to have violated the patent or other intellectual property rights of others.
- Section 18(b) of the Clearing Agreement, “Other Grounds for Termination,” would be amended to provide that there would be a 365-day period in which to transfer contracts to another DCO if either party to the Clearing Agreement voluntarily terminated it. Under this amended provision, OCC also would have the right to terminate the agreement earlier if such a transfer were accomplished prior to this 365-day period.

In addition to the foregoing, various minor and administrative changes have been made throughout the document including, but not limited to, updated references to the names of the parties and clean-up of outdated terms.

(2) Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Act¹² and the rules thereunder applicable to OCC. Section 17A(b)(3)(F) of the Act¹³

¹¹ If OCC ever made a decision to charge Small fees reasonably related to OCC’s costs to make any change(s) necessary to clear a product for Small, OCC would provide Small ample prior written notice (e.g., 30 days) of any such fees. It is also anticipated that OCC would make a determination as to whether a proposed rule change would be needed in connection with any such fee.

¹² 15 U.S.C. 78q-1.

¹³ 15 U.S.C. 78q-1(b)(3)(F).

requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest. The proposed rule change is designed to promote the prompt and accurate clearance and settlement of derivatives contracts traded on Small by providing that such contracts will be cleared through OCC's existing clearance and settlement processes for futures contracts, which have functioned efficiently for many years with regard to other futures markets for which OCC provides clearance and settlement services. Similarly, OCC believes that the proposed rule change is designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency by bringing contracts traded on Small and funds associated with those contracts within the scope of OCC's existing custody and control arrangements, which have effectively served OCC's Clearing Members and their customers for many years. Finally, OCC believes the proposed rule change is designed to protect investors and the public interest. By providing that futures contracts traded on Small and cleared by OCC are risk managed under OCC's risk management framework, which is designed to provide protections to customers and other market participants in the event of a Clearing Member default, OCC believes the proposed rule change contributes to the protection of investors and the public interest.

Rule 17Ad-22(e)(20)¹⁴ requires that a covered clearing agency “establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [i]dentify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies, financial market utilities, or trading markets.” OCC believes that the proposed rule change is also consistent with Rule 17Ad-22(e)(20)¹⁵ because the proposed Clearing Agreement is designed to help OCC identify, monitor, and manage the risks associated with providing clearance and settlement services for Small, which is a trading market. For example, the Clearing Agreement would require Small to report financial information to OCC, which would enable OCC to monitor for changes in Small’s financial condition. It also would require Small to maintain sufficient financial resources or arrangements with another DCM to mitigate the impact to the marketplace should Small become unavailable as a trading venue for its contracts.

B. Clearing Agency’s Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act¹⁶ requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe the proposed rule change would impose any burden on competition. The purpose of the proposed rule change is to adopt a Clearing Agreement between OCC and Small. The adoption of such an agreement would not affect Clearing Members’ access to OCC’s services, nor would it disadvantage or favor

¹⁴ 17 CFR 240.17Ad-22(e)(20).

¹⁵ Id.

¹⁶ 15 U.S.C. 78q-1(b)(3)(I).

any particular user in relationship to another user. As such, OCC believes that the proposed rule change would not impose any burden on competition.

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) of the Act,¹⁷ and Rule 19b-4(f)(4)(ii) thereunder,¹⁸ the proposed rule change is filed for immediate effectiveness because it effects a change in an existing service of OCC that (i) primarily affects the clearing operations of OCC with respect to products that are not securities, i.e., options on futures that are not security futures, and (ii) does not significantly affect any securities clearing operations of OCC or any rights or obligations of OCC with respect to securities clearing or persons using such securities clearing services.

At any time within 60 days of the filing of the proposed 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.¹⁹

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(4)(ii).

¹⁹ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Rule 40.6.

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 Exchange 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. Please include File Number SR-OCC-2019-011 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2019-011. 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. 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 Room, 100 F Street, NE, 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

<https://www.theocc.com/about/publications/bylaws.jsp>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-OCC-2019-011 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.²⁰

J. Matthew DeLesDernier
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).