

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88974; File No. SR-OCC-2020-005)

May 29, 2020

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Deadline for Clearing Members to Provide an Actionable Identifier on Customer and Non-Customer Securities Options Trades Other than Market Maker Trades

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 May 19, 2020, 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)(1)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 proposes to amend Rule 401 to modify the implementation and enforcement timeline for requiring an “Actionable Identifier” to be included on all customer and non-customer securities options trades submitted to OCC for processing, other than Market-Maker trades. The proposed changes to OCC’s Rules are contained in Exhibit 5 of the filing. Material proposed to be added to OCC’s Rules as currently in effect is marked 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)(1).

underlining and material proposed to be deleted is marked with strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the By-Laws and Rules.⁵

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

Background

The Clearing Member Trade Assignment (“CMTA”) process at OCC allows a Clearing Member that executed 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).⁶ Under the CMTA

⁵ OCC’s By-Laws and Rules can be found on OCC’s public website: <http://optionsclearing.com/about/publications/bylaws.jsp>.

⁶ See OCC Rule 407. An “Executing Clearing Member” is defined in Article I, Section 1.E.(12) of the 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 the By-Laws as “a Clearing Member that has authorized an Executing Clearing Member to direct the transfer of a confirmed

process, an Executing Clearing Member and a Carrying Clearing Member can agree to have securities options trades for customers and non-customers effected by the Executing Clearing Member sent directly through OCC to the Carrying Clearing Member's omnibus accounts at OCC for clearance and settlement.⁷ One potential risk that may arise in the CMTA process is that Clearing Members may receive customer trades that they do not recognize in a timely manner because the trades do not include information that allows them to quickly identify the correct customer account at the Carrying Clearing Member or that the trade should have been sent to another Carrying Clearing Member.

On May 6, 2019, the Commission approved a proposed rule change by OCC to amend Rule 401 to require that an Actionable Identifier be included on all customer and non-customer securities options trades submitted to OCC for processing, other than Market-Maker trades.⁸ Actionable Identifier is defined in Interpretation and Policy .06 to Rule 401 as either the name, series of numbers, or other identifying information assigned by a Purchasing Clearing Member or Writing Clearing Member to a customer or non-

trade to a designated account of such Carrying Clearing Member pursuant to a CMTA arrangement.”

⁷ The term “customer” is defined in Article I, Section 1.C. (37) of the By-Laws with regard to listed options as “a person having a securities account at a broker or dealer other than a non-customer of such broker or dealer.” The term “non-customer” is defined in Article I, Section 1.N.(1) of the By-Laws effectively as “a person that is not a customer of a broker or dealer as defined in Rules 8c-1 and 15c2-1 under the Securities Exchange Act of 1934,” including “a Member Affiliate that has consented to having its securities account at a Clearing Member treated as a non-customer account.” OCC Clearing Members hold omnibus accounts at OCC for customer positions (i.e., a “customers’ account” as defined in Article I, Section 1.C.(37) of the By-Laws) and non-customer positions (i.e., a “firm account” as defined in Article I, Section 1.F.(6) of the By-Laws).

⁸ See Securities Exchange Act Release No. 85779 (May 6, 2019), 84 FR 20689 (May 10, 2019) (SR-OCC-2019-003).

customer account (other than a Market-Maker account) at the Clearing Member that originated the options transaction. The introduction of the Actionable Identifier requirement was intended to minimize the risks Clearing Members face in handling trades they cannot timely identify in connection with the CMTA process.

The implementation plan for Actionable Identifier requirement, which is specified in Interpretation and Policy .06 to Rule 401, sets forth the effective dates for the rule change, providing that: (a) from the date on which the Actionable Identifier requirement is approved (“approval date”) to the end of the twelfth month from such approval date, OCC will not treat as a violation of Rule 401 the failure to include an Actionable Identifier or the failure of a Clearing Member’s policies and procedures to provide that sufficient information is included in the Actionable Identifier field to allow the Clearing Member receiving such Actionable Identifier to promptly clear the transaction; (b) from the thirteenth to the end of the eighteenth month from such approval date, an Actionable Identifier will be required but OCC will not treat as a violation of Rule 401 the failure of a Clearing Member’s policies and procedures to provide that sufficient information is included in the Actionable Identifier field to allow the Clearing Member receiving such Actionable Identifier to promptly clear the transaction; and (c) from the nineteenth month after such approval date and thereafter, OCC will treat as a violation of Rule 401 the failure to include an Actionable Identifier or the failure of a Clearing Member’s policies and procedures to provide that sufficient information is included in the Actionable Identifier field to allow the Clearing Member receiving such Actionable Identifier to promptly clear the transaction, subject to the manner in which OCC enforces violations of its rules in Rule 1201. This phased implementation plan was intended to provide time for

Clearing Members to work together to determine appropriate Actionable Identifiers for the accounts subject to their CMTA arrangements and coordinate on processes to include Actionable Identifiers on trades submitted through the give-up process.

Recently, some Clearing Members have requested that OCC delay the deadline for requiring an Actionable Identifier on trades (“Actionable Identifier Deadline”), which is set for June 8, 2020. On this date, OCC would begin to enforce the Actionable Identifier requirement but would not treat as a violation of Rule 401 the failure of a Clearing Member’s policies and procedures to provide that sufficient information is included in the Actionable Identifier field. Due to the COVID-19 pandemic, many Clearing Members are functioning under business continuity plans. OCC has been informed by many Clearing Members that because they are operating under business continuity plans, system enhancements are now limited to critical or essential system installations only. As a result, Clearing Members cannot install system functionality that will allow them to comply with the June 8, 2020 Actionable Identifier Deadline. Additionally, Clearing Members require input from floor brokers to implement Actionable Identifier information.⁹ Clearing Members are limited by remote working conditions to coordinate directly with the floor brokers on the changes needed to populate the identifier on the trades. Given these factors, Clearing Members may require additional time to comply with the requirements of Rule 401(a)(1)(iii) and Interpretation and Policy .06.

⁹ Floor brokers receive and execute trades on behalf of customers. Clearing Members and floor brokers will therefore need to coordinate to have an agreed upon identifier for their various customers.

Proposed Change

OCC proposes to amend Interpretation and Policy .06 to Rule 401 to extend the deadline for requiring Actionable Identifiers on all customer and non-customer securities options trades submitted to OCC for processing, other than Market-Maker trades, by an additional three months from June 2020 to September 2020. OCC believes that extending the Actionable Identifier Deadline by three months will provide Clearing Members with the additional time they will need to make the necessary system changes to comply with the requirements of Rule 401. OCC believes the proposed rule change is appropriate given current conditions caused by the COVID-19 pandemic and does not believe that changes to the final implementation deadline of December 7, 2020, are necessary at this time.

(2) Statutory Basis

Section 17A(b)(3)(F) of the Act¹⁰ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions and to foster cooperation and coordination with persons engaged in clearance and settlement of securities transactions. The Actionable Identifier requirements of Rule 401 are designed to enable Clearing Members to more promptly and accurately clear and settle securities options trades that are subject to CMTA and give-up arrangements. The proposed rule change would provide additional time for OCC's Clearing Members to make the necessary system changes to effectively implement Actionable Identifiers given the recent complications caused by the COVID-19 pandemic. In this way, the proposed rule change is designed to promote the prompt and

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

accurate clearance and settlement of securities transactions and foster cooperation and coordination with persons engaged in clearance and settlement of securities transactions in accordance with the requirements of Section 17A(b)(3)(F).¹¹

In addition, the proposed rule change is not inconsistent with the existing By-Laws and Rules of OCC, including any rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act¹² requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the Act. OCC does not believe that the proposed rule change would impact or impose any burden on competition. The proposed rule change would provide Clearing Members with additional time to comply with the Actionable Identifier requirements previously approved by the Commission.¹³ The proposed rule change would not affect the competitive dynamics between Clearing Members in that it would apply to all Clearing Members equally. The proposed rule change also would not inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another. In this regard, as described above, the proposed rule change is designed to further facilitate the prompt and accurate clearance and settlement of securities transaction.

(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.

¹¹ Id.

¹² 15 U.S.C. 78q-1(b)(3)(I).

¹³ See supra note 8.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)¹⁴ of the Act, and Rule 19b-4(f)(1) thereunder,¹⁵ the proposed rule change is filed for immediate effectiveness as it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. The proposed rule change would modify the implementation and enforcement dates of rule changes previously approved by the Commission in OCC filing SR-OCC-2019-003.¹⁶ Accordingly, the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the administration and enforcement of an existing rule of OCC.

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.¹⁷

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 Act. Comments may be submitted by any of the following methods:

Electronic Comments:

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(1).

¹⁶ See supra note 8.

¹⁷ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Rule 40.6.

- 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-2020-005 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-2020-005. 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-2020-005 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.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).