

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56856; File No. SR-OCC-2007-13)

November 28, 2007

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Delayed Start Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on October 9, 2007, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant approval of the proposal.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would permit OCC to clear and settle delayed start options (“DSOs”) by the Chicago Board Options Exchange (“CBOE”).

II. Self-Regulatory Organization’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.<sup>2</sup>

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The Commission has modified the text of the summaries prepared by OCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose of Rule Change

The purpose of the proposed rule change is to accommodate the introduction of DSOs by the CBOE. Initially CBOE proposes to list DSOs only on indexes.<sup>3</sup>

Description of Product

As described by CBOE, a DSO is identical to existing standardized options with one exception: at the commencement of trading in a series, DSOs of that series will not have a set exercise price. Instead, a DSO will commence trading with a preestablished formula that the listing exchange will use to fix the exercise price for the DSO on a specified date prior to the DSO's expiration date ("exercise price setting date"). The CBOE is currently proposing that an "at-the-money" DSO on an index will be assigned an exercise price equal to the closing value of the underlying index on the exercise price setting date, rounded to the increment established by CBOE at the time the DSO commences trading. CBOE has also indicated that it may introduce in- or out-of-the-money DSOs. Those DSOs would, according to CBOE, have the same terms as at-the-money DSOs except that the exercise price would be set at a specified percentage either in- or out-of-the money on the exercise price setting date (e.g., 5% in-the-money or 5% out-of-the-money).

The listing exchange will specify the exercise price setting date prior to the opening of each series of DSOs. According to CBOE, the exercise price setting date for each series of DSOs traded on CBOE will initially be three months prior to the DSO's expiration date. In other words, each series of DSOs will trade without an exercise price until three months prior to

---

<sup>3</sup> File No. SR-CBOE-2007-26. The Commission recently issued an order granting approval of SR-CBOE-2007-26 that allows CBOE to list and trade DSOs. Securities Exchange Act Release No. 56855 (November 28, 2007).

expiration. From the exercise price setting date forward, all options terms will be fixed, and DSOs will be fungible with any other option on the same underlying interest having the same terms such as exercise price, expiration date, etc. An exchange may determine to issue series of DSOs with more or less than three months between the exercise price setting date and the expiration date.

A DSO will not have an exercise price until the exercise price setting date, and it will not be exercisable until after that date. Thus, an “American-style” DSO would be exercisable only between the exercise price setting date and the expiration date. A “European-style” DSO, like any other European-style option, would be exercised only on or near the expiration date.

#### Proposed Changes to OCC’s By-Laws and Rules

In order to issue and clear DSOs, OCC needs to make several definitional changes in its By-Laws. A definition of DSO would be added to Article I of the By-Laws. OCC is also proposing to amend the existing definition of “American-style” in Article I of its By-Laws to make clear that unlike other American-style options, DSOs could not be exercised beginning at the commencement time for the options. Instead, American-style DSOs could only be exercised after their exercise price is set. Additionally, OCC proposes to amend the existing definition of “series” to provide that DSOs with the same expiration date, unit of trading, exercise price setting date, and exercise price setting formula will comprise the same series until their exercise price is set. At that point DSOs with the same expiration date, unit of trading and exercise price will, like other options, comprise the same series. Similarly, OCC is proposing to amend the existing definition of “variable terms” in Article I because DSOs will not have an exercise price as one of their variable terms until their exercise price setting date. Instead, DSOs will have both an exercise price setting date and an exercise price setting formula as variable terms until that

time. OCC is proposing to add two definitions to Article I as well. Both “exercise price setting date” and “exercise price setting formula” are needed to reflect the fact that DSOs will not have an exercise price when they begin trading and to describe when and how an exercise price will be fixed by the listing exchange.

OCC proposes amending Article VI of its By-Laws to clarify that an exchange listing DSOs need not set the exercise price for such options at the time each series is opened for trading but instead must set the exercise price setting date and the exercise price setting formula, and that an American-style DSO may not be exercised until after its exercise price has been set. The proposed amendment to the definition of “series of options” in Article XVII is similar to the amendment to the definition of “series” in Article I and like that amendment is to clarify that DSOs with the same expiration date, unit of trading, exercise price setting date, and exercise price setting formula will comprise the same series until their exercise price is set. The amendments to Article XVII, Section 2(a) and to Rule 1802(a), like the changes to the definition of “American-style” in Article I and in Article VI, would prohibit holders of American-style DSOs from exercising until the exercise price is set.

Proposed amendments to Rule 401(a)(1) are to permit matched trade reports for DSOs to contain the exercise price setting date and exercise price setting formula rather than an exercise price until the exercise price is set.

The proposed changes to OCC’s By-Laws and Rules are consistent with the purposes and requirements of Section 17A of the Act, as amended, because they are designed to promote the prompt and accurate clearance and settlement of transactions in DSOs, which are a new product designed to allow customers to manage risk associated with the volatility of an underlying interest. DSOs are very similar to existing options currently cleared by OCC and would be

governed by substantially the same rules and procedures to which existing options are subject. The proposed rule change is not inconsistent with the existing rules of OCC, including rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments 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

Section 17A(b)(3)(F) of the Act 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.<sup>4</sup> The purpose of the proposed rule change is to amend OCC's By-Laws and Rules so that OCC may clear and settle DSOs. Accordingly, after careful review the Commission finds that the proposed rule change meets the requirements of Section 17A(b)(3)(F) of the Act because the proposed rule change should result in the prompt and accurate clearance and settlement of securities transactions, specifically transactions in DSOs.

OCC has requested that the Commission approve the proposed rule prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because such approval will allow CBOE to commence trading of DSOs without any unnecessary delay.

---

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

#### 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:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2007-13 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-OCC-2007-13. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at

[http://www.theocc.com/publications/rules/proposed\\_changes/sr\\_occ\\_07\\_13.pdf](http://www.theocc.com/publications/rules/proposed_changes/sr_occ_07_13.pdf). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2007-13 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.<sup>5</sup>

---

<sup>5</sup> 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).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-2007-13) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

Florence E. Harmon  
Deputy Secretary

---

<sup>6</sup> 17 CFR 200.30-3(a)(12).