

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67459; File No. SR-OCC-2012-08)

July 18, 2012

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to Amendments to Certain Rules Applicable to Stock Futures

I. Introduction

On May 24, 2012, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-OCC-2012-08 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 June 7, 2012.³ The Commission received no comment letters on the proposal. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change would clarify the applicability of OCC’s By-Laws and Rules to security futures on index-linked securities such as exchange-traded notes, which are currently traded on OneChicago, LLC. Index-linked securities are non-convertible debt of a major financial institution that typically have a term of at least one year but not greater than thirty years and that provide for payment at maturity based upon the performance of an index or indexes of equity securities or futures contracts, one or more

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 34-67095 (Jun. 1, 2012), 77 FR 33794 (Jun. 7, 2012).

physical commodities, currencies or debt securities, or a combination of any of the foregoing. Index-linked securities are traded on national securities exchanges and, although they are technically debt securities, meet the definition of “NMS stock” under Regulation NMS.⁴ Furthermore, index-linked securities traded on designated contract markets meet the requirements of Commodity Futures Trading Commission Regulation 41.21 for the underlying securities of security futures products that are eligible to be treated as a single security. OneChicago therefore treats security futures on index-linked securities as security futures on single securities, or “single stock futures,” for listing and trading purposes, and trading in them will generally be governed by the same rules that are applicable to other single stock futures. OCC similarly treats futures on index-linked securities as single stock futures, and accordingly is proposing to amend the definition of “stock future” in Article I of its By-Laws to explicitly include index-linked securities.⁵

In addition to amending the definition of “stock future” to reference index-linked securities, OCC is amending Interpretation and Policy .05 to Article XII, Section 3 of its By-Laws to clarify that a call of an entire class of index-linked securities will result in an adjustment of security futures on index-linked securities similar to the adjustment that would be made to other stock futures in the event of a cash merger, but that a partial call

⁴ “NMS stock” is defined in Rule 600(b)(47) of Regulation NMS to mean “any NMS security other than an option.” “NMS security” is defined in Rule 600(b)(46) to mean any security for which transaction reports are collected and disseminated under an effective national market system plan, and because index-linked securities are exchange traded they fall within this definition.

⁵ Article I of OCC’s By-Laws defines “index-linked security” to mean “a debt security listed on a national securities exchange, the payment upon maturity of which is based in whole or in part upon the performance of an index or indexes of equity securities or futures contracts, one or more physical commodities, currencies or debt securities, or a combination of any of the foregoing.”

will not result in an adjustment. OCC is also adding Interpretation and Policy .11 to Article XII, Section 3 of its By-Laws to establish that interest payments on index-linked securities will generally be considered “ordinary cash dividends or distributions” within the meaning of paragraph (c) of Section 3. The amendments parallel amendments previously made to Article VI, Section 11A of the By-Laws to accommodate options on index-linked securities.⁶

The proposed rule change also would amend Interpretation and Policy .08 to Article XII, Section 3, which provides that OCC will ordinarily adjust for capital gains distributions on underlying “fund shares,” *i.e.*, shares of exchange-traded funds (“ETFs”) but with a *de minimis* exception under which no adjustment will be made in respect of distributions of less than \$.125 per fund share. (An equivalent *de minimis* provision is contained in the Interpretations and Policies to Article VI, Section 11A, governing stock options.) However, in the case of stock futures, OneChicago, the only futures exchange clearing through OCC that currently trades such futures, has requested that adjustments be made for capital gains distributions in respect of fund shares without exception in order to permit the stock futures on ETFs to more closely reflect the economic characteristics of the ETFs’ underlying stocks. This revision to the provision for fund shares futures will establish consistency with Interpretation and Policy .01(b) to Article XII, Section 3 which also does not contain a *de minimis* threshold for stock futures adjusted for cash distributions. Accordingly, OCC is amending Interpretation and Policy .08 to eliminate the *de minimis* exception.

⁶ Securities Exchange Act Release No. 34-60872 (October 23, 2009), 74 FR 55878 (October 29, 2009).

Additionally, OCC is making a technical correction to Rule 1304, which permits the acceleration of the maturity date for stock futures adjusted to require the delivery of cash, and Rule 807, which permits the acceleration of the expiration date of stock options adjusted to require the delivery of cash. Rules 1304 and 807 contain language that could be read to suggest that such acceleration would occur only in the event of a cash-out merger. However, cash-outs also may occur as a result of bankruptcies, ADS liquidations and other events, and there is no reason to limit such accelerations to cash-out merger events. Accordingly, OCC is amending Rules 1304 and 807 to delete language that may be perceived to limit OCC's ability to accelerate a maturity or expiration date to such events. OCC is also deleting as obsolete a version of Rule 807 that was effective before January 1, 2008, and related language regarding the effective date in what would now be the only version of Rule 807.

III. Discussion

Section 19(b)(2)(B) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.⁷ Section 17A(b)(3)(F) of the Act requires that a clearing agency, among other things, have the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible.⁸

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

The Commission believes that the change is consistent with the purposes and requirements of Section 17A of the Act⁹ and the rules and regulations thereunder applicable to OCC. In particular, the Commission believes that clarifying the applicability of OCC's By-Laws and Rules to security futures on index-linked securities should facilitate the clearance and settlement of such products and, thus, should help promote the prompt and accurate clearance and settlement of securities transactions for which OCC is responsible.

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 Act¹⁰ and the rules and regulations thereunder.

⁹ 15 U.S.C. 78q-1.

¹⁰ 15 U.S.C. 78q-1.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (File No. SR-OCC-2012-08) be, and hereby is, approved.¹²

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill
Deputy Secretary

¹¹ 15 U.S.C. 78s(b)(2).

¹² 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).

¹³ 17 CFR 200.30-3(a)(12).