

Exchange's corresponding proposal to amend the BOX rule to permit EPs to choose the firms from whom they will accept Directed Orders. Accordingly, the Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>21</sup> in general, and Section 6(b)(5) of the Act,<sup>22</sup> in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) <sup>23</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>24</sup>

A proposed rule change filed under Rule 19b-4(f)(6) <sup>25</sup> normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-

4(f)(6)(iii) <sup>26</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>27</sup> which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would continue to conform the BOX rules to BOX's current practice without interruption and clarify that Directed Orders on BOX are not anonymous.<sup>28</sup> Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate 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.

### **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-BX-2010-041 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-BX-2010-041. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-BX-2010-041 and should be submitted on or before July 21, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-62371; File No. SR-OCC-2010-04]**

### **Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Revise Its By-Laws and Rules To Establish a Clearing Fund Amount Intended To Support Losses Under a Defined Set of Default Scenarios**

June 24, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") <sup>1</sup> and Rule 19b-4 thereunder <sup>2</sup> notice is hereby given that on March 16, 2010, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change and on June 6, 2010, filed an amendment to the proposed rule change. The proposed rule change, as amended, is described in

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>24</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

<sup>25</sup> 17 CFR 240.19b-4(f)(6).

<sup>26</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>27</sup> *Id.*

<sup>28</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

<sup>29</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

Items I, II, and III below, which Items have been substantially prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### **I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

The purpose of this proposed rule change is to revise OCC's By-Laws and Rules to establish a clearing fund amount intended to support losses under a defined set of default scenarios.

### **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.

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

##### **1. Purpose**

This proposed rule change would revise OCC's By-Laws and Rules to establish a clearing fund amount required to support losses under a defined set of default scenarios. Currently, the amount of clearing fund is calculated monthly and is based on a fixed percentage of the average total daily margin requirements during the previous month.<sup>3</sup>

Under the proposed formula for determining the size of the clearing fund, the level of the fund would be equal to the larger of the amount of the charge to the fund that would result from (i) a default by the single "clearing member group" the default of which would be likely to result in the largest draw against the clearing fund or (ii) an event involving the near-simultaneous default of two randomly-selected "clearing member groups".<sup>4</sup> Initially, the

confidence levels employed by OCC in calculating the charge likely to result from a default by OCC's largest "clearing member group" and the default of two randomly-selected "clearing member groups" would be 99% and 99.9% respectively. OCC would have discretion to employ different confidence levels in these calculations but could not employ confidence levels of less than 99%.<sup>5</sup> The size of the clearing fund would continue to be recalculated monthly based on average daily calculations for the previous month. In no event would the size of the total clearing fund be permitted to be less than one billion dollars.<sup>6</sup>

In considering whether to revise the clearing fund sizing formula, OCC compared the size of the clearing fund that would have resulted from application of the revised formula to the actual size of the clearing fund for each month from February 2008 through September 2009.<sup>7</sup> This analysis revealed that the size of the clearing fund under the revised formula would have been on average 10% larger than under the current formula. In September and October 2008, two months of extreme volatility in the U.S. securities markets, the revised formula would have resulted in a clearing fund size approximately 31% and 27% greater than under the current formula. The average monthly change in the size of the clearing fund and the standard deviation of clearing fund size from month-to-month under the two formulas were broadly similar.<sup>8</sup>

OCC believes the proposed new formula for calculating clearing fund is a better predictor of losses that would be likely to result from the default scenarios described above and would establish an adequate clearing fund to cover losses without OCC having to

require clearing members to replenish the clearing fund. The existing formula for determining the amount of clearing fund is intended to establish an amount reasonably designed to cover losses resulting from one or more clearing member defaults. OCC believes the formula adequately serves that purpose. Nevertheless, OCC believes the proposed formula is a better predictor of the actual losses likely to result from such defaults. This is because the existing formula only indirectly accounts for potential losses by setting the amount of the clearing fund as a percentage of the previous month's average daily margin requirements. In contrast, the proposed formula would directly account for various types of default scenarios. Therefore, in OCC's view, the proposed formula would be more likely to result in adequate clearing fund levels if such scenarios occur and would more closely align the size of the clearing fund with its intended purpose of absorbing losses from clearing member defaults and avoid disruption of the clearance process even during extreme market conditions. Article VIII, Section 6 of OCC's By-Laws, which obligates clearing members to satisfy deficiencies in their clearing fund deposits resulting from pro-rata charges or otherwise,<sup>9</sup> would remain unchanged.

The specific amendments proposed to OCC's By-Laws and Rules to facilitate the proposed changes to its clearing fund calculation, can be found at <http://www.optionsclearing.com/about/publications/bylaws.jsp>. If approved by the Commission, OCC would implement the revised formula for determining the size of its clearing fund after sixty days notice to clearing members.

##### **2. Statutory Basis**

OCC believes the proposed rule changes are consistent with the requirements of Section 17A of the Act<sup>10</sup> and the rules and regulations thereunder because the proposed rule changes would facilitate prompt and accurate clearance and settlement of securities transactions by creating a more direct correlation between the clearing fund size and estimated losses from a defined set of default scenarios.

#### *(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.

<sup>9</sup> This is subject to a cap equal to 100% of a clearing member's then-required deposit if it promptly withdraws from membership and closes out or transfers its open positions.

<sup>10</sup> 15 U.S.C. 78q-1.

(proposed new definition in Article I of OCC's By-Laws.).

<sup>5</sup> Proposed Interpretations & Policies .02 to Rule 1001.

<sup>6</sup> Proposed Interpretations & Policies .01 to Rule 1001.

<sup>7</sup> The data used for this analysis was obtained prior to implementation of the changes approved in SR-OCC-2007-20. Accordingly, the data does not account for the effects those changes had on OCC's clearing fund size calculation. SR-OCC-2007-20 allowed certain securities to be analyzed as a single portfolio under OCC's risk management methodology, the System for Theoretical Analysis and Numerical Simulations ("STANS"), and consequently allowed OCC to more accurately measure risk in Clearing Members accounts and more precisely set margin requirements to reflect such risk.

<sup>8</sup> The comparative data described in this paragraph was obtained using confidence levels of 99% and above. OCC estimates that using only a 99% confidence level would have lowered the total size of the clearing fund calculated using the proposed methodology by an average of approximately one half of a percent.

<sup>3</sup> Under the current formula, if 6% does not result in a clearing fund amount of at least one billion dollars, then OCC collects a higher percentage of the previous month's average daily margin requirement that will result in a fund level of at least one billion dollars. However, in no event is the percentage permitted to exceed 7%.

<sup>4</sup> The term "clearing member group" would be defined to mean a clearing member and any member affiliates of such clearing member

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

Written comments relating to the proposed rule change have not been solicited or received. OCC will notify the Commission of any written comments received by OCC.

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

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve the proposed rule change or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

**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-2010-04 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-OCC-2010-04. 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 Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549-1090, on official business days between the hours of 10 am and 3 pm. Copies of such filings will also be available for inspection and copying at the principal office of the OCC and on OCC's Web site at <http://www.optionsclearing.com/about/publications/bylaws.jsp>. 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-2010-04 and should be submitted on or before July 21, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-62368; File No. SR-NYSEARCA-2010-60]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending NYSE Arca Equities Rule 7.11 To Set Forth How the Exchange Will Handle Order Flow During a Regulatory Halt for a Security Listed on an Exchange Other Than NYSE Arca**

June 23, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on June 22, 2010, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend NYSE Arca Equities Rule 7.11 to set forth how the Exchange will handle order flow during a regulatory halt for a security listed on an exchange other than NYSE Arca. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

**1. Purpose**

The Exchange proposes to amend NYSE Arca Equities Rule 7.11 to revise how the Exchange will handle order flow during a regulatory halt for a security listed on an exchange other than NYSE Arca.

Rule 7.11 was approved by the Commission on June 10, 2010.<sup>4</sup> The Exchange filed to amend Rule 7.11 to add subsection (f) to the Rule, which addresses how orders will be handled when another primary listing market issues a trading pause or a regulatory halt.<sup>5</sup> Pursuant to Rule 7.11(f), upon the receipt of a trading pause or regulatory halt message from another primary listing market, the Exchange will take the following actions: (i) Maintain all resting orders in the Book; (ii) cancel any unexecuted portion of Market Orders and Pegged Orders; (iii) accept and process all cancellations; (iv) accept and route new Market Orders to the

<sup>4</sup> See Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR-NYSEARCA-2010-41).

<sup>5</sup> See Securities Exchange Act Release No. 62281 (June 11, 2010), 75 FR 34504 (June 17, 2010) (SR-NYSEARCA-2010-52).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.