

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 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 will also 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 No. SR-BYX-2011-008 and should be submitted on or before June 2, 2011.

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

Elizabeth M. Murphy,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64436; File No. SR-OCC-2011-05]

### Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Provide Flexibility to the Options Clearing Corporation With Respect to Its Obligations To Pay Settlement Amounts to Clearing Members Generally as Well as in Emergency Situations

May 6, 2011.

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 April 28, 2011, 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 primarily by OCC. 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 purpose of the proposed rule change is to provide flexibility to OCC with respect to its obligations to pay settlement amounts to clearing members generally as well as in emergency situations.

#### 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>3</sup>

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

The purpose of this rule change is to revise OCC's By-Laws and Rules to provide flexibility to OCC with respect to its obligations to pay settlement amounts to clearing members generally as well as in emergency situations. The proposed rule amendments would change the current daily deadline for OCC to pay settlement amounts to clearing members from 10 a.m. to 1 p.m. (All times referred to in this filing are Central Time). In addition, in the event that an emergency condition exists, the Board of Directors ("Board") or an authorized executive officer of OCC would be authorized to extend OCC's obligation to pay settlement amounts to clearing members beyond the 1 p.m. deadline.

Currently, each business day morning, OCC is obligated to collect cash owed by its clearing members for the prior day's settlement activity by 9 a.m. OCC, in turn, is obligated to pay cash owed to

its clearing members for the prior day's settlement activity by 10 a.m. This one-hour window is designed to ensure that OCC has collected all required settlement funds before having to disburse any settlement funds to its clearing members. Daily settlement activity includes obligations relating to: (1) The net premium payments arising from the prior day's option purchases and sales, (2) the mark-to-market of futures contracts and stock loan positions, and (3) exercises and assignments of cash-settled option contracts.

OCC's settlement banks routinely approve and are required to honor the associated settlements made by OCC and OCC's clearing members within these time frames. On most business days, the entire bank approval process, which irrevocably obligates each settlement bank to make settlement, is completed by 8:30 a.m.

Under OCC's rules, a failure by OCC to pay its daily settlement obligations to clearing members by 10 a.m. constitutes a default. During discussions amongst OCC's senior management of various potential extreme default and liquidity squeeze scenarios, including the possible default of one of OCC's largest clearing members, OCC analyzed the risk associated with not being able to immediately access liquidity resources in time to meet the 10 a.m. deadline for OCC to pay settlement amounts to clearing members. The deadline may be difficult to meet if, for example, OCC learned of a default near the 9 a.m. deadline. In such a circumstance, OCC would have only one hour or less (considering the time needed to process and communicate information) to access the funds necessary to meet the 10 a.m. deadline.

OCC's immediate liquidity resources rely heavily upon its \$2.0 billion revolving credit facility (backed by Treasuries held in the clearing fund). A one-hour advance notice is required prior to OCC drawing funds from the credit facility. Beyond the credit facility, it would likely take more than one hour to raise cash by borrowing against the remaining clearing fund Treasuries (*i.e.*, those Treasuries not securing the credit facility) either through tri-party repurchase agreements or a traditional bank loan.

The main benefit of moving the deadline to 1 p.m. for OCC to pay clearing members settlement amounts is that it allows up to four hours (rather than one) within which OCC can meet its daily settlement requirement without being required to declare an emergency in order to do so. In addition, based on discussions with its settlement banks,

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

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

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

<sup>3</sup> The Commission has modified the text of the summaries prepared by OCC.

OCC believes that notwithstanding a change in the current 10 a.m. deadline to 1 p.m., the settlement banks will continue the current practice of approving settlements as soon as they can make a credit determination (*i.e.*, confirm present funds or extend credit to the customer) and process OCC's payment requests, which are tasks that are typically completed by 8:30 a.m.

OCC also has incorporated in its rules the authority to extend the deadline for it to pay settlement amounts to clearing members to the close of the Federal Reserve Banks' Fedwire Funds Service on a settlement day, if necessary, during an emergency situation.<sup>4</sup> Such an extension is consistent with the emergency authority other clearinghouses have to deal with late settlement scenarios. The rule amendments would authorize the Board, Chairman of the Board, Management Vice Chairman, or President of OCC to delay settlement beyond 1 p.m. in emergency situations. The rule amendments would authorize the named officers to take such action because the decision may need to be made under time constraints where the Board (or even the Membership/Risk Committee) could not be convened in time to take the necessary action.<sup>5</sup> OCC anticipates that the emergency authority would be used infrequently, if ever. Under proposed Rule 505, such authority could only be used upon a determination by the Board or an authorized officer that extension of the settlement time is necessary or advisable for the protection of OCC or otherwise in the public interest. In the event that the emergency authority is exercised, a number of protections are built into the process. For example, the determination and the reasons for the extension will be promptly reported to the Commission, the Commodities Futures Trading Commission, and any other regulatory or supervisory authorities having jurisdiction over OCC. In addition, the clearing members will be notified of the extension, and a report outlining the emergency actions will be maintained in OCC's records.

For drafting clarity and economy, the specific settlement times have been removed from the applicable rules, a new definition of "settlement day" has

been created, and a revised definition of "settlement time" has been inserted in Article I of the By-Laws.

OCC believes the proposed rule changes are consistent with the requirements of Section 17A of the Act<sup>6</sup> and the rules and regulations thereunder applicable to OCC because the rule amendments are designed to promote the prompt and accurate clearance and settlement of security transactions and to generally protect investors and the public interest by giving OCC flexibility to make settlement payments to its clearing members in a timely manner during normal and abnormal market conditions. The proposed rule change is not inconsistent with the existing rules of OCC, including any other 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 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 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate 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 or disapprove 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 Commissions 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-2011-05 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-OCC-2011-05. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at [http://www.optionsclearing.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_11\\_05.pdf](http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_11_05.pdf).

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For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Elizabeth M. Murphy,**  
Secretary.

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<sup>4</sup> In the event that OCC is unable to pay settlement amounts to clearing members by the close of the Fedwire Funds Service on a settlement day due to an emergency or force majeure condition, OCC will seek appropriate relief from the regulatory or supervisory authorities having jurisdiction over OCC.

<sup>5</sup> Similar authority is provided to the OCC Chairman (or the Board) to summarily suspend a clearing member. See OCC Rule 1102.

<sup>6</sup> 15 U.S.C. 78q-1.

<sup>7</sup> 17 CFR 200.30-3(a)(12).