



April 13, 2021

VIA ELECTRONIC MAIL

Christopher J. Kirkpatrick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: CFTC Regulation 40.6(a) Certification. Notification of Proposed Rule Change to Revise The Options Clearing Corporation's Auction Participation Requirements (Rule Filing No. SR-OCC-2021-004)

Dear Secretary Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended ("Act"), and Commodity Futures Trading Commission ("CFTC") Regulation 40.6(a), The Options Clearing Corporation ("OCC") hereby certifies to the CFTC amendments to OCC's Rules. This rule filing has been submitted to the Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934 ("Exchange Act"). The date of implementation of the rule is at least 10 business days following receipt of the rule filing by the CFTC or the date the proposed rule is approved by the SEC or otherwise becomes effective under the Exchange Act.

In conformity with the requirements of CFTC Regulation 40.6(a)(7), OCC states the following:

Explanation and Analysis

Background

OCC Rule 1102 enumerates the grounds upon which OCC may suspend one of its Clearing Members. Following the suspension of any Clearing Member, OCC would take a number of steps designed to reasonably ensure that the Clearing Member's suspension is managed in an orderly fashion. Among the steps that OCC may take to manage a Clearing Member's suspension is liquidating the remaining collateral, open positions and/or exercised/matured contracts (*i.e.*, the remaining portfolio) of the suspended Clearing Member. Interpretation and Policy .02(a) to Rule 1104 clarifies that OCC "may elect to use one or more private auctions to liquidate all or any part" of a suspended Clearing Member's remaining portfolio. In this context, the term "private auction" means an auction open to bidders who are invited by OCC and in which such bidders submit bids on a confidential basis.

Interpretation and Policy .02(c) to Rule 1104 (“I&P .02(c)”) establishes certain basic requirements for OCC’s private auction process. I&P .02(c) states that OCC “will invite all Clearing Members to apply to become pre-qualified auction bidders” and that “[a]ny Clearing Member may be included in the pool of pre-qualified auction bidders by completing required auction documentation in advance.” Further, I&P .02(c) states that “[b]y posting notices on the [OCC]’s website from time to time, [OCC] will also invite non-Clearing Members to apply to become pre-qualified auction bidders.” I&P .02(c) also establishes that for a non-Clearing Member to be pre-qualified as an auction bidder, it “must (i) actively trade in the asset class in which it proposes to submit bids, (ii) actively trade in markets cleared by [OCC], (iii) be sponsored by, and submit its bids through, a Clearing Member that has agreed to guarantee and settle any accepted bid made by such non-Clearing Member and (iv) complete required auction documentation in advance.” I&P .02(c) also states that OCC “will endeavor to maintain a pool of pre-qualified auction bidders by periodically reviewing such bidders and their qualifications” and that OCC “will promptly notify any pre-qualified auction bidder removed from the pool of pre-qualified auction bidders.”

Proposed Change

OCC is proposing to change I&P .02(c) in order to clarify and further facilitate the process of on-boarding Clearing Members and non-Clearing Members as potential bidders in future auctions of a suspended Clearing Member’s remaining portfolio. To achieve a successful auction pursuant to Rule 1104 and enable OCC to take timely action to contain any losses and liquidity pressures that may be caused by a Clearing Member’s default, it is important for OCC to encourage participation in such auctions. OCC believes that participation by more bidders generally facilitates more competitive bids on a suspended Clearing Member’s portfolio. Competitive bids are necessary for OCC to sell the portfolio at a market price that minimizes the loss to OCC and its Clearing Members, and enable OCC to successfully complete an auction in a timely manner and thereby manage a Clearing Member default in a timely manner. Therefore, OCC proposes to make two related revisions to I&P .02(c), as described below. OCC also proposes to delete current rule text in I&P .02 related to OCC’s internal administration of pre-qualified auction bidders, also described below.

First, OCC proposes to revise I&P .02(c) to reflect that Clearing Members would not need to be invited by OCC to become pre-qualified auction bidders; instead, the revised language in I&P .02(c) would make clear that all Clearing Members are invited to participate in auctions of a suspended Clearing Member’s remaining portfolio. OCC would retain, but slightly rephrase, the existing requirement that any Clearing Member seeking to be included in the pool of pre-qualified auction bidders must complete required auction documentation in advance; OCC’s proposed changes would explain that in order for a Clearing Member to be pre-qualified as an auction bidder, the Clearing Member would need to complete any required auction documentation in advance.

Second, OCC proposes to revise I&P .02(c) to reflect that non-Clearing Members would no longer need to be invited to become pre-qualified auction bidders by OCC posting notices to its

website from time-to-time. Further, the revisions to I&P .02(c) would remove the existing requirements that a non-Clearing Member must actively trade in the asset class in which it proposes to submit bids and must actively trade in markets cleared by OCC. Instead, the revisions to I&P .02(c) would make clear that non-Clearing Members could become pre-qualified auction bidders by (i) having a Clearing Member sponsor to submit bids on behalf of the non-Clearing Member, (ii) having a Clearing Member agree to guarantee and settle any accepted bid made by the non-Clearing Member, and (iii) completing any required auction documentation in advance.

OCC is also proposing to delete from I&P .02(c) two sentences that discuss OCC's administration of the pool of pre-qualified auction bidders. Currently, I&P .02(c) explains that OCC maintains a pool of pre-qualified auction bidders, periodically reviews the pool of such bidders and their qualifications, and notifies any pre-qualified auction bidder that is removed from the pool. OCC is concerned that the trading activity review process contemplated by I&P .02(c) could inappropriately limit the number of pre-qualified bidders by excluding, *inter alia*, prospective bidders who did not have sufficient trading activity that was visible to OCC at the time of pre-qualification or review but were suitable bidders at the time of a particular auction. Accordingly, OCC proposes to eliminate the pre-qualification requirements related to a non-Clearing Member's trading experience.

OCC will continue to perform the pre-auction review described in Interpretation & Policy .02(d) to Rule 1104 ("I&P .02(d)"). This will allow OCC to maximize the number of pre-qualified bidders and select bidders for a particular auction based on an objective review that gives due consideration to the specific portfolio that will be auctioned. The proposal also eliminates the need for a periodic review and removal process. Under the proposed rule, a Clearing Member that terminates its required auction documentation or ceases to maintain its status as a Clearing Member will no longer be considered a pre-qualified auction bidder. Likewise, a non-Clearing Member will no longer be considered a pre-qualified bidder if its Clearing Member sponsorship or guarantee is revoked or its required auction documentation is terminated. OCC notes that it would continue its current practice of maintaining a list of pre-qualified bidders through OCC's default management testing and review of default management testing results.

The amendment to I&P .02(c) is reflected in Exhibit 1 below.

OCC reviewed the DCO core principles ("Core Principles") as set forth in the Act. During this review, OCC identified the following Core Principles as potentially being impacted:

Default Rules and Procedures. OCC believes that implementing the proposed rule change is consistent with Core Principle G. CFTC Regulation 39.16(c)(2)(ii) requires each DCO to have rules and procedures designed to allow for the efficient, fair, and safe management of events during which clearing members become insolvent or default on the obligations of such clearing members to the DCO. The proposed amendments will improve the efficiency of OCC's default management process by reducing the administrative burdens to becoming a pre-qualified auction bidder and encouraging participation in OCC's default management auctions.

Public Information. OCC believes that implementing the proposed rule change will be aligned with Core Principle L.¹ The proposed amendments will be incorporated into OCC's Rules, which are publicly available on OCC's website.

Opposing Views

No opposing views were expressed related to the rule amendments.

Notice of Pending Rule Certification

OCC hereby certifies that notice of this rule filing has been given to Clearing Members of OCC in compliance with Regulation 40.6(a)(2) by posting a copy of the proposed rule change on OCC's website concurrently with the filing of this submission.

Certification

OCC hereby certifies that the rule set forth at Item 1 of the enclosed filing complies with the Act and the CFTC's regulations thereunder.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Blake Brockway", with a stylized flourish at the end.

Blake Brockway
Executive Principal, Associate General Counsel

Enclosure

¹ 7 U.S.C. 7a-1(c)(2)(L).

EXHIBIT 1



OCC RULES

Underlined text indicates new text

~~Strikethrough~~ text indicates deleted text

THE OPTIONS CLEARING CORPORATION

RULES

* * *

CHAPTER XI

Suspension of a Clearing Member

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RULE 1104 – Creation of Liquidating Settlement Account

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...Interpretation and Policies

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.02

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(c) ~~The Corporation will invite all~~All Clearing Members are invited to ~~apply to become pre-qualified~~ participate in auctions. In order for a Clearing Member to be pre-qualified as an auction bidder, the Clearing Member must complete any required auction documentation in advance~~bidders. Any Clearing Member may be included in the pool of pre-qualified auction bidders by completing required auction documentation in advance. By posting notices on the Corporation's website from time to time, the Corporation will also invite non-Clearing Members to apply to become pre-qualified auction bidders.~~ In order for a non-Clearing Member to be pre-qualified as an auction bidder, the non-Clearing Member must ~~(i) actively trade in the asset class in which it proposes to submit bids, (ii) actively trade in markets cleared by the Corporation, (iii) be sponsored by, and submit its bids through, a Clearing Member that has agreed to guarantee and settle any accepted bid made by such non-Clearing Member and (iv) complete~~ any required auction documentation in advance. ~~The Corporation will endeavor to maintain a pool of pre-qualified auction bidders by periodically reviewing such bidders and their qualifications. The Corporation will promptly notify any pre-qualified auction bidder removed from the pool of pre-qualified auction bidders.~~