



November 3, 2017

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: Rule Filing SR-OCC-2017-017 Rule Certification

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, enclosed is a copy of the above-referenced rule filing submitted by The Options Clearing Corporation (“OCC”). 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 Securities and Exchange Commission (“SEC”) or otherwise becomes effective under the Securities Exchange Act of 1934 (the “Exchange Act”). This rule filing has been, or is concurrently being, submitted to the SEC under the Exchange Act.

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

Explanation and Analysis

The purpose of the proposed change is to modify the tools available to OCC in order to provide a mechanism for addressing the risks of liquidity shortfalls, specifically, in the extraordinary situation where OCC faces a liquidity need to meet its same-day settlement obligations as a result of a bank or securities or commodities clearing organization failing to achieve daily settlement.

Current Practice

Presently, Article VIII, Section 5(e) of OCC’s By-Laws provides OCC with the authority to borrow against the Clearing Fund in two circumstances. First, Article VIII, Section 5(e) of OCC’s By-Laws provides OCC the authority to borrow where OCC “deems it necessary or advisable to borrow or otherwise obtain funds from third parties in order to meet obligations arising out of the default or suspension of a Clearing Member or any action taken by the Corporation in connection therewith pursuant to Chapter XI of the Rules or otherwise.” Second, Article VIII, Section 5(e) of OCC’s By-Laws provides OCC the authority to borrow against the

Clearing Fund where OCC “sustains a loss reimbursable out of the Clearing Fund pursuant to [Article VIII, Section 5(b) of OCC’s By-Laws] but [OCC] elects to borrow or otherwise obtain funds from third parties in lieu of immediately charging such loss to the Clearing Fund.” In order for a loss to be reimbursable out of the Clearing Fund under Article VIII, Section 5(b) of OCC’s By-Laws, it must arise from a situation in which any bank or securities or commodities clearing organization has failed “to perform any obligation to [OCC] when due because of its bankruptcy, insolvency, receivership, suspension of operations, or because of any similar event.”¹

Under either of the two aforementioned circumstances, OCC is authorized to borrow against the Clearing Fund for a period not to exceed 30 days, and during such period, the borrowing shall not affect the amount or timing of any charges otherwise required to be made against the Clearing Fund pursuant to Article VIII, Section 5. However, if any part of the borrowing remains outstanding after 30 days, then at the close of business on the 30th day (or the first Business Day thereafter) such amount must be considered an actual loss to the Clearing Fund, and OCC must immediately allocate such loss in accordance with Article VIII, Section 5.

Proposed Change

While Article VIII, Section 5(e) of OCC’s By-Laws currently provides for borrowing authority in the more extreme scenarios involving a bank’s or securities or commodities clearing organization’s bankruptcy, insolvency, receivership, suspension of operations or similar event, such authority does not extend to the similar, but less extreme scenarios in which a bank or securities or commodities clearing organization might be temporarily unable to timely make daily settlement with OCC for reasons other than its bankruptcy, insolvency, receivership or suspension of operations or similar events. An example of such a related scenario would be a disruption of the ordinary operations of a settlement bank that temporarily prohibits the bank from timely effecting settlement payments in accordance with OCC’s daily settlement cycle.

The proposed rule change would expand upon the existing borrowing authority in Article VIII, Section 5(e) of OCC’s By-Laws. As expanded, OCC would be authorized to borrow (or otherwise obtain funds through any means determined to be reasonable by the Executive Chairman, COO or CAO) against the Clearing Fund in the extraordinary event that OCC faces a liquidity need in order to complete same-day settlement. As specified in the proposed rule text, the funds obtained from any such transaction can be used only for their stated purpose, namely, to satisfy a need for liquidity for same-day settlement. Consistent with the existing borrowing authority in Article VIII, Section 5(e) of OCC’s By-Laws, OCC would be authorized to borrow against the Clearing Fund for a period not to exceed 30 days, and during such period, the funds

¹ To the extent that a loss resulting from any of the events referred to in Article VIII, Section 5(b) is recoverable out of the Clearing Fund pursuant to Article VIII, Section 5(a), the provisions of Article VIII, Section 5(a) control and render the provisions of Article VIII, Section 5(b) inapplicable.

obtained would not be deemed to be charges against the Clearing Fund, irrespective of how such funds are applied, and the borrowing shall not affect the amount or timing of any charges otherwise required to be made against the Clearing Fund pursuant to Article VIII, Section 5. However, in the unlikely event that any part of the borrowing were to remain outstanding after 30 days, then at the close of business on the 30th day (or the first Business Day thereafter), such amount would be considered an actual loss to the Clearing Fund, and OCC must immediately allocate such loss in accordance with Article VIII, Section 5.

Like the existing borrowing authority in Article VIII, Section 5(e) of OCC's By-Laws, OCC envisions that the proposed expanded authority only would be relevant in extraordinary circumstances and, even then, only would be used where OCC, exercising its discretion, believes the employment of this particular authority would be appropriate to address OCC's immediate liquidity need.

OCC proposes to amend Sections 1(a), 5(b) and 5(e) of Article VIII of its By-Laws in order to give effect to the expanded borrowing authority discussed herein. Section 5(e) of Article VIII of OCC's By-Laws would be amended to permit OCC to borrow against the Clearing Fund if it reasonably believes such borrowing is necessary to meet its liquidity needs for same-day settlement as a result of the failure of any bank or securities or commodities clearing organization to achieve daily settlement.

Section 1(a) of Article VIII of OCC's By-Laws would be amended to include conforming changes that would reflect that the purpose of the Clearing Fund includes borrowing against the Clearing Fund as permitted under Section 5(e) of Article VIII of the By-Laws.

Section 5(b) of Article VIII of the By-Laws would be amended to include conforming changes that would declare that any borrowing remaining outstanding for less than 30 days may be considered, in OCC's discretion, an actual loss and the amount of any such loss then shall be charged proportionately against all Clearing Members' computed contributions to the Clearing Fund as fixed at the time, and any borrowing remaining outstanding on the 30th day shall be considered an actual loss to the Clearing Fund and the amount of any such loss shall be charged proportionately against all Clearing Members' computed contributions to the Clearing Fund as fixed at the time. The OCC proposes to include discretionary authority to declare any borrowing outstanding for less than 30 days as an actual loss chargeable against the Clearing Fund because the proposed borrowing authority is intended only to address same-day liquidity needs, and intended to be promptly repaid upon the bank's or securities or commodities clearing organization's resolution of the temporary disruption. In the unlikely circumstance that a disruption of a bank or securities or commodities clearing organization is not timely resolved, OCC may need to exercise its discretion to declare an actual loss, depending on the size of the borrowing, to ensure that OCC replenishes its "Cover 1" financial resources.² The requirement

² "Cover 1" financial resources refers to the requirement that a CCA maintains financial resources sufficient to enable it to cover the "default of the participant family that would potentially cause

to recognize any borrowing outstanding after 30 days as an actual loss chargeable against the Clearing Fund would be consistent with the requirements of the borrowing authority currently permitted by Section 5(e) of Article VIII of the By-Laws.

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

Financial Resources. OCC believes that implementing the proposed rule change will be consistent with the requirement in Core Principle B that each DCO have adequate financial, operational and managerial resources to discharge each of its responsibilities.³ Rule 39.11(e)(1)(i) further implements Core Principle B by requiring a DCO to maintain sufficient liquid resources such that it can, at a minimum, fulfill its cash obligations when due.⁴ The proposed changes to Sections 1(a), 5(b) and 5(e) of Article VIII of OCC’s By-Laws would modify the tools available to OCC in order to provide a mechanism for addressing the risks of liquidity shortfalls, specifically, in the extraordinary situation where OCC faces a liquidity need to meet its same-day settlement obligations as a result of a bank or securities or commodities clearing organization failing to achieve daily settlement. In this regard, the proposed changes would further OCC’s compliance with Core Principle B and Rule 39.11(e)(1)(i).

Risk Management. OCC believes that implementing the proposed rule change will be aligned with the requirement in Core Principle E that a DCO complete money settlements on a timely basis (but not less frequently than once per day).⁵ Rule 39.14(b) further implements Core Principle E by requiring each DCO to effect settlement with each of its clearing members at least once each business day.⁶ The proposed changes to Sections 1(a), 5(b) and 5(e) of Article VIII of OCC’s By-Laws would modify existing tools available to OCC in order to provide a mechanism for addressing an extraordinary situation where OCC faces a liquidity need to meet its same-day settlement obligations as a result of a bank or securities or commodities clearing organization failing to achieve daily settlement. In this regard, the proposed changes would further OCC’s compliance with Core Principle E and Rule 39.14(b).

Public Information. OCC believes that implementing the proposed rule change will be aligned with the requirement in Core Principle L that a DCO make information concerning the rules and operation and default procedures governing the clearing and settlement systems of the

the largest aggregate credit exposure for the [CCA] in extreme but plausible market conditions.”
17 CFR 240.17Ad-22(e)(7)(viii).

³ 7 U.S.C. 7a-1(c)(2)(B)(i).

⁴ 17 C.F.R. 39.11(e)(1)(i).

⁵ 7 U.S.C. 7a-1(c)(2)(E)(i).

⁶ 17 C.F.R. 39.14(b).

DCO available to market participants.⁷ The proposed changes to Sections 1(a), 5(b) and 5(e) of Article VIII of OCC's By-Laws would be published on OCC's publicly accessible 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 submission on OCC's website concurrently with the filing of this submission.

⁷ 7 U.S.C. 7a-1(c)(2)(L)(ii).

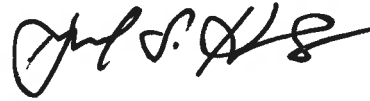
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Certification

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 black ink, appearing to read "Daniel S. Konar II". The signature is fluid and cursive, with a large initial "D" and "K".

Daniel S. Konar II
Vice President, Assistant General Counsel

Enclosure

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 29	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2017 - * 017	Amendment No. (req. for Amendments *)
Filing by Options Clearing Corporation Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934	
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>	Section 3C(b)(2) * <input type="checkbox"/>		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>			
Description				
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).				
<input type="text" value="Proposed rule change by The Options Clearing Corporation concerning liquidity for same day settlement."/>				
Contact Information				
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.				
First Name *	<input type="text" value="Justin"/>	Last Name *	<input type="text" value="Byrne"/>	
Title *	<input type="text" value="Vice President, Regulatory Filings"/>			
E-mail *	<input type="text" value="jbyrne@theocc.com"/>			
Telephone *	<input type="text" value="(202) 971-7238"/>	Fax	<input type="text" value="(312) 322-6280"/>	
Signature				
Pursuant to the requirements of the Securities Exchange Act of 1934,				
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.				
(Title *)				
Date	<input type="text" value="10/13/2017"/>	<input type="text" value="Vice President, Regulatory Filings"/>		
By	<input type="text" value="Justin W. Byrne"/>	<input type="text" value="Justin W. Byrne"/>		
(Name *)				
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.				
<input type="button" value="Justin Byrne, jbyrne@theocc.com"/>				

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 19b-4

Proposed Rule Change
by

THE OPTIONS CLEARING CORPORATION

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

Item 1. Text of the Proposed Rule Change

This proposed rule change by The Options Clearing Corporation (“OCC”) would revise OCC’s By-Laws to expand upon existing authority to borrow against the Clearing Fund. The proposed expansion would enable OCC to borrow (or otherwise obtain funds through any means determined to be reasonable by the Executive Chairman, Chief Operating Officer (“COO”) or Chief Administrative Officer (“CAO”) against the Clearing Fund in the extraordinary event that OCC faces a liquidity need in order to complete same day settlement.

The proposed revisions to OCC’s By-Laws are attached hereto as Exhibit 5. Material proposed to be added to OCC’s By-Laws as currently in effect is marked by underlining and material proposed to be deleted is marked by strikethrough text.

The proposed changes are described in detail in Item 3, below.

All terms with initial capitalization not defined here have the same meaning set forth in OCC’s By-Laws and Rules.¹

Item 2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved for filing with the Commission by OCC’s Board of Directors (“Board”) at a meeting held on April 4, 2017.

Questions should be addressed to Daniel S. Konar II, Vice President and Associate General Counsel, at (312) 322-2020.

¹ OCC’s By-Laws and Rules can be found on OCC’s public website:
<http://optionsclearing.com/about/publications/bylaws.jsp>.

Item 3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Purpose

The purpose of the proposed change is to modify the tools available to OCC in order to provide a mechanism for addressing the risks of liquidity shortfalls, specifically, in the extraordinary situation where OCC faces a liquidity need to meet its same-day settlement obligations as a result of a bank or securities or commodities clearing organization failing to achieve daily settlement.

Proposed Changes

Current Practice

Presently, Article VIII, Section 5(e) of OCC’s By-Laws provides OCC with the authority to borrow against the Clearing Fund in two circumstances. First, Article VIII, Section 5(e) of OCC’s By-Laws provides OCC the authority to borrow where OCC “deems it necessary or advisable to borrow or otherwise obtain funds from third parties in order to meet obligations arising out of the default or suspension of a Clearing Member or any action taken by the Corporation in connection therewith pursuant to Chapter XI of the Rules or otherwise.” Second, Article VIII, Section 5(e) of OCC’s By-Laws provides OCC the authority to borrow against the Clearing Fund where OCC “sustains a loss reimbursable out of the Clearing Fund pursuant to [Article VIII, Section 5(b) of OCC’s By-Laws] but [OCC] elects to borrow or otherwise obtain funds from third parties in lieu of immediately charging such loss to the Clearing Fund.” In order for a loss to be reimbursable out of the Clearing Fund under Article VIII, Section 5(b) of

OCC's By-Laws, it must arise from a situation in which any bank or securities or commodities clearing organization has failed "to perform any obligation to [OCC] when due because of its bankruptcy, insolvency, receivership, suspension of operations, or because of any similar event."²

Under either of the two aforementioned circumstances, OCC is authorized to borrow against the Clearing Fund for a period not to exceed 30 days, and during such period, the borrowing shall not affect the amount or timing of any charges otherwise required to be made against the Clearing Fund pursuant to Article VIII, Section 5. However, if any part of the borrowing remains outstanding after 30 days, then at the close of business on the 30th day (or the first Business Day thereafter) such amount must be considered an actual loss to the Clearing Fund, and OCC must immediately allocate such loss in accordance with Article VIII, Section 5.

Proposed Change

While Article VIII, Section 5(e) of OCC's By-Laws currently provides for borrowing authority in the more extreme scenarios involving a bank's or securities or commodities clearing organization's bankruptcy, insolvency, receivership, suspension of operations or similar event, such authority does not extend to the similar, but less extreme scenarios in which a bank or securities or commodities clearing organization might be temporarily unable to timely make

² To the extent that a loss resulting from any of the events referred to in Article VIII, Section 5(b) is recoverable out of the Clearing Fund pursuant to Article VIII, Section 5(a), the provisions of Article VIII, Section 5(a) control and render the provisions of Article VIII, Section 5(b) inapplicable.

daily settlement with OCC for reasons other than its bankruptcy, insolvency, receivership or suspension of operations or similar events. An example of such a related scenario would be a disruption of the ordinary operations of a settlement bank that temporarily prohibits the bank from timely effecting settlement payments in accordance with OCC's daily settlement cycle.

The proposed rule change would expand upon the existing borrowing authority in Article VIII, Section 5(e) of OCC's By-Laws. As expanded, OCC would be authorized to borrow (or otherwise obtain funds through any means determined to be reasonable by the Executive Chairman, COO or CAO) against the Clearing Fund in the extraordinary event that OCC faces a liquidity need in order to complete same-day settlement. As specified in the proposed rule text, the funds obtained from any such transaction can be used only for their stated purpose, namely, to satisfy a need for liquidity for same-day settlement. Consistent with the existing borrowing authority in Article VIII, Section 5(e) of OCC's By-Laws, OCC would be authorized to borrow against the Clearing Fund for a period not to exceed 30 days, and during such period, the funds obtained would not be deemed to be charges against the Clearing Fund, irrespective of how such funds are applied, and the borrowing shall not affect the amount or timing of any charges otherwise required to be made against the Clearing Fund pursuant to Article VIII, Section 5. However, in the unlikely event that any part of the borrowing were to remain outstanding after 30 days, then at the close of business on the 30th day (or the first Business Day thereafter), such amount would be considered an actual loss to the Clearing Fund, and OCC must immediately allocate such loss in accordance with Article VIII, Section 5.

Like the existing borrowing authority in Article VIII, Section 5(e) of OCC's By-Laws,

OCC envisions that the proposed expanded authority only would be relevant in extraordinary circumstances and, even then, only would be used where OCC, exercising its discretion, believes the employment of this particular authority would be appropriate to address OCC's immediate liquidity need.

OCC proposes to amend Sections 1(a), 5(b) and 5(e) of Article VIII of its By-Laws in order to give effect to the expanded borrowing authority discussed herein. Section 5(e) of Article VIII of OCC's By-Laws would be amended to permit OCC to borrow against the Clearing Fund if it reasonably believes such borrowing is necessary to meet its liquidity needs for same-day settlement as a result of the failure of any bank or securities or commodities clearing organization to achieve daily settlement.

Section 1(a) of Article VIII of OCC's By-Laws would be amended to include conforming changes that would reflect that the purpose of the Clearing Fund includes borrowing against the Clearing Fund as permitted under Section 5(e) of Article VIII of the By-Laws.

Section 5(b) of Article VIII of the By-Laws would be amended to include conforming changes that would declare that any borrowing remaining outstanding for less than 30 days may be considered, in OCC's discretion, an actual loss and the amount of any such loss then shall be charged proportionately against all Clearing Members' computed contributions to the Clearing Fund as fixed at the time, and any borrowing remaining outstanding on the 30th day shall be considered an actual loss to the Clearing Fund and the amount of any such loss shall be charged proportionately against all Clearing Members' computed contributions to the Clearing Fund as fixed at the time. The OCC proposes to include discretionary authority to declare any borrowing

outstanding for less than 30 days as an actual loss chargeable against the Clearing Fund because the proposed borrowing authority is intended only to address same-day liquidity needs, and intended to be promptly repaid upon the bank's or securities or commodities clearing organization's resolution of the temporary disruption. In the unlikely circumstance that a disruption of a bank or securities or commodities clearing organization is not timely resolved, OCC may need to exercise its discretion to declare an actual loss, depending on the size of the borrowing, to ensure that OCC replenishes its "Cover 1" financial resources.³ The requirement to recognize any borrowing outstanding after 30 days as an actual loss chargeable against the Clearing Fund would be consistent with the requirements of the borrowing authority currently permitted by Section 5(e) of Article VIII of the By-Laws.

B. Statutory Basis

Section 17A(b)(3)(F) of the Securities Exchange Act of 1934 ("Act"),⁴ requires, among other things, that the rules of a clearing agency be designed to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The proposed rule change is designed to ensure that OCC can continue to promptly settle the securities and derivatives transactions it clears by enhancing the existing tools OCC has to address liquidity shortfalls. Specifically, the proposed rule change would expand the existing

³ "Cover 1" financial resources refers to the requirement that a CCA maintains financial resources sufficient to enable it to cover the "default of the participant family that would potentially cause the largest aggregate credit exposure for the [CCA] in extreme but plausible market conditions." 17 CFR 240.17Ad-22(e)(7)(viii).

⁴ 15 U.S.C. 78q-1(b)(3)(F).

borrowing authority in OCC's By-Laws to also authorize borrowing in the extraordinary event that OCC faces a liquidity need in order to complete same day settlement, independent of whether OCC has suffered a loss resulting from the bankruptcy or similar event of a bank or securities or commodities clearing organization.

It is conceivable, though extremely unlikely, that parties may fail to make timely settlement with OCC as the result of an event that does not result in a loss to OCC from the bankruptcy, insolvency, resolution, suspension of operations or similar event of a bank or securities or commodities clearing organization. A hypothetical example of one such event might be a temporary disruption to the ordinary operation of a settlement bank resulting from a technology issue. The issue presents no concern about the bank's creditworthiness (or the creditworthiness of any Clearing Member that has selected such institution as its settlement bank) but the bank's technology issue nonetheless temporarily interferes with the ability of the bank to timely move funds in accordance with OCC's daily settlement cycle. In this hypothetical, the most likely alternative for OCC is to exercise its ability under Rule 505 to extend the settlement window to the close of Fedwire. The proposed rule change would provide OCC with an alternative tool with which to address the type of extraordinary circumstance highlighted by OCC's hypothetical. The proposed rule change would improve OCC's ability to address the situation in the hypothetical example because use of the proposed expanded borrowing authority would enable OCC to borrow against the Clearing Fund in order to avoid disrupting its ordinary settlement cycle (and thusly, to avoid imposing the same disruption on Clearing Members), thereby avoiding the need to extend the settlement window and allowing

OCC to settle transactions in a more timely fashion. In this regard, OCC believes the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, in accordance with the requirements of Section 17A(b)(3)(F) of the Act.⁵

Additionally, Rule 17Ad-22(e)(7)(viii) requires that a covered clearing agency (“CCA”) address foreseeable liquidity shortfalls that would not be covered by the CCA’s liquid resources and seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations.⁶ As stated above, OCC believes that it could be foreseeable, though extremely unlikely, that a bank or securities or commodities clearing organization may fail to make timely settlement with OCC as the result of an event that does not result in a loss to OCC from the bankruptcy, insolvency, resolution, suspension of operations or similar event of such bank or securities or commodities clearing organization. The proposed rule change would improve OCC’s ability to address such situations by expanding OCC’s borrowing authority to enable OCC to borrow against the Clearing Fund in order to avoid disrupting its ordinary settlement cycle (and thusly, to avoid imposing the same disruption on Clearing Members).

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

⁵ Id.

⁶ 17 CFR 240.17Ad-22(e)(7)(viii).

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act⁷ requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe the proposed rule change would have any impact or impose any burden on competition. The primary purpose of the proposed rule change is to enhance the existing tools OCC has to address liquidity shortfalls by expanding the existing borrowing authority in OCC's By-Laws to also authorize borrowing in the extraordinary event that OCC faces a liquidity need in order to complete same day settlement. The proposed rule change would apply equally to all Clearing Members and would not affect Clearing Members' access to OCC's services or disadvantage or favor any particular user in relationship to another user. As such, OCC believes that the proposed changes would not have any impact or impose any burden on competition.

Item 5. 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 change and none have been received. OCC will notify the Commission of any written comments received by OCC.

Item 6. Extension of Time Period for Commission Action

Not applicable.

⁷ 15 U.S.C. 78q-1(b)(3)(I).

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

- (a) Not applicable.
- (b) Not applicable.
- (c) Not applicable.
- (d) Not applicable.

Item 8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission

Not applicable.

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

Item 11. Exhibits

Exhibit 1A. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 5. OCC By-Laws

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, The Options Clearing Corporation has caused this filing to be signed on its behalf by the undersigned hereunto duly authorized.

THE OPTIONS CLEARING CORPORATION

By: _____
Daniel S. Konar II
Vice President, Associate General Counsel

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-[_____]; File No. SR-OCC-2017-017)

October 13, 2017

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning Liquidity for Same Day Settlement

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder² notice is hereby given that on October 13, 2017, 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. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change by the OCC would revise OCC’s By-Laws to expand upon existing authority to borrow against the Clearing Fund.

II. Clearing Agency’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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed change is to modify the tools available to OCC in order to provide a mechanism for addressing the risks of liquidity shortfalls, specifically, in the extraordinary situation where OCC faces a liquidity need to meet its same-day settlement obligations as a result of a bank or securities or commodities clearing organization failing to achieve daily settlement.

Proposed Changes

Current Practice

Presently, Article VIII, Section 5(e) of OCC's By-Laws provides OCC with the authority to borrow against the Clearing Fund in two circumstances. First, Article VIII, Section 5(e) of OCC's By-Laws provides OCC the authority to borrow where OCC "deems it necessary or advisable to borrow or otherwise obtain funds from third parties in order to meet obligations arising out of the default or suspension of a Clearing Member or any action taken by the Corporation in connection therewith pursuant to Chapter XI of the Rules or otherwise." Second, Article VIII, Section 5(e) of OCC's By-Laws provides OCC the authority to borrow against the Clearing Fund where OCC "sustains a loss reimbursable out of the Clearing Fund pursuant to [Article VIII, Section 5(b) of OCC's By-Laws] but [OCC] elects to borrow or otherwise obtain funds from third parties in lieu of immediately charging such loss to the Clearing Fund." In order for a loss to be reimbursable out of the Clearing Fund under Article VIII, Section 5(b) of OCC's By-Laws, it must arise from a situation in which any bank or securities or commodities clearing organization has failed "to perform any obligation to [OCC] when due because

of its bankruptcy, insolvency, receivership, suspension of operations, or because of any similar event.”³

Under either of the two aforementioned circumstances, OCC is authorized to borrow against the Clearing Fund for a period not to exceed 30 days, and during such period, the borrowing shall not affect the amount or timing of any charges otherwise required to be made against the Clearing Fund pursuant to Article VIII, Section 5.

However, if any part of the borrowing remains outstanding after 30 days, then at the close of business on the 30th day (or the first Business Day thereafter) such amount must be considered an actual loss to the Clearing Fund, and OCC must immediately allocate such loss in accordance with Article VIII, Section 5.

Proposed Change

While Article VIII, Section 5(e) of OCC’s By-Laws currently provides for borrowing authority in the more extreme scenarios involving a bank’s or securities or commodities clearing organization’s bankruptcy, insolvency, receivership, suspension of operations or similar event, such authority does not extend to the similar, but less extreme scenarios in which a bank or securities or commodities clearing organization might be temporarily unable to timely make daily settlement with OCC for reasons other than its bankruptcy, insolvency, receivership or suspension of operations or similar events. An example of such a related scenario would be a disruption of the ordinary operations of a

³ To the extent that a loss resulting from any of the events referred to in Article VIII, Section 5(b) is recoverable out of the Clearing Fund pursuant to Article VIII, Section 5(a), the provisions of Article VIII, Section 5(a) control and render the provisions of Article VIII, Section 5(b) inapplicable.

settlement bank that temporarily prohibits the bank from timely effecting settlement payments in accordance with OCC's daily settlement cycle.

The proposed rule change would expand upon the existing borrowing authority in Article VIII, Section 5(e) of OCC's By-Laws. As expanded, OCC would be authorized to borrow (or otherwise obtain funds through any means determined to be reasonable by the Executive Chairman, COO or CAO) against the Clearing Fund in the extraordinary event that OCC faces a liquidity need in order to complete same-day settlement. As specified in the proposed rule text, the funds obtained from any such transaction can be used only for their stated purpose, namely, to satisfy a need for liquidity for same-day settlement. Consistent with the existing borrowing authority in Article VIII, Section 5(e) of OCC's By-Laws, OCC would be authorized to borrow against the Clearing Fund for a period not to exceed 30 days, and during such period, the funds obtained would not be deemed to be charges against the Clearing Fund, irrespective of how such funds are applied, and the borrowing shall not affect the amount or timing of any charges otherwise required to be made against the Clearing Fund pursuant to Article VIII, Section 5. However, in the unlikely event that any part of the borrowing were to remain outstanding after 30 days, then at the close of business on the 30th day (or the first Business Day thereafter), such amount would be considered an actual loss to the Clearing Fund, and OCC must immediately allocate such loss in accordance with Article VIII, Section 5.

Like the existing borrowing authority in Article VIII, Section 5(e) of OCC's By-Laws, OCC envisions that the proposed expanded authority only would be relevant in extraordinary circumstances and, even then, only would be used where OCC, exercising

its discretion, believes the employment of this particular authority would be appropriate to address OCC's immediate liquidity need.

OCC proposes to amend Sections 1(a), 5(b) and 5(e) of Article VIII of its By-Laws in order to give effect to the expanded borrowing authority discussed herein. Section 5(e) of Article VIII of OCC's By-Laws would be amended to permit OCC to borrow against the Clearing Fund if it reasonably believes such borrowing is necessary to meet its liquidity needs for same-day settlement as a result of the failure of any bank or securities or commodities clearing organization to achieve daily settlement.

Section 1(a) of Article VIII of OCC's By-Laws would be amended to include conforming changes that would reflect that the purpose of the Clearing Fund includes borrowing against the Clearing Fund as permitted under Section 5(e) of Article VIII of the By-Laws.

Section 5(b) of Article VIII of the By-Laws would be amended to include conforming changes that would declare that any borrowing remaining outstanding for less than 30 days may be considered, in OCC's discretion, an actual loss and the amount of any such loss then shall be charged proportionately against all Clearing Members' computed contributions to the Clearing Fund as fixed at the time, and any borrowing remaining outstanding on the 30th day shall be considered an actual loss to the Clearing Fund and the amount of any such loss shall be charged proportionately against all Clearing Members' computed contributions to the Clearing Fund as fixed at the time. The OCC proposes to include discretionary authority to declare any borrowing outstanding for less than 30 days as an actual loss chargeable against the Clearing Fund because the proposed borrowing authority is intended only to address same-day liquidity

needs, and intended to be promptly repaid upon the bank's or securities or commodities clearing organization's resolution of the temporary disruption. In the unlikely circumstance that a disruption of a bank or securities or commodities clearing organization is not timely resolved, OCC may need to exercise its discretion to declare an actual loss, depending on the size of the borrowing, to ensure that OCC replenishes its "Cover 1" financial resources.⁴ The requirement to recognize any borrowing outstanding after 30 days as an actual loss chargeable against the Clearing Fund would be consistent with the requirements of the borrowing authority currently permitted by Section 5(e) of Article VIII of the By-Laws.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act⁵ requires, among other things, that the rules of a clearing agency be designed to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The proposed rule change is designed to ensure that OCC can continue to promptly settle the securities and derivatives transactions it clears by enhancing the existing tools OCC has to address liquidity shortfalls. Specifically, the proposed rule change would expand the existing borrowing authority in OCC's By-Laws to also authorize borrowing in the extraordinary event that OCC faces a liquidity need in order to complete same day settlement,

⁴ "Cover 1" financial resources refers to the requirement that a CCA maintains financial resources sufficient to enable it to cover the "default of the participant family that would potentially cause the largest aggregate credit exposure for the [CCA] in extreme but plausible market conditions." 17 CFR 240.17Ad-22(e)(7)(viii).

⁵ 15 U.S.C. 78q-1(b)(3)(F).

independent of whether OCC has suffered a loss resulting from the bankruptcy or similar event of a bank or securities or commodities clearing organization.

It is conceivable, though extremely unlikely, that parties may fail to make timely settlement with OCC as the result of an event that does not result in a loss to OCC from the bankruptcy, insolvency, resolution, suspension of operations or similar event of a bank or securities or commodities clearing organization. A hypothetical example of one such event might be a temporary disruption to the ordinary operation of a settlement bank resulting from a technology issue. The issue presents no concern about the bank's creditworthiness (or the creditworthiness of any Clearing Member that has selected such institution as its settlement bank) but the bank's technology issue nonetheless temporarily interferes with the ability of the bank to timely move funds in accordance with OCC's daily settlement cycle. In this hypothetical, the most likely alternative for OCC is to exercise its ability under Rule 505 to extend the settlement window to the close of Fedwire. The proposed rule change would provide OCC with an alternative tool with which to address the type of extraordinary circumstance highlighted by OCC's hypothetical. The proposed rule change would improve OCC's ability to address the situation in the hypothetical example because use of the proposed expanded borrowing authority would enable OCC to borrow against the Clearing Fund in order to avoid disrupting its ordinary settlement cycle (and thusly, to avoid imposing the same disruption on Clearing Members), thereby avoiding the need to extend the settlement window and allowing OCC to settle transactions in a more timely fashion. In this regard, OCC believes the proposed rule change is designed to promote the prompt and accurate

clearance and settlement of securities transactions, in accordance with the requirements of Section 17A(b)(3)(F) of the Act.⁶

Additionally, Rule 17Ad-22(e)(7)(viii) requires that a covered clearing agency (“CCA”) address foreseeable liquidity shortfalls that would not be covered by the CCA’s liquid resources and seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations.⁷ As stated above, OCC believes that it could be foreseeable, though extremely unlikely, that a bank or securities or commodities clearing organization may fail to make timely settlement with OCC as the result of an event that does not result in a loss to OCC from the bankruptcy, insolvency, resolution, suspension of operations or similar event of such bank or securities or commodities clearing organization. The proposed rule change would improve OCC’s ability to address such situations by expanding OCC’s borrowing authority to enable OCC to borrow against the Clearing Fund in order to avoid disrupting its ordinary settlement cycle (and thusly, to avoid imposing the same disruption on Clearing Members).

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency’s Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act⁸ requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe the proposed rule change would have any

⁶ Id.

⁷ 17 CFR 240.17Ad-22(e)(7)(viii).

⁸ 15 U.S.C. 78q-1(b)(3)(I).

impact or impose any burden on competition. The primary purpose of the proposed rule change is to enhance the existing tools OCC has to address liquidity shortfalls by expanding the existing borrowing authority in OCC's By-Laws to also authorize borrowing in the extraordinary event that OCC faces a liquidity need in order to complete same day settlement. The proposed rule change would apply equally to all Clearing Members and would not affect Clearing Members' access to OCC's services or disadvantage or favor any particular user in relationship to another user. As such, OCC believes that the proposed changes would not have any impact or impose any burden on competition.

(C) Clearing Agency'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

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. Please include File Number SR-OCC-2017-017 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2017-017. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, N.E., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at

http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_17_017.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-2017-017 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁹

Robert W. Errett
Deputy Secretary

Action as set forth recommended herein
APPROVED pursuant to authority delegated
by the Commission under Public Law 87-
592.

For: Division of Trading and Markets

By: _____

Print Name: _____

Date: _____

⁹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5



By-Laws

Underlined text indicates new text

~~Strikethrough~~ text indicates deleted text

Article VIII - Clearing Fund

* * *

Maintenance and Purpose of the Clearing Fund

SECTION 1. (a) The Corporation shall maintain a Clearing Fund to which each Clearing Member shall contribute, as provided in this Article VIII, to make good losses suffered by the Corporation, or losses suffered by the Clearing Fund resulting from borrowings pursuant to the authority in Section 5(e) of this Article, (i) as a result of the failure of any Clearing Member to discharge duly any obligation on or arising from any confirmed trade accepted by the Corporation, (ii) as a result of the failure of any Clearing Member (including any Appointed Clearing Member) or of CDS to perform its obligations (including its obligations to the correspondent clearing corporation) under or arising from any exercised or assigned option contract or any other contract or obligation issued, undertaken, or guaranteed by the Corporation or in respect of which the Corporation is otherwise liable, (iii) as a result of the failure of any Clearing Member to perform any of its obligations to the Corporation in respect of the stock loan and borrow positions of such Clearing Member, (iv) in connection with any liquidation of a Clearing Member's open positions, (v) in connection with protective transactions effected for the account of the Corporation pursuant to Chapter XI of the Rules, (vi) as a result of the failure of any Clearing Member to make any other required payment or render any other required performance, ~~or~~ (vii) as a result of the failure of any bank or securities or commodities clearing organization to perform its obligations to the Corporation for reasons specified in Section 5 of this Article, or (viii) as a result of a borrowing by the Corporation for liquidity needs for same day settlement pursuant to the authority in Section 5(e) of this Article.

* * *

Application of the Clearing Fund

SECTION 5.

* * *

(b)

(i) If any bank or securities or commodities clearing organization shall fail to perform any obligation to the Corporation when due because of its bankruptcy, insolvency, receivership, suspension of operations, or because of any similar event, and the Corporation shall sustain a loss (whether directly or as a trustee, custodian, or secured party) by reason thereof that is not recoverable out of the Clearing Fund pursuant to paragraph (a), the Corporation may, in its discretion, reimburse itself for such loss out of the

Clearing Fund pursuant to this paragraph (b)(i), and the amount of any such reimbursement shall be charged proportionately against all Clearing Members' computed contributions to the Clearing Fund as fixed at the time.

(ii) With respect to any borrowing by the Corporation for liquidity needs for same day settlement pursuant to the authority in paragraph (e) of this Section 5, if such borrowing remains outstanding for a period of less than thirty days, the Corporation may, in its discretion, consider such amount an actual loss to the Clearing Fund and the amount of any such loss shall be charged proportionately against all Clearing Members' computed contributions to the Clearing Fund as fixed at the time, provided however, that if such borrowing remains outstanding on the thirtieth day, the Corporation shall consider such amount an actual loss to the Clearing Fund and the amount of any such loss shall be charged proportionately against all Clearing Members' computed contributions to the Clearing Fund as fixed at the time.

To the extent that a loss resulting from any of the events referred to in this paragraph (b) is recoverable out of the Clearing Fund pursuant to paragraph (a), the provisions of ~~such~~ paragraph (a) shall control, and this paragraph (b) shall be inapplicable

* * *

(e) If (i) the Corporation deems it necessary or advisable to borrow or otherwise obtain funds from third parties in order to meet obligations arising out of the default or suspension of a Clearing Member or any action taken by the Corporation in connection therewith pursuant to Chapter XI of the Rules or otherwise; or (ii) the Corporation sustains a loss reimbursable out of the Clearing Fund pursuant to paragraph (b) but elects to borrow or otherwise obtain funds from third parties in lieu of immediately charging such loss to the Clearing Fund; or (iii) the Corporation reasonably believes it necessary to borrow to meet its liquidity needs for same-day settlement as a result of the failure of any bank or securities or commodities clearing organization to achieve daily settlement, and in ~~anyeither~~ case the Corporation determines that it will be unable to borrow or otherwise obtain such funds on acceptable terms on an unsecured basis; then the Corporation may take possession of cash or securities deposited by Clearing Members as contributions to the Clearing Fund and securities in which cash contributions to the Clearing Fund have been invested by the Corporation and use such assets to borrow or otherwise obtain funds through any means determined to be reasonable by the Executive Chairman, Chief Operating Officer or the Chief Administrative Officer of the Corporation in his discretion (including, without limitation, pledging such assets as security for loans and/or using such assets to effect repurchase, securities lending or other transactions); provided, in the case of any transaction effected under the circumstances specified in clause (i) or clause (iii) above, that the funds obtained through such transaction will be used solely for the purposes described in clause (i) or clause (iii), as applicable. The funds obtained by the Corporation pursuant to this paragraph (e), irrespective of how such funds are applied,

shall not be deemed to be charges against the Clearing Fund for a period not to exceed thirty days, and, during said period, shall not affect the amount or timing of any charges otherwise required to be made against the Clearing Fund pursuant to this Section. If all or a part of any transaction effected by the Corporation pursuant to this paragraph (e) remains outstanding after thirty days, the Corporation, at the close of business of the thirtieth day (or on the first Business Day thereafter), shall consider the amount of Clearing Fund assets used to support the Corporation's obligations under the outstanding transaction as an actual loss to the Clearing Fund and immediately allocate such loss in accordance with this Section.