



October 4, 2011

VIA E-MAIL

Mr. David Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

RECEIVED
CFTC
OCT 10 2011
OFFICE OF THE
SECRETARY

Re: Rule Filing SR-OCC-2011-13 A-1 Request for Commission Rule Approval

Dear Mr. Stawick:

The Options Clearing Corporation ("OCC") hereby submits the above-referenced amended rule filing for approval by the Commodity Futures Trading Commission ("CFTC" or "Commission") pursuant to Section 5c(c)(2) of the Commodity Exchange Act (the "CEA") and Sections 39.4(a) and 40.5 of the Commission's regulations.

The purpose of this filing is to obtain jurisdictional clarity with respect to relative performance index options that measure the relative total returns of a stock or exchange-traded fund ("ETF") against another stock or ETF, including where one of the reference ETFs measured by the index is a gold- or silver-based ETF. Options on relative performance indexes referencing gold- or silver-based ETFs are proposed to be traded on a national securities exchange for which OCC provides clearing services.

In conformity with the requirements of CFTC Regulation 40.5(a), OCC states the following: the proposed effective date of the rule change is the earliest date on which the proposed rule change has become effective under the Securities Exchange Act of 1934 and the proposed rule change has been, or is deemed to have been, approved by the Commission pursuant to regulation Section 40.5. The text of the proposed rule and by-laws are set forth at Item 1 of the enclosed filing. The proposed rule was duly authorized by the Board of Directors of OCC as described in Item 2 of the enclosed filing, pursuant to the powers granted to the Board by Article III, Section 8 of OCC's By-Laws. Item 3 of the enclosed filing sets forth the operation, purpose and effect of the proposed rule. Item 5 of the enclosed filing sets forth a description of any written comments on the rule filing, including any such comments expressing opposing views that were not incorporated into the proposed rule.

THE FOUNDATION FOR SECURE MARKETS

1 N. Wacker Drive, Suite 500, Chicago, IL 60606 312.322.6200 www.theocc.com

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OCC proposes to clear options on relative performance indexes subject to the jurisdiction of the Securities and Exchange Commission ("SEC") and would therefore not require clearing members that carry such options for the accounts of their customers to hold them in accounts that are subject to the segregation requirements of the CEA.

As a derivatives clearing organization subject to the jurisdiction of the Commission as well as a registered securities clearing agency, OCC is filing this rule change for prior Commission approval in order to provide legal certainty for the trading of these products. OCC believes that this filing should raise no new regulatory or policy issues.

Should you have any questions regarding this matter, please do not hesitate to contact the undersigned at (312) 322-4802.

Sincerely,


Stephen Szarmack

Attachments

cc: CFTC Central Region (w/enclosure)
525 West Monroe Street, Suite 1100
Chicago, IL 60661
Attn: Heidi Rauh

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

The Options Clearing Corporation (“OCC” or the “Corporation”) proposes to amend Article XVII of its By-Laws, as set forth below, for the purpose of providing legal certainty for the trading of particular products. Material proposed to be added to OCC’s By-Laws as currently in effect is underlined and material proposed to be deleted is enclosed in brackets.

THE OPTIONS CLEARING CORPORATION

BY-LAWS

* * *

ARTICLE XVII

Index Options and Other Cash-Settled Options

* * *

Definitions

SECTION 1

A. – Q. [No change]

R.

(1) [No change]

Relative Performance Index

(2) The term “relative performance index” means an index designed to measure the relative performance of a reference security or reference index in relation to another reference security or reference index.

(2) [Renumbered as (3); otherwise no change]

S. – Z. [No change]

General Rights and Obligations of Holders and Writers of Index Options

SECTION 2

(a) – (c) [No change]

... Interpretations and Policies:

For the elimination of doubt, OCC will clear and treat as options on securities any options on relative performance indexes measuring the total returns of one reference security, such as a stock or exchange-traded fund, against another reference security, including in situations in which one of the reference securities of the relevant index is an exchange-traded fund designed to measure the return of gold or silver.

Adjustments

SECTION 3

(a) – (e) [No change]

(f) In the event that the value of an underlying relative performance index [index designed to measure the relative performance of a reference security or reference index in relation to another reference security or reference index (a “relative performance index”)] falls below zero, any such negative value of the index will be deemed by the Corporation to be zero; provided, however, that if it is deemed impractical for systems reasons to have an index value of zero, then any index value of zero or below will be deemed to be an economically nominal positive number. Such an adjustment will have the effect of limiting the maximum exercise settlement amount for in-the-money put options on such indexes to the difference between the exercise price and the nominal positive number substituted for the actual index value (times the applicable multiplier). Adjustment in the value of an underlying relative performance index pursuant to this paragraph shall not require any action of an adjustment panel.

(g) In the event that any individual reference security in an underlying relative performance index [(as defined in the preceding paragraph)] is eliminated as the result of a cash-out merger or other event, the reporting authority may cease to publish the index. In that case, the exercise settlement value of the options would become fixed based upon the last published value for the index, and the Exchange on which such options are traded may determine to accelerate the expiration date for such options (and, in the case of European-style options, their exercisability). The expiration date for such options will ordinarily be accelerated to fall on the next regularly scheduled expiration date for the same class of options or such other date as the Corporation may establish in consultation with the Exchange on which such options are traded.

(h) [No change]

Item 2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by OCC’s Board of Directors at a meeting held on July 26, 2011.

Questions regarding the proposed rule change should be addressed to Stephen M. Szarmack, Vice President and Associate General Counsel, at (312) 322-4802.

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

The purpose of the proposed rule change is to remove any potential cloud on the jurisdictional status of relative performance indexes. NASDAQ OMX PHLX has proposed to trade options on indexes ("Alpha Index Options") that measure the relative total returns of a stock or exchange-traded fund ("ETF") against another stock or ETF, including where one of the reference ETFs measured by the index is a gold- or silver-based ETF. Generally, a relative performance index should be considered to be an index of securities since the components of a relative performance index are ETFs or other securities. However, OCC would like to confirm the jurisdictional treatment of relative performance indexes in situations in which one of the reference securities of an underlying relative performance index is an ETF designed to measure the return of gold or silver. To accomplish this purpose, OCC is proposing to add an interpretation following Section 2 in Article XVII of OCC's By-Laws, clarifying that OCC will clear and treat as securities any relative performance index, including in situations in which one of the reference securities of a relative performance index is an ETF designed to measure the return of gold or silver. The Securities and Exchange Commission (the "Commission") and Commodity Futures Trading Commission ("CFTC") have previously approved changes to OCC's By-Laws clarifying that options on the CBOE Gold ETF Volatility Index will be cleared and treated as securities.¹

¹ See Securities Exchange Act Release No. 34-62290, 75 FR 35861 (June 23, 2010); CFTC Order Exempting the Trading and Clearing of Certain Products Related to the CBOE Gold ETF Volatility Index and Similar Products, 75 FR 81977 (December 29, 2010).

In its capacity as a “derivatives clearing organization” registered as such with the CFTC, OCC is filing this proposed rule change for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act (the “CEA”) in order to foreclose any potential liability under the CEA based on an argument that the clearing by OCC of such options as securities options constitutes a violation of the CEA.

* * *

The proposed interpretation of OCC’s By-Laws is consistent with the purposes and requirements of Section 17A of the Exchange Act because it is designed to promote the prompt and accurate clearance and settlement of transactions in securities options, to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. It accomplishes this purpose by reducing the likelihood of a dispute as to the Commission’s jurisdiction over relative performance indexes in situations where one of the reference securities of an underlying relative performance index is a gold- or silver-based ETF. The proposed rule change is not inconsistent with the By-Laws and Rules of OCC.

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

OCC does not believe that the proposed rule change would impose any material 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 rule change, and none has been received.

Item 6. Extension of Time Period for Commission Action

OCC does not consent to an extension of the time period for Commission action on the proposed rule change.

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

Not applicable.

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

The proposed rule change is not based on a rule change of another self-regulatory organization.


Item 9. Exhibits

Exhibit 1 Completed notice of the proposed rule change for publication in the Federal Register.

SIGNATURES

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

THE OPTIONS CLEARING CORPORATION

By: 

Stephen M. Szarmack
Vice President and Associate
General Counsel

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____ ; File No. SR-OCC-2011-13

SELF-REGULATORY ORGANIZATION

Proposed Rule Change By
The Options Clearing Corporation

Relating to Relative Performance Indexes

Comments requested within days
after the date of this publication.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on _____, 2011, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III 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 proposed rule change would remove any potential cloud on the jurisdictional status of relative performance indexes.

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

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

The purpose of the proposed rule change is to remove any potential cloud on the jurisdictional status of relative performance indexes. NASDAQ OMX PHLX has proposed to trade options on indexes ("Alpha Index Options") that measure the relative total returns of a stock or exchange-traded fund ("ETF") against another stock or ETF, including where one of the reference ETFs measured by the index is a gold- or silver-based ETF. Generally, a relative performance index should be considered to be an index of securities since the components of a relative performance index are ETFs or other securities. However, OCC would like to confirm the jurisdictional treatment of relative performance indexes in situations in which one of the reference securities of an underlying relative performance index is an ETF designed to measure the return of gold or silver. To accomplish this purpose, OCC is proposing to add an interpretation following Section 2 in Article XVII of OCC's By-Laws, clarifying that OCC will clear and treat as securities any relative performance index, including in situations in which one of the reference securities of a relative performance index is an ETF designed to measure the return of gold or silver. The Securities and Exchange Commission (the "Commission") and

Commodity Futures Trading Commission (“CFTC”) have previously approved changes to OCC’s By-Laws clarifying that options on the CBOE Gold ETF Volatility Index will be cleared and treated as securities.¹

In its capacity as a “derivatives clearing organization” registered as such with the CFTC, OCC is filing this proposed rule change for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act (the “CEA”) in order to foreclose any potential liability under the CEA based on an argument that the clearing by OCC of such options as securities options constitutes a violation of the CEA.

* * *

The proposed interpretation of OCC’s By-Laws is consistent with the purposes and requirements of Section 17A of the Exchange Act because it is designed to promote the prompt and accurate clearance and settlement of transactions in securities options, to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. It accomplishes this purpose by reducing the likelihood of a dispute as to the Commission’s jurisdiction over relative performance indexes in situations where one of the reference securities of an underlying relative performance index is a gold- or silver-based ETF. The proposed rule change is not inconsistent with the By-Laws and Rules of OCC.

¹ See Securities Exchange Act Release No. 34-62290, 75 FR 35861 (June 23, 2010); CFTC Order Exempting the Trading and Clearing of Certain Products Related to the CBOE Gold ETF Volatility Index and Similar Products, 75 FR 81977 (December 29, 2010).

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 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 (i) as the Commission may designate up to 90 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. Please include File Number SR-OCC-2011-13 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-2011-13. 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 Section, 100 F Street, N.E., Washington, D.C. 20549-1090. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. 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-2011-13 and should be submitted on or before [insert date 21 days from publication in the Federal Register]

_____.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Secretary

Dated: _____