



February 19, 2013

VIA ELECTRONIC MAIL

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

Re: Rule Filing SR-OCC-2013-02 Rule Certification

Dear Ms. Warfield:

Enclosed is a copy of the above-referenced rule filing, which The Options Clearing Corporation (“OCC”) is submitting pursuant to the self-certification procedures of Commodity Futures Trading Commission (the “CFTC” or “Commission”) Regulation 40.6. The date of implementation of the rule is the later of 10 business days following receipt of the rule filing by the CFTC hereof or the date the proposed rule is approved by the Securities and Exchange Commission (the “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 this proposed rule change is to revise OCC’s By-Laws and Rules to implement a revised method of calculating clearing members’ respective contributions to OCC’s clearing fund. Currently, clearing members contribute to the clearing fund in proportion to average daily open interest, i.e., the total number of cleared contracts and open positions plus units of stock underlying open stock loan or borrow positions, over the calendar month preceding the date of calculation, subject to a \$150,000 minimum contribution. There are exceptions for a small number of Execution-Only Clearing Members, which are required to make a minimum contribution equal to \$150,000 plus the product of \$15 per contract multiplied by the average daily volume of the Execution-Only Clearing Member over the previous calendar month, and for newly-admitted Clearing Members, whose initial contribution is fixed by OCC’s Board of Directors.

OCC has developed a new allocation formula that it believes would more equitably allocate contributions among its clearing members based on each clearing member’s particular activities and use of OCC’s facilities. The revised formula includes the following components: (1) open interest; (2) total risk charge; and (3) volume. The total risk charge and volume components would be new components of the allocation formula. As the SEC recently noted in publishing its final rules for Clearing Agency Standards, “registered clearing agencies must

evaluate continually and make appropriate updates and improvements to their operations and risk management practices. . .” OCC believes that these proposed enhancements to its existing clearing fund allocation formula are consistent with this notion of continual evaluation and refinement.

The Announcement of Standards for the Registration of Clearing Agencies issued by the staff of the SEC supports the idea that clearing members’ use of the services of a clearing agency forms an appropriate basis on which clearing members should correspondingly be required to participate in the obligations of the clearing agency’s risk management framework. Use of a clearing agency by its clearing members may be measured in a number of ways.

OCC believes that its proposed allocation formula is preferable to the current formula because, by incorporating measurements of volume and certain risk charges, it would apportion contributions based on more sophisticated measurements of clearing members’ usage of OCC’s facilities. Clearing member volume and risk charges would recognize demands on OCC’s services and facilities that are not captured by open interest alone. The new formula would incorporate open interest, total risk charge, and volume, in proportions that are designed to equitably allocate clearing fund requirements in light of these additional demands. Specifically, open interest, total risk charge, and volume would have weightings of 50%, 35%, and 15%, respectively. OCC contemplated alternative weightings in its decision to propose this particular allocation method but believes that the proposed formula is appropriate because it would give significant weight to the new volume and risk charge components and tie allocations more closely to demands placed by clearing members on OCC’s facilities. While the revised formula would result in significant reallocations of contributions, OCC does not expect that it would unduly burden those clearing members anticipated to experience increased contributions.

OCC believes it is appropriate for open interest to continue to serve as the dominant component because open interest, generally speaking, is a measure of a clearing member’s overall usage of OCC’s facilities. With respect to open interest, the definition of open interest in proposed Rule 1001(d) is not identical to the definition of open interest in existing Rule 1001(b), which OCC proposes to delete. However, the differences in these two definitions are not material and are the result of the use of the defined term “cleared contract” in proposed Rule 1001(d) instead of specifically naming the individual types of contracts that make up “cleared contracts,” as well as general updating and restructuring of the rule provision. OCC also believes that risk and volume are relevant factors because they distinctly measure material aspects of clearance and settlement activity and therefore a clearing member’s use of OCC’s resources. Each clearing member’s contribution to the clearing fund should therefore take these measures of usage of OCC’s facilities into account. Clearing members whose OCC accounts contain positions that are well-diversified and/or exhibit relatively little exposure to overall market direction would likely have a smaller required contribution under the proposed formula. Clearing members exhibiting a relatively large exposure to market direction, a concentration in contracts that individually present high amounts of risk, and undiversified accounts would generally experience a larger required contribution than is the case under the current formula.

The inclusion of risk and volume metrics within OCC’s clearing fund allocation formula would generally reflect similar practices that are already in place at other registered clearing agencies. These existing allocation practices of other clearing agencies represent a meaningful

benchmark of practices that are used across the industry. Taking those practices into account, OCC evaluated the appropriateness of including these mechanisms in its own allocation formula in a way that is tailored to the nature and demands of OCC's particular business. OCC understands that one clearing agency allocates contributions among its affected clearing members using certain measures of volume and open interest in addition to considering margin requirements over a given period. The rules of another clearing agency provide that clearing member contributions to its clearing fund are determined according to a wide variety of risk-based charges meant to account for the ways in which clearing members utilize its services.

OCC's proposed total risk charge is intended to measure the economic significance of the activities of a clearing member. The total risk charge is equal to the margin requirement, as determined by OCC, of the accounts of the clearing member exclusive of the net asset value of those accounts. A range of factors influence the relationship between the open interest in a clearing member's account and its associated risk charge. For example, for each clearing member these factors include, but are not limited to, the types of positions, number of long positions versus short positions, value of the securities underlying the contracts, volatility of the underlying, diversification, number of accounts of the clearing member, and the extent to which the clearing member's options positions are in-the-money or out-of-the-money.

Volume, like open interest, is a measure of a clearing member's level of usage of OCC's facilities. However, volume is distinct from open interest in that it is a function of the average turnover of the positions in the clearing member's account. Therefore, market-making, high frequency trading, and execution-only services are all examples of activities that tend to elevate volume relative to open interest. By contrast, holding long term positions in long term contracts is an example of activity that would lower a clearing member's volume relative to its open interest.

Most Clearing Member Groups will experience a material change (i.e., an increase or decrease of 10% or greater in the dollar amount of a Clearing Member Group's aggregated Clearing Fund requirement) under the new formula. The majority of the Clearing Member Groups experiencing a material change increase in Clearing Fund requirements are smaller single firms with lower initial Clearing Fund requirements. Small firms tend to experience an increase under the new allocation formula for two reasons. First, smaller firms often have portfolios lacking the diversification that lowers the risk compared with open interest for larger firms. Second, firms that have a small fraction of combined open interest, risk and volume, experience increases simply due to the fact that the new formula adds a clearing fund share on top of the \$150,000 minimum as opposed to instead of it. To allow firms that would face a substantial increase in their clearing fund requirements adequate time to prepare for the proposed changes, OCC would provide all clearing members significant lead time before implementing the new formula and would also use an incremental approach to implementation that would phase in the percentage weightings applicable to each component. OCC believes that this approach would provide clearing members with an important opportunity to secure any additional funds that they anticipate would be necessary in connection with the requirements of the new formula or to otherwise modify their activities, for instance by reducing positions, to manage the impact of the new formula.

The Clearing Fund requirements under the new allocation formula will be communicated to the clearing membership prior to the time they become effective to allow clearing members to review and prepare for any changes they may experience in their specific Clearing Fund contribution amount. OCC will contact those clearing members that will be negatively impacted in a material manner (i.e., an increase of 10% or greater in the dollar amount of a Clearing Member Group's aggregate Clearing Fund requirement) to confirm such clearing members have reviewed the pro forma Clearing Fund requirement numbers and they are ready to meet the new requirement upon implementation. OCC will then begin a two stage phase in process for the new Clearing Fund requirements. The first stage of implementation will occur within 180 calendar days from the date that OCC provides notice to clearing members of its intent to implement the new formula. At that stage, open interest, total risk charge, and volume would be applied in the formula with weightings of 75%, 17.5%, and 7.5%, respectively. The second stage of implementation and the final weightings of 50%, 35%, and 15% would then be implemented within 360 days from the same date of the original notice to clearing members concerning implementation of the new formula.

The proposed rule change would also create a defined term, "Futures-Only Affiliated Clearing Member," to refer to a clearing member that is admitted solely for the purpose of clearing transactions in security futures, commodity futures, and/or futures options. While the definition is new, there would be no substantive change to Section 2 of Article VIII, under which, if such a clearing member is a member affiliate of an earlier-admitted clearing member, the clearing member's initial clearing fund contribution may be fixed by the Board as an amount that excludes the minimum clearing fund component of \$150,000, so long as the earlier-admitted clearing member already satisfies that requirement.

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

Risk Management. OCC believes that the proposed allocation formula more equitably allocates contributions among its clearing members based on each clearing member's particular activities and use of OCC's facilities. The new allocation formula adds total risk charges and volume components to the allocation formula which more accurately allocates a clearing member's risk to OCC.

Default Rules and Procedures. OCC believes that the proposed allocation formula is designed to be more fair and efficient in apportioning contributions to the clearing fund based on a more sophisticated measurement of a clearing member's usage of OCC's facilities. The new allocation formula is clearly stated and available to the public on OCC's web site.

Additions are indicated by underlining and deletions are bracketed.

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.

Certification

OCC hereby certifies that the attached rule 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 "Stephen Szarmack". The signature is written in a cursive style with a large initial "S".

Stephen Szarmack

Enclosure

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 28

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2013 - * 02

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"/>
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Rule

Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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<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)



Section 806(e)(2)



Section 3C(b)(2)



Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

The purpose of this rule change is to implement a revised method of calculating clearing members' respective contributions to the OCC clearing fund.

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 * Stephen Last Name * Szarmack

Title * Vice President and Associate General Counsel

E-mail * sszarmack@theocc.com

Telephone * (312) 322-4802 Fax (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 02/19/2013

Vice President and Associate General Counsel

By Stephen Szarmack

(Name *)

Stephen Szarmack,

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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS 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

Add Remove View

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

The Options Clearing Corporation (“OCC” or the “Corporation”) proposes to revise its By-Laws and Rules to implement a revised method of calculating clearing members’ respective contributions to the clearing fund. Material proposed to be added is marked by underlining. Material proposed to be deleted is enclosed in bold brackets.

**THE OPTIONS CLEARING CORPORATION
BY-LAWS**

ARTICLE I

Definitions

SECTION 1.

A. – D. [no change]

F. (1) – (11) [no change]

Futures-Only Affiliated Clearing Member

(12) The term “Futures-Only Affiliated Clearing Member” means a Clearing Member admitted to membership solely for the purpose of clearing transactions in security futures, commodity futures, and/or futures options that is a member affiliate of an earlier admitted Clearing Member.

Futures Professional

(13)[12] [renumbered as (13), otherwise no change]

G. – Z. [no change]

ARTICLE VIII

Clearing Fund

* * *

Contributions of Clearing Members

SECTION 2. (a) The initial contribution of each Clearing Member to the Clearing Fund shall be \$150,000 or such greater amount as may be fixed by the Board of Directors in its discretion at the time such Clearing Member's application is approved. Notwithstanding anything else to the contrary herein, the initial Clearing Fund contribution of a Futures-Only Affiliated Clearing Member [that has been admitted to membership solely for the purpose of clearing transactions in security futures, commodity futures, futures options, and/or commodity options,] may be fixed by the Board of Directors to be the amount calculated pursuant to clause (y) of Rule 1001[(a) if](b) if the conditions set forth in Rule 1001(f) are satisfied[such Clearing Member is an affiliate of an earlier-admitted Clearing Member which is in compliance with the minimum requirement calculated pursuant to clause (x) of Rule 1001(a)]. The amount of such initial contribution shall remain in force until such time as determined by the Board of Directors (but in any event not later than the end of the first three calendar months commencing after the Clearing Member's admission to membership), after which time the amount of the Clearing Member's required contribution to the Clearing Fund shall be determined in accordance with the Rules.

(b) The formula for determining required Clearing Fund contributions may be altered from time to time by amendment of the Rules, but in no event shall the minimum required contribution to the Clearing Fund be less than \$150,000 except as provided in section 2(a) of this Article VIII with respect to a Futures-Only Affiliated Clearing Member. If the contribution to the Clearing Fund to be made by a Clearing Member is increased as a result of an amendment of the Rules, the increase shall not become effective until the Clearing Member is given five business days prior written notice of the amendment. Unless a Clearing Member notifies the Corporation in writing that it wishes to terminate its clearing membership and closes out or transfers all of its open long and short positions before the effective date of such amendment, such Clearing Member shall be liable to make the increased contribution.

RULES

* * *

Chapter X**Clearing Fund Contributions****Size of Clearing Fund and Amount of Contribution****RULE 1001.**

(a) [no change]

[(b) The contribution to the Clearing Fund of each Clearing Member (except recently admitted Clearing Members whose contributions are fixed pursuant to Article VIII of the By-Laws) for each calendar month shall be the greater of (x) the minimum clearing fund contribution specified in paragraph (c) of this Rule or (y) such Clearing Member's proportionate share of the total amount of the Clearing Fund as determined pursuant to paragraph (a) of this Rule. A Clearing Member's proportionate share shall be a fraction, the numerator of which shall be the daily average number of options and futures contracts (with the number of OTC options contracts adjusted as needed to ensure that the number of such OTC option contracts, as adjusted, is approximately equal to the number of options contracts other than OTC options contracts that would cover the same notional value or units of the same underlying interest), BOUNDS and shares of Eligible Stock underlying stock loan and borrow positions (adjusted by dividing such number of shares by 100), held by such Clearing Member in open positions with the Corporation during the preceding calendar month and the denominator of which shall be the daily average number of options and futures contracts, BOUNDS, and shares of Eligible Stock underlying stock loan and borrow positions (adjusted in the same manner as in the numerator), held by all Clearing Members in open positions with the Corporation during such preceding calendar month. The numerator and denominator shall each include the average daily number of contracts held in paired X-M accounts. Notwithstanding clause (x) of this paragraph (b), an entity that is an affiliate of a Clearing Member and that also becomes a Clearing Member solely for the purpose of clearing transactions in security futures, commodity futures, futures options, and/or commodity options shall be deemed to be in compliance with the \$150,000 minimum contribution if its contribution is equal to the amount specified in clause (y) of this paragraph and the earlier-admitted Clearing Member is in compliance with the minimum requirement under clause (x).

(c) The minimum clearing fund contribution shall be \$150,000, or, in the case of an Execution-Only Clearing Member, \$150,000 plus \$15 times the average daily number of contracts executed by such Clearing Member during the preceding calendar month. The average daily number of contracts executed by an Execution-Only Clearing Member shall equal (i) the sum of all contracts executed by such Clearing Member during the preceding calendar month divided by (ii) the aggregate number of business days in such preceding calendar month.]

(b) Except as otherwise provided under paragraph (g) or as modified in accordance with paragraph (f) of this Rule, the contribution to the Clearing Fund of each Clearing Member for

each calendar month shall be the sum of (x) \$150,000 and a separate amount equal to (y) such Clearing Member's proportionate share of an amount sufficient to cause the total amount of the Clearing Fund to be equal to the amount determined pursuant to paragraph (a) of this Rule. A Clearing Member's proportionate share of the amount set forth in clause (y) of the preceding sentence shall be equal to a weighted average of the Clearing Member's proportionate shares of total risk, open interest and volume, in all accounts (including paired X-M accounts) of the Clearing Member. In calculating this average, total risk shall have a weighting of 35%, open interest shall have a weighting of 50%, and volume shall have a weighting of 15%. For purposes of this Rule 1001, "total risk" means the margin requirement calculated and reported by the Corporation with respect to all accounts of a Clearing Member exclusive of the net asset value of the positions in such accounts aggregated across all such accounts.

(c) A Clearing Member's proportionate share of total risk shall be equal to a fraction, the numerator of which shall be the daily average of the total risk applicable to all accounts of such Clearing Member for the preceding calendar month, and the denominator of which shall be the daily average of the total risk applicable to all accounts of all Clearing Members for the preceding calendar month.

(d) A Clearing Member's proportionate share of open interest shall be equal to a fraction, the numerator of which shall be the daily average number of open positions in cleared contracts (with the number of OTC options contracts adjusted as needed to ensure that the number of such OTC options contracts, as adjusted, is approximately equal to the number of option contracts other than OTC option contracts that would cover the same notional value or units of the same underlying interest) plus cleared-contract equivalent units attributable to open stock loan and borrow positions held by such Clearing Member with the Corporation and the denominator of which shall be the daily average number of open positions in cleared contracts (adjusted in the same manner as in the numerator) plus cleared-contract equivalent units attributable to open stock loan and borrow positions held by all Clearing Members during the preceding calendar month. The numerator and denominator shall each include the average daily number of contracts held in paired X-M accounts.

(e) A Clearing Member's proportionate share of volume shall be equal to a fraction, the numerator of which shall be the daily average number of all cleared (or executed in the case of an Execution-Only Clearing Member) contracts (with the number of OTC options contracts adjusted as needed to ensure that the number of such OTC options contracts, as adjusted, is approximately equal to the number of option contracts other than OTC option contracts that would cover the same notional value or units of the same underlying interest) and cleared-contract equivalent units attributable to stock loan and borrow positions cleared by such Clearing Member during the preceding calendar month and the denominator of which shall be the daily average number of all cleared (or executed in the case of an Execution-Only Clearing Member) contracts (adjusted in the same manner as in the numerator) and cleared-contract equivalent units attributable to stock loan and borrow positions cleared by all Clearing Members during the preceding calendar month.

(f) A Futures-Only Affiliated Clearing Member shall be exempt from contributing the amount set forth in clause (x) of paragraph (b) of this Rule if its contribution is equal to the amount specified in clause (y) of paragraph (b) and the then existing contribution of its earlier-

admitted member affiliate Clearing Member is no less than the amount specified in clause (x) of paragraph (b).

(g) Notwithstanding the foregoing, in the event that the calculation pursuant to this Rule 1001 of the clearing fund contribution of a recently admitted Clearing Member results in an amount that is less than the amount determined under Article VIII of the By-Laws, the amount determined under Article VIII shall apply.

...Interpretations and Policies

.01 [no change]

.02 [no change]

.03 The Corporation will phase in the weighting percentages that are identified in paragraph (b) by, not sooner than 180 calendar days from notice to Clearing Members, implementing temporary weighting percentages of 17.5% for total risk, 75% for open interest, and 7.5% for volume, and not sooner than 360 calendar days, measured from the same date of notice, implementing the weighting percentages that are prescribed in paragraph (b).

.04 Cleared contract equivalent units attributable to a stock loan and borrow position for purposes of the calculations in paragraphs (d) and (e) will be calculated by dividing the number of shares of Eligible Stock underlying such position by a divisor that the Corporation determines, in its sole discretion, to be fair to the affected Clearing Members.

Item 2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of OCC at a meeting held on November 27, 2009.

Questions regarding the proposed rule change should be addressed to Stephen 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 this proposed rule change is to revise OCC's By-Laws and Rules to implement a revised method of calculating clearing members' respective contributions to OCC's clearing fund. Currently, clearing members contribute to the clearing fund in proportion to average daily open interest, *i.e.*, the total number of cleared contracts and open positions plus units of stock underlying open stock loan or borrow positions, over the calendar month preceding

the date of calculation, subject to a \$150,000 minimum contribution. There are exceptions for a small number of Execution-Only Clearing Members, which are required to make a minimum contribution equal to \$150,000 plus the product of \$15 per contract multiplied by the average daily volume of the Execution-Only Clearing Member over the previous calendar month, and for newly-admitted Clearing Members, whose initial contribution is fixed by OCC's Board of Directors.

OCC has developed a new allocation formula that it believes would more equitably allocate contributions among its clearing members based on each clearing member's particular activities and use of OCC's facilities. The revised formula includes the following components: (1) open interest; (2) total risk charge; and (3) volume.¹ The total risk charge and volume components would be new components of the allocation formula. As the Securities and Exchange Commission recently noted in publishing its final rules for Clearing Agency Standards, "registered clearing agencies must evaluate continually and make appropriate updates and improvements to their operations and risk management practices. . ."² OCC believes that these proposed enhancements to its existing clearing fund allocation formula are consistent with this notion of continual evaluation and refinement.

The Announcement of Standards for the Registration of Clearing Agencies issued by the staff of the Securities and Exchange Commission supports the idea that clearing members' use of the services of a clearing agency forms an appropriate basis on which clearing members should correspondingly be required to participate in the obligations of the clearing agency's risk

¹ Because Execution-Only Clearing Members do not clear their own trades, the measure of volume applicable to them would be executed volume rather than cleared volume.

² Securities Exchange Act Release No. 34-68080 (October 22, 2012).

management framework.³ Use of a clearing agency by its clearing members may be measured in a number of ways.

OCC believes that its proposed allocation formula is preferable to the current formula because, by incorporating measurements of volume and certain risk charges, it would apportion contributions based on more sophisticated measurements of clearing members' usage of OCC's facilities. Clearing member volume and risk charges would recognize demands on OCC's services and facilities that are not captured by open interest alone. The new formula would incorporate open interest, total risk charge, and volume, in proportions that are designed to equitably allocate clearing fund requirements in light of these additional demands. Specifically, open interest, total risk charge, and volume would have weightings of 50%, 35%, and 15%, respectively. OCC contemplated alternative weightings in its decision to propose this particular allocation method but believes that the proposed formula is appropriate because it would give significant weight to the new volume and risk charge components and tie allocations more closely to demands placed by clearing members on OCC's facilities. While the revised formula would result in significant reallocations of contributions, OCC does not expect that it would unduly burden those clearing members anticipated to experience increased contributions.

OCC believes it is appropriate for open interest to continue to serve as the dominant component because open interest, generally speaking, is a measure of a clearing member's overall usage of OCC's facilities. With respect to open interest, the definition of open interest in proposed Rule 1001(d) is not identical to the definition of open interest in existing Rule 1001(b),

³ Securities Exchange Act Release No. 16900 (June 17, 1980); 45 FR 41920 (June 23, 1980) (providing in pertinent part that "all participants utilizing similar clearing agency services . . . should be required to comply fully with the clearing agency's internal financial and operational rules such as clearing fund deposits, mark-to-the-market payments and margin deposits related to the service used").

which OCC proposes to delete. However, the differences in these two definitions are not material and are the result of the use of the defined term “cleared contract” in proposed Rule 1001(d) instead of specifically naming the individual types of contracts that make up “cleared contracts,” as well as general updating and restructuring of the rule provision. OCC also believes that risk and volume are relevant factors because they distinctly measure material aspects of clearance and settlement activity and therefore a clearing member’s use of OCC’s resources. Each clearing member’s contribution to the clearing fund should therefore take these measures of usage of OCC’s facilities into account. Clearing members whose OCC accounts contain positions that are well-diversified and/or exhibit relatively little exposure to overall market direction would likely have a smaller required contribution under the proposed formula. Clearing members exhibiting a relatively large exposure to market direction, a concentration in contracts that individually present high amounts of risk, and undiversified accounts would generally experience a larger required contribution than is the case under the current formula.

The inclusion of risk and volume metrics within OCC’s clearing fund allocation formula would generally reflect similar practices that are already in place at other registered clearing agencies. These existing allocation practices of other clearing agencies represent a meaningful benchmark of practices that are used across the industry. Taking those practices into account, OCC evaluated the appropriateness of including these mechanisms in its own allocation formula in a way that is tailored to the nature and demands of OCC’s particular business. OCC understands that one clearing agency allocates contributions among its affected clearing members using certain measures of volume and open interest in addition to considering margin requirements over a given period.⁴ The rules of another clearing agency provide that clearing

⁴ See CME Clearing Financial Safeguards, (2012) (explaining that CME Group maintains three separate clearing funds that correspond to the different asset classes for which it provides

member contributions to its clearing fund are determined according to a wide variety of risk-based charges meant to account for the ways in which clearing members utilize its services.⁵

OCC's proposed total risk charge is intended to measure the economic significance of the activities of a clearing member. The total risk charge is equal to the margin requirement, as determined by OCC, of the accounts of the clearing member exclusive of the net asset value of those accounts. A range of factors influence the relationship between the open interest in a clearing member's account and its associated risk charge. For example, for each clearing member these factors include, but are not limited to, the types of positions, number of long positions versus short positions, value of the securities underlying the contracts, volatility of the underlying, diversification, number of accounts of the clearing member, and the extent to which the clearing member's options positions are in-the-money or out-of-the-money.

Volume, like open interest, is a measure of a clearing member's level of usage of OCC's facilities. However, volume is distinct from open interest in that it is a function of the average turnover of the positions in the clearing member's account. Therefore, market-making, high frequency trading, and execution-only services are all examples of activities that tend to elevate volume relative to open interest. By contrast, holding long term positions in long term contracts

clearance and settlement services and that the allocation method for each clearing fund is distinct), available at <http://www.cmegroup.com/clearing/files/financialsafeguards.pdf>.

⁵ See National Securities Clearing Corporation Rules and Procedures, (September 4, 2012) Procedure XV. Clearing Fund Formula and Other Matters (providing that allocation of the clearing fund contributions for National Securities Clearing Corporation participants involves risk-based charges that include, but are not limited to, (1) Value-at-Risk to determine the potential future exposure of a given portfolio based on historical price movements; (2) mark-to-market to measure unrealized profit or loss of unsettled securities positions; (3) a fail charge to account for transactions that do not settle; and (4) other special charges to address any volatility or lack of liquidity in a security), available at http://www.dtcc.com/legal/rules_proc/nscc_rules.pdf.

is an example of activity that would lower a clearing member's volume relative to its open interest.

Most Clearing Member Groups⁶ will experience a material change (i.e., an increase or decrease of 10% or greater in the dollar amount of a Clearing Member Group's aggregated Clearing Fund requirement) under the new formula. The majority of the Clearing Member Groups experiencing a material change increase in Clearing Fund requirements are smaller single firms with lower initial Clearing Fund requirements. Small firms tend to experience an increase under the new allocation formula for two reasons. First, smaller firms often have portfolios lacking the diversification that lowers the risk compared with open interest for larger firms. Second, firms that have a small fraction of combined open interest, risk and volume, experience increases simply due to the fact that the new formula adds a clearing fund share on top of the \$150,000 minimum as opposed to instead of it. To allow firms that would face a substantial increase in their clearing fund requirements adequate time to prepare for the proposed changes, OCC would provide all clearing members significant lead time before implementing the new formula and would also use an incremental approach to implementation that would phase in the percentage weightings applicable to each component. OCC believes that this approach would provide clearing members with an important opportunity to secure any additional funds that they anticipate would be necessary in connection with the requirements of the new formula or to otherwise modify their activities, for instance by reducing positions, to manage the impact of the new formula.

The Clearing Fund requirements under the new allocation formula will be communicated to the clearing membership prior to the time they become effective to allow clearing members to

⁶ The term "Clearing Member Group" is defined in OCC's By-Laws as a Clearing Member and any Member Affiliates of such Clearing Member.

review and prepare for any changes they may experience in their specific Clearing Fund contribution amount. OCC will contact those clearing members that will be negatively impacted in a material manner (i.e., an increase of 10% or greater in the dollar amount of a Clearing Member Group's aggregate Clearing Fund requirement) to confirm such clearing members have reviewed the pro forma Clearing Fund requirement numbers and they are ready to meet the new requirement upon implementation. OCC will then begin a two stage phase in process for the new Clearing Fund requirements. The first stage of implementation will occur within 180 calendar days from the date that OCC provides notice to clearing members of its intent to implement the new formula. At that stage, open interest, total risk charge, and volume would be applied in the formula with weightings of 75%, 17.5%, and 7.5%, respectively. The second stage of implementation and the final weightings of 50%, 35%, and 15% would then be implemented within 360 days from the same date of the original notice to clearing members concerning implementation of the new formula.

The proposed rule change would also create a defined term, "Futures-Only Affiliated Clearing Member," to refer to a clearing member that is admitted solely for the purpose of clearing transactions in security futures, commodity futures, and/or futures options.⁷ While the definition is new, there would be no substantive change to Section 2 of Article VIII, under which, if such a clearing member is a member affiliate of an earlier-admitted clearing member, the clearing member's initial clearing fund contribution may be fixed by the Board as an amount

⁷ Article VIII, Section 2 actually refers also to "commodity options," but options directly on an underlying commodity—as opposed to options on futures—are now included in Section 1a(47) of the Commodity Exchange Act to fall within the definition of a "swap." 7 U.S.C. 1a(47). Since OCC does not currently have rules for the clearing of swaps, the reference to commodity options is being omitted from the new definition.

that excludes the minimum clearing fund component of \$150,000, so long as the earlier-admitted clearing member already satisfies that requirement.

* * *

OCC believes that the proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934 (“Act”)⁸ and the rules and regulations thereunder because the proposed modifications would help ensure that the Rules of OCC “provide for the equitable allocation of reasonable dues, fees, and other charges among its participants”⁹ and thereby promotes prompt and accurate clearance and settlement¹⁰ by enhancing the clearing fund allocation methodology to continue to account for open interest but also to additionally use risk charges and volume to account for other exposures to OCC that result from clearing member activities.

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

OCC does not believe that the proposed rule change would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 have been received.

Item 6. Extension of Time Period for Commission Action

OCC does not consent to an extension of the time period specified in Section 19(b)(2) of the Act.

⁸ 15 U.S.C. 78q-1.

⁹ 15 U.S.C. 78q-1(b)(3)(D).

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

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 for 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. 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 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 1A

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-[Leave Blank]; File No. SR-OCC-2013-02)

February 19, 2013

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change to Implement a Revised Method of Calculating Clearing Members' Respective Contributions to OCC's Clearing Fund.

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 February 19, 2013, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

OCC proposes to implement a revised method of calculating clearing members' respective contributions to OCC's clearing fund.

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

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The purpose of this proposed rule change is to revise OCC's By-Laws and Rules to implement a revised method of calculating clearing members' respective contributions to OCC's clearing fund. Currently, clearing members contribute to the clearing fund in proportion to average daily open interest, *i.e.*, the total number of cleared contracts and open positions plus units of stock underlying open stock loan or borrow positions, over the calendar month preceding the date of calculation, subject to a \$150,000 minimum contribution. There are exceptions for a small number of Execution-Only Clearing Members, which are required to make a minimum contribution equal to \$150,000 plus the product of \$15 per contract multiplied by the average daily volume of the Execution-Only Clearing Member over the previous calendar month, and for newly-admitted Clearing Members, whose initial contribution is fixed by OCC's Board of Directors.

OCC has developed a new allocation formula that it believes would more equitably allocate contributions among its clearing members based on each clearing member's particular activities and use of OCC's facilities. The revised formula includes the following components: (1) open interest; (2) total risk charge; and (3) volume.³ The total risk charge and volume components would be new components of the allocation formula. As the Securities and Exchange Commission recently noted in publishing its final rules for Clearing Agency Standards, "registered clearing agencies must evaluate continually and make appropriate updates and improvements to their operations and risk management practices. . ."⁴ OCC believes that

³ Because Execution-Only Clearing Members do not clear their own trades, the measure of volume applicable to them would be executed volume rather than cleared volume.

⁴ Securities Exchange Act Release No. 34-68080 (October 22, 2012).

these proposed enhancements to its existing clearing fund allocation formula are consistent with this notion of continual evaluation and refinement.

The Announcement of Standards for the Registration of Clearing Agencies issued by the staff of the Securities and Exchange Commission supports the idea that clearing members' use of the services of a clearing agency forms an appropriate basis on which clearing members should correspondingly be required to participate in the obligations of the clearing agency's risk management framework.⁵ Use of a clearing agency by its clearing members may be measured in a number of ways.

OCC believes that its proposed allocation formula is preferable to the current formula because, by incorporating measurements of volume and certain risk charges, it would apportion contributions based on more sophisticated measurements of clearing members' usage of OCC's facilities. Clearing member volume and risk charges would recognize demands on OCC's services and facilities that are not captured by open interest alone. The new formula would incorporate open interest, total risk charge, and volume, in proportions that are designed to equitably allocate clearing fund requirements in light of these additional demands. Specifically, open interest, total risk charge, and volume would have weightings of 50%, 35%, and 15%, respectively. OCC contemplated alternative weightings in its decision to propose this particular allocation method but believes that the proposed formula is appropriate because it would give significant weight to the new volume and risk charge components and tie allocations more closely to demands placed by clearing members on OCC's facilities. While the revised formula

⁵ Securities Exchange Act Release No. 16900 (June 17, 1980); 45 FR 41920 (June 23, 1980) (providing in pertinent part that "all participants utilizing similar clearing agency services . . . should be required to comply fully with the clearing agency's internal financial and operational rules such as clearing fund deposits, mark-to-the-market payments and margin deposits related to the service used").

would result in significant reallocations of contributions, OCC does not expect that it would unduly burden those clearing members anticipated to experience increased contributions.

OCC believes it is appropriate for open interest to continue to serve as the dominant component because open interest, generally speaking, is a measure of a clearing member's overall usage of OCC's facilities. With respect to open interest, the definition of open interest in proposed Rule 1001(d) is not identical to the definition of open interest in existing Rule 1001(b), which OCC proposes to delete. However, the differences in these two definitions are not material and are the result of the use of the defined term "cleared contract" in proposed Rule 1001(d) instead of specifically naming the individual types of contracts that make up "cleared contracts," as well as general updating and restructuring of the rule provision. OCC also believes that risk and volume are relevant factors because they distinctly measure material aspects of clearance and settlement activity and therefore a clearing member's use of OCC's resources. Each clearing member's contribution to the clearing fund should therefore take these measures of usage of OCC's facilities into account. Clearing members whose OCC accounts contain positions that are well-diversified and/or exhibit relatively little exposure to overall market direction would likely have a smaller required contribution under the proposed formula. Clearing members exhibiting a relatively large exposure to market direction, a concentration in contracts that individually present high amounts of risk, and undiversified accounts would generally experience a larger required contribution than is the case under the current formula.

The inclusion of risk and volume metrics within OCC's clearing fund allocation formula would generally reflect similar practices that are already in place at other registered clearing agencies. These existing allocation practices of other clearing agencies represent a meaningful benchmark of practices that are used across the industry. Taking those practices into account,

OCC evaluated the appropriateness of including these mechanisms in its own allocation formula in a way that is tailored to the nature and demands of OCC's particular business. OCC understands that one clearing agency allocates contributions among its affected clearing members using certain measures of volume and open interest in addition to considering margin requirements over a given period.⁶ The rules of another clearing agency provide that clearing member contributions to its clearing fund are determined according to a wide variety of risk-based charges meant to account for the ways in which clearing members utilize its services.⁷

OCC's proposed total risk charge is intended to measure the economic significance of the activities of a clearing member. The total risk charge is equal to the margin requirement, as determined by OCC, of the accounts of the clearing member exclusive of the net asset value of those accounts. A range of factors influence the relationship between the open interest in a clearing member's account and its associated risk charge. For example, for each clearing member these factors include, but are not limited to, the types of positions, number of long positions versus short positions, value of the securities underlying the contracts, volatility of the

⁶ See CME Clearing Financial Safeguards, (2012) (explaining that CME Group maintains three separate clearing funds that correspond to the different asset classes for which it provides clearance and settlement services and that the allocation method for each clearing fund is distinct), available at <http://www.cmegroup.com/clearing/files/financialsafeguards.pdf>.

⁷ See National Securities Clearing Corporation Rules and Procedures, (September 4, 2012) Procedure XV. Clearing Fund Formula and Other Matters (providing that allocation of the clearing fund contributions for National Securities Clearing Corporation participants involves risk-based charges that include, but are not limited to, (1) Value-at-Risk to determine the potential future exposure of a given portfolio based on historical price movements; (2) mark-to-market to measure unrealized profit or loss of unsettled securities positions; (3) a fail charge to account for transactions that do not settle; and (4) other special charges to address any volatility or lack of liquidity in a security), available at http://www.dtcc.com/legal/rules_proc/nscc_rules.pdf.

underlying, diversification, number of accounts of the clearing member, and the extent to which the clearing member's options positions are in-the-money or out-of-the-money.

Volume, like open interest, is a measure of a clearing member's level of usage of OCC's facilities. However, volume is distinct from open interest in that it is a function of the average turnover of the positions in the clearing member's account. Therefore, market-making, high frequency trading, and execution-only services are all examples of activities that tend to elevate volume relative to open interest. By contrast, holding long term positions in long term contracts is an example of activity that would lower a clearing member's volume relative to its open interest.

Most Clearing Member Groups⁸ will experience a material change (i.e., an increase or decrease of 10% or greater in the dollar amount of a Clearing Member Group's aggregated Clearing Fund requirement) under the new formula. The majority of the Clearing Member Groups experiencing a material change increase in Clearing Fund requirements are smaller single firms with lower initial Clearing Fund requirements. Small firms tend to experience an increase under the new allocation formula for two reasons. First, smaller firms often have portfolios lacking the diversification that lowers the risk compared with open interest for larger firms. Second, firms that have a small fraction of combined open interest, risk and volume, experience increases simply due to the fact that the new formula adds a clearing fund share on top of the \$150,000 minimum as opposed to instead of it. To allow firms that would face a substantial increase in their clearing fund requirements adequate time to prepare for the proposed changes, OCC would provide all clearing members significant lead time before implementing the new

⁸ The term "Clearing Member Group" is defined in OCC's By-Laws as a Clearing Member and any Member Affiliates of such Clearing Member.

formula and would also use an incremental approach to implementation that would phase in the percentage weightings applicable to each component. OCC believes that this approach would provide clearing members with an important opportunity to secure any additional funds that they anticipate would be necessary in connection with the requirements of the new formula or to otherwise modify their activities, for instance by reducing positions, to manage the impact of the new formula.

The Clearing Fund requirements under the new allocation formula will be communicated to the clearing membership prior to the time they become effective to allow clearing members to review and prepare for any changes they may experience in their specific Clearing Fund contribution amount. OCC will contact those clearing members that will be negatively impacted in a material manner (i.e., an increase of 10% or greater in the dollar amount of a Clearing Member Group's aggregate Clearing Fund requirement) to confirm such clearing members have reviewed the pro forma Clearing Fund requirement numbers and they are ready to meet the new requirement upon implementation. OCC will then begin a two stage phase in process for the new Clearing Fund requirements. The first stage of implementation will occur within 180 calendar days from the date that OCC provides notice to clearing members of its intent to implement the new formula. At that stage, open interest, total risk charge, and volume would be applied in the formula with weightings of 75%, 17.5%, and 7.5%, respectively. The second stage of implementation and the final weightings of 50%, 35%, and 15% would then be implemented within 360 days from the same date of the original notice to clearing members concerning implementation of the new formula.

The proposed rule change would also create a defined term, "Futures-Only Affiliated Clearing Member," to refer to a clearing member that is admitted solely for the purpose of

clearing transactions in security futures, commodity futures, and/or futures options.⁹ While the definition is new, there would be no substantive change to Section 2 of Article VIII, under which, if such a clearing member is a member affiliate of an earlier-admitted clearing member, the clearing member's initial clearing fund contribution may be fixed by the Board as an amount that excludes the minimum clearing fund component of \$150,000, so long as the earlier-admitted clearing member already satisfies that requirement.

OCC believes that the proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934 ("Act")¹⁰ and the rules and regulations thereunder because the proposed modifications would help ensure that the Rules of OCC "provide for the equitable allocation of reasonable dues, fees, and other charges among its participants"¹¹ and thereby promotes prompt and accurate clearance and settlement¹² by enhancing the clearing fund allocation methodology to continue to account for open interest but also to additionally use risk charges and volume to account for other exposures to OCC that result from clearing member activities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁹ Article VIII, Section 2 actually refers also to "commodity options," but options directly on an underlying commodity—as opposed to options on futures—are now included in Section 1a(47) of the Commodity Exchange Act to fall within the definition of a "swap." 7 U.S.C. 1a(47). Since OCC does not currently have rules for the clearing of swaps, the reference to commodity options is being omitted from the new definition.

¹⁰ 15 U.S.C. 78q-1.

¹¹ 15 U.S.C. 78q-1(b)(3)(D).

¹² 15 U.S.C. 78q-1(b)(3)(F).

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

Written comments on the proposed rule change 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-2013-02 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2013-02. 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 Section, 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/about/publications/bylaws.jsp>.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-OCC-2013-02 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.¹³

¹³ 17 CFR 200.30-3(a)(12).

Kevin M. O'Neill
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: _____