



March 15, 2012

VIA ELECTRONIC MAIL

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

Re: Rule Filing SR-OCC-2012-03 Rule Certification

Dear Secretary Stawick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and Commodity Futures Trading Commission Regulation (“CFTC”) 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 April 13, 2012. This rule filing has been, or is concurrently being, submitted to the Securities and Exchange Commission (the “SEC”) under the Securities Exchange Act of 1934 (the “Exchange Act”). The text of the rule is set forth at Item 1 of the enclosed filing.

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 more closely align OCC’s By-Laws and Rules with applicable regulatory requirements related to “statutory disqualifications” under the Exchange Act in order to reduce the overall administrative burden on OCC associated with addressing the statutory disqualification of OCC clearing members (“Clearing Members”) and applicants for clearing membership (“Applicants”) while giving guidance to Clearing Members and Applicants as to OCC’s policies with respect to statutory disqualifications. OCC is also proposing to amend its Fitness Standards to bring such standards into conformity with the proposed amendments to OCC’s By-Laws. The Fitness Standards were submitted to the SEC in SR-OCC-2011-12 and approved by the SEC on October 27, 2011.¹

¹ See Release No. 34-65648 (Oct. 27, 2011).

Background

Persons who have engaged in certain types of misconduct are subject to “statutory disqualification,” as defined by Section 3(a)(39) of the Exchange Act, and must undergo a review by the SEC under Exchange Act Rule 19h-1 in order to enter or continue in membership in a self-regulatory organization (“SRO”). Section 17A(b)(4)(A) of the Exchange Act provides that a registered clearing agency may, and in cases in which the SEC so orders, must, deny participation to any person subject to a statutory disqualification. This provision further requires a registered clearing agency to provide the SEC with 30-days’ notice before admitting a statutorily disqualified person to clearing membership. SEC Rule 19h-1 implements these statutory provisions by requiring notice to the SEC if a registered clearing agency proposes either to admit to membership or continue as a member a person subject to a statutory disqualification. Notably, unlike in the case of a national securities exchange or registered securities association, the rule does not require a registered clearing agency to file such a notice with respect to statutory disqualifications of *associated persons* of a Member or Applicant, but only when the Member or Applicant itself is subject to the disqualification. [Emphasis added]

Article V of OCC’s By-Laws establishes the qualifications required of Clearing Members and sets forth the procedures for admitting persons to clearing membership, including those that are or become subject to a statutory disqualification. Currently, Interpretation and Policy .03 of Article V, Section 1 of OCC’s By-Laws provides that the Membership/Risk Committee (the “Committee”) will not recommend the approval of an application for membership if the Applicant or an associated person is subject to a statutory disqualification, unless the Committee makes a finding that “special circumstances” exist warranting a waiver of the statutory disqualification. The requirements of this By-Law are more stringent than those applied to registered clearing agencies by the Exchange Act or SEC rules because they require the Committee to (i) make specific findings of “special circumstances” before recommending membership approval and (ii) address statutory disqualifications of associated persons. The By-Laws therefore impose additional administrative burdens on the Committee that are not required under any statute or rule administered by the SEC.

Neither Article V of the By-Laws nor OCC’s Rules currently contain procedures for notice to OCC that an Applicant or Member is subject to a statutory disqualification, providing insufficient guidance to Applicants and Clearing Members and exposing OCC to the risk that such notice may be given on a delayed basis. OCC’s By-Laws and Rules are also silent as to the procedures to be followed when a Clearing Member becomes subject to a statutory disqualification, though Rule 19h-1 requires a registered clearing agency to file a notice if it intends to permit such a firm to remain a Clearing Member.

As a registered derivatives clearing organization (“DCO”), OCC is also subject to the jurisdiction of the CFTC, and OCC’s By-Laws also address statutory disqualification

under Section 8a(2)-(4) of the Commodity Exchange Act (the “CEA”), which allows the CFTC to refuse to register, or suspend the registration of, futures commission merchants and other entities required to register under the CEA. Neither the CEA nor the CFTC’s regulations require DCOs to file a notice similar to that required by Rule 19h-1, and OCC therefore is not proposing to amend Article V or the Rules to specifically address statutory disqualifications under the CEA other than to clarify that, if a principal of a futures commission merchant is subject to a statutory disqualification, the Membership/Risk Committee has discretion to not recommend the approval of such futures commission merchants’ application for membership pursuant to Section 8a(2) of the CEA or to determine not to permit such a futures commission merchant to continue in Clearing Membership.

In addition to being consistent with the SEC’s regulations, OCC’s Fitness Standards, as described above, were constructed in part to comply with core principles (“Core Principles”) applicable to DCOs as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act and set forth in the CEA. The Fitness Standards establish certain minimum fitness criteria for directors, Clearing Members and their affiliates sufficient to comply with Core Principle O as set forth in the CEA.² However, the Fitness Standards were also drafted to conform to OCC’s existing qualification standards for Clearing Members — standards that OCC is now proposing to revise. Accordingly, OCC proposes to amend the Fitness Standards to conform them to the proposed amendments to OCC’s By-Laws.

Proposed By-Law Changes

Article V (Clearing Members) sets forth the qualifications for Clearing Members. OCC proposes to amend the current Article V provisions addressing statutory disqualifications to eliminate provisions that require unnecessary Committee action and to add provisions designed to ensure that OCC receives appropriate notice of a statutory disqualification in order to discharge its obligations as an SRO. The proposed amendments are generally based on similar rules of the National Securities Clearing Corporation and the Chicago Board Options Exchange. OCC proposes to amend Article V, Section 1, Interpretation and Policy .03 (Experience and Competence) to:

- Eliminate the requirement that the Committee must find “special circumstances” warranting the waiver of a statutory disqualification in order to recommend an Applicant’s approval for clearing membership, providing instead that the Committee may, in its discretion, consider a statutory disqualification in determining whether or not to recommend approval.
- Eliminate the requirement that the Committee address the status of associated persons who are subject to statutory disqualifications.
- Establish procedures requiring Clearing Members and Applicants to provide notice of a statutory disqualification.

² Commodity Exchange Act § 5b(c)(2)(O); 7 U.S.C § 7a-1(c)(2)(O).

- Eliminate the second paragraph of subsection c. The definition of statutory disqualification in subsection a. includes the conduct covered by Exchange Act Section 15(b)(4)(B), making the second paragraph of subsection c. redundant.

OCC proposes to amend Chapter II and Chapter XII of its Rules to:

- Establish procedures applicable to Clearing Members who are or become subject to a statutory disqualification to provide that: (i) OCC has the discretion not to permit any such Clearing Member to continue in Clearing Membership, (ii) such Clearing Member must notify OCC of any statutory disqualification and may seek to continue in Clearing Membership, (iii) a failure to notify OCC of a statutory disqualification may be deemed a violation of OCC's rules, (iv) OCC may convene a Disciplinary Committee to conduct a hearing concerning a Clearing Member's statutory disqualification, (v) OCC has discretion to waive such provisions if another self-regulatory organization is conducting a proceeding addressing a Clearing Member's statutory disqualification with respect to the same matter, and (vi) OCC has discretion to waive the hearing provisions if OCC intends to grant the Clearing Member's application to continue in Clearing Membership in certain circumstances.
- Add Interpretation and Policy .01 to Rule 1201 in order to clarify that a decision to suspend or expel a Clearing Member after a disciplinary proceeding under Chapter XII of the Rules would be grounds for summary suspension under Chapter XI of the Rules.

OCC also proposes to amend its Fitness Standards (see Exhibit 5 hereto) to conform them to the proposed amendments to OCC's By-Laws.

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.

David Stawick
March 15, 2012
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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 "Stephen Szarmack". The signature is written in a cursive style with a large, stylized initial 'S'.

Stephen Szarmack

Enclosure

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

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 its By-Laws and Rules applicable to Clearing Members and applicants for clearing membership that are subject to a “statutory disqualification” under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) in order to (i) more closely align OCC’s By-Laws with applicable regulatory requirements and (ii) establish standard notification and other procedures. In addition, OCC is proposing to amend its Fitness Standards for Directors, Clearing Members and Others (the “Fitness Standards”) to bring such standards into conformity with the proposed amendments to OCC’s By-Laws. A copy of OCC’s proposed amendments to the Fitness Standards is attached hereto as Exhibit 5. Material proposed to be added to OCC’s By-Laws and Rules as currently in effect is underlined and material proposed to be deleted is enclosed in bold brackets.

THE OPTIONS CLEARING CORPORATION

BY-LAWS

* * *

ARTICLE V

Clearing Members

* * *

Qualifications

SECTION 1. [no change]

... **Interpretations and Policies:**

.01–.02 [no change]

.03 Experience and Competence

The Membership/Risk Committee [will not] has discretion not to recommend, and will not recommend if so ordered by the SEC, the approval of any application for clearing membership if:

a. the applicant [or any person associated with the applicant] is subject to a "statutory disqualification," as defined in Section 3 of the Securities Exchange Act of 1934, as amended, or, in the case of an applicant [primarily] regulated as a futures commission merchant, the applicant [or any person associated with the applicant] or a principal of the applicant, as defined in Section 8a(2) of the Commodity Exchange Act, is subject to statutory disqualification under Section 8a(2)-(4) of the Commodity Exchange Act, or, in the case of a Non-U.S. Securities Firm, any similar provision of the laws or regulations applicable to such Non-U.S. Securities Firm [, and the Membership/Risk Committee finds that there are no special circumstances warranting the waiver of such disqualification with respect to such applicant];

b. [no change]

c. the applicant lacks substantial experience in clearing the kind(s) of cleared contracts that the applicant proposes to clear or related kinds of transactions (e.g., stock transactions where the applicant proposes to clear physically-settled options or futures on individual stocks or futures transactions where the applicant proposes to clear futures options), and has failed, in the opinion of the Membership/Risk Committee, to employ back-office personnel with sufficient experience to compensate for the applicant's lack of such experience.

[An applicant or associated person convicted of a felony or misdemeanor within ten years prior to the filing of an application for clearing membership shall be deemed subject to a statutory disqualification, within the meaning of clause (a) above, if the Membership/Risk Committee finds that the felony or misdemeanor was of a type specified in clause (i), (ii), or (iv) of Section 15(b)(4)(B) of the Securities Exchange Act of 1934, as amended.]

The terms "associated person" and "person associated with an applicant" as used in these Interpretations and Policies means any partner, officer, director, or branch manager of such applicant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such applicant, or any employee of such applicant.

In respect of clause (a) above, the applicant must notify the Corporation in writing if the applicant is or becomes subject to a statutory disqualification as soon as practicable upon learning of such statutory disqualification and in any event within 5 business days. The applicant must provide the Corporation with any information and forms, including amendments thereto, related to the statutory disqualification provided to the SEC, the CFTC or any self-regulatory organization, including, as applicable, any amended Form

BD, Financial Industry Regulatory Authority ("FINRA") Form MC-400A, and any written response to a National Futures Association ("NFA") Rule 504 Notice of Intent or other written request for relief addressed to a self-regulatory organization. Applicants that are not members of NFA or FINRA must provide to the Membership/Risk Committee, at a minimum, the information required by FINRA Form MC-400 in addition to any forms or written responses filed with any self-regulatory organization or regulatory agency with respect to a statutory disqualification or similar provision of the laws or regulations applicable to such applicant. If an applicant fails to provide the notice required by this paragraph, the Membership/Risk Committee has discretion not to recommend the approval of such applicant's application for clearing membership.

[no change to remainder of clause c.]

.04-.10 [no change]

* * *

Admission Procedure

SECTION 2. Applications for clearing membership shall be in such form and contain such information as the Board of Directors shall from time to time prescribe. The Membership/Risk Committee shall review applications for clearing membership and shall recommend, approval or disapproval to the Board of Directors. The Membership/Risk Committee or the Board of Directors, or their designated delegates or agents, may examine the books and papers of any applicant, take such evidence as they may deem necessary or employ such other means as they may deem desirable or appropriate to ascertain relevant facts bearing upon the applicant's qualifications. If the Membership/Risk Committee proposes to recommend to the Board of Directors that an application for clearing membership be disapproved, it shall first furnish the applicant with a written statement of its proposed recommendation and the specific grounds therefor, and afford the applicant an opportunity to be heard and to present evidence on its own behalf. If the applicant fails to request a hearing within such reasonable time as the Membership/Risk Committee may prescribe; or if, after a hearing, the Membership/Risk Committee still proposes to recommend disapproval, the Membership/Risk Committee shall make its recommendation to the Board of Directors in writing, accompanied by a statement of the specific grounds therefor, and a copy thereof shall be furnished to the applicant on request. The Board of Directors shall independently review any recommendation by the Committee, and may, in its discretion, if the applicant so requests, afford the applicant a further opportunity to be heard and to present evidence. If the Board of Directors disapproves the application, written notice of its decision, accompanied by a statement of the specific grounds therefor, shall be mailed or delivered to the applicant. An applicant shall have right to present such evidence as it may deem relevant to its application. A verbatim record shall be kept of any hearing held pursuant hereto.

[If the Membership/Risk Committee proposes to recommend disapproval of an application for clearing membership because a person associated with the applicant is subject to a statutory disqualification, the associated person shall be entitled to the same notice and opportunity for hearing as the applicant.]

* * *

RULES

* * *

CHAPTER II

Miscellaneous Requirements

* * *

Clearing Members Who Are or Become Subject to a Statutory Disqualification

RULE 217. (a) In the event a Clearing Member is or becomes subject to a statutory disqualification (as defined in the Interpretations and Policies under Article V, Section 1 of the By-Laws), and in the case of a Clearing Member that is registered with the CFTC as a futures commission merchant, if a principal of the Clearing Member is or becomes subject to statutory disqualification under Section 8a(2)-(4) of the Commodity Exchange Act, the Corporation may determine not to permit, and will not permit if so ordered by the SEC, such Clearing Member to continue in Clearing Membership subject to the provisions of this Rule.

(b) A Clearing Member that is or becomes subject to a statutory disqualification shall promptly (i) notify the Corporation in writing as soon as practicable upon learning of such statutory disqualification and in any event within 5 business days thereafter, (ii) accompany such notification with a statement of whether or not the Clearing Member is seeking to continue being a Clearing Member notwithstanding the statutory disqualification, and (iii) further accompany such notification with copies of all documents that are contained in the record of any proceeding that resulted in the statutory disqualification as well as any information and forms, including amendments thereto, related to the statutory disqualification provided to the SEC, the CFTC or any self-regulatory organization, including, as applicable, any amended Form BD, Financial Industry Regulatory Authority ("FINRA") Form MC-400A, any written response to a National Futures Association ("NFA") Rule 504 Notice of Intent or other written request for relief addressed to such self-regulatory organization. Clearing Members that are not members of FINRA or NFA must provide the Corporation with, at a minimum, the information contained in FINRA Form MC-400A in addition to any forms filed with any self-regulatory organization or regulatory agency with respect to a statutory disqualification or similar provision of the laws or regulations applicable to such applicant.

(c) Any failure to provide the notice and supporting documentation required by paragraph (b) of this Rule may be deemed a violation of the Corporation's Rules and subject a Clearing Member to Disciplinary Proceedings as provided for in Chapter XII of the Rules. Following the receipt of such notification, or in the event the Corporation becomes aware that a Clearing Member is subject to a statutory disqualification and has failed to submit a notification pursuant to paragraph (b) of this Rule within the required time period, the Corporation may convene a Disciplinary Committee to conduct a hearing or institute a disciplinary proceeding concerning the matter pursuant to Chapter XII of the Rules.

(d) Any Clearing Member which is the subject of a Chapter XII disciplinary proceeding under this Rule shall promptly submit any information requested by the Corporation in connection with such proceeding.

(e) No determination to discontinue or condition Clearing Membership shall take effect until the review procedures under Chapter XII of the Rules have been exhausted or the time for review has expired.

(f) The Corporation may waive all or certain of the provisions of this Rule when a proceeding is pending before another self-regulatory organization to determine whether to permit a Clearing Member to continue in Clearing Membership notwithstanding a statutory disqualification. The Corporation shall determine whether it will concur in any Exchange Act Rule 19h-1 filing made by another self-regulatory organization with respect to the Clearing Member.

(g) The Corporation also may waive the hearing provisions hereof with respect to a Clearing Member if the Corporation intends to grant the Clearing Member's application to continue in Clearing Membership and either: (i) there is no requirement under Exchange Act Rule 19h-1(a)(2) or Exchange Act Rule 19h-1(a)(3) that the Corporation make a notice filing with the Commission to permit the Clearing Member to continue in Clearing Membership; or (ii) the Corporation determines that it is otherwise appropriate to waive the hearing provisions under the circumstances.

* * *

CHAPTER XII

Disciplinary Proceedings

* * *

Sanctions

RULE 1201. [no change]

... Interpretations and Policies:

.01 A decision to suspend or expel a Clearing Member pursuant to this Chapter XII shall constitute a suspension or expulsion from a self-regulatory organization and therefore be grounds for summary suspension under Rule 1102.

* * *

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 September 27, 2011.

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 more closely align OCC's By-Laws and Rules with applicable regulatory requirements related to "statutory disqualifications" under the Exchange Act in order to reduce the overall administrative burden on OCC associated with addressing the statutory disqualification of OCC clearing members ("Clearing Members") and applicants for clearing membership ("Applicants") while giving guidance to Clearing Members and Applicants as to OCC's policies with respect to statutory disqualifications. OCC is also proposing to amend its Fitness Standards to bring such standards into conformity with the proposed amendments to OCC's By-Laws. The Fitness Standards were submitted to the Commission in SR-OCC-2011-12 and approved by the Commission on October 27, 2011.¹

¹ See Release No. 34-65648 (Oct. 27, 2011).

Background

Persons who have engaged in certain types of misconduct are subject to “statutory disqualification,” as defined by Section 3(a)(39) of the Exchange Act, and must undergo a review by the Commission under Exchange Act Rule 19h-1 in order to enter or continue in membership in a self-regulatory organization (“SRO”). Section 17A(b)(4)(A) of the Exchange Act provides that a registered clearing agency may, and in cases in which the SEC so orders, must, deny participation to any person subject to a statutory disqualification. This provision further requires a registered clearing agency to provide the SEC with 30-days’ notice before admitting a statutorily disqualified person to clearing membership. Commission Rule 19h-1 implements these statutory provisions by requiring notice to the Commission if a registered clearing agency proposes either to admit to membership or continue as a member a person subject to a statutory disqualification. Notably, unlike in the case of a national securities exchange or registered securities association, the rule does not require a registered clearing agency to file such a notice with respect to statutory disqualifications of *associated persons* of a Member or Applicant, but only when the Member or Applicant itself is subject to the disqualification. [Emphasis added]

Article V of OCC’s By-Laws establishes the qualifications required of Clearing Members and sets forth the procedures for admitting persons to clearing membership, including those that are or become subject to a statutory disqualification. Currently, Interpretation and Policy .03 of Article V, Section 1 of OCC’s By-Laws provides that the Membership/Risk Committee (the “Committee”) will not recommend the approval of an application for membership if the Applicant or an associated person is subject to a statutory disqualification, unless the Committee makes a finding that “special circumstances” exist warranting a waiver of the statutory

disqualification. The requirements of this By-Law are more stringent than those applied to registered clearing agencies by the Exchange Act or Commission rules because they require the Committee to (i) make specific findings of “special circumstances” before recommending membership approval and (ii) address statutory disqualifications of associated persons. The By-Laws therefore impose additional administrative burdens on the Committee that are not required under any statute or rule administered by the Commission.

Neither Article V of the By-Laws nor OCC’s Rules currently contain procedures for notice to OCC that an Applicant or Member is subject to a statutory disqualification, providing insufficient guidance to Applicants and Clearing Members and exposing OCC to the risk that such notice may be given on a delayed basis. OCC’s By-Laws and Rules are also silent as to the procedures to be followed when a Clearing Member becomes subject to a statutory disqualification, though Rule 19h-1 requires a registered clearing agency to file a notice if it intends to permit such a firm to remain a Clearing Member.

As a registered derivatives clearing organization (“DCO”), OCC is also subject to the jurisdiction of the Commodity Futures Trading Commission (the “CFTC”), and OCC’s By-Laws also address statutory disqualification under Section 8a(2)-(4) of the Commodity Exchange Act (the “CEA”), which allows the CFTC to refuse to register, or suspend the registration of, futures commission merchants and other entities required to register under the CEA. Neither the CEA nor the CFTC’s regulations require DCOs to file a notice similar to that required by Rule 19h-1, and OCC therefore is not proposing to amend Article V or the Rules to specifically address statutory disqualifications under the CEA other than to clarify that, if a principal of a futures commission merchant is subject to a statutory disqualification, the Membership/Risk Committee has discretion to not recommend the approval of such futures commission merchant’s application

for membership pursuant to Section 8a(2) of the CEA or to determine not to permit such a futures commission merchant to continue in Clearing Membership.

In addition to being consistent with the Commission's regulations, OCC's Fitness Standards, as described above, were constructed in part to comply with core principles ("Core Principles") applicable to DCOs as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act and set forth in the CEA. The Fitness Standards establish certain minimum fitness criteria for directors, Clearing Members and their affiliates sufficient to comply with Core Principle O as set forth in the CEA.² However, the Fitness Standards were also drafted to conform to OCC's existing qualification standards for Clearing Members — standards that OCC is now proposing to revise. Accordingly, OCC proposes to amend the Fitness Standards to conform them to the proposed amendments to OCC's By-Laws.

Proposed By-Law Changes

Article V (Clearing Members) sets forth the qualifications for Clearing Members. OCC proposes to amend the current Article V provisions addressing statutory disqualifications to eliminate provisions that require unnecessary Committee action and to add provisions designed to ensure that OCC receives appropriate notice of a statutory disqualification in order to discharge its obligations as an SRO. The proposed amendments are generally based on similar rules of the National Securities Clearing Corporation and the Chicago Board Options Exchange. OCC proposes to amend Article V, Section 1, Interpretation and Policy .03 (Experience and Competence) to:

² Commodity Exchange Act § 5b(c)(2)(O); 7 U.S.C § 7a-1(c)(2)(O).

- Eliminate the requirement that the Committee must find “special circumstances” warranting the waiver of a statutory disqualification in order to recommend an Applicant’s approval for clearing membership, providing instead that the Committee may, in its discretion, consider a statutory disqualification in determining whether or not to recommend approval.
- Eliminate the requirement that the Committee address the status of associated persons who are subject to statutory disqualifications.
- Establish procedures requiring Clearing Members and Applicants to provide notice of a statutory disqualification.
- Eliminate the second paragraph of subsection c. The definition of statutory disqualification in subsection a. includes the conduct covered by Exchange Act Section 15(b)(4)(B), making the second paragraph of subsection c. redundant.

OCC proposes to amend Chapter II and Chapter XII of its Rules to:

- Establish procedures applicable to Clearing Members who are or become subject to a statutory disqualification to provide that: (i) OCC has the discretion not to permit any such Clearing Member to continue in Clearing Membership, (ii) such Clearing Member must notify OCC of any statutory disqualification and may seek to continue in Clearing Membership, (iii) a failure to notify OCC of a statutory disqualification may be deemed a violation of OCC’s rules, (iv) OCC may convene a Disciplinary Committee to conduct a hearing concerning a Clearing Member’s statutory disqualification, (v) OCC has discretion to waive such

provisions if another self-regulatory organization is conducting a proceeding addressing a Clearing Member's statutory disqualification with respect to the same matter, and (vi) OCC has discretion to waive the hearing provisions if OCC intends to grant the Clearing Member's application to continue in Clearing Membership in certain circumstances.

- Add Interpretation and Policy .01 to Rule 1201 in order to clarify that a decision to suspend or expel a Clearing Member after a disciplinary proceeding under Chapter XII of the Rules would be grounds for summary suspension under Chapter XI of the Rules.

OCC also proposes to amend its Fitness Standards (see Exhibit 5 hereto) to conform them to the proposed amendments to OCC's By-Laws.

* * *

The proposed changes to OCC's By-Laws are consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), because they are designed to more closely align OCC's By-Laws and Rules with applicable regulatory requirements, establish standard notification and other procedures, provide Clearing Members with guidance as to OCC's policies regarding statutory disqualifications, facilitate the timely filing of notices pursuant to Rule 19h-1 should OCC determine to admit to membership or continue in membership any person subject to a statutory disqualification and are not designed to permit unfair discrimination in the admission of participants or among participants in the use of OCC. The proposed rule change is not inconsistent with any 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 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.

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 generally based on National Securities Clearing Corporation Rules 2.A and 2.B and the Chicago Board Options Exchange Rule 3.18.

Item 9. Exhibits

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

Exhibit 5 Amended Fitness Standards

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

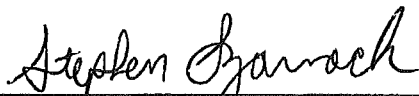
By: 
Stephen Szarmack
Vice President and Associate
General Counsel

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____ ; File No. SR-OCC-2012-03

SELF-REGULATORY ORGANIZATION

Proposed Rule Change By
The Options Clearing Corporation

Relating to Statutory Disqualification
Regulatory Requirements and Fitness Standards

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 _____, 2012, 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 closely align OCC's By-Laws and Rules with applicable regulatory requirements related to "statutory disqualifications" under the Exchange Act in order to reduce the overall administrative burden on OCC associated with addressing the statutory disqualification of OCC clearing members ("Clearing Members") and applicants for clearing

membership (“Applicants”) while giving guidance to Clearing Members and Applicants as to OCC’s policies with respect to statutory disqualifications.

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 this proposed rule change is to more closely align OCC’s By-Laws and Rules with applicable regulatory requirements related to “statutory disqualifications” under the Exchange Act in order to reduce the overall administrative burden on OCC associated with addressing the statutory disqualification of OCC clearing members (“Clearing Members”) and applicants for clearing membership (“Applicants”) while giving guidance to Clearing Members and Applicants as to OCC’s policies with respect to statutory disqualifications. OCC is also proposing to amend its Fitness Standards to bring such standards into conformity with the proposed amendments to OCC’s By-Laws. The Fitness Standards were submitted to the Commission in SR-OCC-2011-12 and approved by the Commission on October 27, 2011.¹

¹ See Release No. 34-65648 (Oct. 27, 2011).

Background

Persons who have engaged in certain types of misconduct are subject to “statutory disqualification,” as defined by Section 3(a)(39) of the Exchange Act, and must undergo a review by the Commission under Exchange Act Rule 19h-1 in order to enter or continue in membership in a self-regulatory organization (“SRO”). Section 17A(b)(4)(A) of the Exchange Act provides that a registered clearing agency may, and in cases in which the SEC so orders, must, deny participation to any person subject to a statutory disqualification. This provision further requires a registered clearing agency to provide the SEC with 30-days’ notice before admitting a statutorily disqualified person to clearing membership. Commission Rule 19h-1 implements these statutory provisions by requiring notice to the Commission if a registered clearing agency proposes either to admit to membership or continue as a member a person subject to a statutory disqualification. Notably, unlike in the case of a national securities exchange or registered securities association, the rule does not require a registered clearing agency to file such a notice with respect to statutory disqualifications of *associated persons* of a Member or Applicant, but only when the Member or Applicant itself is subject to the disqualification. [Emphasis added]

Article V of OCC’s By-Laws establishes the qualifications required of Clearing Members and sets forth the procedures for admitting persons to clearing membership, including those that are or become subject to a statutory disqualification. Currently, Interpretation and Policy .03 of Article V, Section 1 of OCC’s By-Laws provides that the Membership/Risk Committee (the “Committee”) will not recommend the approval of an application for membership if the

Applicant or an associated person is subject to a statutory disqualification, unless the Committee makes a finding that “special circumstances” exist warranting a waiver of the statutory disqualification. The requirements of this By-Law are more stringent than those applied to registered clearing agencies by the Exchange Act or Commission rules because they require the Committee to (i) make specific findings of “special circumstances” before recommending membership approval and (ii) address statutory disqualifications of associated persons. The By-Laws therefore impose additional administrative burdens on the Committee that are not required under any statute or rule administered by the Commission.

Neither Article V of the By-Laws nor OCC’s Rules currently contain procedures for notice to OCC that an Applicant or Member is subject to a statutory disqualification, providing insufficient guidance to Applicants and Clearing Members and exposing OCC to the risk that such notice may be given on a delayed basis. OCC’s By-Laws and Rules are also silent as to the procedures to be followed when a Clearing Member becomes subject to a statutory disqualification, though Rule 19h-1 requires a registered clearing agency to file a notice if it intends to permit such a firm to remain a Clearing Member.

As a registered derivatives clearing organization (“DCO”), OCC is also subject to the jurisdiction of the Commodity Futures Trading Commission (the “CFTC”), and OCC’s By-Laws also address statutory disqualification under Section 8a(2)-(4) of the Commodity Exchange Act (the “CEA”), which allows the CFTC to refuse to register, or suspend the registration of, futures commission merchants and other entities required to register under the CEA. Neither the CEA nor the CFTC’s regulations require DCOs to file a notice similar to that required by Rule 19h-1,

and OCC therefore is not proposing to amend Article V or the Rules to specifically address statutory disqualifications under the CEA other than to clarify that, if a principal of a futures commission merchant is subject to a statutory disqualification, the Membership/Risk Committee has discretion to not recommend the approval of such futures commission merchant's application for membership pursuant to Section 8a(2) of the CEA or to determine not to permit such a futures commission merchant to continue in Clearing Membership.

In addition to being consistent with the Commission's regulations, OCC's Fitness Standards, as described above, were constructed in part to comply with core principles ("Core Principles") applicable to DCOs as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act and set forth in the CEA. The Fitness Standards establish certain minimum fitness criteria for directors, Clearing Members and their affiliates sufficient to comply with Core Principle O as set forth in the CEA.² However, the Fitness Standards were also drafted to conform to OCC's existing qualification standards for Clearing Members — standards that OCC is now proposing to revise. Accordingly, OCC proposes to amend the Fitness Standards to conform them to the proposed amendments to OCC's By-Laws.

Proposed By-Law Changes

Article V (Clearing Members) sets forth the qualifications for Clearing Members. OCC proposes to amend the current Article V provisions addressing statutory disqualifications to eliminate provisions that require unnecessary Committee action and to add provisions designed to ensure that OCC receives appropriate notice of a statutory disqualification in order to

² Commodity Exchange Act § 5b(c)(2)(O); 7 U.S.C § 7a-1(c)(2)(O).

discharge its obligations as an SRO. The proposed amendments are generally based on similar rules of the National Securities Clearing Corporation and the Chicago Board Options Exchange. OCC proposes to amend Article V, Section 1, Interpretation and Policy .03 (Experience and Competence) to:

- Eliminate the requirement that the Committee must find “special circumstances” warranting the waiver of a statutory disqualification in order to recommend an Applicant’s approval for clearing membership, providing instead that the Committee may, in its discretion, consider a statutory disqualification in determining whether or not to recommend approval.
- Eliminate the requirement that the Committee address the status of associated persons who are subject to statutory disqualifications.
- Establish procedures requiring Clearing Members and Applicants to provide notice of a statutory disqualification.
- Eliminate the second paragraph of subsection c. The definition of statutory disqualification in subsection a. includes the conduct covered by Exchange Act Section 15(b)(4)(B), making the second paragraph of subsection c. redundant.

OCC proposes to amend Chapter II and Chapter XII of its Rules to:

- Establish procedures applicable to Clearing Members who are or become subject to a statutory disqualification to provide that: (i) OCC has the discretion not to

permit any such Clearing Member to continue in Clearing Membership, (ii) such Clearing Member must notify OCC of any statutory disqualification and may seek to continue in Clearing Membership, (iii) a failure to notify OCC of a statutory disqualification may be deemed a violation of OCC's rules, (iv) OCC may convene a Disciplinary Committee to conduct a hearing concerning a Clearing Member's statutory disqualification, (v) OCC has discretion to waive such provisions if another self-regulatory organization is conducting a proceeding addressing a Clearing Member's statutory disqualification with respect to the same matter, and (vi) OCC has discretion to waive the hearing provisions if OCC intends to grant the Clearing Member's application to continue in Clearing Membership in certain circumstances.

- Add Interpretation and Policy .01 to Rule 1201 in order to clarify that a decision to suspend or expel a Clearing Member after a disciplinary proceeding under Chapter XII of the Rules would be grounds for summary suspension under Chapter XI of the Rules.

OCC also proposes to amend its Fitness Standards (see Exhibit 5 hereto) to conform them to the proposed amendments to OCC's By-Laws.

* * *

The proposed changes to OCC's By-Laws are consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934, as amended (the

“Exchange Act”), because they are designed to more closely align OCC’s By-Laws and Rules with applicable regulatory requirements, establish standard notification and other procedures, provide Clearing Members with guidance as to OCC’s policies regarding statutory disqualifications, facilitate the timely filing of notices pursuant to Rule 19h-1 should OCC determine to admit to membership or continue in membership any person subject to a statutory disqualification and are not designed to permit unfair discrimination in the admission of participants or among participants in the use of OCC. The proposed rule change is not inconsistent with any rules of OCC.

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-2012-03 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-2012-03. 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, 100F Fifth 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-2012-03 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: _____

Exhibit 5

The Options Clearing Corporation: Fitness Standards for Directors, Clearing Members and Others

The Options Clearing Corporation Fitness Standards

The Board of Directors and the stockholders of The Options Clearing Corporation (the "Corporation") have established qualification and fitness standards (the "Fitness Standards") for (i) directors, (ii) Clearing Members, and (iii) any person affiliated with a director or a Clearing Member. The criteria of the applicable Fitness Standards shall be used in nominating directors and in admitting Clearing Members or otherwise granting direct access to the settlement or clearing activities of the Corporation.

Fitness Standards for Directors

The Corporation's By-Laws contain governance standards designed to provide fair representation to stockholders and Clearing Members. The Board currently has 16 members consisting of nine Clearing Member directors ("Member Directors"), five directors nominated by the stockholder exchanges ("Exchange Directors"), one director who is not affiliated with any national securities exchange, national securities association or broker or dealer in securities (the "Public Director"), and the Corporation's Chairman (the "Management Director"). Member Directors are divided into three equal classes elected for staggered three-year terms. Nominating Committee members are divided into two equal classes elected for staggered two-year terms. Prior to each annual meeting of stockholders, the Nominating Committee nominates a slate of nominees for election to the class of Member Directors and the class of Nominating Committee members whose terms expire at that meeting. Each Exchange Director serves a one-year term and is nominated by one of the five stockholder exchanges, although a single Exchange Director may represent more than one exchange. The Public Director serves a three-year term and is nominated by the Chairman, with the approval of the Board of Directors. The Management Director, who is the Corporation's Chairman, serves a one-year term. This governance structure was carefully designed to meet the statutory requirements of "fair representation" and facilitates the performance of the Corporation's role as a market utility.

The criteria below shall be used by the Nominating Committee, the stockholder exchanges, and the Board of Directors in considering nominees for election to the Board and service on the Disciplinary Committee.

Criteria Applicable to all Directors

- Characteristics essential for effectiveness as a member of the Board, including, but not limited to, integrity, objectivity, sound judgment, and leadership;
- Expertise and experience in an area relevant to governance of the Corporation, including, but not limited to: (i) strategic planning, such as new business development, expansion of markets, products and customers, and joint venture development; (ii) risk management relevant to risks such as credit, market, liquidity, operational, legal and regulatory compliance, payment systems, clearance and settlement, new products, risk modeling, risk valuation, and systemic risk management; (iii) technology, such as infrastructure, applications development and maintenance, information security, and disaster recovery; (iv) operations; (v) trading; (vi) business management; (vii) finance; (viii) audit; (ix) governmental and legislative relationship management; (x) compensation and human resources; and (xi) legal, regulatory, and compliance expertise.

- Substantial seniority in own firm;
- Knowledge of securities and/or futures industries;
- Appropriate educational credentials or other certifications;
- For current directors eligible for re-election, length of service on the Board and attendance, and participation, and contribution at Board and committee meetings; and
- Appropriate weight given to diversity factors.

In addition, no person shall be qualified to serve on the Board if such person:

- is subject to a "statutory disqualification" under Section 3(a)(39) of the Securities Exchange Act of 1934, as amended (the "Exchange Act");
- may be refused registration under the Commodity Exchange Act ("CEA") pursuant to Section 8a(2) of the CEA; or
- has a history of serious disciplinary offenses, including, but not limited to, those that would be disqualifying under Commodity Futures Trading Commission ("CFTC") Regulation § 1.63.

Additional Criteria for Member Directors

- Balanced representation among all Clearing Members;
- Balanced representation of all business activities of Clearing Members;
- Nature of the firm each prospective director is associated with;
- Industry affiliations; and
- Geographical distribution of Clearing Members.

Additional Criteria for Exchange Directors

- Ownership of common stock of the Corporation by the exchange nominating an Exchange Director.

Additional Criteria for the Public Director

- No affiliation with any national securities exchange or national securities association or with any broker or dealer in securities, as stated in the Corporation's By-Laws.

Fitness Standards for Clearing Members

Clearing Members of the Corporation are subject to extensive regulation by either or both of the SEC and the CFTC, or, in the case of Non-U.S. Securities Firms, the regulatory authority of the country or countries in which the firm conducts business. Clearing Member applicants must be:

- Registered as a broker or dealer under the Exchange Act;
- A futures commission merchant registered under Section 4f(a)(1) of the CEA; or
- A Non-U.S. Securities Firm, as defined in the By-Laws.

[No person shall be qualified to be admitted as a Clearing Member if it:

- is subject to a "statutory disqualification" under Section 3(a)(39) of the Exchange Act; or
- may be refused registration under the CEA pursuant to Section 8a(2) of the CEA; unless
- the Membership/Risk Committee finds that there are special circumstances warranting the waiver of such disqualification with respect to the Clearing Member applicant.]

The Membership/Risk Committee may refuse to admit any person as a Clearing Member if the person is subject to a "statutory disqualification" under Section 3(a)(39) of the Exchange Act. No person shall be qualified to be admitted as a Clearing Member if the person may be refused registration under the CEA pursuant to Section 8a(2) of the CEA.

Fitness Standards for Affiliates and Access Persons

No person affiliated, within the meaning of Section 5b(c)(2)(O) of the CEA, with a director of the Corporation or a Clearing Member ("Affiliates") shall:

- [be subject to a "statutory disqualification" under Section 3(a)(39) of the Exchange Act; or]
- meet criteria for refusal to register a person under Section 8a(2) of the CEA; unless
- the Membership/Risk Committee finds that there are special circumstances warranting the waiver of such disqualification with respect to the Affiliate.

With respect to Affiliates, the Board shall be entitled to rely on a certification from the relevant director or Clearing Member that, to the best of such person's knowledge, none of its affiliates is subject to disqualification pursuant to the Corporation's Fitness Standards and that such person will notify the Corporation if at any time such director or Clearing Member becomes aware that any such affiliate fails to meet the Fitness Standards.

Section 5b(c)(2)(O)(ii)(IV) of the CEA requires each derivative clearing organization ("DCO") to establish Fitness Standards for persons with direct access to the settlement or clearing activities of the DCO ("Access Persons"). The Corporation believes that there are presently no persons with such access other than the Clearing Members.