



July 3, 2012

**VIA ELECTRONIC MAIL**

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

**Re: Rule Filing SR-OCC-2012-11 Rule Certification**

Dear Secretary Stawick:

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. The text of the amended rule filing 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**

In a recent rule change, OCC added provisions to its Rule 1104 and Rule 1106 to specifically provide that, in addition to all other permitted means of liquidating positions and collateral in the accounts of a suspended Clearing Member, OCC may, at its discretion, liquidate such positions and collateral through a private auction process.<sup>1</sup> The purpose of the current proposed rule change is to add an interpretation .02 to Rule 1104 to provide a further general description of such a private auction process by which OCC may liquidate all or any part of a suspended Clearing Member’s accounts. The proposed interpretation would set forth the basic parameters of such an auction, including the process for creating a standing pool of pre-qualified

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<sup>1</sup> See Order Approving Proposed Rule Change, as Modified by Amendment No. 1, to Provide Specific Authority to Use an Auction Process As One of the Means to Liquidate a Defaulting Clearing Member’s Accounts, 76 Fed. Reg. 68,236 (November 3, 2011) (Approving SR-OCC-2011-08 and amendment A-1 thereto).

potential bidders, criteria for fixing the number of bidders to participate in any particular auction and the method of selection of such bidders. Such criteria are intended to ensure an orderly and robust auction and to ensure that auction bidders are financially able to make payment for and assume the obligations of the collateral and positions they are acquiring and able to manage the risk thereof and/or trade out of the positions without creating unnecessary further risk to the Corporation. Interpretations cross-referencing interpretation 1104 would be added following Rules 1106, 1107, 2210 and 2210A, and the latter three rules are proposed to be amended to provide that the auction process is applicable to assets and obligations arising from exercised and assigned options and matured, physically-settled futures and to assets and obligations arising from the close-out of stock loan and borrow positions as well.

Each private auction will be a “sealed bid” auction in which pre-qualified bidders selected by OCC will submit confidential bids such that no bidder will know the bid information of any of the other bidders. The pool of prequalified potential bidders in any auction would consist of all Clearing Members who are interested in participation and willing to execute the required documentation. Participation in the pre-qualified bidder pool by certain non-Clearing Members would also be solicited. Should the Corporation determine to hold a private auction, the Corporation will review the pool of pre-qualified auction bidders and would seek to invite a fixed number of bidders for the auction based on objective criteria that the Corporation believes would optimize the effectiveness of the auction process. OCC believes that fixing the size of the desired bidder group at a number that is either too large or too small could have an adverse impact on the effectiveness and competitiveness of the auction process. A group that is too small would not provide adequate competition among bidders, while setting the target size for the group of bidders at too large a number would discourage participation because of fear that the composition of the portfolios to be bid on would be leaked beyond the bidder group, allowing non-bidders to trade ahead of the auction to the disadvantage of bidders in the auction. Attempting to organize too large a group of bidders would also cause potentially costly delay in the auction process. OCC would most likely use its secure ENCORE system or telephone contact to invite selected pre-qualified bidders to submit bids in the private auction. No invited bidder would be obligated to bid in the private auction.

At the conclusion of a private auction, OCC will, in its discretion, select the best bid submitted for the auctioned portfolio based on the totality of the circumstances. For example, where an auction portfolio has a negative net asset value, negative bids may be submitted which indicate how much OCC would be required to pay a bidder to assume the auction portfolio, and the lowest rather than the highest bid may therefore be the best bid. Other factors such as any condition attached to a bid may influence the choice of best bid.

Finally, in order to increase legal certainty under potentially applicable provisions of the Uniform Commercial Code, the proposed interpretations would require Clearing Members to acknowledge that the private auction process is a commercially reasonable method of liquidating a suspended Clearing Member’s accounts and that notice of a private auction to a suspended Clearing Member is not required under the auction process.

Additions are indicated by underlining and deletions are indicated by bold brackets.

#### Opposing Views

No opposing views were expressed related to the rule amendments.

David Stawick  
July 3, 2012  
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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 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,



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**

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**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 Rules, as set forth below, to clarify the private auction process by which OCC may liquidate a suspended Clearing Member’s accounts. Material proposed to be added to OCC’s By-Laws and Rules as currently in effect is underlined.

**THE OPTIONS CLEARING CORPORATION****RULES**

\* \* \*

**CHAPTER XI****SUSPENSION OF A CLEARING MEMBER**

\* \* \*

**Creation of Liquidating Settlement Account**

**RULE 1104.** (a) – (f) [no change]

***...Interpretations and Policies***

**.01** [no change]

**.02** (a) For purposes of this Rule 1104 and Rules 1106, 1107, 2210 and 2210A, in order to minimize the execution and liquidity risks associated with (i) liquidating a suspended Clearing Member’s margins deposited with the Corporation and Clearing Fund contributions (collectively referred to in this Interpretation and Policy as “Collateral”), (ii) closing out such Clearing Member’s open positions in cleared contracts and stock loans (collectively referred to in this Interpretation and Policy as “Open Positions”) and (iii) closing out exercised or matured cleared contracts to which such Clearing Member was a party either as the exercising Clearing Member or as the assigned Clearing Member (collectively referred to in this Interpretation and Policy as “Exercised/Matured Contracts”), the Corporation may elect to use one or more private auctions to liquidate all or any part of such Collateral, Open Positions and/or Exercised/Matured Contracts, as determined by the Board of Directors, the Chairman, the Management Vice-Chairman, or the President of the Corporation. As used in this interpretation, the term “private auction” means an auction open to bidders invited by the Corporation pursuant to this interpretation and with respect to which bidders submit confidential bids. If such determination is made by the Chairman, the Management Vice-Chairman or the President of the Corporation, the Board of Directors shall be notified as soon as practicable of the determination. The option to elect a private auction process is discretionary; the Corporation may use other procedures as

provided for or permitted in the By-Laws and Rules to liquidate a suspended Clearing Member's Collateral, Open Positions and/or Exercised/Matured Contracts if the Corporation decides that circumstances warrant. The Corporation shall provide prompt notice to the Membership/Risk Committee (or other committee of the Board of Directors to which the auction oversight function is delegated) whenever a private auction is expected to be conducted.

(b) The Corporation shall conduct each auction within the general framework as approved by the Membership/Risk Committee and described in this Interpretation and Policy. Each auction will be structured to provide an orderly and robust procedure for liquidating Collateral, Open Positions and/or Exercised/Matured Contracts consistent with the By-Laws and Rules of the Corporation. The Corporation shall consult with the Membership/Risk Committee (or other committee of the Board of Directors to which such function is delegated) regarding the structuring and administration of each individual auction, and may work with such advisors as the Corporation deems necessary and appropriate to assist the Corporation in respect of such matters.

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

(d) With respect to each particular auction, the Corporation shall review pre-qualified auction bidders that seek to participate in the auction on an objective basis and take into consideration criteria including a bidder's (and/or, in the case of a non Clearing-Member bidder, its sponsor Clearing Member's) financial strength, demonstrated activity in the products being auctioned and qualification to clear transactions in the asset class in which it proposes to submit bids before inviting a bidder to participate in the auction. Such review is intended to ensure that each selected bidder, should it be a winner in the auction, would be financially able to make payment for and assume the obligations of the Collateral and other positions it acquires and be able to manage the risk thereof and/or trade out of such positions without creating unnecessary further risk to the Corporation. The Corporation shall endeavor to maximize the effectiveness of the auction process by, among other things, exercising its discretion on a case-by-case basis to fix the number of bidders to be selected for each auction at a level large enough to create robust, efficient auctions that will generate competitive bids but not so large as to create unnecessary delay and jeopardize the confidentiality of positions in the suspended Clearing Member's portfolio and thereby discourage potential bidders from participating competitively in the

auction. The Corporation will promptly notify all pre-qualified auction bidders selected to become bidders for a particular auction by electronic or telephonic communication. Each selected bidder may, but will not be required to, submit a bid in the auction.

(e) The Corporation shall have discretion to auction the suspended Clearing Member's Collateral, Open Positions and/or Exercised/Matured Contracts as a single portfolio or as multiple discrete portfolios based on, for example, product type or asset class. The Corporation shall also have discretion to require bidders to post collateral or other deposits in advance of the auction and the submission of bids shall be in accordance with the procedures and timeframes established by the Corporation from time to time. The Corporation and the bidders shall exchange auction information in a secure and confidential manner as specified by the Corporation. At the conclusion of the auction, the Corporation shall, in its discretion, determine the prevailing bid(s) and whether to accept or reject such bid(s); provided, however, that, in the event that accepting the prevailing bid(s) would result in a loss chargeable against the Clearing Fund, any decision by the Corporation to accept such bid(s) shall require review and approval by the Membership/Risk Committee (or other committee of the Board of Directors to which such function is delegated) or the Board of Directors. The Corporation shall provide prompt notice to the winning bidder that its bid has been selected and shall thereafter provide notice to the losing bidders that their bids have not been selected, in each case by electronic or telephonic communication. If the auction is successful, the Corporation shall facilitate the transfer of the suspended Clearing Member's Collateral, Open Positions and/or Exercised/Matured Contracts to the winning bidder(s) with the intention of completing settlement processing of the auctioned portfolio(s) no later than the first business day after the bids are accepted by the Corporation.

(f) The Corporation shall have discretion to select the best bid submitted for any portfolio in an auction, based on the totality of the circumstances, and no bid shall be binding on the Corporation unless accepted by it. Unless the Corporation determines otherwise with respect to any particular auction, the Corporation retains the right, in its discretion, to reject any or all bids submitted for any or all portfolios in an auction. Such bids may be rejected if, for example, the bids are unreasonably far from the market values of the Collateral, Open Positions and/or Exercised/Matured Contracts being auctioned as determined by the Corporation based upon current market data and theoretical pricing models or if the Corporation determines that the rules of the auction have been breached or other circumstances cause the Corporation to conclude that the bids have been tainted by unfairness or illegality. Notwithstanding the foregoing, the Corporation shall have no authority to reject any bid or bids once settlement has been effected through payment and delivery of the auctioned property and assumption of auctioned obligations. To the extent that the Corporation rejects all bids submitted for some or all of the portfolios in an auction, the Corporation shall take such steps to liquidate the Collateral, Open Positions and/or Exercised/Matured Contracts that were the subject of the rejected bids in the most orderly manner practicable, which may include the holding of another private auction.

(g) Clearing Members agree that the private auction process described above is a commercially reasonable method of liquidating a suspended Clearing Member's Collateral and closing out such Clearing Member's open positions, including for purposes of Section 9-610 of the Uniform Commercial Code to the extent such Section is applicable to the private auction process.

Clearing Members recognize that their positions may lose value quickly and that a prompt and efficient auction may be the best method for an orderly liquidation and preservation of value. Clearing Members agree that notice of a private auction to a suspended Clearing Member is not required under the auction process or under Section 9-611 of the Uniform Commercial Code, but if notice is given, Clearing Members agree that it is commercially reasonable under Section 9-611 of the Uniform Commercial Code for the notice to be given at or prior to the time that bidders are provided information regarding the auction.

### Open Positions

**RULE 1106.** (a) – (g) [no change]

#### *...Interpretations and Policies*

**.01** [no change]

**.02** See Interpretation and Policy .02 following Rule 1104 for a description of the private auction process by which OCC may close out a suspended Clearing Member's open positions in cleared contracts generally.

### Exercised or Matured Contracts

**RULE 1107.** (a) Unless the Corporation stipulates otherwise in a particular case, exercised option contracts to which a suspended Clearing Member is a party (either as the exercising Clearing Member or as the assigned Clearing Member) and matured, physically-settled futures to which such Clearing Member is a party shall be disposed of as follows:

(1) – (5) [no change]

(6) All other exercised option contracts and matured, physically-settled futures to which the suspended Clearing Member was a party shall be closed through the buy-in and sell-out [or other] procedures provided in the Rules or in such other manner as the Corporation determines to be the most orderly manner practicable in the circumstances, including, but not limited to, a private auction. All losses (including damages chargeable against the suspended Clearing Member in the absence of a buy-in or sell-out) and gains resulting from the application of such procedures shall be paid from or credited to, as the case may be, the Liquidating Settlement Account of the suspended Clearing Member; provided, however, that (i) all such losses in a Market-Maker's account or a customers' lien account shall first be paid from such account to the extent there are funds available in such account and only the amount of any deficit therein shall be paid from the Liquidating Settlement Account; (ii) all such losses in a segregated futures account shall first be paid from the Segregated Liquidating Settlement Account to the extent permitted by applicable law and to the extent that there are funds available in such account, and only the amount of any deficit shall be paid from the Liquidating Settlement Account; and (iii) all such losses in an internal non-proprietary cross-margining account shall be first paid from the Internal Non-Proprietary Cross-Margining Liquidating Settlement Account to the extent



permitted by applicable law and to the extent that there are funds available in such account, and only the amount of any deficit shall be paid from the Liquidating Settlement Account.

(b) – (c) [no change]

**...Interpretations and Policies**

**.01 See Interpretation and Policy .02 following Rule 1104 for a description of the private auction process by which OCC may close out exercised option contracts and matured, physically-settled futures to which the suspended Clearing Member was a party.**

**Suspension of Hedge Clearing Members – Pending and Open Stock Loans**

**RULE 2210.** (a) [no change]

(b) Open stock loan and borrow positions resulting from Stock Loans of a suspended Hedge Clearing Member shall, except as hereinafter provided, be terminated in accordance with the provisions of Rule 2211 or in such other manner as the Corporation determines to be the most orderly manner practicable in the circumstances, including, but not limited to, a private auction. Any net proceeds from the termination of such stock loan and borrow positions in the accounts of the suspended Clearing Member shall be credited by the Corporation to the Liquidating Settlement Account of such Clearing Member established pursuant to Rule 1104. Any net amounts payable in respect of the termination of such stock loan and borrow positions in any of the accounts of the suspended Clearing Member shall be withdrawn by the Corporation from the Clearing Member's Liquidating Settlement Account. The suspended Clearing Member or its representative shall be notified as promptly as possible of any termination of stock loan and borrow positions pursuant to this Rule.

(c) [no change]

**...Interpretations and Policies**

**.01 See Interpretation and Policy .02 following Rule 1104 for a description of the private auction process by which OCC may close out a suspended Clearing Member' open positions in stock loan and/or borrow positions resulting from Stock Loans.**

**Suspension of Market Loan Clearing Members – Pending and Open Stock Loans**

**RULE 2210A.** (a) [no change]

(b) If a Market Loan Clearing Member is suspended by the Corporation, a Loan Market or the Depository, open stock loan and borrow positions of such Clearing Member that originated through the Market Loan Program shall, except as hereinafter provided, be terminated in accordance with the provisions of Rule 2211A or in such other manner as the Corporation determines to be the most orderly manner practicable in the circumstances, including, but not limited to, a private auction. Any net proceeds from the termination of such stock loan and

borrow positions in any of the accounts of the suspended Clearing Member (including any net dividend equivalent payments and/or rebate payments that the suspended Clearing Member is entitled to receive in accordance with the Rules) shall be credited by the Corporation to the Liquidating Settlement Account of such Clearing Member established pursuant to Rule 1104. Any net amounts payable in respect of the termination of such stock loan and borrow positions (including any net dividend equivalent payments and/or rebate payments that the suspended Clearing Member is obligated to pay in accordance with the Rules) in any of the accounts of the suspended Clearing Member shall be withdrawn by the Corporation from the Clearing Member's Liquidating Settlement Account. The suspended Clearing Member or its representative shall be notified as promptly as possible of any termination of stock loan and borrow positions pursuant to this Rule.

(c) [no change]

**...Interpretations and Policies**

**.01 See Interpretation and Policy .02 following Rule 1104 for a description of the private auction process by which OCC may close out a suspended Clearing Member's open positions in stock loan and/or borrow positions that originated through the Market Loan Program.**

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**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 May 24, 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**

In a recent rule change, OCC added provisions to its Rule 1104 and Rule 1106 to specifically provide that, in addition to all other permitted means of liquidating positions and collateral in the accounts of a suspended Clearing Member, OCC may, at its discretion, liquidate

such positions and collateral through a private auction process.<sup>1</sup> The purpose of the current proposed rule change is to add an interpretation .02 to Rule 1104 to provide a further general description of such a private auction process by which OCC may liquidate all or any part of a suspended Clearing Member's accounts. The proposed interpretation would set forth the basic parameters of such an auction, including the process for creating a standing pool of pre-qualified potential bidders, criteria for fixing the number of bidders to participate in any particular auction and the method of selection of such bidders. Such criteria are intended to ensure an orderly and robust auction and to ensure that auction bidders are financially able to make payment for and assume the obligations of the collateral and positions they are acquiring and able to manage the risk thereof and/or trade out of the positions without creating unnecessary further risk to the Corporation. Interpretations cross-referencing interpretation 1104 would be added following Rules 1106, 1107, 2210 and 2210A, and the latter three rules are proposed to be amended to provide that the auction process is applicable to assets and obligations arising from exercised and assigned options and matured, physically-settled futures and to assets and obligations arising from the close-out of stock loan and borrow positions as well.

Each private auction will be a "sealed bid" auction in which pre-qualified bidders selected by OCC will submit confidential bids such that no bidder will know the bid information of any of the other bidders. The pool of prequalified potential bidders in any auction would consist of all Clearing Members who are interested in participation and willing to execute the required documentation. Participation in the pre-qualified bidder pool by certain non-Clearing

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<sup>1</sup> See Order Approving Proposed Rule Change, as Modified by Amendment No. 1, to Provide Specific Authority to Use an Auction Process As One of the Means to Liquidate a Defaulting Clearing Member's Accounts, 76 Fed. Reg. 68,236 (November 3, 2011) (approving SR-OCC-2011-08 and amendment A-1 thereto).

Members would also be solicited. Should the Corporation determine to hold a private auction, the Corporation will review the pool of pre-qualified auction bidders and would seek to invite a fixed number of bidders for the auction based on objective criteria that the Corporation believes would optimize the effectiveness of the auction process. OCC believes that fixing the size of the desired bidder group at a number that is either too large or too small could have an adverse impact on the effectiveness and competitiveness of the auction process. A group that is too small would not provide adequate competition among bidders, while setting the target size for the group of bidders at too large a number would discourage participation because of fear that the composition of the portfolios to be bid on would be leaked beyond the bidder group, allowing non-bidders to trade ahead of the auction to the disadvantage of bidders in the auction. Attempting to organize too large a group of bidders would also cause potentially costly delay in the auction process. OCC would most likely use its secure ENCORE system or telephone contact to invite selected pre-qualified bidders to submit bids in the private auction. No invited bidder would be obligated to bid in the private auction.

At the conclusion of a private auction, OCC will, in its discretion, select the best bid submitted for the auctioned portfolio based on the totality of the circumstances. For example, where an auction portfolio has a negative net asset value, negative bids may be submitted which indicate how much OCC would be required to pay a bidder to assume the auction portfolio, and the lowest rather than the highest bid may therefore be the best bid. Other factors such as any condition attached to a bid may influence the choice of best bid.

Finally, in order to increase legal certainty under potentially applicable provisions of the Uniform Commercial Code, the proposed interpretations would require Clearing Members to

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acknowledge that the private auction process is a commercially reasonable method of liquidating a suspended Clearing Member's accounts and that notice of a private auction to a suspended Clearing Member is not required under the auction process.

\* \* \*

The proposed changes to OCC's Rules 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 assure the safeguarding of securities and funds which are in the custody or control of OCC by providing appropriate procedures for the auctioning of positions and Collateral of a suspended clearing member. The changes are intended to facilitate the performance of OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions and the protection of securities investors and the public interest. The proposed rule change is not inconsistent with the By-Laws and Rules of OCC, including any proposed to be amended.

**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)**

Neither summary effectiveness nor accelerated effectiveness is sought.

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

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

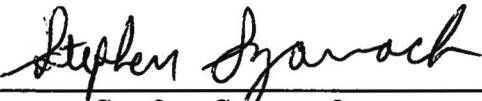
**Item 9. Exhibits**

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

**SIGNATURES**

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

**THE OPTIONS CLEARING CORPORATION**

By:   
\_\_\_\_\_  
**Stephen Szarmack**  
**Vice President and Associate**  
**General Counsel**

**EXHIBIT 1**

**SECURITIES AND EXCHANGE COMMISSION**

(Release No. 34-\_\_\_\_\_ ; File No. SR-OCC-2012-11

**SELF-REGULATORY ORGANIZATION**

Proposed Rule Change By  
The Options Clearing Corporation

Relating to Rule 1104 Auction Process

Comments requested within days  
after the date of this publication.

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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 add an interpretation .02 to Rule 1104 to provide a further general description of such a private auction process by which OCC may liquidate all or any part of a suspended Clearing Member's accounts.



**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**

In a recent rule change, OCC added provisions to its Rule 1104 and Rule 1106 to specifically provide that, in addition to all other permitted means of liquidating positions and collateral in the accounts of a suspended Clearing Member, OCC may, at its discretion, liquidate such positions and collateral through a private auction process.<sup>1</sup> The purpose of the current proposed rule change is to add an interpretation .02 to Rule 1104 to provide a further general description of such a private auction process by which OCC may liquidate all or any part of a suspended Clearing Member's accounts. The proposed interpretation would set forth the basic parameters of such an auction, including the process for creating a standing pool of pre-qualified potential bidders, criteria for fixing the number of bidders to participate in any particular auction and the method of selection of such bidders. Such criteria are intended to ensure an orderly and robust auction and to ensure that auction bidders are financially able to make payment for and

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assume the obligations of the collateral and positions they are acquiring and able to manage the risk thereof and/or trade out of the positions without creating unnecessary further risk to the Corporation. Interpretations cross-referencing interpretation 1104 would be added following Rules 1106, 1107, 2210 and 2210A, and the latter three rules are proposed to be amended to provide that the auction process is applicable to assets and obligations arising from exercised and assigned options and matured, physically-settled futures and to assets and obligations arising from the close-out of stock loan and borrow positions as well.

Each private auction will be a “sealed bid” auction in which pre-qualified bidders selected by OCC will submit confidential bids such that no bidder will know the bid information of any of the other bidders. The pool of prequalified potential bidders in any auction would consist of all Clearing Members who are interested in participation and willing to execute the required documentation. Participation in the pre-qualified bidder pool by certain non-Clearing Members would also be solicited. Should the Corporation determine to hold a private auction, the Corporation will review the pool of pre-qualified auction bidders and would seek to invite a fixed number of bidders for the auction based on objective criteria that the Corporation believes would optimize the effectiveness of the auction process. OCC believes that fixing the size of the desired bidder group at a number that is either too large or too small could have an adverse impact on the effectiveness and competitiveness of the auction process. A group that is too small would not provide adequate competition among bidders, while setting the target size for the group of bidders at too large a number would discourage participation because of fear that the composition of the portfolios to be bid on would be leaked beyond the bidder group, allowing

non-bidders to trade ahead of the auction to the disadvantage of bidders in the auction.

Attempting to organize too large a group of bidders would also cause potentially costly delay in the auction process. OCC would most likely use its secure ENCORE system or telephone contact to invite selected pre-qualified bidders to submit bids in the private auction. No invited bidder would be obligated to bid in the private auction.

At the conclusion of a private auction, OCC will, in its discretion, select the best bid submitted for the auctioned portfolio based on the totality of the circumstances. For example, where an auction portfolio has a negative net asset value, negative bids may be submitted which indicate how much OCC would be required to pay a bidder to assume the auction portfolio, and the lowest rather than the highest bid may therefore be the best bid. Other factors such as any condition attached to a bid may influence the choice of best bid.

Finally, in order to increase legal certainty under potentially applicable provisions of the Uniform Commercial Code, the proposed interpretations would require Clearing Members to acknowledge that the private auction process is a commercially reasonable method of liquidating a suspended Clearing Member's accounts and that notice of a private auction to a suspended Clearing Member is not required under the auction process.

\* \* \*

The proposed changes to OCC's Rules 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 assure the safeguarding of securities and funds which are in the custody or control of OCC by providing appropriate procedures for the auctioning of positions and Collateral of a suspended clearing member. The changes are

intended to facilitate the performance of OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions and the protection of securities investors and the public interest. The proposed rule change is not inconsistent with the By-Laws and Rules of OCC, including any proposed to be amended.

**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](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2012-11 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-2012-11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, N.E., Washington, D.C. 20549-1090. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All

comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2012-11 and should be submitted on or before [insert date 21 days from publication in the Federal Register]

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

Secretary

Dated: \_\_\_\_\_