



November 4, 2013

**VIA ELECTRONIC MAIL**

Melissa Jurgens  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

**Re: Rule Filing SR-OCC-2013-20 Rule Certification**

Dear Secretary Jurgens:

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 the date the proposed rule is approved by the Securities and Exchange Commission (the “SEC”) or otherwise becomes effective under the Securities Exchange Act of 1934 (the “Exchange Act”). This rule filing has been, or is concurrently being, submitted to the SEC under the Exchange Act.

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

**Explanation and Analysis**

The purpose of this proposed rule change is to clarify OCC’s existing policy regarding use of clearing fund assets in anticipation of a clearing member default. Specifically, OCC is proposing to add an interpretation and policy to Article VIII, Section 5 of its By-Laws to provide greater transparency for clearing members and others regarding an existing by-law and to clarify its authority to use cash or securities deposited by clearing members in OCC’s clearing fund to borrow, or otherwise obtain, funds from third parties in anticipation of a clearing member default.<sup>1</sup>

Article VIII, Section 5 of OCC’s By-Laws concerns application of OCC’s clearing fund. Section 5(e)(i) permits OCC to use assets in the clearing fund to borrow, or otherwise obtain,

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<sup>1</sup> OCC, in connection with the renewal of its credit facility, represented to the SEC that it will add such a clarification to its By-Laws. See Exchange Act Release No. 34-70596 (October 2, 2013) 78 FR 62719 (October 22, 2013) (SR-OCC-2013-806).

funds from third parties in the event that OCC deems it necessary or advisable to meet obligations arising out of the default or suspension of a Clearing Member or any action taken by OCC pursuant to Chapter XI of the Rules or otherwise.<sup>2</sup> OCC has interpreted Article VIII, Section 5(e)(i) to provide OCC with the authority to use clearing fund assets to borrow, or otherwise obtain, funds from third parties in anticipation of a clearing member default or suspension should OCC deem such use of assets necessary or advisable to meet obligations that may arise from such potential clearing member default or suspension. However, OCC believes that it would be helpful to clarify such authority and, accordingly, proposes to add Interpretation and Policy .06 to Article VIII, Section 5. Interpretation and Policy .06 will clarify that OCC's authority under Section 5(e)(i) of Article VIII applies to both situations in which a clearing member default or suspension that has already occurred, and in anticipation of a potential default or suspension of a clearing member.

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

**Default Rules and Procedures.** OCC believes that by implementing the proposed rule change it will be better able to manage the risks associated with discharging its responsibilities, through the use of appropriate procedures, with respect to default rules and procedures, as set forth in the DCO Core Principles. By adding an interpretation and policy that clarifies OCC's policy regarding borrowing funds from third parties in anticipation of a clearing member default or suspension, OCC will be more transparent by making its default rules publicly available. Such clarification also furthers OCC's ability to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a clearing member default and also in anticipation of a clearing member default.

#### 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.

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<sup>2</sup> Chapter XI sets out rules pertaining to suspension of OCC Clearing Members.

Melissa Jurgens  
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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,



Stephen Szarmack  
Vice President & Associate General Counsel

Enclosure

**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**

This proposed rule change by The Options Clearing Corporation (“OCC”) will clarify OCC’s existing policy regarding use of clearing fund assets in anticipation of a clearing member default. Specifically, OCC proposes to add an interpretation and policy to Article VIII, Section 5 of OCC’s By-Laws to make clear that OCC has the authority to use cash or securities deposited by clearing members in OCC’s clearing fund to borrow, or to otherwise obtain, funds from third parties in anticipation of a potential default by, or suspension of, a clearing member. Material proposed to be added is marked by underlining. Material proposed to be deleted is enclosed in bold brackets.

**THE OPTIONS CLEARING CORPORATION**

**BY-LAWS**

\* \* \*

**ARTICLE VIII**

**CLEARING FUND**

\* \* \*

**Application of Clearing Fund**

**SECTION 5.**

(a) – (e) [No change]

*... Interpretations & Policies:*

.01 – .05 [No change]

.06 In addition to being permitted to take possession of securities deposited by Clearing Members following a default or suspension that has already occurred, the Corporation may take possession of securities deposited by Clearing Members pursuant to clause (i) of paragraph (e) of this Section 5 in anticipation of a potential default by, or suspension of, a Clearing Member.

**Item 2.        Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by the Board of Directors of OCC at a meeting held on May 21, 2013.

Questions 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 clarify OCC's existing policy regarding use of clearing fund assets in anticipation of a clearing member default. Specifically, OCC is proposing to add an interpretation and policy to Article VIII, Section 5 of its By-Laws to provide greater transparency for clearing members and others regarding an existing by-law and to clarify its authority to use cash or securities deposited by clearing members in OCC's clearing fund to borrow, or otherwise obtain, funds from third parties in anticipation of a clearing member

default.<sup>1</sup>

Article VIII, Section 5 of OCC's By-Laws concerns application of OCC's clearing fund. Section 5(e)(i) permits OCC to use assets in the clearing fund to borrow, or otherwise obtain, funds from third parties in the event that OCC deems it necessary or advisable to meet obligations arising out of the default or suspension of a Clearing Member or any action taken by OCC pursuant to Chapter XI of the Rules or otherwise.<sup>2</sup> OCC has interpreted Article VIII, Section 5(e)(i) to provide OCC with the authority to use clearing fund assets to borrow, or otherwise obtain, funds from third parties in anticipation of a clearing member default or suspension should OCC deem such use of assets necessary or advisable to meet obligations that may arise from such potential clearing member default or suspension. However, OCC believes that it would be helpful to clarify such authority and, accordingly, proposes to add Interpretation and Policy .06 to Article VIII, Section 5. Interpretation and Policy .06 will clarify that OCC's authority under Section 5(e)(i) of Article VIII applies to both situations in which a clearing member default or suspension that has already occurred, and in anticipation of a potential default or suspension of a clearing member.

\* \* \*

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the

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<sup>1</sup> OCC, in connection with the renewal of its credit facility, represented to the Commission that it will add such a clarification to its By-Laws. *See* Exchange Act Release No. 34-70596 (October 2, 2013) 78 FR 62719 (October 22, 2013) (SR-OCC-2013-806).

<sup>2</sup> Chapter XI sets out rules pertaining to suspension of OCC Clearing Members.

Securities and Exchange Act of 1934, as amended (“Exchange Act”),<sup>3</sup> because the proposed interpretation will help ensure that OCC’s By-Laws are designed to promote the safeguarding of securities and funds which are in the custody or control of OCC. In addition, the proposed rule change is consistent with Rule 17Ad-22(d)(14)<sup>4</sup> thereunder because it will help OCC limit its credit exposure to clearing members, and will help OCC facilitate timely settlements in the event a clearing member is about to default or be suspended. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules 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 burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.<sup>5</sup> This proposed rule change clarifies long standing policy regarding the conditions under which OCC may use securities or cash that clearing members deposit in OCC’s clearing fund, and will apply to all clearing members. Accordingly, OCC believes that the proposed modifications would not disadvantage or favor any particular user in relationship to another user.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Exchange Act applicable to

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<sup>3</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>4</sup> 17 CFR 240.17Ad-22(d)(14).

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(I).



clearing agencies, and would not impose a burden on competition that not necessary or appropriate in furtherance of the purposes of the Exchange Act.

**Item 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others**

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

**Item 6. Extension of Time Period for Commission Action**

Not applicable

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

Pursuant to Section 19(b)(3)(A)(i) of the Exchange Act<sup>6</sup> and Rule 19b-4(f)(1) thereunder,<sup>7</sup> the proposed rule change is filed for immediate effectiveness because it constitutes a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule. Notwithstanding the foregoing, implementation of this rule change will be delayed until this rule change is deemed certified under CFTC Regulation §40.6. At any time within 60 days of the filing of such rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>8</sup>

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>7</sup> 17 CFR 240.19b-4(f)(1).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(C).

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

Not applicable.

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

Not applicable.

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

Not applicable.

**Item 11. Exhibits**

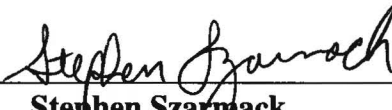
Exhibit 1A Completed Notice of Proposed Rule Change for publication in the

Federal Register.

**SIGNATURES**

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

**THE OPTIONS CLEARING CORPORATION**

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

## EXHIBIT 1A

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_ ; File No. SR-OCC-2013-20)

November 4, 2013

Clearing Agency; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Clarify OCC's Existing Policy Regarding Use of Clearing Fund Assets in Anticipation of a Clearing Member Default.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> notice is hereby given that on November 4, 2013, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i)<sup>3</sup> of the Act and Rule 19b-4(f)(1)<sup>4</sup> thereunder.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change is to clarify OCC's existing policy regarding use of clearing fund assets in anticipation of a clearing member default. Specifically, OCC proposes to add an interpretation and policy to Article VIII, Section 5 of OCC's By-Laws to make clear that OCC has the authority to use cash or securities deposited by clearing members in OCC's clearing fund to borrow, or to otherwise obtain, funds from third parties in anticipation of a potential default by, or suspension of, a clearing member.

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<sup>1</sup> 15 U.S.C. §78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. §78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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

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

The purpose of this proposed rule change is to clarify OCC's existing policy regarding use of clearing fund assets in anticipation of a clearing member default. Specifically, OCC is proposing to add an interpretation and policy to Article VIII, Section 5 of its By-Laws to provide greater transparency for clearing members and others regarding an existing by-law and to clarify its authority to use cash or securities deposited by clearing members in OCC's clearing fund to borrow, or otherwise obtain, funds from third parties in anticipation of a clearing member default.<sup>5</sup>

Article VIII, Section 5 of OCC's By-Laws concerns application of OCC's clearing fund. Section 5(e)(i) permits OCC to use assets in the clearing fund to borrow, or otherwise obtain, funds from third parties in the event that OCC deems it necessary or advisable to meet obligations arising out of the default or suspension of a Clearing Member or any action

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<sup>5</sup> OCC, in connection with the renewal of its credit facility, represented to the Commission that it will add such a clarification to its By-Laws. *See* Exchange Act Release No. 34-70596 (October 2, 2013) 78 FR 62719 (October 22, 2013) (SR-OCC-2013-806).

taken by OCC pursuant to Chapter XI of the Rules or otherwise.<sup>6</sup> OCC has interpreted Article VIII, Section 5(e)(i) to provide OCC with the authority to use clearing fund assets to borrow, or otherwise obtain, funds from third parties in anticipation of a clearing member default or suspension should OCC deem such use of assets necessary or advisable to meet obligations that may arise from such potential clearing member default or suspension. However, OCC believes that it would be helpful to clarify such authority and, accordingly, proposes to add Interpretation and Policy .06 to Article VIII, Section 5. Interpretation and Policy .06 will clarify that OCC's authority under Section 5(e)(i) of Article VIII applies to both situations in which a clearing member default or suspension that has already occurred, and in anticipation of a potential default or suspension of a clearing member.

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act<sup>7</sup> because the proposed interpretation will help ensure that OCC's By-Laws are designed to promote the safeguarding of securities and funds which are in the custody or control of OCC. In addition, the proposed rule change is consistent with Rule 17Ad-22(d)(14)<sup>8</sup> thereunder because it will help OCC limit its credit exposure to clearing members, and will help OCC facilitate timely settlements in the event a clearing member is about to default or be suspended. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

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<sup>6</sup> Chapter XI sets out rules pertaining to suspension of OCC Clearing Members.

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>8</sup> 17 CFR 240.17Ad-22(d)(14).

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

OCC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.<sup>9</sup> This proposed rule change clarifies long standing policy regarding the conditions under which OCC may use securities or cash that clearing members deposit in OCC's clearing fund, and will apply to all clearing members. Accordingly, OCC believes that the proposed modifications would not disadvantage or favor any particular user in relationship to another user.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impose a burden on competition that not necessary or appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act<sup>10</sup> and Rule 19b-4(f)(1)<sup>11</sup> thereunder, the proposed rule change is filed for

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<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>10</sup> 15 U.S.C. § 78s(b)(3)(A)(i).

<sup>11</sup> 17 CFR 240.19b-4(f)(1).

immediate effectiveness inasmuch as it constitutes a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule. OCC will delay the implementation of the rule change until it is deemed certified under CFTC Regulation § 40.6. At any time within 60 days of the filing of such rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>12</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commissions Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2013-20 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-OCC-2013-20. 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

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(C).



comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street, N.E., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at <http://www.theocc.com/about/publications/bylaws.jsp>.

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

All submissions should refer to File Number SR-OCC-2013-20 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated Authority.<sup>13</sup>

**Kevin M. O'Neill**  
Deputy Secretary

Action as set forth recommended herein  
APPROVED pursuant to authority delegated by  
the Commission under Public Law 87-592.  
For: Division of Trading and Markets

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

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<sup>13</sup> 17 CFR 200.30-3(a)(12).