

Register on September 16, 2011.³ The Commission received four comment letters on the proposal.⁴

Section 19(b)(2) of the Act⁵ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is October 31, 2011.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the Exchange's proposal, as described above, and to consider the comment letters that have been submitted in connection with the proposed rule change.

Accordingly, pursuant to Section 19(b)(2) of the Act,⁶ the Commission designates December 15, 2011 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File Number SR-NASDAQ-2011-122).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011-28460 Filed 11-2-11; 8:45 am]

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³ See Securities Exchange Act Release No. 65324 (September 12, 2011), 76 FR 57781 (September 16, 2011).

⁴ See Letters to Elizabeth M. Murphy, Secretary, Commission, from Neil Hershsberg, Senior Vice President, Business Wire Inc., dated September 28, 2011; John Viglotti, Vice President, PR Newswire Association LLC, dated October 7, 2011; Jesse W. Markham, Jr., Roger Myers, and Michael R. MacPhail, Holme Roberts & Owen LLP (writing on behalf of Business Wire, Inc.), dated October 7, 2011; and Patrick Healy, CEO, Issuer Advisory Group LLC, dated October 22, 2011.

⁵ 15 U.S.C. 78s(b)(2).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65654; File No. SR-OCC-2011-08]

Self-Regulatory Organizations; Options Clearing Corporation; 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

October 28, 2011.

I. Introduction

On July 28, 2011, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2011-08 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The proposed rule change was published for comment in the **Federal Register** on August 3, 2011.³ On September 15, 2011, OCC filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1 was published in the **Federal Register** on September 27, 2011.⁴ The Commission received no comment letters on the proposed rule change or Amendment No. 1. This order approves the proposed rule change as modified by Amendment No. 1.

II. Description

OCC is revising its rules to provide specific authority for OCC to use an auction process as one of the possible means by which OCC may liquidate a

defaulting clearing member's accounts.⁵ An auction is likely to be the most efficient and orderly procedure practicable for closing out clearing member portfolios in some circumstances.

The liquidation of open long and short positions through exchange transactions is an obvious means of closing out the positions of a defaulting member. However, auctions are increasingly viewed as an efficient and cost effective alternative for liquidating some or all of a clearing member's positions and collateral, especially where the positions are very large or in unstable market conditions. As compared to liquidating positions through exchange transactions, an auction may usually be expected to result in a shorter liquidation period and reduced execution risk. During Lehman Brothers Holdings Inc.'s liquidation, clearinghouses such as LCH, Clearnet and CME Clearing liquidated certain derivatives positions through auctions.

Chapter XI of OCC's Rules, which governs the liquidation of a clearing member's accounts in the event of an insolvency, provides that open positions of a clearing member must be closed by OCC "in the most orderly manner practicable." While OCC and its counsel believe that this language is broad enough to authorize a private auction, *i.e.*, an auction limited to selected bidders, as a means of closing out open positions, OCC also believes that explicit authorization for a private auction procedure could reduce the likelihood of a legal challenge should such a procedure be utilized.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that, among other things, the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and, to the extent applicable, derivative agreements, contracts, and transactions.⁶ The proposed rule change is designed to ensure OCC has the tools necessary to liquidate the open positions and margin of a defaulting member in order to meet its settlement obligations to non-defaulting members promptly and in a manner that is least disruptive to the securities markets. OCC has not yet established detailed procedures for conducting an auction; however, any such auction must comply with the

⁵ The specific language of the proposed provision can be found at http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_11_08_a_1.pdf.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 64982 (July 28, 2011), 76 FR 46867 (August 3, 2011).

⁴ Securities Exchange Act Release No. 65370 (September 21, 2011), 76 FR 59750 (September 27, 2011). The proposed rule change as originally filed revises OCC Rule 1104 (margins deposited and contributions to the Clearing Fund) to clarify that the auction process is one way to liquidate a defaulting members accounts with respect to positions and collateral in a defaulting member's accounts. Amendment No. 1 to the proposed rule change also revises OCC Rule 1106 (open positions of a suspended clearing member) in a similar manner. Accordingly, as amended, the proposed rule change clarifies that the auction process is one way to liquidate a defaulting members accounts with respect to positions and collateral in a defaulting member's accounts under both OCC Rule 1104 and OCC Rule 1106. Telephone conference between Stephen Szarmack, Vice President and Associate General Counsel, OCC, and Pamela Kesner, Special Counsel, Securities and Exchange Commission Division of Trading and Markets, on September 20, 2011.

requirements of Section 17A, including requirements that the rules of a clearing agency are, in general, designed to protect investors and the public interest and are not designed to permit unfair discrimination among participants in the use of the clearing agency.⁷

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act⁸ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change, as modified by Amendment No. 1, (File No. SR-OCC-2011-08) be, and hereby is, approved.¹⁰

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011-28461 Filed 11-2-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65659; File No. SR-CBOE-2011-098]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to FLEX Options

October 31, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on October 17, 2011, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 by the Exchange. The Exchange has designated the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule

19b-4(f)(6) thereunder.⁴ 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 Exchange is proposing to amend certain rules pertaining to Flexible Exchange Options ("FLEX Options"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), at the Exchange's Office of the Secretary, and at the Commission.

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 Exchange 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices (referred to as "variable terms").⁵ For example, FLEX Options can have an expiration date that is any business day (specified as to day, month and year) with a maximum term of fifteen years.⁶ The rules governing the trading of FLEX Options on the FLEX Request for Quote ("RFQ") System platform are generally contained in Chapter XXIVA. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform are generally contained in Chapter XXIVB. Within each Chapter, the provisions pertaining to the variable

terms of FLEX Options are generally contained in Rules 24A.4 and 24B.4.

The purpose of this proposed rule change is to reorganize and amend certain Exchange Rules pertaining to FLEX Options to provide within Chapters XXIVA and XXIVB that a new series of FLEX Options may be established on any business day prior to the expiration date. The adding of new FLEX Equity Options series on any business day prior to the expiration date is already addressed in Rule 5.5 of Chapter V of the Exchange Rules.⁷ In an effort to make reading and understanding the FLEX Option provisions easier, the Exchange is proposing to move this new series add provision from Rule 5.5 of Chapter V to Rules 24A.4 and 24B.4 of Chapters XXIVA and XXIVB, respectively. In addition, the Exchange is proposing to apply the provision to all FLEX Options (not just FLEX Equity Options).⁸ Previously the rules did not clearly address the applicability of any such provision to other FLEX Options. However, it has been the Exchange's practice to permit other FLEX Options to be listed any business day prior to the expiration date.

The Exchange believes that reorganizing and amending the rules in the manner proposed should make it easier to read and understand the FLEX Options provisions. The Exchange also believes that it should provide additional clarity and avoid any confusion on the applicability of the new series add provision to any and all FLEX Options in a manner that is consistent with the existing provision for FLEX Equity Options.

⁷ Rule 5.5 generally sets forth provisions pertaining to series of options that may be open for trading on the Exchange and generally pertains to option contracts that are not FLEX Options. However, Rule 5.5.04 currently provides as follows: "New series of options on an individual stock may be added until the beginning of the month in which the option contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add new series of options on an individual stock until five business days prior to expiration. Notwithstanding the foregoing, a new series of FLEX Equity Options, as defined in and subject to the provisions of Chapter XXIVA or XXIVB of the Rules, may be added on any business day prior to the expiration date."

⁸ Specifically, the Exchange is proposing to delete the following sentence from Rule 5.5.04: "Notwithstanding the foregoing, a new series of FLEX Equity Options, as defined in and subject to the provisions of Chapter XXIVA or XXIVB of the Rules, may be added on any business day prior to the expiration date." And, the Exchange is proposing to add the following sentence to both Rule 24A.4(a)(1) and 24B.4(a)(1): "A new series of FLEX Options may be established on any business day prior to the expiration date as provided for in this Rule [24A.4 or 24B.4, as applicable]."

⁷ *Id.*

⁸ 15 U.S.C. 78q-1.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. See CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 28.17.

⁶ See Rule 24A.4(a)(2)(iv) and (a)(4)(i), and Rule 24B.4(a)(2)(iv) and (a)(5)(i).