

At any time within 60 days of the filing of the proposed 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.

#### 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2020-29 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-Phlx-2020-29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit

efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2020-29 and should be submitted on or before June 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88989; File No. SR-OCC-2020-004]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Modify the Sequence for Processing Options Transactions

June 2, 2020.

#### I. Introduction

On April 6, 2020, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2020-004 ("Proposed Rule Change") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder to describe a change to the sequence in which options transactions are processed.<sup>3</sup> The Proposed Rule Change was published for public comment in the **Federal Register** on April 21, 2020.<sup>4</sup> The Commission has received no comments regarding the Proposed Rule Change. This order approves the Proposed Rule Change.

#### II. Background

Currently, OCC processes all securities and commodity futures options transactions in the following sequence:<sup>5</sup> (1) Opening Buys; (2) Opening Sells; (3) Closing Buys; (4)

Exercises; (5) Closing Sells; and (6) Assignments. As discussed below, OCC's Clearing Members indicated that the current processing sequence could raise issues related to compliance with exchange rules requiring that firms exercise only "outstanding" net long positions.<sup>6</sup> OCC proposes to change the order in which it processes such transactions by moving "Closing Sells" ahead of "Exercises," which would result in the following sequence: (1) Opening Buys; (2) Opening Sells; (3) Closing Buys; (4) *Closing Sells*; (5) *Exercises*; and (6) Assignments. The current processing sequence was designed to protect Clearing Members against certain errors; however, OCC believes that operational changes as well as increased Clearing Member proficiency in trade processing warrants a change to the processing sequence to reflect the tools OCC offers its Clearing Members as well as increased Clearing Member proficiency.<sup>7</sup>

##### *Current Processing Sequence*

The current processing sequence was designed to protect against the risk that an erroneously coded transaction could prevent a Clearing Member from appropriately exercising a long position. The vast majority of customer securities options positions are maintained on a gross basis at OCC. A miscoded sell transaction of one customer could close out a long position in the same series of another customer, which would prevent the latter from exercising the long position. Processing closing sell transactions after exercises avoids the prevention of exercises by erroneously coded sell transactions.

**Market-Maker and Other Net Accounts:** The current processing sequence applies to firm, customer, and Market-Maker accounts. The processing sequence for Market-Maker accounts, however, includes one additional step because Market-Maker accounts are held on a net basis.<sup>8</sup> At the end of each trading day, OCC nets offsetting positions in the same options series in

<sup>6</sup> See Notice of Filing, 85 FR at 22198.

<sup>7</sup> See *id.*

<sup>8</sup> As noted above, the vast majority of customer accounts are maintained on a gross basis. A few Clearing Members have established the functionality to designate sub-accounts within their omnibus customer and firm accounts held at OCC. These sub-accounts are established for a specific customer or joint back office account and the account holders can elect to hold these accounts on a net basis to assist with the position reconciliation process. When the account holders elect to hold the accounts in this manner, they are subject to the same netting process to which Market-Maker accounts are subject. See Interpretation and Policy .04 to Article VI, Section 3 of OCC's By-Laws available at [https://www.theocc.com/components/docs/legal/rules\\_and\\_bylaws/occ\\_bylaws.pdf](https://www.theocc.com/components/docs/legal/rules_and_bylaws/occ_bylaws.pdf).

<sup>24</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> See Notice of Filing *infra* note 4, 85 FR at 22197.

<sup>4</sup> Securities Exchange Act Release No. 88654 (Apr. 15, 2020), 85 FR 22197 (Apr. 21, 2020) (File No. SR-OCC-2020-004) ("Notice of Filing").

<sup>5</sup> A "commodity future" is defined in Article I(c)(24) of By-Laws as "a futures contract within the exclusive jurisdiction of the Commodity Futures Trading Commission that is traded on, through the facilities of, or subject to the rules of a futures market." Options on securities futures currently do not exist. See [https://www.theocc.com/components/docs/legal/rules\\_and\\_bylaws/occ\\_bylaws.pdf](https://www.theocc.com/components/docs/legal/rules_and_bylaws/occ_bylaws.pdf).

each Market-Maker account. OCC nets offsetting positions before processing the exercise of long positions.<sup>9</sup> From a systems perspective, this means that the current processing sequence for Market-Maker accounts is as follows: (1) Opening Buys; (2) Opening Sells; (3) Closing Buys; (4) *Position Netting*; (5) Exercises; (6) Closing Sells; and (7) Assignments.

Clearing Members have visibility into the trade information that OCC receives, which is now available in near real-time.<sup>10</sup> OCC provides for visibility through a screen in ENCORE and an On Demand Position file provided to Clearing Members, both of which allow Clearing Members to evaluate the availability of long positions to cover exercises notices. OCC also permits Clearing Members to adjust positions for the purpose of correcting the miscoding errors as described above. Specifically, Clearing Members may correct such errors by entering a position adjustment in ENCORE prior to exercises being processed.<sup>11</sup>

Additionally, OCC's Clearing Members have indicated that the current processing sequence could raise issues related to compliance with exchange rules requiring that firms exercise only "outstanding" net long positions.<sup>12</sup> Clearing Members have indicated that a customer position could be subject to conflicting closing sale and exercise

instructions. Under OCC's current processing sequence, such instructions could lead to a position that was intended to be closed out being exercised instead.

#### *Proposed Processing Sequence*

OCC proposes to modify the processing sequence for all securities and futures options transactions for all account types to process all closing sell transactions prior to all exercise transactions.<sup>13</sup> OCC proposes to change the order in which it processes such transactions by moving "Closing Sells" ahead of "Exercises," which would result in the following sequence: (1) Opening Buys; (2) Opening Sells; (3) Closing Buys; (4) *Closing Sells*; (5) *Exercises*; and (6) Assignments. For Market-Maker and other accounts held on a net basis, OCC proposes to net offsetting positions after closing sells but before exercises.

OCC discussed the current processing sequence and the Proposed Rule Change with its Clearing Members at the OCC Roundtable, an OCC-sponsored advisory group comprised of representatives from OCC's participant.<sup>14</sup> Based upon those discussions, OCC believes that its current processing sequence for options transactions no longer needs to be designed to protect Clearing Members from errors in customers' accounts that would result in closing out a position that was intended to be exercised.<sup>15</sup> Further, OCC represented that Clearing Members believe the Proposed Rule Change would help them comply with certain Exchange rules that require customers to exercise only "outstanding" net long positions.<sup>16</sup> As noted, Clearing Members now have visibility into near real-time trade data and the ability to adjust positions prior to exercise to correct errors in the

coding of non-critical aspects of a trade, which was not available when the current processing sequence was established.

### **III. Discussion and Commission Findings**

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.<sup>17</sup> After carefully considering the Proposed Rule Change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act.<sup>18</sup>

#### *A. Consistency With Section 17A(b)(3)(F) of the Exchange Act*

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>19</sup> Based on its review of the record, the Commission believes that modifying OCC's processing sequence for all securities and futures options transactions as described above is consistent with the promotion of prompt and accurate clearance and settlement of securities transactions for the reasons described below.

Clearing Members have raised concerns regarding their ability to comply with exchange rules given OCC's current processing sequence. Specifically, exchanges require market participants to exercise only outstanding net long positions. Processing exercises after buys and sells could address situations in which a customer position is subject to conflicting closing sale and exercise instructions, which could lead to a position being exercised that was intended to be closed out.

The current processing sequence was designed to ensure that a market participant would be able to exercise its long positions even if a trade has been miscoded. The need for such protections, however, arose at a time when trades were received and processed in a batch at the end of the

<sup>9</sup> OCC represented that netting before exercise is designed to address operational risk concerns related to the processing of dividend play transactions by Market-Makers. See Notice of Filing, 85 FR at 22198. A dividend play is a trading strategy that historically was primarily engaged in by Market-Makers and involved buying and selling an equal number of call options right before a dividend date on the underlying equity and exercising the long call options with the goal of capturing the dividend on the underlying equity.

<sup>10</sup> When the current processing sequence was adopted, OCC received trades in a batch file from each exchange at the end of the trading day. OCC would then process trades on a batch basis prior to the opening of trading the following business day. In contrast, OCC now receives trade information on a near real-time basis. The functionality to receive trades on a near real-time basis has been available through OCC's ENCORE clearing system since 2002. See *id.*

<sup>11</sup> OCC allows Clearing Members to make such position adjustment only for non-critical aspects of a trade. For example, a Clearing Member would not be permitted to change the price or symbol of a trade.

<sup>12</sup> See Notice of Filing, 85 FR at 22198. The rules of one exchange provide that, "an outstanding options contract may be exercised during the time period specified in the Rules of [OCC] by the tender to [OCC] of an exercise notice in accordance with the Rules of [OCC]." NYSE Arca Rule 6.24-O(a). See also FINRA Rule 2360 (b)(23) and NYSE American Options Rule 980(a). An "outstanding" contract is "an options contract which has been issued by [OCC] and has neither been the subject of a closing writing transaction nor has reached its expiration date." NYSE Arca Rule 6.1-O(b)(26). See also FINRA Rule 2360 (a)(26).

<sup>13</sup> OCC currently uses the same processing sequence for options on commodity futures; however, OCC understands that futures customers and Clearing Members are indifferent to the processing sequence for futures transactions. See Notice of Filing, 85 FR at 22199. Futures firms submit very few trades marked as closing transactions, and as a result, submit nightly adjustments to correct their open interest, which, in turn reduces the potential of an exercise error since the firms verify their long positions on a daily basis. *Id.*

<sup>14</sup> The OCC Roundtable is made up of Exchanges, a cross-section of OCC Clearing Members, and OCC staff who hold regular monthly operations update calls.

<sup>15</sup> See Notice of Filing, 85 FR at 22199.

<sup>16</sup> See Notice of Filing, 85 FR at 22199. By processing all buys and sells prior to exercises, Clearing Members believe that the proposed processing sequence would help address situations in which a customer position is subject to conflicting closing sale and exercise instructions, which could lead to a position being exercised that was intended to be closed out under the current processing sequence. *Id.*

<sup>17</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>18</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>19</sup> 15 U.S.C. 78q-1(b)(3)(F).

day. Visibility into the near real-time trade information provided to OCC allows Clearing Members to better understand the long positions available for exercise and to correct coding errors through position adjustments.

Further, as noted above, OCC's determination to propose a change to its current processing sequence was supported by discussions with Clearing Members at the OCC Roundtable and during regular monthly operations update calls with Clearing Members and exchanges. Given the position adjustment tools available to Clearing Members to address miscoded transactions, the Commission believes that revising OCC's processing sequence to facilitate compliance with exchange rules would promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes, therefore, that the proposed processing sequence is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.<sup>20</sup>

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act<sup>21</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>22</sup> that the Proposed Rule Change (SR–OCC–2020–004) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88988; File No. SR–MIAX–2020–13]

### Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 404, Series of Option Contracts Open for Trading, Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments, and Exchange Rule 516, Order Types Defined, To Conform the Rules to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options

June 2, 2020.

Pursuant to the provisions of 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 May 29, 2020, Miami International Securities Exchange, LLC (“MIAX” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 filing a proposal to amend certain of the Exchange's rules to conform to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (the “OLPP”) and add new subparagraphs (a)(3)(i)–(iii) and (c) to Exchange Rule 510.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/> at MIAX's principal office, and at the Commission's Public Reference Room.

#### 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 these 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 aspects of such statements.

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

##### 1. Purpose

The purpose of this rule change is to amend Exchange Rule 404, Series of Option Contracts Open for Trading, Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments, and Exchange Rule 516, Order Types Defined, to align the Exchange's rules with the recently approved amendment to the OLPP.

##### Background

On January 23, 2007, the Commission approved on a limited basis a Penny Pilot in option classes in certain issues (“Penny Pilot”). The Penny Pilot was designed to determine whether investors would benefit from options being quoted in penny increments, and in which classes the benefits were most significant. The Penny Pilot was initiated at the then existing option exchanges in January 2007<sup>3</sup> and expanded and extended numerous times over the last 13 years.<sup>4</sup> In each instance, these approvals relied upon the consideration of data periodically provided by the Exchanges that analyzed how quoting options in penny increments affects spreads, liquidity, quote traffic, and volume. Today, the

<sup>3</sup> See Securities Exchange Act Release Nos. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR–CBOE–2006–92); 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR–ISE–2006–62); 54886 (December 6, 2006), 71 FR 74979 (December 13, 2006) (SR–Phlx–2006–74); 54590 (October 12, 2006), 71 FR 61525 (October 18, 2006) (SR–NYSEArca–2006–73); and 54741 (November 9, 2006), 71 FR 67176 (November 20, 2006) (SR–Amex–2006–106).

<sup>4</sup> See Securities Exchange Act Release Nos. 87606 (November 25, 2019), 84 FR 66030 (December 2, 2019) (SR–MIAX–2019–47); 86054 (June 6, 2019), 84 FR 27385 (June 12, 2019) (SR–MIAX–2019–27); 84864 (December 19, 2018), 83 FR 66778 (December 27, 2018) (SR–MIAX–2018–38); 83515 (June 25, 2018), 83 FR 30786 (June 29, 2018) (SR–MIAX–2018–12); 82354 (December 19, 2017), 82 FR 61058 (December 26, 2017) (SR–MIAX–2017–48); 80757 (May 24, 2017), 82 FR 25032 (May 31, 2017) (SR–MIAX–2017–23); 79432 (November 30, 2016), 81 FR 87990 (December 6, 2016) (SR–MIAX–2016–45); 78080 (June 15, 2016), 81 FR 40377 (June 21, 2016) (SR–MIAX–2016–16); 75284 (June 24, 2015), 80 FR 37349 (June 30, 2015) (SR–MIAX–2015–40); 70972 (December 3, 2013), 78 FR 73909 (December 9, 2013) (SR–MIAX–2013–54); 69785 (June 18, 2013), 78 FR 37856 (June 24, 2013) (SR–MIAX–2013–28); and 68551 (December 31, 2012), 78 FR 973 (January 7, 2013) (SR–MIAX–2012–04).

<sup>20</sup> 15 U.S.C. 78q–1(b)(3)(D).

<sup>21</sup> In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.