

to determine whether the proposed rule should be approved or 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2014-115 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASDAQ-2014-115. 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 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 Web site 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 NASDAQ. 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-NASDAQ-2014-115 and should be submitted on or before December 23, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-73685; File No. SR-OCC-2014-21]**

#### **Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change in Order To Permit OCC To Adjust the Size of Its Clearing Fund on an Intra-Month Basis**

November 25, 2014.

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 13, 2014, 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 by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

This proposed rule change by OCC would delete the second sentence of Rule 1001(a), which OCC has temporarily suspended pursuant to emergency authority under Article IX, Section 14 of its By-Laws, which would permit OCC to adjust the size of its Clearing Fund on an intra-month basis.

#### **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.

<sup>9</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.

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

##### **1. Purpose**

OCC is submitting this proposed rule change to permit OCC to collect additional financial resources from its clearing membership by increasing the size of its Clearing Fund on an intra-month basis when OCC determines such action should be taken so that the Clearing Fund is sufficient to protect OCC against potential loss under simulated default scenarios. OCC monitors the sufficiency of the Clearing Fund on a daily basis but may only readjust the size of the Clearing Fund on a monthly basis.<sup>3</sup> During the ordinary course of daily monitoring activities on October 15, 2014, and as a result of increased volatility in the financial markets in October 2014, OCC determined that in the event of a default of its largest participant family, OCC's then current financial resources potentially could have fallen short of the total financial resources needed to cover the loss associated with the default.

To permit OCC to increase the size of its Clearing Fund prior to the next monthly resizing that was scheduled to take place on the first business day of November 2014, OCC's Executive Chairman, on October 15, 2014, exercised certain emergency powers as set forth in Article IX, Section 14 of OCC's By-Laws.<sup>4</sup> In emergency circumstances, and subject to certain conditions, Article IX, Section 14 permits OCC's Board of Directors, Executive Chairman, or President to waive or suspend its By-Laws, Rules, policies and procedures, or any other rules issued by OCC or extend the time fixed thereby for the doing of any act or acts for up to thirty calendar days. Consistent with that authority, and following discussions with the Risk Committee of OCC's Board of Directors, the Executive Chairman waived the provisions in the second sentence of Rule 1001(a). OCC then filed an emergency notice with the Commission pursuant to Section 806(e)(2) of the Payment, Clearing, and Settlement

<sup>3</sup> See OCC Rule 1001(a).

<sup>4</sup> OCC also has submitted an advance notice that would provide greater detail concerning conditions under which OCC would resize the Clearing Fund intra-month. The change would permit intra-month resizing in the event that the five-day rolling average of projected draws are 150% or more of the Clearing Fund's then current size. See Securities Exchange Act Release No. 72804 (August 11, 2014), 79 FR 48276 (August 15, 2014) (SR-OCC-2014-804).

Supervision Act of 2010<sup>5</sup> and increased the Clearing Fund size for the remainder of October 2014 as otherwise provided for by the terms of Rule 1001(a).<sup>6</sup> This was done to respond to the potential risk under prevailing market conditions that the Clearing Fund could be underfunded, which could have affected OCC's ability to provide services in a safe and sound manner.

Clearing members were informed of the action taken by the Executive Chairman and the amount of their additional Clearing Fund requirements, which were met without issue.<sup>7</sup> As a result of these actions, OCC's Clearing Fund for October 2014 was increased by \$1.8 billion. In continued reliance on the emergency rule waiver and the emergency notice, OCC set the November 2014 Clearing Fund size at \$7.8 billion, which included an amount determined by OCC to be sufficient to protect OCC against loss under simulated default scenarios (*i.e.*, \$6 billion), plus a prudential margin of safety (the additional \$1.8 billion collected in October).<sup>8</sup> All required contributions to the November 2014 Clearing Fund have been met by impacted clearing members.

Under Article IX, Section 14(c) of OCC's By-Laws, OCC's waiver of the provisions of the second sentence of Rule 1001(a) is permitted to continue for no more than thirty calendar days unless OCC submits a proposed rule change to the Commission seeking approval of such waiver.<sup>9</sup> Upon submission of a rule filing, the waiver may continue in effect until the Commission approves or disapproves the proposed rule change.<sup>10</sup> Accordingly, OCC is now submitting this proposed rule change to delete the second sentence of Rule 1001(a) and, by the terms of Article IX, Section 14(c), to preserve the suspended effectiveness of the second sentence of Rule 1001(a) beyond thirty calendar days.

OCC believes that this proposal is appropriate to permit OCC to resize the Clearing Fund more frequently than

monthly and to determine its size in an amount sufficient to protect OCC from loss by relying on a broader range of sound risk management practices than only the average daily calculations under Rule 1001(a) that are performed during the preceding calendar month. OCC would use its authority to adjust the size of its Clearing Fund on an intra-month basis only to increase the size of the Clearing Fund where appropriate, not to decrease the size of the Clearing Fund.

## 2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,<sup>11</sup> and the rules and regulations thereunder, including Rule 17Ad-22(b)(3),<sup>12</sup> because, by permitting OCC to resize the Clearing Fund intra-month and to determine its size in an amount sufficient to protect OCC from loss using a broader range of sound risk management practices than is currently required, the proposed modifications would assure the safeguarding of securities and funds which are in the custody or control of OCC or for which it is responsible, protect investors and the public interest and ensure that OCC has policies and procedures designed to maintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

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

OCC does not believe that the proposed rule change would impose any burden on competition.<sup>13</sup> OCC believes the proposed rule change would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user because OCC would continue to allocate the Clearing Fund as per current rules and without regard to any particular user or Clearing Member that makes Clearing Fund contributions. 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.

## (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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate 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 or disapprove 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2014-21 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-2014-21. 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 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

<sup>5</sup> 12 U.S.C. 5465(e)(2).

<sup>6</sup> See Notice of Emergency Change to OCC's Procedures to Resize the Clearing Fund in Response to Market Conditions (SR-OCC-2014-807), [http://www.theocc.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_14\\_807.pdf](http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_807.pdf).

<sup>7</sup> See Information Memorandum #35397, dated October 16, 2014, available on OCC's Web site, <http://www.theocc.com/clearing/clearing-infomemos/infomemos1.jsp>.

<sup>8</sup> See Information Memorandum #35507, dated October 31, 2014, available on OCC's Web site, <http://www.theocc.com/clearing/clearing-infomemos/infomemos1.jsp>.

<sup>9</sup> See, OCC By-Laws, Article IX, Section 14(c). OCC will also submit this proposed rule change to the Commodity Futures Trading Commission.

<sup>10</sup> *Id.*

<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>12</sup> 17 CFR 240.17Ad-22(b)(3).

<sup>13</sup> 15 U.S.C. 78q-1(b)(3)(I).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site 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 OCC and on OCC's Web site at [http://www.theocc.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_14\\_21.pdf](http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_21.pdf). 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-2014-21 and should be submitted on or before December 23, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73682; File No. SR-FICC-2014-09]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Rules of the Government Securities Division and the Mortgage-Backed Securities Division Regarding the Default of Fixed Income Clearing Corporation

November 25, 2014.

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 12, 2014, Fixed Income Clearing Corporation ("FICC" or "Corporation") 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 FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of amendments to the rules of the Government Securities Division ("GSD Rules") of FICC and the rules of the Mortgage-Backed Securities Division ("MBSD Rules") of FICC (each of GSD and MBSD, a "Division" of FICC) regarding a default by the Corporation.

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

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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

##### (1) Purpose

The purpose of this filing is to amend in certain respects the GSD Rules and the MBSD Rules regarding a default by the Corporation.

By way of background, in 2010, FICC received approval from the Securities and Exchange Commission ("SEC") to amend the GSD Rules to add Rule 22B (the "GSD Corporation Default Rule").<sup>3</sup> Certain technical clarifying changes to the GSD Corporation Default Rule were subsequently filed by FICC with the SEC for immediate effectiveness in 2011.<sup>4</sup>

The GSD Corporation Default Rule was originally added to the GSD Rules to make explicit the close out netting that would be applied to obligations between FICC and its members in the event that FICC becomes insolvent or otherwise defaults on its obligations to its members, and, in doing so, provide clarity to member firms in their application of balance sheet netting to their transactions at FICC under U.S. GAAP and in the calculation of their capital requirements on the basis of their net credit exposure to FICC under Basel Accord standards. A rule parallel to the GSD Corporation Default Rule was subsequently added as Rule 17A to

the MBSD Rules<sup>5</sup> (the "MBSD Corporation Default Rule", and together with the GSD Corporation Default Rule, the "Corporation Default Rules").

There are three general types of default covered by the Corporation Default Rules: Voluntary proceedings defaults, involuntary proceedings defaults and non-insolvency related defaults.

With respect to voluntary proceedings defaults, FICC would be considered in default under the current Corporation Default Rules immediately upon the dissolution of the Corporation, the voluntary institution of proceedings by the Corporation seeking a judgment of insolvency or bankruptcy or other similar relief or the voluntary presentation by the Corporation of a petition for its winding up or liquidation.

With respect to involuntary proceedings defaults, FICC would be considered in default under the current Corporation Default Rules on the 91st calendar day after the judgment of insolvency or bankruptcy or the entry of an order for relief (or similar order) for FICC's winding up or liquidation, or the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for all or substantially all of the Corporation's assets, where such judgment, order or appointment, as applicable, remains unstayed throughout the 90 calendar day grace period.

With respect to non-insolvency related defaults, FICC would, as a general matter, be considered in default under the current Corporation Default Rules on the 91st calendar day after it receives notice from a member of its failure to make an undisputed payment or delivery to such member that is required under the GSD Rules or the MBSD Rules, respectively, where such failure remains unremedied throughout the 90 calendar day grace period. However, the current Corporation Default Rules exclude from the scope of what can be considered a non-insolvency related default of the applicable Division of FICC: (1) Failure to satisfy obligations to members in wind-down and defaulting members; (2) the satisfaction of obligations by alternate means provided for under the applicable Division's Rules; (3) failure of the other Division of FICC to satisfy an obligation to a member; and (4) failure to satisfy obligations as a result of an operational, technological or

<sup>3</sup> See Securities Exchange Act Release No. 34-63038 (October 5, 2010), 75 FR 62899 (October 13, 2010) (SR-FICC-2010-04).

<sup>4</sup> See Securities Exchange Act Release No. 34-64004 (March 2, 2011), 76 FR 12782 (March 8, 2011) (SR-FICC-2011-02).

<sup>5</sup> See Securities Exchange Act Release No. 34-66550 (March 9, 2012), 77 FR 15155 (March 14, 2012) (SR-FICC-2008-01).

<sup>14</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.