at the same price, so long as that order was on the Book within the depth of interest that would have traded with the Agency Order had the Agency Order been submitted unmatched. If other interest on the Book can fill the balance of the Agency Order, BOX further will permit the Public Customer Order, together with such other interest, to fill the Agency Order. The Commission believes that it is reasonable and consistent with the Act for BOX to not aggregate Responses in this case because the sole purpose in eliciting Responses in the Solicitation Auction is to explore whether any possibility exists to obtain price improvement for the entire Agency Order.

Regarding BOX's introduction of the Surrender Quantity, the Commission believes that this function could help facilitate the execution of block-sized orders, while avoiding trade-throughs of better priced bids (offers) on the BOX Book and not bypassing Public Customer orders that would have traded with the Agency Order if the Agency Order had been submitted to the BOX Book.

The Exchange has adopted an interpretive provision to make clear that it would be a violation of an Options Participant's duty of best execution to its customer if it were to cancel a facilitation order to avoid execution of the order at the better price. Use of the Facilitation Auction does not modify an Options Participant's best execution duty to obtain the best price for its customer. Accordingly, while Facilitation Orders may be canceled during the facilitation timeframe, if an Options Participant was to cancel a facilitation order when there was a superior price available on the Exchange and subsequently re-enter the facilitation order at the same facilitation price after the better price was no longer available without attempting to obtain that better price for its customer, there would be a presumption that the member did so to avoid execution of its customer order by other market participants.

The Commission believes that this interpretation is important to ensure that brokers proposing to facilitate orders as principal fulfill their best execution duties to their customers. In the Commission's view, withdrawing a facilitated order that may be price improved simply to avoid execution of the order at the superior price is a violation of a broker's duty of best execution.[30] The Commission expects the Exchange to establish procedures to surveil for violations of this best execution obligation.[31]

Finally, the Commission believes that it is reasonable and consistent with the Act for orders and Responses to be entered into the Exchange's Facilitation and Solicitation Auctions and receive executions at penny increments (the ''Penny Increment functionality''). The Commission notes that the Exchange is not restricting the ability of any Options Participant to enter orders and Reponses in penny increments into the Exchange's Facilitation and Solicitation Auctions on its own behalf or on behalf of any other person, including customers. The Commission believes that the Penny Increment functionality could provide greater flexibility in pricing for block-size orders and could provide enhanced opportunities for block-sized orders to benefit from price improvement, while ensuring broad access to persons that would like to participate in a one-cent increment. In addition, the Commission notes that it has previously approved rules relating to exchange crossing mechanisms that allow orders and executions in penny increments.[32]

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule change (SR–BX–2011–034) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–25073 Filed 9–28–11; 8:45 am]

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[30] *See, e.g.,* Securities Exchange Act Release No. 49175 (February 3, 2004), 69 FR 6124 (February 9, 2004) (Commission concept release on ''Competitive Developments in the Options Markets''), citing In the Matter of the Application of the International Securities Exchange, LLC For Registration as a National Securities Exchange, Release No. 42455 (Feb. 24, 2000).

[31] The Commission realizes that ensuring that Options Participations do not re-enter facilitated orders on markets other than the Exchange may be difficult. Nevertheless, the Commission expects the Exchange to work with the other options markets through the Intermarket Surveillance Group to develop methods and procedures to monitor their Options Participants trading on other markets for possible best execution violations in this context.

[32] See Securities Exchange Act Release Nos. 49068 (January 14, 2003), 68 FR 3062 (January 22, 2003) (Commission approval establishing trading rules for BOX, including rules for the Price Improvement Period); 49323 (February 26, 2004), 69 FR 10087 (March 3, 2004) (Commission approval establishing rules for ISE's Price Improvement Mechanism); and 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) (Commission approval establishing rules for CBOE's Automated Improvement Mechanism). These mechanisms allow for the execution of orders at penny increments even when the standard minimum trading increment is greater than one penny.

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65386; File No. SR–OCC–2011–10]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Revise Its By-Laws and Rules To Establish a Clearing Fund Amount Intended To Support Losses Under a Defined Set of Default Scenarios

September 23, 2011.

I. Introduction

On August 3, 2011, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2011–10 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 17, 2011.[3] The Commission received no comment letters. This order approves the proposed rule change.[4]

II. Description of the Proposal

This proposed rule change would revise OCC's By-Laws and Rules to establish the size of OCC's clearing fund as the amount that is required within a confidence level selected by OCC to sustain the possible loss under a defined

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–65119 (August 12, 2011), 76 FR 51087 (August 17, 2011).

[4] This proposed rule change replaced a previously filed and later withdrawn proposed rule change by OCC regarding clearing fund sizing. File No. SR–OCC–2010–04, Securities Exchange Act Release 34–62371 (June 24, 2010), 75 FR 37864 (June 30, 2010) (Notice of Filing of Proposed Rule Change To Revise its By-Laws and Rules To Establish a Clearing Fund Amount Intended to Support Losses Under a Defined Set of Default Scenarios). OCC withdrew its earlier proposed rule change in order that it could: incorporate amendments that had been proposed for the previous proposed rule change; discuss the adaptation of the methodology underlying the formula to take into account the effects of implementing its ''Collateral in Margins'' rule change (Securities Exchange Act Release No. 34–58158 (July 15, 2008), 73 FR 42646 (July 22, 2008) (SR–OCC–2007–20)); give itself time to prepare updated comparative data about the impact of the proposed clearing fund sizing formula; and make additional changes to improve the overall readability of the proposed rule text.

set of scenarios as determined by OCC. Currently the size of the clearing fund is calculated each month and is equal to a fixed percentage of the average total daily margin requirement for the preceding month provided that this calculation results in a clearing fund of $1 billion or more.[5]

Under the revised formula for determining the size of the clearing fund, the amount of the fund will be equal to the larger of the amount of the charge to the fund that would result from (i) a default by the single ''clearing member group'' [6] whose default would be likely to result in the largest draw against the clearing fund or (ii) an event involving the near-simultaneous default of two randomly selected ''clearing member groups'' in each case as calculated by OCC with a confidence level selected by OCC. Initially, the confidence levels employed by OCC in calculating the charge likely to result from a default by OCC's largest ''clearing member group'' and the default of two randomly-selected ''clearing member groups'' will be 99% and 99.9%, respectively. However, OCC will have the discretion to employ different confidence levels in these calculations in the future provided that OCC will not employ confidence levels of less than 99% without filing a rule change with the Commission.[7] The size of the clearing fund will continue to be recalculated monthly based on a monthly averaging of daily calculations for the previous month and subject to a requirement that the total clearing fund be not less than $1 billion.[8]

The new formula is designed to more directly take into account anticipated losses resulting from the clearing member default scenarios described above and thereby establish the clearing fund at a size that is sufficient to cover such losses without relying on any rights of OCC to require clearing members to replenish the clearing fund. OCC believes the formula is generally consistent with the current ''Recommendations for Central Counterparties'' published by the Bank for International Settlements and the International Organization of Securities Commissioners. Among the recommendations in the publication are that a clearing organization ''maintain sufficient financial resources to withstand, at a minimum, a default by the clearing member to which it has the largest exposure in extreme but plausible market conditions.'' The publication further advises clearing organizations to plan for the possibility of a default by two or more clearing members in a short time frame.[9]

In considering whether to revise the current formula for determining the size of the clearing fund, OCC compared the size of the clearing fund that would have resulted from application of the revised formula to the actual size of the clearing fund for each month from February 2008 through September 2009. This analysis revealed that for this time period the size of the clearing fund under the revised formula would have been on average 10% larger than under the current formula. In September and October 2008, which were two months of extreme volatility in the U.S. securities markets, the revised formula would have resulted in a clearing fund size of approximately 31% and 27% greater than under the current formula. The average monthly change in the size of the clearing fund and the standard deviation of clearing fund size from month-to-month for this time period under the two formulas were broadly similar.[10]

Since deciding in September 2009 that it wished to adopt the revised formula, OCC has continued to compare the size of the clearing fund under the revised formula with the size under the current formula. During 2010 the methodology underlying the revised formula was adapted to incorporate the effects of the implementation of the changes described in its Collateral in Margins rule change.[11] Under those changes, certain types of securities accepted as collateral are analyzed for margin purposes together with positions in cleared products as a single portfolio to afford a more accurate measurement of risk. During the period February 2008 through January 2010 (*i.e.,* prior to the implementation of the Collateral in Margins Filing) for which comparative data is available, the size of the clearing fund under the revised formula would have been on average 3% larger than under the current formula. Including also the months of July 2010 through June 2011 (*i.e.,* since the implementation of the Collateral in Margins rule change) for which comparative data is available, the corresponding percentage increase is 2%.

The existing formula for determining the size of the clearing fund was intended to establish the fund at a level reasonably designed to cover losses resulting from one or more clearing member defaults, and OCC believes that it has served that purpose adequately. Nevertheless, OCC believes that the revised formula presents a more accurate prediction of the actual losses that would be likely to result from such defaults. The existing formula takes potential losses into account only indirectly by setting the size of the clearing fund as a percentage of average margin requirements. The revised formula will directly take into account various types of default scenarios and therefore in OCC's view will be more likely to result in a level for the clearing fund that is adequate in the event such scenarios occur. The new formula is designed to more closely align the size of the clearing fund with its intended purpose of protecting OCC from any losses that could result from clearing member defaults and should thereby better help avoid a disruption of the clearance process even during extreme market conditions.

Article VIII, Section 6 of OCC's By-Laws, which obligates clearing members to make good deficiencies in their clearing fund deposits resulting from pro rata charges or otherwise will remain unchanged.[12]

[5] If the calculation does not result in a clearing fund of $1 billion or more, the percentage of the average total daily margin requirement for the preceding month that results in a fund level of at least $1 billion is applied provided that in no event will the percentage exceed 7%.

[6] ''Clearing member group'' will be defined in Article I (''Definitions'') of OCC's By-Laws to mean ''a Clearing Member and any Member Affiliates of such Clearing Member.''

[7] Proposed Interpretation and Policy .02 to OCC Rule 1001.

[8] Proposed Interpretation and Policy .01 to OCC Rule 1001.

[9] Bank for International Settlements and International Organization of Securities Commissions, Recommendations for Central Counterparties (November 2004), *available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD176.pdf* (''2004 Recommendations''). OCC notes that in December 2009 the Committee on Payment and Settlement Systems of the Bank for International Settlements (''CPSS'') and the Technical Committee of the International Organization of Securities Commissions (''IOSCO'') began a comprehensive review of the 2004 Recommendations in order to strengthen and clarify such recommendations based on experience and lessons learned from the recent financial crisis. In March 2011, CPSS and IOSCO published for comment the results of its review with comments requested by July 29, 2011. Bank for International Settlements and International Organization of Securities Commissions, Principles for financial market infrastructures (March 2011), available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD350.pdf*

[10] Note the comparative data described in this paragraph was obtained using confidence levels set at 99% and higher. OCC estimates that using only a 99% confidence level for the months referenced would have lowered by an average of approximately ½% the total size of the clearing fund as determined by the proposed methodology.

[11] Securities Exchange Act Release No. 34–58158 (July 15, 2008), 73 FR 42646 (July 22, 2008) (SR–OCC–2007–20). *Supra* note 4.

[12] OCC's members' obligation to make good deficiencies in their clearing fund deposits will continue to be subject to a cap equal to 100% of a clearing member's then required deposit if it

Continued

III. Discussion

Section 17A(b)(3)(F) of the Act [13] requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that because the proposed rule change creates a more direct correlation between OCC's clearing fund size and potential losses from a defined set of default scenarios, it should better enable OCC to fulfill this statutory obligation.

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 Act [14] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (File No. SR–OCC–2011–10) be, and hereby is, approved.[16]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

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promptly withdraws from membership and closes out or transfers its open positions.

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 15 U.S.C. 78q–1.

[15] 15 U.S.C. 78s(b)(2).

[16] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65384; File No. SR–ISE–2011–59]

Self-Regulatory Organizations; International Securities Exchange, Incorporated; Notice of Proposed Rule To Simplify the $1 Strike Price Interval Program

September 22, 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 September 21, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules in order to simplify the $1 Strike Price Interval Program. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com,* at the principal office of the Exchange, 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 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 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

The Exchange proposes to amend Supplementary Material .01 to ISE Rule 504 in order to simplify the $1 Strike Price Interval Program (''Program''). This filing is based on a filing previously submitted by the Chicago Board Options Exchange, Inc. (''CBOE'').[3]

In 2003, the Commission issued an order permitting the Exchange to establish the Program on a pilot basis.[4] At that time, the underlying stock had to close at $20 on the previous trading day in order to qualify for the Program. The range of available $1 strike price intervals was limited to a range between $3 and $20 and no strike price was permitted that was greater than $5 from the underlying stock's closing price on the previous trading day. Series in $1 strike price intervals were not permitted within $0.50 an existing strike. In addition, the Exchange was limited to selecting five (5) classes and reciprocal listing was permitted. Furthermore, LEAPS in $1 strike price intervals were not permitted for classes selected to participate in the Program.

The Exchange renewed the pilot program on a yearly basis and in 2008, the Commission granted permanent approval of the Program.[5] At that time, the Program was expanded to increase the upper limit of the permissible strike price range from $20 to $50. In addition, the number of class selections per exchange was increased from five (5) to ten (10). Since the Program was made permanent, the number of class selections per exchange has been increased from ten (10) classes to 55 classes [6] and subsequently increased from 55 classes to 150 classes.[7]

Amendments To Simplify Non-LEAPS Rule Text

The most recent expansion of the Program was approved by the Commission in early 2011 and increased the number of $1 strike price intervals permitted within the $1 to $50 range.[8] This expansion was a proposal of another exchange and ISE submitted its filing for competitive reasons. This expansion, however, has resulted in very lengthy rule text that is complicated and difficult to understand. ISE believes that the proposed changes to simplify the rule text of the Program will benefit market participants since the Program will be easier to understand and will maintain the expansions made to the Program in early 2011. Through the current proposal, the Exchange also hopes to make administration of the Program easier, *e.g.,* system programming efforts. To simply the rules of the Program and, as a proactive attempt to mitigate any unintentional listing of improper strikes, ISE is proposing the following streamlining amendments:

- When the price of the underlying stock is equal to or less than $20, permit $1 strike price intervals with an exercise price up to 100% above and 100%

[3] *See* Securities Exchange Act Release No. 65031 (August 4, 2011) 76 FR 48935 (August 9, 2011) (SR–CBOE–2011–040).

[4] *See* Securities Exchange Act Release No. 48033 (June 16, 2003) 68 FR 37036 (June 20, 2003) (SR–ISE–2003–17).

[5] *See* Securities Exchange Act Release No. 57169 (January 18, 2008) 73 FR 4654 (January 25, 2008) (SR–ISE–2007–110).

[6] *See* Securities Exchange Act Release No. 59587 (March 17, 2009), 74 FR 12414 (March 24, 2009) (SR–ISE–2009–04).

[7] *See* Securities Exchange Act Release No. 62442 (July 2, 2010), 75 FR 39597 (July 9, 2010) (SR–ISE–2010–64).

[8] *See* Securities Exchange Act Release No. 63771 (January 25, 2011), 76 FR 5642 (February 1, 2011) (SR–ISE–2011–06).