

and a national market system, and, in general, to protect investors and the public interest.

The Exchange's proposal to expand the scope of potential Users of its co-location services to include any market participant that requests to receive co-location services directly from the Exchange would increase access to the Exchange's co-location facilities by allowing additional types of Users to use those facilities. In this regard, co-location services would be offered by the Exchange to these additional types of Users, as is the case today for existing Users, in a manner that would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

Additionally, the proposed hosting fee would be applied uniformly for comparable services provided by the Exchange and would not unfairly discriminate between similarly situated Users of co-location services. In this regard, the proposed hosting capability and related fee would be applicable to all interested Users that provide hosting services. In addition, the Exchange believes that the proposed hosting fee is reasonable in that it is designed to defray applicable expenses incurred or resources expended by the Exchange related to such services, including, but not limited to, configuration of Users' connections to their Hosted User customers and subsequent monitoring thereof by Exchange staff.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

#### **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: (i) As the Commission may designate up to 90 days of such date 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 such 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-NYSEARCA-2011-74 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-NYSEARCA-2011-74. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. 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-NYSEARCA-2011-74, and

should be submitted on or before November 22, 2011.

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

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

[FR Doc. 2011-28202 Filed 10-31-11; 8:45 am]

BILLING CODE 8011-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65622 File No. SR-OCC-2011-15]

### **Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Management of Liquidity Risk**

October 26, 2011.

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 October 12, 2011, 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. 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 proposed rule change would clarify OCC's ability to obtain temporary liquidity for purposes of meeting liquidity needs arising from default obligations.

#### **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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

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

The purpose of the proposed rule change is to amend OCC's by-laws and rules to clarify OCC's authority to use, and the manner in which OCC may use, a defaulting clearing member's margin deposits and contributions to the clearing fund and all other clearing members' clearing fund contributions<sup>3</sup> to obtain temporary liquidity for purposes of meeting liquidity needs arising from Default Obligations.<sup>4</sup>

An essential element of OCC's risk management regime is sound management of liquidity risk. OCC regularly examines its liquidity risk exposure to determine the optimal amount and form of available liquidity. OCC's largest potential liquidity needs are projected to occur in the case of a clearing member's default where OCC would be obligated to settle the defaulting clearing member's payment obligations with respect to option premiums, settlement of cash-settled option exercises, and mark-to-market payments. These are obligations that OCC must fund on time and potentially with only a few hours of advance notice—from notice of default until the payments are due.

One of the resources that OCC may use to meet its liquidity needs is its existing committed credit facility. The amount of funds available to OCC under the committed credit facility is limited not only by the overall size of the facility, but also by the amount of assets that OCC can pledge as collateral to lenders supporting the facility. OCC believes that, in addition to the authority it already has to pledge clearing fund assets to secure a loan to cover Default Obligations, it should also have the express power to pledge a suspended clearing member's margin deposits to secure loans for the purpose of meeting obligations arising out of the default and suspension of that clearing member or any action taken by OCC in connection therewith. OCC clearly has authority to pledge a suspended clearing member's clearing fund deposits for that

purpose under Article VIII, Section 5(e) of the by-laws. However, it is not as clear that OCC has authority to pledge a suspended clearing member's margin deposits. Rule 1104(a) provides, among other things, that upon the suspension of a clearing member, OCC shall promptly "convert to cash," in the most orderly manner practicable, all of the clearing member's margin deposits. Although this mandate might be construed to include the authority to pledge margin assets as collateral for borrowings under the committed credit facility, the phrase "convert to cash" has generally been used in the by-laws as synonymous with "liquidate" to refer to a final disposition of an asset. And even if OCC does have implied authority to pledge margin assets, that may not be transparent to all clearing members because it is not expressly stated in the rule. In order to eliminate any ambiguity, OCC proposes to (i) Amend Rule 1104 and Rule 1106 to replace the phrases "convert to cash," "conversion to cash" and "converted to cash" with the words "liquidate," "liquidation" and "liquidated," respectively; and (ii) amend Rule 1104(b) to expressly give OCC the power to pledge a suspended clearing member's margin deposits as security for loans if designated executive officers of OCC determine that immediate liquidation of such assets for cash under then-existing circumstances would not be in the best interests of OCC, other clearing members, or the general public.

While OCC's \$2 billion committed credit facility should normally be more than sufficient to meet OCC's liquidity needs, it is nevertheless possible that OCC could encounter a liquidity demand that exceeds the size of that facility. Moreover, it could be difficult to maintain the size of the facility under unfavorable market conditions (*i.e.*, if the credit markets tighten significantly). In addition, future regulatory requirements for clearinghouses could impose liquidity requirements that would be difficult to meet with a committed credit facility alone. In order to be better prepared to deal with such situations, OCC believes that it is necessary to actively explore a variety of means for raising and maintaining liquidity resources, including participation in securities lending or tri-party repo markets. Therefore, OCC proposes to amend both Article VIII, Section 5(e) of the by-laws and Rule 1104(b) to clarify that OCC's authority to use a suspended clearing member's margin and clearing fund deposits and other clearing members' clearing fund deposits to obtain temporary liquidity

for purposes of meeting Default Obligations is not limited to pledging such assets under the committed credit facility. Rather, OCC would have express authority to use such assets to obtain liquidity through any reasonable means as determined by designated executive officers of OCC in their discretion. The addition of the language "or otherwise obtain" in Article VIII, Section 5(e) of the by-laws reflects that certain transactions by which OCC may obtain liquidity could be characterized as something other than a transaction in which funds are "borrowed." For example, in a Master Repurchase Agreement, the Agreement states that the parties' intent is for the transactions to be "sales" and "purchases," but also contains provisions if such transactions are deemed to be loans. Accordingly, the use of "or otherwise obtain" in the phrase "borrow or otherwise obtain" addresses the possibility that the transaction by which OCC obtains funds may not be deemed to be a "borrowing" and forestalls technical arguments that it would be necessary for the transaction to be a "loan" in order for OCC to borrow funds.

OCC believes that the proposed changes to its by-laws and rules are consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), because they are designed to permit OCC to perform clearing services in a manner consistent with OCC's obligations to promote the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest. They accomplish this purpose by clarifying and enhancing OCC's ability to raise liquidity to satisfy Default Obligations. The proposed rule change is not inconsistent with any rules of OCC, including any rules proposed to be amended.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.

*(C) 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.

<sup>3</sup> Margin deposits secure only the depositing clearing member's own obligations to OCC whereas clearing fund deposits of all clearing members may be applied by OCC not only to losses arising from the depositing clearing member's default, but also to losses resulting from defaults by other clearing members and specified other third parties such as settlement banks and other clearing organizations. See generally Article VIII, Sections 1 and 5 of OCC's by-laws and Rule 604 of OCC's rules.

<sup>4</sup> The specific language of the proposed changes can be found at [http://www.optionsclearing.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_11\\_15.pdf](http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_11_15.pdf).

### 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 Commissions 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-2011-15 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-2011-15. 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and

copying at the principal office of OCC and on OCC's Web site at

[http://www.optionsclearing.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_11\\_15.pdf](http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_11_15.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-2011-15 and should be submitted on or before November 22, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65623; File No. SR-NSCC-2011-09]

#### **Self-Regulatory Organizations; The National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise NSCC's Fee Schedule as It Applies to Certain Hedge Fund Products Within NSCC's Alternative Investment Products Service**

October 26, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 12, 2011, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I and II below, which Items have been prepared primarily by NSCC. NSCC filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>2</sup> and Rule 19b-4(f)(2)<sup>3</sup> thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

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

The proposed rule change will revise NSCC's fee schedule as it applies to

certain hedge fund products within NSCC's Alternative Investment Products Service ("AIP").

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>4</sup>

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

The purpose of the proposed rule change is to revise NSCC's fee schedule (Addendum A of the NSCC Rules and Procedures) as it applies to certain hedge fund products within AIP to align the application of those fees with the cost of delivering the services. The proposed revisions to NSCC's fee schedule can be viewed at [http://www.dtcc.com/downloads/legal/rule\\_filings/2011/nscc/2011-09.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2011/nscc/2011-09.pdf).

The current AIP fee schedule is based upon previously projected transaction volumes for the various AIP eligible product types, where fees for higher volume products were intended to be lower than were fees for lower volume products.<sup>5</sup> In general, products such as non-traded Real Estate Investment Trusts and Managed Futures funds are higher volume products based on their distribution strategy, number of client accounts, and investment minimums. NSCC had previously projected that all hedge fund products would be lower volume as they are generally less broadly distributed, the number of investors is generally limited, and the investment minimums are quite high.

NSCC has since recognized that certain hedge funds are distributed through third party channels and are structured to be more attractive to the market. In general, these hedge funds are registered under the Investment Company Act of 1940, as amended ("1940 Act") and as such, generally have lower investment minimums and no statutory limit on the number of

<sup>4</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>5</sup> Securities Exchange Act Release No. 34-59285 (January 23, 2009), 74 FR 5875 (February 2, 2009) and Securities Exchange Act Release No. 34-63634 (January 3, 2011), 76 FR 1475 (January 10, 2011).

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

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

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