

rule change is consistent with Section 6(b)(5) of the Act<sup>30</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>31</sup> that the proposed rule change (SR-BATS-2012-033), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67896; File No. SR-OCC-2012-17]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Margining of Segregated Futures Customer Accounts on a Gross Basis

September 20, 2012.

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 September 14, 2012, The Options Clearing Corporation ("OCC") 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 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 allow OCC to become compliant with Commodity Futures Trading Commission ("CFTC") Rule 39.13(g)(8)(i) which requires the margining of segregated futures customer accounts on a gross basis.

#### II. Self-Regulatory Organization'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 such statements.<sup>3</sup>

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

The purpose of this proposed rule change is to provide for the margining of OCC segregated futures customer accounts on a gross basis, as required by CFTC Rule 39.13(g)(8)(i).<sup>4</sup>

The CFTC's Customer Gross Margin Rule

On October 18, 2011, the CFTC issued final regulations implementing many of the new statutory core principles for CFTC-registered derivatives clearing organizations ("DCOs") enacted under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). As a registered DCO (as well as a registered securities clearing agency), OCC has previously implemented rule changes designed to bring OCC into compliance with CFTC rules applicable to DCOs that went into effect on January 9, 2012<sup>5</sup> and May 7, 2012.<sup>6</sup> OCC believes it is necessary to amend its Rules in order to ensure compliance with the gross margin rule, which requires a DCO to "collect initial margin on a gross basis for each clearing member's customer account(s) equal to the sum of the initial margin amounts that would be required by the derivatives clearing organization for each individual customer within that account if each individual customer were a clearing member."<sup>7</sup> The gross margin rule goes into effect on November 8, 2012, however, OCC intends to begin complying with the gross margin rule on November 5, 2012 as described herein.

<sup>3</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>4</sup> 17 CFR 39.13(g)(8)(i).

<sup>5</sup> See SR-OCC-2011-18.

<sup>6</sup> See SR-OCC-2012-06.

<sup>7</sup> Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69439 (November 8, 2011).

#### OCC's System for Calculating Margin

OCC currently calculates margin requirements for each clearing member's segregated futures customer account held at OCC on a net basis by applying OCC's System for Theoretical Analysis and Numerical Simulations ("STANS"). STANS calculates margin with respect to each account of a clearing member, including each clearing member's futures customer account(s), on a net basis. STANS includes both a net asset value ("NAV") component and a risk component. The NAV component marks all positions to market and nets long and short positions to determine the NAV of each clearing member's portfolio of customer positions. The NAV component represents the cost to liquidate the portfolio at current prices by selling the net long positions and buying in the net short positions. The risk component is estimated by means of an expected shortfall risk measure obtained from "Monte Carlo" simulations designed to measure the additional asset value required in any portfolio to eliminate an unacceptable level of risk that the portfolio would liquidate to a deficit.

OCC presently lacks sufficient information about individual customer positions to calculate margin at the level of each individual customer. However, OCC has been coordinating with other DCOs to establish an industry-wide mechanism for complying with the customer gross margin rule. Pursuant to this new system, each DCO's clearing members will submit data files to the DCO identifying positions by numerical customer identifiers.<sup>8</sup> OCC will use this information to calculate margins, using STANS, for each customer identifier of a clearing member and to aggregate those margin calculations to determine the total futures customer margin requirement for the clearing member's segregated futures customer account(s) held at OCC.<sup>9</sup> OCC will then compare

<sup>8</sup> The position data provided to OCC by clearing members will not include (a) information with respect to the allocation of margin assets to particular customers, nor (b) information with respect to settlement obligations arising from the exercise, assignment or maturity of cleared contracts. For this reason, OCC will treat all margin assets and settlement obligations for each account to which the gross margin rule applies as being in sub-accounts of the Clearing Member. OCC will calculate margin, using STANS, separately for each sub-account and will aggregate the calculated margin requirements at the level of the clearing member's segregated futures customer account to which the sub-accounts relate.

<sup>9</sup> OCC currently carries the following account types that are segregated pursuant to Section 4d of the Commodity Exchange Act: Segregated Futures Accounts, Segregated Futures Professional Accounts, non-Proprietary X-M accounts, and

Continued

<sup>30</sup> 15 U.S.C. 78f(b)(5).

<sup>31</sup> 15 U.S.C. 78s(b)(2).

<sup>32</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.

the aggregate positions reported by each clearing member with its own records and make any needed adjustments to the margin calculation to ensure all positions on OCC's books are properly margined.

#### Proposed By-Law and Rule Changes

The proposed changes to OCC's Rules provide for the calculation of margin for segregated futures customer accounts on a gross basis and mandate submission of the clearing member data files necessary to allow OCC to calculate margin at the level of each futures customer. In the event that the data included in these data files is incomplete (for example, if OCC shows positions held in a clearing member's segregated futures accounts, but those positions are not reflected in the data file), OCC will create a separate sub-account to be used for margin calculation purposes only. Positions recorded on OCC's books and records, but not reflected in the data file, will be attributed to this sub-account and a margin amount will be calculated for the sub-account. This margin amount will be added to a clearing member's margin requirement. OCC has determined to adopt this conservative approach to dealing with discrepancies between its own records and clearing member data files in order to ensure that OCC does not collect an inadequate amount of margin from clearing members.

The proposed changes to OCC's By-Laws are consistent with the purposes and requirements of Section 17A of the Exchange Act because they are designed to permit OCC to perform clearing services for products that are subject to the jurisdiction of the CFTC without adversely affecting OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of securities investors and the public interest. The proposed rule change is not inconsistent with any rules of OCC.

#### (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 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

Written comments 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.

OCC has also filed the proposed rule change as an advance notice under Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act").<sup>10</sup> The proposed changes contained in the advance notice may be implemented pursuant to Section 806(e)(1)(G) of Clearing Supervision Act<sup>11</sup> if the Commission does not object to the proposed changes within 60 days of the later of (i) the date that the advance notice was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed changes contained in the advance notice if the Commission objects to the proposed changes.

The Commission may extend the period for review by an additional 60 days if the proposed changes raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. Proposed changes may be implemented in fewer than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed changes and authorizes the clearing agency to implement the proposed changes on an earlier date, subject to any conditions imposed by the Commission.

The proposals contained in the proposed rule change and advance notice shall not take effect until all regulatory actions required with respect to the proposals are completed. The clearing agency shall post notice on its web site of proposed changes that are implemented.

### 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-2012-17 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-2012-17. 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 10:00 a.m. and 3:00 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 ([http://www.optionsclearing.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_12\\_17.pdf](http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_12_17.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-2012-17 and should be submitted on or before October 17, 2012.

internal non-proprietary cross-margining accounts. All such accounts would be margined on a gross basis under the proposed amendments to Rule 601.

<sup>10</sup> 12 U.S.C. 5465(e)(1).

<sup>11</sup> 12 U.S.C. 5465(e)(1)(G).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Kevin M. O'Neill,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67898; File No. SR-NYSEARCA-2012-95]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Amending Commentary .07 to NYSE Arca Options Rule 6.4 To Expand the Number of Expirations Available Under the Short Term Option Series Program ("STOS Program"), To Allow for the Exchange To Delist any Series in the STOS That Do Not Have Open Interest and To Expand the Number of Series in STOS Under Limited Circumstances

September 20, 2012.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 6, 2012, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On September 18, 2012, the Exchange filed Amendment No. 1. 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 proposes to amend Commentary .07 to NYSE Arca Options Rule 6.4 to expand the number of expirations available under the Short Term Option Series Program ("STOS Program"), to allow for the Exchange to delist any series in the STOS that do not have open interest and to expand the number of series in STOS under limited circumstances. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposal is to amend Commentary .07 to NYSE Arca Options Rule 6.4 to provide for the ability to open up to five consecutive expirations under the Short Term Option Series Program ("STOS Program") for trading on the Exchange, to allow for the Exchange to delist any series in the STOS that do not have open interest and to expand the number of series in STOS under limited circumstances when there are no series at least 10% but not more than 30% away from the current price of the underlying security.<sup>4</sup>

Currently, the Exchange may select up to 5 currently listed option classes on which STOS options may be opened in the STOS Program and the Exchange may also match any option classes that are selected by other securities exchanges that employ a similar program under their respective rules.<sup>5</sup> For each option class eligible for participation in the STOS Program, the Exchange may open up to 30 Short Term Option Series for each expiration date in that class.

This proposal seeks to allow the Exchange to open STOS option series for up to five consecutive week expirations. The Exchange intends to add a maximum of five consecutive week expirations under the STOS

Program, however it will not add a STOS expiration in the same week that a monthly options series expires or, in the case of Quarterly Option Series, on an expiration that coincides with an expiration of Quarterly Option Series on the same class. In other words, the total number of consecutive expirations will be five, including any existing monthly or quarterly expirations.<sup>6</sup> This change is being proposed notwithstanding the current cap of 30 series per class under the STOS Program. The Exchange notes that the STOS Program has been well-received by market participants, in particular by retail investors.<sup>7</sup> The Exchange believes that the current proposed revision to the STOS Program will permit the Exchange to meet increased customer demand and provide market participants with the ability to hedge in a greater number of option classes and series.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of expirations that participate in the STOS Program.

In addition, to provide for circumstances where the underlying security has moved such that there are no series that are at least 10% above or below the current price of the underlying security, the Exchange is proposing to add new language to Commentary .07 to provide that the Exchange would delist series with no open interest in both the call and the put series having a: (i) Strike higher than the highest price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or the call series for a given expiration month, so as to

<sup>6</sup> For example, if quarterly options expire week 1 and monthly options expire week 3 from now, the proposal would allow the following expirations: week 1 quarterly, week 2 STOS, week 3 monthly, week 4 STOS, and week 5 STOS. If quarterly options expire week 3 and monthly options expire week 5, the following expirations would be allowed: week 1 STOS, week 2 STOS, week 3 monthly, week 4 STOS, and week 5 quarterly.

<sup>7</sup> Since the STOS Program [sic] been adopted, it has seen rapid acceptance among industry participants as evidenced by the expansion of the number of classes eligible for the STOS Program by various Exchanges. See Securities Exchange Act Release Nos. 65775 (November 17, 2011), 76 FR 72473 (November 23, 2011) (SR-NASDAQ-2011-138); 65776 (November 17, 2011), 76 FR 72482 (November 23, 2011) (SR-PHLX-2011-131); 66563 (March 9, 2012), 77 FR 15426 (March 15, 2012); 67194 (June 13, 2012), 77 FR 36597 (June 19, 2012) (SR-NYSEMKT-2012-08); and 67178 (June 11, 2012), 77 FR 36305 (June 18, 2012) (SR-NYSEARCA-2012-60).

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> On July 12, 2005, the Commission approved the Weeklies Program on a pilot basis. See Securities Exchange Act Release No. 52013 (July 12, 2005), 70 FR 41471 (July 19, 2005) (SR-PCX-2005-32). The Weeklies Program was made permanent on June 23, 2010. See Securities Exchange Act Release No. 62369 (June 23, 2010), 75 FR 37868 (June 30, 2010) (SR-NYSEARCA-2010-59).

<sup>5</sup> See Securities Exchange Act Release Nos. 65806 (November 22, 2011), 76 FR 73753 (November 29, 2011) (SR-NYSEARCA-2011-88); 67178 (June 11, 2012), 77 FR 36305 (June 18, 2012) (SR-NYSEARCA-2012-60).