

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58346; File No. SR-OCC-2008-08)

August 12, 2008

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to its Facilities Management Agreements

I. Introduction

On January 9, 2008, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-OCC-2008-08 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).¹ Notice of the proposal was published in the Federal Register on June 19, 2008.² No comment letters were received. This order approves the proposed rule change.

II. Description

The purpose of the proposed rule change is to provide an expedited process for reviewing a managed clearing member’s request to operate without a facilities management agreement (“FMA”).³ Under OCC Rule 309(e), a managed clearing member that desires to terminate an FMA must withdraw from membership on the business day before the proposed termination unless the Membership/Risk Committee (“Committee”) has determined in accordance with

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 57963 (June 13, 2008), 73 FR 34969.

³ Article V, Section 1 of OCC’s By-laws, including the Interpretations and Policies thereunder, sets forth the requirements for membership. Interpretation and Policy .04 permits an applicant for clearing membership (“managed clearing member”) to meet specified membership requirements by entering into an FMA with another clearing member (“managing clearing member”) pursuant to which the managing clearing member would perform certain of the applicant’s obligations as a clearing member (“managed services”). An operationally capable clearing member also may elect to outsource certain of its obligations as a clearing member, and thereby, become a managed clearing member. OCC Rule 309(f).

Article V, Section 1 of OCC's By-laws either that the managed clearing member has the operational capability, experience, and competence to perform the managed services required of a clearing member or that the managed clearing member has entered into another acceptable FMA that will be effective on or before such proposed termination.

From March, 2006 to February, 2008, the Committee reviewed three requests to terminate FMAs, all of which were approved. In each case, the managed clearing member was required to defer terminating its FMA until the next regularly scheduled Committee meeting. To provide for a more timely review of certain FMA terminations, OCC is adopting a new Interpretation and Policy .02 under Rule 309. Under the new policy, a managed clearing member desiring to terminate its FMA will be permitted to request an expedited review. If OCC consents to an expedited review,⁴ the Chairman, the Management Vice Chairman, or the President will be authorized to determine whether, as specified in Rule 309(e), a managed clearing member had the operational capability, experience, and competency to perform the managed services required of a clearing member, and to approve or disapprove the termination.

At the next regularly scheduled Committee meeting, the Committee will independently review de novo whether the managed clearing member has met the requirements of Rule 309(e) and determine whether or not to approve the FMA's termination. Notwithstanding that, if the Committee modifies or reverses the action taken by the Chairman, the Management Vice Chairman, or the President, any actions taken by OCC or the clearing member prior to the modification or reversal would not be invalidated, and no rights of any person arising out of such actions would be affected. In the unlikely event that the Committee disapproved of a termination

⁴ OCC would use the expedited review process for FMA terminations only in cases that present no significant or novel issues. Requests involving complex issues would be presented to the Committee at its next regularly scheduled meeting.

previously approved by OCC, the clearing member would be given a reasonable time either to establish another FMA or to withdraw from membership.

This proposal is comparable to a process recently approved by the Commission which permits the expedited review of requests by operationally capable clearing members that desire to outsource certain of their clearing member obligations by entering into FMAs.⁵ OCC believes that the rationale for giving senior management the authority to approve FMAs on an interim basis applies equally to FMA terminations. OCC believes the proposal strikes a reasonable balance between meeting the business requirements of clearing members and continuing to ensure appropriate review of their operational capabilities.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.⁶ The Commission finds the proposed rule change to be consistent with this requirement because the senior management has the experience and familiarity with clearing members to make such decisions and senior management's decision to approve the termination of FMAs prior to a scheduled Committee meeting are subject to the Committee's subsequent review at its next regularly scheduled meeting. Moreover, proposals for expedited review of an FMA termination would only occur where, in management's judgment, no significant or novel issues are raised by the termination.

⁵ Interpretation & Policy .01 to Rule 309. See also Securities Exchange Act Release No. 57535 (March 20, 2008), 73 FR 16086 (March 26, 2008) [SR-OCC-2008-01].

⁶ 15 U.S.C. 78q-1(b)(3)(F).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-2008-08) be and hereby is approved.⁷

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁸

Florence E. Harmon
Acting Secretary

⁷ 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).

⁸ 17 CFR 200.30-3(a)(12).