

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57163; File No. SR-OCC-2007-18)

January 16, 2008

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Expiration Date Exercise Procedure

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on December 7, 2007, The Options Clearing Corporation (“OCC”) 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 OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval to the proposed rule change.

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

The proposed rule change would reduce the threshold amounts used to determine the equity options that are deemed to be in the money for purposes of exercise by exception processing.

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 these statements.<sup>2</sup>

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by OCC.

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

OCC is proposing to amend Rule 805, which prescribes expiration date exercise procedures including exercise by exception processing, to reduce from \$.05 to \$.01 the threshold amount used to determine the equity options that are deemed to be in the money for purposes of exercise by exception processing.<sup>3</sup>

(1) Background

OCC has for years maintained an “exercise by exception” procedure. Under that procedure, options that are in the money at expiration by more than a specified threshold amount are exercised automatically unless the clearing member carrying the position instructs otherwise. Equity options are determined to be in the money or not based on the difference between the exercise price and the closing price of the underlying equity interest on the last trading day before expiration. In each of the last two years, OCC has reduced the threshold amounts for equity options in order to streamline expiration processing.<sup>4</sup> These changes were implemented at the request of the OCC Roundtable<sup>5</sup> and benefited both OCC and clearing members by

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<sup>3</sup> A conforming change is also being made to Rule 1106, which concerns the treatment of open positions following the suspension of a clearing member.

<sup>4</sup> In September, 2005, the threshold was reduced from \$.75 to \$.25 for equity options in a clearing member's customers' account and from \$.25 to \$.15 for equity options in any other account (*i.e.*, firm and market makers' accounts). Securities Exchange Act Release No. 50178 (August 10, 2004), 69 FR 51343 (August 18, 2004) [File No. SR-OCC-2004-04]. In October, 2006, the threshold became \$.05 for equity options in all account types. Securities Exchange Act Release No. 54514 (September 26, 2006), 71 FR 58656 (October 4, 2006) [File No. SR-OCC-2006-05].

<sup>5</sup> OCC's Roundtable is an OCC sponsored advisory group comprised of representatives from OCC's participant exchanges, OCC, a cross-section of OCC clearing members, and industry service bureaus. The Roundtable considers operational improvements that may be made to increase efficiencies and lower costs in the options industry.

reducing the time required for the submission of exercise instructions on an average expiration weekend.

(2) Discussion

In view of the high options volumes experienced in 2007, the OCC Roundtable once again recommended that OCC decrease the threshold applicable to equity options in an effort to continue to improve expiration processing and to reducing operational risks. The Roundtable suggested \$.01 as the new threshold for all accounts.

As with the other proposed threshold reductions, OCC conducted a survey of its clearing membership to assess support for the change. Survey results reflected strong support for the change across the membership.<sup>6</sup> Seventy-nine clearing members responded to the survey with 69 clearing members in favor of the threshold change and 10 clearing members opposed. Clearing members supporting the change confirmed the Roundtable's view that it would significantly reduce the number of instructions they are required to input on expiration and thereby shorten the timeframe for completing instructions to OCC.

OCC contacted each clearing member that opposed the threshold change, generally mid-size to small retail clearing members. Their principal concern was that the lowered threshold would require them to input more "do not exercise" instructions although some indicated concerns about the need to educate customers and the possibility that commission costs could make an exercise unprofitable.<sup>7</sup> For approximately half of the 10 clearing members opposed to

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<sup>6</sup> OCC also contacted clearing members that did not respond to its survey. These clearing members expressed no opinion on the matter.

<sup>7</sup> As noted, clearing members are able to instruct OCC not to exercise an expiring equity option even though the option is in the money by more than the exercise by exception threshold. Clearing members could, for example, choose not to exercise an expiring equity option that is in the money where the in the money amount is less than the applicable commission costs.

the change, expiration exercise reports for the first eight months of 2007 reflected that there were about 20 to 70 line items of positions that were in the money but not exercised because the in the money amount was less than the current threshold level.<sup>8</sup> As a result, OCC believes these clearing members would most likely have to input more “do not exercise” instructions. The remaining clearing members carried positions in fewer than ten expiring series that were in the money by less than the current threshold, leading OCC to conclude that these clearing members would have a negligible increase in processing time for submitting instructions not to exercise. All clearing members, however, agreed that they could adapt to the change if supported by the majority of clearing members.

After carefully considering clearing member views on the threshold change, OCC has concluded that a \$.01 threshold will generally benefit the majority of clearing members and will further improve expiration processing. OCC will modify its clearing system to provide increased functionality in order to lessen the operational burden that may be experienced by the clearing members needing to submit additional “do not exercise” instructions as a result of changing the threshold.

The clearing member survey also asked firms to provide an estimate of the time needed to accommodate the threshold change based upon supplied time frames (i.e., 0-3 months or 4-6 months). The majority of clearing members indicated that they could complete the necessary systems development and customer notifications within six months. OCC contacted every clearing member that commented on the proposed timeframes, and all expressed the view that their efforts would be completed in the six month time period.

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<sup>8</sup> OCC continually reviews expiration exercise reports of clearing members to monitor exercise activity. The referenced information, which remained consistent across expirations during this period and thereafter was obtained in the course of performing such reviews.

The Roundtable has asked that this change be implemented no later than the June 2008 expiration. OCC therefore requests the Commission to approve this rule filing no later than January 31, 2008, in order for OCC to provide sufficient advance notice to clearing members that it has been approved for implementation. OCC further requests that it be authorized to implement the threshold change thereafter based upon its assessment of clearing member readiness. OCC will provide at least ten days advance notice to clearing members of the effective date of the new threshold amounts. Such notice will be provided through information memoranda and other forms of electronic notice such as email.

OCC believes that the proposed rule change is consistent with Section 17A of the Act because it facilitates the prompt and accurate processing of exercise information on expiration.

(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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>9</sup> OCC Rule 805 is based on the assumption that when an option is in-the-money by at least a minimum fixed threshold level, most OCC members and their customers would choose to exercise the option. The rule has the effect, therefore, of reducing the number of exercise

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<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F).

instructions that must be submitted to and processed by OCC. As OCC notes in its description of the proposed rule change, if a threshold amount is set too low, the result could be that some members would have to submit a greater number of “do not exercise” instructions than they would have to submit if the threshold amount was set at a higher amount. However, the Commission is satisfied that by consulting with an industry advisory group, by surveying its clearing members, and by its analysis, OCC has made a reasoned determination in deciding to set the threshold amount for equity options in all account types at \$.01. Furthermore, we note that OCC indicated that it would modify its clearing system to provide increase functionality in order to lessen the operational burden on clearing members that experience increased “do not exercise” instructions as a result of the new threshold amount. Accordingly, because the proposed rule change is designed to reduce the amount of processing required for in-the-money equity options, we find that it is designed to promote the prompt and accurate clearance and settlement of securities transactions.

OCC has requested that the Commission approve the proposed rule at least six months prior to the June 2008 expiration. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because such approval will allow OCC to give its clearing members sufficient time to complete the necessary system developments and customer notifications before OCC’s scheduled implementation for the June 2008 expiration.

#### 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2007-18 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2007-18. This file number should be included on the subject line if e-mail 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such 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/publications/rules/proposed\\_changes/sr\\_occ\\_07\\_18.pdf](http://www.theocc.com/publications/rules/proposed_changes/sr_occ_07_18.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-

2007-18 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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.<sup>10</sup>

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-2007-18) be and hereby is approved.

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

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 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).

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