

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57535; File No. SR-OCC-2008-01)

March 20, 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”) a proposed rule change 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 February 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 facilities management agreement proposed to be entered into by an operationally capable clearing member that desires to become a managed clearing member. A managed clearing member is one that outsources certain of its obligations as a clearing member to another clearing member (“managing clearing member”).

Currently, Rule 309 prohibits a clearing member that proposes to enter into an outsourcing agreement with a managing clearing member from implementing the agreement without the prior approval of the Membership/Risk Committee (“Committee”).³ In 2006 and 2007, the Committee reviewed three requests to approve such outsourcing arrangements.

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 57304 (February 11, 2008), 73 FR 9155.

³ Rule 309(f). See also Securities Exchange Act Release No. 55686 (May 1, 2007), 72 FR 26191 (May 8, 2007) [SR-OCC-2006-21].

However, none of the three clearing member's desired time frame for implementing its facilities management arrangement coincided with a regularly scheduled meeting of the Committee, and each firm was required to defer executing its outsourcing plans until after a meeting occurred.

To provide for a more timely review of certain outsourcing agreements, OCC is modifying Rule 309. As amended, Rule 309 will provide that a managed clearing member is permitted to request an expedited review of its outsourcing agreement, and if OCC consents to an expedited review, the Chairman, the Management Vice Chairman, or the President will be authorized to determine whether the agreement meets applicable requirements and to approve or disapprove the agreement. At the next regularly scheduled Committee meeting, the Committee would independently review the outsourcing agreement and would determine de novo whether to approve or disapprove it. In the event the Committee's decision would result in a modification or a reversal of the action taken by the Chairman, the Management Vice Chairman, or President, no actions previously taken by OCC or the clearing member prior to the modification or reversal would be invalidated and no rights of any person arising out of such previous actions would be affected. In the unlikely event that the Committee disapproved an agreement previously approved by OCC, the clearing member would be given a reasonable time either to enter into an appropriately revised outsourcing agreement or to cease to be a Managed Clearing Member.

This process is comparable to the process used when clearing members request expedited approval to clear a new type or kind of transaction.⁴ OCC believes that the proposed expedited review process strikes a reasonable balance between meeting the business requirements of clearing members and continuing to ensure appropriate review of the operational and financial aspects of outsourcing arrangements.

⁴ Article V, Section 1, Interpretation & Policy .03e. See also Securities Exchange Act Release No. 30169 (January 8, 1992) 57 FR 1776 [SR-OCC-91-06].

The expedited review process is set forth in Interpretation & Policy .01 under Rule 309. The existing Interpretation and Policy .01, which required managing clearing members as of October 1, 2003, to meet revised capital requirements by October 1, 2004, is no longer applicable and is therefore being deleted. In addition, a technical change is being made to paragraph (f) of Rule 309 so that the language more closely parallels the language used in a cross-referenced By-law provision.

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.⁵ The Commission finds the proposed rule change to be consistent with this requirement because the actions of senior management to approve an outsourcing agreement prior to a scheduled Committee meeting are subject to the Committee's subsequent review and approval.

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.

⁵ 15 U.S.C. 78q-1(b)(3)(F).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-2008-01) be and hereby is approved.⁶

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon
Deputy Secretary

⁶ 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).

⁷ 17 CFR 200.30-3(a)(12).