

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59664; File No. SR-OCC-2009-04)

March 31, 2009

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Commodity Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 20, 2009, 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. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act² and Rule 19b-4(f)(4)³ thereunder so that the proposal was effective upon filing with the Commission. 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 revise OCC's By-Laws and Rules to accommodate conventional cash-settled commodity options, binary commodity options, and event options.

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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s-1(b)(3)(A)(iii).

³ 17 CFR 240.19b-4(f)(4).

below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.⁴

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

The primary purpose of the proposed rule change is to revise OCC's By-Laws and Rules to accommodate conventional cash-settled commodity options, binary commodity options, and event options. A general description of each option product follows below. Additionally, OCC is proposing to simplify the By-Laws and Rules by amending the definition of the term "Exchange" to refer to any exchange, futures market, security futures market, or international market for which OCC clears transactions and by revising the language of numerous provisions of its By-Laws and Rules to reflect this amended definition.

Conventional Cash-Settled Commodity Options

Conventional cash-settled commodity options are cash-settled options on the spot price of physical commodities such as precious metals, energy-related commodities such as oil or natural gas, or other physical commodities. Conventional cash-settled commodity options will settle upon exercise based on some specified benchmark price for the underlying commodity. The exercise settlement amount for an in-the-money option will be the product of the multiplier and the difference between the final underlying interest value and the strike price. The listing exchange or other reporting authority will report the final underlying interest value of the underlying commodity to OCC for the purpose of determining the exercise settlement amount.

Binary Commodity Options

Binary commodity options are binary cash-settled options on the spot price of physical commodities. Binary commodity options will be automatically exercised and will pay a fixed

⁴ The Commission has modified parts of these statements.

exercise settlement amount if the spot price of the underlying commodity on the expiration date is greater than or equal to the specified strike price and will otherwise expire unexercised. Other kinds of binary commodity options may be structured such that call options pay only if the price of the underlying commodity is above and not merely equal to the underlying benchmark price and that put options pay if the price of the underlying commodity is less than or equal to the underlying benchmark price.

Event Options

Event options are a type of binary option that pay a fixed cash settlement amount upon the occurrence of a specified event such as a positive change in U.S. gross domestic product for a particular time period. Event options are automatically exercised immediately upon confirmation of the occurrence of a defined event. The listing exchange or other reporting authority will monitor data reported by the official sources and will notify OCC when the underlying event is determined to have occurred. Event options may be referred to in Exchange rules as “capped-style” event options but are referred to in OCC’s rules simply as “event options.”

Exchange rules may also provide for “European-style” event options. An example would be a trade deficit option for which settlement is based upon U.S. trade deficit data. A trade deficit call option would pay a fixed exercise settlement amount if the trade deficit for a specified month is greater than or greater than or equal to the specified strike price, and a trade deficit put option would pay a fixed exercise settlement amount if the trade deficit for a specified month is less than or less than or equal to the specified strike price. In-the-money trade deficit options would be automatically exercised on the expiration date. “European-style event options” are referred to in OCC’s rules simply as “binary options” because they are based on the level of an

underlying measure or metric at a specified point in time rather than an event that can occur at any time during the life of the option.

Changes in General Terminology

To accommodate conventional commodity options and binary commodity options, OCC proposes to introduce the term “commodity option” and to add references to commodity options where the By-Laws and Rules now refer to “futures options” where appropriate. The definitions of “Call” and “Put” in Article I of the By-Laws would be amended to clarify their meanings with regard to futures options. In connection with the introduction of commodity options, the term “underlying interest” would be amended to include commodities as possible underlying interests. Commodity options are not “securities.” Therefore, OCC proposes to replace “underlying security” and “cleared securities” with “underlying interest” and “cleared contracts,” respectively, in the definitions of certain terms related to options, such as “call” and “opening purchase transaction.”

OCC also proposes to simplify its By-Laws and Rules by revising the term “Exchange.” Currently, the term includes only national securities exchanges. Accordingly, in numerous places in the By-Laws and Rules, where the intended reference is to any market for which OCC clears transactions, the term “Exchange” is accompanied by “international market, futures market or security futures market,” or a similar phrase. OCC proposes to revise the definition of Exchange to include all such markets and to eliminate the numerous references to each type of market for which OCC clears transactions. The revised definition of Exchange will be more consistent with the definitions of “Exchange transaction” and “Exchange rules” because the scope of each of these latter terms includes non-securities exchanges or markets for which OCC clears transactions. In addition, OCC proposes to introduce the term “Securities Exchange” to refer to national security exchanges. In instances in which the reference to “Exchange” in the

By-Laws and Rules is necessarily limited to a specific type of market, such as a Securities Exchange or “Equity Exchange” as defined in the By-Laws, OCC proposes to replace the term “Exchange” with the appropriate term.

Finally, OCC proposes to amend the definition of “multiplier” to address the use of this term in connection with cash-settled options other than index options.

Changes with respect to Cash-Settled Commodity Options Generally

Section 1 of Article XII sets forth conditions for OCC to clear futures and futures options for an Exchange. Because the same conditions would apply for OCC to clear commodity options for an Exchange, OCC proposes to make Section 1 applicable to commodity options. Rule 1303 pertains to OCC’s arrangement with an associate clearinghouse to enable members of the associate clearinghouse to clear futures and futures options through the facilities of OCC. OCC proposes that Rule 1303 would potentially apply to all commodity options although the contracts to be included in any particular such arrangement are agreed upon by OCC and the other clearing organization on a case-by-case basis.

Existing provisions in By-Law Article XII and Rule Chapter XIII already provide for clearance of futures options. As discussed below, OCC proposes to address cash-settled commodity options separately in other Articles of its By-Law Articles and Chapters of its Rules. The introductions to By-Laws Articles XII, XIV and XVII and Rules Chapters XIII, XV and XVIII would be amended to reflect their proposed scope.

OCC is proposing to amend the definitions of “Call” and “Put” in Article I of the By-Laws to clarify their meanings with respect to futures options. In addition, for purposes of clarification, OCC proposes to update Interpretation and Policy .01 to Article VI, Section 9 to state that general rights and obligations of holders and writers of cleared contracts other than

stock options are governed by the provisions of those Articles of the By-Laws pertaining to such products and not by Subsections (a) and (b) Section 9 of Article VI.

Changes with respect to Event Options and Binary Commodity Options

To accommodate event options and binary commodity options, OCC proposes to broaden By-Law Article XIV and Rule Chapter XV, which currently apply only to binary options and range options for which the underlying interest is a security or securities index. Credit default options (“CDOs”) and credit default basket options (“CDBOs”) are the only types of event options currently addressed by these provisions of the By-Laws and Rules. OCC proposes to modify the existing framework of rules governing CDOs and CDBOs to support clearance of event options in general while retaining certain definitions and provisions that are applicable only to CDOs and/or CDBOs.

Article XIV of the By-Laws, which presently applies to CDOs and CDBOs as well as to other binary options and range options, is proposed to be amended to apply to the event options and other binary options proposed by CFE. Section 1 would be amended to add a definition of “event option,” which in OCC’s lexicon would be confined to binary options that are automatically exercised upon the occurrence of a specified event. CDOs and CDBOs would be defined as specific kinds of event options. Event options, in turn, would be a subcategory of binary options. Certain terms applicable to CDOs and CDBOs would be made more generic so as to apply to all event options. Other definitions would be amended to accommodate event options, and to provide that underlying interests for binary options and range options may include commodities. Other sections of Article XIV are amended to, among other things, specify which provisions are unique to CDOs and CDBOs and which apply to event options generally. Although no market has yet proposed to trade range options on underlying commodities, the proposed rule amendments are broad enough to accommodate such trading.

Existing adjustment provisions in Section 3 of Article XIV, which defer entirely to the listing market to determine adjustments for CDOs and CDBOs, will be made to apply to all event options. This is appropriate because OCC anticipates that the definitions of underlying events and other terms of these products will be unique to the listing market. Existing Section 3A will apply to binary options other than event options and range options where the underlying interest is a security or an index of securities, and OCC is proposing a new Section 3B to provide for adjustments to binary options other than event options and range options where the underlying interest is a commodity rather than a security or index of securities. Adjustments under Section 3B will be made by OCC rather than through an adjustment panel as is the case for securities products under Section 3A.

Rules in Chapter V are being amended to provide for event options, other binary options and range options on underlying commodities. The changes intended to accommodate the new contracts govern among other things the automatic exercise of event options and binary options and exercise settlement. They also provide that binary options and event options on commodities that when carried for the accounts of customers, must be carried in the customers' segregated funds account in accordance with CFTC regulations.

Changes with respect to Cash-Settled Conventional Commodity Options

OCC proposes to provide for clearance of cash-settled conventional commodity options by expanding the scope of By-Law Article XVII and Rule Chapter XVIII, which currently cover only index options.

Article XVII. OCC proposes to amend the definitions of numerous terms to apply to cash-settled options generally. Other provisions of Article VII are also amended to make them more generic to cash-settled options generally. Provisions limited to index options are retained where appropriate and in many cases are made applicable to options on commodity indexes as

well as securities indexes. OCC proposes to substitute the term “cash-settled option” for the term “index option” in Article XVII, Section 2 so that it will apply to cash-settled options generally. Section 3 of Article XVII will govern adjustments to cash-settled options generally. A new proposed paragraph (b) would address adjustments to cash-settled options overlying a single commodity. Under the proposed amendments, OCC rather than an adjustment panel will decide when and what adjustments may be necessary in light of various policy considerations. Existing paragraph (b), which governs adjustments of index options, would be renumbered as paragraph (c) and amended to reflect the inclusion of commodities as possible components of an underlying index.

Similarly, existing Section 4 of Article XVII, which defines OCC’s rights and obligations in situations in which the current index value of an index option is unavailable or otherwise determined to be inaccurate will be amended to expand its application to cover unavailability or inaccuracy of values for any underlying interest.

Chapter XVIII, Rules 1802 – 1806. OCC proposes to amend Rules 1802 – 1806 so that they will apply to cash-settled options generally. The term “cash-settled option” would be substituted for the term “index option” and the term “current interest value” would be substituted for the term “current index value” in Rules 1802 – 1806. In addition, OCC proposes to amend paragraphs 1801(a)(1) and (a)(2) to specify the conditions under which Clearing Member will pay the exercise settlement to or receive the exercise settlement from OCC with respect to an exercised cash-settled option other than an index option. OCC also proposes to substitute the term “cash-settled option” for the term “index option” and make a small number of other corrections to certain defined terms in Rules 1802, 1803, 1804, and 1805 so that they will apply to cash-settled options generally.

Chapter XVIII, Rules 1807. Cash-settled commodity options will be carried in a Clearing Member's segregated futures account(s). Therefore, to maintain consistency with Rule 1104, OCC proposes to amend Rule 1807 so that the net settlement amount with respect to exercised cash-settled commodity options is paid from or credited to a suspended Clearing Member's Segregated Liquidating Settlement Account.

In several other places in the By-Laws and Rules where references are made to index options, OCC proposes to substitute the term "cash-settled option" for the term "index option" and the term "current underlying interest value" for the term "current index value."

Finally, OCC proposes to amend the terms of Article VI, Section 2 of the By-Laws, which concerns the initial clearing fund contribution of clearing members, to be consistent with the terms of Rule 1001. Rule 1001 provides that affiliates of existing Clearing Members that become Clearing Members of OCC solely for the purpose of clearing transactions in security futures, commodity futures, and/or futures options need not put up an additional \$150,000 minimum Clearing Fund contribution. OCC would expand this exemption to also apply to commodity options.

The proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because it provides for the clearance of various commodity futures and options products without adversely affecting the prompt and accurate clearance and settlement of transactions in securities options, the prompt and accurate clearance and settlement of securities transactions, or the protection of securities investors and the public interest. The proposed rule change accomplishes this purpose by applying substantially the same rules and procedures to transactions in futures products that OCC applies to transactions in securities options. 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.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁵ and Rule 19b-4(f)(4)⁶ promulgated thereunder because the proposal changes effects a change in an existing service of a registered clearing agency that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significant affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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:

⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

⁶ 17 CFR 240.19b-4(f)(4).

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2009-04 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-2009-04. 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. 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-2009-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Florence E. Harmon
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).