

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67333; File No. SR-OCC-2012-07)

July 2, 2012

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving
Proposed Rule Change Relating to Adjustment Panel Voting

I. Introduction

On May 7, 2012, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-OCC-2012-07 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder.² The proposed rule change was published for comment in the Federal Register on May 24, 2012.³ The Commission received no comment letters on the proposal. This order approves the proposal.

II. Description

OCC is updating the procedures applied to adjustment panel voting and eliminating the requirement that an adjustment panel be convened to vote on certain specific types of standard contract adjustments affecting equity options. These changes are intended to improve overall operational efficiency in responding to events for which a contract adjustment may be made.

Certain panels may be convened under OCC’s by-laws to (i) determine contract adjustments to the terms of outstanding options when certain events occur (e.g., stock

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 67021 (May 18, 2012), 77 FR 31060 (May 24, 2012).

distribution, stock dividend, merger, consolidation or reorganization) and (ii) fix certain amounts or values in respect of certain options in the event a required value is unreported, inaccurate, unreliable, unavailable, or inappropriate. Such panels are convened in accordance with Article VI, Section 11 of OCC's by-laws and currently consist of two representatives of each options exchange on which options affected by the event are traded and one representative of OCC, who votes only in case of a tie. The decision to adjust (and the nature of the adjustment to be made) or to fix an amount or value is made by majority vote of the adjustment panel. Most often, panels are convened to determine adjustments to the terms of outstanding equity options in response to certain corporate events.

The procedures for panel voting, as described in Article VI, Section 11, have not been updated for over 25 years. In the past, a smaller number of OCC options exchanges posed few problems in convening panels to consider adjustments for equity options. Currently, however, there are ten options exchanges and multiple listing of equity options on several, if not all, exchanges is common. It is increasingly difficult to convene two members from each exchange to consider adjustments on a timely basis. This difficulty is magnified when it is necessary to convene panel meetings to address late-breaking events which often occur outside of normal business hours. Additionally, although all equity option adjustments must currently be addressed by an adjustment panel, certain corporate events and their corresponding option adjustments are so regular and predictable that it no longer appears necessary for an adjustment panel to be convened to address them.

The OCC Securities Committee has unanimously endorsed the proposed changes and OCC's Board of Directors and stockholders have authorized OCC to submit the proposed rule change. OCC is continuing to evaluate the rules applicable to adjustment determinations and additional changes may be proposed in the future.

Proposed By-Law Changes

OCC is making several changes to the voting procedures for the Securities Committee and adjustment panels. OCC believes the changes will provide significant operational efficiencies, allowing OCC and the option exchanges to respond more quickly to corporate events affecting listed options. The changes to the procedures governing adjustment panel voting (1) change the requirement that each exchange be represented by two persons to one person,⁴ (2) allow that adjustment panel actions be determined by votes accomplished by such means as the Securities Committee may designate for that purpose, (3) provide that certain kinds of corporate events shall not require an adjustment panel vote, (4) define a quorum for adjustment panels and provide

⁴ Panels convened by OCC to fix a required amount or value (as provided for in the by-laws) would continue to include two representatives from each exchange on which the affected series is open for trading. (Such panels also include an OCC representative, who votes only in case of a tie.) OCC believes it appropriate to retain this requirement as the need to fix such amount or value generally would involve series that are less likely to be traded on multiple exchanges. However, certain of the procedural changes being made to Article VI, Section 11 will be applied to the by-laws that permit panels to be convened to fix a required amount or value in order to improve efficiency. These changes include eliminating the requirement that at least one panel member from an exchange be a member of the Securities Committee and allowing such panels to transact its business by such means as determined by the Securities Committee.

for majority vote,⁵ and (5) allow the Chairman of OCC to designate a non-officer as his representative on adjustment panels.⁶

The specific corporate events which would no longer require a panel vote to effect an adjustment to the terms of an option would be limited to stock splits or stock distributions where additional shares of the underlying security are issued, reverse splits, and cash mergers or similar events where all shares are exchanged exclusively for cash. Adjustments for stock splits, stock distributions, and reverse splits are generally the most routine option adjustments executed by OCC. Option adjustments for these events, when executed, are the result of well understood formulae and consistent precedent. The Securities Committee does not believe it is necessary to convene adjustment panels for “boiler plate” adjustments of this kind. In like manner, mergers and other events where the affected security is exchanged exclusively for cash have always occasioned option adjustments which have called for the delivery of cash. The Securities Committee does not believe it necessary to convene panel meetings to authorize these adjustments.

While an adjustment panel vote would not be required in these cases, an adjustment panel could be convened at any time at the request of any exchange or OCC

⁵ The intent is to ensure that any adjustment decision is determined by a majority of the exchanges (including a representative of OCC if a voting member) that trade the affected option. For example, if eight exchanges trade an option, five exchanges would constitute a quorum for an adjustment panel. However, a majority vote of these five exchanges would require only three exchanges. In this case an adjustment decision would be determined by a distinct minority of the exchanges trading the option. Specifying an *additional* requirement that the action be determined by a majority of the exchanges trading the option provides for an additional level of assurance that a majority of eligible voting members will determine an adjustment.

⁶ Currently, the Chairman is allowed to designate an OCC officer as his representative. OCC believes the Chairman should be able to designate a non-officer as his representative.

in order to address any aspect of the corporate event or option contract adjustment deemed to need discussion by such panel. Also, in all cases of option adjustments, OCC and the exchanges would naturally coordinate the operational execution of the adjustments (effective date, option symbol, strike prices, etc).

The changes also allow convened panels the ability to conduct their business by any means determined by the Securities Committee. Currently, the Securities Committee and panels are allowed to conduct business in person or by phone. For the purposes of exchanging information and registering votes, OCC and the Securities Committee believe that electronic means of communication (e.g., email) should also be allowed as well as other means of communication which may be available in the future (e.g., OCC systems applications developed for this purpose).

III. Discussion

Section 19(b)(2)(B) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.⁷ Section 17A(b)(3)(F) of the Act requires that a clearing agency, among other things, have the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible.⁸

The Commission finds that the proposed change is consistent with the purposes and requirements of Section 17A of the Act⁹ and the rules and regulations thereunder applicable to OCC. In particular, the Commission believes that the proposed change

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 15 U.S.C. 78q-1.

provides for more efficient procedures that further the purposes of the Act by facilitating the prompt and accurate clearance and settlement of securities transactions for which OCC is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act¹⁰ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (File No. SR-OCC-2012-07) be, and hereby is, approved.¹²

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin O'Neill
Deputy Secretary

¹⁰ 15 U.S.C. 78q-1.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 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).

¹³ 17 CFR 200.30-3(a)(12).