

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76641; File No. SR-OCC-2015-805]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of an Advance Notice, as Modified by Amendment Nos. 1, 2 and 3, Concerning The Options Clearing Corporation's Non-Bank Liquidity Facility

December 14, 2015.

Pursuant to section 806(e)(1) of title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Payment, Clearing and Settlement Supervision Act")¹ and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 ("Act"),² notice is hereby given that on November 5, 2015, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") an advance notice described in Items I and II below, which Items have been prepared by OCC. On November 11, 2015, OCC filed Amendment No.1 to the advance notice, which amended and replaced in its entirety the advance notice as originally submitted on November 5, 2015. On November 17, 2015, OCC filed Amendment No. 2 to the advance notice, which partially amended the advance notice as submitted on November 11, 2015. On November 24, 2015, OCC filed Amendment No. 3 to the advance notice, which amends and replaces in its entirety the advance notice as submitted on November 11, 2015, and amended on November 17, 2015. The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

As discussed in more detail below, this advance notice is filed by OCC in connection with a proposed change to: (i) Extend the existing confirmation ("Existing Confirmation")³ for one year under the Master Repurchase Agreement ("MRA") with the same terms and conditions; (ii) enter into a second confirmation ("Second

Confirmation," and collectively with the Existing Confirmation, "Confirmations") under the MRA also on the same terms and conditions except with an expiration date in June 2016; and (iii) maintain, between the Existing Confirmation and Second Confirmation, an aggregate commitment amount of no less than \$1 billion and no greater than \$1.5 billion under the non-bank liquidity facility ("Non-Bank Liquidity Facility") with the existing institutional investor ("Counterparty") and its agent.⁴

By this notice, OCC requests that the Commission not object to the foregoing proposed changes for renewing, in the future, the Existing Confirmation and the Second Confirmation on the same terms and conditions⁵ with the same Counterparty without filing an advance notice concerning the renewal, provided that there has been no negative change to the Counterparty's credit profile or the Counterparty has not experienced a material adverse change (as defined below) since entering into the Confirmations or the latest renewal of the either Confirmation, whichever is later.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. 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 and B below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the advance notice and none have been received.

⁴ OCC intends the commitment amount of the Second Confirmation to be \$500 million and the commitment amount of the extended Existing Confirmation to be \$500 million. OCC would have the flexibility to change the commitment amount of each Confirmation at each renewal provided that at all times OCC would maintain the aggregate commitment level between the two Confirmations under the Non-Bank Liquidity Facility at no less than \$1 billion and no greater than \$1.5 billion. The MRA and any effective Confirmation(s) constitute the Non-Bank Liquidity Facility.

⁵ For the purposes of clarity, OCC would not consider changes to the costs of entering into a Confirmation, or the rate of a transaction permitted under a Confirmation, a change to a term or condition that would require the filing of a subsequent advance notice filing provide that such costs or rate is at the then prevailing market rate.

(B) Advance Notice Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

This Amendment No. 3 to SR-OCC-2015-805 ("Filing") amends and replaces in its entirety the Filing as originally submitted on November 5, 2015, and amended on November 11, 2015 and November 17, 2015. The purpose of this Amendment No. 3 to the Filing is to clarify the conditions under which OCC would be permitted to renew either of the Confirmations without filing a subsequent advance notice filing.

Description of Change

This advance notice is filed by OCC in connection with a proposed change to: (i) Extend the Existing Confirmation, for one year under the MRA, with the same terms and conditions, for a commitment amount of \$500 million; (ii) enter into a Second Confirmation under the MRA, also on the same terms and conditions, except with an expiration date in June 2016, for a commitment amount of \$500 million; and, (iii) maintain, between the Existing Confirmation and Second Confirmation, an aggregate commitment amount of no less than \$1 billion and no greater than \$1.5 billion under the Non-Bank Liquidity Facility with the existing Counterparty and its agent.⁶ The Second Confirmation has the same terms, conditions, operations, and mechanics as the Existing Confirmation, except for the expiration date and commitment amount.

Background

OCC's overall liquidity plan provides it with access to a diverse set of liquidity funding sources, which include bank borrowing arrangements (i.e., OCC's syndicated credit facility⁷) and the Non-Bank Liquidity Facility. The Non-Bank Liquidity Facility is designed to reduce the concentration of OCC's counterparty exposure with respect to its overall liquidity plan by diversifying its lender base among banks and non-bank, non-clearing member institutional investors, such as pension funds or insurance companies.

The currently approved Non-Bank Liquidity Facility is comprised of two parts: The MRA and the Existing

⁶ The substantive terms regarding each additional transaction are set forth in the OCC Committed Repo Program Summary of Indicative Terms, which are attached hereto as Exhibits 3A and 3B. Such exhibits are non-public documents for which OCC has submitted a request for confidential treatment to the Commission.

⁷ See Securities Exchange Act Release No. 76062 (October 1, 2015), 80 FR 64028 (October 22, 2015) (SR-OCC-2015-803).

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b-4(n)(1)(i).

³ The Existing Confirmation is the original \$1 billion Master Confirmation executed under the Master Repurchase Agreement as described in Securities Exchange Act Release No. 73979 (January 2, 2015), 80 FR 1062 (January 8, 2015) (SR-OCC-2014-809).

Confirmation, which contains certain individualized terms and conditions of transactions executed between OCC, an institutional investor and its agent. The MRA is structured like a typical repurchase arrangement in which the buyer (*i.e.*, the Counterparty) would purchase from OCC, from time to time, United States government securities (“Eligible Securities”).⁸

OCC, as the seller, would transfer Eligible Securities to the buyer in exchange for a payment by the buyer to OCC in immediately available funds (“Purchase Price”). The buyer would simultaneously agree to transfer the purchased securities back to OCC at a specified later date (“Repurchase Date”) or on OCC’s demand against the transfer of funds by OCC to the buyer in an amount equal to the outstanding Purchase Price plus the accrued and unpaid price differential (together, “Repurchase Price”), which is the interest component of the Repurchase Price.

The Confirmations establish tailored provisions of the actual repurchase transactions permitted under the MRA. By entering into the Confirmation, the Counterparty is obligated to enter repurchase transactions even if OCC experiences a material adverse change,⁹ funds must be made available to OCC within 60 minutes of OCC’s delivering eligible securities, and the institutional investor is not permitted to rehypothecate purchased securities.¹⁰ Additionally, the Confirmations set forth the terms and maximum dollar amounts of the transaction permitted under the MRA.

Extension of the Existing Confirmation

In order to provide continued access to liquidity resources, OCC is also proposing to extend the Existing Confirmation under the Non-Bank Liquidity Facility. The extended Existing Confirmation would have the same terms, conditions, operations, and mechanics as the Existing Confirmation entered into under the Non-Bank

Liquidity Facility, but for the expiration date, which would be January 2017, and the commitment amount, which would be \$500 million.¹¹

The extended Existing Confirmation would, for example, continue to state that OCC is entitled to receive funds from the Non-Bank Liquidity Facility within 60 minutes of a request for such monies and delivery of eligible securities. The buyer would not be able to rehypothecate eligible securities sold to it in connection with a Non-Bank Liquidity Facility transaction, and OCC would be able to substitute eligible securities held by the buyer. Additionally, OCC would have early termination rights with respect to any transaction entered into under the Non-Bank Liquidity Facility as well as have additional remedies in the case of “material adverse changes” to OCC. For example, OCC would require that it would not be an event of default if OCC suffers a material adverse change, such as the failure of a clearing member. This provision is important because it provides OCC with certainty of funding, even in adverse or difficult market conditions. This commitment to provide funding would be a key distinction from ordinary repurchase arrangements and a key requirement for OCC.

Second Confirmation

OCC proposes to enter into the Second Confirmation that would permit transactions of up to \$500 million and would expire in June 2016. The proposed Second Confirmation would have the same terms, conditions, operations, and mechanics as the Existing Confirmation of the Non-Bank Liquidity Facility, but for the commitment amount and the term.

The proposed Second Confirmation, with a June 2016 expiration date, would help ensure continued access to a minimum amount of liquidity to OCC by staggering the expiration of the committed liquidity funding sources. OCC’s current committed liquidity funding sources, which are its syndicated credit facility¹² and the Existing Confirmation, currently expire each year in October and January, respectively. Staggering the expiration dates of Confirmations under the Non-Bank Liquidity Facility in relationship to each other and in relationship to the other liquidity funding source in OCC’s overall liquidity plan would mitigate the risk of a precipitous decrease in

OCC’s access to liquidity as a result of an unsuccessful renewal of any one funding source.

Aggregate Commitment Amount Under the Non-Bank Liquidity Facility

OCC’s current aggregate committed funding available under its Non-Bank Liquidity Facility (\$1.0 billion) and its bank syndicated credit facility (\$2.0 billion) is \$3.0 billion. OCC is proposing to maintain the aggregate commitment amount under the Non-Bank Liquidity Facility at no lower than \$1.0 billion and no higher than \$1.5 billion, so that the aggregate total funding available is between \$3.0 billion and \$3.5 billion. This would provide OCC with the flexibility to: (i) React to shifting liquidity needs in a swift manner within funding parameters approved by the Commission, and (ii) reallocate the amount of funding available under the Confirmations at the time either of the Confirmations is to be renewed to manage liquidity needs and enhance its ability to ensure continual liquidity resources.

OCC would continue to evaluate the aggregate commitment amount of the Non-Bank Liquidity Facility so that OCC’s available liquidity resources remain properly calibrated to its activities and settlement obligations, and to the extent: (i) OCC determines its liquidity needs merit funding levels below the \$1.0 billion or above the \$1.5 billion thresholds for the Non-Bank Liquidity Facility, (ii) OCC should seek to change the terms and conditions of the Non-Bank Liquidity Facility, or (iii) the Counterparty has experienced a negative change to its credit profile or a material adverse change since entering into the Confirmations or the latest renewal of the either Confirmation, OCC would submit a proposal with the Commission for approval first.

Anticipated Effect on and Management of Risk

Completing timely settlement is a key aspect of OCC’s role as a clearing agency performing central counterparty services. The extension of the Existing Confirmation would continue to promote the reduction of risks to OCC, its clearing members and the options market in general because it would allow OCC to continue to obtain short-term funds from the Non-Bank Liquidity Facility to address liquidity demands arising out of the default or suspension of a clearing member, in anticipation of a potential default or suspension of clearing members, or the insolvency of a bank or another securities or commodities clearing organization.

⁸ OCC would use U.S. government securities that are included in clearing fund contributions by clearing members and margin deposits of any clearing member that has been suspended by OCC for the repurchase arrangements. Article VIII, section 5(e) of OCC’s By-Laws and OCC Rule 1104(b) authorize OCC to obtain funds from third parties through securities repurchases using these sources. The officers who may exercise this authority include the Executive Chairman and the President.

⁹ When included in a contract, a “material adverse change” is typically defined as a change that would have a materially adverse effect on the business or financial condition of a company.

¹⁰ See Securities Exchange Act Release No. 73979 (January 2, 2015), 80 FR 1062 (January 8, 2015) (SR-OCC-2014-809).

¹¹ See Securities Exchange Act Release No. 73979 (January 2, 2015), 80 FR 1062 (January 8, 2015) (SR-OCC-2014-809).

¹² See Securities Exchange Act Release No. 76062 (October 1, 2015), 80 FR 64028 (October 22, 2015) (SR-OCC-2015-803).

The Second Confirmation and the ability to seek an aggregate commitment amount under the Non-Bank Liquidity Facility for no lower than \$1.0 billion and no greater than \$1.5 billion would also help OCC ensure the continued availability of its liquidity resources by embedding the staggered expiration of the committed liquidity funding sources and providing OCC with the flexibility to seek additional funding amounts at the same terms, conditions, operations, and mechanics of the Confirmations.

The MRA, like any liquidity source, would involve certain risks, but OCC would continue to structure the Non-Bank Liquidity Facility to mitigate those risks. Most of these risks are standard in any master repurchase agreement. For example, a buyer could fail to deliver, or delay in delivering, purchased securities to OCC by the applicable Repurchase Date. OCC will address this risk by seeking a security interest from the buyer in that portion of the purchased securities representing the excess of the market value over the Repurchase Price, or by obtaining other comfort from the buyer that the purchased securities will be timely returned. Further, the purchased securities generally will not be "on-the-run" securities, *i.e.*, the most recently issued Treasury securities. The demand in the marketplace for Treasury securities, for uses other than collateral, is much greater for on-the-run Treasury securities, and, therefore, OCC believes buyers will have little incentive to retain the securities transferred by OCC.

The mechanics under the MRA would be structured so that OCC could avoid losses by paying the Repurchase Price. For example, OCC will have optional early termination rights in each Confirmation, under which OCC would be able to accelerate the Repurchase Date of any transaction by providing written notice to the buyer and paying the Repurchase Price. Through this mechanism, OCC can maintain the benefit of the MRA, while mitigating any risk associated with a particular transaction.

The MRA would be structured to avoid potential third-party risks, which are typical of repurchase arrangements. The prohibition on buyer rehypothecation and use of purchased securities, along with OCC's visibility into the buyer's custody account, would reduce the risk to OCC of a buyer default.

As with any repurchase arrangement, OCC is subject to the risk that it may have to terminate existing transactions and accelerate the applicable Repurchase Date with respect to a buyer due to changes in the financial health or

performance of the buyer. Terminating transactions could negatively affect OCC's liquidity position. However, any negative effect is reduced by the fact that OCC maintains a number of different financing arrangements, and thus will have access to liquidity sources in the event the MRA is no longer a viable source.

Under the MRA, OCC would be obligated to transfer additional cash or securities as margin in the event the market value of any purchased securities decreases. OCC seeks to ensure it can meet any such obligation by monitoring the value of the purchased securities and maintaining adequate cash resources to make any required payments. Such payments are expected to be small in comparison to the total amount of cash received for each transfer of purchased securities.

The proposed change would help OCC minimize losses in the event of a default, suspension or insolvency, by allowing it to obtain funds from sources not connected to OCC's clearing members on extremely short notice to ensure clearance and settlement of transactions in options and other contracts without interruption. OCC believes that the reduced settlement risk presented by OCC resulting from the proposed change would correspondingly reduce systemic risk and promote the safety and soundness of the clearing system. The ability to borrow funds from the Non-Bank Liquidity Facility would allow OCC to avoid liquidating margin or clearing fund assets in what would likely be volatile market conditions, which would preserve funds available to cover any losses resulting from the failure of a clearing member, bank or other clearing organization.

Because the proposed change preserves substantially the same terms and conditions as the MRA and the Existing Confirmation, OCC believes that the proposed change would not otherwise affect or alter the management of risk at OCC.

Consistency With the Payment, Clearing and Settlement Supervision Act

OCC believes the proposed change is consistent with section 805(b)(1) of the Payment, Clearing and Settlement Supervision Act.¹³ The objectives and principles of section 805(b)(1) of the Payment, Clearing and Settlement Supervision Act specify the promotion of robust risk management, promotion of safety and soundness, reduction of systemic risks, and support of the stability of the broader financial

system.¹⁴ OCC believes that the proposed change would promote these objectives because the proposed Confirmations would provide OCC with an additional source of committed liquidity to meet its settlement obligations while at the same time being structured to mitigate certain operational risks, as described above, that arise in connection with this committed liquidity source.

III. Date of Effectiveness of the Advance Notice, and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. OCC shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing OCC with prompt written notice of the extension. The proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies OCC in writing that it does not object to the proposed change and authorizes OCC to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

OCC shall post notice on its Web site of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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 email to rule-comments@sec.gov. Please include File Number SR-OCC-2015-805 on the subject line.

¹³ 12 U.S.C. 5464(b)(1).

¹⁴ *Id.*

Paper Comments

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

All submissions should refer to File Number SR-OCC-2015-805. This file number should be included on the subject line if email 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site (http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_15_805.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-2015-805 and should be submitted on or before January 4, 2016.

By the Commission.

Robert W. Errett,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76638; File No. SR-NYSEMKT-2015-106]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending the Seventh Amended and Restated Operating Agreement of the Exchange To Establish a Committee for Review as a Sub-Committee of the ROC and Make Conforming Changes to Rules and the NYSE MKT Company Guide

December 14, 2015.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 11, 2015, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 Exchange proposes (1) amending the Seventh Amended and Restated Operating Agreement of the Exchange ("Operating Agreement") to establish a Committee for Review as a sub-committee of the ROC and make conforming changes to Rules 475, 476, 476A, 20—Equities, 308—Equities and Sections 1201, 1204, 1205, 1206, 1211, and 1212T of the NYSE MKT Company Guide (the "Company Guide"); (2) deleting references to "NYSE Regulation, Inc." and "NYSE Regulation" in Section 4.05 of the Operating Agreement and Rules 0, 1—Equities, 22—Equities, 36—Equities, 48—Equities, 49—Equities, 54—Equities, 70—Equities, 103—Equities, 103A—Equities, 103B—Equities, 422—Equities, 497—Equities, and 902NY; (3) replacing references to the Chief Executive Officer of NYSE Regulation, Inc. in Rules 48—Equities, 49—Equities and 86—Equities with references to the Chief Regulatory Officer of the Exchange; and (4) making certain technical and non-substantive changes. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of

the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to the following changes:

- Amending the Operating Agreement to establish a Committee for Review ("CFR") as a sub-committee of the ROC and make conforming changes to Rules 475, 476, 476A, 20—Equities, 308—Equities and Sections 1201, 1204, 1205, 1206, 1211, and 1212T of the Company Guide;
 - deleting references to "NYSE Regulation, Inc." and "NYSE Regulation"⁴ in Section 4.05 of the Operating Agreement and Rules 0, 1—Equities, 22—Equities, 36—Equities, 48—Equities, 49—Equities, 54—Equities, 70—Equities, 103—Equities, 103A—Equities, 103B—Equities, 422—Equities, 497—Equities, and 902NY;
 - replacing references to the Chief Executive Officer of NYSE Regulation, Inc. in Rules 48—Equities, 49—Equities and 86—Equities with references to the Chief Regulatory Officer of the Exchange; and
 - making certain technical and non-substantive changes.

The Exchange proposes that the above rule changes would be operative simultaneously with the termination of

⁴ NYSE Regulation, Inc. ("NYSE Regulation"), a not-for-profit subsidiary of the Exchange's affiliate New York Stock Exchange LLC ("NYSE"), performs regulatory functions for the Exchange pursuant to an intercompany Regulatory Services Agreement ("RSA") that gives the Exchange the contractual right to review NYSE Regulation's performance. See Securities Exchange Act Release No. 75991 (September 28, 2015), 80 FR 59837 (October 2, 2015) (SR-NYSE-2015-27) ("NYSE Approval Order"). As noted below, these proposed changes would be appropriate once the RSA terminates because NYSE Regulation would cease providing regulatory services to the Exchange, which would re-integrate its regulatory functions.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.