

Section 11A(a)(1)(C)(iii) of the Act,<sup>11</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The Exchange will disseminate quotation and last-sale data information via the Consolidated Tape. The value of the Index is calculated on at least a 15-second basis and is widely disseminated by major market data vendors and financial publications.

The Commission further believes that the proposal to list and trade the Certificates is reasonably designed to promote fair disclosure of information that may be necessary to price the Certificates. If the value of the Index is not being disseminated as required, the Exchange may halt trading during the day on which the interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in Trust Certificates.<sup>12</sup> Standard & Poor's ("S&P"),<sup>13</sup> which publishes the Index, is not a registered broker-dealer, and Citigroup Funding, Inc. is not affiliated with S&P. With respect to any index upon which the value of an issue of Trust Certificates is based and that is maintained by a broker-dealer, the Exchange would require that such broker-dealer erect a "firewall" around personnel responsible for the maintenance of such index or who have access to information concerning adjustments to the index, and the index would be required to be calculated by a third party who is not a broker-dealer. In addition, the Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.

The Certificates will be subject to the requirements of NYSE Arca Equities Rule 5.2(j)(7), including the continued listing criteria. Additionally, NYSE Arca states that: (1) At least one million publicly held trading units will be

issued prior to listing and trading on the Exchange, with at least 400 public beneficial holders; (2) the issuer, Citigroup Funding, Inc., has total assets of at least \$100 million and a net worth of at least \$10 million; and (3) the issuer will be required to have either (a) a minimum tangible net worth of \$250,000,000, or (b) a minimum tangible net worth of \$150,000,000 and the original issue price of the Certificates, combined with all of the issuer's other Trust Certificates listed on a national securities exchange or otherwise publicly traded in the United States, must not be greater than 25% of the issuer's tangible net worth at the time of issuance.<sup>14</sup>

Further, the Exchange has represented that the Certificates are equity securities subject to the Exchange's rules governing the trading of equity securities, including the Exchange's equity margin rules. In support of this proposal, the Exchange has made the following representations:

(1) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Certificates in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG.

(2) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Certificates. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and exchanges of Trust Certificates; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading an issue of Trust Certificates; (c) trading hours; and (d) trading information. In addition, the Information Bulletin will reference that an issue of Trust Certificates is subject to various fees and expenses described in the applicable prospectus.

This approval order is based on the Exchange's representations.

### III. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> for approving the proposal prior to the thirtieth day after the date of

publication of the Notice in the **Federal Register**. The Commission notes that it has previously approved for listing and trading on the Exchange other issues of Trust Certificates issued by Citigroup Funding, Inc. based on the Index that have similar characteristics and payout provisions to the Certificates.<sup>16</sup> In addition, no comments were received on the proposed rule change during the 21-day comment period, and the Commission believes that the Exchange's proposal to list and trade the Certificates under NYSE Arca Equities Rule 5.2(j)(7) does not present any novel or significant regulatory issues. The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Trust Certificates.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-NYSEArca-2009-20) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-8961 Filed 4-17-09; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59763; File No. SR-OCC-2009-06]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Accommodate the Clearance and Settlement of Metals Futures and Options on Metals Futures Traded on NYSE Liffe

April 14, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on March 25, 2009, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared

<sup>16</sup> See Securities Exchange Act Release No. 59051 (December 4, 2008), 73 FR 75155 (December 10, 2008) (SR-NYSEArca-2008-123) (order approving NYSE Arca Equities Rule 5.2(j)(7) and listing on the Exchange of 14 issues thereunder).

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

<sup>11</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>12</sup> Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in Trust Certificates inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

<sup>13</sup> S&P is a division of The McGraw-Hill Companies, Inc.

<sup>14</sup> The Commission notes that the foregoing criteria relating to the issuance and the issuer are substantially similar to the requirements applicable to Index-Linked Securities. See NYSE Arca Equities Rule 5.2(j)(6)(A).

<sup>15</sup> 15 U.S.C. 78s(b)(2).

primarily by OCC. OCC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>2</sup> and Rule 19b-4(f)(4)<sup>3</sup> thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The purpose of the rule change is to accommodate the clearance and settlement of: (i) 100 oz. gold futures, 5,000 oz. silver futures, "mini" gold futures, and "mini" silver futures (collectively, "Metals Futures") and (ii) options on 100 oz. gold futures and on 5,000 oz. silver futures (collectively, "Options on Metals Futures") traded on NYSE Liffe.

### **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>4</sup>

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

##### **1. Metals Futures**

The primary purpose of this proposed rule change is to revise OCC's By-Laws and Rules (collectively, the "Rules") to accommodate the clearance and settlement of Metals Futures and Options on Metals Futures traded by NYSE Liffe.<sup>5</sup> Delivery of the metals underlying the Metals Futures will be made through the facilities of NYSE Liffe by delivery of "vault receipts" (or, in the case of the "mini" futures contracts, through delivery of electronic "warehouse depository receipts") representing the underlying metals. Delivery is required upon maturity of any Metals Future that has not been

closed out in an exchange transaction prior to the close of trading on the last trading day for the contract. In addition, delivery may be made, at the election of the seller of a Metals Future, on any business day during the delivery month. Delivery will be initiated by the submission to NYSE Liffe by the clearing member with a short position in the Metals Future of a notice of an Intent to Deliver. Obligations to take delivery of the underlying metal which is the subject of an Intent to Deliver will be assigned by NYSE Liffe to clearing members with long positions in the same Metals Future, and NYSE Liffe will notify OCC of the delivery and payment obligations of clearing members resulting from Intents to Deliver. Delivery of the vault receipts will be made through NYSE Liffe's facilities on the second day after submission of the Intent to Deliver or on maturity date, as applicable. Payment will be made through OCC's systems on this same date. Although delivery of the vault receipts is not made through OCC's systems, the Clearance and Settlement Services Agreement between OCC and NYSE Liffe ("Clearing Agreement") provides that NYSE Liffe is deemed to represent to OCC in connection with its notification to OCC of an Intent to Deliver that it holds vault receipts sufficient to satisfy the delivery obligation of the clearing member submitting the Intent to Deliver. This provision is intended to ensure that delivery has been made by the delivering clearing member before OCC credits the purchase price to this clearing member. In addition, OCC will have a lien on the vault receipts from the time the Intent to Deliver has been submitted until physical delivery against payment has been made. OCC will collect initial margin and pay and collect variation margin for Metals Futures as in the case of any other futures contract.

The last trading day for Metals Futures is the third to last business day of the maturity month. The trading day for Metals Futures is 22 hours long and spans two calendar days. As a result, a clearing member may sell a Metals Future to offset a long position before an assignment is made or after an assignment has been made but before the clearing member learns of it. In this situation, the sale will be deemed to have created a new short position rather than closing out the long position. However, clearing members in this situation will be able to "retender" the underlying metals in satisfaction of their delivery obligations with respect to the short position.

OCC proposes to expand Chapter 13 of the Rules to accommodate: (i) The settlement of Metals Futures by physical delivery; (ii) the granting of requests for offsets between full-sized and mini-sized Metals Futures in the same contract month and year; (iii) the retendering of a delivery in the event a clearing member is assigned an Intent to Deliver with respect to a long position that the clearing member has closed out; and (iv) the procedures to be followed in the event a clearing member fails to make physical delivery or payment at delivery settlement. Rule 1308 provides that, in the event of such a failure, OCC will make payment to the non-defaulting clearing member in an amount equal to the damages, as determined by OCC, incurred by the non-defaulting clearing member from such failure. The amount of the damages is charged by OCC to the defaulting clearing member.

##### **2. Options on Metals Futures**

Options on Metals Futures are American style. The last trading day for Options on Metals Futures is normally the fifth business day prior to the first calendar day of the delivery month for the underlying future. Submission of exercise notices at expiration and at other than expiration will be governed by existing OCC Rules, as supplemented by proposed Rule 1305. At expiration, OCC will apply exercise-by-exception ("Ex-by-Ex") processing procedures to expiring Options on Metals Futures. Under Ex-by-Ex processing procedures, a clearing member is deemed to have submitted exercise notices for options that are in the money by a specified amount (i.e., exercise threshold amount) unless the clearing member instructs OCC otherwise. The exercise threshold amount for Options on Metal Futures will be set at \$.001. Article XII, Section 9 of the By-Laws would be amended to provide that the expiration time for futures and commodity options traded on NYSE Liffe will be 7 p.m. Central Time, which is different from the expiration time for other such options. OCC is also proposing to amend Rule 801 to permit clearing members to submit exercise notices for Options on Metals Futures on the business day prior to expiration. In light of the 22-hour trading day for the Metals Contracts, filing, revoking, or modifying exercise notices, or submitting contrary exercise instructions in connection with Ex-by-Ex processing for Options on Metal Futures and certain other classes of contracts identified by OCC after applicable deadlines will be prohibited.

NYSE Liffe will require that Metals Contracts be held separately from

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>3</sup> 17 CFR 240.19b-4(f)(4).

<sup>4</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>5</sup> The proposed amendments are also designed to accommodate cash-settled futures that NYSE Liffe intends to introduce shortly after the transition of clearing services to OCC.

contracts traded on other exchanges, which OCC understands is intended to prevent the offset for margin purposes of Metals Contracts against contracts traded on other exchanges. OCC is proposing to add an interpretation and policy to its Rules stating that futures markets may impose such a requirement and explaining how clearing members may satisfy this requirement. OCC will provide notice to clearing members that NYSE Liffe has such a requirement. Additional changes are proposed to introduce the terminology necessary to support clearance and settlement of Metals Contracts, allow for the use of cash settlement in the event of a shortage of an underlying interest, and require that clearing members holding positions in Metals Contracts be members of the relevant exchange. The latter point is necessary because delivery is affected through the facilities of the exchange.

OCC assumed the clearing function for Metals Contracts traded on NYSE Liffe from CME Clearing during the last weekend of March 2009. In connection therewith, OCC and NYSE Liffe entered into the Clearing Agreement, which is generally similar to corresponding agreements between OCC and other futures exchanges but contains specific provisions concerning the delivery settlement since vault or warehouse depository receipts, as applicable, will be delivered through the facilities of NYSE Liffe. It further contains additional commercial terms relative to the treatment of trade data. OCC has prepared an information memorandum specifying the obligations of clearing members in connection with such transitions. The memorandum will be distributed to all clearing members and will be considered an OCC rule.

The proposed rule change is consistent with Section 17A of the Act,<sup>6</sup> as amended, because it is designed to permit OCC to perform clearing services for products that are subject to the jurisdiction of the Commodity Futures Trading Commission without adversely affecting OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of securities investors and the public interest. The proposed rule change applies substantially the same rules and procedures to transactions in Metals Futures and Metals Options as OCC applies to transactions in security futures and securities options.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change will have any impact or 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 relating to the proposed rule change have not yet been solicited or received. OCC will notify the Commission of any written comments received by OCC.

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

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(4)<sup>8</sup> thereunder because the proposed rule change 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 significantly 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*

- 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-2009-06 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Elizabeth M. Murphy, Securities and Exchange Commission,

100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2009-06. 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 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at [http://www.optionsclearing.com/publications/rules/proposed\\_changes/sr\\_occ\\_09\\_06.pdf](http://www.optionsclearing.com/publications/rules/proposed_changes/sr_occ_09_06.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-2009-06 and should be submitted on or before May 11, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E9-8963 Filed 4-17-09; 8:45 am]

BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59764; File No. SR-OCC-2009-07]

**Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise Fee Schedule**

April 14, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>6</sup> 15 U.S.C. 78q-1.

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(4).

<sup>9</sup> 17 CFR 200.30-3(a)(12).