Section 26 be amended to require that a proposed substitution of the underlying investments of a trust receive prior Commission approval.[6]

Congress responded to the Commissioners' concerns by enacting Section 26(c) to require that the Commission approve all substitutions by the depositor of investments held by unit investment trusts. The Senate Report on the bill explained the purpose of the amendment as follows:

> The proposed amendment recognizes that in the case of the unit investment trust holding the securities of a single issuer notification to shareholders does not provide adequate protection since the only relief available to shareholders, if dissatisfied, would be to redeem their shares. A shareholder who redeems and reinvests the proceeds in another unit investment trust or in an open-end company would under most circumstances be subject to a new sales load. The proposed amendment would close this gap in shareholder protection by providing for Commission approval of the substitution. The Commission would be required to issue an order approving the substitution if it finds the substitution consistent with the protection of the investors and provisions of the [1940] Act.[7]

42. Applicants represent that the proposed substitution appears to involve the substitution of securities within the meaning of Section 26(c) of the 1940 Act.[8] Applicants therefore request an order from the Commission pursuant to Section 26(c) approving the proposed substitution.

43. Applicants represent that all the Contracts expressly reserve for the Company the right, subject to compliance with applicable law, to substitute shares of one fund or portfolio held by a subaccount of an Account for another. The prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right. The Company has reserved this right of substitution both to protect itself and its Contract owners in situations where it believes an underlying fund is no longer appropriate for Contract owners or where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of its separate accounts, and to afford the opportunity to replace such shares where to do so could benefit itself and Contract owners.

44. Applicants maintain that Contract owners will be better served by the proposed substitution and that the proposed substitution is appropriate given the Replacement Portfolio, the Replaced Portfolio, and other investment options available under the Contracts. In the last four (4) out of the last five (5) years, the Replacement Portfolio has had investment performance superior to that of the Replaced Portfolio. In addition, for each one-year, five-year and since inception periods ended December 31, 2009, the Replacement Portfolio has had investment performance superior to that of the Replaced Portfolio. The Replacement Portfolio has also had substantially lower expenses than the Replaced Portfolio over these same periods.

45. Applicants believe that the Replacement Portfolio and the Replaced Portfolio are substantially the same in their stated investment objectives and principal investment strategies as to afford investors continuity of investment and risk. In addition, Applicants generally submit that the proposed substitution meets the standards that the Commission and its staff have applied to similar substitutions that have been approved in the past.

46. Applicants believe that Contract owners will be better off with the Replacement Portfolio than with the Replaced Portfolio. The proposed substitution retains for Contract owners the investment flexibility that is a central feature of the Contracts. If the proposed substitution is carried out, all Contract owners will be permitted to allocate purchase payments and transfer Contract values between and among the remaining subaccounts as they could before the proposed substitution.

47. Applicants assert that the proposed substitution is not the type of substitution that Section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer Contract values into other subaccounts and the fixed account. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccount into any of the remaining subaccounts without cost or disadvantage. The proposed substitution, therefore, will not result in the type of costly forced redemption that Section 26(c) was designed to prevent.

48. Applicants state that the proposed substitution is also unlike the type of substitution that Section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their Contract values. They also select the specific type of coverage offered by the Company under the Contracts, as well as numerous other rights and privileges set forth in the Contracts. Contract owners may also have considered the size, financial condition, type, and reputation for service of the Company, from whom they purchased their Contract in the first place. These factors will not change because of the proposed substitution.

*Conclusion*

Applicants request an order of the Commission pursuant to Section 26(c) of the 1940 Act approving the proposed substitution by the Company. Applicants submit that, for all the reasons stated above, the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

**Cathy H. Ahn,**

*Deputy Secretary.*

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[6] In the years leading up to its 1966 recommendation, the Commission took the position that the substitution of portfolio securities of a unit investment trust constituted an offer of exchange under Section 11 of the [1940] Act requiring prior Commission approval. The Commission proposed Section 26(c) in order to specifically address substitutions by unit investment trusts which previously had been scrutinized under Section 11 of the [1940] Act. *See* House Committee on Interstate and Foreign Commerce, Report of the Securities and Exchange Commission on the Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong., 2d Sess. 337 (1966).

[7] S. Rep. No. 184, 91st Cong., 1st Sess. 41 (1969), reprinted in 1970 U.S. Code Cong. & Admin. News 4897, 4936 (1970).

[8] While Section 26(c), by its terms, applies only to a unit investment trust holding the securities of one issuer, the Commission has interpreted Section 26(c) to apply to "a substitution of securities in any *subaccount* of a registered separate account." Adoption of Permanent Exemptions from Certain Provisions of the Investment Company Act of 1940 for Registered Separate Accounts and Other Persons, Investment Company Act Rel. No. 12678 (Sept. 21, 1982) (emphasis added).

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

## In the Matter of Euro Solar Parks, Inc.; Order of Suspension of Trading

March 28, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Euro Solar Parks, Inc. ("Euro Solar") because of

possible manipulative conduct occurring in the market for the company's stock. Euro Solar is quoted on the OTC Bulletin Board and OTC Link under the ticker symbol ESLP.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on March 28, 2011, through 11:59 p.m. EDT on April 8, 2011.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–7572 Filed 3–28–11; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64119; File No. SR–OCC–2011–02]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Accommodate the Clearance of Relative Performance Options

March 24, 2011.

### I. Introduction

On January 19, 2011, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR–OCC–2011–02 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change was published for comment in the **Federal Register** on February 7, 2011.[2] No comment letters were received on the proposal. This order approves the proposal.

### II. Description

The purpose of this rule change is to accommodate the clearance of options on certain indexes measuring the relative performance of one reference security or reference index relative to a second reference security or reference index ("Relative Performance Options").[3] The revised rules have been broadly drafted to cover Alpha Options, a Relative Performance Option described below, and any similar product that may be listed on any participant exchange in the future.

NASDAQ OMX PHLX LLC ("Phlx") is proposing to list options ("Alpha Options")[4] on NASDAQ OMX Alpha Indexes ("Alpha Indexes"), a family of indexes developed by NASDAQ OMX Group, Inc. ("Nasdaq"). Alpha Indexes measure relative total returns of one underlying stock and one underlying ETF, which are also traded on the Phlx.[5] An Alpha Index is calculated by measuring the total return performance of the Target Component relative to the total return performance of the Benchmark Component based upon prices of transactions on the primary listing exchange of each underlying component. Each Alpha Index will initially be set at 100.00. Alpha Options will be cash-settled, European-style options. In the event of a corporate event that eliminates one of the underlying components of an Alpha Index, Nasdaq will cease calculation of the Alpha Index for that pair of underlying components, and all outstanding option positions will be immediately settled at the last disseminated price of that Alpha Index.

Relative Performance Options are highly similar to other index options cleared by OCC except for the identity and nature of the underlying index. Therefore, OCC believes that the provisions of its By-Laws and Rules governing index options, as they are currently in effect, are generally sufficient to support the clearance and settlement of Relative Performance Options. However, minor modifications are needed to support the clearance and settlement of Alpha Options and other types of Relative Performance Options that may be introduced in the future. For example, OCC's current Rules do not account for the possibility of an index having a negative value as could occur for certain Relative Performance Indexes. If this should ever occur, the index value would be deemed to be equal to zero or, because certain systems may not accept a zero index value, a near-zero positive amount. Therefore, OCC is modifying its By-Laws to provide for such potential adjustments of the index value by either the listing exchange or OCC.

In addition, OCC's current By-Laws do not account for the possibility that an expiration date may be accelerated when a reference security (*i.e.,* an individual reference security and not a reference index) that is one of the components of an underlying relative performance index ceases to be published as a result of a cash-out merger or similar corporate event. If the value of an underlying Relative Performance Index ceases to be published as a result of such an event, the value of the overlying options would become fixed. Therefore, OCC proposes to modify its By-Laws to provide that OCC will either accelerate or not accelerate the expiration in consultation with the relevant exchange on which the index underlying a Relative Performance Option is listed.

### III. Discussion

Section 17A(b)(3)(F) of the Act[6] requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. Because the proposed rule change modifies OCC's Rules and By-Laws to support the clearance of Alpha Options and other types of Relative Performance Options that may be introduced in the future, the proposed rule change is facilitating the perfection of the national system for the clearance and settlement of securities transactions and therefore is consistent with the requirements of Section 17A(b)(3)(F) of the Act.

### 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 Act[7] and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–OCC–2011–02) be, and hereby is, approved.[9]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–7366 Filed 3–29–11; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 34–63811 (February 1, 2011), 76 FR 6648 (February 7, 2011).

[3] A reference security may be an exchange-traded fund ("ETF").

[4] Securities Exchange Act Release No. 34–63575 (December 17, 2010), 75 FR 81320 (December 27, 2010) [File No. SR–Phlx–2010–176].

[5] The combination of the two components is referred to as an "Alpha Pair." The first component of each Alpha Pair is referred to as the "Target Component" and the second component is referred to as the "Benchmark Component."

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(2).

[9] 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).

[10] 17 CFR 200.30–3(a)(12).