

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Tuesday, May 22, 2012 at 4:30 p.m.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions as set forth in 5 U.S.C. 552b(c)(2), (4), (6) and (8) and 17 CFR 200.402(a)(2), (4), (6) and (8) permit consideration of the scheduled matters at the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matters of the Closed Meeting on May 22 will be examinations of financial institutions and a personnel matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551-5400.

Dated: May 22, 2012.

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2012-12795 Filed 5-22-12; 4:15 pm]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67018; File No. SR-OCC-2012-03]

### Self-Regulatory Organizations; the Options Clearing Corporation; Order Approving Proposed Rule Change to More Closely Align OCC's By-Laws and Rules With Regulatory Requirements Related to "Statutory Disqualifications"

May 18, 2012.

#### I. Introduction

On March 15, 2012, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2012-03 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The

proposed rule change was published for comment in the **Federal Register** on April 4, 2012.<sup>2</sup> On May 15, 2012, OCC filed an amendment to the proposed rule change.<sup>3</sup> The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

The proposed rule change will more closely align OCC's By-Laws and Rules with applicable regulatory requirements related to "statutory disqualifications" under the Act in order to reduce the overall administrative burden on OCC associated with addressing the statutory disqualification of OCC clearing members ("Clearing Members") and applicants for clearing membership ("Applicants") and will provide guidance to Clearing Members and Applicants as to OCC's policies with respect to statutory disqualifications. The proposed rule change will amend OCC's "Fitness Standards for Directors, Clearing Members and Others" ("Fitness Standards") to bring such standards into conformity with the proposed amendments to OCC's By-Laws. The Fitness Standards were submitted to the Commission in proposed rule change SR-OCC-2011-12 and were approved by the Commission on October 27, 2011.<sup>4</sup>

##### A. Background

Persons who have engaged in certain types of misconduct are subject to "statutory disqualification," as defined by Section 3(a)(39) of the Act, and must undergo a review by the Commission under Rule 19h-1 of the Act in order to enter or continue in membership in a self-regulatory organization ("SRO"). Section 17A(b)(4)(A) of the Act provides that a registered clearing agency may and in cases in which the Commission so orders must deny participation to any person subject to a statutory disqualification. This provision further requires a registered clearing agency to provide the Commission with 30-days' notice before admitting a statutorily disqualified person to clearing membership. Rule 19h-1 of the Act implements these statutory provisions by requiring notice to the Commission if a registered clearing agency proposes

either to admit to membership or to continue as a member a person subject to a statutory disqualification. Notably, unlike in the case of a national securities exchange or registered securities association, the rule does not require a registered clearing agency to file such a notice with respect to statutory disqualifications of associated persons of a Clearing Member or Applicant. A registered clearing agency is required to file such a notice only when the Clearing Member or Applicant itself is subject to the disqualification.

Article V of OCC's By-Laws establishes the qualifications required of Clearing Members and sets forth the procedures for admitting persons to clearing membership, including those that are or become subject to a statutory disqualification. Currently, Interpretation and Policy .03 of Article V, Section 1 of OCC's By-Laws provides that the Membership/Risk Committee ("Committee") will not recommend the approval of an application for membership if the Applicant or an associated person is subject to a statutory disqualification unless the Committee makes a finding that "special circumstances" exist warranting a waiver of the statutory disqualification. The requirements of this By-Law are more stringent than those applied to registered clearing agencies by the Act or Commission rules because they require the Committee to (i) make specific findings of "special circumstances" before recommending membership approval and (ii) address statutory disqualifications of associated persons. The By-Laws therefore impose additional administrative burdens on OCC that are not required under any statute or rule administered by the Commission.

Neither Article V of the By-Laws nor OCC's Rules currently contain procedures for notice to OCC that an Applicant or Clearing Member is subject to a statutory disqualification, which provides insufficient guidance to Applicants and Clearing Members and exposes OCC to the risk that such notice may be given on a delayed basis. OCC's By-Laws and Rules are also silent as to the procedures to be followed by a Clearing Member when it becomes subject to a statutory disqualification even though Rule 19h-1 requires a registered clearing agency to file a notice if it intends to permit such a firm to remain a Clearing Member.

As a registered derivatives clearing organization ("DCO"), OCC is also subject to the jurisdiction of the Commodity Futures Trading Commission ("CFTC"). OCC's By-Laws also address statutory disqualification

<sup>2</sup> Securities Exchange Act Release No. 34-66676 (March 29, 2012), 77 FR 20472 (April 4, 2012).

<sup>3</sup> The amendment made changes to OCC's "Fitness Standard for Directors, Clearing Members and Others" to conform it to the recent changes made to OCC's By-Laws pursuant to File No. SR-OCC-2012-01, which was approved by the Commission on March 9, 2012. As such, the amendment was technical in nature and did not require republication of notice.

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