

out the purposes of the Act, to comply with the Act, and to enforce compliance by FINRA members and persons associated with FINRA members with the Act, the rules and regulations thereunder, FINRA rules and the federal securities laws. FINRA further believes that the proposed rule change is consistent with Section 15A(b)(4) of the Act, which requires, among other things, that FINRA's rules assure a fair representation of its members in the selection of its directors and administration of its affairs and provides that one or more directors shall be representative of issuers and investors and not be associated with a member of FINRA, broker or dealer. FINRA believes that the proposal would assure fair administration of its Dispute Resolution affairs by providing another source of qualified and experienced candidates from which to select public members for the NAMC.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition or capital formation that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.<sup>13</sup> Further, FINRA believes that the proposal will promote efficiency in the arbitration forum as it will provide another source of qualified and experienced candidates from which to select public members for the NAMC.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2012-040 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-FINRA-2012-040. 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 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 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2012-040 and should be submitted on or before October 2, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-67782; File No. SR-OCC-2012-12]**

### **Self-Regulatory Organizations; the Options Clearing Corporation; Order Approving Proposed Rule Change To Amend OCC's By-Laws To Allow the Corporation To Approve OCC's Form of Clearing Member Application and Form of Clearing Agreement**

September 5, 2012.

#### **I. Introduction**

On July 16, 2012, The Options Clearing Corporation ("OCC" or the "Corporation") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2012-12 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 August 1, 2012.<sup>2</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 would amend OCC's By-Laws to allow the Corporation to approve OCC's form of clearing member application and form of clearing agreement. The proposed rule change also amends the Agreement for OCC Services to reflect operational changes OCC made since OCC first created the agreement.

##### *A. Background*

Currently, OCC's Board of Directors must approve the form of OCC's clearing member application and form of clearing agreement. OCC requires applicants for clearing membership at OCC to complete an application and, once an applicant becomes a clearing member, requires clearing members to enter into a clearing member agreement. OCC's By-Laws and Rules set forth the qualifications and requirements for clearing membership at OCC. The

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 34-67506 (July 26, 2012), 77 FR 45702 (August 1, 2012).

<sup>13</sup> 15 U.S.C. 78c(f).

clearing member application is designed to elicit relevant information from an applicant for clearing membership in order for OCC to determine if the applicant meets OCC's qualifications for clearing membership. The clearing member agreement is a contract between OCC and a clearing member whereby the clearing member agrees to meet all of the requirements of clearing membership at OCC. The By-Laws require OCC's Board of Directors to approve both the form of clearing member application and the form of clearing member agreement.

In addition to the clearing member agreement, clearing members may also enter into an Agreement for OCC Services. The Agreement for OCC Services sets forth certain ancillary services OCC provides to its clearing members that are in addition to those services set forth in the By-Laws and Rules. The Agreement for OCC Services is set up as a master agreement. Clearing members may then choose the specific ancillary services they desire and then execute the appropriate ancillary services supplement. Such ancillary services may include, for example, access to OCC's Data Distribution Services, internet access to OCC information and data systems, and OCC's theoretical profit and loss values service.

#### *B. Proposed By-Law and Rule Changes*

OCC proposes to amend the applicable provisions of its By-Laws to state that both the form of clearing member application and the form of clearing member agreement be specified by OCC generally, rather than its Board of Directors. The requirement that the Board of Directors approve the form of such documents is overly ministerial given that OCC's By-Laws specify the substantive requirements of both the clearing member application and the clearing member agreement.

OCC also proposes to amend its Agreement for OCC Services to reflect operational changes OCC made since OCC first created the agreement. These changes include broader references to "clearing services" provided by OCC and not only to "options" clearing services. Advanced notice of 90 days of fee changes would be eliminated because fee changes to the ancillary services program are filed as rule changes and are infrequent in nature. Language would be added to the Agreement for OCC Services such that the clearing member authorizes OCC to withdraw funds from the clearing member's firm account, on or after the fifth business day following the end of the calendar month. This language

conforms to OCC Rules. In addition, a provision referring to the exclusivity of the warranties set forth in the Agreement for OCC Services would be eliminated because the agreement contains no warranty provisions. Any applicable warranty provisions would be contained within the ancillary supplements to the Agreement for OCC Services.

### **III. Discussion**

Section 19(b)(2)(C) of the Act<sup>3</sup> 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. Section 17A(b)(3)(F) of the Act<sup>4</sup> requires, among other things, that the rules of a clearing agency are designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

The Commission believes that these changes are consistent with the requirements of Section 17A of the Act<sup>5</sup> and the rules and regulations thereunder applicable to OCC. The changes to OCC's By-Laws eliminate inefficient and burdensome administrative procedures which unnecessarily require OCC's Board approval for the form of clearing member application and agreement. The changes to the Agreement for OCC Services are designed to reflect operational changes OCC made since creating the agreement.

### **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<sup>6</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (File No. SR-OCC-2012-12) be, and hereby is, approved.<sup>8</sup>

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

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> *Id.*

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 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).

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

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

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-67785; File No. SR-NYSEArca-2012-48]**

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Amending NYSE Arca Equities Rule 7.31(h) To Add a PL Select Order**

September 5, 2012.

#### **I. Introduction**

On May 22, 2012, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend NYSE Arca Equities Rule 7.31(h) to add a PL Select Order. The proposed rule change was published for comment in the **Federal Register** on June 8, 2012.<sup>3</sup> A designation of a longer period for Commission action was published in the **Federal Register** on July 26, 2012.<sup>4</sup> The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

#### **II. Description of the Proposal**

The Exchange proposes to amend NYSE Arca Equities Rule 7.31(h) to add a PL Select Order. The PL Select Order would be a subset of a Passive Liquidity ("PL") Order.<sup>5</sup> NYSE Arca Equities Rule 7.31(h)(7) would define the PL Select Order as a PL Order that would not interact with an incoming order that: (i) Has an immediate-or-cancel ("IOC") time in force condition,<sup>6</sup> (ii) is an ISO,<sup>7</sup> or (iii) is larger than the size of the PL Select Order. The PL Select Order

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

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 67101 (June 4, 2012), 77 FR 34115 ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 67475 (July 20, 2012), 77 FR 43879 (Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Amending NYSE Arca Equities Rule 7.31(h) To Add a PL Select Order Type).

<sup>5</sup> See NYSE Arca Equities Rule 7.31(h)(4).

<sup>6</sup> See NYSE Arca Equities Rule 7.31(e).

<sup>7</sup> See NYSE Arca Equities Rule 7.31(jj).