

burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6)<sup>13</sup> thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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-Phlx-2012-124 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-Phlx-2012-124. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of Phlx. 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-Phlx-2012-124, and should be submitted on or before November 28, 2012.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-27211 Filed 11-6-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68130; File No. SR-OCC-2012-19]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Revise the Method for Determining the Minimum Clearing Fund Size To Include Consideration of the Amount Necessary To Draw on Secured Credit Facilities

November 1, 2012.

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> notice is hereby given that on October 18, 2012, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by OCC. 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

OCC proposes to revise the method for determining the minimum clearing fund size to include consideration of the amount necessary for OCC to draw on its secured credit facilities.

#### 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.

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

The purpose of this proposed rule change is to implement a minimum clearing fund size equal to 110% of the amount of committed credit facilities secured by the clearing fund to ensure that the amount of the clearing fund likely will exceed the required collateral value that would be necessary for OCC to be able to draw in full on such credit facilities. OCC's clearing fund is primarily intended to provide a high degree of assurance that market integrity will be maintained in the event that one or more clearing members or other specified entities to which OCC has credit exposure fails to meet its obligations.<sup>3</sup> This includes the potential use of the clearing fund as a source of liquidity should it ever be the case that OCC is unable to obtain prompt delivery of, or convert promptly to cash, any

<sup>3</sup> Under Article VIII, Section 1 of OCC's By-Laws, the clearing fund may be used to pay losses suffered by OCC: (1) As a result of the failure of a clearing member to perform its obligations with regard to any exchange transaction accepted by OCC; (2) as a result of a clearing member's failure to perform its obligations in respect of an exchange transaction or an exercised/assigned options contract, or any other contract or obligations in respect of which OCC is liable; (3) as a result of the failure of a clearing member to perform its obligations in respect of stock loan or borrow positions; (4) as a result of a liquidation of a suspended clearing member's open positions; (5) in connection with protective transactions of a suspended clearing member; (6) as a result of a failure of any clearing member to make any other required payment or to render any other required performance; or (7) as a result of a failure of any bank or securities or commodities clearing organization to perform its obligations to OCC.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>14</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.

asset credited to the account of a suspended clearing member.

On September 23, 2011, the Commission approved a proposed rule change by OCC to establish the size of OCC's clearing fund as the amount that is required, within a confidence level selected by OCC, to sustain the maximum anticipated loss under a defined set of scenarios as determined by OCC, subject to a minimum clearing fund size of \$1 billion.<sup>4</sup> OCC implemented this change in May 2012. Until that time, the size of OCC's clearing fund was calculated each month as a fixed percentage of the average total daily margin requirement for the preceding month, provided that the calculation resulted in a clearing fund of \$1 billion or more.<sup>5</sup>

Under the formula that is implemented for determining the size of the clearing fund as a result of the May 2012 change, OCC's Rules provide that the amount of the fund is equal to the larger of the amount of the charge to the fund that would result from (i) a default by the single "clearing member group"<sup>6</sup> whose default would be likely to result in the largest draw against the clearing fund or (ii) an event involving the near-simultaneous default of two randomly-selected "clearing member groups" in each case as calculated by OCC with a confidence level selected by OCC.<sup>7</sup> The size of the clearing fund continues to be recalculated monthly, based on a monthly averaging of daily calculations for the previous month, and it is subject to a requirement that its minimum size may not be less than \$1 billion.

This minimum dollar size for OCC's clearing fund is the subject of this proposed rule change. OCC maintains committed credit facilities that are secured by the clearing fund in order to

provide a source of liquidity in the event of a default by a clearing member or one of OCC's settlement banks. The proposed rule change arises out of a regular review that OCC conducts in order to determine the appropriate aggregate amount of such committed credit facilities. In addition to its liquidity exposure to the potential failure of a clearing member, OCC also evaluates its liquidity exposure to settlement banks in respect of their ability to wire net settlement proceeds in time for OCC to meet its settlement obligations at one or more of OCC's other settlement banks as well as OCC's credit exposure to banks that issue letters of credit on behalf of clearing members as a form of margin.

OCC's committed credit facilities are secured by assets in the clearing fund and certain margin deposits of suspended clearing members. In light of the uncertainty regarding the amount of margin assets of a suspended clearing member that might be eligible at any given point to support borrowing under the secured credit facilities, OCC has considered the availability of funds based on a consideration of the amount of the clearing fund deposits available as collateral. To draw on the full amount of its credit facilities secured by the clearing fund, the size of the clearing fund would need to be approximately \$2.2 billion. The \$2.2 billion figure reflects a 10% increase above the total size of such credit facilities, which is meant to account for the percentage discount applied to collateral pledged by OCC in determining the amount available for borrowing.

Based on monthly recalculation information, the size of OCC's clearing fund during the period from July 2011 to July 2012 was less than \$2.2 billion on eight occasions. Therefore, to address the risk that the assets in the clearing fund might at any time be insufficient to enable OCC to meet potential liquidity needs by fully accessing its committed credit facilities that are secured by the clearing fund, the proposed rule change would amend the requirement that the minimum size of the clearing fund cannot be less than \$1 billion by providing instead that the minimum clearing fund size would be equal to the greater of either \$1 billion or 110% of the amount of such committed credit facilities. OCC proposes to denote the credit facility component of the minimum clearing fund requirement as a percentage of the total amount of the credit facilities that OCC actually secures with clearing fund assets because OCC negotiates these credit facility agreements, including size

and other terms, on an annual basis and the total size is therefore subject to change.

OCC believes that the proposed rule change is consistent with Section 17A of the Act<sup>8</sup> and the rules and regulations thereunder because the proposed modifications would help ensure that the Rules of OCC are designed to promote the prompt and accurate clearance and settlement of securities transactions<sup>9</sup> by requiring a minimum clearing fund size that is designed to enable OCC to draw in full on its committed credit facilities that are secured by the clearing fund.

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

OCC does not believe that the proposed rule change would impose any burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

**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 up to 90 days (i) as the Commission may designate 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 the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposals contained in this proposed rule change shall not take effect until all regulatory actions required with respect to the proposals are completed.<sup>10</sup> The clearing agency

<sup>8</sup> 15 U.S.C. 78q-1.

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>10</sup> OCC also filed the proposed rule change as an advance notice under Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act"). 12 U.S.C. 5465(e)(1). Proposed changes filed under the Clearing Supervision Act may be implemented either: (i) At the time the Commission notifies the clearing agency that it does not object to the proposed rule change and authorizes its implementation, or, if the Commission does not object to the proposed rule change within sixty days of the later of: (i) the date the advance notice was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. 12 U.S.C. 5465(e)(1)(G).

<sup>4</sup> Securities Exchange Act Release No. 34-65386 (September 23, 2011), 76 FR 60572 (September 29, 2011) (SR-OCC-2011-10).

<sup>5</sup> If the calculation did not result in a clearing fund size of \$1 billion or more, then the percentage of the average total daily margin requirement for the preceding month that resulted in a fund level of at least \$1 billion would be applied. However, in no event was the percentage permitted to exceed 7%. With the rule change approved in September 2011, this 7% limiting factor on the minimum clearing fund size was eliminated.

<sup>6</sup> The term "clearing member group" is defined in OCC's By-Laws to mean a clearing member and any member affiliates of the clearing member.

<sup>7</sup> The confidence levels employed by OCC in calculating the charge likely to result from a default by OCC's largest "clearing member group" and the default of two randomly-selected "clearing member groups" were approved by the Commission at 99% and 99.9%, respectively. However, the Commission approval order notes that OCC retains discretion to employ different confidence levels in these calculations provided that OCC will not employ confidence levels of less than 99% without first filing a proposed rule change.

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

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2012-19 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-OCC-2012-19. 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 Section, 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 such filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at [http://www.optionsclearing.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_12\\_19.pdf](http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_12_19.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-2012-19 and should be submitted on or before November 28, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68139; File No. SR-NYSEMKT-2012-56]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Amex Options LLC Fee Schedule To Amend the Fees for Specialists and eSpecialists Relating to Qualified Contingent Cross Orders

November 2, 2012.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on October 19, 2012, 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 to amend the NYSE Amex Options Fee Schedule (the "Fee Schedule") to amend the fees for Specialists and eSpecialists relating to Qualified Contingent Cross ("QCC") orders. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://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 amend the Fee Schedule to amend the fees for Specialists and eSpecialists relating to QCC orders.<sup>4</sup> The Exchange proposes to implement these changes on November 1, 2012.

##### Current Fees

Currently, the Exchange does not charge an order fee for Customer orders that comprise all or part of a QCC order. The Exchange charges \$0.20 per contract for non-Customer orders for all other participants.<sup>5</sup> If a Specialist, eSpecialist, Market Maker, or Firm has reached its respective fee cap of \$350,000 for the month and has executed volume in excess of \$3,500,000 for the month, then the Exchange charges an incremental service fee of \$0.05 per contract for a QCC order executed against a non-Customer and \$0.10 per contract for a QCC order executed against a Customer.

##### Proposed Fees

For a Specialist or eSpecialist executing a QCC order that has not reached its fee cap for the month under the Fee Schedule, the Exchange proposes to charge \$0.13 per contract if the Specialist or eSpecialist executes an average daily volume ("ADV") of fewer than 50,000 contracts during the month, and \$0.10 per contract if the Specialist or eSpecialist executes an ADV of 50,000 or more contracts during the month. In calculating the threshold of 50,000 contracts, the Exchange will exclude both Strategy Trades<sup>6</sup> and QCC

<sup>4</sup> The QCC order permits an ATP Holder to effect a qualified contingent trade ("QCT") in a Regulation NMS stock and cross the options leg of the trade on the Exchange immediately upon entry and without order exposure if the order is for at least 1,000 contracts, is part of a QCT, and is executed at a price at least equal to the national best bid and offer, as long as there are no Customer orders in the Exchange's Consolidated Book at the same price.

<sup>5</sup> This includes Specialists, eSpecialists, NYSE Amex Options Market Makers, Non-NYSE Amex Options Market Makers, Broker Dealers, Professional Customers, and Firms.

<sup>6</sup> Strategy Trades include reversals and conversions, dividend spreads, box spreads, short stock interest spreads, merger spreads, and jelly rolls.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

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