selling shares in exchange for investment securities is stated in the Trust's current registration statement; (2) the shares will be sold at their net asset value in conformity with Rule 22c–1 under the Act; and (3) the investment securities will be of the type and quality that a Replacement Fund could have acquired with the proceeds from the sale of its shares had the shares been sold for cash. For each of the proposed In-Kind Transactions, LIAC and the relevant Subadviser(s) will analyze the portfolio securities being offered to each relevant Replacement Fund and will retain only those securities that it would have acquired for each such Fund in a cash transaction.

9. The Section 17 Applicants submit that, for all the reasons stated above: (1) The terms of the proposed In-Kind Transactions, including the consideration to be paid and received, are reasonable and fair to each of the relevant Replacement Funds, each of the relevant Existing Funds, and Contract Owners, and that the proposed In-Kind Transactions do not involve overreaching on the part of any person concerned; (2) the proposed In-Kind Transactions are, or will be, consistent with the policies of the relevant Replacement Funds and the relevant Existing Funds as stated in the relevant investment company's registration statement and reports filed under the 1940 Act; and (3) the proposed In-Kind Transactions are, or will be, consistent with the general purposes of the 1940 Act. The Section 17 Applicants maintain that the proposed In-Kind Transactions, as described herein, are consistent with the general purposes of the 1940 Act set forth in Section 1 of the 1940 Act. In particular, the proposed In-Kind Transactions do not present any conditions or abuses that the 1940 Act was designed to prevent.

Conclusion

For the reasons set forth in the application, the Applicants submit that the proposed Substitutions and related transactions meet the standards of Section 26(c) of the 1940 Act and are consistent with the standards of Section 17(b) of the 1940 Act and that the requested orders should be granted.

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

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–09633 Filed 4–23–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69403; File No. SR–OCC–2013–02]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Implement a Revised Method of Calculating Clearing Members' Respective Contributions to OCC's Clearing Fund

April 18, 2013.

I. Introduction

On February 19, 2013 The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2013–02 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on March 8, 2013.[3] The Commission received no comment letters. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The purpose of this proposed rule change is to revise OCC's By-Laws and Rules to implement a revised method of calculating Clearing Members' contributions to OCC's Clearing Fund. Currently, Clearing Members contribute to the Clearing Fund in proportion to average daily open interest, i.e., the total number of cleared contracts and open positions plus units of stock underlying open stock loan or borrow positions, over the calendar month preceding the date of calculation, subject to a $150,000 minimum contribution.

OCC has developed a new allocation formula that it believes will equitably allocate contributions among its Clearing Members based on each Clearing Member's particular activities and use of OCC's facilities.[4] The revised formula will include the following components and weights: (1) Open interest (50% of total); (2) total risk charge (35% of total); and (3) volume (15% of total).[5]

The total risk charge is intended to measure the economic significance of the activities of a Clearing Member. The total risk charge is equal to the margin requirement, as determined by OCC, of the accounts of the Clearing Member exclusive of the net asset value of those accounts. OCC notes that a range of factors influence the relationship between the open interest in a Clearing Member's account and its associated risk charge. For example, for each Clearing Member these factors include, but are not limited to, the types of positions, number of long positions versus short positions, value of the securities underlying the contracts, volatility of the underlying, diversification, number of accounts of the Clearing Member, and the extent to which the Clearing Member's options positions are in-the-money or out-of-the-money.

Volume, like open interest, is a measure of a Clearing Member's level of usage of OCC's facilities. However, volume is distinct from open interest in that it is a function of the average turnover of the positions in the Clearing Member's account. Therefore, according to OCC, market-making, high frequency trading, and execution-only services are all examples of activities that might elevate volume relative to open interest. By contrast, holding long term positions in long term contracts is an example of activity that might lower a Clearing Member's volume relative to its open interest.

OCC believes that its proposed allocation formula is preferable to its current formula because, by incorporating measurements of volume and certain risk charges, it will apportion contributions based on more sophisticated measurements of Clearing Members' usage of OCC's facilities and recognize demands on OCC's services and facilities that are not captured by open interest alone.

OCC believes it is appropriate for open interest to continue to serve as the most heavily weighted component because open interest, generally speaking, is a measure of a Clearing Member's overall usage of OCC's facilities. The definition of open interest in proposed Rule 1001(d) is different than the definition of open interest in existing Rule 1001(b), which OCC is deleting, in a non-material way as a result of the use of the defined term ''cleared contract'' in proposed Rule 1001(d) instead of specifically naming the individual types of contracts that make up ''cleared contracts.''

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–69026 (March 4, 2013), 78 FR 15088 (March 8, 2013).

[4] OCC believes the new allocation formula generally reflects similar practices that are in place at the other clearing agencies registered with the Commission. See supra note 3, Securities Exchange Act Release No. 34–69026 (March 4, 2013), 78 FR 15088 (March 8, 2013).

[5] Because Execution-Only Clearing Members do not clear their own trades, the measure of volume applicable to them would be executed volume rather than cleared volume.

OCC also believes that risk and volume are relevant factors because they distinctly measure material aspects of clearance and settlement activity and therefore a Clearing Member's use of OCC's resources. OCC notes that Clearing Members whose OCC accounts contain positions that are well-diversified and/or exhibit relatively little exposure to overall market direction will likely have a smaller required contribution under the proposed formula. Clearing Members exhibiting a relatively large exposure to market direction, a concentration in contracts that individually present high amounts of risk, and undiversified accounts will generally experience a larger required contribution than is the case under the current formula.

OCC notes that most Clearing Member Groups[6] will experience a material change (i.e., an increase or decrease of 10% or greater in the dollar amount of a Clearing Member Group's aggregated Clearing Fund requirement) under the new formula. OCC notes that smaller single firms with lower initial Clearing Fund requirements may experience an increase under the new allocation formula because (i) they may have portfolios lacking the diversification that lowers the risk compared with open interest for larger firms, and (ii) the new formula adds a Clearing Fund share on top of the $150,000 minimum as opposed to instead of it.

The Clearing Fund requirements under the new allocation formula will be communicated to Clearing Members with significant lead time to allow Clearing Members to review and prepare for any changes they may experience in their specific Clearing Fund contribution amount. OCC will contact those Clearing Members that will be negatively impacted in a material manner (i.e., an increase of 10% or greater in the dollar amount of a Clearing Member Group's aggregate Clearing Fund requirement) to confirm such Clearing Members have reviewed the pro forma Clearing Fund requirement numbers and they are ready to meet the new requirement upon implementation. OCC will then begin a two stage phase in process for the new Clearing Fund requirements. The first stage of implementation will occur within 180 calendar days from the date that OCC provides notice to Clearing Members of its intent to implement the new formula. At that stage, open interest, total risk charge, and volume will be applied in the formula with weightings of 75%, 17.5%, and 7.5%, respectively. The second stage of implementation and the final weightings of 50%, 35%, and 15% will then be implemented within 360 days from the same date of the original notice to Clearing Members concerning implementation of the new formula.

The proposed rule change will also create a defined term in OCC's By-Laws, ''Futures-Only Affiliated Clearing Member,'' to refer to a Clearing Member that is admitted solely for the purpose of clearing transactions in security futures, commodity futures, and/or futures options.[7] While the definition is new, there will be no substantive change to Section 2 of Article VIII, under which, if such a Clearing Member is a member affiliate of an earlier-admitted Clearing Member, the Clearing Member's initial Clearing Fund contribution may be fixed by the Board as an amount that excludes the minimum Clearing Fund component of $150,000, so long as the earlier-admitted Clearing Member already satisfies that requirement.

III. Discussion

Section 19(b)(2)(C) of the Act[8] 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[9] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions, and to the extent applicable derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and to protect investors and the public interest. Section 17A(b)(3)(D) of the Act[10] requires that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. Rule 17Ad–22(b)(2)[11] requires a registered clearing agency that performs central counterparty services to establish, implement, maintain, and enforce written policies and procedures reasonably designed to use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly.

The proposed rule change accomplishes these purposes by enhancing the Clearing Fund allocation methodology by incorporating measures that OCC believes will apportion contributions based on more sophisticated measurements of Clearing Members' usage of OCC's facilities and recognize demands on OCC's services and facilities that are not captured by the current methodology.

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[12] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–OCC–2013–02) be and hereby is APPROVED.[14]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–09632 Filed 4–23–13; 8:45 am]

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[6] The term ''Clearing Member Group'' is defined in Article I, Section 1 of OCC's By-Laws as ''a Clearing Member and any Member Affiliates of such Clearing Member.''

[7] Article VIII, Section 2 of OCC's By-Laws actually refers also to ''commodity options,'' but options directly on an underlying commodity—as opposed to options on futures—are now included in Section 1a(47) of the Commodity Exchange Act to fall within the definition of a ''swap.'' 7 U.S.C. 1a(47). Since OCC does not currently have rules for the clearing of swaps, the reference to commodity options is being omitted from the new definition.

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

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 15 U.S.C. 78q–1(b)(3)(D).

[11] 17 CFR 240.17Ad–22(b)(3).

[12] 15 U.S.C. 78q–1.

[13] 15 U.S.C. 78s(b)(2).

[14] 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).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69399; File No. SR–CBOE–2013–039]

Self-Regulatory Organizations; NYSE Arca, Inc.; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for the BBO Data Feed for Securities Traded on the CBOE Stock Exchange

April 18, 2013.

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