

#### 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-ICEEU-2014-04 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-ICEEU-2014-04. 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 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at <https://www.theice.com/notices/Notices.shtml?regulatoryFilings>.

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-ICEEU-2014-04 and should be submitted on or before March 18, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71571; File No. SR-OCC-2013-23]

#### Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change, As Modified by Amendment No. 1, To Provide OCC With Authority in Emergency Circumstances To Waive, Suspend, or Extend the Time for Compliance With Its By-Laws, Rules, Policies and Procedures, or any Other Rules Issued by OCC

February 19, 2014.

##### I. Introduction

On December 27, 2013, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2013-23 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> On January 8, 2014, OCC filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on January 15, 2014.<sup>4</sup> The Commission received no comments concerning the proposed rule change. For the reasons set forth below, the Commission is approving the proposed rule change.

##### II. Description

The rule change, as approved, amends OCC's by-laws to provide OCC with authority in emergency circumstances, subject to certain conditions, to waive or suspend the operation of its by-laws, rules, policies and procedures, or any other rules issued by OCC (collectively, "Rules") or to extend any time fixed thereby for the doing of any act or acts. OCC previously sought action by the Division of Trading and Markets on an ad hoc basis whenever OCC needed to temporarily waive or suspend certain of

its Rules, or extend the time for doing any act or acts specified by its Rules, in order to help facilitate the national system for the prompt and accurate clearance and settlement of securities transactions.<sup>5</sup> The rule change generally aligns OCC's Rules with those of other registered clearing agencies, which allow those clearing agencies to waive or suspend their rules, or extend the time fixed thereby for performing any act or acts, in similar circumstances.

Under the rule change, as approved, OCC's Board of Directors, Chairman,<sup>6</sup> Management Vice Chairman, or President is authorized either to waive or suspend the Rules or extend any time fixed by the Rules for the doing of any act or acts if it is believed that an emergency exists and such extension, waiver, or suspension is necessary or advisable to protect OCC or allow it to continue to facilitate the prompt and accurate clearance and settlement of confirmed transactions and to provide its services in a safe and sound manner. If a determination to invoke these emergency powers is made by anyone other than by the Board of Directors, the Board of Directors must be notified as soon as practicable.

The rule change, as approved, requires OCC to notify the Commission and the CFTC within two hours after exercising its emergency powers.<sup>7</sup> OCC is further required to provide the Commission and the CFTC as soon as practicable, but not later than three calendar days after exercising its emergency powers, with a report setting out the nature of the emergency, the identity of the person or persons who invoked OCC's emergency powers, and the rationale for doing so.

OCC is permitted to continue the emergency action for up to thirty calendar days unless the Commission or the CFTC, as applicable, objects in writing. If OCC wishes to continue the emergency action beyond the thirty-day period, then OCC is required to file a

<sup>5</sup> For instance, in one case, OCC needed to waive certain of its rules temporarily to facilitate the transfer and assignment of the correspondent securities-clearing business of one of its clearing members to another. The Division of Trading and Markets issued a No-Action Letter advising OCC that the Division would not recommend an enforcement action if OCC waived its rules under those circumstances. The Options Clearing Corporation, SEC No-Action Letter, (June 4, 2012), available at <http://www.sec.gov/divisions/marketreg/mr-noaction/2012/occ060412.pdf>.

<sup>6</sup> Pursuant to Article IV, Section 6 of OCC's By-Laws, the Chairman of the Board is also the Executive Chairman.

<sup>7</sup> The Commission's approval of this rule change does not relieve OCC of its obligation to submit a filing to the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act when appropriate. See 12 U.S.C. 5465(e)(1).

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

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

<sup>3</sup> In Amendment No. 1, OCC clarified its ability to extend the time fixed in certain Rules for the doing of any act or acts in emergency situations, and made other technical changes.

<sup>4</sup> Securities Exchange Act Release No. 71268 (January 9, 2014), 79 FR 2739 (January 15, 2014) (SR-OCC-2013-23).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

corresponding proposed rule change with the Commission, the CFTC, or both during this thirty-day period. In that case, the emergency action would remain in effect while the agency or agencies review the corresponding proposed rule change. If either the Commission or the CFTC objects to the proposed rule change in writing, OCC is required to discontinue the emergency extension, waiver, or suspension of its rules.

### III. Discussion

Section 19(b)(2)(C) of the Act<sup>8</sup> directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the 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>9</sup> requires that the rules of a registered clearing agency be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions, as well as foster cooperation and coordination amongst other persons engaged in the clearance and settlement of securities transactions.

The Commission believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to OCC. By giving OCC the ability to respond promptly in the event of an emergency, the proposed rule change will help to minimize the risk of a disruption to OCC's clearance and settlement services. This will help facilitate the prompt clearance and settlement of securities transactions, and will also enable OCC to coordinate its actions with those of other clearing agencies that already possess emergency powers similar to those at issue here. Further, the proposed rule change circumscribes OCC's emergency powers by requiring it to notify the Commission and the CFTC whenever OCC invokes those powers, and by further requiring OCC to discontinue any changes made under those powers if the Commission or the CFTC, as applicable, objects. These procedural safeguards will help to ensure that OCC exercises its emergency powers only in a manner that is consistent with the requirements of the Act and the rules and regulations thereunder.

### IV. Conclusion

On the basis of the foregoing, the Commission concludes that the proposal is consistent with the

requirements of the Act, particularly the requirements of Section 17A of the Act<sup>10</sup> and the rules and regulations thereunder.

It is therefore *ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that proposed rule change SR-OCC-2013-23, as amended, be and hereby is *approved*.<sup>12</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71575; File No. SR-FINRA-2013-054]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change Relating to a Capacity Management Plan

February 19, 2014.

#### I. Introduction

On December 24, 2013, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt a Capacity Management Plan ("Plan") for the Alternative Display Facility ("ADF") and to amend the ADF Certification Record ("Certification"). The proposed rule change was published for comment in the **Federal Register** on January 8, 2014.<sup>3</sup> The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

#### II. Description of the Proposed Rule Change

The ADF is a quotation collection and trade reporting facility that provides

ADF Market Participants the ability to post quotations, display orders and report transactions in NMS stocks<sup>4</sup> for submission to the Securities Information Processors ("SIPs") for consolidation and dissemination to vendors and other market participants. In addition, the ADF delivers real-time data to FINRA for regulatory purposes, including enforcement of requirements imposed by Regulation NMS.<sup>5</sup>

To ensure that the ADF has sufficient capacity to handle the volume of quote, order and trade data submitted to the ADF without maintaining unused data capacity, FINRA proposes to adopt the Plan for those FINRA members that opt to utilize the ADF for quoting and trade reporting. According to FINRA, the proposed Plan is similar to the approach of other data plans, notably the Consolidated Tape Association Plan ("CTA Plan") and the Consolidated Quotation Plan ("CQ Plan"; together, "CTA/CQ Plans"),<sup>6</sup> which serve as the consolidated data plans for securities listed on the New York Stock Exchange, BATS, NYSE Arca, NYSE MKT and other regional exchange-listed securities.<sup>7</sup>

Pursuant to the Plan, each ADF Trading Center would complete an initial ADF Trading Center Capacity Certification process,<sup>8</sup> including testing its connectivity to the ADF. In addition, each ADF Trading Center would submit volume projections for current and future peak data reporting levels on a quarterly basis, and on demand from FINRA.<sup>9</sup> Specifically, the Plan would provide a timeframe by which ADF Trading Centers submit initial and final volume projections for the next two calendar quarters, with final volume projections tested and certified by FINRA in the event of a capacity upgrade. The Plan also would provide ADF Trading Centers with the ability to increase and decrease their capacity projections for the second quarter, subject to certain limitations, in the event that their actual capacity usage deviates from their projected capacity usage. In addition, under the Plan, FINRA would honor an ADF Trading Center's capacity requests and build out to support the ADF Trading Center's

<sup>4</sup> See 17 CFR 242.600(b)(47).

<sup>5</sup> See 17 CFR 242.600 et seq.

<sup>6</sup> The CTA/CQ Plans and the Unlisted Trading Privileges Plan are collectively referred to as the "NMS data plans."

<sup>7</sup> See Notice, *supra* note 3 at 1414.

<sup>8</sup> Each ADF Trading Center would also be required to complete an annual recertification.

<sup>9</sup> ADF Trading Centers would submit separate volume projections for CTA securities and UTP securities, and project their volume for quotations, media trade reports, total trade reports, and order reports.

<sup>10</sup> 15 U.S.C. 78q-1.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</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).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</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. 71224 (Jan. 2, 2014), 79 FR 1414 ("Notice").

<sup>8</sup> 15 U.S.C. 78s(b)(2)(C).

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