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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67733; File No. SR-OCC-2012-11)

August 27, 2012

Self-Regulatory Organizations; Options Clearing Corporation; Order Approving Proposed Rule Change Relating to the Auction Process under Options Clearing Corporation Rule 1104

I. Introduction

On July 3, 2012, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2012-11 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 July 20, 2012.[3] The Commission received no comment letters. This order approves the proposed rule change.

II. Description

In a recent rule change, OCC proposed and the Commission approved provisions to OCC Rule 1104 and Rule 1106 to specifically provide that, in addition to all other permitted means of liquidating positions and collateral in the accounts of a suspended Clearing Member, OCC may, at its discretion, liquidate such positions and collateral through a private auction process.[4] The purpose of the current rule change is to add an interpretation .02 to Rule 1104 to provide a further general description of such a private auction process by which OCC may liquidate all or

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

2 17 CFR 240.19b-4.

3 Securities Exchange Act Release No. 67443 (July 16, 2012), 77 FR 42784 (July 20, 2012).

4 See Exchange Act Release No. 65654 (October 28, 2011), 76 FR 68236 (November 3, 2011) (SR-OCC-2011-08)(Order Approving Proposed Rule Change, as Modified by Amendment No. 1, to Provide Specific Authority to Use an Auction Process As One of the Means to Liquidate a Defaulting Clearing Member's Accounts).

any part of a suspended Clearing Member's accounts. The proposed interpretation sets forth the basic parameters of such an auction, including the process for creating a standing pool of pre-qualified potential bidders, criteria for fixing the number of bidders to participate in any particular auction and the method of selection of such bidders. Such criteria are intended to ensure an orderly and robust auction and to ensure that auction bidders are financially able to make payment for and assume the obligations of the collateral and positions they are acquiring and able to manage the risk thereof and/or trade out of the positions without creating unnecessary further risk to the Corporation. Interpretations cross-referencing interpretation .02 to Rule 1104 will be added following Rules 1106, 1107, 2210, and 2210A, and the latter three rules are proposed to be amended to provide that the auction process is applicable to assets and obligations arising from exercised and assigned options and matured, physically-settled futures and to assets and obligations arising from the close-out of stock loan and borrow positions as well.

Each private auction will be a "sealed bid" auction in which pre-qualified bidders selected by OCC will submit confidential bids such that no bidder will know the bid information of any of the other bidders. The pool of prequalified potential bidders in any auction would consist of all Clearing Members who are interested in participation and willing to execute the required documentation. Participation in the pre-qualified bidder pool by certain non-Clearing Members would also be solicited. Should the Corporation determine to hold a private auction, the Corporation will review the pool of pre-qualified auction bidders and would seek to invite a fixed number of bidders for the auction based on objective criteria that the Corporation believes would optimize the effectiveness of the auction process. OCC believes that fixing the size of the desired bidder group at a number that is either too large or too small could have an adverse

impact on the effectiveness and competitiveness of the auction process. A group that is too small would not provide adequate competition among bidders, while setting the target size for the group of bidders at too large a number would discourage participation because of fear that the composition of the portfolios to be bid on would be leaked beyond the bidder group, allowing non-bidders to trade ahead of the auction to the disadvantage of bidders in the auction. Attempting to organize too large a group of bidders would also cause potentially costly delay in the auction process. OCC would most likely use its secure ENCORE system or telephone contact to invite selected pre-qualified bidders to submit bids in the private auction. No invited bidder would be obligated to bid in the private auction.

At the conclusion of a private auction, OCC will, in its discretion, select the best bid submitted for the auctioned portfolio based on the totality of the circumstances.[5] For example, where an auction portfolio has a negative net asset value, negative bids may be submitted which indicate how much OCC would be required to pay a bidder to assume the auction portfolio, and the lowest rather than the highest bid may therefore be the best bid. Other factors such as any condition attached to a bid may influence the choice of best bid.

Finally, in order to increase legal certainty under potentially applicable provisions of the Uniform Commercial Code, the proposed interpretations would require Clearing Members to acknowledge that the private auction process is a commercially reasonable method of liquidating a suspended Clearing Member's accounts and that notice of a private auction to a suspended Clearing Member is not required under the auction process.

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[5] The Staff notes for clarity that OCC has no specific procedures to announce auctions or their results other than notices to the winning bidders and losing bidders as specified in proposed Rule 1104(e).

III. Discussion

Section 17A(b)(3)(F) of the Act requires that, among other things, the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and, to the extent applicable, derivative agreements, contracts, and transactions.[6] The rule change sets forth the procedures that OCC will use to liquidate the open positions and margin of a defaulting member in order to meet its settlement obligations to non-defaulting members promptly and in a manner that is least disruptive to the securities markets. Section 17A(b)(3)(F) of the Act also requires that the rules of a clearing agency are, in general, designed to protect investors and the public interest and are not designed to permit unfair discrimination among participants in the use of the clearing agency.[7] The rule change sets forth the general criteria used by OCC to select bidders, invite bidders to participate in the auction, and select the best bid.

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[8] and the rules and regulations thereunder.

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6 15 U.S.C. 78q-1(b)(3)(F).

7 Id.

8 15 U.S.C. 78q-1.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR-OCC-2012-11) be, and hereby is, approved.[10]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill
Deputy Secretary

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9 15 U.S.C. 78s(b)(2).

10 In approving this proposed rule change the Commission has considered the proposed rule's impact of efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

11 17 CFR 200.30-3(a)(12).