

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82296; File No. SR-OCC-2017-806)

December 12, 2017

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice Concerning Liquidity for Same-Day Settlement

The Options Clearing Corporation (“OCC”) filed on October 13, 2017 with the Securities and Exchange Commission (“Commission”) advance notice SR-OCC-2017-806 (“Advance Notice”) pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing and Settlement Supervision Act of 2010 (“Clearing Supervision Act”)¹ and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 (“Exchange Act”)² to modify the tools it has available to address the risks of liquidity shortfalls when OCC faces a liquidity need to meet its same-day settlement obligations resulting from the failure of a bank or securities or commodities clearing organization (“Settlement Entity”) to achieve daily settlement. The Advance Notice was published for comment in the Federal Register on November 13, 2017.³ The Commission has not received any comments on the Advance Notice to date. This publication serves as notice of no objection to the Advance Notice.

I. BACKGROUND

OCC filed this Advance Notice in connection with its proposed change to modify the tools available to OCC to provide a mechanism for addressing the risks of liquidity shortfalls, specifically, in the extraordinary situation where OCC faces a liquidity need to meet its same-day

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b-4(n)(1)(i).

³ SR-OCC-2017-806. Securities Exchange Act Release No. 82056 (Nov. 13, 2017) 82 FR 54430 (Nov. 17, 2017). OCC also filed a proposed rule change with the Commission in connection with the proposed change. See Securities Exchange Act Release No. 81956 (Oct. 26, 2017), 82 FR 50705 (Nov. 1, 2017) (SR-OCC-2017-017).

settlement obligations resulting from a Settlement Entity's failure to achieve daily settlement.

OCC's By-Laws currently grant OCC the authority to borrow against its Clearing Fund where a Settlement Entity fails to make timely settlement with OCC due to the bankruptcy, insolvency, resolution, suspension of operations or similar event of such Settlement Entity.⁴ The Advance Notice seeks to expand this borrowing authority to circumstances relatively less severe than bankruptcy, insolvency, or a similar event to include a temporary failure of a Settlement Entity to achieve daily settlement.

Specifically, Article VIII, Section 5(e) of OCC's By-Laws provides OCC with the authority to borrow against the Clearing Fund in two circumstances. First, the By-Laws provide OCC the authority to borrow where OCC "deems it necessary or advisable to borrow or otherwise obtain funds from third parties in order to meet obligations arising out of the default or suspension of a Clearing Member or any action taken by the Corporation in connection therewith pursuant to Chapter XI of the Rules or otherwise." Second, the By-Laws provide OCC the authority to borrow against the Clearing Fund where OCC "sustains a loss reimbursable out of the Clearing Fund pursuant to [Article VIII, Section 5(b) of OCC's By-Laws] but [OCC] elects to borrow or otherwise obtain funds from third parties in lieu of immediately charging such loss to the Clearing Fund." In order for a loss to be reimbursable out of the Clearing Fund under Article VIII, Section 5(b) of OCC's By-Laws, the loss must arise from a situation in which any Settlement Entity has failed "to perform any obligation to [OCC] when due because of its bankruptcy, insolvency, receivership, suspension of operations, or because of any similar event."⁵

⁴ OCC By-Laws, Article VIII, Section 5.

⁵ To the extent that a loss resulting from any of the events referred to in Article VIII, Section 5(b) is recoverable out of the Clearing Fund pursuant to Article VIII, Section

Under either of the circumstances above, OCC is authorized to borrow against the Clearing Fund for a period not to exceed 30 days, and during this time, the borrowing would not affect the amount or timing of any charges otherwise required to be made against the Clearing Fund pursuant to Article VIII, Section 5 of the By-Laws. However, if any part of the borrowing remains outstanding after 30 days, then at the close of business on the 30th day (or the first Business Day thereafter) the amount must be considered an actual loss to the Clearing Fund, and OCC must immediately allocate such loss among its Clearing Members in accordance with Article VIII, Section 5.

II. DESCRIPTION OF THE ADVANCE NOTICE

A. Proposed Change to Expand Borrowing Authority

The Advance Notice seeks to expand OCC's authority to borrow against its Clearing Fund to instances where a Settlement Entity suffers an event relatively less extreme than a bankruptcy, insolvency, or similar event, but is still temporarily unable to timely make daily settlement with OCC. Such an event might include a scenario where the ordinary operations of a settlement bank are disrupted in a manner that temporarily prohibits the bank from timely effecting settlement payments in accordance with OCC's daily settlement cycle. OCC believes that such authority would only be used in extraordinary circumstances, and any funds obtained from any such transaction could only be used for the stated purpose of satisfying a need for liquidity for same-day settlement.

Pursuant to the proposed change, any ability to borrow under this expanded authority would not exceed thirty (30) days. During this period, the funds obtained would not be deemed to be charges against the Clearing Fund and would not affect the amount or timing of any

5(a), the provisions of Article VIII, Section 5(a) control and render the provisions of Article VIII, Section 5(b) inapplicable.

charges otherwise required to be made against the clearing fund under Article VIII of OCC's By-Laws.⁶ Should the borrowing unexpectedly remain outstanding after thirty (30) days, at the close of business on the 30th day (or the first Business Day thereafter), the amount outstanding would be considered an actual loss to the Clearing Fund. However, OCC would also have discretionary authority to declare a borrowing outstanding for less than thirty (30) days as an actual loss chargeable against the Clearing Fund to be collected from Clearing Members.⁷ If the amount outstanding becomes an actual loss to the Clearing Fund, OCC, in accordance with its By-Laws, would then charge all of its Clearing Members to make pro rata contributions to the Clearing Fund to cover the deficit arising from the loss.

B. Proposed Change to OCC's By-Laws

To implement the proposed change, OCC proposed to amend Sections 1(a), 5(b) and 5(e) of Article VIII of its By-Laws to give effect to the expanded borrowing authority. First, Article VIII, Section 5(e) of the By-Laws would be amended to permit OCC to borrow against the Clearing Fund if it reasonably believes such borrowing is necessary to meet its liquidity needs

⁶ Assets contained in the Clearing Fund, including those assets pledged by OCC pursuant to its authority under this proposed expansion of borrowing authority, would remain in OCC's possession.

⁷ OCC states that such discretionary authority could be exercised in a circumstance where, depending on the size of the borrowing, OCC must ensure that it maintains financial resources necessary to meet a "Cover 1" liquidity resource standard. OCC must establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence, and, to the extent not already maintained pursuant to the foregoing, maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the "default of the participant family that would potentially cause the largest aggregate credit exposure for the [CCA] in extreme but plausible market conditions." 17 CFR 240.17Ad-22(e)(4)(iii).

for same-day settlement as a result of the failure of any Settlement Entity to achieve daily settlement. Second, Article VIII, Section 1(a) of the By-Laws would be amended to include conforming changes stating that the purpose of the Clearing Fund includes borrowing against the Clearing Fund as permitted under Article VIII Section 5(e).

Next, Article VIII, Section 5(b) of the By-Laws would be amended to include conforming changes that would declare that any borrowing remaining outstanding for less than 30 days may be considered, in OCC's discretion, an actual loss to the Clearing Fund to be charged proportionately against all Clearing Members' computed contributions. Any borrowing remaining outstanding on the 30th day shall be considered an actual loss to the Clearing Fund and the amount of any such loss shall be charged proportionately against all Clearing Members' computed contributions to the Clearing Fund as fixed at the time.

III. DISCUSSION AND COMMISSION FINDINGS

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, its stated purpose is instructive.⁸ The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities ("SIFMUs") and strengthening the liquidity of SIFMUs.⁹

Section 805(a)(2) of the Clearing Supervision Act¹⁰ authorizes the Commission to prescribe regulations containing risk-management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the

⁸ See 12 U.S.C. 5461(b).

⁹ Id.

¹⁰ 12 U.S.C. 5464(a)(2).

Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act¹¹ provides the following objectives and principles for the Commission’s risk-management standards prescribed under Section 805(a):

- To promote robust risk management;
- To promote safety and soundness;
- To reduce systemic risks; and
- To support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission’s risk-management standards may address such areas as risk-management and default policies and procedures, among others areas.¹²

The Commission has adopted risk-management standards under Section 805(a)(2) of the Clearing Supervision Act and the Exchange Act (the “Clearing Agency Rules”).¹³ The Clearing Agency Rules require each covered clearing agency, among other things, to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for operations and risk-management practices on an

¹¹ 12 U.S.C. 5464(b).

¹² 12 U.S.C. 5464(c).

¹³ 17 CFR 240.17Ad-22. See Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7-08-11). See also Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14) (“Covered Clearing Agency Standards”). The Commission established an effective date of December 12, 2016, and a compliance date of April 11, 2017, for the Covered Clearing Agency Standards. On March 4, 2017, the Commission granted covered clearing agencies a temporary exemption from compliance with Rule 17Ad-22(e)(3)(ii) and certain requirements in Rules 17Ad-22(e)(15)(i) and (ii) until December 31, 2017, subject to certain conditions. OCC is a “covered clearing agency” as defined in Rule 17Ad-22(a)(5).

ongoing basis. As such, it is appropriate for the Commission to review advance notices for consistency with the objectives and principles for risk-management standards described in Section 805(b) of the Clearing Supervision Act and the Clearing Agency Rules.

A. Consistency with Section 805(b) of the Clearing Supervision Act

The Commission believes the Advance Notice proposal is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act.¹⁴ Specifically, the Commission believes that the changes proposed in the Advance Notice are consistent with promoting robust risk management in the area of liquidity risk, as well as enhancing safety and soundness across the broader financial system.

The Commission believes that the expanded authority proposed by OCC under the Advance Notice would enhance OCC's ability to access liquid resources that, in turn, would allow OCC to continue to meet its settlement obligations to its Clearing Members in a timely fashion, thereby promoting robust liquidity risk management at OCC. The Commission notes that OCC's By-Laws already grant OCC the authority to borrow against the Clearing Fund to manage the bankruptcy, insolvency, receivership, suspension of operations or similar event of a Settlement Entity.¹⁵ The proposed change would therefore constitute a limited expansion of that authority to relatively less extreme scenarios that nevertheless temporarily prevent a Settlement Entity from achieving daily settlement. While the Commission notes that this expansion of

¹⁴ 12 U.S.C. 5464(b).

¹⁵ The Commission previously issued a Notice of No Objection to OCC's Advance Notice Proposal to Enter Into a New Credit Facility Agreement, which involved a replacement of a revolving credit facility. See Securities Exchange Act Release No. 81058 (June 30, 2017), 82 FR 31371 (July 6, 2017) (SR-OCC-2017-803). The Commission believes that the present Advance Notice is consistent with the new credit facility agreement, which provides OCC with the ability to borrow to address reasonably anticipated same-day settlement obligations, including but not limited to, the failure of any Settlement Entity to achieve daily settlement.

OCC's authority to use the Clearing Fund potentially expands that range of scenarios where OCC might have to use Clearing Fund resources, the Commission believes that the ability of OCC management to exercise its discretion to either borrow against the Clearing Fund or utilize some other tool would permit OCC to consider and effectively manage such scenarios based on the facts and circumstances present.¹⁶

Further, the Commission believes that the Advance Notice is consistent with reducing systemic risks and promoting the stability of the broader financial system. The Commission believes that expanding OCC's authority to use the Clearing Fund in the manner proposed by the Advance Notice increases the probability of OCC being able to meet its settlement obligations to its Clearing Members. The ability to use the Clearing Fund to obtain liquid resources to cover a liquidity gap that arises where a Settlement Entity is unable to perform enhances OCC's ability to contain losses and liquidity pressures that otherwise might cause financial distress to OCC or its Clearing Members, thereby enhancing safety and soundness across the broader financial system. The Commission believes that the Advance Notice is designed to bolster OCC's ability to meet its settlement obligations even if a Settlement Entity temporarily fails to achieve daily settlement with OCC, thereby reducing the risk of loss contagion and enhancing the ability of OCC and its Clearing Members to provide reliability, stability, and safety to the financial markets that they serve. Accordingly, the Commission believes that the proposal could help to reduce systemic risk and support the stability of the broader financial system, consistent with Section 805(b) of the Clearing Supervision Act.

¹⁶ For example, OCC could use existing authority to expand the settlement window under OCC Rule 505, rather than borrowing against the Clearing Fund, should it determine that this tool would be more appropriate in light of other demands on Clearing Fund resources.

B. Consistency with Rule 17Ad-22(e)(7)(viii) under the Exchange Act

The Commission further believes that the proposed change is consistent with Rule 17 Ad-22(e)(7)(viii), which requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, effectively measure, monitor, and manage liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum, addressing foreseeable liquidity shortfalls that would not be covered by its liquid resources and seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations.¹⁷

The Commission believes that the Advance Notice is designed to improve OCC's ability to address a temporary liquidity need resulting from the failure of a Settlement Entity to achieve timely settlement. The Commission believes that the proposed change is designed to provide OCC with additional tools to address a foreseeable, temporary liquidity shortfall to prevent the unwinding, revoking, or delaying of same-day settlement should that scenario materialize, and is therefore consistent with Rule 17Ad-22(e)(7)(viii) under the Exchange Act.

¹⁷ 17 CFR 240.17Ad-22(e)(7)(viii).

IV. CONCLUSION

IT IS THEREFORE NOTICED, pursuant to Section 806(e)(1)(G) of the Payment, Clearing and Settlement Supervision Act,¹⁸ that the Commission DOES NOT OBJECT to Advance Notice (SR-OCC-2017-806) and that OCC is AUTHORIZED to implement the proposed change.¹⁹

By the Commission.

Brent J. Fields
Secretary

¹⁸ 12 U.S.C. 5465(e)(1)(G).

¹⁹ OCC is authorized to implement the proposed change as of the date of this Notice of No Objection or the date of an Order by the Commission approving the proposed rule change filed in connection with this Advance Notice, SR-OCC-2017-017, whichever is later.