

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86182; File No. SR-OCC-2019-803)

June 24, 2019

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice Concerning The Options Clearing Corporation's Proposal to Enter Into a New Credit Facility Agreement

I. INTRODUCTION

On April 26, 2019, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) advance notice SR-OCC-2019-803 (“Advance Notice”) pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (“Clearing Supervision Act”)¹ and Rule 19b-4(n)(1)(i)² under the Securities Exchange Act of 1934 (“Exchange Act”)³ to propose to replace the 364-day term revolving credit facility that OCC currently maintains, which is due to expire on June 27, 2019.⁴ The Advance Notice was published for public comment in the Federal Register on May 30, 2019,⁵ and the Commission received no comments regarding the proposal contained in the Advance Notice. This publication serves as notice of no objection to the Advance Notice.

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b-4(n)(1)(i).

³ 15 U.S.C. 78a et seq.

⁴ See Notice of Filing infra note 5, at 83 Fed. Reg. 25089.

⁵ Securities Exchange Act Release No. 85924 (May 23, 2019), 83 Fed. Reg. 25089 (May 30, 2019) (SR-OCC-2019-803) (“Notice of Filing”).

II. BACKGROUND

OCC maintains a \$2 billion revolving credit facility to provide access to liquid resources in certain circumstances, including the default of a Clearing Member.⁶ The current revolving credit facility (“Existing Facility”) was implemented on June 28, 2018 for a 364-day term, and will terminate on June 27, 2019. To maintain access to the liquid resources provided by the Existing Facility, OCC proposes to implement a replacement credit facility (“New Facility”) on substantially similar terms as the Existing Facility with one exception: OCC proposes to expand the types of collateral that OCC would be permitted to pledge under the New Facility.

OCC currently has conditional authority to borrow from the Existing Facility, using Clearing Member margin deposits or Clearing Fund contributions as collateral, (i) in anticipation of a potential default by or suspension of a Clearing Member; (ii) to meet obligations arising out of the default or suspension of a Clearing Member; (iii) to meet reasonably anticipated liquidity needs for same-day settlement as a result of the failure of any bank or securities or commodities clearing organization to achieve daily settlement; or (iv) to meet obligations arising out of the failure of a bank or securities or commodities clearing organization to perform its obligations due to its bankruptcy, insolvency, receivership or suspension of operations (“Permitted Use Circumstances”). The exact same Permitted Use Circumstances will be present in the New Facility as are present in the Existing Facility.

To obtain a loan under the Existing Facility, OCC must pledge collateral. The collateral permitted under the Existing Facility includes U.S. dollars, securities issued or guaranteed by the

⁶ See Securities Exchange Act Release No. 83529 (Jun. 27, 2018), 83 Fed. Reg. 31237 (Jul. 3, 2018) (Notice of Filing of Advance Notice of and No Objection to OCC's Proposal To Enter Into a New Credit Facility Agreement) (SR-OCC-2018-802).

U.S. Government or the Government of Canada,⁷ S&P 500 Market Index equities, Exchange-Traded Funds, American Depositary Receipts, or certain government-sponsored enterprise debt securities. As noted above, the New Facility would permit OCC to pledge a wider range of collateral than what is contemplated by the Existing Facility. Under the New Facility, OCC would be permitted to pledge the same collateral permissible under the Existing Facility as well as debt securities issued by the Federal Republic of Germany, the Republic of France, Japan, or the United Kingdom (“Additional G7 Governments”), but only to the extent that Clearing Members are permitted to pledge such collateral as margin deposits or Clearing Fund contributions at the time that OCC obtains a loan under the New Facility.⁸ In that event, under the proposed terms of the New Facility, debt securities of Additional G7 Governments would be subject to haircuts and would be permissible collateral for a loan from the New Facility only if they have minimum credit ratings of A (by Standard & Poor’s) and A2 (by Moody’s).

III. DISCUSSION AND COMMISSION FINDINGS

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the stated purpose of the Clearing Supervision Act is instructive: to mitigate systemic risk in the financial system and promote financial stability by, among other things,

⁷ In 2013, OCC expanded the permissible collateral in an earlier iteration of the current revolving credit facility (“2013 Facility”). See Securities Exchange Release No. 70596 (Oct. 2, 2013), 78 Fed. Reg. 62719 (Oct. 22, 2013). In assessing the anticipated effects on and management of risk related to the 2013 Facility, OCC noted that the inclusion of Canadian Government securities as eligible collateral would increase the amount of OCC collateral that can be pledged to support borrowings under the 2013 Facility, resulting in increased availability of loans. Id. at 62721.

⁸ OCC currently does not permit Clearing Members to pledge as margin deposits or clearing fund contributions debt securities issued by the Additional G7 Governments. As OCC clarified in its proposal, permitting Clearing Members to pledge such securities to OCC would require OCC to address certain governance requirements, including making any necessary filings with the Commission. See Notice of Filing, 84 Fed. Reg. at 25090.

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 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 other areas.¹²

The Commission has adopted risk-management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act (the “Clearing Agency Rules”).¹³ The Clearing Agency Rules require, among other things, each covered clearing

⁹ See 12 U.S.C. 5461(b).

¹⁰ 12 U.S.C. 5464(a)(2).

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 Fed. Reg. 66220 (November 2, 2012) (S7-08-11). See also Securities Exchange Act Release No. 78961 (September 28, 2016), 81 Fed. Reg. 70786 (October 13, 2016) (S7-03-14) (“Covered Clearing Agency Standards”). The Commission established an

agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk management practices on an ongoing basis.¹⁴ As such, it is appropriate for the Commission to review advance notices against the Clearing Agency Rules and the objectives and principles of the risk management standards as described in Section 805(b) of the Clearing Supervision Act. As discussed below, the Commission believes the proposal in the Advance Notice is consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,¹⁵ and in the Clearing Agency Rules, in particular Rule 17Ad-22(e)(7)(ii).¹⁶

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

The Commission believes that the Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act. The Commission believes that the changes proposed in the Advance Notice are consistent with promoting robust risk management, in particular management of liquidity risk presented to OCC. Renewing and maintaining a credit facility for this purpose and in the manner proposed by OCC would diversify the liquidity resources that OCC may use to resolve a Member default.¹⁷ Additionally,

effective date of December 12, 2016 and a compliance date of April 11, 2017 for the Covered Clearing Agency Standards. OCC is a “covered clearing agency” as defined in Rule 17Ad-22(a)(5).

¹⁴ 17 CFR 240.17Ad-22.

¹⁵ 12 U.S.C. 5464(b).

¹⁶ 17 CFR 240.17Ad-22(e)(7)(ii).

¹⁷ OCC also maintains a minimum amount of cash in its Clearing Fund as well as a non-bank liquidity facility. See Securities Exchange Act Release No. 82501 (Jan. 12, 2018), 83 Fed. Reg. 2843 (Jan. 19, 2018) (Notice of No Objection to Advance Notice, as Modified by Amendment No. 1, Concerning the Adoption of a New Minimum Cash Requirement for the Clearing Fund) (SR-OCC-2017-808) and Securities Exchange Act

the Commission believes that the terms of the New Facility providing for an expanded range of eligible collateral would promote robust risk management by giving OCC more flexibility to use assets it may already hold as a means of accessing liquidity under the New Facility. At the same time, the expansion of collateral would be limited to only those assets that Clearing Members are permitted to pledge as collateral to OCC (as margin or clearing fund contributions) at the time of the loan, which the Commission believes would further promote robust risk management by aligning the collateral necessary to access the New Facility with the actual collateral that OCC has available at that time.¹⁸ As such, the Commission believes that the proposal would promote robust risk management practices at OCC, consistent with Section 805(b) of the Clearing Supervision Act.¹⁹

The Commission also believes that the changes proposed in the Advance Notice are consistent with promoting safety and soundness. As described above, the New Facility would provide OCC with an additional liquidity resource in the event of a Clearing Member default. This would promote safety and soundness for Clearing Members because it would provide OCC

Release No. 76821 (Jan. 4, 2016), 81 Fed. Reg. 3208 (Jan. 20, 2016) (Notice of No Objection to Advance Notice Filing, as Modified by Amendment Nos. 1, 2 and 3, Concerning The Options Clearing Corporation's Non-Bank Liquidity Facility) (SR-OCC-2015-805), respectively.

¹⁸ The Commission is not, at this time, expressing a view regarding the specific collateral or the haircuts applicable under the New Facility as they would apply to Clearing Member margin deposits or Clearing Fund contributions. As noted, OCC currently does not permit Clearing Members to pledge as margin deposits or clearing fund contributions debt securities of Additional G7 Governments, and OCC would not be able to do so without first making any necessary filings with the Commission. See supra note 8. The Commission believes that an analysis of the specific collateral or haircuts that would apply to clearing member margin deposits or clearing fund contributions would be more appropriate at the time and in the context of any such future filings.

¹⁹ 12 U.S.C. 5464(b).

with a readily available liquidity resource that could enable OCC to continue to meet its obligations in a timely fashion in the event of a Clearing Member default, thereby helping to contain losses and liquidity pressures from that default. As discussed above, the expansion of the range of eligible collateral under the New Facility would further promote safety and soundness because it increases OCC's ability to access such a liquidity resource. As such, the Commission believes it is consistent with promoting safety and soundness as contemplated in Section 805(b) of the Act.²⁰

In addition, the Commission believes that the proposed changes set forth in the Advance Notice are consistent with reducing systemic risks and promoting the stability of the broader financial system. As mentioned above, allowing OCC to enter into the New Facility would enable OCC to maintain an additional liquidity resource that OCC may access to help manage a Clearing Member default. Further, aligning the collateral that OCC would be permitted to pledge under the New Facility with the collateral that Clearing Members are permitted to pledge to OCC at the time that OCC accesses credit under the New Facility would give OCC flexibility to access credit under the New Facility, thereby reducing the risk that OCC would lack sufficient collateral to access the New Facility. This flexibility would, in turn, enable OCC to access additional liquidity to help manage a Clearing Member default.

Accordingly, and for the reasons stated, the Commission believes the changes proposed in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.²¹

²⁰ Id.

²¹ 12 U.S.C. 5464(b).

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

Rule 17Ad-22(e)(7)(ii) requires, in part, OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage liquidity risk that arises in or is borne by OCC, 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, holding qualifying liquid resources sufficient to meet the minimum liquidity resource requirement under Rule 17Ad-22(e)(7)(i)²² in each relevant currency for which the covered clearing agency has payment obligations owed to Clearing Members.²³ Rule 17Ad-22(a)(14) of the Exchange Act defines “qualifying liquid resources” to include, among other things, lines of credit without material adverse change provisions, that are readily available and convertible into cash.²⁴

As described above, the implementation of the New Facility would provide OCC with continued access to a \$2 billion revolving credit facility on substantially similar terms to the Existing Facility. As the Commission noted previously, the Existing Facility provides OCC with access to a single credit facility designed to help ensure that OCC has sufficient, readily-

²² Rule 17Ad-22(e)(7)(i) requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage liquidity risk that arises in or is borne by OCC, 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, maintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment of obligation for the covered clearing agency in extreme but plausible conditions. 17 CFR 240.17Ad-22(e)(7)(i).

²³ 17 CFR 240.17Ad-22(e)(7)(ii).

²⁴ 17 CFR 240.17Ad-22(a)(14).

available qualifying liquid resources to meet the cash settlement obligations of its largest family of affiliated members.²⁵ Implementation of the New Facility on substantially similar terms to the Existing Facility would ensure that OCC maintains continued access to such a credit facility. Further, as noted above, by aligning the collateral that OCC would be permitted to pledge under the New Facility with the collateral that Clearing Members are permitted to pledge to OCC at the time that OCC needs to access the New Facility, the proposed expansion of permissible collateral that OCC could pledge under the New Facility would give OCC increased flexibility to access credit under the New Facility. Therefore, the Commission believes that the proposal is consistent with Rule 17Ad-22(e)(7)(ii).

IV. CONCLUSION

IT IS THEREFORE NOTICED, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission DOES NOT OBJECT to Advance Notice (SR-OCC-2019-803) and that OCC is AUTHORIZED to implement the proposed change as of the date of this notice.

By the Commission.

Jill M. Peterson
Assistant Secretary

²⁵ Securities Exchange Act Release No. 83529 (Jun. 27, 2018), 83 Fed. Reg. 31237, 31241 (Jul. 3, 2018) (SR-OCC-2018-802).