



August 3, 2023

VIA ELECTRONIC MAIL [rule-comments@sec.gov]

Ms. Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Supplemental Submission of Options Clearing Corporation re: File No. S7-08-23, Electronic Submission of Certain Materials Under the Securities Exchange Act of 1934; Amendments Regarding the FOCUS Report

Dear Ms. Countryman:

The Options Clearing Corporation (“OCC”) submits this supplemental comment on the above-referenced proposal (“Proposal” or “Proposed Rules”)¹ under the Securities Exchange Act of 1934 (“Exchange Act”). OCC previously submitted comments on the Proposed Rules in May 2023.² This supplemental comment is provided in response to Request for Comment 90 in the Proposal, which asks commenters to identify any additional filing requirements for potential inclusion in a final rule. Specifically, OCC requests that the Commission consider modernizing the filing requirements of Exchange Act Rule 9b-1(b), relating to the filing of the Options Disclosure Document (“ODD”). The current requirement to file five physical copies of the ODD with the Commission prior to effectiveness is not practical or efficient and fails to take advantage of contemporary communication technologies. As part of its pandemic-related relief, Commission staff (“Staff”) permitted electronic filing of the ODD starting in 2020 and continuing to today, which has reduced the burden on OCC as the administrator of the ODD with no observable deleterious impact. In order to ensure the availability of electronic filing going forward, OCC therefore suggests that the Commission revise Rule 9b-1(b) if and when it finalizes the Proposed Rules.

Background

Exchange Act Rule 9b-1, originally adopted in 1982, requires the preparation and distribution by one or more Options Market(s) (as defined in Rule 9b-1)³ of the ODD. The ODD discusses the mechanics, risks, costs, and other information related to listed options, and is required to be provided by broker-dealers to customers trading in listed options. OCC acts as the administrator of the ODD, preparing the document on behalf of all currently operating Options Markets.

¹ RIN 3235-AL85 Electronic Submission of Certain Materials Under the Securities Exchange Act of 1934; Amendments Regarding the FOCUS Report (Mar. 15, 2023), 88 FR 23920 (Apr. 18, 2023) (“Release”).

² See Letter from Megan Malone Cohen, General Counsel and Corporate Secretary, dated May 22, 2023, *available at* <https://www.sec.gov/comments/s7-08-23/s70823-192699-383322.pdf>.

³ “Options Market” is defined in Rule 9b-1(a)(1) as “a national securities exchange, an automated quotation system of a registered securities association or a foreign securities exchange on which standardized options are traded.” 17 CFR § 240.9b-1(a)(1).

Purpose of Rule 9b-1(b)

Rule 9b-1(b) governs the process for preparing and updating the ODD, including the required filing of copies of the draft ODD and subsequent proposed amendments or supplements with the Commission. Specifically, Rule 9b-1(b)(1) generally requires that, when originally filing the ODD, five copies of a preliminary ODD to be filed with the Commission at least 60 days prior to being provided to customers, and five copies of the definitive ODD to be filed no later than the date on which it is provided to customers.⁴ Rule 9b-1(b)(2), in turn, requires that for amendments to the ODD resulting from information in the ODD becoming materially incomplete or misleading, five copies of an amendment or supplement to the disclosure document shall be filed with the Commission at least 30 days prior to the date that the definitive copies will be provided to customers.⁵

Current ODD Filing Process

Until 2022, OCC, in its role as the administrator of the ODD, satisfied the requirements of Rule 9b-1(b) by providing physical, paper copies of the draft or definitive ODD (as appropriate), via mail, to the Staff. Since early 2020, however, pursuant to the relief the Staff provided to filers in connection with the Covid-19 pandemic (“Relief”),⁶ Staff has permitted OCC to satisfy the filing obligations of Rule 9b-1(b)(2)⁷ by providing electronic copies of the draft and definitive ODD to responsible Commission staff in the Division of Trading and Markets via email.

Since the Staff provided the Relief, OCC has prepared two revised, definitive versions of the ODD subject to Rule 9b-1(b)(2); in each instance, preliminary drafts were also prepared. In all cases, the ODD in question was provided by email to the Staff pursuant to the terms of the Relief. From OCC’s perspective, providing the ODD electronically was more efficient than mailing paper copies, produced less waste, and streamlined the process of communicating with the Staff about amendments or supplements to the document. OCC is not aware of any concerns from the Staff about the process since the Relief was provided.

Modernization of Rule 9b-1(b) Should be Included in Any Final Rule

As noted in our initial comment letter, OCC supports the Commission’s efforts to reduce the burden on registrants by modernizing filing requirements and forms to make submission more streamlined and cost-effective, and commends the Commission for committing the time and resources to updating rules to eliminate paper filing requirements, enhance the usability of data, and take advantage of contemporary communications technologies. In Request for Comment 90 of the Proposal, the Commission asked whether any additional paper filing requirements, beyond those

⁴ See 17 CFR § 240.9b-1(b)(1).

⁵ 17 CFR § 240.9b-1(b)(2).

⁶ See Division Updated Staff Statement Regarding Certain Paper Submissions in Light of COVID19 Concerns (“Updated Staff Statement”), available at <https://www.sec.gov/tm/paper-submissionrequirements-covid-19-updates-061820>; Release at pp. 9-10.

⁷ The Amendments and supplements to the ODD administered by OCC are subject to Rule 9b-1(b)(2), as Rule 9b-1(b)(1) applies only to initial filings of an ODD.



identified in the Proposal, should be modernized.⁸ For the reasons discussed above, we respectfully suggest that the Commission include in any final rule amendments to Rule 9b-1(b) – and in particular Rule 9-1(b)(2) to allow electronic filing of the ODD and subsequent amendments or supplements thereto.

OCC believes the process in place since the Relief was issued has worked well, and therefore suggests amending Rule 9b-1(b) to permit filing by email to a designated electronic mailbox. Alternatively, the Commission could provide instructions for filing the ODD via EDGAR, in a format suitable for such a document. While filing by email would maximize efficiency and minimize burden for all parties, any electronic filing requirement would be an improvement on the current requirement to provide five paper copies of each draft and definitive ODD.

We thank the Commission for the opportunity to provide this supplemental comment on the Proposed Rules. If you have any questions, please do not hesitate to contact Megan Flaherty, at [REDACTED], or [REDACTED]. We would be pleased to provide the Commission with any additional information or analyses that might be useful in determining the content of the final rules.

Sincerely,

Megan Malone Cohen
General Counsel and Corporate Secretary

⁸ See Release at 170.