



DCO Rules

UNITED STATES COMMODITY FUTURES TRADING COMMISSION

Submitter Information	
Organization Name Options Clearing Corporation	
Organization Type DCO	Organization Acronym OCC
Submitted By bbrockway	Email Address bbrockway@theocc.com
Cover Sheet	
Submission Number 2204-1912-2125-40	Submission Date 4/19/2022 12:21:25 PM ET
Submission Type 40.6(a) Rule Certification	
Submission Description Proposed amendments to OCC Rule 1111.	
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Registered Entity Identifier Code	
Rule Numbers OCC Rule 1111.	
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Documents	
SR-OCC-2022-005 CFTC Letter.docx SR-OCC-2022-005 - Exhibit B.pdf SR-OCC-2022-005 - Confidential Exhibits.pdf (Confidential Treatment Requested)	
Request For Confidential Treatment - Detailed Written Justification	
CFTC - FOIA Confidential Treatment Request.pdf	



April 19, 2022

VIA ELECTRONIC MAIL

Christopher J. Kirkpatrick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

**Re: CFTC Regulation 40.6(a) Certification. Notification of Proposed Rule Change
Concerning Revisions to OCC Rule 1111 (Rule Filing No. SR-OCC-2022-005)**

Dear Secretary Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and Commodity Futures Trading Commission (“CFTC”) Regulation 40.6(a), The Options Clearing Corporation (“OCC”) hereby certifies to the CFTC amendments to OCC Rule 1111 (Voluntary Tear-Ups and Partial Tear-Ups). This rule filing has been submitted to the Securities and Exchange Commission (“SEC”) under the Securities Exchange Act of 1934 (“Exchange Act”). The date of implementation of the rule is at least 10 business days following receipt of the rule filing by the CFTC or the date the proposed rule is approved by the SEC or otherwise becomes effective under the Exchange Act.

The proposed changes to OCC Rules are included in Exhibit A. Material proposed to be added to OCC’s Rules as currently in effect is underlined and material proposed to be deleted is marked in strikethrough text. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.¹

In conformity with the requirements of CFTC Regulation 40.6(a)(7), OCC states the following:

Explanation and Analysis

In 2018, OCC adopted enhanced and new tools for recovery scenarios, including a Partial Tear-Up process designed to return OCC to a matched book by extinguishing positions that remain

¹ OCC’s By-Laws and Rules can be found on OCC’s public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

open after OCC has attempted one or more auctions.² The process for determining and terminating Partial Tear-Up Positions is set forth in OCC Rule 1111(e). In adopting Rule 1111(e), OCC noted that its Partial Tear-Up process would be initiated if OCC determined that potential losses from remaining positions of the defaulting member would exceed OCC's financial resources and that the process was designed to be initiated in advance of the exhaustion of OCC's financial resources in order to maintain its ability to meet obligations to non-defaulting members.³ OCC also acknowledged that the process may be used to allocate losses in the event OCC's resources are insufficient to pay the Partial Tear-Up Price.⁴ When the Partial Tear-Up process is used to allocate losses, Rule 1111(e)(iii) currently provides that each Clearing Member will receive a pro rata payment based on OCC's remaining resources and an unsecured claim against OCC for the difference between the pro rata amount received and the Partial Tear-Up Price.

An unsecured claim issued pursuant to Rule 1111(e) provides a mechanism for OCC to compensate Clearing Members that receive a pro rata payment when warranted by particular circumstances (e.g., when funds are subsequently recovered from a defaulted Clearing Member or the estate of the defaulted Clearing Member). However, OCC Rules do not specify a specific payment obligation for these claims. The purpose of the proposed amendment to Rule 1111(e) is to provide clarity regarding the nature of the claim issued following a Partial Tear-Up. More specifically, the revisions to Rule 1111(e) would clarify that: (i) a Clearing Member receiving a pro rata payment following a partial tear-up will have a claim for the value of the difference between the pro rata amount received and the Partial Tear-Up Price; and (ii) such a claim shall be an unsecured claim on any recovery from a suspended or defaulted Clearing Member (or from the estate of a suspended or defaulted Clearing Member). Clarification of the nature of the claim arising out of Rule 1111(e) would, in turn, clarify that such claims would not provide a basis for triggering close-out netting under Article VI, Section 27 of OCC's By-Laws.⁵

As part of its Partial Tear-Up process, OCC also adopted Rule 1111(g), which provides the Board with discretionary authority to levy a special charge against remaining non-defaulting Clearing Members for the purpose of re-allocating the losses, costs and fees imposed on holders of torn-up positions. Following the adoption of OCC Rule 1111, OCC received a letter from the Futures Industry Association ("FIA") requesting that OCC limit the amount of the special charge that could be levied by the Board pursuant to Rule 1111(g) to the amount of a Clearing Member's required contribution to the Clearing Fund.⁶ OCC has considered this request and proposes to amend Rule 1111(g) to cap the amount of the special charge levied under the rule to the amount of

² See Exchange Act Release No. 34-83916 (August 23, 2018); 83 Fed. Reg. 44076 (August 29, 2018) (File No. SR-OCC-2017-020).

³ 83 Fed. Reg. at 44078.

⁴ Id.

⁵ OCC By-Laws Art. VI, Section 27(a)(i), regarding default or insolvency of OCC, requires OCC to notify various stakeholders if OCC fails to comply with an undisputed obligation to pay money or deliver property to a Clearing Member under the By-Laws or Rules for a period of thirty days from the date that OCC receives notice from the Clearing Member of the past due obligation.

⁶ The letter OCC received from the FIA has been provided as Exhibit B.

the Clearing Members required contribution to the Clearing Fund at the time of the special charge. The purpose of this change is to improve Clearing Members' ability to measure, monitor and manage their potential exposure to OCC.

OCC reviewed the DCO core principles ("Core Principles") as set forth in the Act. During this review, OCC identified the following Core Principle as potentially being impacted:

Risk Management. OCC believes that implementing the proposed rule change is consistent with Core Principle D. CFTC Regulation 39.13 requires DCOs to establish appropriate tools and procedures to manage the risks associated with discharging its responsibilities as a DCO. CFTC Regulation 39.35 requires each subpart C DCO to adopt explicit rules and procedures that address fully any loss arising from the individual or combined default of any clearing member(s). The proposed amendments will clarify the partial tear-up tools that enhance OCC's ability to effectively management its risk in certain circumstances.

Default Management. OCC believes that implementing the proposed rule change is consistent with Core Principle G. CFTC Regulation 39.16 requires DCOs to adopt default procedures and publicly available default rules. The proposed amendments are consistent with the spirit of Core Principle G as the improve the clarity of OCC's default management rules. The proposed revision to OCC Rule 1111(g) special cap charge is also intended to improve Clearing Members' ability to measure, monitor and manage their potential exposure to OCC.

Opposing Views

No opposing views were expressed related to the rule amendments.

Notice of Pending Rule Certification

OCC hereby certifies that notice of this rule filing has been be given to Clearing Members of OCC in compliance with Regulation 40.6(a)(2) by posting a copy of the proposed rule change on OCC's website concurrently with the filing of this submission.

Certification

OCC hereby certifies that the rule set forth at Item 1 of the enclosed filing complies with the Act and the CFTC's regulations thereunder.

Christopher J. Kirkpatrick
April 19, 2022
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Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Blake Brockway", with a large, stylized flourish at the end.

Blake Brockway
Executive Principal, Associate General Counsel

Enclosure

EXHIBIT A



OCC RULES

Underlined text indicates new text
~~Strikethrough~~ text indicates deleted text

THE OPTIONS CLEARING CORPORATION

RULES

* * *

CHAPTER XI

Suspension of a Clearing Member

* * *

RULE 1111 – Voluntary Tear-Ups and Partial Tear-Ups

* * *

(e) For a Partial Tear-Up under subpart (b) of this Rule, the Corporation will determine and designate the Tear-Up Positions pursuant to the following methodology:

* * *

(iii) Upon and with effect from the Partial Tear-Up Time, every Tear-Up Position shall be automatically terminated at the Partial Tear-Up Price, without the need for any further step by any party to such Cleared Contract or Cleared Security. Upon such termination, either the Corporation or the relevant Clearing Member, as the case may be, shall be obligated to pay to the other the applicable Partial Tear-Up Price; provided however, that if the Corporation, in its discretion, determines that the resources referenced in subpart (b) of this Rule are inadequate to pay the applicable Partial Tear-Up Price for each position being extinguished in the Partial Tear-Up, the Corporation shall be obligated to pay each relevant Clearing Member a pro rata amount of the applicable Partial Tear-Up Price based on the amount of such resources remaining. Upon the termination of a Tear-Up Position, the corresponding open position shall be deemed terminated at the Partial Tear-Up Price, and the relevant Clearing Member shall have a claim for the value of the difference between the pro rata amount received and the Partial Tear-Up Price. Such claim shall be an unsecured claim on any recovery from a suspended or defaulted Clearing Member (or from the estate of a suspended or defaulted Clearing Member). ~~and notwithstanding subpart (h) of this Rule the relevant Clearing Member shall have a claim against the Corporation for the value of the difference between the pro rata amount received and the Partial Tear-Up Price. Upon the termination of a Tear-Up Position, the corresponding open position shall be deemed terminated at the Partial Tear-Up Price. Such claim against the Corporation shall be unsecured.~~ With regard to amounts recovered from a suspended or defaulted Clearing Member (or from the estate of a suspended or defaulted Clearing Member) Rules 1011(b) and 1111(a)(ii) shall continue to apply.

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Christopher J. Kirkpatrick

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(g) Notwithstanding any provision of this Rule 1111, to the extent that the losses, costs and fees imposed upon non-defaulting Clearing Members and their customers directly resulting from a Partial Tear-Up reasonably can be determined by the Corporation, the Board of Directors may elect to re-allocate such losses, costs and fees among all non-defaulting Clearing Members through a special charge to all non-defaulting Clearing Members in an amount corresponding to each such non-defaulting Clearing Member's proportionate share of the variable amount of the Clearing Fund at the time such Partial Tear-Up is conducted. The amount of the special charge levied upon each Clearing Member under this Rule 1111(g) shall not exceed the Clearing Member's required contribution to the Clearing Fund at the time of the special charge.

* * *