

and reported at 9:20 a.m. Under the proposed rule change, a trade executed between midnight and 8 a.m. that is reported at 9:20 a.m. would be marked late, thus distinguishing it from a trade executed and reported real-time at 9:20 a.m. The Commission believes that this change will enhance market transparency by eliminating systematically imposed delays in the reporting of “outside normal market hours” trades to the FINRA/Nasdaq TRF and ORF.

The Commission believes that by conforming the reporting requirements and systems functionality with respect to “outside normal market hours” trades across FINRA Facilities, the proposed rule change will promote more consistent trade reporting by members and a more complete and accurate audit trail.<sup>10</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-FINRA-2009-031), as amended, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

<sup>10</sup> The Commission notes that in connection with these changes to the trade reporting rules FINRA is also moving language from Rule 6282(a)(1) to Rule 6282(a)(6) concerning patterns or practices of late trade reporting. Rule 6282(a)(1) currently states that “[a] pattern or practice of late trade reporting without exceptional circumstances shall be considered conduct inconsistent with high standards of commercial honor and just equitable principles of trade violation of Rule 2010.” The change FINRA is proposing would replace the word “shall” with “may,” and applies the lower standard not only to a pattern or practice of late trade reporting outside of normal market hours, but to a pattern or practice of late trade reporting during normal market hours. Rule 6282 concerns transactions reported only to TRACS, and FINRA has informed the Commission staff that the change is designed to make the rule consistent with the FINRA/NASDAQ, FINRA/NYSE, and OTC Trade Reporting Facilities, all of which currently have the identical language to proposed Rule 6282(a)(6). Telephone call between Stephanie Dumont, Senior Vice President and Director of Capital Markets Policy, FINRA, and Kathy England, Assistant Director, Commission, May 29, 2009. The Commission expects FINRA to continue pursuing violations of its trade reporting rules and to continue, as appropriate, charging violations of Rule 2010 (Standards of Commercial Honor and Principles of Trade). The Commission notes that it has routinely upheld appeals from FINRA disciplinary actions when FINRA has charged respondents with violations of Rule 2010 based solely on an underlying violation of another SRO rule. *See e.g.*, Stephen J. Gluckman, 54 S.E.C. 175, 185 (1999), Exchange Act Release No. 41628 (July 20, 1999).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

Florence E. Harmon,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60386; File No. SR-OCC-2009-13]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Clearance and Settlement of Treasury Futures Contracts

July 24, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on July 1, 2009, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>2</sup> and Rule 19b-4(f)(4) thereunder<sup>3</sup> so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will establish parameters for OCC to clear and settle futures contracts based on U.S. Treasury Notes and Bonds (“Treasury Futures”).

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>3</sup> 17 CFR 240.19b-4(f)(4).

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to establish new provisions to OCC’s rules in order for OCC to provide clearance and settlement services for Treasury Futures transactions that are proposed to be traded by ELX Futures LP. (“ELX”), an electronic futures market that was designated as a contract market by the Commodity Futures Trading Commission (“CFTC”) on May 22, 2009.<sup>4</sup> Under the terms of its clearing agreement with ELX dated December 5, 2008,<sup>5</sup> OCC will operate as the exclusive provider of clearance and settlement services through physical delivery for Treasury Futures and other futures, futures options, or commodity options that may be traded on ELX. As such, ELX will send OCC matched trade data so that OCC can margin the contracts and inform ELX members their payment and securities delivery obligations.

##### 1. Delivery of Underlying Treasury Securities

As detailed in proposed modifications to Chapter 13 of its Rules, OCC clearing members may satisfy their delivery obligations with respect to Treasury Futures by delivering different treasury securities provided the securities meet certain specifications. Since there is not an established delivery date to deliver the underlying treasury securities, OCC proposes to permit a seller of Treasury Futures to elect to deliver on any business day during the delivery month, which, in the case of certain Treasury Futures, includes up to the third business day of the following month.

Delivery of the treasury securities underlying Treasury Futures will be effected directly between OCC clearing members rather than through the facilities of OCC. The delivery process will occur over a period of three business days and will be initiated by the submission of a delivery intent by the clearing member holding a short position in the Treasury Futures. After a delivery intent is submitted to OCC, OCC will assign the delivery intent to an open long position in Treasury Futures beginning with long positions with the oldest trading date. On the second business day of the delivery process, the delivering clearing members will be

<sup>4</sup> Commodity Futures Trading Commission Release No. 5662-09 (May 28, 2009).

<sup>5</sup> The clearing agreement is attached as Exhibit 5A to OCC’s rule filing with the Commission. OCC states that the clearing agreement is generally similar to corresponding agreements between OCC and other futures exchanges.

required to submit invoices identifying the specific treasury securities to be delivered and the amounts the receiving clearing members must pay in settlement of the actual deliveries. On the second business day following the submission of a delivery intent, the treasury securities will be delivered and payment will be made through the correspondent banks of the delivering and receiving clearing members.

## 2. Settlement Failure

OCC is also proposing to add rules to Chapter 13 to address the direct settlement between clearing members for the delivery of the underlying treasury securities upon maturity of the Treasury Futures and to address failure to complete settlement. Specifically, in the event that either the delivering clearing member or the receiving clearing member with respect to a physically-settled futures contract believes that a failure to settle has occurred without proper cause, such clearing member will need to notify OCC of such failure by a set cut-off time. Then, OCC will determine whether delivery has in fact failed and if necessary determine the damages.

OCC's transactional guarantee will be limited to paying reasonable damages as determined by OCC in accordance with Rule 1308B. Rule 1308B provides that in the event of such a failure OCC will make payment to the non-defaulting clearing member in an amount equal to the damages incurred by the non-defaulting clearing member from such failure as determined by OCC. Such damages would be charged by OCC to the defaulting clearing member. OCC is proposing to add provisions to its By-Laws addressing inability to deliver underlying treasury securities similar to the provisions of Articles XIII of the By-Laws addressing the inability to delivery treasury securities upon the exercise of options on treasury securities.

OCC states that the proposed changes to OCC's By-Laws and Rules are consistent with the purposes and requirements of Section 17A of the Act<sup>6</sup> because the changes are designed to permit OCC to perform clearing services for products that are subject to the jurisdiction of the CFTC without adversely affecting OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of investors and the public interest. The changes accomplish this purpose by applying substantially the same rules and procedures to transactions in

Treasury Futures as OCC applies to transactions in security futures and securities options. The proposed rule change is not inconsistent with any rules of OCC including any rules proposed to be amended.

## B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

OCC has not solicited or received written comments relating to the proposed rule change. OCC will notify the Commission of any written comments it receives.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(4)<sup>8</sup> thereunder because it effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-OCC-2009-13 on the subject line.

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(4).

## Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-OCC-2009-13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at OCC's principal office and on OCC's Web site at [http://www.theocc.com/publications/rules/proposed\\_changes/proposed\\_changes.jsp](http://www.theocc.com/publications/rules/proposed_changes/proposed_changes.jsp). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-OCC-2009-01 and should be submitted on or before August 21, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2009-0033]

## Occupational Information Development Advisory Panel Meeting

**AGENCY:** Social Security Administration (SSA).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>6</sup> 15 U.S.C. 78q-1.