

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69595; File No. SR-OCC-2013-06]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Accommodate the Use of Vault Receipts or Warehouse Depository Receipts in Electronic Form, Rather Than Vault Receipts or Warehouse Depository Receipts in Physical Form, To Represent the Metals Underlying Physically-Settled Futures Contracts on Metals Traded by NYSE Liffe US LLC

May 16, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 13, 2013, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the clearing agency. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b(4)(f)(1) thereunder<sup>4</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. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to accommodate the use of vault receipts or warehouse depository receipts in electronic form (“electronic receipts”), rather than vault receipts or warehouse depository receipts in physical form, to represent the metals underlying physically-settled futures contracts on metals (“Precious Metals Futures”) traded by NYSE Liffe US LLC (“NYSE Liffe US”).

#### II. Clearing Agency’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.

#### (A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The primary purpose of this proposed rule change is to revise OCC’s Rules (the “Rules”) to accommodate NYSE Liffe US’s transition to using electronic receipts, rather than vault receipts or warehouse depository receipts in physical form, to represent the metals underlying Precious Metals Futures. To make this accommodation, OCC proposes to revise its Rules regarding the delivery of the metals underlying such futures contracts to provide that the vault receipts used to facilitate settlement can be held in either electronic or physical form during a transition period and, after such transition period expires, must be in electronic form. In addition, the proposed Rules clarify that the warehouse depository receipts created by NYSE Liffe US represent a proportional interest in a specified pool of the vault receipts held by NYSE Liffe US for contracts such as 100 oz. gold futures and 5,000 oz. silver futures. Such warehouse depository receipts shall be used in the settlement of mini-sized gold and silver futures and shall, in all cases, be in electronic form. The proposed Rules also clarify that vault receipts that are subject to third party liens or encumbrances are not eligible to be delivered to settle obligations pertaining to Precious Metals Futures.

In the event of a default or insolvency by either the delivering or receiving Clearing Member with respect to a Precious Metals Futures contract, OCC is required to pay damages to the non-defaulting Clearing Member. The amount of damages is determined by OCC, taking into account the delivery payment amount for the applicable Precious Metals Futures contract, the market price of the underlying interest, market conditions generally and reasonable and customary transaction costs applicable to transactions in the underlying interest. As a means of allowing OCC to complete delivery of the underlying precious metals owed by, or recover the amount of damages from, the defaulting Clearing Member, the proposed Rules authorize OCC to maintain a perfected security interest, or lien, in the vault receipts tendered for delivery during the delivery process. This lien will be automatically released at 10:00 a.m. Central Time on the related delivery date unless by such time OCC provides NYSE Liffe US with

a notification that there was a default by the delivering Clearing Member, thereby keeping the lien in place. OCC intends to perfect its security interest in three ways: (a) By control; (b) by possession through a bailee; and (c) by filing financing statements.

#### Perfection by Control

Revised Article 7 of the Uniform Commercial Code (“UCC”) permits a secured party with a security interest in an electronic document of title to perfect that security interest by “control.” Revised Article 7 of the UCC is in effect in Illinois, but not in New York. OCC believes that certain procedures undertaken by NYSE Liffe US through its electronic delivery system, as detailed in the Amended and Restated Clearing Agreement (which is governed by the law of the state of Illinois), (a) conform to the requirements of Revised Article 7 of the UCC, as in effect in Illinois, and (b) are designed to effect the perfection of OCC’s security interest in the electronic receipts through “control.” OCC effects perfection of its security interest in the electronic receipts by “control” in accordance with Revised Article 7 of the UCC, because NYSE Liffe US’s electronic delivery system reliably establishes OCC as the transferee of such electronic receipts during the delivery process.

#### Perfection Through Bailee

In the event a court applies the laws of a jurisdiction that has not adopted Revised Article 7 of the UCC, OCC believes that its security interest in the electronic receipts would still be perfected under Article 9 of the UCC because of the bailment arrangements in place with the vaults holding the underlying precious metals. Each vault will sign a vault agreement agreeing that the vault holds the metals on behalf of OCC during the delivery process. OCC is an express third-party beneficiary of these vault agreements.

#### Perfection by Filing Financing Statements

In addition, both OCC’s Rules and the Amended and Restated Clearing Agreement provide for a secondary method of perfecting OCC’s security interest in both the electronic receipts and the underlying precious metals through the filing of financing statements against each Clearing Member in accordance with Article 9 of the UCC. Filing financing statements is an effective way to perfect the security interest in jurisdictions with, and without, Revised Article 7 of the UCC in effect.

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

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

OCC believes that its primary and secondary perfection methods provide it with ample protection in the event of one of its clearing members fails to deliver a vault receipt that represent metals underlying Precious Metals Futures. OCC perfected its security interest in such vault receipts through methods of perfection that work in jurisdictions that have adopted Revised Article 7 of the UCC, like Illinois, and in jurisdictions that have not, like New York. OCC has also adopted traditional perfection methods such as filing financing statements. Moreover, OCC requires each Clearing Member to deposit margin, which provides protection for OCC in the event of a Clearing Member's failure to satisfy its delivery or receipt obligations in respect of the settlement of Precious Metals Futures.

The proposed changes to OCC's By-Laws and Rules are consistent with the purposes and requirements of Section 17A(b)(3)(A) of the Securities Exchange Act of 1934, as amended (the "Exchange Act" or "Act"), because they are designed to permit OCC to perform clearing services for products that are subject to the jurisdiction of the Commodity Futures Trading Commission (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 securities investors and the public interest. They accomplish this purpose by revising existing procedures regarding the delivery of metals underlying certain physically-settled futures and futures option contracts to make express provision for the use of warehouse depository receipts in electronic form and for a transition to the use of vault receipts that are also in electronic form as a more efficient method of delivery consistent with evolving industry practice. The proposed rule change is not inconsistent with any rules of OCC, including any rules proposed to be amended.

*(B) Clearing Agency's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the Act because it relates solely to a commodity futures product subject to the exclusive jurisdiction of the Commodity Futures Trading Commission and therefore will not have any impact, or impose any burden, on competition in securities markets or any other market governed by the Act.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

**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)(i) of the Act<sup>5</sup> and paragraph (f)(i) of Rule 19b-4 thereunder<sup>6</sup> because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. OCC states that it will delay the implementation of the rule change until it is deemed certified under CFTC Regulation § 40.6.<sup>7</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2013-06 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-OCC-2013-06. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site (<http://www.theocc.com/about/publications/bylaws.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 Number SR-OCC-2013-06 and should be submitted on or before June 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-69593; File No. SR-CTA/CQ-2013-03]

**Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of the Eighteenth Charges Amendment To the Second Restatement of the CTA Plan and Tenth Charges Amendment To the Restated CQ Plan**

May 16, 2013.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on May 10, 2013, the Consolidated Tape Association ("CTA") Plan and Consolidated Quotation ("CQ") Plan

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>6</sup> 17 CFR 240.19b-4(f)(1).

<sup>7</sup> 17 CFR 40.6.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 242.608.