

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83519; File No. SR–OCC–2018–009]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Facilitate Reporting Under Commodity Futures Trading Commission Regulations Applicable to Derivatives Clearing Organizations

June 26, 2018

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on June 15, 2018, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b–4(f)(6)⁴ thereunder 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

The proposed rule change by OCC would amend OCC Rule 601(e)(2) regarding customer information in data provided to OCC identifying the positions of each futures customer of a Clearing Member for purposes of calculating the initial margin requirement for segregated futures accounts. The proposed rule change is intended to facilitate reporting under Commodity Futures Trading Commission (“CFTC”) regulations applicable to Derivatives Clearing Organizations (“DCOs”) such as OCC. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.⁵

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 these statements.

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

(1) Purpose

The purpose of the proposed rule change is to amend the provisions of OCC Rule 601(e)(2) with respect to information regarding the identity of customers included in data provided to OCC identifying the positions of each futures customer of a Clearing Member for purposes of calculating the initial margin requirement for segregated futures accounts. The proposed rule change removes the provisions that require “a unique alphanumeric customer identifier for each such customer” and that provide that information submitted to OCC pursuant to Rule 601(e)(2) “shall not include any indication of the identity of any customer or other personal information of a customer.” As described below, the removal of these provisions will allow OCC to perform daily reporting consistent with applicable CFTC regulations and associated guidance.

On November 8, 2011, the CFTC adopted reporting rules for DCOs in CFTC Regulation 39.19 that cover daily, quarterly, annual, and event-specific reporting.⁶ The reporting requirements in Regulation 39.19 had a compliance date of November 8, 2012.⁷ For daily reporting, paragraph (c)(1) of Regulation 39.19 requires DCOs to submit reports with certain initial margin, variation margin, cash flows, and end-of-day positions for each Clearing Member, by house origin and by each customer origin. In adopting these daily reporting requirements, the CFTC stated that “[t]he overall purpose of receiving the daily data is to enable [CFTC] staff to analyze the data on a regular basis so that it can detect certain trends or unusual activity on a timely basis.”⁸

CFTC Regulation 39.19 requires a DCO to report certain information in a format and manner specified by the CFTC.⁹ Since the regulation’s adoption, the CFTC has published a “Guidebook

for Daily Reports” (“Guidebook”) that provides guidance and specifications to DCOs for submitting their daily reports under Regulation 39.19. Generally, daily reports must include, for each Clearing Member, information related to initial margin, daily variation margin, daily cash flows related to clearing and settlement, and end-of-day positions, by house origin and by each customer origin, for all futures, options, and swaps positions, and all securities positions held in a segregated account or pursuant to a cross margining agreement. The most recent version of the Guidebook—Version 9.2—was published in December 2017; however, Version 9.1, which was published earlier in 2017, introduced new reporting specifications that can be met only if OCC amends Rule 601(e)(2) as described below. Specifically, Section 2.1.2.2 of the Guidebook requires DCOs (other than exempt DCOs) to “provide the clearing members’ customer information that properly describes the margins reported” by reporting customer names and legal entity identifiers (“LEIs”).

The Guidebook acknowledges that, at the time of its publication, customer-level information may not be available for all DCOs. Indeed, following publication of Version 9.1 of the Guidebook, the CFTC provided informal guidance to DCOs in August 2017 noting that the CFTC was aware that DCOs may not have names and LEIs for all customer accounts that they clear and understood that DCOs and futures commission merchants would begin a project in the near future to obtain names and LEIs for their customers.

OCC makes its daily reports to the CFTC in accordance with Regulation 39.19 based on information it receives from its Clearing Members. OCC Rule 601(e)(2) requires each Clearing Member to submit to OCC on each business day a data file that identifies the positions in segregated futures accounts of each futures customer of the Clearing Member using a unique alphanumeric customer identifier for each such customer. The rule, however, specifically requires Clearing Members to use a “unique alphanumeric customer identifier for each customer” and provides that “such identifiers shall not include any indication of the identity of any customer or other personal information of a customer.” For these segregated futures accounts, OCC prohibits Clearing Members from providing information such as customer name and LEI; thus, OCC does not currently have this information to include in its daily reports to the CFTC and is not able to provide customer-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b–4(f)(6).

⁵ OCC’s By-Laws and Rules can be found on OCC’s public website: <http://optionsclearing.com/about/publications/bylaws.jsp>.

⁶ See 17 CFR 39.19(c); see also Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334 (Nov. 8, 2011). OCC is a DCO as that term is defined in applicable CFTC regulations. See 17 CFR 1.3.

⁷ See 76 FR 69334.

⁸ 76 FR 69334, at 69400.

⁹ See 17 CFR 39.19(b).

level information with respect to these accounts in accordance with the Guidebook specifications.

Consequently, OCC is proposing to delete the customer identifier provisions from Rule 601(e)(2) so that Clearing Members can provide customer names and LEIs to OCC so that it can, in turn, provide this information on daily reports to the CFTC consistent with the CFTC staff guidance on daily reporting requirements under Regulation 39.19.

(2) Statutory Basis

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed, in general, to protect investors and the public interest.¹⁰ OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.¹¹ As noted above, OCC Rule 601(e)(2) requires each Clearing Member to submit to OCC on each business day a data file that identifies the positions in segregated futures accounts of each futures customer of the Clearing Member using a unique alphanumeric customer identifier for each such customer. The proposed rule change would remove this provision and the requirement that “such identifiers shall not include any indication of the identity of any customer or other personal information of a customer.” Once these provisions are removed, Clearing Members can provide this information to OCC, who can then provide it to the CFTC in accordance with the Guidebook specifications. This will enhance the CFTC staff’s ability to perform its oversight function with the information it deems necessary, which promotes the protection of investors and the public interest.

(B) Clearing Agency’s Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the Act.¹² OCC does not believe that the proposed rule change would impose any burden on competition. Rather, the proposed rule change removes an existing restriction on the data provided to OCC by its Clearing Members regarding customers with segregated futures accounts. As discussed above, this will then allow OCC to provide this information to the CFTC, consistent with the CFTC staff guidance on daily reporting requirements under

Regulation 39.19, who uses the information in performing its statutory mandate.

(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

Pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6)¹⁴ thereunder, the proposed rule change is filed for immediate effectiveness because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate.¹⁵

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.¹⁶

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. Please include File Number SR–OCC–2018–009 on the subject line.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ OCC provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission.

¹⁶ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Rule 40.6.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2018–009. 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 website (<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 website 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 such filing also will be available for inspection and copying at the principal office of OCC and on OCC’s website at https://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_18_009.pdf.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2018–009 and should be submitted on or before July 23, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 83 Federal Register 29838, 26 June 2018.

¹⁷ 17 CFR 200.30-3(a)(12).

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

¹¹ *Id.*

¹² 15 U.S.C. 78q-1(b)(3)(I).