

shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>19</sup> and Rule 19b-4(f)(6) thereunder.<sup>20</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>21</sup> However, Rule 19b-4(f)(6)(iii)<sup>22</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay. The Exchange believes that waiver of the 30-day operative delay would provide more clarity and transparency in its rule text concerning all of the functions that Arca Securities performs on behalf of the Exchange without undue delay. In addition, the Exchange notes that the proposal is consistent with the rules of another national securities exchange. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.<sup>23</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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2011-39 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-NYSEAmex-2011-39. 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 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-NYSEAmex-2011-39 and should be submitted on or before July 20, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64740; File No. SR-OCC-2011-05]

#### Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Provide Flexibility to The Options Clearing Corporation With Respect to Its Obligations To Pay Settlement Amounts to Clearing Members Generally as Well as in Emergency Situations

June 24, 2011.

#### I. Introduction

On April 28, 2011, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2011-05 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The proposed rule change was published for comment in the **Federal Register** on May 12, 2011.<sup>2</sup> No comment letters were received on the proposal. This order approves the proposal.

#### II. Description

The purpose of this rule change is to revise OCC's By-Laws and Rules to provide flexibility to OCC with respect to its obligations to pay settlement amounts to clearing members generally as well as in emergency situations. The proposed rule amendments will change the current daily deadline for OCC to pay settlement amounts to clearing members from 10 a.m. to 1 p.m. (All times referred to in this filing are Central Time). In addition, in the event that an emergency condition exists, the Board of Directors or certain executive officers of OCC would be authorized to extend OCC's obligation to pay settlement amounts to clearing members beyond the 1 p.m. deadline.

Currently, each business day morning, OCC is obligated to collect cash owed by its clearing members for the prior day's settlement activity by 9 a.m. OCC, in turn, is obligated to pay cash owed to its clearing members for the prior day's settlement activity by 10 a.m. This one-hour window is designed to give OCC time to collect all required settlement funds before having to disburse any settlement funds to its clearing members. Daily settlement activity includes obligations relating to: (1) The net premium payments arising from the prior day's option purchases and sales,

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

<sup>2</sup> Securities Exchange Act Release No. 34-64436 (May 6, 2011), 76 FR 27697 (May 12, 2011).

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission 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. The Exchange has satisfied this requirement.

<sup>22</sup> *Id.*

<sup>23</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>24</sup> 17 CFR 200.30-3(a)(12).

(2) the mark-to-market of futures contracts and stock loan positions, and (3) exercises and assignments of cash-settled option contracts.

OCC's settlement banks routinely approve and are required to honor the associated settlements made by OCC and OCC's clearing members within these time frames. On most business days, the entire bank approval process, which irrevocably obligates each settlement bank to make settlement, is completed by 8:30 a.m.

Under OCC's rules, a failure by OCC to pay its daily settlement obligations to clearing members by 10 a.m. constitutes a default. During discussions among OCC's senior management of various potential extreme default and liquidity squeeze scenarios, including the possible default of one of OCC's largest clearing members, OCC analyzed the risk associated with not being able to immediately access liquidity resources in time to meet the 10 a.m. deadline for OCC to pay settlement amounts to clearing members. The deadline may be difficult to meet if, for example, OCC learned of a default near the 9 a.m. deadline. In such a circumstance, OCC would have only one hour or less when the time needed to process and communicate information is considered to access the funds necessary to meet the 10 a.m. deadline.

OCC's immediate liquidity resources rely heavily upon its \$2.0 billion revolving credit facility, which is backed by Treasuries held in the clearing fund. A one-hour advance notice is required prior to OCC drawing funds from the credit facility. Beyond the credit facility, it would probably take more than one hour to raise cash by borrowing against the Treasuries held in the clearing fund that are not securing the credit facility either through tri-party repurchase agreements or a traditional bank loan.

The main benefit of moving the deadline to 1 p.m. for OCC to pay clearing members settlement amounts is that it allows up to four hours as opposed to the current one hour, within which OCC can meet its daily settlement requirement without being required to declare an emergency in order to do so. In addition, based on discussions with its settlement banks, OCC believes that notwithstanding a change from the current 10 a.m. deadline to a 1 p.m. deadline, the settlement banks will continue the current practice of approving settlements as soon as they can make a credit determination (*i.e.*, confirm present funds or extend credit to the customer) and process OCC's payment

requests, which are tasks that are typically completed by 8:30 a.m.

OCC also has incorporated in its rules the authority to extend the deadline for it to pay settlement amounts to clearing members to the close of the Federal Reserve Banks' Fedwire Funds Service on a settlement day, if necessary, during an emergency situation.<sup>3</sup> Such an extension is consistent with the emergency authority other clearinghouses have to deal with late settlement scenarios. The rule amendments would authorize the Board, Chairman of the Board, Management Vice Chairman, or President of OCC to delay settlement beyond 1 p.m. in emergency situations. The rule amendments would authorize the named officers to take such action because the decision may need to be made under time constraints where the Board (or even the Membership/Risk Committee) could not be convened in time to take the necessary action.<sup>4</sup> OCC anticipates that the emergency authority would be used infrequently, if ever. Under proposed Rule 505, such authority could only be used upon a determination by the Board or an authorized officer that extension of the settlement time is necessary or advisable for the protection of OCC or otherwise in the public interest. In the event that the emergency authority is exercised, a number of protections are built into the process. For example, the determination and the reasons for the extension will be promptly reported to the Commission, the Commodities Futures Trading Commission, and any other regulatory or supervisory authorities having jurisdiction over OCC. In addition, the clearing members will be notified of the extension, and a report outlining the emergency actions will be maintained in OCC's records.

For drafting clarity and economy, the specific settlement times have been removed from the applicable rules, a new definition of "settlement day" has been created, and a revised definition of "settlement time" has been inserted in Article I of the By-Laws.

### III. Discussion

Section 17A(b)(3)(F) of the Act<sup>5</sup> requires, among other things, that the rules of a clearing agency be designed to

<sup>3</sup> In the event that OCC is unable to pay settlement amounts to clearing members by the close of the Fedwire Funds Service on a settlement day due to an emergency or force majeure condition, OCC will seek appropriate relief from the regulatory or supervisory authorities having jurisdiction over OCC.

<sup>4</sup> Similar authority is provided to the OCC Chairman (or the Board) to summarily suspend a clearing member. See OCC Rule 1102.

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

promote the prompt and accurate clearance and settlement of security transactions and to generally protect investors and the public interest. Because the proposed rule change modifies OCC's Rules and By-Laws to give OCC flexibility to make settlement payments to its clearing members in a timely manner during normal and abnormal market conditions, the proposed rule change promotes the prompt and accurate clearance and settlement of security transactions and generally protects investors and the public interest and therefore is consistent with the requirements of Section 17A(b)(3)(F) of the Act.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>6</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (File No. SR-OCC-2011-05) be, and hereby is, approved.<sup>8</sup>

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

**Cathy H. Ahn,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64734; File No. SR-BX-2011-034]

### Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change Relating to Amending the BOX Trading Rules To Establish Facilitation and Solicitation Auction Mechanisms

June 23, 2011.

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 June 17, 2011, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission

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

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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

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

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