

Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt rules regarding supervision in the consolidated FINRA rulebook. The proposed rule change was published for comment in the **Federal Register** on June 29, 2011.<sup>3</sup> The Commission received 12 comments on the proposal.<sup>4</sup> On July 26, 2011, FINRA extended the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to September 27, 2011.

On September 27, 2011, FINRA withdrew the proposed rule change (SR-FINRA-2011-028).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65483 File No. SR-OCC-2011-13]

### Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing of Proposed Rule Relating to Relative Performance Indexes

October 4, 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 September 21, 2011, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change. On October 4, 2011, OCC filed Amendment No. 1 to the proposed rule change. The proposed rule change as amended by Amendment No. 1 is described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is

publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 to 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 would remove any potential cloud on the jurisdictional status of relative performance indexes.

#### 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 these statements.

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

The purpose of the proposed rule change is to remove any potential cloud on the jurisdictional status of relative performance indexes. NASDAQ OMX PHLX has proposed to trade options on indexes (“Alpha Index Options”) that measure the relative total returns of a stock or exchange-traded fund (“ETF”) against another stock or ETF, including where one of the reference ETFs measured by the index is a gold- or silver-based ETF.<sup>3</sup> Generally, a relative performance index should be considered to be an index of securities since the components of a relative performance index are ETFs or other securities. However, OCC would like to confirm the jurisdictional treatment of relative performance indexes in situations in which one of the reference securities of an underlying relative performance index is an ETF designed to measure the return of gold or silver. To accomplish this purpose, OCC is proposing to add an interpretation following Section 2 in Article XVII of OCC’s By-Laws,<sup>4</sup> clarifying that OCC

will clear and treat as securities any relative performance index, including in situations in which one of the reference securities of a relative performance index is an ETF designed to measure the return of gold or silver. The Commission and Commodity Futures Trading Commission (“CFTC”) have previously approved changes to OCC’s By-Laws clarifying that options on the CBOE Gold ETF Volatility Index will be cleared and treated as securities.<sup>5</sup>

In its capacity as a “derivatives clearing organization” registered as such with the CFTC, OCC is filing this proposed rule change for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act (the “CEA”) in order to foreclose any potential liability under the CEA based on an argument that the clearing by OCC of such options as securities options constitutes a violation of the CEA.

OCC believes that the proposed interpretation of OCC’s By-Laws is consistent with the purposes and requirements of Section 17A of the Exchange Act because it is designed to promote the prompt and accurate clearance and settlement of transactions in securities options, to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. It accomplishes this purpose by reducing the likelihood of a dispute as to the Commission’s jurisdiction over relative performance indexes in situations where one of the reference securities of an underlying relative performance index is a gold- or silver-based ETF. The proposed rule change is not inconsistent with the By-Laws and Rules of OCC.

##### (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.

reference security or reference index in relation to another reference security or reference index.

<sup>5</sup> See Securities Exchange Act Release No. 34-62290, 75 FR 35861 (June 23, 2010); CFTC Order Exempting the Trading and Clearing of Certain Products Related to the CBOE Gold ETF Volatility Index and Similar Products, 75 FR 81977 (December 29, 2010).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 64736 (June 26, 2011), 76 FR 38245 (June 29, 2011) (Notice of Filing of File No. SR-FINRA-2011-028) (“Notice”).

<sup>4</sup> The comment period ended on July 20, 2011; all comments are posted on the Commission’s Web site, <http://www.sec.gov/rules/sro.shtml>.

<sup>5</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.

<sup>3</sup> The staff notes that on August 17, 2011, the Commission issued an Order granting approval this proposed rule change. See Securities Exchange Act Release No. 34-65149, 76 FR 52729 (August 23, 2011).

<sup>4</sup> The staff notes that OCC’s is also adding a definition of “relative performance index” to Section 1, which will be defined as an index designed to measure the relative performance of a

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

Written comments 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**

Within 45 days of the date of publication of this notice in the *Federal Register* or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**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-OCC-2011-13 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-2011-13. 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 website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 pm. Copies of such filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at [http://www.optionsclearing.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_11\\_13\\_a\\_1.pdf](http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_11_13_a_1.pdf).

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-2011-13 and should be submitted on or before November 1, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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**SELECTIVE SERVICE SYSTEM**

**Form Submitted to the Office of Management and Budget for Extension of Clearance**

**AGENCY:** Selective Service System.

**ACTION:** Notice.

The following form has been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

**SSS Form—402**

*Title:* Uncompensated Registrar Appointment Form.

*Need and/or Use:* Is used to verify the official status of applicants for the position of Uncompensated Registrars and to establish authority for those appointed to perform as Selective Service System Registrars.

*Respondents:* United States citizens over the age of 18.

*Frequency:* One-time.

*Burden:* The reporting burden is three minutes or less per respondent.

Copies of the above identified form can be obtained upon written request to

the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209-2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of the publication of this notice to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209-2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Date: September 26, 2011.

**Lawrence G. Romo,**

*Director.*

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**DEPARTMENT OF STATE**

[Public Notice: 7598]

**Industry Advisory Panel: Notice of Open Meeting**

The Industry Advisory Panel of the Bureau of Overseas Buildings Operations will meet on Tuesday, October 18, 2011 from 9:30 a.m. until 3:30 p.m. Eastern Daylight Time. The meeting is open to the public and will be held in the Loy Henderson Conference Room of the U.S. Department of State, located at 2201 C Street, NW., (entrance on 23rd Street), Washington, DC. For logistical and security reasons, it is imperative that everyone enter and exit using only the 23rd Street entrance.

The majority of the meeting will be devoted to an exchange of ideas between the Department's senior management and the panel members on design, construction, operations, and building maintenance. There will be reasonable time provided for members of the public to provide comment.

Entry to the building is controlled; to obtain pre-clearance, a member of the public planning to attend should provide, by October 7, his or her name, professional affiliation, date of birth, citizenship, and a valid government-issued ID number (*i.e.*, U.S. government ID, U.S. military ID, passport, or drivers license) via e-mail to: [IAPR@state.gov](mailto:IAPR@state.gov). Requests for reasonable accommodation should be sent to the same e-mail address by October 7. Requests made

<sup>6</sup> 17 CFR 200.30-3(a)(12).