SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65654; File No. SR–OCC–
2011–08]

Self-Regulatory Organizations;
Options Clearing Corporation; Order
Approving Proposed Rule Change, as
Modified by Amendment No. 1, To
Provide Specific Authority To Use an
Auction Process as One of the Means
To Liquidate a Defaulting Clearing
Member’s Accounts

October 28, 2011.

I. Introduction

On July 28, 2011, the Options
Clearing Corporation ("OCC") filed with
the Securities and Exchange
Commission ("Commission") the
proposed rule change SR–OCC–2011–08
pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934
("Act") 1 and Rule 19b–4 thereunder.2
The proposed rule change was
published for comment in the Federal
Register on August 3, 2011.3 On
September 15, 2011, OCC filed
Amendment No. 1 to the proposed rule
change. The proposed rule change, as
modified by Amendment No. 1 was
published in the Federal Register on
September 27, 2011.4 The Commission
received no comment letters on the
proposed rule change. The proposed rule change is designed to
provide specific authority for OCC to use an auction process as one of the possible means by which OCC may liquidate a
defaulting clearing member’s accounts.5

An auction is likely to be the most
efficient and orderly procedure
practicable for closing out clearing member portfolios in some
circumstances.

The liquidation of open long and
short positions through exchange
transactions is an obvious means of
closing out the positions of a defaulting
member. However, auctions are
increasingly viewed as an efficient and
cost effective alternative for liquidating
some or all of a clearing member’s
positions and collateral, especially
where the positions are very large or in
unstable market conditions. As
compared to liquidating positions
through exchange transactions, an
auction may usually be expected to
result in a shorter liquidation period
and reduced execution risk. During
Lehman Brothers Holdings Inc.’s
liquidation, clearinghouses such as
LCH. Clearnet and CME Clearing
liquidated certain derivatives positions
through auctions.

Chapter XI of OCC’s Rules, which
governs the liquidation of a clearing
member’s accounts in the event of an
insolvency, provides that open positions of a clearing member must be closed by
OCC “in the most orderly manner practicable.” While OCC and its counsel believe
that this language is broad enough to authorize a private auction, i.e., an auction limited to selected
bidders, as a means of closing out open positions, OCC also believes that
explicit authorization for a private auction procedure could reduce the likelihood of a legal challenge should such a procedure be utilized.

III. Discussion

Section 17A(b)(3)(F) of the Act
requires that, among other things, the
rules of a clearing agency be designed to
promote the prompt and accurate
clearance and settlement of securities
transactions, and, to the extent
applicable, derivative agreements,
contracts, and transactions.6 The
proposed rule change is designed to
ensure OCC has the tools necessary to
liquidate the open positions and margin
of a defaulting member in order to meet
its settlement obligations to non-
defaulting members promptly and in a
manner that is least disruptive to the
securities markets. OCC has not yet
established detailed procedures for
conducting an auction; however, any
such auction must comply with the


The specific language of the proposed
provision can be found at http://www.optionsclearing.com/
components/docs/legal/rules_and_bylaws/
sr_occ_11_08_a_1.pdf.

(September 12, 2011), 76 FR 57781 (September 16, 2011).
4 See Letters to Elizabeth M. Murphy, Secretary,
Commission, from Neil Heeschberg, Senior Vice
President, Business Wire Inc., dated September 28,
2011; John Viglotti, Vice President, PR Newswire
Association LLC, dated October 7, 2011; Jesse W.
Markham, Jr., Roger Myers, and Michael R.
MacPhail, Holme Roberts & Owen LLP (writing on
behalf of Business Wire, Inc.), dated October 7,
2011; and Patrick Healy, CEO, Issuer Advisory
Group LLC, dated October 22, 2011.
requirements of Section 17A, including requirements that the rules of a clearing agency are, in general, designed to protect investors and the public interest and are not designed to permit unfair discrimination among participants in the use of the clearing agency.7

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 Act8 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,9 that the proposed rule change, as modified by Amendment No. 1, [File No. SR–OCC–2011–08] be, and hereby is, approved.10

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.11

Kevin M. O’Neill,
Deputy Secretary.

[FR Doc. 2011–28461 Filed 11–2–11; 8:45 am]
BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to FLEX Options

October 31, 2011.

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 October 17, 2011, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) 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 the Exchange. The Exchange has designated the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act3 and Rule 19b–4(f)(6) thereunder.4 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 Exchange is proposing to amend certain rules pertaining to Flexible Options (“FLEX Options”). The text of the proposed rule change is available on the Exchange’s Web site (http://www.cboe.org/Legal), at the Exchange’s Office of the Secretary, and at the Commission.

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

In its filing with the Commission, the Exchange 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices (referred to as “variable terms”).5 For example, FLEX Options can have an expiration date that is any business day (specified as to day, month and year) with a maximum term of fifteen years.6 The rules governing the trading of FLEX Options on the FLEX Request for Quote (“RFQ”) System platform are generally contained in Chapter XXIVA. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform are generally contained in Chapter XXIVB. Within each Chapter, the provisions pertaining to the variable terms of FLEX Options are generally contained in Rules 24A.4 and 24B.4.

The purpose of this proposed rule change is to reorganize and amend certain Exchange Rules pertaining to FLEX Options to provide within Chapters XXIVA and XXIVB that a new series of FLEX Options may be established on any business day prior to the expiration date. The adding of new FLEX Equity Options series on any business day prior to the expiration date is already addressed in Rule 5.5 of Chapter V of the Exchange Rules.7 In an effort to make reading and understanding the FLEX Option provisions easier, the Exchange is proposing to move this new series add provision from Rule 5.5 of Chapter V to Rules 24A.4 and 24B.4 of Chapters XXIVA and XXIVB, respectively. In addition, the Exchange is proposing to apply the provision to all FLEX Options (not just FLEX Equity Options).8

Previously the rules did not clearly address the applicability of any such provision to other FLEX Options. However, it has been the Exchange’s practice to permit other FLEX Options to be listed any business day prior to the expiration date.

The Exchange believes that reorganizing and amending the rules in the manner proposed should make it easier to read and understand the FLEX Options provisions. The Exchange also believes that it should provide additional clarity and avoid any confusion on the applicability of the new series add provision to any and all FLEX Options in a manner that is consistent with the existing provision for FLEX Equity Options.

—8239 Federal Register / Vol. 76, No. 213 / Thursday, November 3, 2011 / Notices

Specifically, the Exchange is proposing to delete the following sentence from Rule 5.5.04:

“Notwithstanding the foregoing, a new series of FLEX Equity Options, as defined in and subject to the provisions of Chapter XXIVA or XXIVB of the Rules, may be added on any business day prior to the expiration date.”

Specifically, the Exchange is proposing to delete the following sentence from Rule 5.5.04:

“Notwithstanding the foregoing, a new series of FLEX Equity Options, as defined in and subject to the provisions of Chapter XXIVA or XXIVB of the Rules, may be added on any business day prior to the expiration date.”

And, the Exchange is proposing to add the following sentence to both Rule 24A.4(a)(1) and 24B.4(a)(1):

“A new series of FLEX Options may be established on any business day prior to the expiration date as provided for in this Rule (24A.4 or 24B.4, as applicable).”