SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Options Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Amendments No. 1, No. 2, and No. 3, Relating to Relative Performance Indexes

December 29, 2011.

I. Introduction

On September 21, 2011, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR–OCC–2011–13 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) and Rule 19b–4 thereunder. On October 4, 2011, OCC filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on October 11, 2011. On November 17, 2011, OCC filed Amendment No. 2 and Amendment No. 3 to the proposed rule change. The proposed rule change, as modified by Amendments No. 1, No. 2 and No. 3 was published in the Federal Register on November 29, 2011. The Commission received no comment letters on the proposed rule change, as modified by Amendments No. 1, No. 2, and No. 3. This order approves the proposed rule change as modified by Amendments No. 1, No. 2, and No. 3.

II. Description

The purpose of the proposed rule change is to remove any potential cloud on the jurisdictional status of relative performance indexes. NASDAQ OMX PHILX 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.

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 and in particular with the requirements of Section 17A of the Act and in particular with the requirements of Section 17A of the Act. 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.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and derivative transactions. The proposed rule change is similar to a proposed rule change the Commission approved previously with respect to the jurisdictional status CBOE Gold ETF Volatility Index and clarifies 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. Any uncertainty regarding the jurisdictional status of a product could presumably interfere with OCC’s ability to provide clearance and settlement services with respect to the product. The proposed rule change, by allowing OCC to clarify in its rules the treatment of a relative performance index, should facilitate the clearance and settlement of such products and, thus, should help promote the prompt and accurate clearance and settlement of securities transactions and of derivative transactions.

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.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, as modified by Amendments No. 1, No. 2, and No. 3, be, and hereby is, approved.

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

Kevin M. O’Neill,
Deputy Secretary.

[FR Doc. 2011–33795 Filed 1–4–12; 8:45 am]

BILLING CODE 8011–01–P

5 In approving this proposed rule change the Commission has considered the proposed rule’s impact of efficiency, competition, and capital formation. See 15 U.S.C. 78q–1(f).