

the Commission shall by order, cancel the registration of such person.

The registrant indicated on its most recent Form ADV filing that it is relying on section 203A(a)(1)(A) of the Act to register with the Commission, which prior to September 19, 2011 prohibited an investment adviser from registering with the Commission unless it maintained assets under management of at least \$25 million. Effective September 19, 2011, Congress increased the assets under management threshold under section 203A of the Advisers Act to prohibit an investment adviser from registering with the Commission if it is required to be registered in the state in which it maintains its principal office and place of business and has assets under management between \$25 million and \$100 million. Accordingly, an adviser currently registered with the Commission generally is required to withdraw from registration when its assets under management fall below \$90 million, unless the adviser is not required to register in the state where it maintains its principal office and place of business.<sup>1</sup>

The registrant is prohibited from registering as an investment adviser under section 203A of the Act because the Commission believes, based on the facts it has, that the registrant did not at the time of the Form ADV filing, and does not currently, maintain the required assets under management to remain registered with the Commission. Accordingly, the Commission believes that reasonable grounds exist for a finding that this registrant is no longer eligible to be registered with the Commission as an investment adviser and that the registration should be cancelled pursuant to section 203(h) of the Act.

Any interested person may, by March 5, 2012 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the cancellation, accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, and he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed:

<sup>1</sup> Section 203A of the Act generally prohibits an investment adviser from registering with the Commission unless it meets certain requirements. See Advisers Act section 203A(a)(2)(B)(ii) (amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010)); Advisers Act rule 203A–1(a); *Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Release No. 3221 (June 22, 2011), available at <http://www.sec.gov/rules/final/2011/ia-3221.pdf>.

Secretary, Securities and Exchange Commission, Washington, DC 20549.

At any time after March 5, 2012, the Commission may issue an order cancelling the registration, upon the basis of the information stated above, unless an order for a hearing on the cancellation shall be issued upon request or upon the Commission's own motion. Persons who requested a hearing, or to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. Any adviser whose registration is cancelled under delegated authority may appeal that decision directly to the Commission in accordance with rules 430 and 431 of the Commission's rules of practice (17 CFR 201.430 and 431).

For further information contact: Alpa Patel, Attorney-Adviser at 202–551–6787 (Office of Investment Adviser Regulation).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.<sup>2</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66340; File No. SR–OCC–2012–02]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit OCC To Clear and Settle Spot Gold Futures, Which Are Proposed To Be Traded by NASDAQ OMX Futures Exchange, Inc.

February 7, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on January 24, 2012, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I and II below, which Items have been prepared primarily by OCC. OCC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>2</sup> and Rule 19b–4(f)(4)(ii)<sup>3</sup> thereunder so that the proposal was effective upon filing with the Commission. The Commission is

<sup>2</sup> 17 CFR 200.30–5(e)(2).

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

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>3</sup> 17 CFR 240.19b–4(f)(4)(ii).

publishing this notice to solicit comments on the rule change from interested parties.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will permit OCC to clear and settle Spot Gold Futures, which are proposed to be traded by NASDAQ OMX Futures Exchange, Inc. (“NFX”).

### 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.<sup>4</sup>

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

The purpose of this rule change is to permit OCC to clear and settle Spot Gold Futures, which are proposed to be traded by NFX. A Spot Gold Future is a U.S. dollar-settled futures contract based on the value of gold with an additional daily cost of carry/interest payment feature (“Cost of Carry Payment”) reflecting the difference between the overnight lease rate for gold and the overnight interest rate for the U.S. dollar. The Cost of Carry Payment will be in addition to the daily variation payment and is designed to make the economic effect of buying or selling a Spot Gold Future equivalent to the purchase or sale of gold in the spot market. Spot Gold Futures would simulate a spot market transaction that is continually “rolled forward” to the maturity date of the future with the Cost of Carry Payment being similar to the payment exchanged between the buyer and seller in a spot transaction each day the transaction is rolled forward.

The per-contract amount of the Cost of Carry Payment will be expressed in terms of “swap points,” which will be calculated and supplied to NFX by a third-party service provider. A positive swap point results in a credit for the holder of the short position with respect to a Spot Gold Futures contract, and a

<sup>4</sup> The Commission has modified the text of the summaries prepared by OCC.

debit for the holder of the long position. Similarly, a negative swap point results in a debit for the holder of the short position and a credit for the holder of the long position. NFX will provide the swap point data that it receives from the third-party service provider to OCC each day, and OCC will apply the swap point value to each Clearing Member account's final position at the end of each day and will settle the resultant payment along with regular cash settlements on the following business day. In the event that that NFX does not provide the swap point data by the deadline specified by OCC, settlement of the Cost of Carry Payment may be postponed until the business day following the business day on which such amount was provided. Furthermore, the amount of the Cost of Carry Payment provided by NFX will be conclusively presumed to be accurate, and OCC will not bear any liability as a result of any inaccuracy in such amount.

NFX plans to use as the final settlement price for each Spot Gold Future the published settlement price of the corresponding gold futures contract on COMEX.

#### OCC's Proposed By-Law and Rule Changes

OCC's current By-Laws and Rules do not provide for cash-settled futures with a daily cost of carry/interest payment between the buyer and seller of such contract in addition to the daily variation payment. In order to provide for the clearance of Spot Gold Futures, OCC proposes to add definitions for Spot Futures and the Cost of Carry Payment to its By-Laws and to amend its Rules to describe the manner in which Cost of Carry Payments will be calculated and made.

#### Changes to Agreement for Clearing and Settlement Services

OCC performs the clearing function for NFX pursuant to the Clearing Agreement between OCC and NFX. The Clearing Agreement provides that NFX will provide settlement prices to OCC and will indemnify OCC in the event that OCC uses an incorrect settlement price provided by NFX. It does not, however, contemplate the transmission of separate settlement items such as swap points. The Clearing Agreement will be amended to address NFX's provision of swap point data to OCC and to provide protection for OCC in the

event that NFX provides incorrect swap point data.<sup>5</sup>

Pursuant to the terms of the Clearing Agreement, OCC has agreed to clear the specific types of contracts enumerated in the Clearing Agreement and may agree to clear additional types through the execution by both parties of a new "Schedule C" to the Agreement.<sup>6</sup>

OCC believes that the proposed changes to OCC's By-Laws are consistent with the purposes and requirements of Section 17A of the Act<sup>7</sup> and the rules and regulations thereunder applicable to OCC because the proposed changes are designed to permit OCC to perform clearing services for products that are subject to the jurisdiction of the CFTC without adversely affecting OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of investors and the public interest. The proposed rule change is not inconsistent with any rules of OCC.

#### (B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

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

Written comments relating to the proposed rule change have not been solicited or received. OCC will notify the Commission of any written comments received by OCC.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(4)(ii)<sup>9</sup> thereunder. 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

<sup>5</sup> A copy of the proposed second amended and restated Clearing Agreement is attached to the proposed rule change filing as Exhibit 5A.

<sup>6</sup> A copy of the proposed new Schedule C providing for the clearance of Spot Gold Futures is attached to the proposed rule change filing as Exhibit 5B.

<sup>7</sup> 15 U.S.C. 78q-1.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(4)(ii).

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2012-02 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-2012-02. 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 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 such filings also will 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\\_12\\_02.pdf](http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_12_02.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-2012-02 and should be submitted on or before March 5, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Kevin O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66342; File No. SR-NYSEArca-2011-82]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 3 Thereto, Relating to the Listing and Trading of Shares of the WisdomTree Emerging Markets Inflation Protection Bond Fund Under NYSE Arca Equities Rule 8.600

February 7, 2012.

#### I. Introduction

On November 14, 2011, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to list and trade shares of the WisdomTree Emerging Markets Inflation Protection Bond Fund under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on December 5, 2011.<sup>3</sup> On January 17, 2012, the Exchange filed Amendment No. 1 to the proposed rule change ("Amendment No. 1").<sup>4</sup> On January 18, 2012, the Exchange filed Amendment No. 2 to the proposed rule change ("Amendment No. 2").<sup>5</sup> On January 23, 2012, the Exchange further extended the time period for Commission action to February 8, 2012. On January 25, 2012, the Exchange filed Amendment No. 3 to the proposed rule change ("Amendment No. 3").<sup>6</sup> The

Commission received no comments on the proposal. This order grants approval of the proposed rule change, as modified by Amendment No. 3.

#### II. Description of the Proposed Rule Change

The Exchange proposes to list and trade shares ("Shares") of the WisdomTree Emerging Markets Inflation Protection Bond Fund ("Fund") pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Fund will be an actively-managed exchange-traded fund. The Shares will be offered by the WisdomTree Trust ("Trust"), which was established as a Delaware statutory trust on December 15, 2005. The Fund is registered with the Commission as an investment company, and the Fund has filed a registration statement on Form N-1A ("Registration Statement") with the Commission.<sup>7</sup> WisdomTree Asset Management, Inc. is the investment adviser ("Adviser") to the Fund, and Mellon Capital Management serves as sub-adviser for the Fund ("Sub-Adviser"). The Bank of New York Mellon is the administrator, custodian, and transfer agent for the Trust, and ALPS Distributors, Inc. serves as the distributor for the Trust.<sup>8</sup> The Exchange states that, while WisdomTree Asset Management is not affiliated with any broker-dealer, the Sub-Adviser is affiliated with multiple broker-dealers. As a result, the Sub-Adviser has implemented a "fire wall" with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, Sub-

relating to restrictions on holdings of illiquid securities by registered open-end management investment companies. Because Amendment No. 3 seeks to maintain consistency with the 1940 Act and rules and regulations thereunder, and does not materially alter the substance of the proposed rule change or raise any novel regulatory issues, the amendment is not subject to notice and comment.

<sup>7</sup> See Post-Effective Amendment No. 54 to Registration Statement on Form N-1A for the Trust, dated July 1, 2011 (File Nos. 333-132380 and 811-21864).

<sup>8</sup> The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 28171 (October 27, 2008) (File No. 812-13458) ("Exemptive Order"). In compliance with Commentary .05 to NYSE Arca Equities Rule 8.600, which applies to Managed Fund Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio.<sup>9</sup>

#### Description of the Fund

The Fund seeks to provide a high level of income and capital appreciation representative of investments in inflation-linked debt of emerging market issuers. The Fund intends to achieve its investment objectives through direct and indirect investments in inflation-protected Fixed Income Securities<sup>10</sup> of emerging market countries. The Fund expects that it will have at least 70% of its assets invested in Fixed Income Securities. The Fund will invest in Fixed Income Securities linked to inflation rates in emerging markets throughout the world. The Fund may invest in Fixed Income Securities that are not linked to inflation, such as U.S. or non-U.S. government bonds, as well as Fixed Income Securities that pay variable or floating rates. The Fund may also invest in Money Market Securities and derivative instruments, as described below.

The Fund intends to invest in inflation-linked Fixed Income Securities of issuers in the following regions: Asia, Latin America, Eastern Europe, Africa, and the Middle East. Within these regions, the Fund is likely to invest in countries such as Brazil, Chile, Colombia, Hungary, Indonesia, Malaysia, Mexico, Peru, Philippines, Poland, Russia, South Africa, South Korea, Thailand, and Turkey, although this list may change as market developments occur and may include additional emerging market countries that conform to selected ratings, liquidity, and other criteria. As a general matter, and subject to the Fund's investment guideline to provide

<sup>9</sup> See Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that, in the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

<sup>10</sup> For these purposes, "Fixed Income Securities" include bonds, notes, or other debt obligations, such as government or corporate bonds, denominated in local currencies or U.S. dollars, as well as issues denominated in emerging market local currencies that are issued by "supranational issuers," such as the International Bank for Reconstruction and Development and the International Finance Corporation, as well as development agencies supported by other national governments.

<sup>10</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> See Securities Exchange Act Release No. 65846 (November 29, 2011), 76 FR 75932 ("Notice").

<sup>4</sup> The Exchange withdrew Amendment No. 1 on January 18, 2012 and extended the time period for Commission action to January 25, 2012.

<sup>5</sup> The Exchange withdrew Amendment No. 2 on January 25, 2012.

<sup>6</sup> The proposed rule change originally stated that "[t]he Fund may invest up to an aggregate amount of 15% of its net assets in (a) illiquid securities and (2) [sic] Rule 144A securities." See Notice, 76 FR at 75936, *supra* note 3. Amendment No. 3 amended the proposed rule change by replacing the term "invest" with "hold." The purpose of Amendment No. 3 was to make the proposed rule change more consistent with the Investment Company Act of 1940 (15 U.S.C. 80a-1) ("1940 Act") requirements