

the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio;<sup>10</sup> or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its Underlying Index (any such change, a "Rebalancing"). If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Securities or Fund Securities exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the "Cash Component").

Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Component, as described above; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions, or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant,<sup>11</sup> the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash;<sup>12</sup> (d) if, on a given Business Day,

determination of the Cash Component (as defined below).

<sup>10</sup> A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants on a given Business Day.

<sup>11</sup> An "Authorized Participant" is either (1) a "Participating Party," i.e., a broker-dealer or other participant in the Shares Clearing Process (as defined below) through the Continuous Net Settlement System of the National Securities Clearing Corporation ("NSCC"), or (2) a participant of The Depository Trust Company, a limited purpose trust company organized under the laws of the State of New York ("DTC," and such participant, a "DTC Participant"), which in either case has executed an agreement with a Distributor, with respect to creations and redemptions of Creation Units. The "Shares Clearing Process" refers to processes through the Continuous Net Settlement System of the NSCC as such processes have been enhanced to effect purchases and redemptions of Creation Units.

<sup>12</sup> In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption.

the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Securities or Fund Securities, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC Process or the DTC Process; or (ii) in the case of International Funds, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Securities or Fund Securities, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of an International Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.<sup>13</sup>

Each Business Day, before the open of trading on a national securities exchange as defined in Section 2(a)(26) of the Act on which the Shares are listed ("Listing Exchange"), the Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Securities and the Fund Securities, as well as the estimated Cash Component (if any), for that day.<sup>14</sup> The list of Deposit Securities and Fund Securities will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list.

In order to defray the transaction expenses, including brokerage costs, that will be incurred by a Fund when investors purchase or redeem Creation Units, and other expenses, such as custody fees and stamp taxes, each Fund will impose purchase or redemption transaction fees ("Transaction Fees") to be borne only by such purchasers or redeemers. Where a Fund permits an in-kind purchaser to substitute cash in lieu of depositing a portion of the Deposit Securities, the purchaser may be assessed a higher

As a result, tax considerations may warrant in-kind redemptions.

<sup>13</sup> A "custom order" is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

<sup>14</sup> If the Fund is Rebalancing, it may need to announce two estimated Cash Components for that day, one for deposits and one for redemptions.

Transaction Fee to cover the cost of purchasing those securities. The exact amounts of such Transaction Fees will be determined separately for each Fund. The Transaction Fee is designed to protect the continuing shareholders of a Fund against the dilutive costs associated with the transfer or purchase of Portfolio Securities in connection with the purchase of Creation Units and with the transfer or sale of Portfolio Securities in connection with the redemption of Creation Units.

Transaction Fees will be limited to amounts that have been determined by the Adviser to be appropriate and will take into account transaction costs and associated with the relevant Deposit Securities of the Funds. In all cases, such Transaction Fee will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities.

Creation Units will be issued in aggregations of at least 25,000 Shares. Applicants recognize that each Share is issued by an investment company and, accordingly, the acquisition of any Shares by an investment company, whether acquired from the Fund or in the secondary market, shall be subject to the restrictions of Section 12(d)(1) of the Act except as permitted by an exemptive order that permits investment companies to invest in a Fund beyond those limitations.

2. Finally, Applicants also seek to make certain conforming changes to the Prior Application related to the changes set forth above.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a technology and trading roundtable discussion on Tuesday, October 2, 2012, in the Multipurpose Room, L-006. The meeting will begin at 10 a.m. and will be open to the public. Seating will be on a first-come, first served basis. Doors will be open at 9:30 a.m. Visitors will be subject to security checks. The roundtable will be Webcast on the

Commission's Web site at [www.sec.gov](http://www.sec.gov) and will be archived for later viewing.

On August 24, 2012, the Commission published notice of the roundtable discussion (Release No. 34-67725), indicating that the event is open to the public and inviting the public to submit written comments to the Commission staff. This Sunshine Act notice is being issued because a majority of the Commission may attend the roundtable discussion.

The agenda for the roundtable includes opening remarks followed by two panel discussions. The first panel will focus on the prevention of errors through robust system design, deployment, and operation. The second panel will focus on the responses to errors and malfunctions and managing crises in real-time.

For further information, please contact the Office of the Secretary at (202) 551-5400.

Dated: September 25, 2012.

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67917; File No. SR-OCC-2012-16]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Accommodate Recently Proposed Equity Options That Have a Unit of Trading of 10 Shares

September 24, 2012.

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 12, 2012, The Options Clearing Corporation ("OCC") 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 primarily by OCC. 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

OCC proposes to change its rules in order to accommodate recently

proposed equity options that have a unit of trading of 10 shares ("Mini Options").

#### 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>3</sup>

##### 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 accommodate Mini Options, which are recently proposed equity options that have a unit of trading of 10 shares.<sup>4</sup> OCC proposes to amend its By-Law provision that sets forth the minimum amount of a cash dividend or distribution ("Distribution") on an underlying equity security that will result in an adjustment of outstanding options on that underlying equity security.

The International Securities Exchange and NYSE Arca recently filed proposed rule changes with the Commission to list and trade Mini Options on a select number of liquid, high-priced and actively traded securities.<sup>5</sup> Mini Options are intended to expand the choices available to participants in the options markets. Other than the difference in the unit of trading, Mini Options would have the same terms, use, and characteristics as standard equity options ("Standard Options"), which cover 100 shares.

Under OCC's By-Laws, equity options may be adjusted upon the occurrence of certain corporate actions, including Distributions. Currently, OCC's By-Laws stipulate that a Distribution must be in

<sup>3</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>4</sup> No other changes to OCC's rules are needed to clear Mini Options, as the definition of "unit of trading" in Article I of OCC's By-Laws is sufficiently flexible to permit OCC to designate a unit of trading other than the standard 100 shares for particular series or classes of options. Similarly, OCC's risk management systems will take the number of underlying shares into consideration.

<sup>5</sup> Securities Exchange Act Release Nos. 67284 (June 27, 2012), 77 FR 39545 (July 3, 2012) (SR-ISE-2012-58); 67283 (June 27, 2012), 77 FR 39535 (July 3, 2012) (SR-NYSE Arca-2012-64). For example, Mini Options are proposed to be listed on SPY (SPDR S&P 500), GLD (SPDR Gold Trust) and AAPL (Apple, Inc.).

excess of \$12.50 *per contract* in order for OCC to consider adjusting any type of option contract. Some Distributions, however, would exceed the adjustment threshold in the case of Standard Options but would not exceed the adjustment threshold in the case of a Mini Option because the per contract Distribution on the Mini Option would be only 1/10th of the Distribution on the Standard Option and the adjustment threshold is stated on a *per contract* basis rather than a *per share* basis. OCC does not believe that this result is appropriate given that Mini Options are intended to be identical to Standard Options, but for the unit of trading.

Instead, OCC believes that it is appropriate to design an adjustment policy such that a Distribution that would result in an adjustment on a Standard Option would also result in an adjustment on a Mini Option. Moreover, the exchanges proposing to list Mini Options, as well as OCC clearing members, have expressed a preference for OCC to design an adjustment policy under which OCC makes consistent and parallel adjustments to both Mini Options and Standard Options. Therefore, OCC is proposing to amend the adjustment threshold in Article VI, Section 11A of OCC's By-Laws to \$.125 *per share* from \$12.50 *per contract*.

Furthermore, OCC does not intend for the rule change to affect options contracts that were originally listed with units of trading in excess of 100 shares. This determination was made by the Securities Committee<sup>6</sup> because using a threshold of \$.125 per share for all option contracts would mean that OCC might not adjust an option contract that has a unit of trading of 1,000 shares for certain Distributions even though such a Distribution may represent a significant dollar amount on a per contract basis.<sup>7</sup> For example, in the case of an option contract with a unit of trading of 1,000 shares, a Distribution of \$.12 per share would not trigger an adjustment even though the amount of the Distribution would be \$120 on a single 1,000 share contract—far in excess of the existing \$12.50 per contract *de minimis* threshold. To address this adjustment issue, OCC is proposing to retain the existing adjustment threshold of \$12.50 per

<sup>6</sup> The Securities Committee is authorized under OCC By-Law Article VI Section 11(a) to determine contract adjustments in particular cases and to formulate adjustment policy or interpretations having general applicability. The Securities Committee is comprised of representatives of OCC's participant options exchanges and authorized representatives of OCC.

<sup>7</sup> OCC has rules to accommodate options with a unit of trading of 1,000 shares, although no such options currently trade.

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

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