Accordingly, granting such relief to the Shares to permit the Trust and any of its affiliated purchasers to redeem Shares during the distribution of the Shares is appropriate in the public interest, and is consistent with the protection of investors.

Conclusion

It is hereby ordered, pursuant to Rule 101(d) of Regulation M, that, based on the representations and facts presented in the Letter, the Shares of the Trust are exempt from the requirements of Rule 101 to permit persons participating in the distribution of Shares of the Trust and their affiliated purchasers to bid for or purchase such Shares during their participation in such distribution.

It is further ordered, pursuant to Rule 102(e) of Regulation M, that, based on the representations and facts presented in the Letter, the Shares of the Trust are exempt from the requirements of Rule 102 to permit the Trust and any of its affiliated purchasers to redeem Shares of the Trust during the distribution of such Shares.

This expository relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. Persons participating in the distribution of Shares of the Trust shall discontinue creations and redemptions involving the Shares of the Trust, in the event that any material change occurs with respect to any of the facts or representations made by the Trust, the Sponsor, or its counsel. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws and rules must rest with the persons relying on this exemption. This order does not represent the Commission views with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws and rules to, the proposed transactions.

By the Commission.

Kevin M. O’Neill, Secretary.

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Clear Western European Sovereign CDS Contracts

December 14, 2012.

On October 17, 2012, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR–ICEEU–2012–08 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 November 2, 2012.3 The Commission received one comment on this proposal.4

Section 19(b)(2) of the Act5 provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day from the publication of notice of filing of this proposed rule change is December 17, 2012. The Commission is extending this 45-day time period.

The proposed rule change would permit ICE Clear Europe to clear Western European Sovereign credit default swaps on the following sovereign reference entities: Republic of Ireland, Italian Republic, Hellenic Republic, Portuguese Republic, and Kingdom of Spain. In light of the fact that ICE Clear Europe does not currently provide clearing services for Western European Sovereign credit default swaps, and because no registered clearing agency currently provides clearing services for Western European Sovereign credit default swaps, the Commission finds it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,6 designates January 31, 2013, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–ICEEU–2012–08).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.7

Kevin M. O’Neill, Deputy Secretary.

Billings Code 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Options Clearing Corporation; Order Approving Proposed Rule Change To Revise the Method for Determining the Minimum Clearing Fund Size To Include Consideration of the Amount Necessary To Draw on Secured Credit Facilities

December 14, 2012.

I. Introduction

On October 18, 2012, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change SR–OCC–2012–19 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 November 7, 2012.3 The Commission received no comment letters. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

On September 23, 2011, the Commission approved a proposed rule change by OCC to establish the size of OCC’s clearing fund as the amount that is required, within a confidence level selected by OCC, to sustain the maximum anticipated loss under a defined set of scenarios as determined by OCC, subject to a minimum clearing fund size of $1 billion. OCC implemented this change in May 2012. Until that time, the size of OCC’s clearing fund was calculated each month as a fixed percentage of the average total daily margin requirement for the preceding month, provided that the calculation resulted in a clearing fund of $1 billion or more. Under the formula that is implemented for determining the size of the clearing fund as a result of the May 2012 rule change, OCC’s Rules provide that the amount of the fund is equal to the larger of the amount of the charge to the fund that would result from (i) a default by the single “clearing member group” whose default would be likely to result in the largest draw against the clearing fund or (ii) an event involving the near-simultaneous default of two randomly-selected “clearing member groups” in each case as calculated by OCC with a confidence level selected by OCC. The size of the clearing fund continues to be recalculated monthly, based on a monthly averaging of daily calculations for the previous month, and it is subject to a requirement that its minimum size may not be less than $1 billion.

B. Proposed Rule Change

The proposed rule change will implement a minimum clearing fund size equal to 110% of the amount of committed credit facilities secured by the clearing fund so that the amount of the clearing fund likely will exceed the required collateral value that would be necessary for OCC to be able to draw in full on such credit facilities. OCC’s clearing fund is primarily intended to provide a high degree of assurance that market integrity will be maintained in the event that one or more clearing members, settlement banks, or banks that issue letters of credit on behalf of clearing members as a form of margin fail to meet its obligations. This includes the potential use of the clearing fund as a source of liquidity should it ever be the case that OCC is unable to obtain prompt delivery of, or convert promptly to cash, any asset credited to the account of a suspended clearing member.

OCC’s committed credit facilities are secured by assets in the clearing fund and certain margin deposits of the suspended clearing member. In light of the uncertainty regarding the amount of margin assets of a suspended clearing member that might be eligible at any given point to support borrowing under the secured credit facilities, OCC has considered the availability of funds based on a consideration of the amount of the clearing fund deposits available as collateral. As an example, for OCC to draw on the full amount of its current credit facilities secured by the clearing fund, the size of the clearing fund likely would need to be approximately $2.2 billion. The $2.2 billion figure reflects a 10% increase above the total size of such credit facilities, which is meant to account for the percentage discount applied to collateral pledged by OCC in determining the amount available for borrowing. Based on monthly recalculation information, the size of OCC’s clearing fund during the period from July 2011 to July 2012 was less than $2.2 billion on eight occasions. Therefore, to reduce the risk that the assets in the clearing fund might at any time be insufficient to enable OCC to meet potential liquidity needs by accessing the full amount of its committed credit facilities that are secured by the clearing fund, OCC is amending the current minimum clearing fund size requirement of $1 billion by providing instead that the minimum clearing fund size is the greater of either $1 billion or 110% of the amount of such committed credit facilities. OCC is denoting the credit facility component of the minimum clearing fund requirement as a percentage of the total amount of the credit facilities that OCC actually secures with a clearing fund asset because OCC negotiates these credit facility agreements, including size and other terms, on an annual basis and the total size is therefore subject to change.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, and to safeguard securities and funds in its custody or control or for which it is responsible. The proposed rule change will further these ends by requiring a minimum clearing fund size that is designed to enable OCC to draw in full on its committed credit facilities that are secured by the clearing fund.

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, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, 11 that the proposed rule change (File No. SR–OCC–2012–19) be and hereby is approved 12 as of the date of this order or the date of the “Notice of No Objection to Advance Notice Filing to Revise the Method for Determining the Minimum Clearing Fund Size to Include Consideration of the Amount Necessary to Draw on Secured Credit Facilities”

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5 If the calculation did not result in a clearing fund size of $1 billion or more, then the percentage of the average total daily margin requirement for the preceding month that resulted in a fund level of at least $1 billion would be applied. However, in no event was the percentage permitted to exceed 7%. With the rule change approved in September 2011, this 7% limiting factor on the minimum clearing fund size was eliminated.
6 The term “clearing member group” is defined in OCC’s By-Laws to mean a clearing member and any member affiliates of the clearing member.
7 The confidence levels employed by OCC in calculating the charge likely to result from a default by OCC’s largest “clearing member group” and the default of two randomly-selected “clearing member groups” were approved by the Commission at 99% and 99.9%, respectively. However, the Commission approved orders that OCC retains discretion to employ different confidence levels in these calculations provided that OCC will not employ confidence levels of less than 99% without first filing a proposed rule change.
8 Under Article VIII, Section 1 of OCC’s By-Laws, the clearing fund may be used to pay losses suffered by OCC: (1) As a result of the failure of a clearing member to perform its obligations with regard to any exchange transaction accepted by OCC; (2) as a result of a clearing member’s failure to perform its obligations in respect of an exchange transaction or an exercised/assigned options contract, or any other contract or obligations in respect of which OCC is liable; (3) as a result of the failure of a clearing member to perform its obligations in respect of stock loan or borrow positions; (4) as a result of a liquidation of a suspended clearing member’s open positions; (5) in connection with protective transactions of a suspended clearing member; (6) as a result of a failure of any clearing member to perform any other required payment or to render any other required performance; or (7) as a result of a failure of any bank or securities or commodities clearing organization to perform its obligations to OCC.
12 In approving the proposed rule change, the Commission considered the proposal’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78q(f).
December 14, 2012. I. Introduction

On April 2, 2012, 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")1 and Rule 19b–4 thereunder,2 a proposed rule change to list and trade shares of the JPM XF Physical Copper Trust Pursuant to NYSE Arca Equities Rule 8.201.

The Commission received three more comment letters (another letter from V&F and two more on behalf of the Sponsor). On October 28, 2012, the Commission issued a notice of designation of longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change.13 The Commission subsequently received six more comment letters (two more from V&F, two letters from Americans for Financial Reform, and two letters from Robert E. Rutkowski).14

On November 30, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.15 On December 7, 2012, the

14 See letters from Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated October 23, 2012 ("V&F October 23 Letter"); and email from Robert E. Rutkowski, to Mary Schapiro, Chair, Commission, dated November 16, 2012 ("AFR November 16 Letter"); and email from Robert E. Rutkowski, to Mary Schapiro, Chair, Commission, dated November 17, 2012 ("Rutkowski November 17 Letter").
15 In Amendment No. 1, the Exchange represented that: (1) it has obtained a representation from the Sponsor that the Sponsor is affiliated with one or more broker-dealers and other entities and the Sponsor will implement a firewall with respect to such affiliate(s) regarding the day-to-day non-public information of the Trust concerning the Trust and the Shares, and will be subject to procedures designed to prevent the use and dissemination of material non-public information of the Trust regarding the Trust and the Shares; (2) it will obtain a representation from the Trust prior to commencement of trading of the Shares that the net asset value ("NAV") of the NAV per Share will be calculated daily and made available to all market participants at the same time; (3) if the First Out IV or the Liquidity IV Items (as defined infra in note 42) is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the disruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption: (4) its comprehensive surveillance sharing agreement with the London Metal Exchange ("LME") applies to trading in copper derivatives (as well as copper); (5) it will require that a minimum of 100,000 Shares be outstanding at the start of trading of the Shares; and (6) it can obtain information regarding the activities of the Sponsor and its affiliates under the Exchange's listing rules. Additionally, the Exchange supplemented its description of surveillance to the Shares contained in the proposed rule change as originally filed. Specifically, the Exchange represents that trading in the Shares would be subject to the existing trading surveillance administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, and that, in addition, FINRA would augment those existing surveillances with a review specific to the Shares that is designed to identify potential manipulative trading activity through use of the creation and redemption process. The Exchange represented that all those procedures described in Amendment No. 1 would be operational at the commencement of trading of the Shares on the Exchange and that, on an ongoing basis, NYSE Regulation, Inc. (on behalf of the Exchange) and FINRA would regularly monitor the continued operation of those