

approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule changes (File Numbers SR-NYSE-2013-72 and SR-NYSEMKT-2013-91).

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71268; File No. SR-OCC-2013-23]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Provide OCC With Authority in Emergency Circumstances To Extend, Waive, or Suspend the Operation of Its By-Laws, Rules, Policies and Procedures, or Any Other Rules Issued by OCC

January 9, 2014.

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 December 27, 2013, 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 by OCC. OCC filed Amendment No. 1 to the proposed rule change on January 8, 2014.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to provide OCC with authority in emergency circumstances, subject to certain conditions, to waive or suspend the operation of its By-Laws, Rules, policies and procedures, or any other rules issued by OCC or to extend any time fixed thereby for the doing of any act or acts.

<sup>7</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> In Amendment No. 1, OCC: (i) Clarified its ability to extend the time fixed in certain Rules for the doing of any act or acts in emergency situations; (ii) removed the concept of a force majeure situation from the proposed rule change; and (iii) made other technical changes.

#### II. Clearing Agency’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.

##### (A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### (i) Purpose of the Proposed Rule Change

The purpose of the proposed rule change is to amend OCC’s By-Laws to provide OCC with authority in emergency circumstances, subject to certain conditions, to waive or suspend the operation of its By-Laws, Rules, policies and procedures, or any other rules issued by OCC (collectively, the “Rules”) or to extend any time fixed thereby for the doing of any act or acts. The proposed rule change is patterned on, although not identical to, the existing rule of a registered clearing agency that was previously approved by the Commission.<sup>4</sup> OCC is filing this Amendment No. 1 to: (1) Clarify OCC’s ability to extend the time fixed in certain Rules for the doing of any act or acts in emergency situations, (2) remove the concept of a force majeure situation from the proposed rule change and (3) make other non-material, technical, changes.

From time-to-time, OCC has faced situations in which its ability to help facilitate the national system for the prompt and accurate clearance and settlement of securities transactions has involved a need to temporarily waive or suspend certain of its Rules, or extend the time for doing any act or acts thereunder. In one instance, a temporary waiver was necessary so that OCC could facilitate the transfer, assignment, and

<sup>4</sup> In connection with an order approving the ability of the Mortgage-Backed Securities Division of Fixed Income Clearing Corporation (“FICC MBSD”) to perform guaranteed settlement and central counterparty services, the Commission approved FICC MBSD Rule 33, which provides authority to waive and suspend rules, or extend the time for doing any act or acts thereunder, in emergency circumstances subject to certain conditions. Securities Exchange Act Release No. 34-66550 (March 9, 2012), 77 FR 15155, 15160 (March 14, 2012) (SR-FICC-2008-01). FICC’s Government Securities Division (FICC GSD Rule 42) and other registered clearing agencies, National Securities Clearing Corporation (NSCC Rule 22) and The Depository Trust Company (DTC Rule 18), maintain similar rules.

assumption of the securities correspondent clearing business from one of its clearing members to another. Through the issuance of a No-Action Letter, the staff of the Commission’s Division of Trading and Markets facilitated OCC’s ability to temporarily waive certain of its Rules, which was appropriate to accommodate underlying transactions involved with restructuring a clearing member’s business.<sup>5</sup>

OCC’s ability to more immediately and effectively address emergency situations would be enhanced by the proposed rule change, which would allow OCC to waive or suspend its Rules or to extend the time fixed thereby for the doing of any act or acts to address emergency circumstances. The proposed rule change would also bring OCC’s Rules in line with the existing capabilities of other registered clearing agencies to waive or suspend their rules, or extend the time fixed thereby for performing any act or acts, in like circumstances.

Under the proposed rule change, OCC’s Board of Directors, Chairman, Management Vice Chairman or President would be authorized to waive or suspend the Rules or extend any time fixed thereby for the doing of any act or acts, if, in his, her, or their judgment, an emergency exists and extension, waiver or suspension is necessary or advisable for the protection of OCC or would otherwise be in the public interest in order for OCC to continue to facilitate the prompt and accurate clearance and settlement of confirmed trades or other transactions and to provide its services in a safe and sound manner. If a determination were to be made other than by the Board of Directors, notice to the Board of Directors would be required as soon as practicable.

The proposed By-Law provision states that OCC would be required to notify the SEC and CFTC within two hours of any such emergency extension, waiver or suspension and that as soon as practicable, but not later than three calendar days after the date of the determination to effect the extension, waiver or suspension, OCC would provide the SEC and CFTC with a report of the material aspects of the extension, waiver or suspension and the reasons that it was deemed necessary or advisable. Any such emergency action would be permitted to continue at OCC’s discretion for up to thirty calendar days, provided that the SEC or CFTC, as applicable, does not notify OCC it objects in writing. OCC would file a corresponding proposed rule

<sup>5</sup> The Options Clearing Corporation, SEC No-Action Letter, (June 4, 2012).

change with the SEC and/or CFTC, as applicable, during the thirty day period if it wishes to continue the extension, waiver, or suspension beyond the thirty day period. In that case, the extension, waiver or suspension would continue while the proposed rule change is under review by each agency, but if either the SEC and/or the CFTC staff, as applicable, notifies OCC in writing that it objects to the proposed rule change the operation of the extension, waiver or suspension would be discontinued.

(ii) Statutory Basis for the Proposed Rule Change

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act<sup>6</sup> and the rules and regulations thereunder because by enhancing OCC's ability to more immediately and effectively address emergency situations through waiver or suspension of its Rules, or extension of any time periods fixed thereby, in a manner consistent with the capabilities of other registered clearing agencies that perform comparable services it would help ensure that OCC's rules are designed to promote the prompt and accurate clearance and settlement of securities transactions and foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. In addition, OCC believes that the proposed rule change is consistent with Rule 17Ad-22(d)(1)<sup>7</sup> because including these emergency capabilities in OCC's By-Laws would help ensure that OCC maintains a well-founded, transparent, and enforceable legal framework. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.<sup>8</sup> With respect to any burden on competition among clearing agencies, OCC is the only registered clearing agency that performs central counterparty services for the equity options markets.

Changes to the rules of a clearing agency may have an impact on the participants in a clearing agency and the markets that the clearing agency serves. This proposed rule change primarily affects clearing members with respect to

their obligation to abide by all provisions of OCC's By-Laws and Rules and all procedures adopted pursuant thereto<sup>9</sup> in that OCC would have authority in an emergency to waive or suspend such provisions, or extend any time fixed thereby for the doing of any act or acts, if it is necessary or advisable for the protection of OCC or would otherwise be in the public interest in order for OCC to continue to facilitate the prompt and accurate clearance and settlement of confirmed trades or other transactions and to provide its services in a safe and sound manner. OCC believes that the proposed authority would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user because the authority would apply equally to all of OCC's Rules and clearing members. While any actual emergency extension, waiver or suspension could ultimately result in certain advantages or disadvantages for a particular subset of clearing members, OCC's authority in this regard could only be exercised where OCC believes it is necessary or advisable for the protection of OCC or is otherwise in the public interest in order for OCC to facilitate prompt and accurate clearance and settlement or for the safety and soundness of its clearing functions.

Predicating OCC's emergency authority on these conditions directly serves the purposes of the Act relevant to OCC because it would help ensure that any emergency action taken by OCC would be consistent with Congress' finding in Section 17A of the Act that promoting prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, is necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.<sup>10</sup> In this way, OCC's proposed framework for any such emergency action would be designed to promote the national system for clearance and settlement and serve the larger interest of all clearing members in OCC's continuing ability to operate in a safe and sound manner. With respect to any burden on competition that might result from a particular extension, waiver or suspension in an emergency circumstance, the proposed framework would also facilitate ongoing regulatory oversight of any emergency action by limiting the initial effectiveness to thirty days and requiring OCC to provide prompt notice to regulators of material

aspects of the emergency action together with the reasons therefor. In addition, the SEC and/or CFTC staff, as applicable, would have the ability to immediately discontinue the effectiveness of any emergency action through delivery of a written objection to OCC.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impose a burden on competition that is unnecessary or inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

**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-2013-23 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.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> 17 CFR 240.17Ad-22(d)(1).

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>9</sup> OCC By-Laws Article V, Section 3.

<sup>10</sup> 15 U.S.C. 78q-1(a)(1)(A).

All submissions should refer to File Number SR–OCC–2013–23. 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 of submission. 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 Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing 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\\_13\\_23.pdf](http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_13_23.pdf) and at [http://www.theocc.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_13\\_23\\_a1.pdf](http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_13_23_a1.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–2013–23 and should be submitted on or before February 5, 2014.

For the Commission by the Division of Trading and Markets, pursuant to delegated Authority.<sup>11</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71272; File No. SR–FINRA–2013–056]

### **Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 2251 (Forwarding of Proxy and Other Issuer-Related Materials), Which Includes Fees for Processing and Forwarding Proxy and Other Issuer Communications to Beneficial Owners, and Establish a Fee Under Certain Conditions for an Enhanced Brokers’ Internet Platform**

January 9, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act,” “SEA” or “Exchange Act”) <sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that, on December 30, 2013, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b–4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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**

FINRA is proposing to amend the provisions of FINRA Rule 2251 (Forwarding of Proxy and Other Issuer-Related Materials) relating to rates of reimbursement for expenses incurred in forwarding proxy and other issuer-related material, to establish a five-year fee for the development of an enhanced brokers internet platform and to make miscellaneous conforming revisions.

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> 17 CFR 240.19b–4(f)(6).

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

In its filing with the Commission, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

FINRA Rule 2251 requires FINRA members to transmit proxy materials and other communications to beneficial owners of securities and limits the circumstances in which FINRA members may vote proxies without instructions from those beneficial owners.<sup>4</sup> The Supplementary Material under FINRA Rule 2251 (FINRA Rule 2251.01) sets forth the rate reimbursement provisions pursuant to which FINRA members are entitled to receive fees in connection with the rule’s forwarding obligations. FINRA has previously indicated that, in the interest of ensuring regulatory clarity and harmonization with respect to proxy rate reimbursement, it intends to conform the rate reimbursement provisions of FINRA Rule 2251 with the New York Stock Exchange (“NYSE”) provisions in this area.<sup>5</sup>

On February 1, 2013, NYSE filed with the Commission a proposed rule change<sup>6</sup> to amend the provisions set forth under NYSE Rules 451 and 465, and the related provisions of Section 402.10 of the NYSE Listed Company Manual, for the reimbursement of expenses by issuers to NYSE member organizations for the processing and transmission of proxy materials and

<sup>4</sup> FINRA Rule 2251 was adopted as a consolidation of former NASD Rule 2260 and IM–2260 as part of FINRA’s rulebook consolidation process. See Securities Exchange Act Release No. 61052 (November 23, 2009), 74 FR 62857 (December 1, 2009) (Order Granting Approval of Proposed Rule Change; File No. SR–FINRA–2009–066).

<sup>5</sup> See Securities Exchange Act Release No. 47392 (February 21, 2003), 68 FR 9730 (February 28, 2003) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR–NASD–2003–019).

<sup>6</sup> See Securities Exchange Act Release No. 68936 (February 15, 2013), 78 FR 12381 (February 22, 2013) (Notice of Filing of Proposed Rule Change; File No. SR–NYSE–2013–07).

<sup>11</sup> 17 CFR 200.30–3(a)(12).