

December 14, 2012

Self-Regulatory Organizations; Options Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, and Notice of No Objection to Advance Notice, Modified by Amendment No. 1 Thereto, Relating to the Clearance and Settlement of Over-the-Counter Options

I. Introduction

On August 30, 2012, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-OCC-2012-14 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder² (“Proposed Rule Change”) and as an Advance Notice (SR-OCC-2012-01) pursuant to Section 806(e) of Title VIII of the Dodd-Frank Act (“Title VIII” or “Clearing Supervision Act”)³ (the Proposed Rule Change with the Advance Notice, the “Proposal”). The Proposed Rule Change and Advance Notice were published for comment in the Federal Register on September 18, 2012⁴ and September 27, 2012,⁵ respectively. On October 26, 2012, the Commission extended the time within which to act on the Proposal.⁶ The Commission received

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 12 U.S.C. 5465(e).

⁴ Securities Exchange Act Release No. 67835 (September 12, 2012), 77 FR 57602 (September 18, 2012).

⁵ Securities Exchange Act Release No. 67906 (September 21, 2012), 77 FR 59431 (September 27, 2012).

⁶ Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Relating to the Clearance and Settlement of Over-the-Counter Options, Release No. 34-68112 (October 26, 2012); 77 FR 66497 (November 5, 2012); Notice of Extension of Review Period of Advance Notice to Establish the Legal and Operational Framework for Providing Central Clearing of OTC Index Options on the S&P 500

no comment letters. On November 30, 2012, OCC filed Amendment No. 1 to the Proposal.⁷

This Order approves the Proposed Rule Change and serves as notice of no objection to the Advance Notice.

II. Description of the Proposal

The purpose of this Proposal is to establish a legal and operational framework for OCC to provide central clearing of certain OTC index options on the S&P 500 Index (“OTC S&P 500 Index Options”).⁸ OCC will not commence clearing of OTC S&P 500 Index Options until a subsequent proposal concerning certain enhancements to OCC’s risk modeling and risk management procedures (“Risk Management Proposal”)⁹ is approved by the Commission and implemented by OCC.¹⁰ OCC anticipates using the same legal and operational framework as contained in the Proposal for clearing additional OTC equity options or OTC equity index options in the future, subject to the requisite regulatory approvals.¹¹

Index That Are Negotiated Bilaterally in the Over-The-Counter Market and Submitted to OCC for Clearance, Release No. 34-68111 (October 26, 2012), 77 FR 66196 (November 2, 2012).

⁷ In Amendment No. 1, OCC proposed to amend Article XVII of its By-laws to clarify that Section 6 of that Article, pertaining to OTC Index Options, are inoperative until further notice by OCC, as well as to amend Item 3 of the proposed rule change to clarify that the clearing of OTC Options will not occur until certain enhancements related to longer-tenor options have been approved and implemented.

⁸ The proposed rule change replaces a previously proposed rule change which was withdrawn by OCC. See Securities Exchange Act Release No. 34-66090 (January 3, 2012), 77 FR 1107 (January 9, 2012) (SR-OCC-2011-19).

⁹ OCC is in the process of implementing risk modeling enhancements with respect to longer-tenor options, including OTC S&P 500 Index Options. The enhancements are part of OCC’s ongoing efforts to test and improve its risk management operations with respect to all longer-tenor options that OCC currently clears. These procedures will be submitted for review in a separate proposed rule change and advance notice filing, and OCC represents that it will not commence clearing of OTC S&P 500 Index Options until such procedures have been approved and implemented. See also supra note 7.

¹⁰ Notice of Filing of Advance Notice Relating to the Clearance and Settlement of Over-the-Counter Options, Rel. No. 34-67906 at 15 (Sept. 21, 2012), 77 FR 59431, 59434 (Sept. 27, 2012); Notice of Filing of Proposed Rule Change Relating to the Clearance and Settlement of Over-the-Counter Options, Rel. No. 34-67835 at 15 (Sept. 12, 2012), 77 FR 57602, 57606 (Sept. 18, 2012). See also supra note 7.

¹¹ See supra notes 9 and 10 and accompanying text.

OTC Options

OCC has entered into a license agreement with Standard & Poor's Financial Services LLC ("S&P") that allows OCC to clear OTC options on three equity indices published by the S&P: the S&P 500 Index, the S&P MidCap 400 Index, and the S&P SmallCap 600 Index. The Proposal would allow OCC to clear only OTC S&P 500 Index Options,¹² and only subject to the filing and approval of the Risk Management Proposal, as discussed above.¹³ OTC S&P 500 Index Options are limited in tenor to between four months and five years and have minimum notional values of either 500,000 or 100,000 times the value of the S&P 500 Index.¹⁴ OCC may propose to clear OTC options on other indices and on individual equity securities in the future, subject to Commission approval of one or more additional rule filings. In establishing a legal and operational framework for the potential future clearing of OTC options referencing other equities or equity indices, the Proposal defines "OTC option" and "OTC index option" (both of which terms include OTC S&P 500 Index Options) generically in order to simplify future amendments to provide for additional underlying interests. As noted above, however, the Proposal by its terms would permit only the clearing of OTC S&P 500 Index Options,¹⁵ and only after the Commission's approval and OCC's implementation of a subsequent Risk Management Proposal.¹⁶

¹² See Proposed By-laws, Section 6, Interpretations and Policies .01, Proposed Rule Change and Advance Notice by OCC (SR-OCC-2012-14), available at http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_12_14.pdf.

¹³ See supra notes 10 and 10 and accompanying text.

¹⁴ See Proposed By-laws, Section 6, Interpretations and Policies .01, Proposed Rule Change and Advance Notice by OCC (SR-OCC-2012-14), available at http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_12_14.pdf.

¹⁵ See id. See also supra notes 9 and 10 and accompanying text.

¹⁶ See supra notes 10 and 10 and accompanying text.

OTC S&P 500 Index Options will be similar to exchange-traded standardized equity index options called “FLEX Options.” FLEX Options are put and call options traded on various options exchanges that allow for customization of certain terms. For example, FLEX index Options traded on the Chicago Board Options Exchange have six customizable terms: (1) underlying index, (2) put or call, (3) expiration date, (4) exercise price, (5) American or European exercise style, and (6) method of calculating settlement value.¹⁷ OCC is the issuer and guarantor of FLEX Options and clears FLEX Options traded on multiple exchanges.

Similar to FLEX Options referencing the S&P 500 Index, OTC S&P 500 Index Options will allow for customization of a limited number of variable terms with a specified range of values that may be assigned to each as agreed between the buyer and seller. Parties submitting transactions in OTC Options for clearing by OCC will be able to customize six discrete terms: (1) underlying index;¹⁸ (2) put or call; (3) exercise price; (4) expiration date; (5) American or European exercise style; and (6) method of calculating exercise settlement value on the expiration date.¹⁹ The variable terms and permitted values will be specified in the proposed Section 6 of Article XVII of the By-Laws.

Clearing of OTC Options

OCC proposes to clear OTC S&P 500 Index Options subject to the same basic rules and procedures used for the clearance of listed index options, with such modifications to reflect the

¹⁷ See CBOE Rule 24A.4, Terms of FLEX Options, available at <http://www.cchwallstreet.com/CBOETools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F25%5F5&manual=%2FCBOE%2Frules%2Fcboe%2Drules%2F>.

¹⁸ Initially, pursuant to this Proposal, the S&P 500 Index will be the only permitted underlying index.

¹⁹ The expiration date of an OTC option must fall on a business day. The method of determining the exercise settlement value of an OTC option on its expiration date may be either the opening settlement value or the closing settlement value of the underlying index (calculated by S&P using the opening or closing price, as applicable, in the primary market of each component security of the underlying index on the specified expiration date), in each case as reported to OCC by CBOE.

unique characteristics of OTC Options. Transactions in OTC options²⁰ will not be executed through the facilities of any exchange, but will instead be entered into bilaterally and submitted to OCC for clearance through one or more providers of trade affirmation services.²¹ In addition, the proposed rules require that the counterparties to the OTC Options must be eligible contract participants (“ECPs”), as defined in Section 3a(65) of the Act,²² and Section 1a(18) of the Commodity Exchange Act,²³ as amended (the “CEA”). Because an OTC S&P 500 Index Option is a “security” as defined in the Act, the proposed rules also require that the transactions be cleared through a clearing member of OCC that is registered with the Commission as a broker-dealer or one of the small number of clearing members that are “non-U.S. securities firms” as defined in OCC’s By-Laws. OCC is not requiring clearing members to meet any different financial standards for clearing OTC Index Options, as defined in OCC’s By-laws and Rules, than those to which they are presently subject. However, clearing members must be specifically approved by OCC to clear OTC Index Options pursuant to proposed new Interpretation and Policy .11 to Section 1 of Article V in order to ensure the operational readiness of such clearing members to clear OTC Index Options. Clearing members seeking to clear OTC Index Options will be required to submit a business expansion request and complete an operational review. The operational review is to consist of an initial meeting with the clearing member’s staff to evaluate

²⁰ As noted above, the Proposal by its terms would permit only the clearing of OTC S&P 500 Index Options, and only after the Commission’s approval and OCC’s implementation of a subsequent Risk Management Proposal. See supra notes 9, 10, and 14 and accompanying text. Also as discussed above, while OCC anticipates using the same legal and operational framework contained in the Proposal to clear additional OTC equity options or OTC equity index options in the future, OCC could only do so upon OCC’s filing and the Commission’s approval of one or more additional rule filings.

²¹ See infra note 266 and accompanying text.

²² 15 U.S.C. 78c(a)(65).

²³ 7 U.S.C. 1a(18).

the staff's experience, confirming the staff's familiarity with current OCC systems and procedures, completion of an operational questionnaire, performing a high level review of the clearing member's systems and processing capabilities, and reviewing other pertinent operational information. Successful testing of messaging capability between the clearing member, the OTC Trade Source,²⁴ and OCC is also necessary. These procedures will determine whether the firm is operationally ready to clear OTC Index Options.

Exercise of an OTC S&P 500 Index Option will be settled by payment of cash by the assigned writer and to the exercising holder through OCC's cash settlement system on the business day following exercise in exactly the same manner as is the case with exercise settlement of listed index options. As in the case of listed index options, the exercise-settlement amount will be equal to the difference between the current value of the underlying interest and the exercise price of the OTC Index Option, times the multiplier that determines the size of the OTC Index Option. In the case of OTC S&P 500 Index Options, the multiplier will be fixed at 1 (i.e., equal to the value of the S&P 500 Index).

OTC S&P 500 Index Options may be carried in a clearing member's firm account, in market-maker accounts or in its securities customers' account, as applicable. Although customer positions in OTC S&P 500 Index Options will be carried in the securities customers' account (an omnibus account), OCC will use a "customer ID" to identify positions of individual customers based on information provided by clearing members.²⁵ However, positions are not presently intended to be carried in individual customer sub-accounts, and positions in OTC S&P 500 Index Options will be margined at OCC in the omnibus customers' account on the same basis as listed

²⁴ See infra note 266 and accompanying text.

²⁵ Such customer IDs are necessary in order to allow OCC to comply with certain terms of OCC's license agreement with S&P. As described further below, customer IDs will be used for other purposes as well.

options. If a clearing member takes the other side of a transaction with its customer in an OTC S&P 500 Index Option, the transaction will result in the creation of a long or short position (as applicable) in the clearing member's customers' account and the opposite short or long position in the clearing member's firm account. The positions could also be includable in the internal cross-margining account, subject to any necessary regulatory approvals.

OCC has stated that OTC S&P 500 Index Options will be fungible with each other to the extent that there are OTC S&P 500 Index Options in the system with identical terms. However, OCC has stated that it will not treat OTC S&P 500 Index Options as fungible with index options listed on any exchange, even if an OTC S&P 500 Index Option has terms identical to the terms of the exchange-listed option.

Clearing members that carry customer positions in cleared OTC S&P 500 Index Options will be subject to all OCC rules governing OCC-cleared options generally, as well as all applicable rules of the Commission and of any self-regulatory organization, including the Financial Industry Regulatory Authority ("FINRA"), of which they are a member. Section 8 of Article III of OCC's By-Laws provides that, subject to the By-Laws and Rules, "the Board of Directors may suspend Clearing Members and may prescribe and impose penalties for the violation of the By-Laws or the Rules of the Corporation, and it may, by Rule or otherwise, establish all disciplinary procedures applicable to Clearing Members and their partners, officers, directors, and employees." As a condition to admission, Section 3(c) of Article V of the By-Laws provides that a clearing member must agree, among other things, to "pay such fines as may be imposed on it in accordance with the By-Laws and Rules." OCC Rule 305 permits OCC to impose restrictions on the clearing activities of a clearing member if it finds that the financial or operational condition of the clearing member makes it necessary or advisable to do so for the

protection of OCC, other clearing members, or the general public. OCC Rule 1201(a) provides that OCC “may censure, suspend, expel or limit the activities, functions or operations of any Clearing Member for any violation of the By-Laws and Rules or its agreements with the Corporation.” In addition to, or in lieu of, such actions, OCC is permitted under the same paragraph to impose fines. OCC Rule 1202(b) establishes procedures for taking any such disciplinary actions. The foregoing provisions are sufficient to permit OCC to fine or otherwise discipline a clearing member that fails to abide by OCC’s By-Laws and Rules applicable to OTC options, or to prohibit such clearing member from continuing to clear such options.

MarkitSERV Trade Submission Mechanics

The trade data for an OTC S&P 500 Index Option trade will be entered into the system of MarkitSERV or another trade confirmation/affirmation vendor approved by OCC for this purpose (“OTC Trade Source”).²⁶ While MarkitSERV will be the only OTC Trade Source at launch, OCC has stated that it will permit additional OTC Trade Sources in the future in response to sufficient market demand from OCC’s clearing members and subject to the ability of any such OTC Trade Source to meet OCC’s requirements for operational readiness and interoperability with OCC’s systems, as well as requirements with respect to relevant business experience and reputation, adequate personnel and expertise, financial qualification, and such other factors as OCC deems relevant.

²⁶ MarkitSERV, LLC is owned by Markit Group Limited, Markit Group Holdings Limited and The Depository Trust & Clearing Corporation. MarkitSERV Limited is a wholly-owned U.K. subsidiary of MarkitSERV, LLC. MarkitSERV, LLC and MarkitSERV Limited (collectively, “MarkitSERV”) provide derivatives transaction processing, electronic confirmation, portfolio reconciliation services, and other related services for firms that conduct business in the over-the-counter derivatives markets through a variety of electronic systems, including the MarkitWire system. MarkitWire, owned by MarkitSERV Limited, is an OTC derivatives electronic confirmation/affirmation service offered by MarkitSERV as part of its post-trade processing suite of products. The role of MarkitSERV and MarkitWire in OCC’s clearing of OTC options is described in further detail below.

MarkitSERV will provide an interface to OCC that allows OCC to receive messages containing details of transactions in OTC S&P 500 Index Options submitted for clearing by clearing members with access to MarketWire and also allows OCC to transmit messages to MarkitWire participants identifying the status of submitted transactions. MarkitSERV will use a “confirmation/affirmation” procedure in which one party to the trade enters the trade data to the MarkitWire platform, which issues a confirmation to the counterparty to be affirmed, rejected, or requested to be revised. If the trade details are confirmed, the trade will then be submitted to OCC for clearance and MarkitSERV will affirm such submission to both parties. OCC will then validate the trade information for compliance with applicable requirements, such as the identification of an account of an eligible clearing member in which each side of the trade will be cleared, that the variable terms are within permissible ranges, and that minimum size requirements under OCC’s license agreement with S&P are met.²⁷ This validation will be completed by OCC immediately upon submission. OCC’s clearing system will automatically accept the trade if it passes the validation process and will otherwise reject it. Once accepted, a trade is guaranteed by OCC.²⁸ A trade that is rejected by OCC may be corrected and submitted as a new transaction. Parties may submit trades for clearance that were entered into bilaterally at any time in the past, provided that the eligibility for clearance will be determined as of the date the trade is submitted to OCC for clearance.²⁹ Clearing members and customers with access to

²⁷ MarkitWire applications use product-specific templates to simplify deal entry and negotiations. The templates specify the data required for a given product and also the business validation rules for each field. MarkitSERV has included OCC’s validation requirements for OTC options in its trade templates.

²⁸ Note, however, that OTC options for which the premium payment date communicated by MarkitSERV to OCC is prior to the business day on which the OTC option is submitted to OCC for clearing (“Backloaded OTC Option”) will not be accepted and guaranteed until the selling clearing member has met its initial morning cash settlement obligations to OCC on the following business day.

²⁹ OCC’s license agreement with S&P imposes certain requirements relating to minimum time remaining to expiration of an OTC option.

MarkitSERV will be able to determine whether a trade has been accepted or rejected both through MarkitSERV and, in the case of clearing members, through their interface with OCC's clearing system.

Proposed By-Law and Rule Changes³⁰

Article I of the By-Laws contains defined terms used throughout the By-Laws and Rules. OCC proposes to modify certain existing definitions and include certain new definitions in order to incorporate OTC options into existing rules and facilitate the creation of new provisions unique to OTC options. Throughout the By-Laws and Rules, OCC proposes to replace the term "Exchange transaction," which is currently defined in Article I, in relevant part, as "a transaction on or through the facilities of an Exchange for the purchase, writing or sale of a cleared contract" with the term "confirmed trade" so as to make the relevant portions of the By-Laws and Rules applicable to transactions in OTC options as well as listed options. "Confirmed trade" is proposed to be defined in Article I to include transactions "effected on or through the facilities of an exchange" or "affirmed through the facilities of an OTC Trade Source" in order to include transactions in both listed options and OTC options. The current definition of "confirmed trade" in OCC Rule 101 is proposed to be deleted as unnecessary given the new definition. OCC is also proposing to add an Interpretation and Policy to the new definition of "confirmed trade" in order to avoid any ambiguity concerning how such terms should be interpreted in any such agreement.

OCC proposes to add a new Interpretation and Policy .11 to Section 1 of Article V of the By-Laws, providing the additional criteria that must be met by a clearing member in order to

³⁰ As noted above, the Proposal by its terms would permit only the clearing of OTC S&P 500 Index Options, and only after the Commission's approval and OCC's implementation of a subsequent Risk Management Proposal. See *supra* notes 9, 10, and 12 and accompanying text. Also as discussed above, while OCC anticipates using the same legal and operational framework contained in the Proposal to clear additional OTC equity options or OTC equity index options in the future, OCC could only do so upon OCC's filing and the Commission's approval of one or more additional rule filings.

clear OTC index options. Among these new criteria are that clearing members seeking to clear OTC index options on underlying indices published by S&P must execute and maintain in effect a short-form license agreement in such form as specified from time to time by S&P.

The Interpretations and Policies under Section 1, Article VI allow clearing members to adjust their positions with OCC for certain enumerated reasons. OCC proposes to amend the Interpretations and Policies to clarify that adjustment of positions in OTC options will be effected through a manual process (as opposed to the electronic process available to post-trade adjustments in listed options), to the extent permitted by OCC. For the same reason, OCC is proposing to amend OCC Rule 403 to prohibit clearing member trade assignment (“CMTA”) transactions in OTC options. Trade “give-ups” that are effected through the CMTA process in the case of listed options will, in the case of OTC options, be effected through MarkitSERV before the trades are submitted to OCC for clearing.

Article XVII of the By-Laws governs index options in general and OCC is proposing amendments to Article XVII in order to set forth the terms applicable to the initial OTC options proposed to be cleared by OCC — options on the S&P 500 Index — and to differentiate OTC index options from other index options cleared by OCC. For example, certain amendments to the definitions are necessary because OTC options will be permitted to have a much wider range of expiration dates than exchange-traded options (other than FLEX Options). Additional definitional amendments ensure that OTC index options will constitute a separate class of options from other cash-settled index options even if both index options have the same terms and cover the same underlying interest.

Section 3 of Article XVII provides for adjustment of the terms of outstanding index options as necessary to reflect possible changes in the underlying index — such as those creating

a discontinuity in the level of the index — that could theoretically make an adjustment necessary to protect the legitimate expectations of holders and writers of options on the index. Pursuant to paragraph (g) of Section 3, most but not all such adjustments would be made, in the case of listed index options, by an adjustment panel consisting of representatives of the exchanges on which the options are traded. In the case of OTC options, any such adjustments will be made by OCC in its sole discretion. However, in exercising that discretion, OCC may take into consideration any adjustment made by the adjustment panel with respect to exchange-traded options covering the same underlying index.

OCC proposes to add a new Section 6 to Article XVII to set forth certain provisions unique to OTC index options, including the variable terms allowed for OTC index options and the general limitations on such variable terms. In general, all OTC index options must conform to the terms and limitations set forth in Section 6, and additional specific requirements applicable to specific OTC index options will either be set forth in the Interpretations and Policies under Section 6 or published separately on OCC’s website. Section 6 also makes clear that although OTC index options are not fungible with exchange-traded index options, OTC index options of the same series (i.e., options having identical terms) will be fungible with each other. Interpretations and Policies .01 to Section 6 would provide that only the S&P 500 Index will have been approved by OCC as an underlying index for OTC Index Options and would specify the additional terms for an OTC S&P 500 Index Option.³¹

Unless another exemption from the registration requirements of the Securities Act of 1933 (“Securities Act”)³² is available, OCC intends to rely upon Rule 506 of Regulation D³³

³¹ See supra note 12.

³² 15 U.S.C. 77a et seq.

³³ 17 CFR 230.506.

under the Securities Act, which is a safe harbor under the Securities Act exemption in Section 4(a)(2)³⁴ for offerings by an issuer not involving a public offering.³⁵ OCC represents that it intends to satisfy the conditions of Rule 506 of Regulation D as in effect at the time OCC relies upon the safe harbor. OTC Index Options will be available for purchase only by highly sophisticated investors that are both “eligible contract participants,” as defined in Section 3a(65) of the Act,³⁶ and “accredited investors,” as defined in Rule 501(a) under Regulation D.³⁷ Accordingly, Section 6(f) of Article XVII will establish that clearing members will be deemed to have made a number of representations and warranties to OCC in connection with their activities in OTC options each time they affirm a confirmed trade entered into an OTC Trade Source. These representations and warranties include, among others, that (i) the offer and sale of the OTC Index Option are exempt from the registration requirements of the Securities Act; (ii) in the case where the transaction is effected for the account of a customer, the customer is an ECP, as defined in Section 3a(65) of the Act; (iii) unless OCC notifies clearing members that the OTC Index Options will no longer be offered and sold pursuant to Rule 506 of Regulation D under the Securities Act, the clearing member has not offered or sold the OTC Index Options to any person that is not an “accredited investor”, as defined in Rule 501(a) under Regulation D and has otherwise complied with applicable conditions to the exemption set forth in Rule 506; and (vi) unless OCC notifies clearing members that such restriction no longer applies, the clearing

³⁴ 15 U.S.C. 77d(a)(2).

³⁵ The OCC submitted a rulemaking petition requesting exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act. See SEC File No. 4-644 (submitted January 13, 2012), available at <http://www.sec.gov/rules/petitions/2012/petn4-644.pdf>. This Order does not address the relief requested under the rulemaking petition, nor does it represent a position on the availability of any exemption under the Securities Act.

³⁶ 15 U.S.C. 77c(a)(65).

³⁷ 17 CFR 230.501.

member has not offered or sold the OTC Index Options by any form of general solicitation or general advertising that, at the time of such activities, is or may be deemed to constitute general solicitation or general advertising, as described in Rule 502(c) of Regulation D.

In addition, each clearing member would represent and warrant to OCC that the transaction has been effected by the clearing member in accordance with, the clearing member's participation in such transaction is in compliance with, and the clearing member will continue with respect to such transaction to comply with, all applicable laws and regulations including, without limitation, all applicable rules and regulations of the Commission, of FINRA, and any other regulatory or self-regulatory organization to which the clearing member is subject.

Chapter IV of the OCC's Rules sets forth the requirements for reporting of confirmed trades to OCC, and OCC Rule 401 thereunder governs reporting of transactions in listed options by participant Exchanges. OCC is proposing to add new Rule 404 to govern the details of reporting of confirmed trades in OTC options by an OTC Trade Source.

OCC has stated that positions in OTC options will generally be margined in the same manner as positions in listed options using STANS and pursuant to Chapter VI of the OCC's Rules. However, OCC proposes to amend its Rule 611 to establish different procedures for the segregation of long positions in OTC options for margining purposes.³⁸ Long positions in listed options are held in a clearing member's customers' account or firm non-lien account and by

³⁸ Specifically, Proposed OCC Rule 611(d) provides:

(d) In the case of a long position in OTC options carried in the securities customers' account of a Clearing Member and for which the Corporation has received a customer ID, to the extent permitted under all applicable laws and regulations (including the rules of the Financial Industry Regulatory Authority, Inc. and any other regulatory or self-regulatory organization to which the Clearing Member is subject), the Corporation shall automatically unsegregate such long position to the extent that the Corporation identifies a qualifying spread position where the short leg of the spread is carried under the same customer ID. The Clearing Member shall not carry a qualifying spread position for a customer unless the customer's margin requirement has been reduced in recognition of the spread, and the carrying of a qualifying spread position for the account of a customer shall constitute a representation to the Corporation that the customer's margin has been so reduced.

default are deemed to be “segregated,” meaning that they are not subject to OCC’s lien and are given no collateral value when determining the margin requirement in the account. Such positions may be unsegregated only when a clearing member instructs OCC to unsegregate a long position and represents to OCC that the long position is part of a spread transaction carried for a single customer whose margin requirement on the corresponding short position has been reduced in recognition of the spread. OCC will then unsegregate the long position and so reduce OCC’s margin requirement. However, in case of long positions in OTC options that are carried in a clearing member’s customers’ account and for which OCC has received a customer ID, OCC proposes that it will automatically unsegregate such long positions if OCC identifies a qualifying short position in OTC options carried under the same customer ID. Clearing members will not be required to give an affirmative instruction to OCC to unsegregate a long position in OTC options or make a separate representation regarding the spread transaction. Instead, by carrying a qualifying spread position in a customer account, clearing members are deemed to have represented to OCC that the customer’s margin has been reduced in recognition of the spread. Based on discussion with its clearing members, OCC’s understanding is that, in practice, broker-dealers reduce customers’ margin requirements to reflect spread positions. Therefore, OCC has stated that it believes automatic recognition of such spreads by OCC together with the deemed representation will greatly increase operational efficiency while providing equal assurance that long positions in OTC options will be unsegregated only if an identified customer will receive the benefit of the reduced margin required for spread transactions.

OCC Rule 1001 sets forth the amount of the contribution that each clearing member is required to make to the clearing fund. OCC proposes to amend OCC Rule 1001(c) so that, for purposes of calculating the daily average number of cleared contracts held by a clearing member

in open positions with OCC during a calendar month (which number is used in turn to determine the clearing member's contribution to the clearing fund), open positions in OTC options will be adjusted as needed to account for any differences between the multiplier or unit of trading with respect to OTC options relative to non-OTC options covering the same underlying index or interest so that OTC options and non-OTC options are given comparable weight in the computation.³⁹

In general, the rules in Chapter XI governing the suspension of a clearing member will apply equally to clearing members that transact in OTC options. OCC Rule 1104 provides broad authority for OCC to liquidate a suspended clearing member's margin and clearing fund deposits "in the most orderly manner practicable." OCC Rule 1106 provides similarly worded authority to close out open positions in options and certain other cleared contacts carried by a suspended clearing member. In 2011, the Commission approved an OCC rule change providing OCC the express authority to use a private auction as one of the means by which OCC may close out open positions and liquidate margin and clearing fund deposits of a suspended clearing member.⁴⁰ OCC has stated that it anticipates it will use this auction process for OTC options as well.

As an additional tool to ensure its ability to close out positions in OTC options promptly, OCC is proposing to amend OCC Rule 1106 to provide for an alternative auction procedure specifically applicable only to OTC index options and related positions hedging, or hedged by, OTC index options ("OTC Options Auction"). An OTC Options Auction would be used only in

³⁹ For example, the index multiplier applicable to OTC index options on the S&P 500 Index will be fixed at 1. In comparison, the index multiplier applicable to listed index options is 100.

⁴⁰ See Securities Exchange Act Release No. 34-65654 (October 28, 2011), 76 FR 68238 (November 3, 2011) (SR-OCC-2011-08). OCC subsequently filed and obtained approval for a rule change to provide for detailed procedures for the conduct of such an auction. See Securities Exchange Act Release No. 34-67443 (July 16, 2012), 77 FR 42784 (July 20, 2012) (SR-OCC-2012-11); Securities Exchange Act Release No. 34-67733 (August 27, 2012), 77 FR 53241 (August 31, 2012) (approving SR-OCC-2012-11).

unusual circumstances where OCC determines it is not feasible to close out open positions in OTC index options through the other means provided in OCC's Rules and By-Laws.⁴¹ The amendments to OCC Rule 1106 summarize the OTC Options Auction procedures and incorporate by reference the detailed procedures contained in a document entitled "OTC Options Auction Procedures," which will be posted on the OCC's website and otherwise made available to clearing members upon request of OCC.

OCC Rule 1106(e)(2)(C) clarifies that, in the event that the liquidation of a clearing member results in a deficiency that would otherwise result in a proportionate charge against the clearing fund contributions of other clearing members, each OTC Index Option Member (as defined below) that failed to purchase or assume its share of an auction portfolio will be the first to absorb the deficiency, through a "Priority Charge" against such clearing members' clearing fund contributions. The Priority Charge is a "first loss" mechanism, and is not intended to increase a clearing member's total maximum exposure to OCC.

Under the OTC Options Auction procedures, all clearing members authorized to clear transactions in OTC index options ("OTC Index Option Members"), other than the defaulting clearing member, will be required to participate in the OTC Options Auction by submitting competitive bids for all or a portion of the defaulting clearing member's OTC index option portfolio. Each such participant will be subject to a minimum participation level based on the participant's proportionate share of the total "risk margin" requirement posted by all OTC Index Options Members in the previous month for all positions (not limited to OTC option positions) held in accounts eligible to hold OTC options positions ("OTC Eligible Accounts"), after

⁴¹ OCC anticipates that it would propose to apply these procedures to other OTC derivatives that may be cleared by OCC in the future.

removing the defaulting clearing member.⁴² This method of calculating the minimum participation level in the OTC Options Auction results in all OTC Index Option Members being required to participate in the OTC Options Auction based on their clearing activity related to all positions in OTC Eligible Accounts. Required participation ensures that the OTC Options Auction will have sufficient participants authorized to clear transactions in OTC index options and that the most active clearing members in OTC index options will submit bids for the largest percentage of the auction portfolio, increasing the likelihood of the acquisition of OTC index options positions by clearing members with appropriate financial strength, risk management capabilities, and trading expertise.

Each participant may submit bids at varying quantities and varying prices, so long as the participant's bids equal or exceed its minimum participation level. A participant may use bids from non-OTC Index Options Members and non-clearing members in order to meet its minimum participation level, subject to certain OCC requirements including that it guarantee the performance of such third parties. Each bid will indicate what percentage of the auction portfolio the participant is bidding on and the amount of the bid. Bids will be stated in terms of a price for the entire auction portfolio, and may be either positive or negative. (Negative bids imply an auction portfolio that has a negative net asset value and indicate how much OCC would be required to pay the participant to assume the relevant percentage of the auction portfolio.) OCC will rank the submitted bids from best to worst and the auction portfolio will be allocated among the bidding participants accordingly until the auction portfolio is exhausted. The bid

⁴² This minimum participation level will be multiplied by 1.15 to calculate each participant's minimum bid size, such that the sum of all participants' bids will equal 115% of the auction portfolio, in order to increase the likelihood that the entire auction portfolio will be allocated to participants.

price that is sufficient to clear the entire auction portfolio will become the single price to be used for all winning bids, even if a participant's stated bid was better.

In order to provide a strong incentive to ensure competitive bidding by the OTC Index Option Members required to participate in an OTC Options Auction, OTC Index Options Members who fail to win their minimum participation in the auction will be subject to a potential priority charge against its clearing fund contribution. If all OTC Options Auction participants submit bids such that each receives an allocation of OTC index options positions equal to its minimum participation level, no priority charge will be made regardless of whether or not there is a liquidation shortfall. If a liquidation shortfall remains after any priority charges, or if no priority charges were required, OCC will then make a proportionate charge against the clearing fund contributions of all clearing members, including those that participated in the OTC Options Auction, in the usual manner pursuant to Section 5 of Article VIII of OCC's By-Laws.

In order to protect the estate of the suspended clearing member, OCC reserves some discretion in supervising the auction. In the event that the bid price that clears the entire auction portfolio is determined by OCC to be an outlier bid, OCC may choose as the winning bid a price that clears at least 80% of the auction portfolio. The remaining auction portfolio will then be re-auctioned as described above.

Impact of Clearing OTC Options on Other OCC-Cleared Products

An OTC option may have economic characteristics that are substantially similar or identical to the characteristics of options in series of listed options that OCC clears. While it is possible that in any given instance a market participant may elect to enter into an OTC S&P 500 Index Option in lieu of an economically similar listed product, OCC has stated that it does not believe that its clearing of OTC options will adversely affect the efficiency or liquidity of the

listed markets. According to OCC, the OTC options markets accommodate a variety of commercial and other needs of market participants, including the ability to customize the terms of transactions. While the availability of an OCC guarantee for OTC transactions in which the parties would otherwise be exposed to each other's creditworthiness may cause transactions that currently occur in the non-cleared OTC markets to migrate to the cleared-OTC markets, OCC does not believe it will cause significant migration from the listed markets to the cleared-OTC options markets. OCC has stated that the limitation of the OTC options markets to ECPs as well as the significant minimum transaction size and tenor requirements that are applicable to OTC options under the S&P License Agreement will limit their use appropriately and should help to ensure that there is no substantial migration from the listed markets to the OTC markets for this product. OCC has stated that the existing bilateral OTC options markets have existed for years alongside the listed options markets, and OCC believes that dealers in such bilateral options often use the listed markets to hedge positions taken in such bilateral options and other OTC derivatives.

III. Analysis of the Proposed Rule Change

Section 19(b)(2)(B) of the Act⁴³ directs the Commission to approve a proposed rule change of a SRO if the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing

⁴³ 15 U.S.C. 78s(b)(2)(B).

agency or for which it is responsible, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.⁴⁴

The Proposal contains provisions requiring clearing members to make representations necessary to ensure that OTC S&P 500 Index Options trades submitted to OCC for clearing involve only parties that are ECPs, were transacted in accordance with the conditions of Regulation D under the Securities Act, and are in compliance with other regulatory requirements. Consistent with the objective of OCC's safeguarding securities and funds within its control, such provisions help to ensure that OCC avoids clearing trades that are not in compliance with regulatory requirements.

The Proposal, as an initial step toward enabling OCC to provide central clearing for OTC S&P 500 Index Options, is consistent with the objective under Section 17A(b)(3)(A) of the Exchange Act of removing impediments to and perfecting the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. Clearing OTC options using the existing market infrastructure at OCC will allow market participants to retain the benefits of the features of OTC options on the S&P 500 Index, such as expiration dates and strike prices that can be customized to match market participants' unique needs, while reducing less favorable aspects such as counterparty risk. Clearing OTC S&P 500 Index Options may also allow for capital and market efficiencies because it extends the use of existing market infrastructure at OCC into a related new product category, and eliminates the need for individual counterparties to bilaterally exchange option premiums and collect and maintain margin on a

⁴⁴ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

daily basis. As such, cleared OTC S&P 500 Index Options should represent a safer and more efficient use of capital than their uncleared counterpart.

Additionally, clearing OTC S&P 500 Index Options should benefit the markets and regulators by centralizing and allowing for access to information about the OTC markets that has otherwise been unavailable.

The Proposal is consistent with the protection of customers and the public interest. Only OTC S&P 500 Index Options between counterparties that are ECPs and that meet the notional minimums and other OCC requirements, as well as the conditions of Rule 506 of Regulation D under the Securities Act and other regulatory requirements, will be eligible for clearing by OCC. In addition, customers are expected benefit from substituting their credit exposure to a clearing member with exposure to OCC itself.

Although customer positions in OTC S&P 500 Index Options will be carried in an omnibus account, OCC will use a “customer ID” to identify OTC S&P 500 Index Options positions of individual customers based on information provided by the clearing member. This should allow customers holding OTC S&P 500 Index Options to benefit from additional capital efficiencies resulting from OCC’s ability to unsegregate and offset long positions in OTC S&P 500 Index Options with qualifying short spread positions belonging to the same customer without compromising customer protections.⁴⁵

Finally, the Proposal is in the public interest in that it represents an initial step in enabling OCC to provide central clearing for OTC S&P 500 Index Options, which ultimately should help to reduce systemic risk. Allowing for the substitution of OCC as the buyer for every seller and

⁴⁵ See supra 38 and accompanying text.

the seller for every buyer should reduce bilateral credit risk, replacing it with the credit risk of the more robustly risk-managed central counterparty. Thus, clearing OTC S&P 500 Index Options could potentially decrease risk to end-users of such products and, as a result, decrease systemic risk overall.

The Proposal is designed to bring about the clearing of options in sizes that are not already traded in the listed (cleared) markets. While the availability of an OCC guarantee for OTC transactions in which the parties would otherwise be exposed to each other's credit risk could cause transactions that currently occur in the listed markets to migrate to less transparent cleared-OTC markets, OCC has indicated that it does not believe this will be the case for OTC S&P 500 Index Options. The limitation to ECPs, as well as the significant minimum transaction size and tenor requirements established as part of OCC's license with S&P, are intended to minimize and should limit migration of index options referencing the S&P 500 Index from the listed to the OTC markets. OTC S&P 500 Index Options will have a minimum notional value of \$500,000 times the value of the S&P 500 Index for initial maturities greater than four months but less than or equal to nine months, and a minimum notional value of at least \$100,000 times the value of the S&P 500 Index for initial maturities greater than nine months but less than three years after the date the trade was originally executed.⁴⁶ The Commission expects to monitor the clearing of OTC S&P 500 Index Options and the trading of equivalent options on listed markets to consider the possible impact the clearing of OTC S&P 500 Index Options may have on the listed markets.

OCC has stated, and the Commission notes, that the existing bilateral OTC options markets have existed for years alongside the listed options markets and believes that dealers in

⁴⁶ The value of the S&P 500 Index has hovered around 1,400 points in recent months; therefore, the current notional values of such minimum transaction amounts are approximately \$700,000,000 and \$140,000,000, respectively.

bilateral options often use the listed markets to hedge positions taken in bilateral options and other OTC derivatives.

The Commission believes OCC's clearing of OTC S&P 500 Index Options can lead to greater efficiency. Increases in efficiency may be achieved through lower transaction costs and appropriately risk-based margin reductions for clearing members and customers. Clearing of OTC S&P 500 Index Options will increase the volume of transactions cleared at OCC and should thereby reduce transaction costs.

Another improvement in efficiency will come from margin offsets, which will free up costly capital for other uses. In particular, in clearing OTC S&P 500 Index Options, clearing members would be expected to gain margin efficiencies by (i) clearing in the same account both OTC contracts and the hedges to those positions that are traded on the listed markets; and (ii) netting positions and/or obtaining margin offsets among OTC positions in the same account that would otherwise be spread across multiple accounts and OTC counterparties. Customers may gain margin efficiencies from OCC's ability to identify unsegregated long and short positions associated with the same customer ID. By moving OTC S&P 500 Index Options to OCC for clearing, OCC clearing members and their customers trading these products may be expected to benefit from reduced counterparty credit risk by introducing OCC as central counterparty.

Finally, central clearing of OTC derivatives will bring more transparency for regulators concerning a market that is presently more asymmetric in terms of information available to regulators than the exchange-traded derivatives market. The Commission believes that the introduction of OTC S&P 500 Index Options for clearing by OCC should result in OCC and the Commission having more complete information regarding options market activity and clearing

member positions overall. This should assist OCC in its risk management practices and the Commission in its supervisory and other regulatory efforts.

The impact of OCC's clearing of OTC S&P 500 Index Options on capital formation is not as direct as it is on efficiency and competition. Derivative contracts are risk management products used to hedge different risks, a practice that supports the investments that lead to capital formation. However, it is unclear whether the effects of the Proposal would be large enough to affect capital formation.

IV. Analysis of the Advance Notice

Standard of Review

A registered clearing agency that has been designated as a systemically important financial market utility ("FMU") by the Financial Stability Oversight Council ("FSOC")⁴⁷ must provide advance notice of all changes to its rules, procedures or operations that could, as defined in the rules of the supervisory agency, materially affect the nature or level of risk presented by the clearing agency.⁴⁸ Absent an extension or request for additional information, as discussed in greater detail below, the Commission is required to notify the clearing agency of any objection regarding the proposed change within the 60 day time frame established by Title VIII.⁴⁹ A designated clearing agency may not implement a change to which its supervisory agency has

⁴⁷ On July 18, 2012, the FSOC designated OCC as a systemically important FMU. See Financial Stability Oversight Council, 2012 Annual Report 145 (2012).

⁴⁸ 12 U.S.C. 5465(e). See also, Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b-4 and Form 19b-4 Applicable to All Self-Regulatory Organizations, Rel. No. 34-63557 (December 15, 2010), 75 FR 82490 (December 30, 2010) (Proposing Release); Rel. No. 34-67286 (June 28, 2012), 77 FR 41602 (July 13, 2012) (Adopting Release).

⁴⁹ 12 U.S.C. 5465(e)(1)(E).

objected;⁵⁰ however, the clearing agency is explicitly permitted to implement a change if it has not received an objection from its supervisory agency within the same 60 day time period.⁵¹

Although Title VIII does not specify a standard that the Commission must apply to determine whether to object to an advance notice, the Commission believes that the purpose of Title VIII, stated under Section 802(b),⁵² is relevant to the review of advance notices.

The stated purpose of Title VIII is to mitigate systemic risk in the financial system and promote financial stability, by (among other things) authorizing the Federal Reserve Board to promote uniform risk management standards for systemically important FMUs, and providing an enhanced role for the Federal Reserve Board in the supervising of risk management standards for systemically important FMUs.⁵³ Therefore, the Commission believes that when reviewing advance notices related for FMUs, the consistency of an advance notice with Title VIII may be judged principally by reference to the consistency of the advance notice with applicable rules of the Federal Reserve Board governing payment, clearing, and settlement activity of the designated FMU.⁵⁴

Section 805(a) requires the Federal Reserve Board and authorizes the Commission to prescribe standards for the payment, clearing, and settlement activities of FMUs designated as systemically important, in consultation with the supervisory agencies. Section 805(b) of the

⁵⁰ 12 U.S.C. 5465(e)(1)(F).

⁵¹ 12 U.S.C. 5465(e)(1)(G).

⁵² 12 U.S.C. 5461(b).

⁵³ 12 U.S.C. 5461(b).

⁵⁴ See Financial Market Utilities, 77 FR 45907 (Aug. 2, 2012).

Clearing Supervision Act⁵⁵ requires that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- Promote robust risk management and safety and soundness;
- Reduce systemic risks; and
- Support the stability of the broader financial system.

The relevant rules of the Federal Reserve Board prescribing risk management standards for designated FMUs by their terms do not apply to designated FMUs that are clearing agencies registered with the Commission.⁵⁶ Therefore, the Commission believes that the objectives and principles by which the Federal Reserve Board is authorized to promulgate such rules, as expressed in Section 805(b) of Title VIII,⁵⁷ are the appropriate standards at this time by which to evaluate advance notices.⁵⁸ Accordingly, the analysis set forth below is organized by reference to the stated objectives and principles in Section 805(b).

Promote Robust Risk Management and Safety and Soundness

By establishing the legal and operational framework for central clearing of OTC S&P 500 Index Options, the Proposal paves the way for shifting counterparty credit risk stemming from the over-the-counter trading of these products between bilateral counterparties to OCC. As a central counterparty that collects margin and mutualizes the risk of loss among its members in

⁵⁵ 12 U.S.C. 5464(b).

⁵⁶ 12 CFR 234.1(b).

⁵⁷ 12 U.S.C. 5464(b).

⁵⁸ The risk management standards that have been adopted by the Commission in Rule 17Ad-22 are substantially similar to those of the Federal Reserve Board applicable to designated FMUs other than those designated clearing organizations registered with the CFTC or clearing agencies registered with the Commission. See Clearing Agency Standards, Exchange Act Release No. 68080 (Oct. 22, 2012), 77 FR 66220 (November 2, 2012). To the extent such Commission standards are in effect at the time advance notices are reviewed in the future, the analysis of clearing agency rule filings under the Exchange Act would incorporate such standards directly.

the event of a member default, OCC is generally expected to be better situated to manage the risks associated with OTC S&P 500 Index Options than the original bilateral counterparties. By laying the groundwork for OCC's clearing of OTC S&P 500 Index Options, the Proposal is consistent with the objective of promoting safety and soundness.

With regard to the credit risk that OCC would face once it begins to clear OTC S&P 500 Index Options, changes in membership or additional trading in OTC S&P 500 Index Options that results from the OTC S&P 500 Index Options being available for clearing (i.e., is not listed traffic that is migrating to OCC) could increase OCC's total exposure to its members and hence credit risk to OCC. On the other hand, credit risk to OCC could decrease because, by clearing OTC S&P 500 Index Options, OCC would have better visibility into the OTC S&P 500 Index Options positions of its members and thereby be better able to monitor its members' financial conditions, thus improving its own credit risk management. OCC's financial risks are managed through a set of financial safeguards, including strict membership rules, the collection of high-quality collateral, and additional assessment powers that protect OCC in the event of a default by a member.

Reduce Systemic Risks

As discussed above, the Proposal would allow OCC to lay the groundwork for clearing OTC S&P 500 Index Options. Substitution of a central counterparty as a buyer to each seller and seller to each buyer is expected to reduce counterparty risk inherent in the markets for OTC derivatives, including OTC options. To the extent the Proposal eventually leads to eliminating bilateral credit risk in OTC S&P 500 Index Options and replacing it with the credit risk of OCC, the more robustly risk-managed central counterparty, the Proposal should decrease risk to end-users of such products and, as a result, should reduce systemic risk overall.

Support the Stability of the Broader Financial System

OCC is the only central counterparty currently clearing exchange-listed options; any prolonged interruption to these services likely would prevent the exchanges from trading until they were restored. As such, OCC plays a primary role in the trading and clearing of options in the United States. OCC also maintains relationships with financial market utilities, settlement banks, clearing members, credit facility lenders, custodians, exchanges, cross-margining entities, and pricing vendors.

OTC options directly indexed to the S&P 500 amounted to more than \$1.1 trillion as of 2010,⁵⁹ representing a market with a significant trading volume that currently does not reap any of the risk mitigation benefits of central clearing. The Commission believes that, by establishing the legal and operational framework for clearing OTC S&P 500 Index Options, the Proposal will pave the way for systemic risk reducing benefits and thus support the stability of the broader financial system.

⁵⁹ See *Nina Mehta, Nandini Sukumar, and Jeff Kearns, Over-The-Counter S&P 500 Index Options Will Shift to Clearinghouse in 2011, Sept. 20, 2010, <http://www.bloomberg.com/news/2010-09-20/over-the-counter-s-p-500-index-options-will-shift-to-clearinghouse-in-2011.html>.*

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁶⁰ that the Proposed Rule Change (File No. SR-OCC-2012-14), as Modified by Amendment No. 1 Thereto, be and hereby is APPROVED as of the date of this order, provided that OCC will not commence clearing of OTC S&P 500 Index Options until the Risk Management Proposal referenced above is filed by OCC, approved by the Commission, and implemented by OCC.

IT IS THEREFORE NOTICED, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,⁶¹ that the Commission DOES NOT OBJECT to proposed rule change (File No. AN-OCC-2012-01), as Modified by Amendment No. 1 Thereto, provided that OCC will not commence clearing of OTC S&P 500 Index Options until the Risk Management Proposal referenced above is filed by OCC, approved by the Commission, and implemented by OCC.

By the Commission.

Kevin M. O'Neill
Deputy Secretary

⁶⁰ 15 U.S.C. 78s(b)(2).

⁶¹ 12 U.S.C. 5465(e)(1)(I).