

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55152; File No. SR-OCC-2006-17)

January 23, 2007

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Definition of Fund Share and Options on Commodity Pool ETFs

I. Introduction

On September 21, 2006, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-OCC-2006-17 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).¹ Notice of the proposal was published in the Federal Register on November 28, 2006.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The rule change permits OCC to issue, clear, and settle options on equity interests issued by exchange-traded funds (“ETFs”) that trade directly or indirectly in commodity futures products and are therefore subject to regulation by the Commodity Futures Trading Commission (“CFTC”) as commodity pools. The American Stock Exchange recently filed a proposed rule change to list and trade options on (1) interests (“Interests”) issued by the DB Commodity Index Tracking Fund (“DBC Fund”), whose value is intended to track the performance of the “Deutsche Bank Liquid Commodity Index™ - Excess Return” and (2) units issued by the United

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 54784, (November 20, 2006), 71 FR 68871.

States Oil Fund, L.P. (“Oil Fund”), whose value is intended to track the spot price of West Texas Intermediate light, sweet crude oil delivered to Cushing, Oklahoma, less Oil Fund expenses.³

The interests and the units are freely transferable and may be bought and sold like any other ETF interest or other exchange-listed security. In addition to options on the Interests and the Units, there may be other similar options on ETFs regulated by the CFTC as commodity pools that OCC may be asked to issue, clear, and settle in the future.

The definition of “fund share” in Article I of OCC’s By-Laws is currently limited to shares in entities “holding portfolios or baskets of securities.” However, the Oil Fund invests directly in commodity futures contracts. Additionally, although as a technical matter the DBC Fund invests exclusively in securities, entities such as the DBC Fund that invest in the securities issued by a commodity pool are themselves deemed to be commodity pools because they represent an indirect investment in commodity futures contracts. OCC is therefore amending the definition of “fund share” in Article I of its By-Laws to specifically refer to interests in an entity that is a commodity pool. The definition is revised to make it clear that it includes feeder funds.

The proposed rule change will not be implemented until definitive copies of an appropriate supplement to the options disclosure document, Characteristics and Risks of Standardized Options, are available for distribution.

³ File No. SR-AMEX-2006-110. See Securities Exchange Act Release Nos. 54450 (September 14, 2006) 71 FR 55230 (September 21, 2006) [File No. SR-AMEX-2006-44] and 53582 (March 31, 2006) 71 FR 17510 (April 6, 2006) [File No. SR-AMEX-2005-127] for more detailed descriptions of the DBC Fund and of the Oil Fund.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.⁴ The purpose of the proposed rule change is to amend OCC's By-Laws so that OCC may clear and settle options on equity interests issued by ETFs that trade directly or indirectly in commodity futures products. Accordingly, the proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.⁵

⁴ 15 U.S.C. 78q-1(b)(3)(F).

⁵ 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).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-2006-17) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Florence E. Harmon
Deputy Secretary

⁶ 17 CFR 200.30-3(a)(12).