

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70753; File No. SR-OCC-2013-17)

October 24, 2013

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning Charters for the Board of Directors, the Membership/Risk Committee, the Audit Committee and the Performance Committee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on October 17, 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. 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

This proposed rule change concerns the charters of OCC’s Board of Directors (“Board Charter”) and the Membership/Risk Committee (“MRC Charter”), Audit Committee (“AC Charter”) and Performance Committee (“PC Charter”) of OCC’s Board of Directors (collectively, the “Committee Charters”).³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Board Charter was adopted by the Board of Directors on March 7, 2013. Prior versions existed of the MRC Charter, AC Charter and PC Charter. Each of these Committee Charters were reviewed and amended in 2012 with the MRC Charter being further amended in 2013. The 2013 amendment provided that a Public Director would Chair the Membership/Risk Committee. *See* Securities Exchange Act Release No. 70486 (September 24, 2013), 78 FR 59994 (September 30, 2013) (SR-OCC-2013-12). OCC has not previously submitted the Board Committee Charters as rule changes pursuant to Section 19(b) of the Exchange Act, 15 U.S.C. 78s(b), and Rule 19b-4 thereunder, 17 CFR 240.19b-4, but is now doing so in light of recently provided guidance by the Commission’s staff. Since none of these Charters have been the subject of prior rule filings, the key terms of

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

1. *Purpose of the Proposed Rule Change*

This proposed rule change concerns the Board, Membership/Risk Committee (“MRC”), Audit Committee (“AC”) and Performance Committee (“PC”) Charters.

Board of Directors Charter

The introduction of the Board Charter reconfirms that oversight of the management of the business and affairs of OCC is generally vested in the Board. OCC has not previously adopted a charter for its Board of Directors (“Board”) because OCC’s By-Laws and Rules provide the framework within which the respective responsibilities of OCC’s Board and management have been defined. The Board Charter does not impose any new responsibilities on the Board, but rather reflects the longstanding powers and duties of the Board, as well as underlying practices that have been developed to aid the Board in meeting its obligations. The Board’s adoption of a Charter at this time reflects a desire to increase the transparency of the Board’s oversight activities for parties outside of OCC, promote accountability, and to align with corporate governance best practices.

each Charter, as most recently approved by the Board, are described in more detail below in Item 3.

The Board Charter would also acknowledge certain parameters applicable to the membership in and organization of the Board, many of which are separately provided for in OCC's By-Laws.⁴ The Board Charter would reflect that the size and composition of the Board and qualification standards used in the selection of Directors would be consistent with the corresponding terms of the By-Laws. Actions concerning the election, resignation, and disqualification of Directors, and with respect to the tenure of service of each category of Director, would be required to be taken in accordance with the By-Laws. The Management Director⁵ and Exchange Directors would be required to be elected at each annual stockholder meeting and term limits and the absence of age limits for Directors would be addressed along with responsibilities of any Management or Member Vice Chairman.

The Board Charter would address certain aspects of the membership and organization of the Board with respect to meetings. The Board would meet a minimum of five times each year with special meetings called pursuant to the By-Laws.⁶ Expectations concerning participation in meetings by Directors would be set out and the

⁴ The Board Charter contains cross-references to such applicable provisions of OCC's By-Laws. For ease of readability, those cross-references have not been repeated in this Item 3.

⁵ Pursuant to a recent OCC rule change that has been approved by the Commission, but not yet implemented by OCC, the office of Chairman of OCC will be split into two offices, Executive Chairman and President. Each of the Executive Chairman and the President will be elected as Management Directors by the stockholders at each annual stockholder meeting. *See* File No. SR-OCC-2013-09, 78 FR 47449 (Aug. 5, 2013).

⁶ The Chairman would be permitted to ask OCC management or others to attend meetings and to provide pertinent information and the Board would be permitted to call executive sessions from which OCC management may be excluded. A majority of the Directors then in office, but not fewer than six Directors, would constitute a quorum for the conduct of business of the Board.

Chairman of the Board would be required to set the agenda in consultation with the President and the Secretary.

The Board Charter would provide that the Board is authorized to make inquiries as it deems appropriate in the execution of its duties and may confer with OCC management or employees.⁷ The Board would elect certain corporate officers annually, as provided for in the By-Laws.

The Board would be permitted to form such committees and subcommittees as it deems appropriate and delegate authority to committee members.⁸ Chairs of the Board committees would be determined in accordance with the terms of the applicable committee charter and any applicable provisions of the By-Laws. Committee assignments would be annually reviewed and approved by the Board subject to the By-Laws. Consistent with the requirements applicable to the Directors serving on the Board, Directors on Board committees would be expected to meet certain standards of preparation and participation.

As a more detailed expression of the Board's responsibility to act as a steward of OCC and ensure it has the critical capabilities to achieve its obligations in a safe, sound, efficient and prudential manner, the Board Charter would identify specific functions and responsibilities of the Board.⁹ The Board Charter would also note that certain functions

⁷ The Board Charter would provide that in discharging its oversight role the Board may hire specialists or rely on outside advisors or specialists and that it would have the authority to approve related fees and terms of retention.

⁸ The Board would be required to establish a written charter for each committee.

⁹ These include the responsibility to oversee: OCC's governance processes in a manner consistent with the Board Charter; processes and framework for assessing, managing and monitoring strategic, financial and operational risk; financial reporting, auditing, accounting and compliance processes; a system of internal controls; major capital expenditures; the development and design of

and responsibilities of the Board are set forth separately in the By-Laws¹⁰ and that each Director must act in good faith in the best interests of OCC and with due regard for the fiduciary responsibilities owed to OCC. Each Director would also be required to comply with certain conduct requirements.

Committee Charters

OCC has long maintained Charters for the MRC, AC and PC (each, a “Committee,” and collectively, the “Committees”). Below is a discussion of the provisions common across all the Committee Charters, followed by a discussion of each Committee Charter’s unique provisions.

The purpose of the Committee Charters is to describe the role each Committee plays in assisting the Board in fulfilling its responsibilities, as described in OCC’s By-Laws and Rules, as well as specify the policies and procedures governing the membership and organization, scope of authority, and specific functions and responsibilities of each Committee. The guidelines for the composition of each Committee, as well as the policies regarding its meeting schedules, quorum rules, minute-

employee compensation, incentive and benefit programs; and compensation of the Chairman and the President. The Board Charter would also specifically require the Board to approve and oversee OCC’s business strategies, monitor performance in delivering clearance and settlement services; foster OCC’s processes designed to ensure compliance with applicable laws and regulations and conduct business in a legal and ethical manner; assure management succession; and approve OCC’s annual budget and corporate plan.

¹⁰ The Charter would identify the Board’s responsibility under the By-Laws to approve applications for clearing membership and initial contributions to the clearing fund, OCC’s fee structure as well as rebates, discounts and refunds of clearing fees, and modifications of OCC’s By-Laws and Rules. The Board Charter would also identify the responsibility of the Board to determine disqualifications from Board service and fill vacancies, elect corporate officers, conduct hearings in connection with a denial or suspension of membership; and suspend a clearing member.

keeping and reporting requirements, are set forth in each charter and conform to applicable requirements specified in OCC's By-Laws and Rules. Each Committee, subject to the direction of the Board, is authorized to act on behalf of the Board with respect to any matter necessary or appropriate to accomplish the purpose and responsibilities set forth in its Charter, and is authorized to further delegate this authority to various subcommittees that it may form. Each Committee is authorized to make inquiries into any matter related to its respective purpose and responsibilities¹¹ and to confer with OCC's management and other employees as it deems appropriate. Additionally, the chair of each Committee would be authorized to act on behalf of its respective Committee in the case that immediate action is required, and it is impractical to convene such Committee.¹²

While each Committee Charter sets forth its own Committee composition requirements, each requires the inclusion of at least one Public Director and empowers the Board to remove or replace any Committee member at any time.

Each Committee Charter sets forth its own meeting schedule, though each empowers its respective chairman to call additional meetings as circumstances dictate. Each Committee Charter specifies that the agenda for each Committee's meetings would be established by the chairman of the Committee, or its designee, in consultation with the Secretary and OCC's management. A majority of the members would constitute a

¹¹ The Committee Charters further permit each Committee to hire specialists or rely on outside advisors or specialists to assist in carrying out the Committee's activities and confirm the Committee's authority to approve any related terms of retention and fees. The MRC and PC's authority under these provisions, however, is subject to Board approval.

¹² In such instances, the committee chair must, as soon as practicable, report any actions taken to its committee for its ratification.

quorum, and if the chairman is not present at a meeting the members who are present would designate a member to act as the chairman. All Committees are permitted to call executive sessions from which guests of such Committee may be excluded, and Committee members are permitted to participate in all meetings by conference telephone call or other means of communication that permit all meeting participants to hear each other.¹³

Each Committee Charter requires the relevant Committee to review its respective charter annually, with each charter submitted to OCC's Board for reapproval with any such changes that the relevant Committee deems advisable.

The discussion that follows summarizes the key charter provisions associated with the specific functions of the MRC, AC and PC, respectively.

The MRC Charter

The MRC Charter sets forth the MRC's purpose as overseeing OCC's policies and processes for identifying, addressing and reporting on strategic, operational and financial risk as well as OCC's enterprise risk management framework, among other duties, as well as performing those functions delegated to it in OCC's By-Laws and Rules.¹⁴ In addition, the MRC Charter clarifies that it is the MRC's responsibility to review periodic reports from OCC's enterprise risk management program and to review

¹³ Meeting minutes would be required to be kept and circulated with the Board.

¹⁴ This oversight by the MRC includes, but is not limited to, review of material policies and processes concerning: membership criteria and financial safeguards; member and other counterparty risk exposure assessments; liquidity requirements and maintenance of financial resources; risk modeling and assessments; and default management planning.

and assess that program annually, and that the MRC must provide a report to the Board of Directors on an annual basis that summarizes its activities during the past year.¹⁵

The MRC Charter requires the MRC to be composed of OCC's Chairman, Member Vice Chairman, and three or more other Member Directors appointed annually by the Board. The MRC is to be chaired by a Public Director. The MRC Charter requires the MRC to meet at least seven times a year.

The MRC Charter sets forth certain responsibilities and functions for the MRC, including but not limited to, the following: reviewing and approving or disapproving certain requests from clearing members, including proposals to become managed clearing members, to expand clearing activities to include additional account types or products, and to participate in stock loan programs; periodically reviewing OCC's initial and ongoing membership requirements and standards; periodically reviewing and recommending modifications to the inputs to OCC's margin formula, the methodologies behind margin and clearing fund requirements, the lists of approved classes of GSE debt securities for margin deposits, and the applicable haircuts for margin; modifying margin requirements; reviewing the adequacy and efficacy of and recommending modifications to OCC's contingency plans for clearing member failures; periodically reviewing clearing member surveillance standards, and reviewing and advising management with respect to such surveillance; periodically reviewing and assessing, and reviewing reports from, OCC's enterprise risk management program; and performing such other functions specified in OCC's By-Laws and Rules or delegated to it by the Board.

¹⁵ The MRC may make other reports to the Board of Directors as it deems appropriate.

The AC Charter

The AC Charter sets forth the purpose of the AC as assisting the Board in fulfilling its oversight responsibilities, by serving as an independent and objective party to oversee OCC's financial reporting process, system of internal control, and auditing, accounting and compliance environment and processes. The AC's purpose also includes overseeing the audit efforts of OCC's independent accountants and the internal audit department, as well as facilitating open communication among the independent accountants, financial and senior management, internal audit department, compliance department and the Board.

The AC Charter requires that the AC be composed of three or more directors appointed annually by the Board, each of whom must have a working familiarity with basic finance and accounting practices. At least one member, if possible, is required to have accounting or related financial management expertise. The Board is permitted to appoint a Chair of the AC, though in the absence of a Board appointment, the AC should appoint a Chairman by majority vote of the full AC membership. The AC Charter requires the AC to meet at least four times a year.

The AC Charter also assigns specific activities to the AC, including, but not limited to, the following: appointing, overseeing and reviewing OCC's independent accountants, and all fees paid to them; reviewing the annual audit plan, annual internal control attestation engagement, and the annual audited financial statements and related reports; approve any decision of OCC's management to appoint or replace the Chief Compliance Officer; reviewing and approving the Compliance Charter; assessing the performance and effectiveness of the compliance program; reviewing and evaluating any

annual compliance report that may as a matter of regulation be certified by the Chief Compliance Officer; reviewing remediation tracking performed by OCC's compliance department in connection with regulatory inspection reports and management's response; reviewing OCC's system to communicate and monitor compliance with and enforcement of OCC's Code of Conduct and the outcome of disciplinary actions taken by OCC; and establishing "whistleblower" procedures for the reporting by personnel of any concerns regarding unethical or illegal conduct.

The PC Charter

The PC Charter sets forth the PC's purpose as assisting the Board in oversight of OCC's overall performance in promptly and accurately delivering clearance, settlement and other designated industry services and in the accomplishment of other periodically-established corporate goals and objectives given OCC's systemically important status. The PC is also tasked with recommending compensation for certain OCC officers and reviewing and approving the structure and design of employee compensation, incentive and benefit programs.

The PC Charter requires that the PC be composed of OCC's Chairman, Member Vice Chairman and three or more other directors appointed annually by the Board, and that the PC be chaired by OCC's Member Vice Chairman. The PC Charter states that the PC will generally meet in advance of each regularly scheduled Board meeting.

The PC Charter describes the PC's role as one of oversight, including oversight of management's responsibility to identify, organize, and manage the operational, systems, technology, financial, human, and other resources necessary to support OCC's clearance, settlement and other business activities. The PC Charter sets forth additional functions

and responsibilities including, but not limited to, the following: regularly scheduled reviews of OCC's Corporate Plan, Budget, executive performance and compensation, employment contracts, changes in OCC's fee structure, and special financial matters; oversight of the administration of OCC's various incentive, bonus, deferred compensation, retirement and welfare plans; periodic assessment of succession plans for key executives; oversight of the compensation, benefits and perquisites of OCC's executive and management personnel, provided that decisions with respect to the individual compensation of the Chairman, Management Vice Chairman, and President shall be made in the form of recommendations to the Board; and any other activities that are consistent with the PC Charter, as the PC or the Board may deem necessary or appropriate.

2. *Statutory Basis for the Proposed Rule Change*

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act¹⁶ because the Board Charter and Committee Charters will help ensure that OCC's governance structure is designed to protect investors and the public interest. By creating a Board Charter and making certain amendments to the MRC Charter, AC Charter and PC Charter that clarify the duties and operations of the Board and its Committees OCC will have, as required under Rule 17Ad-22(d)(8),¹⁷ a clear and transparent governance structure that will fulfill the public interests requirements in Section 17A of the Act, support the objectives of OCC's owners and participants, and promote the effectiveness of OCC's risk management procedures.

¹⁶ 15 U.S.C. 78q-1(b)(3)(F).

¹⁷ 17 CFR 240.17Ad-22(d)(8).

(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.¹⁸ This proposed rule change will help ensure that OCC meets regulatory requirements that it has a clear and transparent governance structure, as well as clarify the organization, duties and operation of its Board and Committee, through the adoption of the Board Charter and updated Committee Charters. To the extent OCC's clearing members are affected by proposed rule change, OCC believes that, by clarifying and publishing the terms of the Board and Committee Charters in the public domain, all of its participants will have greater certainty concerning OCC's governance arrangements and that such clarification will facilitate the prompt and accurate settlement of securities transactions. Accordingly, OCC does not believe that the proposed rule will it impose any burden on competition that is not necessary or appropriate 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

¹⁸ 15 U.S.C. 78q-1(b)(3)(I).

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 e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2013-17 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.

All submissions should refer to File Number SR-OCC-2013-17. This file number should be included on the subject line if e-mail 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 website (<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 website viewing and printing in the Commission's Public Reference Room located at 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 website at

http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_13_17.pdf

f. 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-2013-17 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Kevin M. O'Neill
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).