

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83918; File No. SR-OCC-2017-021)

August 23, 2018

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 2, Concerning Updates to and Formalization of OCC's Recovery and Orderly Wind-Down Plan

I. INTRODUCTION

On December 8, 2017, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2017-021 ("Proposed Rule Change") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act")¹, and Rule 19b-4² thereunder to propose to formalize and update its Recovery and Orderly Wind-Down Plan ("RWD Plan").³ The Proposed Rule Change was published for comment in the Federal Register on December 26, 2017.⁴ On January 25, 2018, the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice infra note 4, 82 FR 61072.

⁴ Securities Exchange Act Release No. 82352 (Dec. 19, 2017), 82 FR 61072 (Dec. 26, 2017) (File No. SR-OCC-2017-021) ("Notice"). On December 8, 2017, OCC also filed a related advance notice (SR-OCC-2017-810) ("Advance Notice") with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b-4(n)(1)(i) under the Exchange Act. 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b-4(n)(1)(i), respectively. The Advance Notice was published in the Federal Register on January 23, 2018. Securities Exchange Act Release No. 82514 (Jan. 17, 2017), 83 FR 3224 (Jan. 23, 2018) (SR-OCC-2017-810).

The Financial Stability Oversight Council designated OCC a systemically important financial market utility on July 18, 2012. See Financial Stability Oversight Council 2012 Annual Report, Appendix A, available at <http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf>. Therefore, OCC is required to comply with the Payment, Clearing and Settlement Supervision Act and file advance notices with the Commission. See 12 U.S.C. 5465(e).

Commission designated a longer period of time for Commission action on the Proposed Rule Change.⁵ On March 22, 2018, the Commission published an order to institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁶

On July 11, 2018, OCC filed Partial Amendment No. 1 to the Proposed Rule Change.⁷ On July 13, 2018, OCC filed Partial Amendment No. 2 to the Proposed Rule Change.⁸ Notice of Partial Amendments No. 1 and 2 to the Proposed Rule Change was published for public comment in the Federal Register on August 2, 2018,⁹ and the Commission has received no comments in response. This order approves the Proposed Rule Change as modified by Partial Amendment No. 2 (“Amended Proposed Rule Change”).

⁵ Securities Exchange Act Release No. 82586 (Jan. 25, 2018), 83 FR 4527 (Jan. 31, 2018) (File No. SR-OCC-2017-021).

⁶ Securities Exchange Act Release No. 82927 (Mar. 22, 2018), 83 FR 13176 (Mar. 27, 2018) (File No. SR-OCC-2017-021).

⁷ In Partial Amendment No. 1, OCC made three modifications to the Notice: (1) removal of sections of the RWD Plan concerning OCC’s proposed authority to require cash settlement of certain physically delivered options and single stock futures; (2) updating the list of OCC’s Critical Support Functions; and (3) making three changes to the RWD Plan to conform to a change contemporaneously proposed in Partial Amendment No. 2 to OCC filing SR-OCC-2017-020 concerning enhanced and new tools for recovery scenarios.

⁸ Partial Amendment No. 2 superseded and replaced Partial Amendment No. 1 in its entirety, due to technical defects in Partial Amendment No. 1.

⁹ See Securities Exchange Act Release No. 83732 (Jul. 27, 2018), 83 FR 37864 (Aug. 2, 2018) (“Notice of Amendment”).

II. DESCRIPTION OF THE AMENDED PROPOSED RULE CHANGE¹⁰

OCC's proposal would formalize and update its RWD Plan. The purpose of the RWD Plan is to: (i) demonstrate that OCC has considered the scenarios which may potentially prevent it from being able to provide the services OCC determined to be critical as a going-concern; (ii) provide appropriate plans for OCC's recovery or orderly wind-down based on the results of such consideration; and (iii) impart to relevant authorities the information reasonably anticipated to be necessary for purposes of recovery and orderly wind-down planning.

The RWD Plan would identify the services provided by OCC that OCC has determined to be critical, and it would set forth five qualitative events that could trigger a recovery scenario and six qualitative events that could trigger an orderly wind-down. It would also address six scenarios that describe OCC's possible responses to series of stresses. The RWD Plan would also include an overview designed to provide information that OCC believes would be essential to relevant authorities for purposes of recovery and orderly wind-down planning, as well as to provide readers of the Plan with necessary context for subsequent discussion and analysis. The overview would also include a detailed description of OCC's business, summarizing the role OCC has in the options market as well as the services and products it provides to its clearing members and market participants. The RWD Plan would identify fourteen internal support functions at OCC and provide a brief description of the activities performed by each support function. Similar to the information regarding OCC's business, this information is designed to inform the relevant authorities for orderly wind-down planning and as necessary context for understanding other elements of the RWD Plan.

¹⁰ Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at <https://www.theocc.com/about/publications/bylaws.jsp>.

A. Designating Critical Services and Critical Support Functions

The RWD Plan would define the terms “Critical Services” and “Critical Support Functions.” Specifically, a Critical Service would be a service provided by OCC that, if interrupted, would likely have a material negative impact on participants or significant third parties, give rise to contagion, or undermine the general confidence of markets that OCC serves. A Critical Support Function would be a function within OCC that must continue in some capacity for OCC to be able to continue providing its Critical Services.

The RWD Plan would describe the framework that OCC uses to determine whether a service is critical. This framework includes four criteria to determine if failure or discontinuation of a particular service would impact financial and operational capabilities of OCC’s clearing members, other FMUs, or the broader financial system: (1) market dominance, (2) substitutability, (3) interconnectedness, and (4) barriers to entry. The current set of services designated as Critical Services under the RWD Plan is based on the analysis of these measureable indicators and subsequent internal discussion at OCC. The Critical Services currently include, but are not limited to, clearance services for listed options and clearance services for futures.

B. Recovery Plan

The RWD Plan would include plans for recovery from scenarios that could prevent OCC from providing Critical Services.¹¹ After discussing particular scenarios, the RWD Plan

¹¹ For the purposes of the RWD Plan, OCC defines “recovery” as “the actions of [a financial market utility], consistent with its rules, procedures, and other ex-ante contractual arrangements, to address any uncovered credit loss, liquidity shortfall, capital inadequacy, or business, operational or other structural weakness, including the replenishment of any depleted pre-funded financial resources and liquidity arrangements, as necessary to maintain the [financial market utility’s] viability as a going concern.”

identifies the tools that OCC could use as warranted in such scenarios. These tools fall into two categories: (1) Enhanced Risk Management Tools, and (2) Recovery Tools. An Enhanced Risk Management Tool is a tool that is designed to supplement OCC's existing processes and other existing tools in scenarios where OCC faces heightened stresses, while a Recovery Tool is a tool that is generally limited to a scenario in which a specific trigger has occurred. In its RWD Plan, OCC would define a set of five such qualitative trigger events ("Recovery Trigger Events").

The sequence and timing of the deployment of each Recovery Tool is more structured and lacks the flexibility inherent in the sequence and timing for use of the Enhanced Risk Management Tools. For each tool, the RWD Plan provides an overview of the tool, and, as appropriate, a discussion of its implementation with an estimated time frame for use of the tool, key risks associated with use of the tool, and the expected impact and incentives of using the tool.

1. Enhanced Risk Management Tools

OCC stated that the Enhanced Risk Management Tools would be used prophylactically in an effort to prevent the occurrence of a Recovery Trigger Event and would not be limited to recovery. OCC would not anticipate applying a rigid order or timing for the deployment of the Enhanced Risk Management Tools. The RWD Plan would include five Enhanced Risk Management Tools: (1) Use of Current/Retained Earnings; (2) Minimum Clearing Fund Cash Contribution; (3) Borrowing Against Clearing Fund; (4) Credit Facility; and (5) Non-Bank Facility.

Use of Current/Retained Earnings. Under its By-Laws, OCC may use current and/or retained earnings to discharge a loss that would be chargeable against the Clearing Fund, but would require unanimous consent from the holders of OCC's Class A and Class B common

stock. The RWD Plan acknowledges that the utility of this tool is limited by the requirement for shareholder consent and that OCC's retained earnings presently amount to a small fraction of OCC's existing prefunded Clearing Fund resources. OCC stated that, given this amount, the maximum utility of this tool may be realized in specific circumstances at either the beginning of OCC's loss waterfall or toward the end of OCC's loss waterfall, where it would be sufficient to fully extinguish liabilities without triggering the use of another tool.

Minimum Clearing Fund Cash Contribution. Under its current rules, OCC Clearing Members collectively contribute \$3 billion in cash to OCC's Clearing Fund.¹² In addition, OCC may, in certain limited circumstances, increase the minimum cash requirement up to the then-minimum size of the Clearing Fund.¹³ The RWD Plan would acknowledge that increasing the minimum cash requirement would require preparation of OCC documentation that considers the projected liquidity demands for successful management of a defaulted Clearing Member.

Borrowing Against Clearing Fund. OCC has the authority to borrow against the Clearing Fund in three circumstances: (1) to meet obligations arising out of the default or suspension of a Clearing Member or any action taken by OCC under Chapter XI of its rules pertaining to the suspension of a clearing member; (2) to borrow or otherwise obtain funds from third parties in lieu of immediately charging the Clearing Fund for a loss that is reimbursable out of the Clearing Fund; and (3) to meet liquidity needs for same-day settlement as a result of the failure of any

¹² See OCC By-Laws, Art. VIII, Section 3(a)(i). The Commission recently approved a proposal by OCC that, after implementation, would move this section of the OCC By-Laws to OCC Rule 1002(a)(i). See Securities Exchange Act Release No. 83735 (Jul. 27, 2018), 83 FR 37855, 37859 (Aug. 2, 2018) (SR-OCC-2018-008) ("Order Approving Proposed Rule Change, as Modified by Amendments No. 1 and 2, Related to OCC's Stress Testing and Clearing Fund Methodology").

¹³ See OCC By-Laws, Art. VIII, Section 3(a)(i).

bank or securities or commodities clearing organization to achieve daily settlement.¹⁴ The RWD Plan would acknowledge that any borrowing would require preparation of OCC documentation in accordance with OCC procedures. Further, the RWD Plan would recognize that the availability of this tool in advance of a heightened stress scenario would be unknown because OCC's primary liquidity facilities could already be fully or partially utilized.

Credit Facility and Non-Bank Liquidity Facility. OCC maintains a \$2 billion dollar senior secured 364-day revolving credit facility with a syndicate of lenders for the purpose of providing OCC with liquidity to meet settlement obligations as a central counterparty. The RWD Plan would recognize that an inherent risk of the credit facility is that a portion of the syndicate may not provide funds in timely response to OCC's request. OCC also maintains a \$1 billion dollar secured non-bank liquidity facility for the purpose of providing OCC with a non-bank liquidity resource to meet settlement obligations as a central counterparty. Similar to the risk associated with the credit facility, the RWD Plan would recognize the risk that OCC's counterparty may not timely execute the transaction under the non-bank liquidity facility.

2. Recovery Tools

Under the RWD Plan, Recovery Tools would be different from Enhanced Risk Management Tools because OCC's use of a Recovery Tool is generally limited to a scenario in which a Recovery Trigger has occurred. The RWD Plan would identify five Recovery Tools, the last four of which would generally be deployed in the order they are described here:

(1) Replenishment Capital; (2) Assessment Powers; (3) Voluntary Payments; (4) Voluntary Tear-

¹⁴ See OCC By-Laws, Art. VIII, Section 5(e). The Commission recently approved a proposal by OCC that, after implementation, would move this section of the OCC By-Laws to OCC Rule 1006(f). See Order Approving Proposed Rule Change Related to OCC Stress Testing and Clearing Fund Methodology, supra note 12, 83 FR at 37859.

Up; and (5) Partial Tear-Up.¹⁵ As noted above, the sequence and timing of deployment of the Recovery Tools would be more structured than the sequence and timing of the use of Enhanced Risk Management Tools.

Replenishment Capital. OCC holds capital contributed by its stockholder exchanges who have committed to replenish OCC's capital if it falls below a certain threshold.¹⁶ The RWD Plan would include the replenishment of capital by OCC's stockholder exchanges as a recovery tool.

Assessment Powers. Under OCC's rules, OCC has authority to assess a non-defaulting Clearing Member during any cooling-off period for an amount equal to 200 percent of the Clearing Member's then-required contribution to the Clearing Fund.¹⁷ Following the end of the cooling-off period, each remaining Clearing Member must replenish the Clearing Fund in the amount necessary to meet its then-required contribution.¹⁸ The RWD Plan would recognize the risk that the use of assessment powers may incentivize Clearing Members to withdraw from

¹⁵ For a more detailed description of the Recovery Tools numbered (2) through (5) here, please see Securities Exchange Act Release No. 83916 (Aug. 23, 2018) (SR-OCC-2017-020).

¹⁶ The requirement to replenish OCC's capital was adopted as part of OCC's plan to raise and maintain capital at a specified level ("Capital Plan"). See Securities Exchange Act Release No. 77112 (Feb. 11, 2016), 81 FR 8294 (Feb. 18, 2016) (SR-OCC-2015-02). The Capital Plan was later subject to judicial review by the U.S. Court of Appeals for the District of Columbia Circuit, which remanded for the Commission to further analyze whether the Capital Plan is consistent with the Exchange Act. Susquehanna Int'l Grp., LLP v. SEC, 866 F.3d 442 (D.C. Cir. 2017). The Commission's review of the Capital Plan on remand is ongoing, and the Capital Plan remains in effect during this ongoing review.

¹⁷ The cooling-off period is the period following a proportionate charge assessed by OCC against the Clearing Members' Clearing Fund contributions. It is a minimum of fifteen days, but could extend to as much as twenty days from the date of the proportionate charge based on intervening events.

¹⁸ A Clearing Member may avoid liability for replenishment by terminating its membership in OCC prior to the end of the cooling-off period.

membership in OCC to avoid replenishment, and that such withdrawals would limit the resources available to OCC for future assessments.

Voluntary Payments. OCC's rules provide a framework by which OCC can receive voluntary payments in response to a Clearing Member default. Use of this tool is permissible only where OCC has determined that it may not have sufficient resources to satisfy its obligations and liabilities arising out of the default. The RWD Plan would describe the processes involved in calling for and receiving voluntary payments, including the issuance of a notice to Clearing Members. The RWD Plan would recognize the risk that Clearing Members would be unwilling or unable to make voluntary payments. As an incentive for Clearing Members to provide voluntary payments, a non-defaulting Clearing Member who made a voluntary payment would receive priority in reimbursement from amounts recovered by OCC from the estate of a defaulting Clearing Member.

Voluntary Tear-up. OCC's rules provide a framework by which non-defaulting Clearing Members and customers could be permitted to voluntarily extinguish (i.e., voluntarily tear-up) open positions in response to a Clearing Member default. Voluntary Tear-up is permissible only where OCC has determined that it may not have sufficient resources to satisfy its obligations and liabilities arising out of the default. The RWD Plan would contemplate that OCC would initiate any tear-up process after the market close on the day that OCC determines it may have insufficient resources. The RWD Plan would further anticipate that OCC would publish notice of tear-up no later than the following morning (prior to the market open), and that positions would be extinguished following the market close. The RWD Plan would also recognize the risk that Clearing Members would be unwilling or unable to participate in the voluntary tear-up process. A non-defaulting Clearing Member that faced losses, costs, or expenses in

reestablishing voluntarily torn-up positions could receive compensation from amounts recovered by OCC from the estate of a defaulting Clearing Member ahead of other Clearing Members that faced such losses, costs, or expenses after reestablishing torn up positions.

Partial Tear-up. OCC's rules provide a framework by which OCC could extinguish the remaining open positions of a defaulted Clearing Member or its customers (i.e., Partial Tear-up) in response to a Clearing Member default. The RWD Plan would anticipate that the Partial Tear-up process would be intertwined with the Voluntary Tear-up process described above. The RWD Plan also would contemplate the compensation of Clearing Members facing losses, costs, or expenses after reestablishing torn up positions from Clearing Fund contributions.

The RWD Plan also would provide a mapping of Enhanced Risk Management Tools and Recovery Tools to different types of risk exposures. Such risk exposures include: (1) uncovered credit losses; (2) liquidity shortfalls; (3) replenishment of financial resource; (4) losses related to business, operational, or other structural weaknesses; and (5) re-establishment of a matched book. The RWD Plan discusses how each tool would apply to these risk categories and would reference the stress scenarios contemplated by the RWD Plan.

The RWD Plan would outline an escalation process for the occurrence of each Recovery Trigger.¹⁹ Under the RWD Plan, OCC's Enterprise Risk Management and Financial Risk Management groups would be responsible for recommending which, if any, of the tools described above should be used in a given situation. Further, OCC's Chief Executive Officer and Executive Chairman would be responsible for approval of such recommendations, and OCC's Chief Risk Officer and Management Committee would be responsible for overseeing

¹⁹ The RWD Plan also would discuss notification of regulators, including the Commission, the U.S. Commodity Futures Trading Commission, and the Federal Deposit Insurance Corporation, in response to the occurrence of a Recovery Trigger.

deployment of such tools. Finally, OCC's Board and the Risk Committee of the Board would be responsible for generally overseeing OCC's recovery efforts.

C. Orderly Wind-Down Plan

The RWD Plan would also include OCC's wind-down plan and include scenarios that could prevent OCC from being able to provide Critical Services as a going-concern. OCC would identify its wind-down objective as the pursuit of financial stability and ensuring the continuity of critical functions. The RWD Plan would provide OCC's assumptions concerning the wind-down process regarding: (1) duration of wind-down; (2) cost of wind-down; (3) OCC's capitalization; and (4) the maintenance of Critical Services and Critical Support Functions. It also would identify six wind-down triggers ("WDP Trigger Events"), the occurrence of which could jeopardize the viability of OCC's recovery. Under the RWD Plan, the occurrence of a WDP Trigger Event would necessitate notification of regulators, including the Commission, the U.S. Commodity Futures Trading Commission, and the Federal Deposit Insurance Corporation, as well as internal notifications to OCC senior management.

The RWD Plan would reference critical interconnections and key agreements for consideration in the context of wind-down. The RWD Plan also would discuss OCC's key actions in wind-down including the: (1) decision by OCC's Board to initiate wind-down; (2) institution of heightened clearing member requirements; (3) imposition of heightened capital requirements for clearing members; (4) imposition of increased margin requirements; (5) cessation of investment by OCC; (6) institution of new operational practices; and (7) targeted reductions in force.

The RWD Plan also would identify transactions that could be entered into to accomplish OCC's wind-down objectives: (1) stock transactions; (2) merger transactions; and (3) asset

transactions. The RWD Plan focuses discussion of wind-down transactions on issues including, but not limited to, governance and regulatory issues. The goal of any such transaction would be to transfer ownership of OCC in a manner that ensures the continuation of OCC's critical services; however, the RWD Plan also would contemplate the cessation of Critical Services through OCC's existing close-out netting rules.²⁰

D. Governance

The RWD Plan would also memorialize the governance processes for maintenance, review, and approval of the RWD Plan. Under the RWD Plan, all changes would originate in a recommendation from OCC's RWD Working Group. Changes would go through a series of consecutive rounds of review and approval by OCC's Management Committee, the Risk Committee of OCC's Board of Directors, and the full Board of Directors, which would have final approval authority.

III. DISCUSSION AND COMMISSION FINDINGS

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.²¹ After carefully considering the Amended Proposed Rule Change, the Commission believes the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the Amended Proposed Rule Change is consistent with Section

²⁰ See also OCC By-Laws, Art. VI, Section 27.

²¹ 15 U.S.C. 78s(b)(2)(C).

17A(b)(3)(F) of the Exchange Act²² and Rules 17Ad-22(e)(2)(i), (iii), and (v), 17Ad-22(e)(3)(ii), and 17Ad-22(e)(15)(i) thereunder.²³

A. Consistency with Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires that the rules of a clearing agency be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest.²⁴

As described above, the RWD Plan would specify the Enhanced Risk Management Tools and Recovery Tools available to OCC in recovery and in an orderly wind-down, as well as the governance framework applicable to the use of such tools. The RWD Plan would analyze the use of the Enhanced Risk Management Tools and Recovery Tools, the incentives created by such tools, and the risks associated with using such tools. The Commission believes that by specifying the tools that OCC would take in either a recovery or a wind-down, the RWD Plan would enhance OCC's ability to address circumstances specific to an extreme stress event, thereby increasing the likelihood that OCC could execute a successful recovery or orderly wind-down in such an event. In increasing the likelihood that OCC could execute a successful recovery or orderly wind-down, the RWD Plan would enhance OCC's ability to maintain continuity of its critical services (including clearance and settlement services) during, through, and following periods of extreme stress giving rise to the need for recovery, thereby promoting

²² 15 U.S.C. 78q-1(b)(3)(F).

²³ 17 CFR 240.17Ad-22(e)(2)(i), (iii), and (v); (e)(3)(ii); (e)(15)(i).

²⁴ 15 U.S.C. 78q-1(b)(3)(F).

the prompt and accurate clearance and settlement of securities transactions. The Commission also believes that the rules proposed in the RWD Plan are designed to assure the safeguarding of securities or funds in the custody or control of OCC by reducing the likelihood of a disorderly or unsuccessful recovery or wind-down, which could otherwise disrupt access to such securities or funds.

Further, the Commission believes that the RWD Plan is designed, in general, to protect investors and the public interest by establishing a plan to effectuate an orderly wind-down. The RWD Plan's governance processes and regulatory notice provisions could facilitate either the orderly transfer of OCC's Critical Services to another entity or the orderly close-out of positions. Providing additional information regarding the potential orderly transfer of services or close-out of positions would benefit Clearing Members and their customers by providing greater transparency and certainty regarding the potential disposition or treatment of their positions and assets at OCC, thereby benefiting market participants more broadly.

Therefore, the Commission believes that the Amended Proposed Rule Change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds in OCC's custody and control, and, in general, protect investors and the public interest, consistent with the Section 17A(b)(3)(F) of the Act.²⁵

B. Consistency with Rules 17Ad-22(e)(2)(i), (iii), and (v) Under the Exchange Act

Rules 17Ad-22(e)(2)(i), (iii), and (v) require that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent, that support the public interest requirements in

²⁵ 15 U.S.C. 78q-1(b)(3)(F).

Section 17A of the Exchange Act applicable to clearing agencies, and the objectives of owners and participants, and that specify clear and direct lines of responsibility.²⁶

The RWD Plan would outline an escalation process for the occurrence of a Recovery Trigger Event, which would provide a governance framework for the use and functioning of the Enhanced Risk Management Tools and Recovery Tools in addition to those specified elsewhere in OCC's rules. It would also identify the internal notification requirements that would apply to WDP Trigger Events and establish the role of the Board in determining whether to enter into a wind-down or take other key actions, consistent with the governance specified elsewhere in OCC's rules.

Moreover, the RWD Plan would identify the internal governance process for the approval of subsequent changes to OCC's RWD Plan. The RWD Plan would also specify the process OCC would take to receive input from various parties at OCC, including management and the Board.

Taken together, the Commission believes that these lines of control could contribute to establishing, implementing, maintain and enforcing clear and transparent governance arrangements that support the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies, and the objectives of owners and participants.

Therefore, the Commission believes that the proposed changes are consistent with Rules 17Ad-22(e)(2)(i), (iii), and (v).²⁷

²⁶ 17 CFR 240.17Ad-22(e)(2)(i), (iii), and (v).

²⁷ Id.

C. Consistency with Rule 17Ad-22(e)(3)(ii) Under the Exchange Act

Rule 17Ad-22(e)(3)(ii) requires that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by OCC, which includes plans for the recovery and orderly wind-down of OCC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.²⁸

The Commission believes that the information the RWD Plan would provide about the OCC's recovery tools would enhance OCC's ability to recover from credit losses, liquidity shortfalls, general business risk losses, or other losses, consistent with Rule 17Ad-22(e)(3)(ii).²⁹ Specifically, the information from the RWD Plan would enable OCC to prepare in advance for the use of such tools, which would in turn enhance OCC's ability to use such tools effectively to carry out a successful recovery. In addition, by establishing a single source of information about, and steps needed to effectuate, a recovery of OCC, the RWD Plan would allow OCC personnel to effectuate a recovery in a consistent and coordinated fashion, and would thereby increase the likelihood of a successful recovery. Moreover, by identifying and assessing available Enhanced Risk Management Tools and Recovery Tools, the Commission believes that the RWD Plan would enhance OCC's ability to use such tools effectively to bring about a recovery by

²⁸ 17 CFR 240.17Ad-22(e)(3)(ii).

²⁹ Id.

identifying in advance which tools may be most effective for different situations or needs, consistent with Rule 17Ad-22(e)(3)(ii).³⁰

Similarly, in providing detailed information about the assumptions, actions, and objectives related to triggering and implementing the wind-down portion of the RWD Plan, discussed in more detail above, the Commission believes that the RWD Plan would enhance OCC's ability to effectuate an orderly wind-down, consistent with Rule 17Ad-22(e)(3)(ii).³¹ Specifically, by setting out in advance the potential events that could cause OCC to trigger, and transactions by which OCC would effectuate, a wind-down, the RWD Plan would enable OCC to prepare in advance for a wind-down, which the Commission believes would enhance OCC's ability to use the RWD Plan effectively to carry-out an orderly wind-down. In addition, by establishing a single source of information about, and steps needed to effectuate, a wind-down of OCC, the Commission believes the RWD Plan would allow OCC personnel to effectuate a wind-down in a consistent and coordinated fashion, and would thereby increase the likelihood of an orderly wind-down. Finally, the RWD Plan would identify the legal basis for OCC's actions with respect to a potential wind-down, including relevant citations to provisions of the rule books of its various clearing services and contractual agreements, which the Commission believes would further facilitate an orderly wind-down process by providing OCC with a single source of information and steps needed for a wind-down, consistent with Rule 17Ad-22(e)(3)(ii).³²

³⁰ Id.

³¹ Id.

³² Id.

Therefore, the Commission believes that the proposed changes to adopt plans for the recovery and orderly wind-down of OCC are consistent with Rule 17Ad-22(e)(3)(ii).³³

D. Consistency with Rules 17Ad-22(e)(15)(i) Under the Exchange Act

Rule 17Ad-22(e)(15)(i) requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that OCC can continue operations and services as a going concern if those losses materialize, including by determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken.³⁴

OCC's RWD Plan would estimate costs related to a wind-down based on a series of assumptions laid out in the RWD Plan. These assumptions include duration of the wind-down process, OCC's capitalization through the wind-down process, the maintenance of Critical Services and Critical Support Functions, and the retention of personnel and contractual relationships. OCC also provided information regarding its assumption about the cost of the wind-down process. Further, the RWD Plan identifies potential transactions that could be effected to accomplish the objectives of wind-down with the ultimate goal of transferring ownership of OCC itself by the consummation or a consensual sale or similar transaction, in a manner that ensures the continuation of OCC's Critical Services. The Commission considered the assumptions that the RWD Plan

³³ Id.

³⁴ 17 CFR 240.17Ad-22(e)(15)(i).

makes regarding wind-down as well as the potential transactions in which OCC might engage in the event of a wind-down. The Commission also considered the estimated cost of wind-down noted in the RWD Plan in light of OCC's rules regarding the maintenance of certain capital levels and qualifying liquid resources. The Commission believes that the RWD Plan, which indicates the cost at which OCC could effectuate an orderly wind-down, i.e., at a lower cost than the amount of its liquid resources is consistent with Rule 17Ad-22(e)(15)(i).³⁵

Therefore, the Commission believes that the proposed changes that would determine costs associated with an orderly wind-down and that would further ensure that OCC holds liquid net assets greater than these costs, are consistent with Rule 17Ad-22(e)(15)(i).³⁶

³⁵ Id.

³⁶ Id.

IV. CONCLUSION

On the basis of the foregoing, the Commission finds that the Amended Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, with the requirements of Section 17A of the Exchange Act³⁷ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,³⁸ that the Proposed Rule Change (SR-OCC-2017-021), as modified by Partial Amendment No. 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁹

Eduardo A. Aleman
Assistant Secretary

³⁷ In approving this Proposed Rule Change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁸ 15 U.S.C. 78s(b)(2).

³⁹ 17 CFR 200.30-3(a)(12).