

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-84473; File No. SR-OCC-2018-012)

October 23, 2018

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Related to The Options Clearing Corporation's Board of Directors and Board Committee Charters

**I. INTRODUCTION**

On August 24, 2018, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2018-012 ("Proposed Rule Change") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder to make changes to OCC's (1) Audit Committee Charter, (2) Compensation and Performance Committee Charter, (3) Governance and Nominating Committee Charter, (4) Risk Committee Charter, (5) Technology Committee Charter and (6) Board of Directors Charter. The Proposed Rule Change was published for comment in the Federal Register on September 10, 2018,<sup>3</sup> and the Commission has received no comments in response.

**II. BACKGROUND<sup>4</sup>**

The Proposed Rule Change would make certain changes to OCC's (1) Audit Committee

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 84021 (Sep. 4, 2018), 83 FR 45706 (Sep. 10, 2018) (SR-OCC-2018-012) ("Notice").

<sup>4</sup> All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules. OCC's By-Laws and Rules can be found on OCC's public website:  
<http://optionsclearing.com/about/publications/bylaws.jsp>.

(“AC”) Charter (“AC Charter”), (2) Compensation and Performance Committee (“CPC”) Charter (“CPC Charter”), (3) Governance and Nominating Committee (“GNC”) Charter (“GNC Charter”), (4) Risk Committee (“RC”) Charter (“RC Charter”), (5) Technology Committee (“TC”) Charter (“TC Charter”), and (6) Board of Directors (“Board”) Charter (“Board Charter”).<sup>5</sup> These changes are described and broadly categorized below.<sup>6</sup>

As a general matter, the Proposed Rule Change would amend the charters to provide that in carrying out their responsibilities the Board and the committees would prioritize the safety and efficiency of OCC, generally support the stability of the broader financial system and consider the legitimate interests of Clearing Members, customers of Clearing Members and other relevant stakeholders, including OCC’s shareholders and other participant exchanges, taking into account prudent risk management standards (including systemic risk mitigation) and industry best practices.

A. Clarity and transparency

Several of the changes within the Proposed Rule Change seek to better describe OCC’s current processes. Such changes range from clarification (e.g., changing “annually” to “each calendar year”) to removal of redundancies (e.g., where a requirement is found elsewhere in OCC’s rules) to stating the existing functions and responsibilities of OCC’s Board and Board committees. These changes are described in more detail below.

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<sup>5</sup> See Notice at 45707-08. As discussed below, the changes to the Board Charter would involve incorporating provisions from OCC’s Corporate Governance Principles (“CGP”) and changing the title of the resultant document to the Board Charter and Corporate Governance Principles.

<sup>6</sup> Many of the components of the Proposed Rule Change may serve more than one purpose and could, therefore, be discussed in more than one category herein. The categorization of changes is not designed to denote otherwise.

The Proposed Rule Change would make a number of changes to OCC's Board committee charters to clarify that, where certain actions were required to be performed "annually" under the charters, those actions would now be required to occur "each calendar year." OCC believes that it is appropriate to clarify which actions are required on an every twelve months-basis, particularly in cases where a regulatory requirement to do so exists.<sup>7</sup> Such changes include amending the committee charters to provide that the following activities must occur on a calendar year basis: (i) appointment of directors to particular committees; (ii) committee meetings with certain members of management in executive sessions conducted regularly (no less than once per calendar year); (iii) reporting from each committee to the Board summarizing that committee's activities for the prior year; (iv) confirmation by each committee to the Board that all responsibilities outlined in the committee's charter have been carried out; and (v) provision of each committee's assessment of its and its individual members' performance to the GNC for review.

The Proposed Rule Change would also make a number of clarifying changes to each charter. For example, with respect to the AC Charter, the Proposed Rule Change would replace the current reference to "financial and senior management" to OCC's "Corporate Finance Department" in describing the AC's responsibility to facilitate open communication between external auditors and certain groups within OCC. Additionally, the AC Charter would be amended to provide that the AC is authorized to approve the "issuance of the annual financial" statements after its review of such statements.

The Proposed Rule Change would also amend certain descriptions of the AC's responsibilities. For example, the Proposed Rule Change would revise text describing the role of

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<sup>7</sup> See Notice at 45708.

the AC, along with external auditors, as responsible for “planning and carrying out audit work, as appropriate” rather than “planning and carrying out a proper audit.” The AC Charter’s description of the AC’s power to delegate to the Chief Audit Executive (“CAE”) “within the external audit limits” would be changed for accuracy to read “within the co-sourced audit hour limits.”

With respect to the CPC Charter, the Proposed Rule Change would remove a number of specified responsibilities and replace them with a general statement that the committee is required to perform activities consistent with the CPC Charter as it deems necessary or appropriate or as are delegated to the committee by the Board. The specified responsibilities that would be removed include, for example, a provision that states that the committee reviews special financial matters as requested by the Board, and provisions addressing the committee’s review and approval of policies and programs regarding salary compensation and incentive compensation and its review of material changes to executive management benefits.

With respect to the GNC Charter, the Proposed Rule Change would make revisions such that the GNC is no longer responsible for recommending to the Board candidates for nomination for election or re-election by the stockholders and any Board vacancies that are to be filled by the Board.<sup>8</sup>

With respect to the RC Charter, the Proposed Rule Change would add a clarifying statement to state that the RC is required to perform its responsibilities in accordance with the provisions of the RC Charter and applicable regulatory requirements. Regarding meetings of the

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<sup>8</sup> The requirement that the GNC nominate candidates is provided explicitly in the By-Laws. See OCC By-Law Article III, Sections 5 and 6A. The GNC Charter would specify that the GNC’s role in this context applies specifically to Public Directors and Member Directors to promote consistency with the By-Laws.

RC, the RC Charter would specify that joint meetings with other Board committees count toward the requirement to meet at least six times a year. The Proposed Rule Change would also clarify that in-person attendance at meetings is preferred.

With respect to the TC Charter, the Proposed Rule Change would revise the TC Charter to remove specific references to the committee's oversight of OCC's physical security and instead describe the committee's responsibility for overseeing the adequacy of OCC's management of information security risks, which generally includes: oversight of the confidentiality, integrity, and availability of OCC data; the security of the information systems used to process, transmit, and store OCC information; and the physical, personnel, procedural, administrative, and environment security disciplines. The Proposed Rule Change would replace language stating that the TC will periodically review and appraise OCC's crisis management plans with language stating that the TC will oversee and receive a quarterly report on OCC's Business Continuity and Disaster Recovery Programs because crisis management plans are incorporated within the Business Continuity and Disaster Recovery Programs.

The Proposed Rule Change would delete certain general statements regarding the TC's duty to make recommendations to the Board with respect to IT-related projects and investments and critically review the progress of such projects and/or technology architecture decisions. These general statements would be replaced with more specific descriptions of the TC's duties. For example, the TC will receive a report on management's progress in executing on major information technology ("IT") initiatives, technology architecture decisions and IT priorities. The TC will also review and recommend to the Board for approval material changes to (i) the operational execution and delivery of core clearing and settlement services, and (ii) written policies concerning information security risk.

The Proposed Rule Change would make similar changes to the TC Charter with respect to other TC responsibilities. For example, the Proposed Rule Change would revise the language describing the TC’s responsibility to monitor and assess OCC’s management of IT-related compliance risks as a responsibility to monitor and oversee the overall adequacy of OCC’s IT and operational control environment, including the implementation of key controls in response to regulatory requirements.

With respect to the Board Charter, the Proposed Rule Change will incorporate the existing CGP into the Board Charter and rename the charter as the “Board of Directors Charter and Corporate Governance Principles” to reflect the change. OCC believes this change is appropriate to eliminate significant overlap between the contents of the two existing documents and thereby make the consolidated provisions in the Board Charter easier for Clearing Members and other OCC stakeholders to access, use, and understand.<sup>9</sup> For example, the existing CGP and Board Charter each address aspects of the Board such as its size and composition. The Proposed Rule Change would make changes to the contents of the CGP to conform the existing provisions to the structure and organization of the Board Charter and related requirements in the By-Laws and Rules.<sup>10</sup> However, the majority of the provisions in the CGP would be incorporated in their existing form, and these provisions address, for example, the size of the Board and its

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<sup>9</sup> See Notice at 45713.

<sup>10</sup> For example, the CGP provides in one instance that all materials for Board meetings are made available online by the office of the secretary. This particular provision in the CGP would not be incorporated into the Board Charter, but the Board Charter would be amended to provide that OCC operates a portal for the general dissemination of meeting and other written materials to directors, a process that is consistent with how OCC distributes such materials today. In addition, the Proposed Rule Change would state in the Board Charter that Public Directors do not have term limits, consistent with the requirements in Article III, Section 6 of the OCC By-Laws.

composition, membership criteria, appointment of the GNC, the selection of Member, Public, Exchange, and Management Directors, conduct matters, ethics and conflicts of interest, compensation, access to senior management, and Board and Board committee evaluations.

As a further result of incorporation of the CGP into the Board Charter, the Proposed Rule Change would remove certain existing provisions in the Board Charter that specifically reference, or are duplicative of, more comprehensive descriptions from the CGP. Specifically, sections of the Board Charter would be replaced with more detailed explanations drawn from the CGP with respect to: (i) Board composition; (ii) qualification standards for directors; (iii) election of directors, resignation, and disqualification; (iv) tenure, term, and age limitations; and (v) calling of Board meetings, selection of agenda items, and attendance.

Currently, the Board Charter sets forth a number of functions and responsibilities of the Board. The Proposed Rule Change would reorganize this list of functions and responsibilities in a new section regarding the mission of the Board and would make non-substantive changes to some of the descriptions of the Board's responsibilities. For example, the Board Charter currently provides that the Board is responsible for advising, approving, and overseeing OCC's business strategies, including expansions of clearing and settlement services to new business lines, as well as monitoring OCC's performance in delivering clearance and settlement services. The Proposed Rule Change would amend the Board Charter to provide that the Board is responsible for overseeing OCC's business strategies, including expansions of clearance and settlement services to new business lines and product types, to ensure they reflect the legitimate interests of relevant stakeholders and are consistent with the public interest. As a further example, the Proposed Rule Change would revise the Board's responsibility to oversee "OCC's information technology strategy, infrastructure, resources and risks" to provide that the Board's

responsibility is to oversee “OCC’s technology infrastructure, resources, and capabilities to ensure resiliency with regard to OCC’s provision of its clearing, settlement, and risk management services.” The Proposed Rule Change would also remove oversight of human resources programs from the Board Charter because that responsibility has been delegated to the CPC under the current CPC Charter. OCC stated that the changes described above are designed to improve the readability of the Board Charter as well as to specify additional, specific considerations of the Board with respect to particular responsibilities.<sup>11</sup>

In addition to the changes described above, the Proposed Rule Change would specify that the Board’s authority extends to performing such functions as it believes are appropriate or necessary, or as otherwise prescribed by rules or regulation, including OCC’s By-Laws and Rules, “or other policies.” OCC stated that this change is intended to clarify that the scope of the Board’s authority extends to all of OCC’s policies.<sup>12</sup>

The Board Charter would also provide that the Board is responsible for the business and affairs of OCC, and that the Board will continue to be responsible for performing such other functions as the Board believes appropriate or necessary or as otherwise prescribed by rules or regulations, including OCC’s By-Laws and Rules. Pursuant to this broad responsibility, OCC believes that the functions and responsibilities of the Board will remain consistent notwithstanding certain proposed deletions or rephrasing regarding the existing list of responsibilities.<sup>13</sup> For example, the Board Charter would no longer specify that the Board will review committee charters and reports of committee activities; however, it would nevertheless

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<sup>11</sup> See Notice at 45714.

<sup>12</sup> See Notice at 45714, n. 78.

<sup>13</sup> See Notice at 45714, n. 79.



provide that the Board is responsible for establishing a written charter for each committee and that each committee will be responsible for providing an annual report to the Board regarding its activities.

The Proposed Rule Change would make certain other changes to the Board Charter. The Proposed Rule Change would delete the provision noting that the Member Vice Chairman of the Board has the responsibilities set forth in the By-Laws. The Proposed Rule Change would also delete the current footnote one (1) from the Board Charter, which provides an example of an instance in which certain provisions of the By-Laws provide that the Board should not take action. The amended Board Charter will continue to provide that the Board's responsibilities and duties are subject to any exceptions provided in OCC's Amended and Restated Certificate of Incorporation or the By-Laws and Rules. OCC believes that the footnote providing an example of such an instance is unnecessary, and that its deletion would improve readability of the Board Charter.<sup>14</sup>

Additionally, the Proposed Rule Change includes revisions (including by removing or relocating existing content and changing word choices) intended to reduce redundancy and better organize the content of the charters to more clearly state what a committee is authorized or obligated to do. OCC stated that such changes will not substantively alter the responsibilities or activities of the relevant committee.<sup>15</sup> For example, all of the charters would be amended to state that the Board or the relevant committee will review the charter "at least once every twelve months" instead of "annually" to provide further clarity around the intended frequency. Further, the statement in the TC Charter that the TC "shall also have the authority to perform any other

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<sup>14</sup> See Notice at 45715.

<sup>15</sup> See Notice at 45707.

duties” consistent with the TC Charter would be revised to provide that the TC “is authorized to perform any other duties” consistent with the TC Charter. In addition, the statement in the AC Charter that the committee shall “approve material changes in accounting principles and practices” would state that the AC “is authorized to approve material changes in accounting principles and practices.” Consistent with this change, where a charter currently states that the Board or a committee “shall approve” a particular matter, the charter would state instead that the Board or a committee is “authorized to approve” the particular matter. OCC believes such changes properly clarify the oversight role of the Board and the committees, and that approval of a particular matter is not mandatory.<sup>16</sup>

The Proposed Rule Change would make amendments acknowledging, where relevant based on the particular charter, that its Executive Chairman (“EC”) also serves as its Chief Executive Officer (“CEO”), and that therefore certain responsibilities and considerations that currently apply to the EC would also apply to the CEO. All charters would also be revised to state that a role of the Board or the committee, as applicable, is to advise management.

#### B. Public and stakeholder interests

The Proposed Rule Change would specify that the GNC shall review the composition of the Board for consistency with public interest and regulatory requirements at least every three years rather than periodically. The GNC Charter would further be amended to require yearly GNC review of the committee charters for consistency with the public interest and other regulatory requirements.<sup>17</sup> Lastly, the Proposed Rule Change would require the GNC annually to review and advise the Board with regard to director independence.

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<sup>16</sup> See Notice at 45707, n. 16.

<sup>17</sup> The GNC currently performs such a review of the Board Charter annually.

### C. Board and management expertise

The Proposed Rule Change would make several changes related to the experience and skills of the Board and management. With respect to the CPC Charter, the Proposed Rule Change would clarify the role that the CPC plays in oversight of succession planning regarding OCC's Management Committee. A new provision would also provide that the CPC must review the results of Management Committee succession planning activities at least once every twelve months.

With respect to the GNC Charter, the Proposed Rule Change would make two revisions that specifically address the experience and skills of the Board and management. First, the Proposed Rule Change would amend the GNC Charter to establish new responsibilities for the GNC to advise the Board on matters pertaining to director leadership development and succession planning. Second, the Proposed Rule Change would revise the language regarding the GNC's responsibilities with respect to ensuring that directors are appropriately qualified. For example, rather than providing that the GNC will work toward developing a Board with a broad spectrum of experience and expertise, the GNC Charter would provide that the GNC shall identify, for purposes of making recommendations to the Board, the criteria, skills, experience, expertise, attributes, and professional backgrounds (collectively, the "Standards") desirable in directors to ensure the Board is able to discharge its duties and responsibilities. Relatedly, the GNC Charter would no longer include language providing that the GNC is responsible for recommending to the Board for approval and overseeing the implementation and effectiveness of OCC's policies and procedures for identifying and reviewing Board nominee candidates, including the criteria for Board nominees.

With respect to the Board Charter, the Proposed Rule Change would provide that the

Board is responsible for overseeing OCC's activities through regular assessments of Board and individual director performance. Because the Board has delegated responsibility to the GNC for the annual evaluation of the Board and its committees, OCC believes that it is no longer necessary to specify that the Board would have an annual self-evaluation obligation, as provided in the current charter.<sup>18</sup> The Proposed Rule Change would further amend the Board Charter to provide that the regular assessments will no longer include a focus on individual director performance, but will instead focus primarily on the performance of the Board and each committee as a whole. OCC stated that focusing the annual self-evaluation on individual director performance is less effective than focusing on the performance of each committee as a whole because not every director has the opportunity to work with each other director.<sup>19</sup>

D. Clear and direct lines of responsibility

The Proposed Rule Change would amend the charters to provide clearer information regarding the functions and responsibilities of the Board and committees and reporting requirements. The Proposed Rule Change would amend all of the charters to specify that the Board and each committee may delegate authority to one or more designated officers of OCC or may refer a risk under its oversight to another committee or the Board as advisable or appropriate. The proposed revisions would provide, however, that the delegating body will retain the obligation to oversee any such delegation or referral and assure itself that delegation and reliance on the work of any delegate is reasonable.

The Proposed Rule Change would further clarify that, where the Board or a committee has authority to approve reports or other proposals in its business judgment, such as materials

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<sup>18</sup> See Notice at 45715.

<sup>19</sup> See id.

provided by management, it is not obligated to approve such reports or other proposals, and related modifications would articulate a clear means of recourse for the committee or the Board if it does not approve. OCC stated that the purpose of these changes would be to promote governance arrangements that clearly prioritize the safety and efficiency of OCC and specify clear and direct lines of responsibility in its governance arrangements.<sup>20</sup> The Proposed Rule Change would amend certain committee charters to address committee member vacancies to provide that in the event of a vacancy, the applicable committee would continue to undertake its responsibilities, so long as the remaining committee members are capable of satisfying the quorum requirement.<sup>21</sup>

The AC Charter would describe new responsibilities for the AC that include reviewing the impact of litigation and other legal matters that may have a material impact on OCC's financial statements and overseeing the structure, independence and objectivity, staffing, resources, and budget of OCC's compliance and audit departments. The Proposed Rule Change would amend the AC Charter and the RC Charter to transfer responsibility for reviewing the investigation and enforcement outcomes of disciplinary actions taken by OCC against Clearing Members from the AC to the RC. OCC believes that the RC is appropriately situated to review disciplinary actions against Clearing Members given the committee's broader role in overseeing OCC's management of third party risks, which includes OCC counterparties such as Clearing Members.<sup>22</sup>

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<sup>20</sup> See Notice at 45708, n. 23.

<sup>21</sup> No such change would be added to the GNC Charter because the matter is already addressed therein.

<sup>22</sup> See Notice at 45712.

The Proposed Rule Change would revise the description of the AC's responsibility with respect to OCC's compliance department by providing more generally that the AC will review ongoing compliance monitoring activities by reviewing reports and other communications prepared by the Chief Compliance Officer ("CCO") and inquire of management regarding steps taken to deal with items raised. As a result of this change, the AC Charter would no longer specify that the AC is responsible for approving the annual Compliance Testing Plan, monitoring progress against the annual Compliance Testing Plan, and approving any recommendations by the CCO relating to that plan. OCC stated that the purpose of this change is to shift OCC's compliance department to a monitoring role and away from its historic role of creating a specific plan to follow, as well as to facilitate the transition of validation responsibilities to OCC's internal audit department, over which the compliance department would have monitoring responsibilities.<sup>23</sup> The AC would also be authorized to approve management's recommendations regarding approval or replacement of the CCO.

Under the Proposed Rule Change, the AC charter would no longer expressly require annual Board approval regarding audit services. However, the AC would be required to confirm annually to the Board that all of the AC's responsibilities have been carried out and provide an annual report to the Board summarizing the AC's activities during the previous year.

The Proposed Rule Change would amend the AC Charter to provide that, in addition to the CAE and CCO, the Chief Financial Officer ("CFO") also will be authorized to communicate directly with the Chair of the AC with respect to any of the responsibilities of the AC between meetings of the AC given the CFO's role as part of OCC's executive team and his/her responsibility for OCC finances.

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<sup>23</sup> See Notice at 45709.

The Proposed Rule Change would revise the CPC Charter to provide that the CPC will oversee and monitor the activities of OCC's Administrative Committee, including the approval of the Administrative Committee's charter and changes thereto and of the members of the Administrative Committee. OCC believes that these allocations of responsibility are appropriate given the CPC's current oversight of the Administrative Committee, whereby the CPC is responsible for, among other things, appointing members of the Administrative Committee and overseeing and monitoring the activities of the Administrative Committee with respect to retirement and retirement savings plans.<sup>24</sup>

The Proposed Rule Change would amend the CPC Charter to state that the CPC assists the Board in overseeing risks related to OCC's general business, regulatory capital, investments, corporate planning, compensation, and human capital in addition to assisting the Board in executive management succession planning and performance assessments; however, OCC management will continue to identify, manage, monitor, and report the associated risks to the Board. The Proposed Rule Change would clarify that the corporate plan and budget are annual arrangements, and that the CPC oversees their alignment with OCC's business strategy.

The Proposed Rule Change would also address the CPC's oversight of OCC's capital plan. The CPC Charter would clarify that oversight of OCC's capital plan includes the written policies adopted thereunder, which include OCC's fee, dividend, and refund policies. Revisions to the CPC Charter would also clarify that the CPC must review the capital plan at least once every twelve months, and that the committee makes recommendations to the Board concerning capital requirements, refund payments, and dividend payments. In addition, the Proposed Rule

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<sup>24</sup> See Notice at 45710.

Change would add a provision to the CPC Charter requiring management to provide a quarterly performance report to the committee against the capital plan.

Regarding the CPC's review of Public Director compensation and the recommendations that it provides to the Board related thereto, a requirement would be added to the CPC Charter for the committee to engage in these activities not less than once every two years. OCC believes that a two-year period is appropriate for such a review because the overall trends in industry compensation generally do not change dramatically from year-to-year.<sup>25</sup> The CPC would no longer be required to perform a full review of each component of Public Director compensation packages and recommend adjustments to the Board on a yearly basis. The Proposed Rule Change would also clarify that the CPC is not authorized to adopt or amend compensation, retirement, or welfare benefit plans that require Board approval. The Proposed Rule Change would also add a new requirement that the CPC must review OCC's insurance program at least once every twelve months.

The Proposed Rule Change would amend the GNC Charter to establish new responsibilities for the GNC to approve all material changes to written policies concerning related-party transactions and recommend such changes to the Board for approval. The GNC Charter would also be amended to provide that the GNC shall review and, if appropriate, approve or ratify, any related-party transactions involving OCC in accordance with the written policy governing such transactions. Because the GNC is already responsible for the review of conflicts of interests of directors and the manner in which such conflicts will be monitored and resolved, OCC believes that it is appropriate for the GNC to assume the additional responsibility

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<sup>25</sup> See id.



of reviewing related-party transactions.<sup>26</sup> Additionally, the Proposed Rule Change would remove the ability for a designee of the chair of the GNC to call an additional meeting beyond the four times per year that the GNC must meet. OCC believes this change would help ensure that the committee's time and resources would be utilized appropriately.<sup>27</sup>

The RC Charter currently provides that the RC assists the Board in overseeing OCC's policies and processes for identifying and addressing strategic, operational, and financial (e.g., credit, market, liquidity, and systemic) risks. The Proposed Rule Change would amend the RC Charter to state more specifically that the RC will have responsibility for assisting the Board in its oversight of OCC's financial, collateral, risk model, and third party risk management processes.<sup>28</sup> Corresponding changes would also be made to clarify that the RC has an oversight role regarding these responsibilities, and that it remains OCC management's responsibility to identify, manage, monitor, and report risks in these areas. The RC would continue to be responsible for functions delegated to it under the By-Laws and Rules and as may be delegated to it by the Board.

The current provisions of the RC Charter dealing with the oversight of credit, collateral, liquidity, and third party risks would be replaced with more specific provisions. At least once every twelve months, the RC would be required to review the adequacy of OCC's management of credit, collateral, liquidity, and third party risks. In connection with these responsibilities, the RC would receive monthly reports from OCC management regarding the effectiveness of OCC's

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<sup>26</sup> See Notice at 45710-11.

<sup>27</sup> See Notice at 45711, n. 47.

<sup>28</sup> As described below, the RC would no longer be responsible for oversight of strategic or operational risks because those matters would be overseen by the Board as they relate to enterprise risk management.

management of credit exposures and liquidity risks.<sup>29</sup> The RC would also be required to review the adequacy of OCC's secured committed liquidity facilities at least once every twelve months and recommend the size and composition of such facilities to the Board for approval. The RC would also be responsible for approval of all material changes to written policies regarding risk management in these areas and recommending such changes to the Board.

The Proposed Rule Change would make explicit the RC's responsibilities in connection with the review and approval of any new products that materially impact OCC's established risk profile or introduce novel or unique financial, risk model, and third party risks. The RC would refer any such new products that it approves to the Board for its potential approval.

The Proposed Rule Change would amend the RC Charter to codify the RC's responsibility to oversee OCC's Recovery and Orderly Wind-down Plan ("RWD Plan"). This responsibility would include reviewing the adequacy of the RWD Plan at least once every twelve months. If the committee approves the RWD Plan, it would next recommend the RWD Plan to the Board for potential Board approval. The RC would also have responsibility for reviewing and approving any material changes to the RWD Plan. In the event the RC approves any such changes, it would, in turn, recommend the changes to the Board for its potential approval.

The Proposed Rule Change would amend the RC Charter to detail the RC's responsibility regarding the structure and staffing of OCC's corporate risk management functions in addition to OCC's financial risk management group. The RC must review structure and staffing in these areas at least once every twelve months. A provision would also be added requiring that the RC

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<sup>29</sup> For example, the report regarding the effectiveness of the management of credit exposures would include the results of: (i) a comprehensive analysis of OCC's existing stress testing scenarios, models and underlying parameters and assumptions, and (ii) a sensitivity analysis of OCC's margin models and a review of the associated parameters and assumptions for back testing.

review and approve the Chief Risk Officer's goals and objectives, and any material changes thereto, at least once every twelve months.

Further, the Proposed Rule Change would add a statement to the RC Charter to clarify that the RC is responsible for reviewing third-party assessment reports as to financial, collateral, risk model, and third-party risk management processes and for reviewing OCC management's remediation efforts pertaining to any such reports.

The Proposed Rule Change would amend the TC Charter to clarify that the TC's role is one of oversight, and that it remains the responsibility of OCC management to identify, manage, monitor, and report on IT and other operational risks arising from OCC's business activities. The Proposed Rule Change would also amend the TC Charter such that the TC would have responsibility for OCC's operational initiatives, including approving major IT and operational initiatives, recommending major capital expenditures to the Board, and approving the IT and operational budget for each calendar year.<sup>30</sup>

The Proposed Rule Change would amend the Board Charter to set forth certain key considerations and responsibilities. These include providing that the Board will exercise its authority to provide for governance arrangements that, among other things, support applicable public interest requirements and the objectives of owners and participants, establish that the Board and senior management have appropriate experience and skills to discharge their duties and responsibilities, specify clear and direct lines of responsibility, and consider the interests of

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<sup>30</sup> Relatedly, the Proposed Rule Change would amend the TC Charter so that it would no longer require that the TC work with, or report to, the AC and RC to monitor the quality and effectiveness of IT systems and processes that relate to or affect OCC's internal control systems and risk management systems.

Clearing Members' customers.<sup>31</sup> The Proposed Rule Change would also revise the Board Charter to note that the Board has explicitly delegated management of specific risks to the Board committees, and that to the extent a specific risk is not retained by the Board or otherwise assigned to a Board committee, such risk shall be overseen by the RC.<sup>32</sup> Similarly, the Proposed Rule Change would amend the Board Charter to state that the Board is responsible for approving the compensation of the EC and certain other officers because the Board has delegated responsibility to the CPC to evaluate and fix such compensation.

Finally, the Proposed Rule Change would amend the Board Charter to provide that a number of different activities related to the conduct and functioning of the Board would involve participation by or input from certain other officers of OCC that serve functions relevant to the topic at issue. For example, the Board Charter would state that the EC and CEO, in consultation with the Chief Operating Officer ("COO") and Chief Administrative Officer ("CAO"), other directors or officers of OCC, and the Corporate Secretary shall establish the agenda for Board meetings.<sup>33</sup> OCC stated that these changes are designed to make clear the roles and authority of

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<sup>31</sup> The Board Charter would also provide as a guiding principle that the Board is, among other things, mindful of the public interest as it fulfills its duties by complying with the obligations imposed on it under relevant law, and that it discloses major decisions to relevant stakeholders and the public.

<sup>32</sup> The amended Board Charter would further specify that the Board may form and delegate authority to committees and may delegate authority to one or more of its members and to one or more designated officers of OCC, but would note that the Board retains the obligation to oversee any such delegation or referral and assure itself that delegation and reliance on the work of any delegate is reasonable.

<sup>33</sup> Similarly, the Proposed Rule Change would amend the Board Charter to provide that the CEO, COO and CAO would have the authority to invite employees to Board meetings, that such officers encourage members of senior management to respond to questions posed by directors relating to their areas of expertise, and that directors shall coordinate access to members of senior management and outside advisors through such officers. The criteria for Board member eligibility would also be expanded to ensure that

certain officers and to ensure that input from additional officers is included where appropriate.<sup>34</sup>

The Proposed Rule Change would also amend the charters to provide for clear reporting requirements. The Proposed Rule Change would amend the AC Charter to provide that certain mandatory reports be sent to the AC for review, including quarterly reports from the CAE regarding the internal audit plan and from the General Counsel regarding existing, pending, or threatened litigation.<sup>35</sup> OCC believes that such quarterly reports would help provide the AC with the necessary information to appropriately discharge its duties and responsibilities.<sup>36</sup> OCC also believes that these quarterly reports to the AC would help specify clear and direct lines of responsibility in OCC's governance arrangements by ensuring that these officers keep the AC apprised of OCC's ongoing performance or handling of these matters, which in turn would allow the AC to more effectively carry out its oversight functions and the responsibilities associated therewith.<sup>37</sup>

A new provision of the CPC Charter would require management to provide a quarterly report to the committee that contains information on OCC's performance against the corporate plan and the budget. OCC believes that quarterly reporting by management to the CPC would

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candidates' experience and expertise are not only adequate to offer advice and guidance to the Executive Chairman, but also to the CEO, COO, and CAO.

<sup>34</sup> See Notice at 45715.

<sup>35</sup> The Proposed Rule change would also include certain other descriptive changes to the AC Charter, such as providing that the AC will review OCC's Reporting Concerns and Whistleblower Policy (and specifying that such review will occur each calendar year), rather than providing a more detailed description of what the reporting concerns and whistleblower procedures under the relevant policy entail.

<sup>36</sup> See Notice at 45709.

<sup>37</sup> See Notice at 45709, n. 33.

help specify clear and direct lines of responsibility in OCC's governance arrangements by ensuring that management keeps the CPC apprised of OCC's ongoing performance on these matters, which, in turn, would allow the CPC to more effectively carry out its oversight functions and the responsibilities associated therewith.<sup>38</sup>

The Proposed Rule Change would also require OCC management to provide the RC with quarterly reports regarding the effectiveness of OCC's management of collateral and third-party risks. OCC believes that this quarterly reporting would help specify clear and direct lines of responsibility in OCC's governance arrangements by ensuring that management keeps the RC apprised of OCC's ongoing performance on these matters, which, in turn, would allow the RC to more effectively carry out its oversight functions and the responsibilities associated therewith.<sup>39</sup>

A new provision in the RC Charter would provide that, from time to time, the RC may receive reports and guidance relating to financial risk issues from, among others, OCC's Financial Risk Advisory Council, and that the RC would consider and discuss such reports and consider how such financial risk issues may impact the options and futures industries. The RC would take such guidance into account in the exercise of its fiduciary judgment and the performance of its functions and responsibilities.

The Proposed Rule Change would amend the TC Charter to introduce mandatory periodic reporting from management on major IT initiatives. The TC would oversee and receive quarterly reports from management that provide information on: (i) executing on major IT initiatives, technology architecture decisions (as applicable) and IT priorities as well as overall IT performance; (ii) the effectiveness of the management of information security risks; (iii)

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<sup>38</sup> See Notice at 45710, n. 42.

<sup>39</sup> See Notice at 45712, n. 55.

OCC's Business Continuity and Disaster Recovery Programs, including the progress on executing the annual test plan and achieving recovery time objectives; and (iv) major operational initiatives and metrics on the effectiveness of OCC's operations with reference to key indicators. OCC believes that such reports would provide the TC with the necessary information to discharge its oversight duties and responsibilities appropriately and would facilitate dialogue between the TC and OCC's senior IT management team. OCC believes that this reporting would also help specify clear and direct lines of responsibility in OCC's governance arrangements by ensuring that management keeps the TC apprised of OCC's ongoing performance on these matters, which, in turn, would allow the TC to more effectively carry out its oversight functions and the associated responsibilities.<sup>40</sup>

E. Risk management

The Proposed Rule Change would amend the committee charters to provide that each committee would perform, and is authorized to perform, such other responsibilities and functions as may, from time to time, be assigned to it under the By-Laws and Rules, other policies, or delegated to it by the Board.<sup>41</sup> The Proposed Rule Change would amend the committee charters to provide that each committee shall perform any other duties consistent with their respective charters as the committee deems necessary or appropriate, or as the Board shall further delegate to the particular committee.<sup>42</sup> OCC believes that these changes would provide for flexibility for each committee to supervise and account for matters naturally within the scope of their

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<sup>40</sup> See Notice at 45713, n. 63.

<sup>41</sup> OCC noted that a comparable provision to this exists in the RC Charter. See Notice at 45708.

<sup>42</sup> OCC noted that comparable language currently appears in the AC Charter, GNC Charter, and TC Charter. See Notice at 45708, n. 25.

responsibility or that may be assigned to them by the Board.<sup>43</sup>

The Proposed Rule Change would modify the description of the Board’s functions and responsibilities as part of the description of the mission of the Board to include: (i) overseeing OCC’s governance structures and processes, including through regular assessments of Board and individual director performance, to ensure that the Board is positioned to fulfill its responsibilities effectively and efficiently, consistent with applicable requirements; (ii) ensuring that risk management, compliance, and internal audit personnel have sufficient authority, resources, independence from management, access to the Board, and a direct reporting line to, and oversight by, certain committees; (iii) ensuring that the Audit Committee of the Board is independent; (iv) transitioning the overall oversight of ERM to the Board; and (v) assigning responsibility for risk decisions and policies to address decision-making during a crisis. The Board Charter would also be amended to codify the Board’s existing responsibility for overseeing and approving OCC’s RWD Plan.

As noted above, the Proposed Rule Change would transfer responsibility for the oversight of the enterprise risk management (“ERM”) program from the RC to the Board.<sup>44</sup> This change

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<sup>43</sup> See Notice at 45708.

<sup>44</sup> For example, the Proposed Rule Change would modify the description of the Board’s functions and responsibilities as part of the description of the mission of the Board to include transitioning the overall oversight of ERM to the Board. The RC Charter currently provides that the committee is responsible for overseeing OCC’s overall ERM framework, including “reviewing material policies and processes relating to (i) membership criteria and financial safeguards, (ii) member and other counterparty risk exposure assessments, (iii) liquidity requirements and maintenance of financial resources, (iv) risk modeling and assessments, (v) default management planning, and (vi) risks related to new initiatives.” The revised descriptions in the RC Charter regarding its oversight of these areas would continue to involve responsibilities related to credit, market, liquidity and systemic risk, but would no longer include responsibility for overseeing those aspects related to the ERM program.



would allow the Board to retain responsibility for the comprehensive oversight of OCC's overall risk management framework, while retaining the ability to delegate oversight of specific risks to designated committees, which would then report to and be subject to oversight by the Board. OCC believes that shifting enterprise risk oversight responsibility from the RC to the Board would promote further engagement by and attention from the Board regarding OCC's risk universe and how such risks impact OCC's strategic direction and priorities, as well as provide for more meaningful dialogue and discussion at Board meetings.<sup>45</sup> OCC believes, moreover, that the change would alleviate the potential for overburdening the RC and establish clearer lines of oversight responsibilities for particular risks across the Board's committees.<sup>46</sup> Additionally, the collective expertise of the Board would be available to provide appropriate guidance relative to each key risk within OCC's risk universe.<sup>47</sup>

Consistent with changes to the RC Charter that provide that the RC would no longer have responsibilities related to the ERM program, the Proposed Rule Change would remove the RC's responsibility for strategic and operational risks. OCC believes that these changes are appropriate because issues regarding ERM are central to OCC's comprehensive management of risk and would therefore benefit from the experience and attention of the full Board.<sup>48</sup>

In connection with the RC no longer having responsibilities regarding the ERM program, several related provisions would be removed from the RC Charter. For example, the RC would no longer have responsibility to oversee the structure, staffing, and resources of the ERM

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<sup>45</sup> See Notice at 45714.

<sup>46</sup> See id.

<sup>47</sup> See Notice at 45715.

<sup>48</sup> See Notice at 45711.

program or approve its goals and objectives on an annual basis. Additionally, the RC would no longer be responsible for reviewing OCC's risk appetite statements and risk tolerances because the Board would assume responsibility for approval of these matters.

The Proposed Rule Change would require that the TC review, at least every twelve months, the adequacy of OCC's management of information security risks, approve all material changes to written policies related to the managing information security risks, and recommend such changes to the Board.

Additionally, the Proposed Rule Change would address the identification and escalation of risks. The AC Charter, the RC Charter, and the TC Charter would each be amended to require the respective committees to identify risk issues relating to their areas of oversight that should be escalated to the Board for its review and consideration.

#### F. Internal audit

The AC Charter would be amended to clarify that the AC shall oversee the independence and objectivity of the internal audit department. Further, the Proposed Rule Change would amend the AC Charter to provide that the AC must review the effectiveness of the internal audit function, including conformance with the Institute of Internal Auditor's Code of Ethics and the International Standards for Professional Practice of Internal Auditing. The AC Charter would also be amended to authorize the AC to approve deviations to the audit plan that may arise over the course of an audit. OCC believes that these changes would be a natural extension of the AC's role and responsibilities.<sup>49</sup> Additionally, the Proposed Rule Change would amend the AC charter to authorize the AC to approve management's recommendation to appoint or replace the CAE.

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<sup>49</sup> See Notice at 45709.

The Proposed Rule Change would also amend the AC charter to authorize the AC to approve OCC's audited financial statements after review, to oversee the timing and process for implementing a rotation of the engagement partner of the external auditor, and to discuss certain significant issues with the external auditor. OCC believes that framing the AC's responsibilities in this manner would provide appropriate flexibility for the committee to carry out its oversight and advisory responsibilities using its business judgment.<sup>50</sup>

### 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 Act and the rules and regulations thereunder applicable to such organization.<sup>51</sup> After carefully considering the Proposed Rule Change, the Commission finds 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 proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act<sup>52</sup> and Rules 17Ad-22(e)(2) and (3) thereunder.<sup>53</sup>

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

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

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<sup>50</sup> See id.

<sup>51</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>52</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>53</sup> 17 CFR 240.17Ad-22(e)(2) and (3).

transaction and, in general, to protect investors and the public interest.<sup>54</sup>

As described above, the Proposed Rule Change would make numerous changes to OCC's rules. The changes address a number of areas, including providing clarification and transparency to the committees' processes and responsibilities, reducing redundancy and improving readability of the charters, addressing the consistency of the charters with the public interest, providing further detail and specificity regarding the Board and management expertise, specifying clear and direct lines of responsibility, including the responsibilities of the Board and the committees and the responsibilities of management to provide particular information to the Board and the committees, and ensuring that the Board is responsible for OCC's overall risk management.

The Commission believes that, as a general matter, the Proposed Rule Change should help ensure that OCC has governance arrangements that support its ability to promptly and accurately offer clearance and settlement services to its Clearing Members and the markets OCC serves, and effectively manage the range of risks that arise in the course of providing such services. Moreover, the Commission believes that the Proposed Rule Change should provide greater accessibility, transparency and clarity to market participants to better understand OCC's governance arrangements. For both of these reasons, the Commission believes that the Proposed Rule Change is consistent with the prompt and accurate clearance and settlement of securities transaction, and, accordingly, with Section 17A(b)(3)(F) of the Exchange Act.<sup>55</sup>

The Proposed Rule Change is also designed, in part, to reallocate responsibilities across OCC's governing bodies. For example, the Proposed Rule Change would shift responsibility for

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<sup>54</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>55</sup> Id.

investigations and enforcement outcomes from the AC to the RC, which OCC has stated is appropriate because the RC is better situated to review such matters given its oversight the OCC's Clearing Membership framework.<sup>56</sup> Similarly, the Proposed Rule Change would shift responsibility for ERM from the RC to the Board, which OCC has stated would promote engagement by and attention from the Board regarding OCC's risk universe and how risks impact OCC's strategic direction and priorities.<sup>57</sup> The Commission believes that these aspects of the Proposed Rule Change should better align these particular responsibilities with the relevant expertise within OCC's Board and promote Board engagement in a manner that should provide for a more effective framework for comprehensive risk management, which, in turn, should help protect the public interest. The Commission believes, therefore, that the Proposed Rule Change is consistent, in general, with the protection of investors and the public interest, and, accordingly, with Section 17A(b)(3)(F) of the Exchange Act.<sup>58</sup>

B. Consistency with Rule 17Ad-22(e)(2) Under the Exchange Act

Rule 17Ad-22(e)(2) under the Exchange Act requires, among other things, that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that meet certain criteria.<sup>59</sup>

As described above in section II., the Proposed Rule Change would amend the charters to provide that, in carrying out their responsibilities, the Board and the committees would prioritize the safety and efficiency of OCC, generally support the stability of the broader financial system

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<sup>56</sup> See Notice at 45709.

<sup>57</sup> See Notice at 45712.

<sup>58</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>59</sup> 17 CFR 240.17Ad-22(e)(2).

and consider legitimate interests of Clearing Members, customers of Clearing Members and other relevant stakeholders, including OCC's shareholders and other participant exchanges, taking into account prudent risk management standards (including systemic risk mitigation) and industry best practices. Such amended charter language would be, at least in part, aligned with the provisions of Exchange Act Rule 17Ad-22(e)(2), such as prioritizing the safety and efficiency of a covered clearing agency and considering the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency.<sup>60</sup> The Commission believes that these amendments should provide for governance arrangements that allow the Board and the committees to consider whether their actions are consistent with such considerations. Accordingly, the Commission believes that the proposed change providing for the inclusion of such a statement is consistent with Exchange Act Rule 17Ad-22(e)(2).<sup>61</sup>

Rule 17Ad-22(e)(2)(i) under the Exchange Act requires that such governance arrangements are clear and transparent.<sup>62</sup> As described above in section II.A., the Proposed Rule Change includes changes that should better clarify and assign certain responsibilities for the governance and oversight of OCC among the Board and its respective committees. Certain aspects of the Proposed Rule Change would amend OCC's rules to provide clear and transparent descriptions of existing operating procedures and lines of responsibility throughout OCC. For example, the RC Charter would clarify that joint meetings of the RC with other Board committees count toward the requirement to meet at least six times a year. The Board Charter would remove the language stating that the Board oversees "OCC's information technology

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<sup>60</sup> See 17 CFR 240.17Ad-22(e)(2)(ii) and (vi).

<sup>61</sup> See 17 CFR 240.17Ad-22(e)(2).

<sup>62</sup> 17 CFR 240.17Ad-22(e)(2)(i).

strategy, infrastructure, resources and risks” and replace it with language stating that the Board oversees “OCC’s technology infrastructure, resources, and capabilities to ensure resiliency with regard to OCC’s provision of its clearing, settlement, and risk management services.”

Additionally, such statements include the replacement of general statements in the TC Charter with specific duties such as the review material changes to the operational execution and delivery of core clearing and settlement services. The Commission believes that these aspects of the Proposed Rule Change should improve the clarity and transparency of OCC’s governance arrangements by clearly identifying the current responsibilities of the Board, its committees, and management.

The Proposed Rule Change also includes changes ranging from clarification (e.g., changing “annually” to “each calendar year”) to removal of redundancies (e.g., where a requirement is found elsewhere in OCC’s rules). Delineating between those tasks that must be completed once each calendar year and those that must be completed annually provides more specificity and clarity around the requirements of OCC’s rules. Similarly, the removal of redundant language, such as the removal of statements in the GNC Charter are regarding candidate nominations, which is in OCC’s by-Laws, reduces the likelihood of later interpretive conflicts arising. In addition, the consolidation of documents, such as the Board Charter and CGP, along with the removal of redundancies between such documents would improve the accessibility and clarity of OCC’s rules. The Commission believes that such consolidation and removal of redundancies would make OCC’s rules more readable for the public and reduce the potential for internal inconsistencies in OCC’s rules. Accordingly, based on the foregoing, the Commission believes that the proposed changes pertaining to the clarity and transparency of

OCC's rules are consistent with Exchange Act Rule 17Ad-22(e)(2)(i).<sup>63</sup>

Rule 17Ad-22(e)(2)(iii) under the Exchange Act requires that the governance arrangements required under Rule 17Ad-22(e)(2) support the public interest requirements of Section 17A of the Exchange Act applicable to clearing agencies, and the objectives of owners and participants.<sup>64</sup> Further, Rule 17Ad-22(e)(2)(vi) under the Exchange Act requires that the governance arrangements required under Rule 17Ad-22(e)(2) consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency.<sup>65</sup> As described above in section II.B., the Proposed Rule Change includes changes relevant to the consideration of the interests of OCC's various stakeholders. The GNC would review the composition of the Board at least once every three years and the Board and committee charters at least annually for consistency with public interest and regulatory requirements. Further, the GNC would annually review and advise the Board with regard to whether directors are independent as defined by the Board. The Commission believes that these requirements should help ensure the protection of the public interest.

The Proposed Rule Change would also amend the charters to clarify, among other things, that the Board and committees will generally support the stability of the broader financial system and consider legitimate interests of Clearing Members, customers of Clearing Members and other relevant stakeholders, including OCC's shareholders and other participant exchanges. The Commission believes that these amendments should provide for governance arrangements that allow the Board and the committees to consider whether their actions support the stability of the

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<sup>63</sup> Id.

<sup>64</sup> 17 CFR 240.17Ad-22(e)(2)(iii).

<sup>65</sup> 17 CFR 240.17Ad-22(e)(2)(vi).



broader financial system and to consider the legitimate interests of Clearing Members, customers, and other relevant stakeholders. Accordingly, based on the foregoing, the Commission believes that the proposed changes pertaining to the composition of the Board, charter language, and director independence are consistent with Exchange Act Rules 17Ad-22(e)(2)(iii) and (vi).<sup>66</sup>

Rule 17Ad-22(e)(2)(iv) under the Exchange Act requires that the governance arrangements required under Rule 17Ad-22(e)(2) establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities.<sup>67</sup> As described above in section II.C., the Proposed Rule Change includes revisions relevant to ensuring that the directors and senior management have appropriate skills and experience. The Proposed Rule Change would also address the CPC's role in management succession planning and the GNC's role in director succession planning. Succession planning is important to ensuring that future members of OCC's senior management have appropriate experience and skills. Relatedly, the Proposed Rule Change would revise the language describing the GNC's role in identifying the Standards for directors on OCC's Board. The Commission believes that these aspects of the Proposed Rule Change should provide governance arrangements reasonably designed to ensure that the board of directors and senior management have appropriate experience and skills. The Proposed Rule Change would also directly address the Board and GNC's responsibilities regarding Board and director assessments. The Commission believes that assessing the performance of the Board and directors may provide the information necessary for OCC to identify gaps in the experience and skills represented on its

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<sup>66</sup> 17 CFR 240.17Ad-22(e)(2)(iii) and (vi).

<sup>67</sup> 17 CFR 240.17Ad-22(e)(2)(iv).

Board. Accordingly, based on the foregoing, the Commission believes that the proposed changes pertaining to succession planning, Standards for directors, and Board assessments are consistent with Exchange Act Rule 17Ad-22(e)(2)(iv).<sup>68</sup>

Rule 17Ad-22(e)(2)(v) under the Exchange Act requires that the governance arrangements required under Rule 17Ad-22(e)(2) specify clear and direct lines of responsibility.<sup>69</sup> As described above in section II.D., the Proposed Rule Change would amend the charters in numerous places to clarify the various responsibilities of the Board, the committees, and OCC management. For example, the Proposed Rule Change addresses the delegation of authority from the Board and committees and describes the oversight responsibilities of the delegating body. The Proposed Rule Change addresses revisions to the specific responsibilities of the Board and committees, such as the oversight of ERM by to the Board and the review of investigation and enforcement outcomes of disciplinary actions by the RC. Such changes document which bodies would be granted various authorities while clarifying where the ultimate responsibilities would reside. More generally, the Proposed Rule Change would provide greater specificity and clarity regarding the responsibilities of particular Board committees and would address how the committees interact with the Board and also with management. The Commission believes that these assignments and specifications of responsibilities among the Board and its committees should provide for clear and direct lines of responsibility for particular areas and functions performed by OCC.

The Proposed Rule Change also describes channels of communication from management to the Board, such as authorization for the CFO to communicate directly with the chair of the

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<sup>68</sup> Id.

<sup>69</sup> 17 CFR 240.17Ad-22(e)(2)(v).

AC, as well as routine reporting requirements designed to keep OCC's governing bodies apprised of OCC's ongoing performance in areas relevant to each body. Additionally, as noted above, the Proposed Rule Change would provide for quarterly reporting to the RC from management regarding the effectiveness of OCC's management of collateral and third party risks. The Commission believes that such changes should clarify reporting lines and access to OCC's Board and committees. Accordingly, based on the foregoing, the Commission believes that the proposed changes pertaining to the assignment of responsibilities and reporting are consistent with Exchange Act Rule 17Ad-22(e)(2)(v).<sup>70</sup>

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

Rule 17Ad-22(e)(3) under the Exchange Act requires, among other things, that a covered clearing agency 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 the covered clearing agency, which meet certain criteria.<sup>71</sup> As described above in section II.E., a number of the amendments that would be made by the Proposed Rule Change address Board and committee responsibilities for risk-related activities. For example, the transfer of oversight of ERM from the RC to the Board may elevate and strengthen the focus on risk management at OCC. Additionally, the Proposed Rule Change would provide clarity regarding the identification and escalation of risk from committees to the Board. The Commission believes that having in place clear and transparent arrangements that facilitate risk identification and escalation is an important component of a sound risk

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<sup>70</sup> Id.

<sup>71</sup> 17 CFR 240.17Ad-22(e)(3).

management framework. Additionally, the Proposed Rule Change is designed, in part, to provide flexibility in stating that the committees would perform other duties as necessary or appropriate. The Commission recognizes that, while a covered clearing agency's risk management framework must be detailed to be comprehensive, it can also reflect a reasonable degree of flexibility in order to allow the covered clearing agency to respond to particular risks or issues arising in its operations in an effective manner.<sup>72</sup> Therefore, the Commission believes that including in the Proposed Rule Change flexibility for the committees to address such risks or issues, where exercised appropriately, may be a useful complement to a detailed risk management framework that otherwise is designed to comprehensively manage foreseeable risks that arise in or are borne by the covered clearing agency.<sup>73</sup> Accordingly, based on the foregoing, the Commission believes that the proposed changes pertaining to the assignment of responsibility for risk oversight are generally are consistent with Exchange Act Rule 17Ad-22(e)(3).<sup>74</sup>

Further, Rule 17Ad-22(e)(3)(iv) under the Exchange Act requires, in part, that the risk management framework required under Rule 17Ad-22(e)(3) provides internal audit personnel with oversight by an independent audit committee of the board of directors.<sup>75</sup> As described above in section II.F., the Proposed Rule Change includes revisions designed to strengthen the AC's oversight of OCC's internal audit department. The Proposed Rule Change addresses the

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<sup>72</sup> Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786, 70801 (Oct. 13, 2016).

<sup>73</sup> In making this statement, the Commission is not expressing a view as to the comprehensiveness of OCC's overall risk management framework, which was not the subject of the Proposed Rule Change.

<sup>74</sup> 17 CFR 240.17Ad-22(e)(3).

<sup>75</sup> 17 CFR 240.17Ad-22(e)(3)(iv).

independence of OCC's internal audit personnel by charging the AC with oversight of the independence and objectivity as well as the effectiveness of OCC's internal audit department. Such changes also provide for oversight of audit personnel by the AC. Similarly, the Proposed Rule Change strengthens the AC's oversight by providing authority to approve or replace the CAE and to oversee the timing and process for implementing a rotation of the engagement partner of the external auditor, and is authorized to discuss certain significant issues with the external auditor. The Commission believes that these aspects of the Proposed Rule Change should provide an appropriate framework for the AC's oversight of the internal audit function. Accordingly, based on the foregoing, the Commission believes that the proposed changes pertaining to the oversight of internal audit personnel are consistent with Exchange Act Rules 17Ad-22(e)(3)(iii) and (iv).<sup>76</sup>

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<sup>76</sup> 17 CFR 240.17Ad-22(e)(3)(iii) and (iv).

#### IV. CONCLUSION

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act<sup>77</sup> and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,<sup>78</sup> that the Proposed Rule Change (SR-OCC-2018-012) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>79</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>77</sup> In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>78</sup> 15 U.S.C. 78s(b)(2).

<sup>79</sup> 17 CFR 200.30-3(a)(12).