

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87207; File No. SR-OCC-2019-008)

October 3, 2019

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change to Establish a Regulatory Committee of The Options Clearing Corporation's Board of Directors

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 25, 2019, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would establish the OCC Regulatory Committee ("Committee") and adopt the OCC Regulatory Committee Charter ("Committee Charter"). The Committee Charter is being submitted in its entirety as new rule text. A corresponding proposed change to OCC's Article III, Section 4 of the OCC By-Laws ("By-Laws") and the OCC Board of Directors Charter and Corporate Governance Principles ("Board Charter") would be adopted in to list the Committee among the other OCC Board of Directors ("Board") committees. The proposed rule change does not require any changes to the text of OCC's Rules.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The proposed rule change is available on OCC's website at <https://www.theocc.com/about/publications/bylaws.jsp>. 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.³

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

OCC is filing this proposed rule change to establish a Board-level Regulatory Committee that would: (a) operate separately from the current OCC Audit Committee; (b) complement the work done by independent consultants on regulatory compliance matters; (c) take over and continues the work done by the current OCC Regulatory Oversight Working Group ("ROWG"), including but not limited to OCC's efforts to demonstrate compliance with applicable laws and regulations; and (d) be solely

³ OCC's By-Laws and Rules can be found on OCC's public website: <http://optionsclearing.com/about/publications/bylaws.jsp>.

comprised of OCC's Public Directors, as that term is defined in the Board Charter.⁴ For the avoidance of doubt, upon approval of the proposed Committee Charter, the ROWG will cease to exist.

The contents of the proposed rule change are summarized as follows.

Regulatory Committee Charter

Committee Purpose

The proposed Committee Charter would state that the OCC Board has established the Committee to assist the Board in overseeing OCC's efforts to demonstrate compliance with its regulatory obligations with particular attention to the OCC Regulatory Compliance Oversight Group ("RCOG"), a working group established by OCC management. The proposed Committee Charter would explain that given OCC's designation as a Systemically Important Financial Market Utility, the Board believes it is critical that OCC demonstrate its continued strong commitment to compliance with applicable regulations in the conduct of its core clearance and settlement activities. The proposed Committee Charter would also state that nothing in the Committee Charter alters the existing roles and responsibilities of other Board Committees.

Committee Membership and Organization

Composition

The proposed Committee Charter would provide that the Committee will be comprised of all OCC Public Directors, as that term is defined in the Board Charter. The proposed Committee Charter would state that (i) unless a chair of the Committee

⁴ OCC's Board Charter can be found on OCC's website:
<https://www.theocc.com/about/corporate-information/board-charter.jsp>.

(“Chair”) is elected by the Board, the members of the Committee will designate a Chair by majority vote of the full membership, and (ii) in the absence of the Chair at any meeting of the Committee, those members of the Committee present would designate a Committee member to serve as acting Chair. The proposed Committee Charter would explain that in the event of a vacancy on the Committee, the Committee would continue to undertake its responsibilities, so long as the remaining Committee members are capable of satisfying the quorum requirement.

Meetings

The proposed Committee Charter would provide that the Committee will meet at least quarterly, or more frequently, as deemed necessary by the Committee in order to fulfill its purposes as described in the Committee Charter. The proposed Committee Charter would additionally provide that other meetings may be called by the Chair as circumstances dictate. The proposed Committee Charter would explain that the Chair or designee, in consultation with OCC management, as well as the OCC Corporate Secretary, would establish the agenda for Committee meetings. The proposed Committee Charter would state that members of the Committee may ask members of OCC management or others to attend the meeting and provide pertinent information as necessary. The proposed Committee Charter would provide that the OCC Chief Compliance Officer, or one of his or her deputies if the Chief Compliance Officer is unable to attend, shall attend all meetings of the Committee. The proposed Committee Charter would provide that the Committee may call executive sessions from which members of management and invited guests, and other Committee members to the extent the Chair determines there exists an actual or potential conflict of interest, may be

excluded. The proposed Committee Charter would explain that the Chair or acting Chair, as applicable, would serve as Chair for the executive session. The proposed Committee Charter would explain that members of the Committee may participate in meetings by means of a conference telephone call or other means of communication that allows all participants in the meeting to hear each other.

Quorum

The proposed Committee Charter would state that a simple majority of the Committee members would constitute a quorum for the transaction of business.

Minutes and Reports

The proposed Committee Charter would require that the Committee maintain minutes of all Committee meetings. The proposed Committee Charter would explain that the Chair or acting Chair, as applicable, would determine whether separate minutes of executive sessions are to be recorded as well as determined by the level of detail to be included in such minutes, taking into consideration the sensitivity of the matters to be discussed and the possibility that candor might be limited if detailed minutes are recorded. The proposed Committee Charter would provide that meeting minutes would reflect that an executive session was convened and broadly describe the topic(s) discussed. The proposed Committee Charter would require that minutes of Committee meetings are circulated to the Board.

The proposed Committee Charter would provide that the Committee would make such reports to the Board as deemed necessary or advisable and that the Chair is responsible for ensuring that important issues discussed at Committee meetings are reported timely to the Board. The proposed Committee Charter would require that on an

annual basis, the Committee would provide a report to the Board summarizing its activities during the previous year.

Committee Authority

The proposed Committee Charter would provide that subject to the direction of the Board, the Committee is authorized to act on behalf of the Board with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the Committee Charter. The proposed Committee Charter would further provide that in discharging its role, the Committee may inquire into any matter it considers appropriate to carry out its purpose and responsibilities, with access to all books, records, facilities and personnel of OCC and that the Committee may confer with management and other employees of OCC to the extent it may deem necessary or appropriate to fulfill its duties.

The proposed Committee Charter would provide that the Committee would have the authority to hire specialists or rely upon other outside advisors, including legal advisors, to assist it in carrying out its activities. The proposed Committee Charter would also state that the Committee would have the authority to approve the fees and retention terms applicable to such advisors and specialists. The proposed Committee Charter would require that the Committee's annual report to the Board reference any engagement of specialists or outside advisors, including any fees and expenses associated therewith.

Committee Functions and Responsibilities

The proposed Committee Charter would state that the Committee's role is one of oversight, and that it remains the responsibility of the RCOG to identify, manage,

monitor, and report on OCC's activities that demonstrate compliance with regulatory obligations.

The proposed Committee Charter would provide that the Committee would have the following functions and responsibilities in discharging its oversight role:

- The Committee would oversee, and assist the Board in evaluating, OCC's efforts to demonstrate compliance with applicable laws and regulations, including banking and securities laws and other applicable regulatory guidance and standards, through regular reporting to the Committee by the RCOG.
- The Committee would oversee OCC management's action plans to achieve compliance with any proposed new regulation to which OCC is subject.
- The Committee would oversee work performed by any independent compliance auditor(s) engaged by OCC and approved by the Board.
- The Committee would make recommendations to the Board as it deems appropriate, and as the Board may request.
- The Committee would meet with OCC's regulators, with or without OCC management, as the Committee deems necessary, in order to discuss OCC's efforts to enhance its regulatory compliance posture.
- The Committee would review any annual regulatory compliance reports provided by OCC management.
- The Committee would review any final exam report letter received from OCC's regulators. Additionally, the Committee would review any OCC response to an exam report letter received from OCC's regulators. The Committee would receive

a briefing on OCC's action plans, if any, in response to items identified in any final exam report letter received from OCC's regulators.

- The Committee would perform such other activities consistent with the Board Charter and By-Laws and applicable legal and regulatory requirements, as the Committee deems necessary or appropriate.

Review Cycle

The proposed Committee Charter would provide that the Committee review the Committee Charter at least once every twelve months and submit the Committee Charter to the Board for approval, with such changes, if any, as the Board deems advisable. The proposed Committee Charter would additionally provide that the Board would have the authority to diminish or eliminate the duties and obligations of the Committee as of the date of any final report of any independent compliance auditor, but in any case, no sooner than three years from the initial approval of the Committee Charter, subject to the approval of the Commission.

By-Laws

The proposed rule change would also adopt an amendment to the OCC By-Laws to include reference to the Regulatory Committee in Article III, Section 4 to list the Committee among the other OCC Board committees. The proposed By-Law provision would state that the Board shall appoint the Committee, having the powers and duties set forth in the By-Laws and Rules and as delegated by the Board. The proposed By-Law provision would state that the Committee members will be all OCC Public Directors. The proposed By-Law provision would state that the chairman of the Committee shall be

designated by the Board or by a majority vote of the Committee membership from among the members of the Committee.

Board Charter

The proposed rule change would also adopt an amendment to the Committees section of the Board Charter to include reference to the Committee among the other Board committees. The proposed Board Charter amendment would state that the Board has established Board-level committees including: Audit, Compensation and Performance, Governance and Nominating, Regulatory, Risk and Technology.

2. **Statutory Basis**

OCC believes the proposed rule change is consistent with Section 17A of the Act⁵ and the rules thereunder applicable to OCC. Section 17A(b)(3)(A) of the Act⁶ requires, among other things, that a clearing agency be so organized and have the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivatives agreements, contracts, and transactions for which it is responsible. OCC believes the proposed rule change is consistent with this requirement because the change would help ensure OCC has governance arrangements that are organized to support its ability to promptly and accurately serve Clearing Members and the markets for which it clears. For example, the proposed Committee Charter would provide that, among other things, the Committee would oversee OCC management's action plans to achieve compliance with any proposed new regulation to which OCC is subject.

⁵ 15 U.S.C. 78q-1.

⁶ 15 U.S.C. 78q-1(b)(3)(A).

OCC believes the proposed rule change is also consistent with the requirements in Rule 17Ad-22(e)(2)(i)⁷ and (v)⁸ to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility. The proposed rule change is also consistent with the requirement to have governance arrangements that specify clear and direct lines of responsibility because the Committee Charter would provide a clear statement of the functions and responsibilities of the Committee. For example, the proposed Committee Charter would provide that, among other things, the Committee would make recommendations to the Board as it deems appropriate, and as the Board may request. Additionally, the proposed Committee Charter would provide that nothing in the Committee Charter alters the existing roles and responsibilities of other Board Committees. Finally, including the Committee in the By-Laws and Board Charter provides for consistency with how other committees of the Board are represented in the By-Laws and Board Charter.

OCC also believes that the proposed rule change is consistent with the requirement in Rule 17Ad-22(e)(3)(i)⁹ to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for managing legal, credit, liquidity, operational, general business, investment, custody and other risks that arise in or are borne by OCC, including risk management policies, procedures, and systems that are designed to identify, measure,

⁷ 17 CFR 240.17Ad-22(e)(2)(i).

⁸ 17 CFR 240.17Ad-22(e)(2)(v).

⁹ 17 CFR 240.17Ad-22(e)(3)(i).

monitor, and manage such risks and that are subject to review on a periodic basis and approved annually by the Board. For example, the Committee Charter would provide that, among other things, the Committee would oversee, and assist the Board in evaluating, OCC's efforts to demonstrate compliance with applicable laws and regulations, including banking and securities laws and other applicable regulatory guidance and standards, through regular reporting to the Committee by the RCOG. Additionally, the Committee Charter would provide that the Committee will review the Committee Charter at least once every twelve months and submit the Committee Charter to the Board for approval, with such changes, if any, as the Committee deems advisable.

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

B. Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impact or impose any burden on competition.¹⁰ The proposed rule change addresses one charter used in OCC's governance structure, and all Clearing Members would be equally subject to these governance arrangements. Consequently, the Committee Charter, By-Laws and Board Charter would not provide any Clearing Member with a competitive advantage over any other Clearing Member. Further, the proposed rule change would not affect Clearing Member's access to OCC's services or impose any direct burdens on Clearing Members. Accordingly, the proposed rule change would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user.

¹⁰ 15 U.S.C. 78q-1(b)(3)(I).

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impact or impose a burden on competition.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self- regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2019-008 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2019-008. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at <https://www.theocc.com/about/publications/bylaws.jsp>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-OCC-2019-008 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Jill M. Petersen
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).