

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87603; File No. SR-OCC-2019-007)

November 22, 2019

Self-Regulatory Organizations; The Options Clearing Corporation; Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Concerning a Proposed Capital Management Policy That Would Support The Options Clearing Corporation's Function as a Systemically Important Financial Market Utility

I. Introduction

On August 9, 2019, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-OCC-2019-007 (“Proposed Rule Change”) pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4² thereunder to adopt a policy concerning capital management at OCC, which includes OCC’s plan to replenish its capital in the event it falls close to or below target capital levels.³ The Proposed Rule Change was published for public comment in the Federal Register on August 27, 2019.⁴ The Commission received comments regarding the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing infra note 4, at 84 Fed. Reg. 44952.

⁴ Securities Exchange Act Release No. 86725 (Aug. 21, 2019), 84 Fed. Reg. 44952 (Aug. 27, 2019) (SR-OCC-2019-007) (“Notice of Filing”). OCC also filed a related advance notice (SR-OCC-2019-805) (“Advance Notice”) with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b-4(n)(1)(i) under the Exchange Act. 12 U.S.C. 5465(e)(1). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4. The Advance Notice was published in the Federal Register on September 11, 2019. Securities Exchange Act Release No. 86888 (Sep. 5, 2019), 84 Fed. Reg. 47990 (Sep. 11, 2019) (SR-OCC-2019-805).

Proposed Rule Change.⁵ On September 11, 2019, OCC filed a partial amendment (“Partial Amendment No. 1”) to modify the Proposed Rule Change.⁶ On October 8, 2019, the Commission designated a longer period for Commission action on the Proposed Rule Change.⁷ The Commission is publishing this order pursuant to Section 19(b)(2)(B) of the Exchange Act⁸ to institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.

II. Description of the Proposed Rule Change

OCC now proposes changes to adopt, as part of its rules, a new policy concerning capital management at OCC (“Capital Management Policy”). Specifically, the proposed Capital Management Policy would (i) describe how OCC would determine the amount of liquid net assets funded by equity (“LNAFBE”) necessary to cover OCC’s potential general business losses; (ii) require OCC to hold a minimum amount of shareholders equity (“Equity”) sufficient to support the amount of LNAFBE determined to be necessary;⁹ and (iii) establish a plan for replenishing OCC’s capital in the event that Equity were to fall below certain thresholds. OCC also proposes to revise its existing rules to support the terms of the proposed Capital Management policy.

⁵ Comments are available at <https://www.sec.gov/comments/sr-occ-2019-007/srocc2019007.htm>.

⁶ See Extension *infra* note 7, at 84 Fed. Reg. 55189.

⁷ Securities Exchange Act Release No. 87246 (Oct. 8, 2019), 84 Fed. Reg. 55189 (Oct. 15, 2019) (File No. SR-OCC-2019-007) (“Extension”).

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ LNAFBE would mean cash and cash equivalents to the extent that such cash and cash equivalents do not exceed Equity.

III. Proceedings to Determine Whether to Approve or Disapprove File No. SR-OCC-2019-007 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the Proposed Rule Change should be approved or disapproved.¹⁰ Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,¹¹ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning the Proposed Rule Change's consistency with the Exchange Act and the rules thereunder, including the following:

- Section 17A(b)(3)(D) of the Exchange Act, which requires the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants;¹² and
- Section 17A(b)(3)(F) of the Exchange Act, which requires, among other things, that the rules of OCC be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of OCC or for which it is responsible.¹³

¹⁰ 15 U.S.C. 78s(b)(2)(B).

¹¹ Id.

¹² 15 U.S.C. 78q-1(b)(3)(D).

¹³ 15 U.S.C. 78q-1(b)(3)(F).

- Rule 17Ad-22(e)(15) of the Exchange Act, which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage the covered clearing agency's general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize, including by taking the actions described in Rules 17Ad-22(e)(15)(i)-(iii) under the Exchange Act.¹⁴

IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the Proposed Rule Change with respect to the issues identified above, as well as any other concerns they may have with the Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with Sections 17A(b)(3)(D) and 17A(b)(3)(F) of the Exchange Act and Rule 17Ad-22(e)(15) thereunder, cited above, or any other provision of the Exchange Act, rules, and regulations thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.¹⁵

¹⁴ 17 CFR 240.17Ad-22(e)(15).

¹⁵ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking,

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Rule Change should be approved or disapproved by [insert date 15 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert 21 days from publication in the Federal Register].

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 No. SR-OCC-2019-007 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 No. SR-OCC-2019-007. 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

Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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 No. SR-OCC-2019-007 and should be submitted on or before [insert date 15 days from publication in the Federal Register]. If comments are received, any rebuttal comments 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.¹⁶

Eduardo A. Aleman
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).