

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89590; File No. SR-OCC-2020-010)

August 18, 2020

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning the Commingling of Certain Non-Customer Margin Assets with Clearing Fund Contributions in The Options Clearing Corporation's Account at the Federal Reserve Bank of Chicago

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 7, 2020, 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 primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

This proposed rule change by OCC would set forth new interpretations and policies to OCC Rules 604 (Form of Margin Assets) and 1002 (Clearing Fund Contributions) to provide OCC with express authority to hold cash Clearing Fund contributions and certain non-customer cash margin assets in its account at the Federal Reserve Bank of Chicago at the same time. The proposed changes to OCC's Rules are included in Exhibit 5 of filing SR-OCC-2020-010. Material proposed to be added is underlined and material proposed to be deleted is marked in strikethrough text. All terms

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

with initial capitalization that are not 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

As part of OCC's designation as a systemically important financial market utility by the Financial Stability Oversight Council on July 18, 2012, OCC is eligible pursuant Section 806 of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 to request the use of certain accounts and services of Federal Reserve Banks. OCC has been approved by the Board of Governors of the Federal Reserve System to maintain an account at the Federal Reserve Bank of Chicago ("Federal Reserve Bank Account") to hold, among other things, cash deposits from its Clearing Members to satisfy margin and Clearing Fund requirements.⁴ However, OCC Rules

³ OCC's By-Laws and Rules can be found on OCC's public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

⁴ See Federal Reserve Bank of Chicago authorization to provide accounts and services to Options Clearing Corporation and Chicago Mercantile Exchange, Inc.,

1002(c) and 604(d) (described in more detail below) impose certain restrictions on the manner in which OCC must hold Clearing Fund contributions and margin assets.⁵ Consistent with these requirements, OCC currently holds only cash Clearing Fund contributions in its Federal Reserve Bank Account and separately holds cash margin assets of Clearing Members in accounts with commercial banks.

Congress established the Federal Reserve System, comprised of the Board of Governors, the Federal Open Markets Committee, and twelve Federal Reserve Banks, in 1913 as the central bank of the U.S. “to provide the nation with a safer, more flexible, and more stable monetary and financial system.”⁶ The Commission’s rules for covered clearing agencies⁷ like OCC expressly promote the use of central bank services for a variety of purposes, including using central bank services to: conduct money settlements,⁸ satisfy requirements regarding custody of qualifying liquid resources,⁹ and

in accordance with the Dodd-Frank Act and Regulation HH, approved March 15, 2016 (<https://www.federalreserve.gov/releases/h2/20160319/h2.pdf>). OCC has also been approved to maintain two additional accounts to serve as customer segregated accounts as defined under Section 4d of the Commodity Exchange Act. Since these accounts are segregated margin accounts, the change discussed herein does not impact the activation of these accounts.

⁵ See OCC Rule 604(d) (allowing OCC to deposit margin assets of Clearing Members “with such banks, trust companies or other depositories as the Board of Directors may select”) and Rule 1002(c) (allowing OCC to deposit Clearing Fund contributions “in approved custodians”). Article I, Section 1.A.(3) defines term “approved custodian” to mean “a bank or trust company approved the Chief Executive Officer, or Chief Operating Officer.”

⁶ Board of Governors of the Federal Reserve System, *Federal Reserve Act* (March 10, 2017), <https://www.federalreserve.gov/aboutthefed/fract.htm>.

⁷ 17 CFR 240.17Ad-22(a)(5).

⁸ 17 CFR 240.17Ad-22(e)(9).

⁹ 17 CFR 240.17Ad-22(a)(14)(i), (e)(7)(ii).

enhance management of liquidity risk.¹⁰ OCC is proposing amendments to Rules 604 and 1002 that, as described below, would permit OCC to commingle cash Clearing Fund contributions and certain non-customer cash margin assets of Clearing Members in its Federal Reserve Bank Account.

Proposed Change

Cash Margin Assets

OCC Rule 604(d) states that certain cash margin assets of Clearing Members (“Specified Cash Margin Assets”) must be deposited to the credit of OCC in an account or accounts,¹¹ designated as Clearing Member margin accounts, with such banks, trust companies or other depositories as the Board of Directors may select. Rule 604(d) further states that such Specified Cash Margin Assets shall not be commingled with funds of OCC or used by OCC as working capital. Under OCC’s By-Laws and Rules, OCC has a lien on margin assets of a Clearing Member to be able to satisfy obligations of the Clearing Member to OCC; however, OCC does not have authority to use the margin assets of one Clearing Member to satisfy obligations to OCC of a different Clearing Member.¹²

¹⁰ 17 CFR 240.17Ad-22(e)(7)(iii).

¹¹ OCC Rule 604(d) expressly excludes from these Specified Cash Margin Assets those funds that are: (i) deposited in respect of a segregated futures account (which must be held in accordance with the provisions of Section 4d of the Commodity Exchange Act and regulations thereunder); (ii) invested by OCC pursuant to Rule 604(a); or (iii) credited by OCC to a liquidating settlement account pursuant to Chapter XI of OCC’s Rules.

¹² See OCC By-Laws Article I., Sections 1.G.(1) (defining the term “general lien”) and R.(7) (defining the term “restricted lien”); see also OCC By-Laws Article VI, Section 3 (specifying the application of general and restricted liens to Clearing Member margin assets credited to different OCC account types).

OCC proposes to add Interpretation and Policy .18 to Rule 604 to provide that, notwithstanding anything else in Rule 604, Specified Cash Margin Assets held by OCC as non-customer margin assets and deposited to the credit of OCC in its Federal Reserve Bank Account may be deposited in accounts that are not designated as Clearing Member margin accounts and may be commingled with cash Clearing Fund contributions.

Cash Clearing Fund Contributions

OCC Rule 1002(c) states in relevant part that cash Clearing Fund contributions may from time to time be partially or wholly invested by OCC for its account in Government securities, and to the extent that such contributions are not so invested they “shall be deposited by OCC in a separate account or accounts for Clearing Fund contributions in approved custodians, provided that such account or accounts may commingle the Clearing Fund contributions of different Clearing Members.” As noted, OCC currently holds only cash Clearing Fund contributions in its Federal Reserve Bank Account.

OCC proposes to add Interpretation and Policy .04 to Rule 1002 to provide that, notwithstanding the aforementioned requirements of Rule 1002(c), Clearing Fund contributions deposited in an account at a Federal Reserve Bank may be commingled in the account with Specified Cash Margin Assets that are non-customer margin assets in accordance with the requirements of proposed Interpretation and Policy .18 to Rule 604.

As described above, the purpose of the proposed interpretations and policies is to provide OCC with clear authority to be able to maintain Specified Cash Margin Assets that are non-customer margin assets and cash Clearing Fund contributions in its Federal Reserve Bank Account at the same time. OCC currently maintains a single Federal

Reserve Bank Account for assets that are not required to be segregated under Section 4d of the Commodity Exchange Act, so the Specified Cash Margin Assets that are non-customer margin assets and cash Clearing Fund contributions would be commingled in this account. OCC believes that the ability to hold such margin and cash Clearing Fund contributions in its Federal Reserve Bank Account at the same time would be consistent with Commission rules for covered clearing agencies¹³ that encourage the use of central bank services. OCC notes that it would not be required to hold all non-customer margin cash in its Federal Reserve Bank Account and that it may continue to maintain some or all non-customer margin cash at creditworthy commercial banks that are approved custodians for OCC.¹⁴

All other OCC By-Laws and Rules pertaining to margin assets and Clearing Fund contributions would be unchanged and apply as they do currently, regardless of whether margin assets or Clearing Fund contributions are held in commercial bank accounts or in OCC's Federal Reserve Bank Account. For example, Specified Margin Assets of a Clearing Member that are held in OCC's Federal Reserve Bank Account would continue to only have a lien on Specified Margin Assets to satisfy obligations of that particular Clearing Member to OCC.

(2) Statutory Basis

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions, safeguard securities and funds in its custody or

¹³ See supra notes 8-10 and accompanying text.

¹⁴ See supra note 5.

control or for which it is responsible, and comply with the provisions of the Exchange Act and the rules and regulations thereunder.¹⁵ The proposed rule change would allow OCC to maintain Specified Cash Margin Assets of Clearing Members that are non-customer margin assets with cash Clearing Fund contributions in its Federal Reserve Bank Account. The proposed rule change would provide OCC with an additional approved custodian at which OCC can hold such assets in a manner that minimizes the custody risk of those assets and ensures prompt access to such assets when needed, thereby promoting the prompt and accurate clearance and settlement of securities transactions and the safeguarding the securities and funds in OCC's custody or control or for which it is responsible.

Exchange Act Rule 17Ad-22(e)(16) requires OCC, as a covered clearing agency, to establish, implement, maintain, and enforce written policies and procedures reasonably designed to safeguard its own and its Clearing Members' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market, and liquidity risks.¹⁶ In adopting Rule 17Ad-22(e)(16), the Commission stated that in satisfying the requirements a covered clearing agency should consider, among other things: (i) whether it holds its own and its participants' assets at supervised and regulated entities that have robust accounting practices, safekeeping procedures, and internal controls that fully protect these assets; (ii) whether it has prompt access to its assets and the assets provided by participants, when required; and (iii)

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ 17 CFR 240.17Ad-22(e)(16).

whether it evaluates and understands its exposures to its custodian banks, taking into account the full scope of its relationships with each.¹⁷

OCC believes that the proposed rule change is consistent with these considerations. As part of the U.S. central banking system, the Federal Reserve Bank of Chicago, where OCC maintains its account, is among the safest and most sound depository institutions in the world. Therefore, the ability to maintain Specified Cash Margin Assets that are non-customer assets and cash Clearing Fund contributions in the account at the same time would provide OCC with an additional approved custodian for such assets that would appropriately safeguard those assets and minimize the risk of OCC's loss or delay in access to them consistent with Exchange Act Rule 17Ad-22(e)(16).¹⁸

Moreover, and as noted above, provisions in Exchange Act Rules 17Ad-22(e)(7) and (9) also promote the use of central bank services by a covered clearing agency to conduct money settlements,¹⁹ satisfy requirements regarding custody of qualifying liquid resources²⁰ and enhance management of liquidity risk.²¹ Accordingly, providing OCC with clear authority to use its Federal Reserve Bank Account to custody Specified Cash Margin Assets that are non-customer margin assets and cash Clearing Fund contributions at the same time is generally consistent with these provisions.

¹⁷ See Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786, 70837 (October 13, 2016) (File No. S7-03-14).

¹⁸ 17 CFR 240.17Ad-22(e)(16).

¹⁹ 17 CFR 240.17Ad-22(e)(9).

²⁰ 17 CFR 240.17Ad-22(a)(14)(i), (e)(7)(ii).

²¹ 17 CFR 240.17Ad-22(e)(7)(iii).

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

Section 17A(b)(3)(I) of the Exchange Act²² requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. OCC does not believe that the proposed rule change would impact or impose any burden on competition. The proposed rule change is designed to facilitate OCC's ability to appropriately safeguard Specified Cash Margin Assets that are non-customer margin assets and cash Clearing Fund contributions using OCC's Federal Reserve Bank Account. The proposed rule change would apply equally to all Clearing Members in that all Specified Cash Margin Assets that are non-customer margin assets and cash Clearing Fund contributions of Clearing Members would be eligible to be maintained in OCC's Federal Reserve Bank Account. Therefore, the proposal does not favor or disfavor any Clearing Member or group of Clearing Members compared to others.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Exchange 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.

²² 15 U.S.C. 78q-1(b)(3)(I).

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-2020-010 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-2020-010. 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-2020-010 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.²³

J. Matthew DeLesDernier
Assistant Secretary

²³ 17 CFR 200.30-3(a)(12).