

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101189; File No. SR-OCC-2024-013)

September 25, 2024

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change by The Options Clearing Corporation Concerning Modifications to its By-Laws and Rules Primarily to Discontinue Certain Outmoded or Unused Products and Services

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 13, 2024, The Options Clearing Corporation (“OCC” or “Corporation”) 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 would make modifications to its By-Laws and Rules primarily to discontinue certain outmoded or unused products and services.

Proposed changes to OCC’s By-Laws are contained in Exhibit 5A [sic] that OCC provided as part of File No. SR-OCC-2024-013. Proposed changes to OCC’s Rules are contained in Exhibit 5B [sic] that OCC provided as part of File No. SR-OCC-2024-013. Material proposed to be added is underlined and material proposed to be deleted is marked in strikethrough text.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

All terms 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

OCC is the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission. OCC also clears certain stock loan and futures transactions. In its role as a clearing agency, OCC acts as a central counterparty ("CCP") guarantying all contracts it clears, meaning OCC becomes the buyer to every seller and the seller to every buyer (or the lender to every borrower and the borrower to every lender, in the case of stock loan transactions). As a CCP, OCC maintains a platform called ENCORE consisting of OCC's core clearing, risk management, and data management applications launched in 2000. Among other functions, ENCORE serves as OCC's real-time processing engine, receiving trade and post-trade data from a variety of sources on a transaction-by-transaction basis to facilitate OCC's clearance and settlement operations. OCC intends to retire ENCORE and

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>.

implement a new, updated clearance and settlement system, known as “Ovation,” that will leverage more current technology and enhanced security features. Ovation is designed to provide a more robust solution to meet market participants’ needs and OCC’s responsibilities, including in OCC’s role as a systemically important financial market utility. As part of the transition to the Ovation system, OCC is considering which features of ENCORE should be carried over to Ovation and which should be retired, as well as other updates to its By-Laws and Rules to conform to current capability and support future requirements.

1. Purpose

This proposed change by OCC would modify the By-Laws and Rules to address certain outmoded or unused functions or products that OCC proposes to discontinue. OCC also proposes certain miscellaneous changes to provide greater clarity to its By-Laws and Rules.⁴

First, OCC proposes to no longer facilitate the settlement of commissions and fees owed between Clearing Members that are party to a Clearing Member Trade Assignment (“CMTA”) arrangement. OCC members have not used or expressed an interest in having OCC facilitate such settlement of commissions and fees. Second, OCC proposes to delete provisions related to OTC option products because these OTC option products are not currently traded.

Third, OCC proposes to no longer require that Clearing Members maintain records of both parties to a trade because trade counterparty information is not necessary

⁴ OCC is also proposing these changes, with a view toward its planned transition to a new core clearing system, which OCC calls Ovation.

for OCC's clearing and settlement purposes. Accordingly, OCC has not developed Ovation to aggregate such information and provide it to Clearing Members for purposes of compliance with this rule. Implementing this non-clearing data element in Ovation would require significant investment of resources to develop functionality that could impact Ovation's release timeline.

Fourth, OCC proposes to amend its Rules to provide that when a Clearing Member wants to "give-up" one or more positions in cleared contracts that are futures or futures options to another Clearing Member, it need not designate the specific account of the Given-Up Clearing Member to which such positions must be allocated. Rather, the Given-Up Clearing Member will be able to indicate the account to which it wishes the futures or futures options positions to be allocated in order to provide more flexibility to Clearing Members and better facilitate give-up allocations to the appropriate account.

Fifth, OCC proposes to clarify that, when an opening or closing indicator is not included on a trade for an options or a futures contract, OCC will default the trade to an opening position for all account types, including market makers. Defaulting to an open position when there is no indicator will help ensure that an existing position is not inadvertently closed out.

Sixth, OCC proposes to amend its Rules to reflect that when a particular class of exercised options is subject to broker-to-broker settlement, the settlement obligation will not be considered discharged until both the Delivering and Receiving Clearing Member submit matching notices as to the number of units of the underlying security delivered (received). This change will better reflect the manner in which OCC currently handles broker-to-broker settlements.

Seventh, OCC also proposes to delete the “associated Market Maker” account subtype, which is not currently used by Clearing Members.

Proposed Rule Changes

As noted, this proposed change by OCC is primarily designed to modify the By-Laws and Rules to address certain outmoded or unused functions or products that OCC proposes to discontinue, particularly as OCC works toward its transition to a new core clearing system. ENCORE is OCC’s existing clearing system, and it was launched in 2000. Since then, it has operated as OCC’s real-time processing engine to receive trade and post-trade data from a variety of sources on a transaction-by-transaction basis, maintain clearing member positions, calculate margin and clearing fund requirements, and provide reporting to OCC staff, regulators, and Clearing Members. As stated in the Commission’s notice of no objection to OCC’s advance notice filing related to adoption of cloud infrastructure for new clearing, risk management and data management applications,⁵ OCC’s objective is the eventual retirement of ENCORE and its replacement with a resilient successor clearing system, which OCC calls Ovation. In connection with this transition by OCC to a successor clearing system and the related development work to design the successor system to support an appropriate scope of operations, OCC plans to discontinue certain existing functions or products that are outmoded or unused, as described in more detail below.

The proposed rule change would amend the By-Laws and Rules to: (i) discontinue OCC’s facilitation of the settlement of commissions and fees owed between Clearing

⁵ See Securities Exchange Act Release No. 96113 (Oct. 20, 2022), 87 FR 64824 (Oct. 26, 2022) (File No. SR-OCC-2021-802).

Members that are party to a CMTA arrangement; (ii) remove provisions related to OTC option products that are inoperative; (iii) no longer require that Clearing Members must maintain records of both parties to a trade; (iv) provide that a Giving-Up Clearing Member in connection with futures and futures options is not required to provide instructions that identify the designated account of the Given-Up Clearing member; (v) clarify and make uniform across all account types the default treatment of confirmed trades in futures and options as opening transactions; (vi) clarify its rules about the discharge of settlement obligations when OCC directs that exercise and assignment activity for a specific class of options will be subject to broker-to-broker settlement; and (vii) delete the Associated Market-Maker account type.

OCC to No Longer Facilitate Settlement of Commissions and Fees between CMTA Clearing Members

OCC's Rules 407 and 504 currently provide for a voluntary service at the election of Clearing Members that are parties to a CMTA arrangement whereby OCC will facilitate the settlement of fees and commissions between such Clearing Members, subject to certain conditions. OCC amended its Rules in 2010 to provide for this service.⁶ The service has not been used by Clearing Members since 2016, and Clearing Members have not expressed an interest in using the settlement of commissions and fees service provided by OCC in the future. As a result of the lack of Clearing Member interest in this service, OCC proposes to decommission it such that it will also not need to be supported in OCC's successor clearing system. All other aspects of OCC's Rules related to CMTA arrangements would remain unchanged.

⁶ See Securities Exchange Act Release No. 63120 (Oct. 15, 2010), 75 FR 65538 (Oct. 25, 2010) (File No. SR-OCC-2010-017).

Accordingly, OCC proposes to renumber paragraph (a)(1) to (a) and to delete paragraph (a)(2) from Rule 407, which provides that Clearing Members that are parties to a CMTA arrangement may elect to authorize OCC to settle fees and commissions owed by the Carrying Clearing Member to the Executing Clearing Member in respect of transfers effected pursuant to that arrangement.⁷ OCC also proposes to delete paragraph (e) of Rule 504, which corresponds to current Rule 407(a)(2), generally providing that OCC, as agent, is authorized to effect non-guaranteed settlement of fees and commissions owed by a Carrying Clearing Member to an Executing Clearing Member for transfers effected pursuant to their registered CMTA arrangement, provided that the CMTA registration authorizes OCC to effect such settlements.⁸ OCC proposes to mark paragraph (e) of Rule 504 as reserved. In addition, OCC proposes to delete the final sentence of Rule 504(g), which provides that OCC shall have no obligation to effect settlement of fees and commissions as provided in Rule 407 if either the Executing Clearing Member or the Carrying Clearing Member has been suspended by OCC.

Over-the-Counter (“OTC”) Options Provisions to Be Removed

OCC’s By-Laws and Rules currently permit it to clear and settle certain OTC options products, specifically OTC index options on the S&P 500 index.⁹ In connection

⁷ Rule 407(a)(2) further provides, among other things, that Clearing Members making such election shall specifically register that aspect of their CMTA arrangement with OCC, sets forth the authority granted to OCC for Clearing Members making such an election, and specifies that any such election becomes effective once accepted by OCC’s systems.

⁸ Rule 504(e) further provides, among other things, that aggregate amounts to be settled are calculated based on entries made by the Executing Clearing Member, that settlements of the fees/commissions will be effected on the business days first succeeding the business day on which the Executing Clearing Member entered the information into OCC’s systems.

⁹ See Securities Exchange Act Release No. 68434 (December 14, 2012), 77 FR 75243 (December 19, 2012) (SR-OCC-2012-14).

with this service, OCC's By-Laws and Rules were modified in various places to provide for the clearance and settlement of such OTC index options. Although OCC has only ever cleared OTC index options on the S&P 500 index, OCC's By-Laws and Rules were designed to support the clearance and settlement of additional OTC options using the same legal and operational framework. However, OCC has not cleared and settled an OTC option since 2014 and there is no open interest in OTC options. Clearing Members have also not expressed interest in the OTC option clearance settlement services.

As a result, OCC proposes to remove all provisions from its By-Laws and Rules¹⁰ related to the clearance and settlement of OTC options. These changes include the deletion of the entire definitions and references to the terms "OTC options," "OTC index option," "OTC Trade Source," "OTC Trade Source Rules", "Backloaded OTC option," and "OTC Option Auction," as well as text accompanying these terms that describe OCC's role in the clearance and settlement of OTC options in the following By-Law and Rule provisions: (i) Article I of the By-Laws (Definitions);¹¹ (ii) Article VI of the By-Laws, Section 1, Interpretation and Policies .01(a), the entirety of Section 3,

¹⁰ OCC notes that it is not proposing in this proposed rule change to eliminate the reference to OTC options in Rule 805 (Expiration Exercise Procedure) because it is proposing to delete such reference in another rule filing with the Commission.

¹¹ OCC proposes to delete references to OTC options and related terms throughout the definitions in Article I of the By-Laws, including "Backloaded OTC option," "OTC Index Option Clearing Member," "origination date," "OTC index option," "OTC option," "OTC Trade Source," "OTC Trade Source Rules." OCC also proposes to delete text from the definitions of the terms "Class", "Clearing Member", "Index Multiplier", "Index Value Determinant", "Trade Date", and "Variable Terms" that define what those terms mean with respect to OTC options. In addition, OCC proposes to delete text from Interpretation and Policies .01 to Section C of Article I of the By-Laws providing that the term "'Exchange transaction' was removed from the By-Laws and Rules and replaced with the term 'confirmed trade' to reflect the expansion of the Corporation's clearing activities into OTC options" because such sentence is no longer necessary given the removal of provisions related to OTC options. OCC is not proposing to revert back to the use of "Exchange transaction" in its By-Laws and Rules because OCC believes that Clearing Members are familiar with the term "confirmed trade."

Interpretations and Policies .09, Section 10(b) and (g), and Section 27(a) and (b); (iii) Article XVII of the By-Laws, Introduction, Section 1 (Definitions),¹² Section 3(h) and Interpretation and Policies .01 (deleted entirely), Section 4(a)(2), Section 5(a), and the entirety of Section 6 (relating to OTC Index options); (iv) Rule 201(b)(6) (deleted entirely); (v) Rules 401(a), (a)(1)(i), (b), (d), (e), (f) and (g); (vi) Rule 405; (vii) Rule 406; (viii) Rule 407(l) (deleted entirely); (ix) Rule 408(a); (x) Rule 611(a), (b), and (d) (deleted entirely); (xi) Rule 801(b); (xii) Rule 803 Interpretation and Policy .01; (xiii) Rule 804; (xiv) Rule 1003 Interpretation and Policy .02 (deleted entirely); (xv) Rule 1104 Interpretation and Policy .03 (deleted entirely); (xvi) Rule 1105; (xvii) Rule 1106(e)(2) (deleted entirely), and Interpretation and Policy .01; (xviii) Chapter XVIII of the Rules, Introduction; (xix) Rule 1804(b), (c),¹³ and Interpretation and Policy .03 (deleted entirely). OCC is not proposing changes to these provisions (unless otherwise described in this proposed rule change) other than the removal of provisions that relate to OTC options. For example, OCC proposes to modify the definition of the term “confirmed trade” in the By-Laws only to delete the provision relating to OTC options.¹⁴

To the extent OCC may plan to support the clearance and settlement of OTC options again in the future based on Clearing Member demand for such services, OCC would submit a proposed rule change with the Commission pursuant to Section 19(b) of

¹² OCC proposes to delete OTC option related provisions in the following definitions in Article XVII, Section 1: (i) “class of options,” (ii) “current underlying interest value,” (iii) “expiration date,” (iv) “expiration time” (deleted entirely), (v) “reporting authority,” and (vi) “series of options.”

¹³ OCC proposes to delete Rule 1804(c)(1) in its entirety because it relates solely to OTC options. OCC proposes to renumber current Rule 1804(c)(2) and (3) as (c)(1) and (2).

¹⁴ Specifically, OCC proposes that the definition of “confirmed trade” would no longer include a cleared contract affirmed through the facilities of an OTC Trade Source and submitted to the OCC for clearance.

the Exchange Act to reincorporate changes to its By-Laws or Rules as may be necessary for that purpose.¹⁵

Records of Both Parties to a Transaction to No Longer Be Required

Rule 208 currently requires, among other things, that every Clearing Member must keep records showing all confirmed trade data required pursuant to the OCC's By-Laws and Rules, including confirmed trade information reported to OCC under Rule 401. Rule 401(a)(1)(i) requires that confirmed trade details include "the identity of the Purchasing Clearing Member and the Writing Clearing Member to the transaction." As a result, Clearing Members are currently required to maintain records of the identity of the Clearing Members who are parties to a confirmed trade. Prior to the adoption of electronic trading, these records were maintained to facilitate the efficient clearing and settlement of confirmed trades and reconcile counterparty settlement obligations to avoid settlement delays and disputes. OCC currently provides such information through Encore for purposes of compliance with this Rule.

However, with the widespread adoption of electronic trading and the development of supporting market infrastructure, OCC's clearing processes and capabilities have evolved to no longer require the identities of the counterparty Clearing Members for the purposes of clearing and settlement. Therefore, OCC would no longer require that Clearing Members maintain such records in Ovation.¹⁶ Implementing this non-clearing data element and developing this functionality would require OCC to invest significant

¹⁵ 15 U.S.C. 78s(b).

¹⁶ OCC notes that Clearing Members continue to debate whether the counterparty information should be maintained given past trading precedent when this information was required. Today, the trade counterparty information is no longer required for clearing purposes. However, OCC may reconsider providing this information in the future.

resources that could have an impact on Ovation's release timeline. As a result, OCC proposes to modify Rule 208 to provide, with respect to parties to a transaction, that a Clearing Member must keep records showing all confirmed trade data required pursuant to OCC's By-Laws and Rules, including confirmed trade information reported to OCC under Rule 401 "except for the identity of the counterparty Clearing Member." This change would require Clearing Members to only record trade information relevant for clearing and settlement purposes. OCC notes that because all confirmed trades in option contracts that are accepted by OCC are novated such that OCC becomes the buyer to the seller and the seller to the buyer, it is not necessary or relevant for clearance and settlement purposes to require a Clearing Member to record the identity of another Clearing Member who was originally counterparty to the transaction.

Discontinue the Requirement to Identify Designated Accounts of Given-Up Clearing Members

Rule 408 provides that one or more positions in cleared contracts may be allocated from the designated account of a Giving-Up Clearing Member to the designated account of a Given-Up Clearing Member. Currently, this system for allocation of positions is only available in connection with positions in futures contracts and options on futures contracts that are cleared and settled by OCC. These allocations are post-trade instructions to OCC that are entered by one Clearing Member, called the Giving-Up Clearing Member, to direct OCC that a position in a cleared contract in one of the OCC accounts of that Giving-Up Clearing Member should be moved to the designated account of the Given-Up Clearing Member. Currently, the Rules allow the Giving-Up Clearing Member to designate the account of the Given-Up Clearing Member to which the position should be allocated.

OCC proposes to add rule text to the header for Rule 408 and elsewhere in Rule 408(a) to make clear that this allocation of positions functionality is only available for futures and options on futures. Currently, Rule 408 states that the allocation functionality is available for “cleared contracts,” which could be read to include securities options contracts notwithstanding that the allocation functionality is currently only available for futures and options on futures, and OCC plans for the same to be true in connection with the successor Ovation system.¹⁷

OCC also proposes to remove reference to the term “designated account” within the provisions of Rule 408 (a) and (b) from certain instances that refer to the Given-Up Clearing Member to clarify that the Giving-Up Clearing Member would no longer be required to specify the designated account of the Given-Up Clearing Member to which the cleared contract position should be moved. OCC proposes to then add a sentence in Rule 408(b) that would require the Given-Up Clearing Member to designate an account to which the allocation will be made. OCC will then process allocation instructions for Cleared contract positions once the Given-Up Clearing Member has designated an account in which to accept the allocations.

OCC proposes to also remove the last sentence of Rule 408(b) that generally describes OCC’s posture in the absence of an allocation agreement,¹⁸ which OCC

¹⁷ OCC also proposes to make similar changes to Rule 408(e) to make clear that the Rule only applies to futures and options on futures contracts. This would be done by inserting the word “futures” before references to the word “options” in Rule 408(e).

¹⁸ The last sentence of Rule 408(b) currently provides that If the Giving-Up Clearing Member and the Given-Up Clearing Member are not parties to an allocation agreement registered with the Corporation, then the Corporation shall adjust the positions in the respective designated accounts of the Giving-Up and Given-Up Clearing Member in accordance with the allocation instruction only upon receipt of notice from the Given-Up Clearing Member of its affirmative acceptance of the allocation.

believes is already addressed as part of paragraphs (b), and (d) of the Rule, and including the text would be duplicative and unnecessary. An allocation instruction, whether direct or provided through a confirmed trade, is a request by the Giving-Up Clearing Members to allocate positions to a Given-Up Clearing Member. Positions would remain in pending status awaiting the designation of an allocation account by the Given-Up Clearing Member to complete processing. Positions would move automatically if an account was designated, and an allocation agreement existed between the Giving-Up Clearing Member and the Given-Up Clearing Member. In all cases Rule 408 would provide that the Giving-Up Clearing Member would be required to allocate the cleared futures or options on futures contract position to a Given-Up Clearing Member. In turn, the Given-Up Clearing Member would be responsible for affirmatively confirming the account to which the cleared contract position should be transferred by OCC before the position would be moved by OCC from the designated account of the Giving-Up Clearing Member to the designated account of the Given-Up Clearing Member.

OCC proposes to also remove all references to “allocation agreement” in the text of Rule 408(b), and (d). OCC believes removing this text adds clarity to the rule because the text of Rule 408(c) addresses the registration of allocation agreements with OCC and declares that an allocation agreement would constitute notice of a pre-agreed instruction to OCC by the Given-Up and the Giving-Up Clearing Members for OCC to allocate positions to an account of the Given-Up Clearing Member without further action. If the Given-Up Clearing Member rejects the allocation or if it does not provide affirmative acceptance by the cut-off time, Rule 408 would continue to provide, as it currently does, that the positions will remain in the account of the Giving-Up Clearing Member. This

proposed approach puts each Clearing Member, as applicable, in control of the account from which or to which the position in the cleared futures or futures option contract should be moved. OCC believes that this would help reduce the risk of positions being transferred to an account of the Given-Up Clearing Member that the Given-Up Clearing Member does not want to receive them.

Clarify the Default Treatment of Confirmed Trades in Options as Opening Transactions

Rule 401 addresses information that is required to be or that may be reported to OCC in connection with new confirmed trades in options, futures and BOUNDS.¹⁹ For confirmed transactions in options that are transmitted to OCC by an options exchange, OCC does not require as a condition to OCC's acceptance and novation an indication of whether the transaction is an opening or closing transaction. Such information may be included in the confirmed trade information from the exchange, but if it is not included OCC treats the confirmed trade as an opening transaction – which has the effect of increasing the number of option contracts in the option series in the relevant account of the Clearing Member. To clarify this default treatment in Rule 401, OCC is proposing to amend current Interpretation and Policy .01 to Rule 401, which already states that this is the default treatment for confirmed trades that OCC receives in futures for all Clearing Member accounts other than market-maker accounts. In revising Interpretation and Policy .01 to be applicable to confirmed trades in both options and futures, OCC is also proposing to delete the part of the provision that states that it applies the opening transaction default treatment to all accounts other than market-maker accounts. OCC

¹⁹ The term "BOUND" means a security issued by the Corporation pursuant to Article XXIV of the By-Laws and Chapter XXV of the Rules. See OCC By-Laws, Article 1.

believes that this revision is appropriate in respect of options and futures in Clearing Member market-maker accounts in addition to all other types of Clearing Member accounts because defaulting a trade without an open or close indicator to “open” is operationally safer and more prudent and prevents such trades from unintentionally closing an existing position. OCC believes that defaulting to open when there is no open or close indicator should also be consistent across all account types, including Market Makers.

Discharge of Settlement Obligations under Broker-to-Broker Settlement

Consistent with OCC Rule 901, settlement of exercise and assignment activity in stock options is typically made through the facilities of a correspondent clearing corporation, currently the National Securities Clearing Corporation (“NSCC”). However, in certain situations, including when a particular underlying security becomes ineligible at NSCC, OCC directs that settlement will occur on a broker-to-broker basis under Rule 903. Rule 909 then provides for the notices that the Delivering Clearing Member and Receiving Member must submit to advise OCC of the discharge of the settlement obligation.

Currently, Rule 909 provides that if one of the Clearing Members submits a notice of delivery, payment, or receipt of delivery or payment, and the counterparty fails to respond to such notice within two business days, that failure to respond constitutes the counterparty’s acknowledgement that the obligation has been settled as indicated in the submitting Clearing Member’s notice, “provided that the designated delivery date has

occurred.”²⁰ However, in practice, when OCC directs broker-to-broker settlement, it also directs that if it is not possible for the Delivering Clearing Member to effect delivery of the underlying shares on the designated settlement date, then the settlement obligations of both the Delivering and Receiving Clearing Member will be delayed until such time as OCC designates a new exercise settlement date, settlement method or settlement value,²¹ pursuant to OCC’s authority under Section 19 of Article VI of the By-Laws (Shortage of Underlying Securities).²² This directive allows Delivering Clearing Members the opportunity to effect settlement if they have the underlying securities and are able to effect delivery, but delays the settlement obligation when this is not possible. Under Article VI, Section 19 of the By-Laws, such settlement obligation remains delayed until either (i) OCC determines that a sufficient supply of the underlying security has become available to warrant the termination of such action and fixes a new delivery date for the contracts effected by the suspension,²³ or (ii) OCC determines that there is no reasonable likelihood that a sufficient supply of the underlying security will become available within the foreseeable future to permit the Clearing Members affected by such suspension to discharge their obligations by delivery or receipt of the underlying security. In this situation OCC will exercise its authority to fix a cash value to settle the obligation for exercised option contracts, and/or, in the event that the suspended security underlies

²⁰ OCC Rule 909(d).

²¹ See, e.g., Information Memo #53517, available at <https://infomemo.theocc.com/infomemos?number=53517> (exemplative OCC Info Memo directing broker-to-broker settlement).

²² See By-Laws Article VI, Section 19(a)(2)-(3) (providing that OCC may suspend the settlement obligations of exercised options when Clearing Members are unable to deliver the underlying security).

²³ See id. Section 19(b).

matured, physically-settled stock futures, terminates all rights and obligations to deliver or receive underlying securities and instead require payment and receipt of the final variation payment to fully discharge the rights and obligation for such matured, physically-settled stock futures.²⁴

When such settlement obligation is delayed, the conditions under Rule 909(d) for considering a contraparty's failure to respond when the other Clearing Member marks an obligation settled is not satisfied. Accordingly, OCC proposes to amend Rule 909(d) to remove the provision directing that a contraparty's failure to respond to the other Clearing Member's settlement notice in OCC's system within two business days after such notice was made available to such Clearing Member may be treated as acknowledgement of settlement. In its place, OCC would provide that the contraparty's failure to respond would indicate that the obligation is unsettled and that OCC would maintain that status until such time as either (i) both Delivering and Receiving Clearing Members mutually agree to settle the obligation and notify OCC; or (ii) OCC settles the obligation on behalf of both Delivering and Receiving Clearing Members pursuant to OCC's policies and procedures. As amended, Rule 909(d) would clarify and better align Rule 909 with OCC's practices with respect to shortages of underlying securities under Article VI, Section 19 of the By-Laws.

OCC also proposes to make an associated clarifying change by removing text from the first paragraph of Rule 909 related to the amount received or paid for the underlying security. Currently when OCC directs broker-to-broker settlement, the Delivering and Receiving Clearing Members inform OCC of settlement by submitting

²⁴ See id. Section 19(c).

notices that specify the number of units of the underlying security delivered or received and equivalent cash amounts received or paid. In practice, however, the cash amounts received or paid are systematically determined and not specified by either Delivering or Receiving Clearing Members. The practice of systematically calculating the cash amounts received or paid allows OCC to reduce operational risk and avoid processing any inaccurate notices entered by Clearing Members. OCC believes that the proposed change would clarify and conform Rule 909 with OCC's current practices.

Elimination of Associated Market Maker Sub-Account Type

Article VI, Section 3(c), of OCC's By-Laws currently allows Clearing Members to use a combined market makers' account to carry the positions of multiple proprietary Market Makers or to carry the positions of multiple associated Market Makers,²⁵ so long as such accounts are restricted to positions of proprietary Market Makers or associated Market Makers, respectively. Today, the associated Market Maker subaccount type is not used by Clearing Members. As a result, OCC proposes to eliminate the associated Market Maker sub-account type.

Accordingly, OCC proposes to delete the definition of an "associated Market Maker" from Article I of the By-Laws and remove provisions in the By-Laws related to associated Market Makers and the ability to establish a combined Market Maker account of associated Market Makers. Specifically, OCC proposes to delete references to an associated Market Maker and the ability to establish a combined Market Maker account

²⁵ An "associated Market Maker" is currently defined in Article I of OCC's By-Laws as a person maintaining an account with a Clearing Member as a Market-Maker, specialist, stock market-maker, stock specialist or Registered Trader that is a Related Person of the Clearing Member and shall include any participant, as such, in an account of which 10% or more is owned by an associated Market-Maker, or an aggregate of 10% or more of which is owned by one or more associated Market-Makers.

from Article VI, Section 3(c) and Interpretation and Policies .03 and .06, and to revise the reference in the first sentence of Interpretations and Policies .06 to refer to Section 3(c). As amended, OCC's By-Laws would, in effect, provide for two, rather than three, combined Market Maker accounts: (i) a combined account limited to Market Makers that are not proprietary Market Makers; and (ii) a combined account limited to proprietary Market Makers.²⁶

Implementation Timeframe

OCC will release and implement the proposed change described above into production concurrently with the release of Ovation and the attendant retirement of ENCORE, which is planned to launch no earlier than July of 2025. OCC will announce the implementation date of the proposed change by Information Memorandum posted to its public website at least four weeks prior to implementation. OCC plans to launch Ovation and implement the proposed change no later than December 31, 2025, and OCC will announce another intended implementation date by Information Memorandum posted to its public website if the changes will not be implemented by that date.

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 control or for which it is responsible, remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest; and are not

²⁶ See proposed By-Law Article VI, Section 3(c), Interpretation and Policy .06.

designed to permit unfair discrimination among participants using the clearing agency.²⁷

In addition, Rule 17Ad-22(e)(21) requires OCC, as a covered clearing agency, to establish, implement, maintain, and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves, and have its management regularly review the efficiency and effectiveness of OCC's clearing and settlement arrangements, operating structure, and the scope of products cleared or settled.²⁸

OCC believes that the proposed rule changes are consistent with these requirements because the proposed rule change is designed to decommission or render inoperative services that OCC no longer plans to provide based on the products and services demands of Clearing Members. For example, because OCC has not cleared any OTC options since 2014 and Clearing Members have not expressed an interest in using OCC to clear and settle OTC options going forward, OCC believes that removing all By-Law and Rule provisions related to OTC options promotes OCC being effective and efficient in meeting the requirements of Clearing Members with respect to the scope of products cleared and settled, consistent with Rule 17Ad-22(e)(21).²⁹ Similarly, OCC believes that decommissioning OCC's voluntary service for Clearing Members that are party to a CMTA to facilitate the settlement of commissions and fees, which service has not been used by Clearing Members since 2016, also promotes the efficient and effective satisfaction of the requirements of Clearing Members consistent with Rule 17Ad-

²⁷ 15 U.S.C. 78q-1(b)(3)(F).

²⁸ 17 CFR 240.17Ad-22(e)(21).

²⁹ Id.

22(e)(21).³⁰ As a third example, no Clearing Members currently use the associated Market Maker account subtype, so OCC proposes to eliminate such account type. By no longer supporting products or services that have not been used by Clearing Members, OCC can free up resources to focus on products and services for which there is demand from Clearing Members, thereby promoting a more efficient and effective OCC to meet the requirements of Clearing Members. OCC also believes that specifying in its By-Laws and Rules which products and services are no longer available or that are currently inoperative generally serves to protect investors and the public interest who benefit from clear and transparent rulebooks, consistent with Section 17A(b)(3)(F) of the Exchange Act.³¹

Several other proposed changes would similarly promote a clear and transparent rulebook consistent with Section 17A(b)(3)(F) of the Exchange Act.³² For example, the proposed change to Rule 408, which would make clear that the account allocation functionality is only available for futures and options on futures would eliminate any potential confusion that Clearing Members might have regarding the scope of this service. OCC's proposal to clarify that the default treatment of confirmed trades in futures and options as opening transactions in Rule 401 similarly promotes a clear and transparent rulebook and would reduce any potential concerns of a Clearing Member that a confirmed trade without having been marked as an opening position might

³⁰ Id.

³¹ 15 U.S.C. 78q-1(b)(3)(F).

³² Id.

inadvertently result in closing a Clearing Member's position.³³ For the same reasons, the proposed change to Rule 909(d) would make clear OCC's practices with respect to the discharge of broker-to-broker obligations by specifying that OCC treats transactions as pending and would better align that Rule with By-Law Article VI, Section 19.³⁴

OCC believes that no longer requiring that Clearing Members must maintain records of both parties to a trade (pursuant to the proposed changes to Rule 208) is consistent with Section 17A(b)(3)(I) because OCC would no longer provide the counterparty information of trades to Clearing Members party to those trades. Such information is not required for clearing and settlement purposes, and providing this information would result in OCC developing and supporting functionality that would impact OCC's implementation of Ovation. In turn, by not providing counterparty information, OCC would help ensure that its Rules do not inappropriately burden competition among its participants by forcing Clearing Members to develop and support functionality not necessary for the clearing and settlement of trades.³⁵

OCC believes that the proposed changes to clarify that a Giving-Up Clearing Member is not required to provide instructions that identify the designated account of the Given-Up Clearing member serves the protection of investors and the public interest

³³ This change would also make uniform such default treatment (as an opening transaction) across all account types (i.e., including market makers), which eliminates any potential unfair discrimination across different account types, consistent with the requirement under Section 17A(b)(3)(F) of the Exchange Act that OCC's rules not be designed to permit unfair discrimination in the use of OCC. 15 U.S.C. 78q-1(b)(3)(F).

³⁴ OCC also notes that all Clearing Members would continue to be treated the same under Rule 909(d) with respect to OCC's role in settling broker-to-broker transactions, which OCC believes promotes consistency with Section 17A(b)(3)(F) of the Exchange Act (prohibiting OCC's rules from being designed to permit unfair discrimination in the use of OCC).

³⁵ 15 U.S.C. 78q-1(b)(3)(I).

consistent with Section 17A(b)(3)(F) of the Exchange Act by providing more control to Clearing Members in allocating give-ups. For example, a Given-Up Clearing Member will have control to designate the account to which positions should be allocated and a Giving-Up Clearing Member will no longer be required to designate the specific account when it may or may not know the correct account. OCC believes that this would protect investors by reducing potential operational risk arising from a Giving-Up Clearing Member selecting the incorrect account of the Given-Up Clearing Member. This change would also provide a more efficient means for Giving-Up Clearing Members to ensure positions are allocated to the desired account, which efficiencies OCC believes helps removes impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.³⁶

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Exchange Act³⁷ 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 changes related to discontinuing OCC's settlement of fees and commissions for Clearing Member CMTA arrangements, elimination of the unused associated Market Maker account subtype, and rendering OTC option services inoperative would impact or impose any burden on competition. Neither of these services have been used by Clearing Members for at least six years, and the proposed changes would apply equally to all Clearing Members. Regarding the proposed rule change to no longer require a Clearing

³⁶ 15 U.S.C. 78q-1(b)(3)(F)

³⁷ 15 U.S.C. 78q-1(b)(3)(I).

Member to keep records of its counterparties to confirmed trades, OCC believes that this change will remove any burden on competition that could arise from Clearing Members developing solutions to support functionality not required for clearing and settlement purposes. In that regard, OCC believes that this proposed rule change promotes greater consistency with Section 17A(b)(3)(I) of the Exchange Act.³⁸

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 either would not impact or impose a burden on competition or would help alleviate potential burdens on competition.

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

Written comments 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 such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

³⁸ Id.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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 Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking>); or
- Send an e-mail to rule-comments@sec.gov. Please include file number SR-OCC-2024-013 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-OCC-2024-013. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking>). 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 am and 3 pm. 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/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR-OCC-2024-013 and should be submitted on or before [INSERT DATE 21 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

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

Vanessa Countryman,
Secretary.

³⁹ 17 CFR 200.30-3(a)(12).