

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103436; File Nos. SR-OCC-2025-006]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Rule Change by The Options Clearing Corporation concerning the adoption of the Amended and Restated Participant Exchange Agreement between OCC and each of the national securities exchanges that list equity options

July 11, 2025.

I. INTRODUCTION

On May 13, 2025, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-OCC-2025-006, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4² thereunder, to replace the current Restated Participant Exchange Agreement with a new agreement.³ The proposed rule change was published for public comment in the *Federal Register* on May 29, 2025.⁴ The Commission has received no written comments regarding the proposed rule change.⁵ For the reasons discussed below, the Commission is approving the proposed rule change (hereinafter defined as “Proposed Rule Change”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing *infra* note 4, at 90 FR 22807.

⁴ See Securities Exchange Act Release No. 103106 (May 22, 2025), 90 FR 22807 (May 29, 2025) (File No. SR-OCC-2025-006) (“Notice of Filing”).

⁵ On June 17, 2025, representatives of BOX Exchange, LLC met with staff in the Commission’s Division of Trading and Markets to discuss the proposed rule changes. See Memorandum from the Division of Trading and Markets regarding a June 17, 2025 meeting with representatives of BOX Exchange, LLC; available at <https://www.sec.gov/comments/sr-occ-2025-006/srocc2025006-615728-1806735.pdf>.

II. BACKGROUND

OCC is the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission. OCC's relationship with the national securities exchanges that list options (each an "Exchange," and collectively, the "Exchanges") is largely governed by an agreement, last updated in 2007, between OCC and the Exchanges. This agreement, the Restated Participant Exchange Agreement ("RPEA") sets out the terms and conditions under which OCC will provide to the Exchanges clearing services for the options listed on the Exchanges.

OCC proposes to replace the current RPEA with a new RPEA. OCC represents that the differences between the current and new RPEA are designed to: (i) reflect current, enhanced, or implied but not specifically stated operational and business practices between OCC and the Exchanges, which may address technology or industry changes or developments that necessitate new or updated agreement terms or incorporate adopted best practices for contract terms; (ii) align the agreement with current law and/or OCC's rules; (iii) eliminate provisions that are out of date or update provisions to reflect current industry terminology; (iv) acknowledge the legal and regulatory landscape of the options industry that affect the interactions between OCC and the Exchanges by recognizing such factors within the agreement; and (v) improve overall readability of the document through the incorporation of intervening amendments and changes into the agreement.⁶

Such differences are described in more detail below.

⁶ See Notice of Filing, 90 FR at 22808.

A. Operational and business practices

As stated above, OCC represents that some of the differences between the current RPEA and the new RPEA are designed to reflect current, enhanced, or implied but not specifically stated operational and business practices between OCC and the Exchanges. These operational and business practice changes generally result from technology and industry developments that either necessitate new or updated agreement terms or incorporate into the new RPEA best practices for contract terms that have been implied or adopted in practice but are not reflected in the current RPEA.⁷ The specific updates related to developments in operational and business practices are discussed in more detail below.

Section 5 of the new RPEA would set forth conditions the Exchanges will establish before seeking to delist an option. OCC states that this change would reduce the risk that Clearing Members could have open interest in options with no mechanism to close out those positions.⁸

OCC proposes to add a new Section 2(b)⁹ that would allow OCC to refuse to clear options that materially impact OCC's risk profile or introduce novel or unique risks to OCC.¹⁰ Proposed section 2(b) requires OCC to work with the Exchange to mitigate any such risk, if feasible, and to otherwise notify an Exchange of a disapproval of a new product. OCC states that

⁷ See Notice of Filing, 90 FR at 22808.

⁸ See Notice of Filing, 90 FR at 22810.

⁹ Section 2 of the new RPEA corresponds to Section 3 of the current RPEA because OCC proposes deleting section 2 of the current RPEA as described below. OCC proposes to make other section number changes as needed. For clarity, references herein are to the proposed section numbers of the new RPEA unless otherwise stated.

¹⁰ New section 2(b) replaces an out of date section related to the obligation to register options for trading.

this change would address industry changes in terms of risk assessment and management of new products.¹¹

OCC proposes to add a new Section 6 to set forth the conditions for options that are listed on only one Exchange. Where OCC deems the price of an option listed on only one Exchange to be inaccurate, unreliable, unavailable, or inappropriate, the new RPEA would require the Exchanges to work with OCC to determine reliable settlement prices and to use commercially reasonable efforts to continue listing a singly listed option until all open interest is closed out at OCC.¹² OCC states that these changes would address a situation in which an underlying price may not be available or accurate.¹³

As a consequence of the substantial growth in the amount and speed of data flow between OCC and the Exchanges since the execution of the current RPEA,¹⁴ OCC proposes to add a new Section 7 governing OCC's use of data provided by the Exchanges.¹⁵ New Section 7 would restrict OCC's use of Exchange Data such that OCC would not be permitted to use Exchange Data in any index calculation or other financial instrument, investment product, or investment strategy without consent.¹⁶ Section 7 also would limit the entities to which OCC would be permitted to redistribute data based on the type of data being provided by the Exchange, and the Exchanges would be permitted to audit OCC's use of Exchange Data for non-compliance with

¹¹ See Notice of Filing, 90 FR at 22809.

¹² If the Exchange could no longer list a singly listed option, it would be required to notify OCC and to permit listing and trading on an alternate Exchange.

¹³ See Notice of Filing, 90 FR at 22810.

¹⁴ See Notice of Filing, 90 FR at 22810.

¹⁵ The Exchanges would provide daily values of underlying interest and options. See Notice of Filing, 90 FR at 22811.

¹⁶ The Exchanges would be required to use commercially reasonable efforts to provide OCC with at least 60 days' notice of material modifications, additions, or deletions to Exchange Data.

any material provision of this Section 7. Separately, Section 7 would define Derived Data as data derived by OCC from non-real-time Exchange Data, which OCC would be authorized to create and use without restriction.

Section 8 of the RPEA governs trade comparisons. OCC proposes to add a new provision to Section 8 that would require OCC to notify the Exchanges at least 60 days prior to any change to the time by which an Exchange must report trade comparisons. OCC states that this change is designed to give the Exchanges sufficient notice to prepare for the change.¹⁷

Section 13 of the RPEA limits on OCC's authority. For the avoidance of doubt, and to reflect current practice,¹⁸ OCC proposes to add a provision to Section 13 that would authorize OCC to calculate position limits at the request of the Exchanges even though OCC is generally precluded from establishing or enforcing position limits. OCC states that it began calculating position limits in 2003 at the request of the Exchanges and continues to provide position limits on the OCC website.¹⁹ OCC also proposes adding a parenthetical noting that the general limit precluding OCC from determining when to open or restrict trading would not limit OCC's other rights and obligations under the RPEA.

Section 15 addresses financial requirements for Clearing Members. Currently, Exchanges are required both to notify OCC when a Clearing Member is not in compliance with OCC's financial responsibility standards²⁰ and notify OCC of any financial condition that would

¹⁷ See Notice of Filing, 90 FR at 22811. To reflect current industry terminology, OCC would also add language stating that the term Trading Day is any day the Exchange is trading. See *id.*

¹⁸ See Notice of Filing, 90 FR at 22812.

¹⁹ See Notice of Filing, 90 FR at 22812.

²⁰ Exchanges have indicated that they do not incorporate OCC's financial responsibility standards into their Exchange monitoring processes. See Notice of Filing, 90 FR at 22812.

be reported any resolution authority.²¹ In an effort to incorporate into the RPEA best practices for contract terms that have already been adopted and are in use by the industry, OCC proposes to remove the requirement to notify OCC when a Clearing Member is not in compliance with OCC's financial responsibility standards.²² OCC also proposes to change the time requirement for submission of material from 2:00 p.m. Central Time to 3:00 p.m. Central Time, and to require such reporting "promptly" rather than "immediately."

Currently, Section 17, which addresses operations, requires OCC to use its best efforts to maintain sufficient operational capacity to clear new options on behalf of the Exchanges. OCC proposes to replace this language with a requirement to use commercially reasonable efforts, which OCC asserts would allow it to conduct its operations in a manner that is economically justified and in accordance with commonly accepted commercial practices.²³ Relatedly, OCC proposes to replace the current requirement to act "as expeditiously as possible" with a requirement to act "as soon as reasonably practicable." Additionally, the new RPEA would require the Exchanges to comply with OCC's operational specification for new products and to provide 60 days notice in advance of operational changes such as trading hour changes. OCC asserts that such changes incorporate best practices for contract terms.²⁴

OCC proposes to add a new Section 18 governing financial reporting from the Exchanges, including obligations relating to annual financials, quarterly financials, and losses. For example, an Exchange would be obligated to provide quarterly unaudited financials for three

²¹ The current RPEA already requires notification of such reporting to the Securities Investor Protection Corporation. *See* Notice of Filing, 90 FR at 22812.

²² *See* Notice of Filing, 90 FR at 22812. This is part of a general set of changes to to remove details related to interactions regarding lack of operational capacity to clear a new underlying.

²³ *See* Notice of Filing, 90 FR at 22812.

²⁴ *See* Notice of Filing, 90 FR at 22813.

years after becoming a party to the new RPEA (if not a party to the current RPEA). An Exchange would also be required to provide quarterly financials following losses over certain thresholds. Under the proposed terms, OCC would be obligated to maintain the confidentiality of such financials to the extent they are not publicly available.²⁵ OCC states that the purpose of this new section is to allow OCC to monitor for going concern risk.²⁶

OCC proposes to add Section 19 in the new RPEA, which addresses information technology and security. Section 19 requires Exchanges and OCC to provide each other with contact information for personnel relating to operational, technology and information security matters. OCC and the Exchanges would be required to provide notice if either party has an incident that could impact their ability to provide or receive services²⁷ and to take commercially reasonable efforts to comply with relevant cybersecurity regulations. The Exchanges would further agree to accommodate OCC's connectivity requirements. OCC proposes these changes to to strengthen information security given widespread use of ever evolving and improving electronic systems, along with related security concerns since the time the current RPEA became effective.²⁸

OCC proposes changes to Section 24, which governs the services, programs and projects OCC provides to and for Exchanges. The changes would provide OCC sole and absolute discretion with regard to taking on projects for an Exchange. The proposed changes would also

²⁵ Relatedly, OCC proposes to add language to Section 25, which addresses access to books and records of OCC, to state that an Exchange will not have a right to view another Exchange's Confidential Information.

²⁶ See Notice of Filing, 90 FR at 22813.

²⁷ The proposed terms would permit OCC to take steps in response to the reporting of an incident, such as suspending its obligations to an Exchange under the RPEA. To suspend obligations to the Exchanges, OCC proposes to add a requirement that the OCC CEO, or the COO if the CEO is unavailable, must approve a suspension of obligations to the Exchange. If neither the OCC CEO and OCC COO are available, the Chief Security Officer has the authority to suspend services to the Exchange.

²⁸ See Notice of Filing, 90 FR at 22813.

make it clear that (i) services OCC develops for any Clearing Member or group of Clearing Members and (ii) programs or projects developed at OCC's own cost will be offered to all Clearing Members on the same terms and cost.

OCC proposes to revise Section 29, which covers miscellaneous items, to state that the RPEA may not be assigned by the Exchange without written consent of OCC, and that the RPEA cannot be assigned by OCC without the consent of all Exchanges.²⁹ OCC also proposes to add a new provision related to the use of the parties' names, tradenames, logos, and trademarks (collectively, "Marks"). More specifically, OCC proposes to add language where each Exchange grants OCC license to use each party's respective name, tradename, logos, and trademarks in connection with OCC's activities such as issuance, clearance, settlement, and investor education services. OCC states that these changes are intended to reflect either current or implied business practices between OCC and the Exchanges and to incorporate adopted best practices for contract terms.³⁰

Section 31 addresses the options disclosure document ("ODD"). OCC proposes to add a subparagraph addressing indemnification. Specifically, OCC proposes to incorporate language from Section 2(g) of the current RPEA, which is being deleted. The proposed text would indicate that OCC agrees to indemnify each Exchange from claims relating to any untrue statement or alleged untrue statement of a material fact contained in the ODD, and the Exchanges agree to indemnify OCC from damages relating to any untrue statement of a material fact contained in information from the ODD. The new text regarding indemnification would also

²⁹ The RPEA would allow assignment without written consent in the event of a corporate reorganization or the sale of OCC.

³⁰ See Notice of Filing, 90 FR at 22814.

detail the notice requirements related to indemnification (e.g., notification of claim made against an indemnified party).

OCC also proposes to add a new Section 32 that addresses confidential information. OCC proposes to define “Confidential Information” to include information that relates to a disclosing party’s products and services, operations, customers, members, prospects, know-how, design rights, trade secrets, market information, business affairs, and information provided to the receiving party. OCC would not be permitted to disclose Exchange Data that identifies an Exchange member except when the Exchange consents, when allowed by OCC By-Laws and Rules or required by law, regulation, or government rule, or as post-trade information given to clearing members. OCC states that these changes are intended to reflect current business practices between OCC and the Exchanges and to adopt best practices for contract terms.³¹

B. Current law and OCC rules

As stated above, OCC represents that some of the differences between the current RPEA and the new RPEA are designed to align the agreement with current law and/or OCC’s rules.³² General changes throughout the new RPEA include replacing references from “the Corporation” to “OCC.” In Section 1, OCC proposes to add a requirement for both OCC and the Exchanges that both parties will remain in compliance with the Exchange Act and its own Exchange rules and to require that each party will use reasonable efforts to come back into compliance in the event a party can no longer make the representation. The proposed language of Section 26, which addresses indemnification, would add “or noteholder agreement” where the current RPEA references the “stockholders agreement” because certain exchanges are subject to the

³¹ See Notice of Filing, 90 FR at 22815.

³² See Notice of Filing, 90 FR at 22808.

shareholders agreement while other are subject to the noteholders agreement. OCC also proposes to add references to OCC Rules and references.

C. Out of date provisions

As stated above, OCC represents that some of the differences between the current RPEA and the new RPEA are designed to eliminate provisions that are out of date or update provisions to reflect current industry terminology.³³ For example, OCC proposes to replace the term “Participating Exchange” with “Exchange” throughout the agreement. In the introductory paragraph, the new RPEA would note that the current agreement supercedes the old agreement and would reflect the date of the new agreement. OCC proposes to change Section 1 so that national securities associations cannot become parties to the agreement.³⁴

OCC proposes to delete Section 2 of the current RPEA, which relates to the registration of options, because the registration of standardized options is no longer required.³⁵ OCC also proposes changes to Section 2 of the new RPEA (section 3 of the current RPEA), which addresses selection of underlying interests. OCC proposes changes regarding the products it clears, including (i) defining the term “Underlying Interests”; (ii) requiring that an underlying interest must be permitted on a national securities exchange; and (iii) changing the set of Underlying Interests explicitly listed in the RPEA.³⁶ OCC also proposes to remove a subsection of what would be Section 2 of the new RPEA that is now out of date as it relates to OCC’s

³³ See Notice of Filing, 90 FR at 22808.

³⁴ OCC states that no parties to the Existing RPEA are national securities associations and the parties do not anticipate that any such entity will become a party to the agreement in the future. See Notice of Filing, 90 FR at 22809.

³⁵ See 17 CFR 230.238.

³⁶ For example, OCC proposes to remove U.S. Treasury bonds, notes, or bills because they do not underlie listed options that OCC clears and do not align with the interest types OCC is prepared to clear. See Notice of Filing, 90 FR at 22809. OCC proposes to add, among other things exchange trades funds and exchange traded notes because they did not exist at the time the current RPEA was first executed. See *id.*

former obligation to register options for trading. OCC proposes to remove similar references to its former obligation to register options for trading from Section 31 of the new RPEA as well.

OCC proposes to amend Section 3, which addresses expiration dates, exercise prices, and units of trading, to remove time requirements for new series of options for trading. OCC states that such timeframes were necessary decades prior when adding new series and notifying other exchanges of newly added series was a more manual process but are now no longer needed.³⁷ OCC proposes further to assign the responsibility for determining units of trading to the Exchanges instead of the Securities Committee because the change reflects current business practices.³⁸

OCC proposes to amend Section 4, which addresses the listing of option, by replacing a reference to “expiration months” with a reference to “expiration dates” because expirations have expanded outside of the standard monthly expiration cycle that was prevalent when the RPEA was first executed. OCC also propose to remove the phrase “in reasonable quantities” that currently is used in reference to making the list of options available to members because such lists are now provided electronically.

OCC proposes to amend Section 8, which addresses comparison of options transactions, to remove the ability of an Exchange to request a comparison service because OCC has not been retained by the Exchanges to perform such services. OCC also proposes to make “Matched Trade(s)” and “Trading Day” defined terms. OCC proposes to amend Section 10, which addresses acceptance of options transactions, to remove the payment of options premiums as a

³⁷ See Notice of Filing, 90 FR at 22810.

³⁸ This reflects a rule change OCC implemented in 2018 that transferred the authority to make contract adjustment determinations from panels of the Securities Committee to OCC. See Notice of Filing, 90 FR at 22810.

perquisite for clearing because OCC accepts all transactions for clearance until a member terminates its membership or is suspended by OCC.

OCC proposes to amend Section 15, which addresses financial requirements for Clearing Members, to add a reference to “Regulatory Services Agreement” because some Exchanges outsource member surveillance. OCC also proposes to remove requirements for in-person delivery of documents and telephone calls. Finally, OCC proposes to replace reference to OCC’s Chairman or any Vice President with reference to a “Financial Risk Management officer” to reflect OCCs’ current designation of authority.

OCC proposes to amend Section 17, which addresses Clearing Member operations, to remove references to systems and response protocols that OCC and the Exchange no longer use. Instead, the new RPEA would require Exchanges to provide OCC with supporting materials to support the Exchange’s clearing activities. Exchanges would also be required to make representatives available to OCC to discuss any of OCC’s additional information needs, and to comply with OCC operational specifications such as extended trading hours.

OCC proposes to delete Section 16 of the current RPEA because it requires OCC to maintain offices in each city in which an Exchange is located. OCC states that, given the widespread use of electronic communications in financial services, the increase in the number and various locations of Exchanges over time, and the ability of Exchanges and OCC to send and receive information quickly via electronic means, the requirement for OCC to maintain an office in such locations is outdated.³⁹ Similarly, OCC proposes to amend Section 23, which addresses financial arrangements, to remove a requirement to establish local banking relationships because this is no longer necessary. OCC also proposes to amend Section 28, regarding Notices, to

³⁹ See Notice of Filing, 90 FR at 22812.

remove references to physical addresses of each party and instead add an option to provide notices by email because the addresses in the current RPEA are out of date and, even if updated, may change over time.

OCC proposes to amend Section 20, which addresses exercise restrictions, to replace references to “index options” with references to “Options that are cash settled” and to replace references to “other options” with references to “Options that are physically settled” to ensure consistency with current industry terminology, which generally is broader and more descriptive of the products subject to the provisions. OCC also proposes to add language that allows either an Exchange or OCC to restrict the exercise of Options if doing so would be necessary to comply with any government imposed restriction that would have the effect of restricting the exercise of an option.

OCC proposes to amend Section 31, which addresses options disclosure documents, to reassign the responsibility for chairing the Listed Options Disclosure Committee (“LDOC”) from OCC’s Chairman of the Board to a an officer of OCC.⁴⁰ The changes would also modify the current provision specifying that the Exchange Directors of OCC’s Board will participate on the LDOC to specify that representatives of each Exchange will participate on the LDOC. As new Exchanges have joined OCC over time, not all of them have a representative on the OCC Board. Thus, this change would align the RPEA with current practice and help future proof it in the event that additional Exchanges join OCC in the future. OCC also proposes to require Exchanges to notify OCC of proposed Exchange rule changes that would cause information in the ODD to become inaccurate and to require relevant Exchanges to provide input and feedback when OCC is drafting amendments to the ODD. OCC proposes to remove the requirement that

⁴⁰ The new RPEA does not specify which officer OCC would designate.

OCC will pay costs associated with the meeting of the LODC. OCC states that this provision is out of date because the LODC does not meet in person.⁴¹

D. Industry landscape

As stated above, OCC represents that some of the differences between the current RPEA and the new RPEA are designed to acknowledge and factor into the RPEA the legal and regulatory landscape of the options industry that affect the interactions between OCC and the Exchanges.⁴²

In Section 2, OCC proposes to add language stating that the underlying interest must be listed in accordance with Options Rules, listed on a national securities exchange, and permitted in the Options Disclosure Document. OCC proposes to add a requirement in Section 2 that Exchanges submit new Options to OCC pursuant to the requirements of the Options Listing Procedures Plan. OCC proposes these changes because because the OLPP serves as the national market plan that establishes the requirements Exchanges must follow when submitting a new option class to OCC.⁴³

OCC proposes to amend Section 30, which addresses breach and termination, by adding a provision permitting OCC to suspend its obligations to an Exchange whenever a suspension is necessary to comply with OCC's own rules and outlining which provisions of the RPEA, if breached by an Exchange, would allow OCC to cease providing clearing services. OCC also proposes to add language allowing termination if providing services for the Exchange would cause OCC to be in breach federal securities law. The proposed amendments would also define who at OCC is authorized to approve a suspension and require OCC to notify each Exchange of

⁴¹ See Notice of Filing, 90 FR at 22815.

⁴² See Notice of Filing, 90 FR at 22808.

⁴³ See Notice of Filing, 90 FR at 22810.

any suspension. Finally, amended Section 30 would require OCC and the relevant Exchange to work together to minimize a suspension while simultaneously acknowledging that OCC would not be obligated to clear transactions for an Exchange that ceases to (i) be a registered exchange, (ii) abide by the Securities Act of 1933 or the Exchange Act, or (iii) be an OCC noteholder or stockholder.

E. Readability

As stated above, OCC represents that some of the differences between the current RPEA and the new RPEA are designed to improve overall readability of the document through the incorporation of intervening amendments and changes into the agreement.⁴⁴ OCC also proposes to replace “premises” with “promises” in the introduction, and to remove the language “The 1975 Agreement is hereby terminated, effective as of the date of this Agreement” because the 1975 agreement was terminated by the 1983 agreement.

III. DISCUSSION AND COMMISSION FINDINGS

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.⁴⁵ Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization [‘SRO’] that proposed the rule change.”⁴⁶

⁴⁴ See Notice of Filing, 90 FR at 22808.

⁴⁵ 15 U.S.C. 78s(b)(2)(C).

⁴⁶ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,⁴⁷ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.⁴⁸ Moreover, “unquestioning reliance” on an SRO’s representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.⁴⁹

After carefully considering the Proposed Rule Change, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the Proposed Rule Change is consistent with and with Section 17A(b)(3)(F) of the Exchange Act,⁵⁰ Exchange Act Rules 17ad-22(e)(1),⁵¹ 17ad-22(e)(20),⁵² and 17ad-22(e)(21),⁵³ as described in detail below.

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

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Susquehanna Int’l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 447 (D.C. Cir. 2017).

⁵⁰ 15 U.S.C. 78q-1(b)(3)(F).

⁵¹ 17 CFR 240.17ad-22(e)(1).

⁵² 17 CFR 240.17ad-22(e)(20).

⁵³ 17 CFR 240.17ad-22(e)(21).

clearance and settlement of securities transactions.⁵⁴ As discussed above, the RPEA sets out the terms and conditions under which OCC will provide clearing services to the Exchanges for the options listed on the Exchanges. Amending the RPEA to better reflect current practices, laws, regulations, and industry terminology as well as general readability, strengthens the RPEA. For example the proposed addition of a section based on singly listed options would require cooperation between OCC and the Exchanges to arrive at a reliable settlement process in the event that the price listed on an exchange is inaccurate. This subparagraph requires both OCC and the exchange to cooperate to determine the correct price. Further, in the selection of new underlying interests, if OCC identifies a risk to a new product, OCC is required to undertake commercially reasonable efforts to address the risk that caused OCC to refuse to issue such option, and the relevant Exchange would be required to reasonably cooperate with those efforts. Both of these provisions require OCC to cooperate with exchanges if there is an inaccurate price or risk posed from the new product. Further, the Proposed Rule Change establishes that an Exchange that makes changes to its Exchange Data will give OCC at least 60 days notice in advance of such change, in most cases. The notice period will provide OCC with the time to prepare for the change, and OCC will cooperate with an Exchange in addressing any such change. Such change, along with those described above, promote cooperation between OCC and the Exchanges because they facilitate, and at times require cooperation between, OCC and the Exchanges.

Accordingly, the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.⁵⁵

⁵⁴ 15 U.S.C. 78q-1(b)(3)(F).

⁵⁵ 15 U.S.C. 78q-1(b)(3)(F).

B. *Consistency with Rule 17ad-22(e)(1) under the Exchange Act*

Rule 17ad-22(e)(1) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions.⁵⁶

As described above, OCC proposes various changes designed to align the terms of the RPEA with current law and OCC's rules,⁵⁷ acknowledge the current legal and regulatory landscape of the options industry,⁵⁸ and generally improve the readability of the RPEA.⁵⁹ For example, OCC proposes to add multiple representations from both OCC and the Exchanges that OCC and each Exchange is and will remain in compliance with the Exchange Act. In Section 2, OCC proposes to clarify that an Exchange must list options in accordance with the relevant Exchange's rule and submit new products to OCC in accordance with the Options Listing Procedure Plan. These changes are well-founded in that OCC and the exchanges are required to be in compliance with the Exchange Act and create procedures for listing new options and in all aspects of its operations.

As discussed above, in Section 30, OCC proposes to add language permitting OCC to suspend its obligations when necessary to comply with its own rules. OCC also proposes to modify the RPEA to explicitly acknowledge that OCC will not be obligated to clear transactions for an Exchange that cannot abide by the the Exchange Act. These changes help create

⁵⁶ 17 CFR 240.17ad-22(e)(1).

⁵⁷ *See infra* section II.B.

⁵⁸ *See infra* section II.D.

⁵⁹ *See infra* section II.E.

reasonably designed policies and procedures that allow for a well-founded and enforceable legal framework by ensuring all parties are in compliance with relevant securities laws.

With regard to the ODD, the proposed changes would require that, absent certain exceptions, the Exchanges and OCC indemnify each other for untrue statements or omissions of material fact. Additionally, OCC proposes to update the manner in which the RPEA may be assigned by specifying that an Exchange must have the prior written consent of OCC for assignment and OCC must have prior written consent of all the Exchanges. These changes would help create a more transparent and enforceable legal framework by clarifying both the requirements for effective assignment of the RPEA and when parties are responsible for omissions of material fact by the other party. These changes clarify how the agreement can be assigned and ensure all parties to the RPEA understand the consequences of making or providing untrue statements or omissions of material fact in connection with the ODD.

Accordingly, the Proposed Rule Change is consistent with Rule 17ad-22(e)(1) under the Exchange Act.⁶⁰

C. *Consistency with Rule 17ad-22(e)(20) under the Exchange Act*

Rule 17ad-22(e)(20) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies, financial market utilities, or trading markets.⁶¹

As described above, OCC proposes various changes to the RPEA designed to reflect current, enhanced, or implied business practices between OCC and the Exchanges.⁶² For

⁶⁰ 17 CFR 240.17ad-22(e)(1).

⁶¹ 17 CFR 240.17ad-22(e)(20).

⁶² *See infra* section II.A.

example, OCC proposes to add language allowing it to disapprove new options that pose a risk to OCC. OCC also proposes new provisions governing the pricing and listing of options that are listed on only one Exchange, and to add the ability for OCC to calculate position limits at the request of the Exchanges. These changes help decrease the risk to OCC presented by options that are only listed on one exchange by reducing the risk that OCC would be unable to price such options or that members would be unable to trade options for which there is open interest at OCC. It would also help reduce the risk from position limits so that OCC can adjust accordingly if a position grows too large.

As discussed above, the proposed rule would establish financial requirements for Exchanges and allow OCC to monitor for going concern risk. If an Exchange becomes insolvent it could pose a risk to OCC and other financial institutions. Thus, Exchanges would be required to provide certain financial statements to OCC and notify OCC if they experience a certain percentage decrease in shareholder equity or losses exceeding a certain percentage of shareholder equity. At the same time, the proposed changes to the RPEA would create clear obligations for OCC to keep and maintain non-public information submitted to OCC by the Exchanges strictly confidential and would prevent OCC from sharing or disclosing such information outside of limited circumstances. Together, these updates to the RPEA would help OCC manage financial risk from trading markets should an exchange become insolvent, allow OCC to monitor its member Exchanges for signs of financial distress, and help ensure that the Exchanges' sensitive financial information is protected and kept confidential.

The proposed rule change would also require the parties' to take commercially reasonable steps to comply with relevant cybersecurity regulations. As part of this change, OCC would be authorized under the RPEA to take reasonable steps to mitigate any effects from a cybersecurity

incident at an Exchange, for example by suspending its obligations for the impacted Exchange. Cyber related incidents have the potential to disrupt financial institutions, including both the Exchanges and OCC. These policy changes would help OCC identify and manage cybersecurity, connectivity, and other operational and technology risks posed to OCC through its connection to the Exchanges and the various trading markets they serve..

The proposed rule would also explain how Confidential Information is defined and provide how it can be shared. It would also outlines the repercussions in the event of a breach of the confidentiality provisions. Given the volume of information produced by both OCC and the Exchanges, it is important to set clear standards to reduce legal risk.

Accordingly, the Proposed Rule Change is consistent with Rule 17ad-22(e)(20) under the Exchange Act.⁶³

D. Consistency with Rule 17ad-22(e)(21) under the Exchange Act

Rule 17ad-22(e)(21) under the Exchange Act requires, in part, that a covered clearing agency 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 the covered clearing agency's management regularly review the efficiency and effectiveness of its (i) scope of products cleared or settled⁶⁴ and (ii) use of technology and communication procedures.⁶⁵

As described above, OCC proposes various changes designed to reflect current, enhanced, or implied business practices between OCC and the Exchanges.⁶⁶ For example, the

⁶³ 17 CFR 240.17ad-22(e)(20).

⁶⁴ 17 CFR 240.17ad-22(e)(21)(ii).

⁶⁵ 17 CFR 240.17ad-22(e)(21)(iii).

⁶⁶ *See infra* section II.A.

proposed rule change addresses how new options will be approved, permits OCC to refuse to issue such option if it identifies a risk in the new option, and requires OCC to undertake commercially reasonable efforts to address the risk that caused OCC to refuse the new option. The Exchange is also required to reasonably cooperate with OCC. The proposed changes also update the Underlying Interests provisions of the RPEA and, more broadly, help establish transparent and consistent procedures for OCC to clear new products and identify and address the specific risks such new products might pose. Such changes will enhance OCC's ability to meet the requirements of its participants and the needs of the market it serves.

As described above, OCC proposes various changes designed to eliminate RPEA provisions that are out of date.⁶⁷ For example, the Proposed Rule Change would remove references to specific times for opening new option series and reflect that it is currently the Exchanges, not the Securities Committee, that determine units of trading. Similarly, OCC proposes to remove the requirement that lists of options be provided "in reasonable quantities" because such lists are now provided electronically. OCC also proposes to remove references to in-person delivery of documents and telephone calls, requirements for local banking relationships, and the maintenance of offices in certain cities. These updates to remove outdated references to timeframes, quantities, and requirements improve the clarity and effectiveness of OCC's policies and procedures.

Accordingly, the Proposed Rule Change is consistent with Rule 17ad-22(e)(21) under the Exchange Act.⁶⁸

⁶⁷ See *infra* section II.C.

⁶⁸ 17 CFR 240.17ad-22(e)(21).

IV. CONCLUSION

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act⁶⁹ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,⁷⁰ that the Proposed Rule Change (SR-OCC-2025-006) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷¹

Sherry R. Haywood,

Assistant Secretary.

⁶⁹ In approving the Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

⁷⁰ 15 U.S.C. 78s(b)(2).

⁷¹ 17 CFR 200.30-3(a)(12).