

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85129; File No. SR-OCC-2018-015)

February 13, 2019

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, Concerning Changes to The Options Clearing Corporation's Management Structure

On December 20, 2018, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-OCC-2018-015 (“Proposed Rule Change”) pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4² thereunder. The Proposed Rule Change was published for comment in the Federal Register on December 31, 2018,³ and the Commission has received no comments in response. On February 1, 2019, OCC filed a partial amendment (“Partial Amendment No. 1”) to the Proposed Rule Change.⁴ This order approves the Proposed Rule Change, as modified by Partial Amendment No. 1.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 84939 (Dec. 21, 2018), 83 FR 67762 (Dec. 31, 2018) (SR-OCC-2018-015) (“Notice”).

⁴ In Partial Amendment No. 1, OCC corrected an error in Exhibit 5 without changing the substance of the Proposed Rule Change. Partial Amendment No. 1 is not subject to notice and comment because it does not materially alter the substance of the Proposed Rule Change or raise any novel regulatory issues. References to the Proposed Rule Change from this point forward refer to the Proposed Rule Change, as amended by Partial Amendment No. 1.

I. DESCRIPTION OF THE PROPOSED RULE CHANGE⁵

OCC proposes to change its By-Laws, Rules, Board Charter, and certain Board-committee charters to (1) separate the roles of Executive Chairman and Chief Executive Officer (“CEO”) and reallocate authority and responsibilities between the two roles; (2) remove the requirement from OCC’s By-Laws that the Board of Directors (“Board”) elect a Chief Administrative Officer (“CAO”) and delete the references to a CAO throughout OCC’s By-Laws, Rules, and charters; and (3) provide additional flexibility regarding the Management Director seat on the Board, including providing that such a director is not required. According to OCC, the purpose of the Proposed Rule Change would be to re-establish the separation of the Executive Chairman and CEO roles and to implement additional organizational changes to OCC’s governance structure, including providing additional flexibility to the Management Director on the Board and removing the requirement that the Board elect a CAO, that the Board has concluded would benefit OCC’s operation and, consequently, OCC’s ability to serve Clearing Members and the markets for which it clears and settles transactions.⁶

A. Separation of Roles of Executive Chairman and CEO

Currently, the Executive Chairman of OCC’s Board also serves as OCC’s CEO.⁷ OCC stated that, at the time that it adopted this structure in 2017, combining the roles of Executive Chairman and CEO was part of a package of governance changes that OCC’s Board concluded

⁵ All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules. OCC’s By-Laws and Rules can be found on OCC’s public website: <http://optionsclearing.com/about/publications/bylaws.jsp>.

⁶ See Notice, 83 FR at 67763.

⁷ See OCC By-Laws, Art. IV, Sec. 6(a).

represented enhancements to OCC's leadership structure that would promote more efficient management and operations.⁸ Since the adoption of the current structure, OCC has new members of its senior management team, including its current Chief Security Officer and Chief Information Officer.⁹ As a result, OCC believes it is now well positioned to again separate the roles of Executive Chairman and CEO in its management structure.¹⁰

According to OCC, providing for separate Executive Chairman and CEO roles would add a counterbalance in the management and oversight of OCC.¹¹ Currently, OCC's Executive Chairman and CEO is responsible for the control functions of OCC, including enterprise risk management, internal audit and compliance, and external affairs, and has supervision over the officers and agents he appoints.¹² The Executive Chairman, as CEO, is also "an officer responsible for all aspects of [OCC's] business and . . . its day to day affairs."¹³ Under the Proposed Rule Change, the Executive Chairman would be less involved in day-to-day

⁸ See Notice, 83 FR at 67763. See also Exchange Act Release No. 80168 (Mar. 7, 2017), 82 FR 13522 (Mar. 13, 2017) (Notice of Filing of a Proposed Rule Change concerning changes to OCC's management structure); Securities Exchange Act Release No. 80531 (Apr. 26, 2017), 82 FR 20502 (May 2, 2017) (SR-OCC_2017-002).

⁹ OCC also installed a number of other senior executives in the period leading up to the adoption of its current management structure, including its current Chief Administrative Officer, head of government relations, Chief Compliance Officer ("CCO"), Chief Financial Officer, and President and Chief Operating Officer.

¹⁰ See Notice, 83 FR at 67764.

¹¹ See *id.* OCC further represented that the separation of these roles would enable the Executive Chairman to serve an advisory role in assisting the CEO with strategic plan development as well as management succession planning by assisting in developing, coaching and mentoring members of the senior management team in a separate capacity than that of the CEO. See *id.*

¹² See OCC By-Laws, Art. IV, Sec. 6(a).

¹³ *Id.*

management decisions of the type more typically made by an executive but would retain his or her role vis-à-vis the Board.¹⁴ In addition, the Executive Chairman would retain responsibility over internal audit, public affairs, and government relations. The CEO would be responsible for all aspects of OCC's business and of its day-to-day affairs, including enterprise risk management and compliance, and would be responsible for all aspects of the business of the Corporation that do not report directly to the Executive Chairman. The Chief Operations Officer ("COO") would administer the day-to-day affairs and business of the Corporation in accordance with the directions of the CEO.

There are numerous provisions throughout OCC's By-Laws and Rules that the Proposed Rule Change would amend to change the list of officers authorized to act under the relevant provision. In some instances, the Executive Chairman will continue to be listed as an authorized individual; in other instances, the reference to the Executive Chairman would be replaced by the CEO. The Proposed Rule Change would replace references to the Executive Chairman with references to the CEO in those provisions that generally involve routine day-to-day business decisions or are, by their terms, temporary.¹⁵ The Proposed Rule Change would add references to the CEO, but not remove references to the Executive Chairman, in those provisions that primarily involve emergency or other exigent circumstances, determinations around OCC's management structure, and other activities generally outside of OCC's day-to-day activities (e.g.,

¹⁴ Because the Executive Chairman would be less involved in day-to-day operational issues, the Proposed Rule Change would remove the requirement that the Executive Chairman must be selected from "among the full-time employees of OCC" to require only that the Executive Chairman be selected from "among the employees of OCC." This amendment would allow the Executive Chairman to be a part-time employee.

¹⁵ See Notice, 83 FR at 67765 (providing the full list of provisions that would no longer reference the Executive Chairman).

signing OCC share certificates).¹⁶ OCC stated that the purpose of referencing both the Executive Chairman and CEO in such provisions would be to provide management the capacity to carry out OCC's affairs in such circumstances even if a particular officer is absent or is otherwise unable to perform his or her duties.¹⁷ Because, as described below, OCC has proposed removing the role of CAO, the Proposed Rule Change would remove the CAO from the list of officers authorized to act under each relevant provision.

B. Removal of the Role of CAO

OCC's rules currently require the Board to elect a CAO.¹⁸ This requirement was created in 2017 at the same time as the combining of the Executive Chairman and CEO roles and the removal of the role of the President.¹⁹ At that time, OCC stated that the CAO role was created for the purpose of distributing the responsibilities of the President and to provide flexibility to help ensure that responsibility is not concentrated in any one officer.²⁰ OCC believes that, with the separation of the Executive Chairman and CEO roles, the role of CAO is no longer necessary to ensure flexibility.²¹ The Proposed Rule Change would eliminate the requirement for the Board to elect a CAO and would remove related references to the CAO.²² Where the removal of

¹⁶ See id. (providing the full list of provisions that would include a reference to the CEO).

¹⁷ See id.

¹⁸ See OCC By-Laws, Art. IV, Sec. 8.

¹⁹ See Securities Exchange Act Release No. 80531 (Apr. 26, 2017), 82 FR 20502, 20503 (May 2, 2017) (SR-OCC-2017-002).

²⁰ See id.

²¹ See Notice, 83 FR at 67765-66.

²² OCC's Board would retain authority under the existing By-Laws to "elect one or more Vice Presidents or such other officers as it may from time to time determine are required

reference to the CAO reduces the number of individuals authorized to take some action under OCC's rules to two, the Proposed Rule Change would provide for the delegation of authority by the CEO and COO to a Designated Officer²³ in the event that the CEO and COO are both unavailable. OCC believes delegation in these instances to senior officers of the Corporation is appropriate to ensure that the authority can be exercised if necessary in the event the CEO and COO are both unavailable.²⁴

C. Changes to the Role of Management Director

OCC's rules currently require that the Board include a Management Director, and that the Executive Chairman be elected to fill that position.²⁵ The Proposed Rule Change would remove the following requirements: (1) that the Board include a Management Director; and (2) that the Executive Chairman serve as Management Director. OCC believes that these changes would create more flexibility for filling the role of Management Director and could more easily accommodate potential future scenarios, for example, if the Management Director seat shifts from the Executive Chairman to the CEO.²⁶

D. Conforming Changes

The positions of Executive Chairman, CEO, CAO, and Management Director are referenced throughout OCC's governing documents. Consistent with the changes described

for the efficient management and operation of the Corporation.” See OCC By-Laws, Art. IV, Sec. 1.

²³ See OCC By-Laws, Art. I, Sec. D(8). A Designated Officer must be of the rank of Senior Vice President or higher. See id.

²⁴ See Notice, 83 FR at 67766.

²⁵ See OCC By-Laws, Art. III, Sec. 1.

²⁶ See Notice, 83 FR at 67766.

above that would impact OCC's By-Laws and Rules, the Proposed Rule Change would make certain conforming amendments to the following charters: (1) Board Charter; (2) Audit Committee Charter ("AC Charter"); (3) Compensation and Performance Committee Charter ("CPC Charter"); (4) Governance and Nominating Committee Charter ("GNC Charter"); and (5) Risk Committee Charter ("RC Charter").²⁷

The Proposed Rule Change would generally make amendments to reflect the separation of those roles and the revised duties of each role pursuant to the amendments described above in the Board Charter, AC Charter, CPC Charter, GNC Charter, and RC Charter. Additionally, the Proposed Rule Change would amend the Board Charter to remove the CEO's role in certain Board matters due to the CEO position no longer being linked to the position of Executive Chairman. The Proposed Rule Change would amend the AC Charter as follows: (1) the CCO would report administratively to the CEO and functionally to the Audit Committee; (2) the Chief Audit Executive ("CAE") would report administratively to the Executive Chairman and functionally to the Audit Committee; (3) the Audit Committee would consult the CEO in reviewing the performance of the Compliance function and the CCO; (4) the Audit Committee would consult the Executive Chairman in reviewing the performance of the Internal Audit function and the CAE. The Proposed Rule Change would amend the RC Charter to reflect that OCC's Chief Risk Officer would report administratively to the CEO and functionally to the Risk Committee.

The Proposed Rule Change would remove the references to the CAO from the Board Charter and CPC Charter. The Proposed Rule Change would also conform the description of the

²⁷ In its proposal, OCC noted that the Technology Committee Charter required no amendment. See Notice, 83 FR at 67766, n. 31.

Management Director in the Board Charter to the changes described above.

II. 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.²⁸ After carefully considering the Proposed Rule Change, the Commission finds the proposal 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 proposal is consistent with Section 17A(b)(3)(A) of the Exchange Act²⁹ and Rule 17Ad-22(e)(2) thereunder.³⁰

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

Section 17A(b)(3)(A) of the Act requires, among other things, that a clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivatives agreements, contracts, and transactions for which it is responsible, safeguard securities and funds in its custody or control or for which it is responsible, and to comply with the provisions of Section 17A of the Exchange Act and the rules and regulations thereunder.³¹

As described above, the Proposed Rule Change would amend OCC's senior leadership structure. The Proposed Rule Change would provide a balance between the groups involved in

²⁸ 15 U.S.C. 78s(b)(2)(C).

²⁹ 15 U.S.C. 78q-1(b)(3)(A).

³⁰ 17 CFR 240.17Ad-22(e)(2).

³¹ 15 U.S.C. 78q-1(b)(3)(A).

the management and oversight of OCC by separating the roles of Executive Chairman and CEO. The Commission believes that such a balance would support the Board's ability to engage with and challenge decisions by management.

The Proposed Rule Change would remove the requirement for OCC's Board to elect a CAO, which would also reduce the number of individuals authorized to act in certain situations. The separation of the roles of Executive Chairman and CEO would, however, account for the removal of the role of CAO in some instances, and the authority to delegate authority to Designated Officers, as described above, would account for the removal in other instances. The Commission believes that these structure changes, taken together with the removal of the role of CAO, would maintain OCC's current capacity to address both day-to-day and exigent circumstances as they arise.

As described above, the Proposed Rule Change would continue to allow for a Management Director, but would remove the requirements that there be a Management Director and that such a Management Director be the same person as the Executive Chairman. These changes would provide flexibility for filling the role of Management Director under potential future scenarios. The Commission believes that providing additional flexibility for filling the role of Management Director would support the functioning of OCC's Board in the future. Accordingly, based on the foregoing, the Commission believes that the Proposed Rule Change is consistent with the organizational and capacity requirements of Section 17A(b)(3)(A) of the Exchange Act.³²

B. Consistency with Rule 17Ad-22(e)(2) Under the Exchange Act

Rule 17Ad-22(e)(2) under the Exchange Act requires, among other things, that a covered

³²

Id.

clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that meet certain criteria.³³ Rule 17Ad-22(e)(2)(i) under the Exchange Act requires that such governance arrangements are clear and transparent.³⁴ Further, Rule 17Ad-22(e)(2)(v) under the Exchange Act requires that such governance arrangements specify clear and direct lines of responsibility.³⁵

As described above, the Proposed Rule Change would separate the roles of Executive Chairman and CEO and remove the role of CAO. The Commission believes that separating the roles of Executive Chairman and CEO would promote clarity in each of the separate roles by removing any potential overlap. The Proposed Rule Change would also clarify the reporting lines of the function and members of senior management as described above (e.g., the CAE would report to the Executive Chairman and the CCO would report to the CEO). Further, the Proposed Rule Change would not alter the direct reporting of members of senior management, such as the CAE, CCO, and CRO, to the Board and its committees. The Commission believes that these changes provide increased clarity around the reporting lines of these members of senior management. Accordingly, based on the foregoing, the Commission believes that the proposed changes pertaining to the assignment of responsibilities and reporting are consistent with Exchange Act Rule 17Ad-22(e)(2).³⁶

³³ 17 CFR 240.17Ad-22(e)(2).

³⁴ 17 CFR 240.17Ad-22(e)(2)(i).

³⁵ 17 CFR 240.17Ad-22(e)(2)(v).

³⁶ 17 CFR 240.17Ad-22(e)(2).

III. 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 Act³⁷ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,³⁸ that the Proposed Rule Change (SR-OCC-2018-015), as modified by Partial Amendment No. 1, be, and hereby is, approved.

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

Eduardo A. Aleman
Deputy Secretary

³⁷ In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁸ 15 U.S.C. 78s(b)(2).

³⁹ 17 CFR 200.30-3(a)(12).