

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92584; File No. SR-OCC-2021-007)

August 5, 2021

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning The Options Clearing Corporation's Governance Arrangements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 30, 2021, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

This proposed rule change by OCC would provide OCC's Board of Directors ("Board") with the discretion to elect either an Executive Chairman or a Non-Executive Chairman to preside over the Board, provide OCC's Board and stockholders with the discretion to elect a Management Director, clarify the respective authority and responsibility of any Executive Chairman or Non-Executive Chairman, and make other clarifying, conforming, and administrative changes to OCC's rules.

The proposed changes to OCC's By-Laws, Rules, Board of Directors Charter and Corporate Governance Principles ("Board Charter"), Audit Committee Charter,

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Compensation and Performance Committee Charter, Governance and Nominating Committee Charter, Risk Committee Charter, Technology Committee Charter (such committee charters collectively being the “Board Committee Charters”), and Amended and Restated Stockholders Agreement (“Stockholders Agreement”) (all collectively, the “OCC Governing Documents”) have been provided as Exhibits 5A – 5I of OCC filing SR-OCC-2021-007. Material proposed to be added to the OCC Governing Documents is marked by underlining. Material proposed to be deleted from the OCC Governing Documents is marked by strikethrough. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in OCC’s By-Laws and Rules.<sup>3</sup>

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.

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<sup>3</sup> OCC’s By-Laws and Rules can be found on OCC’s public website at <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>. OCC’s Board and Board Committee Charters are also available on OCC’s public website: <https://www.theocc.com/about/corporate-information/board-charter>.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

**Background**

Generally speaking, the board of directors of a company is responsible for its own structure and processes and applies its business judgment to board leadership decisions. A board's leadership structure is determined based on several factors, including the board's culture and practices and the capabilities, leadership styles, expectations, personal characteristics, and relationships of its potential leaders. Board leadership roles are context dependent and evolve depending on the circumstances of the company and the board. Specifically, the board of directors generally has discretion to determine whether, for example, the chairman of the board should also be an employee of the company. An "Executive Chairman" is typically employed by the company and may work for the company on a full-time or part-time basis. An Executive Chairman fulfills responsibilities to manage the board while also being more involved with management decisions and "day-to-day" aspects of the company. A "Non-Executive Chairman" is typically not an employee of the company and focuses on leading and supporting the board. Self-regulatory organizations ("SROs") registered with the Commission, including registered clearing agencies, employ a variety of board of director and management structures, with both Executive and Non-Executive Chairmen presiding over the board of directors of SROs.<sup>4</sup>

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<sup>4</sup> For example, the National Securities Clearing Corporation and Fixed Income Clearing Corporation have a Non-Executive Chairman presiding over each of their respective boards of directors. See By-Laws of National Securities Clearing Corporation, Article II, Section 2.8 and By-Laws of Fixed Income Clearing

Article III, Section I of OCC's By-Laws currently requires that the Board be composed of nine Member Directors,<sup>5</sup> five Exchange Directors, five Public Directors,<sup>6</sup> and an Executive Chairman (who also serves as a Management Director<sup>7</sup>). The Board is generally responsible for advising management and overseeing the management of the business and affairs of OCC. The Board performs its oversight role, either directly or indirectly, through delegating certain authority to its committees to ensure that OCC is managed and operated in a manner consistent with the discharge of OCC's regulatory responsibilities as a systemically important financial market utility and that OCC has the critical capabilities necessary to achieve its objectives and obligations in a safe and efficient manner. The Board is also responsible for electing OCC's Executive Chairman

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Corporation, Article II, Section 2.8 (available at <http://www.dtcc.com/legal/rules-and-procedures>). Alternatively, The Financial Industry Regulatory Authority, Inc. ("FINRA") and Cboe Exchange, Inc. each retain flexibility in their By-Laws to elect an Executive or Non-Executive Chairman. See FINRA, By-Laws of the Corporation, Article VII, Section 4 (available at <https://www.finra.org/rules-guidance/rulebooks/corporate-organization/laws-corporation>) and Eleventh Amended and Restated Bylaws of Cboe Exchange, Inc., Section 3.6 (available at: <https://markets.cboe.com/us/options/regulation/>).

<sup>5</sup> Member Directors include Clearing Members or representatives of a Clearing Member who are selected based on, among other things: (i) consideration of balanced representation among all Clearing Members; (ii) balanced representation of all business activities of Clearing Members; (iii) the nature of the firm with which each prospective Director is associated; (iv) industry affiliations; (v) assuring that not all Member Directors are representatives of the largest Clearing Members based on the prior year's volume; and (vi) developing a mix of Member Directors that includes representatives of Clearing Members that are primarily engaged in agency trading on behalf of retail customers or individual investors.

<sup>6</sup> Public Directors are independent directors who are not affiliated with any national securities exchange or national securities association or with any broker or dealer.

<sup>7</sup> Management Directors also serve as employees of the Corporation. See Article III, Section 7 of the OCC By-Laws.

and appointing certain key officers of OCC, including but not limited to, OCC's Chief Executive Officer ("CEO") and Chief Operating Officer ("COO").<sup>8</sup> Each member of OCC's executive management team is ultimately responsible for the day-to-day operations and performance of his or her applicable business area. For example, OCC's Executive Chairman is responsible for certain control functions of the Corporation, including internal audit and public affairs and government relations,<sup>9</sup> and its CEO is responsible for all aspects of the Corporation's business and of its day-to-day affairs, including enterprise risk management and compliance, and all other aspects of the business of the Corporation that do not report directly to the Executive Chairman.<sup>10</sup>

OCC's Board continually evaluates OCC's governance arrangements, including the composition of the Board and OCC's senior management team. OCC's Board and management structure have evolved over time in response to changing business conditions and regulatory obligations as well as to changes in personnel and the knowledge, skills, and experience of its various Board members and senior officers.<sup>11</sup>

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<sup>8</sup> See Article IV, Sections 1 and 2 of the OCC By-Laws. The Executive Chairman, CEO, and COO may also delegate authority for certain responsibilities to other senior executives and officers.

<sup>9</sup> See Article IV, Section 6 of the OCC By-Laws.

<sup>10</sup> OCC's COO supports the operations of the Corporation in accordance with the directions and under the oversight of the Chief Executive Officer. See Article IV, Section 8 of the OCC By-Laws.

<sup>11</sup> For example, at the end of 2013, OCC's then Chairman and CEO retired, and the Board changed OCC's governance structure by separating the roles of Chairman and CEO and creating the new Executive Chairman position. See Securities Exchange Act. Release No. 34-70076 (July 30, 2013), 78 FR 47449 (August 5, 2013) (SR-OCC-2013-09). In 2014, upon the resignation of the then President and CEO, the Board composition was changed to include only one Management Director (the Executive Chairman). See Securities Exchange Act. Release No. 34-73785 (December 8, 2014), 79 FR 73915 (December 12, 2014) (SR-OCC-

OCC's By-Laws currently require the Board to elect an Executive Chairman from among the employees of OCC.<sup>12</sup> While OCC's By-Laws also contemplate discretion for the Board and stockholders to elect a Management Director,<sup>13</sup> the Executive Chairman, by virtue of being elected to his or her office, serves as the Management Director.<sup>14</sup>

### **Proposed Changes**

OCC proposes to revise the OCC Governing Documents to give the Board discretion to elect either an Executive or Non-Executive Chairman to preside over the Board. In addition, the proposed rule change would provide OCC's Board and stockholders discretion to elect Management Directors from OCC's management, which would be necessary if OCC does not have an Executive Chairman. The proposed rule change would also provide clarity around the authority and responsibilities of an Executive Chairman versus a Non-Executive Chairman. OCC also proposes to make additional clarifying, conforming, and administrative changes to the OCC Governing Documents. OCC believes the proposed changes would provide appropriate flexibility to the Board to evaluate OCC's governance arrangements, including whether OCC should have an Executive or Non-Executive Chairman, and more quickly adjust the composition of OCC's Board and leadership structure in response to changing business conditions and

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2014-18). In 2017, the roles of Executive Chairman and CEO were temporarily combined and then subsequently separated in 2018. See Securities Exchange Act Release No. 80531 (April 26, 2017), 82 FR 20502 (May 2, 2017) (SR-OCC-2017-002) and Securities Exchange Act Release No. 34-85129 (February 13, 2019), 84 FR 5129 (February 20, 2019) (SR-OCC-2018-015).

<sup>12</sup> See Article IV, Section 1 of the OCC By-Laws.

<sup>13</sup> See, e.g., Article III, Sections 1 and 7 of the OCC By-Laws.

<sup>14</sup> See e.g., Article IV, Section 1 of the OCC By-Laws.

personnel and the knowledge, skills, and experience of its various Board members and senior officers. The proposed changes are discussed in detail below.

#### Proposed Changes to OCC's By-Laws

OCC proposes to revise Article III, Section 9 and Article IV, Sections 1 and 6 of its By-Laws to give its Board the discretion to elect either an Executive or Non-Executive Chairman. Under OCC's current By-Laws, OCC's Chairman is described as an "Executive Chairman." As a result of this specificity, even though there is no legal or regulatory requirement that OCC have either an Executive or Non-Executive Chairman, and the Board's desire to cast as wide a net as possible for qualified candidates for an important leadership role, the Board likely would not consider Non-Executive Chairman candidates if the ability to do so were not already in the By-Laws. OCC believes that revising its By-Laws to allow the Board the option to elect either an Executive or Non-Executive Chairman would dramatically increase the potential pool of qualified candidates for the position and enable the Board to select the best Chairman for the company at any given time.

Newly proposed Article III, Section 9 (currently Reserved) would provide that, upon the nomination of the Governance and Nominating Committee, the Board shall elect from among its members a Chairman of the Board (as opposed to an Executive Chairman), and if the Chairman is elected from among the employees of OCC, such Chairman would be an "Executive Chairman" for purposes of OCC's By-Laws and Rules. OCC also proposes to revise Article I of its By-Laws to add a definition for the term "Chairman," which would be defined to mean the individual elected by the Board as the Chairman of the Board pursuant to Article III, Section 9 of the By-Laws and that may

be, but would not be required to be, an Executive Chairman. In addition, OCC would revise Article III, Section I of the By-Laws to provide that the Board may have no less than five Public Directors. The proposed change would allow OCC to have a sixth Public Director serving on its Board if there is a Public Director serving as Chairman.<sup>15</sup>

Pursuant to proposed Article III, Section 9 of the By-Laws, the Chairman would preside at all meetings of the Board of Directors, be responsible for carrying out the policies of the Board, have general supervision over the Board and its activities, and provide overall leadership to the Board of Directors. Additionally, the By-Laws would be revised to provide OCC's Board with additional flexibility to define the role of the Chairman. Article IV, Section 6 of the By-Laws currently states that the Executive Chairman is responsible for certain control functions of OCC, including internal audit and public affairs and government relations, and has supervision of the officers and agents appointed by him. This By-Law requirement would be replaced by a more general statement in proposed Article III, Section 9 that the Chairman would have those powers and perform such duties as the Board may designate. The proposed change would provide appropriate flexibility for the Board to assign or remove responsibilities of the Chairman based on whether such Chairman is an Executive or Non-Executive Chairman

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<sup>15</sup> OCC notes that the proposed change, along with the potential election of a Management Director that is not an Executive Chairman (discussed below), could result in the Board having up to 21 total directors as opposed to its current 20 directors. OCC also notes that if the Board elects a Non-Executive Chairman that is determined to be an independent Public Director, such a Chairman would be eligible to serve as the chair of any of OCC's Board Committees pursuant to the requirements of each Board Committee Charter. OCC does not believe that the potential addition of a Public Director to its Board, increasing the overall Board size by one director, would materially impact the composition, representation, or decision-making process of the Board.

and based upon the needs of OCC at a given point in time, as discussed in further detail below. OCC would also make conforming changes to Article IV, Section 8 to clarify that the CEO would be responsible for all aspects of OCC's business and for its day-to-day affairs, except for those that may report directly to the Chairman, as determined by the Board.

OCC also proposes to revise the following sections of its By-Laws so that any Chairman (whether Executive or Non-Executive) retains the authority and responsibility currently given to the Executive Chairman and which OCC believes relate to governance matters appropriately assigned to any Chairman of the Board. This includes the following sections of the By-Laws.

- Article II, Sections 2 and 4 concerning the authority to call and provide notice of meetings of OCC's stockholders;
- Article III, Section 10 concerning the authority to receive notice of resignation of a member of the Board;
- Article III, Section 14 concerning the authority to call special meetings of the Board;
- Article III, Section 15 concerning the authority to exercise emergency powers and call special meetings of the Board during such an emergency;
- Article IV, Sections 2, 3, 9 and 13 concerning the authority to appoint officers, fix the salaries of any appointed officers, and remove such officers;
- Article VIIB, Section 1, Interpretation and Policy .01 concerning the responsibility to promptly provide Non-Equity Exchanges with information the Chairman considers to be of competitive significance to such Non-Equity

Exchanges that was disclosed to Exchange Directors at or in connection with any meeting or action of the Board or one of its committees;

- Article IX, Section 12 concerning the authority to sign certificates for shares of OCC; and
- Article IX, Section 14 concerning the authority to suspend the rules of OCC in emergency circumstances.

OCC would also revise its By-Laws to transfer certain responsibilities that currently belong to the Executive Chairman, and that would no longer belong to any Chairman, to OCC's CEO. Specifically, OCC proposes to revise Article VI, Section 11 of the By-Laws to assign the responsibility for participating in the Securities Committee and panels thereof for purposes of contract adjustments to the CEO. OCC also proposes similar changes to its By-Laws concerning the fixing of: (i) underlying interest values of binary and range options (Article XIV, Section 5), (ii) exercise settlement amounts of yield-based Treasury options (Article XVI, Section 4), (iii) exercise settlement amounts of cash-settled securities options other than OTC index options (Article XVII, Section 4), (iv) exercise settlement amounts of cash-settled foreign currency options (Article XXII) in circumstances where certain prices or values are determined to be unavailable or inaccurate for the contracts in question, and (v) the Closing Price for BOUNDS contracts (Article XXIV). OCC believes these responsibilities are best discharged by the CEO – the senior executive of the company directly familiar with the day-to-day operations of the company and with no director-related responsibilities – than an Executive Chairman. Furthermore, the proposed changes would ensure these responsibilities remain clearly

and transparently assigned to an executive officer of the company in the event the Board elects a Non-Executive Chairman.

OCC also proposes to revise its By-Laws and Stockholder Agreement to provide OCC's Board and stockholders with the discretion to elect a Management Director. Currently, under the By-Laws and Stockholder Agreement, the Executive Chairman is also elected as the Management Director of OCC. Under the proposed rule change, however, OCC's Board would have the discretion to elect a Non-Executive Chairman. OCC therefore proposes to revise Article VIIA, Section 3 of the By-Laws and Sections 2 and 3 of the Stockholder Agreement to provide the Board and stockholders with the discretion to elect a Management Director if the Board has elected a Non-Executive Chairman should they choose. OCC would also revise Article III, Section 12 of the By-Laws to reflect that any vacancy in the position of Management Director may be filled by the Board until the next meeting of the stockholders and would not be limited to the selection of the Executive Chairman to serve as Management Director. In addition, OCC proposes to revise Article IV, Sections 1 and 7 of the By-Laws to relocate certain provisions concerning the election of the Vice Chairman of the Board.

Finally, OCC proposes to revise Article III, Section 4 of the By-Laws to remove specific references to various Board committees and their compositions. OCC notes that each of the Board Committee Charters are filed with the Commission as rules of OCC, and as a result, this information is unnecessarily duplicated in OCC's By-Laws. OCC believes that maintaining this information in multiple places does not add any benefit to the rules of OCC and only increases the possibility for inconsistent statements among the

OCC Governing Documents to the detriment of clear and transparent governance arrangements.<sup>16</sup>

#### Proposed Changes to OCC's Rules

OCC proposes changes to its Rules in connection with the proposed By-Law changes described above. OCC would revise the following Rules so that any Chairman (whether Executive or Non-Executive) retains the following authority and responsibility currently given to the Executive Chairman.

- Rule 505 concerning the authority to extend settlement times upon a determination that an emergency or force majeure condition exists;
- Rule 609A concerning the authority to waive margin deposits in limited circumstances;
- Rule 1006(f) concerning the authority to use Clearing Fund assets to borrow or otherwise obtain funds from third parties;
- Rule 1104, Interpretation and Policy .02 concerning the authority to elect to use one or more private auctions to liquidate collateral, open positions and/or exercised/matured contracts of a suspended Clearing Member; and
- Rule 1110 concerning the authority to appoint an appeals panel to consider and decide appeals by suspended Clearing Members.

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<sup>16</sup> As part of this proposed change, OCC would relocate from the By-Laws to each of the Board Committee Charters the requirement that committee members are selected by the Board from among the directors recommended by the then-constituted Governance and Nominating Committee after consultation with the Chairman and serve at the pleasure of the Board.

OCC believes it is appropriate for the Chairman to retain the authority to make certain critical decisions, which primarily involve emergency or exigent circumstances or other activities generally outside of OCC's day-to-day activities. The proposed change would help to ensure the efficient management and operation of OCC in such circumstances if other authorized officers are absent or otherwise unable to perform their duties.

OCC also proposes conforming changes to its Rules concerning those responsibilities and authorities that would remain with any Executive Chairman of the Corporation. This includes the following:<sup>17</sup>

- Rule 1104(b) concerning the authority to delay the immediate liquidation of a suspended Clearing Member's margin deposits and to use such deposits to borrow or otherwise obtain funds from third parties;
- Rule 1106(e) concerning the authority to determine not to close out a suspended Clearing Member's unsegregated long positions or short positions in options or BOUNDS, or long or short positions in futures; and
- Rule 1106(f) concerning the authority to execute hedging transactions to reduce the risk associated with any collateral or positions not immediately liquidated or closed out pursuant to Rules 1104(b) and 1106(e).

While these responsibilities and authorities involve important aspects of OCC's default management process, OCC does not believe they rise to the level of emergency or exigent circumstances. OCC believes it is appropriate for these responsibilities to remain with senior executives more closely familiar with the day-to-day operations of the

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<sup>17</sup> OCC notes that the CEO and COO would also continue to have authority to take the following actions.

Corporation. As a result, OCC would not substantively change the requirements in its existing rules.

#### Proposed Changes to OCC Board Charters

OCC proposes several conforming changes to its Board Charters in connection with the proposed changes to its By-Laws and Rules. OCC also proposes administrative changes to its Board Charters relating to its Board Committee composition requirements. The proposed changes to each of the charters are described below.

##### *Board Charter*

OCC proposes to revise its Board Charter to conform to the proposed changes to OCC's By-Laws discussed above. First, OCC would remove the qualifier "Executive" before most occurrences of "Executive Chairman" throughout the charter. In addition, OCC would revise the Board Charter to clarify that those provisions relating to management structure, evaluation, and succession would be applicable only to any Executive Chairman. The proposed changes would also clarify that, with respect to employee compensation, the Board would be responsible for the compensation, incentive, and benefit programs and evaluating the performance of any Executive Chairman. OCC also proposes to revise the Board Charter to reflect that the election of a Management Director would be at the discretion of the Board and provide that a Management Director would no longer be eligible to serve if he or she ceases to hold a senior officer position at OCC, by virtue of which he or she was elected as a Management Director.

OCC also proposes to revise the Board Charter to include the Regulatory Committee in the list of charters required to be established by the Board.<sup>18</sup> In addition, OCC proposes to revise its Board Charter to remove specific requirements around the composition of the Governance and Nominating Committee, which would align with proposed changes to the Governance and Nominating Committee discussed below.

#### *Audit Committee Charter*

OCC proposes changes to its Audit Committee Charter regarding the functional and administrative reporting lines for the Chief Audit Executive (“CAE”) and Chief Compliance Officer (“CCO”) and the review and oversight of OCC’s Internal Audit and Compliance functions to accommodate the proposed changes to OCC’s By-Laws. The Audit Committee Charter currently provides that the CAE reports functionally to the Audit Committee and administratively<sup>19</sup> to the Executive Chairman and that the committee consults with the Executive Chairman and CEO in reviewing the performance of the Internal Audit function and CAE. OCC would revise the Audit Committee Charter to state that the CAE would continue to report functionally to the Committee and report administratively to a member of the Management Committee designated by the Committee. As noted above, governance responsibilities may vary depending on OCC’s management structure and the Board’s allocation of responsibilities at a given point in time. The proposed rule change is intended to provide appropriate flexibility for the

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<sup>18</sup> See Securities Exchange Act Release No. 87577 (November 20, 2019) 84 FR 65202 (November 26, 2019) (SR-OCC-2019-008).

<sup>19</sup> Administrative reporting may include, for example, reporting concerning budgeting and accounting issues, human resource administration, administration of OCC’s internal policies and procedures, and other day-to-day communication and updates concerning the respective function.

administrative reporting line of the CAE and in the officers that the committee may consult in their review of the Internal Audit function. OCC also proposes similar changes to the functional and administrative reporting lines of the CCO, who currently reports functionally to the Audit Committee and administratively to the CEO, and to the consultation requirements in reviewing the performance of the CCO and Compliance Department. This would provide for a consistent approach and similar flexibility for the Audit Committee's oversight of OCC's Compliance function.

#### *Compensation and Performance Committee Charter*

OCC proposes to revise its Compensation and Performance Committee Charter to conform to the proposed changes to OCC's By-Laws. Specifically, the proposed revisions would reflect that the committee's responsibilities for reviewing the performance and compensation of OCC's management team, including the executive officers of OCC, would extend to any Executive Chairman of OCC.

#### *Governance and Nominating Committee Charter*

OCC proposes to revise its Governance and Nominating Committee Charter to conform to the proposed changes to OCC's By-Laws by clarifying that the Committee would consult with any Chairman in its oversight and advising responsibilities to OCC's Board.

#### *Risk Committee Charter*

OCC proposes changes to its Risk Committee Charter regarding the functional and administrative reporting lines for the Chief Risk Officer ("CRO"). Currently, the Risk Committee Charter provides that the CRO reports functionally to the Committee and administratively to the CEO and that the Committee consults with the CEO and other

committees as appropriate in reviewing the CRO's performance. OCC proposes to revise the Risk Committee Charter to state that the CRO would continue to report functionally to the Committee and would report administratively to a member of the Management Committee designated by the Committee. The proposed rule change is intended to provide flexibility for the administrative reporting line of the CRO and the particular officers and committees the Risk Committee may consult in their review of the CRO's performance depending on the Board's allocation of responsibilities at a given point in time.

#### *Technology Committee Charter*

Finally, OCC proposes to revise its Technology Committee Charter to require that the chair of the committee be a Public Director. The proposed change is intended to align the Technology Committee Charter with OCC's other Board Committee Charters, which also require that a Public Director serves as committee chair. OCC notes that the proposed change would not result in any practical change to the Technology Committee as it is currently chaired by a Public Director.

#### (2) Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Act<sup>20</sup> and the rules thereunder applicable to OCC. Section 17A(b)(3)(A) of the Act<sup>21</sup> requires, among other things, that a clearing agency be so organized and have the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it

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<sup>20</sup> 15 U.S.C. 78q-1.

<sup>21</sup> 15 U.S.C. 78q-1(b)(3)(A).

is responsible. The proposed changes would enable the Board to adjust OCC's Board and management structure in a timelier fashion based on changing business conditions as well as changes in personnel and the knowledge, skills, and experience of OCC's various Board members and senior officers, particularly as it concerns the Chairman of OCC's Board. OCC notes that SROs registered with the Commission, including registered clearing agencies, employ a variety of board of director and management structures, with both Executive and Non-Executive Chairmen presiding over the board of directors of SROs.<sup>22</sup> In certain cases, SROs maintain flexibility to elect Executive and Non-Executive Chairmen as circumstances warrant. OCC proposes similar changes to its rules so that its Board can maintain governance arrangements that promote the efficient and effective management and operation of OCC. The proposed rule change would also clearly delineate the authority and responsibilities of an Executive Chairman versus a Non-Executive Chairman. The proposed rule change would also provide flexibility in the administrative reporting lines for key OCC personnel such as the CAE, CCO, and CRO, allowing these administrative reporting lines to be adjusted, as necessary, and develop an appropriate review process for the performance of OCC's Internal Audit and Compliance functions so that OCC can adapt to its evolving Board and management structure. For these reasons, OCC believes the proposed rule change is designed to ensure that OCC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts,

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<sup>22</sup> See supra note 4.

and transaction for which it is responsible consistent with the requirements of Section 17A(b)(3)(A) of the Act.<sup>23</sup>

Exchange Act Rules 17Ad-22(e)(2)(i) and (v)<sup>24</sup> require covered clearing agencies to have governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility. As discussed above, the proposed rule change would further enable OCC's Board to adjust OCC's governance arrangements in a more timely fashion, particularly as they relate to OCC's Chairman, so that its governance arrangements are continually designed to promote the efficient and effective management and operation of OCC, taking into consideration the Board's culture and practices, business circumstances, and the capabilities, leadership styles, expectations, personal characteristics, and relationships of its potential leaders at a given point in time. The proposed rule change would also clearly delineate the proposed authority and responsibilities of an Executive Chairman versus a Non-Executive Chairman. Finally, OCC believes the proposed changes to its Board Committee Charters would provide OCC's Board with appropriate flexibility to more quickly adjust the administrative reporting lines for, and oversight of the performance of, OCC's Internal Audit and Compliance functions and key OCC personnel, such as the CAE, CCO, and CRO, taking into account the specific qualifications, experience, competence, character, skills, incentives, integrity or other relevant attributes of Board members and senior officers at any given time. OCC believes the proposed change would provide an appropriate level of clarity and transparency regarding the limited set of officers to which the CAE, CCO,

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<sup>23</sup> 15 U.S.C. 78q-1(b)(3)(A).

<sup>24</sup> 17 CFR 240.17Ad-22(e)(2)(i) and (v).

and CRO may report to for administrative purposes and the Board's responsibility for designating such reporting lines. The proposed changes to the Board Committee Charters would not alter the responsibilities of the Board generally or of any of its individual committees or committee members. These responsibilities would continue to be specified in each of the Board Committee Charters. As a result, OCC believes the proposed rule change is reasonably designed to provide for governance arrangements that remain clear and transparent and specify clear and direct lines of responsibility in accordance with Rule 17Ad-22(e)(2)(i) and (v).<sup>25</sup>

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

Section 17A(b)(3)(I) of the Exchange Act<sup>26</sup> requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the Act. OCC does not believe that the proposed rule change would have any impact or impose any burden on competition. The proposed rule change would provide OCC's Board with the discretion to elect either an Executive Chairman or a Non-Executive Chairman to preside over the Board and would clarify the roles and responsibilities of an Executive versus a Non-Executive Chairman. The proposed rule change would also make changes to OCC's Board and Board Committee Charters regarding the Board's oversight of the Chairman and other senior officers of OCC. The proposed rule change would not inhibit access to OCC's services or disadvantage or favor any user in relationship to another. As a result, OCC believes the proposed rule change would not impact or impose a burden on competition.

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<sup>25</sup> Id.

<sup>26</sup> 15 U.S.C. 78q-1(b)(3)(I).

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

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2021-007 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2021-007. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-OCC-2021-007 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>27</sup> 17 CFR 200.30-3(a)(12).