

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92690; File No. SR-OCC-2021-008)

August 17, 2021

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Technical Changes to the By-Laws and Rules of the Options Clearing Corporation.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 6, 2021, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii)³ of the Act and Rule 19b-4(f)(1)⁴ and (f)(4)⁵ thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

This proposed rule change would amend OCC’s By-Laws and Rules to (i) correct typographical errors, (ii) make conforming changes intended by prior proposed rule change filings, (iii) correct erroneous cross-references, and (iv) remove certain

¹ 15 U.S.C. 78s(b)(1).
² 17 CFR 240.19b-4.
³ 15 U.S.C. 78s(b)(3)(A)(ii).
⁴ 17 CFR 240.19b-4(f)(1).
⁵ 17 CFR 240.19b-4(f)(4).

inoperative provisions and clarifying certain other provisions related to OCC's Clearing Member Trade Assignment ("CMTA") process. Amendments to OCC's By-Laws and Rules are included in Exhibit 5 of filing SR-OCC-2021-008. Material proposed to be added is marked by underlining, and material proposed to be deleted is marked with strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the By-Laws and Rules.⁶

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

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

(1) Purpose

OCC is proposing to amend its By-Laws and Rules to (1) correct typographical errors, (2) make conforming changes intended by prior proposed rule change filings, (3) correct erroneous cross-references and (4) remove certain inoperative provisions and clarifying certain other provisions related to OCC's CMTA process

⁶ OCC's By-Laws and Rules can be found on OCC's public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

1. Typographical Error Correction

First, OCC has identified several typographical errors in the text of the proposed rule change as submitted to the SEC:

- The definition of “Clearing Member” in Article I of the By-Laws would be amended to reflect that the plural of the defined term “BOUND” is “BOUNDs,” not “BOUNDS.” The same change would be made to Rule 401(a)(3).
- The definition of “Equity Exchange” in Article I of the By-Laws would be amended to correct a reference to “Section VIIA” of the By-Laws. There is no “Section VIIA” of the By-Laws; the references should be to “Article VIIA.”
- The definition of “Hedge Clearing Member” in Article I of the By-Laws would be amended to replace a reference to “Stock Clearing Member,” which is not a term defined by the By-Laws or Rules, with “Clearing Member.”
- Article IV, Section 3 of the By-Laws would be amended to re-insert a comma within a series in the second sentence that was inadvertently removed.
- Article IX, Section 5 of the By-Laws would be amended to employ more standard American spelling of “depositories.”
- Article XXI, Section 2(a)(2) of the By-Laws would be amended to correct capitalization of the word “accordance.”
- Interpretations and Policies to Rule 1309 and Rule 1405 would be renumbered to conform to the standard numbering convention for such Interpretations and Policies.
- Rule 1403(a) would be amended to correct the verb tense in the second clause.

- Interpretation and Policy .01 to Rule 2210A would be amended to correct a typographical error in the possessive of “Clearing Member.”

2. Conforming Changes

Second, OCC has identified instances in which the changes OCC intended to make in prior rule change filings were not applied to all affected provisions. This proposed rule change would apply conforming changes to OCC’s By-Laws and Rules reflecting the intended changes to the affected provisions:

- Article VI, Section 3(d) of the By-Laws would be deleted. The provision allows for Clearing Members to establish and maintain Pledge Accounts to the extent permitted by OCC’s Rules—Rules which OCC eliminated in 2012 when it terminated the Pledge Program.⁷ Because OCC’s Rules no longer permit Pledge Accounts, Section 3(d) of By-Law Article VI is now inoperative and can be eliminated.
- Article XXVI, Section 1 of the By-Laws would be amended by deleting the definition of “index group.” That defined term was previously deleted from Article XVII because it was not used elsewhere in that Article.⁸ Likewise, the term is not used elsewhere in Article XXVI. In addition, the definition of “index multiplier” would be amended to reflect that the referenced definition is found in Article I, not Article XVII as currently indicated.

⁷ See Securities Exchange Act Release (“Exchange Act Release”) No. 67706 (Aug. 22, 2012), 77 FR 52082 (Aug. 28, 2012) (File No. SR-OCC-2012-10).

⁸ See Exchange Act Release No. 58352 (Aug. 13, 2008), 73 FR 48421, 48422 (Aug. 19, 2008) (File No. SR-OCC-2008-17).

- Rule 504(c) would be amended to use the term “non-guaranteed settlement,” rather than “money-only settlement.” Paragraph (c) was inadvertently excluded from a prior rule change filing that applied the same change to other paragraphs of that Rule.⁹ Consequently, OCC would also renumber paragraphs (d) through (g), as they appeared in that filing, as paragraphs (e) through (h).
- Interpretation and Policy .14 to Rule 604 would be amended to reflect the deletion of a former provision under Rule 604(b)(4). Rule 604(b)(4) limited the amount of margin credit of any single issue to 10% of the margin deposited by Clearing Members. OCC intended to remove that limitation when it eliminated preferred stock as a form of margin asset.¹⁰ Consequently, the Interpretation and Policy’s application of that now defunct provision to sub-accounts is no longer relevant.
- Rule 705 would be amended to reflect that interests or gains received or accrued on the investment of margins deposited in respect of cross margin accounts shall belong to the Corporation or the Participating CCO(s) (rather than “and”) as may be determined by mutual agreement between the parties, consistent with

⁹ See Exchange Act Release No. 63120 (Oct. 15, 2010), 75 FR 65538 (Oct. 25, 2010) (File No. SR-OCC-2010-17).

¹⁰ See Exchange Act Release No. 72206 (May 21, 2014), 79 FR 30674, 30675 (May 28, 2014) (File No. SR-OCC-2014-07). As OCC explained, the limitation on margin credit was no longer necessary after eliminating preferred stock as an acceptable form of margin asset because additional charges for concentration positions are already determined under OCC’s System for Theoretical Analysis and Numerical Simulations (“STANS”).

unmarked changes in the text as filed in connection with a prior proposed rule change.¹¹

- Interpretation and Policy .02 to Rule 1106 would be renumbered as .01, consistent with the deletion of the immediately Interpretation and Policy by a previous proposed rule change.¹²
- Rule 2205 would be amended to reflect that OCC shall “make available,” rather than “issue,” information concerning stock loan positions and stock borrow positions resulting from Stock Loans, consistent with unmarked changes in the text as filed in connection with prior proposed rule changes.¹³

3. Correcting Erroneous Cross-References

Third, OCC has identified erroneous cross-references to provisions that have been renumbered by prior rule changes. This proposed rule change would correct these erroneous cross-references.¹⁴ In the case of erroneous cross-references to definitions

¹¹ See Exchange Act Release No. 58258 (July 30, 2008), 73 FR 46133 (Aug. 7, 2008) (File No. SR-OCC-2008-12).

¹² See Exchange Act Release No. 67835 (Sept. 12, 2012), 77 FR 57602 (Sept. 18, 2012) (File No. SR-OCC-2012-14).

¹³ See Exchange Act Release No. 80171 (Mar. 8, 2017), 82 FR 13690 (Mar. 14, 2017) (File No. SR-OCC-2017-004); Exchange Act Release No. 59294 (Jan. 23, 2009), 74 FR 5958 (Feb. 3, 2009) (File No. SR-OCC-2008-20).

¹⁴ Specifically, OCC would update the cross-references in the bracketed parentheticals that identify By-Laws or Rules supplemented or replaced by Article XII, Section 4A; Article XIII, Sections 1 and 3; Article XV, Section 1; Article XVI, Section 1; and Article XVII, Section 1 of the By-Laws and Rules 1401, 1402, 1403, 1404, 1503, 1703, 1704, 1805, and 2704. OCC would also amend erroneous cross-references in Rules 101, 304(a), 309(f), and 803 and Article XV, Section 1 of the By-Laws. The rationale for these amendments and the identification of the intervening rule filings that renumbered the referenced provisions is included in Exhibit 3 to File No. SR-OCC-2021-008.

found in Article I of the By-Laws or Rule 101, OCC is proposing to replace citations to numbered paragraphs with references to the defined term. OCC believes citations to numbered paragraphs are unnecessary for definition sections that are alphabetized,¹⁵ and referring to the definitions by term rather than number will help avoid the need to update cross-references whenever the definition sections are amended.

4. Amendments to CMTA Processes

Finally, OCC is proposing to remove references to certain identifiers related to the Clearing Member Trade Assignment (“CMTA”) process that were never implemented. Specifically, the provisions related to the Customer CMTA Indicator, CMTA Customer Identifier, and IB Identifier in Article I of the By-Laws, Rule 401, and Rule 407 contemplated that participant exchanges would adopt rules to implement them, which did not occur.¹⁶ OCC proposes to remove the changes applied when it added the capacity for those identifiers.¹⁷

Notwithstanding the amendments to Article XV, that Article remains inoperative until further notice by OCC. See Exchange Act Release No. 58977 (Nov. 19, 2008), 73 FR 72097, 72098 (Nov. 26, 2008) (File No. SR-OCC-2008-09).

¹⁵ The practice of referring to definition sections by number dates to OCC’s original practice of adding new definitions sequentially to the end of the definition sections, which OCC ceased when it alphabetized the definition sections. See Exchange Act Release No. 30327 (Jan. 31, 1992), 57 FR 4785-01 (Feb. 7, 1992) (File No. SR-OCC-92-4).

¹⁶ See OCC Rule 401(a) (“Such confirmed trade information shall also include a Customer CMTA Indicator, a CMTA Customer Identifier, and an IB Identifier to the extent required under applicable Exchange rules.”)

¹⁷ See Exchange Act Release No. 51350 (Mar. 9, 2005), 70 FR 12934 (Mar. 16, 2005) (File No. SR-OCC-2004-19).

OCC would also clarify Rule 407(b) to address situations where the account designated by the Carrying Clearing Member to receive confirmed trades is not approved to hold a specific confirmed trade. Rule 407(b) does not provide for what happens in this event. In such cases, it is OCC's practice to default to the Carrying Clearing Member's customer or segregated futures account, as applicable, or, if the Carrying Clearing Member does not maintain such an account, to the Carrying Clearing Member's firm account. In addition, OCC would delete the last sentence of Rule 407(b), which provides for default accounts if an Executing Clearing Member failed to designate a default account for failed transactions. Executing Clearing Members are required to make a designation prior to engaging in transactions, so the situation this provision is intended to address could not occur. Therefore, this last sentence is unnecessary and can be eliminated. OCC believes that these proposed changes help to clarify OCC's Rules with respect to default accounts and reflect OCC's current practice.

(2) Statutory Basis

OCC believes the proposed rule changes are consistent with Section 17A of the Securities Exchange Act of 1934 ("Exchange Act") and the rules and regulations thereunder. Section 17A(b)(3)(F)¹⁸ of the Exchange Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions and protect investors and the public interest. By correcting typographical errors, omissions and erroneous cross-references in OCC's By-Laws and Rules, as well as removing inoperative provisions, the proposed rule changes facilitate the administration of existing rules

¹⁸ 15 U.S.C. 78q-1(b)(3)(F).

intended to promote the prompt and accurate clearance and settlement of securities and derivatives transactions and protect investors and the public interest.

In addition, Rule 17Ad-22(e)(1) requires OCC to, among other things, maintain written policies and procedures reasonably designed to, among other things, ensure a well-founded, clear, transparent, and enforceable legal basis for each aspect of OCC's activities.¹⁹ By correcting errors and omissions in the text as filed with the SEC and removing inoperative provisions, the changes discussed above are intended to support the maintenance of OCC's By-Laws and Rules and improve their clarity and transparency. The proposed rule change is not inconsistent with any existing rules of OCC, including any other rules proposed to be amended.

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

Section 17A(b)(3)(I) of the Exchange Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.²⁰ As discussed above, the proposed changes would correct typographical errors, omissions and erroneous cross-references and remove certain inoperative provisions. These proposed changes are technical in nature and would not impact the rights or obligations of Clearing Members or other participants in a way that would benefit or disadvantage any participant versus another participant. Accordingly, OCC does not believe that the proposed corrections to its By-Laws and Rules have any impact, or impose any burden, on competition.

¹⁹ 17 CFR 240.17Ad-22(e)(1).

²⁰ 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 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

Pursuant to Section 19(b)(3)(A)(ii)²¹ of the Act, and Rule 19b-4(f)(1)²² and (f)(4)²³ thereunder, the proposed rule change is filed for immediate effectiveness. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.²⁴

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:

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

²² 17 CFR 240.19b-4(f)(1).

²³ 17 CFR 240.19b-4(f)(4).

²⁴ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under Commodity Futures Trading Commission Regulation 40.6.

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2021-008 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-2021-008. 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-2021-008 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.²⁵

Jill M. Peterson
Assistant Secretary

²⁵ 17 CFR 200.30-3(a)(12).