

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69771; File No. SR-OCC-2013-09)

June 17, 2013

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, to Separate the Powers and Duties Currently Combined in the Office of OCC's Chairman into Two Offices, Executive Chairman and President, and Create an Additional Directorship to be Occupied By the President

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 4, 2013, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by OCC. On June 10, 2013, OCC filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

OCC proposes to separate the powers and duties currently combined in the office of OCC's Chairman into two offices, Executive Chairman and President, and create an additional directorship to be occupied by the President.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 modified Exhibit 3A to the original filing to correct an erroneous reference contained therein.

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

The purpose of this proposed rule change is to provide for separation of the powers and duties currently combined in the office of OCC's Chairman into two offices, Executive Chairman and President, and create an additional directorship to be occupied by the President. These changes resulted from a review of the structure of OCC's Board, with particular consideration given to the trend in many corporations toward separating the positions of Chief Executive Officer and Chairman of the Board. OCC's Board of Directors ultimately determined that as a corporate governance matter dividing the powers and duties of the Chairman into two positions was desirable. Under the proposal, the Executive Chairman would be responsible for the control functions of OCC, including enterprise risk management, internal audit and compliance, as well as for external affairs, and for presiding at all meetings of the Board and the stockholders. The President would report to the Chairman and be responsible for all aspects of OCC's business that do not report directly to the Chairman. OCC intends that the President, who

would be OCC's Chief Executive Officer,⁴ would focus on the effectiveness of OCC's day-to-day operations, as well as strategic initiatives for the future, while the Chairman would provide objective oversight over the entire organization, including the President.

OCC believes that the proposed change would enhance oversight of management because the Chairman will be independent of most management functions. The separation would also avoid concentrating too much power over OCC's operations in the hands of a single individual, and heighten accountability of management to the Board. Furthermore, the Board of Directors found that separation of these offices would better align OCC's governance structure with global standards for financial services organizations.

While OCC's Board of Directors determined that its Chairman should no longer function as its chief executive officer, in light of OCC's status as a registered clearing organization and designated clearing organization, it concluded that the Chairman should have executive responsibilities relating to risk management, compliance and similar issues. The Board of Directors believes that the Chairman's direct oversight of these control functions will increase independence by limiting management's influence over them.⁵ The Board also believes that the significance of these control functions for a

⁴ While the By-Laws would make it clear that the President is OCC's Chief Executive Officer, for simplicity the officer in question would be referred to only as the "President."

⁵ The proposed structure of OCC's Board, including the utilization of an executive chairman, is similar to that employed by the Depository Trust & Clearing Corporation and CME Group Inc. See Article III of the Depository Trust & Clearing Corporation's By-Laws, effective April 2012, *available at* http://www.dtcc.com/legal/rules_proc/dtc_rules.pdf, and Article V of CME Group Inc.'s Tenth Amended and Restated By-Laws, effective as of April 17, 2013, *available at* <http://investor.cmegroup.com/investor-relations/groupBylaws.cfm>).

clearing organization warrants full-time oversight, which can only be provided by an executive of OCC.

To reflect the above changes in its governance structure, OCC is proposing to revise Section 7 of Article III of its By-Laws to include OCC's President as a Management Director, along with OCC's Chairman. Accordingly, Sections 1, 7 and 12 of Article III will also be amended to reflect the existence of an additional Management Director. Furthermore, OCC proposes to amend Section 15 of Article III to grant the President the same authority to act in the case of an emergency as the Chairman and, consequently, OCC also proposes to remove the President as one of the "Designated Officers" to whom such authority would devolve if certain enumerated officers are unavailable. Section 3 of Article III would also be amended to clarify the timing of the annual meetings at which the initial election of each class of Member Directors in fact occurred.

OCC is proposing to revise Article IV of its By-Laws to include references to the President in certain provisions governing OCC's officers. In particular, Section 8 of Article IV would no longer give the Board the option of electing a President, but would make such office required, and, accordingly, Section 1 of Article IV would include the President, along with the Chairman, as an officer elected by the Board of Directors. Sections 6 and 8 would also be amended to specify the Chairman's duties and the President's duties, respectively, as described above. OCC also proposes to amend Sections 2, 3 and 13 of Article IV to provide that, like the Chairman, the President may appoint and remove certain officers and agents to carry out the functions assigned to him and may determine the salaries of these appointees and agents. Finally, OCC is

proposing to amend Sections 7 and 9 to add references to the President, in addition to the Chairman, when referencing the highest-ranking officers of OCC.

Amendments to Certificate of Incorporation and Stockholders Agreement

OCC is proposing to amend Articles IV and V of its Certificate of Incorporation to reflect the existence of an additional Management Director.⁶ OCC is also proposing to amend Sections 2 and 3 of the Stockholders Agreement to provide for the election of the President, in addition to the Chairman, as a Management Director.⁷

Effect on Clearing Members

The proposed rule change relates to OCC governance issues. OCC believes that it would affect all clearing members equally, and that it would not impose any compliance burdens on clearing members.

Notice of Implementation

Following approval of this rule change by the Commission, OCC expects to provide notice to its clearing members of the date on which it intends to implement this rule change by separating the powers and duties of OCC's Chairman into two offices and creating the additional directorship. Such notice will be provided to clearing members through an information memo posted on OCC's website. The implementation of the rule change will occur no later than December 31, 2013.

⁶ See the proposed Fifth Certificate of Amendment of Restated Certificate of Incorporation of the Options Clearing Corporation, attached hereto as Exhibit 3A.

⁷ See Amendment No. 10 to the Stockholders Agreement, attached hereto as Exhibit 3B.

OCC believes that the proposed rule change is consistent with Section 17A of the Act⁸ and the rules and regulations thereunder, including Rule 17Ad-22(d)(8), because the proposed modifications would help ensure that the rules of OCC are designed to protect investors and the public interest⁹ and that OCC's governance arrangements are clear and transparent, fulfill the public interests requirements in Section 17A, support the objectives of owners and participants and promote the effectiveness of OCC's risk management procedures¹⁰ by separating the powers and duties currently combined in the office of Chairman into two offices.

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

OCC does not believe that the proposed rule change would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.¹¹ With respect to any burden on competition among clearing agencies, OCC is the only clearing agency that performs central counterparty services for the options markets.

Changes to the rules of a clearing agency may have an impact on the participants in a clearing agency and the markets that the clearing agency serves. However, this proposed rule change primarily affects OCC in that it separates the powers and duties of the office of OCC's Chairman into two offices and creates an additional directorship. OCC does not believe that these changes with respect to governance would disparately treat any clearing member or group of clearing members or otherwise disparately affect

⁸ 15 U.S.C. 78q-1.

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 17 CFR 240.17Ad-22(d)(8).

¹¹ 15 U.S.C. 78q-1(b)(3)(I).

access to or use of any of OCC's facilities or disadvantage or favor any user in relationship to any other such user. In this connection, OCC notes that the provision of Section 1 of Article III of the By-Laws that requires that the number of Member Directors must exceed the sum of the number of Exchange Directors and the number of Public Directors by at least one is not being changed as a result of the proposed rule change. In addition, OCC believes that the proposed rule change would in fact allow OCC's Board to supervise management more effectively and thereby help ensure against any particular clearing member's exercising undue influence over management to the detriment of other clearing members.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, that it would promote transparency, fairness and competition in the options markets served by OCC, and it would not impose any burden on competition that is unnecessary or inappropriate in furtherance of the purposes of the Act.¹²

(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:

¹² 15 U.S.C. 78q-1(b)(3)(I).

- (A) by order approve or disapprove such 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. Please include File Number SR-OCC-2013-09 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2013-09. 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 am and 3:00 pm. Copies of the filing, and the amendment thereto, also will be available for inspection and copying at the principal office of OCC and on OCC's website:

http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_13_09.pdf.

http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_13_09_a1.pdf.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2013-09 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.¹³

Kevin M. O'Neill
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).