

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70207; File No. SR-OCC-2013-12)

August 15, 2013

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change to Revise its By-Laws and Rules to Make Structural Changes to OCC's Membership/Risk Committee Regarding Public Directors and the Process for Designating Membership/Risk Committee Members

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 August 2, 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. 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

OCC proposes to revise its By-Laws and Rules to make structural changes to OCC's Membership/Risk Committee ("MRC") regarding Public Directors and the process for designating MRC members.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The purpose of this proposed rule change is to revise OCC's By-Laws and Rules to make structural changes to OCC's MRC regarding Public Directors³ and the process for designating MRC members. The proposed rule change would require that at least one Public Director must serve on the MRC, that the MRC Chairman be a Public Director, and that all MRC members would be designated on an annual basis.

Currently, Article III, Section 9 of OCC's By-Laws specifies that at the first meeting of the Board of Directors that follows each annual meeting the Board must designate the Chairman of the Board, the Vice Chairman of the Board, and at least three other Member Directors to serve on the MRC. The By-Laws would be modified to provide that at least one Public Director must serve on the MRC and that the MRC Chairman must be a Public Director. These modifications would correspond to OCC's existing practice of having at least one Public Director serve on the MRC, and OCC

³ In relevant part, Article III, Section 6A of OCC's By-Laws defines a Public Director as a person who is "not affiliated with any national securities exchange or national securities association or with any broker or dealer in securities[.]"

believes that including this requirement in the By-Laws would help ensure that the MRC will continue to operate in a manner that is appropriately free from outside influence and that therefore helps protect the interests of investors and the public.

The proposed rule change would also eliminate the requirement from the By-Laws that MRC members must be designated at the first meeting of OCC's Board of Directors that follows each annual meeting. Instead, the only timing requirement in the By-Laws would be for MRC members to be designated annually. OCC believes this change to the By-Laws would provide OCC's Board with appropriate flexibility to decide when it is best for new MRC member designations to be made.

As amended, Article III, Section 9 of OCC's By-Laws would provide that the Public Director(s) would be nominated to serve on the MRC by the Chairman of the Board and that any nomination would be subject to approval by the Board of Directors. Article III, Section 9 would also provide that the Chairman of the MRC would be required to be a Public Director. If more than one Public Director is nominated to serve on the MRC, the Chairman of the Board would nominate one of the Public Directors to serve as the MRC Chairman. Any such nomination by the Chairman of the Board would be subject to Board approval. OCC also proposes to make technical corrections in Article III, Section 9 to eliminate specific references to Article V of the By-Laws and Chapter VI of the Rules in order to avoid any erroneous inference that those are the only provisions of the By-Laws and Rules that set forth powers and duties of the MRC, which are in fact contained in many other provisions of the By-Laws and Rules as well.⁴

⁴ For example, see Article I, Section G (6) of the By-Laws and Rules 214(b), 305(c), and 309(e).

(2) Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F)⁵ of the Act⁶ and the rules and regulations thereunder, including Rule 17Ad-22(d)(8),⁷ because these requirements with respect to Public Directors in OCC's By-Laws would protect investors and the public interest by promoting the continued operation of the MRC in a manner that is appropriately free from outside influence. By including in the By-Laws the existing practice of having at least one Public Director serve on the MRC and by further requiring that the MRC Chairman be a Public Director, the proposed modifications would help ensure 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 procedures.⁸ OCC further believes that the proposed change to the By-Laws to require a Public Director to serve as the MRC Chairman is consistent with explanatory note 3.2.14 to Principle 2 of the Principles for Financial Market Infrastructures that recommends that a risk committee be chaired by a sufficiently knowledgeable independent board member.

(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

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ 15 U.S.C. 78a et. seq.

⁷ 17 CFR 240.17Ad-22(d)(8).

⁸ Id.

Act.⁹ 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. This proposed rule change primarily affects OCC in that it would require at least one Public Director to serve on the MRC, the MRC Chairman to be a Public Director, and all MRC members to be designated on an annual basis. OCC does not believe that these changes with respect to governance would treat any clearing member or group of clearing members disparately or otherwise disparately affect access to or use of any of OCC's facilities or disadvantage or favor any user in relationship to any other such user. In fact, OCC believes that the proposed requirement that at least one member be a Public Director and that the MRC Chairman be a Public Director would promote competition by lessening the influence that any particular clearing member may have on the MRC.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, that it would be consistent with the requirements of the Act applicable to clearing agencies, and would not impose any burden on competition that is unnecessary or inappropriate in furtherance of the purposes of the Act because the changes would help ensure that the MRC continues to operate in a manner that is appropriately free from outside influence and therefore help promote the purposes of the Act and Rule 17Ad-22(d)(8)¹⁰ thereunder as described above.

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

⁹ 15 U.S.C. 78q-1(b)(3)(I).

¹⁰ 17 CFR 240.17Ad-22(d)(8).

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 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-2013-12 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-2013-12. 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 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_12.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-2013-12 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.³

Kevin M. O'Neill
Deputy Secretary

³ 17 CFR 200.30-3(a)(12).