

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-71311; File No. SR-OCC-2014-01)

January 15, 2014

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning Amendments to the Charters for the Membership/Risk Committee, Audit Committee and Performance Committee of OCC's Board of Directors

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 2, 2014, 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

This proposed rule change concerns amendments to the Charters for the Membership/Risk Committee ("MRC Charter"), Audit Committee ("AC Charter") and Performance Committee ("PC Charter") (collectively, the "Committee Charters") of OCC's Board of Directors ("Board").

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

<sup>2</sup> 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

On an annual basis, each Committee is required to review its charter and recommend changes, if any, to the Board for approval. This proposed rule change concerns proposed amendments to the MRC Charter, AC Charter and PC Charter and is a result of that review and approval process.<sup>3</sup> All of the proposed amendments have been approved by the Board.

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<sup>3</sup> At its meeting on May 21, 2013, OCC's Board authorized formation of a Governance Committee ("GC") and approved the GC Charter at its September 24, 2013, meeting. As set forth in the GC Charter, the purpose of the GC is to review the overall corporate governance of OCC and recommend improvements to OCC's Board. Changes to the GC Charter are not included in this rule filing because the GC was only recently formed. The GC work is ongoing and the MRC, the AC and the PC continue to discharge their obligations under their respective charters. The GC Charter was submitted as an Advance Notice filing on November 26, 2013. *See* Securities Exchange Act Release No. 71083 (December 16, 2013), 78 FR 76181 (December 20, 2013), (SR-OCC-2013-807).

### *Common Changes*

Each Committee Charter<sup>4</sup> is proposed to be amended to more clearly set forth certain uniform administrative functions of the Membership/Risk Committee (“MRC”), Audit Committee (“AC”) and Performance Committee (“PC”) (collectively, “Committees”). Such functions include: 1) each Committee Chair is responsible for ensuring that important issues discussed at Committee meetings are timely reported to the Board, 2) each Committee Chair is allowed to determine if minutes of executive sessions will be maintained, 3) each Committee will annually confirm that all responsibilities outlined in its charter have been carried out, and 4) the Committees’ and individual members’ performance shall be evaluated on a regular basis and that the results of such assessment are provide [sic] to the Governance Committee (“GC”) for review.

OCC also proposes to amend the MRC Charter, AC Charter and PC Charter to better reflect certain specific functions of MRC, AC and PC, respectively. Such proposed amendments are discussed in greater detail below.

### *Membership/Risk Committee*

The MRC assists the Board in overseeing OCC’s policies and processes for identifying and addressing strategic, operational and financial risks. The MRC has had longstanding authority to review OCC’s risk management functions and practices, and consistent with that authority, OCC is proposing to amend the MRC Charter to more clearly provide for the MRC’s oversight over the activities of the Chief Risk Officer (“CRO”). Specifically, the proposed amendments to the MRC Charter will expressly

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<sup>4</sup> The current versions of the Committee Charters were approved on December 6, 2013. See Securities Exchange Act Release No. 71022 (December 6, 2013), 78 FR 75659 (December 12, 2013), (SR-OCC-2013-17).

provide that: 1) the MRC will meet at least annually with the CRO in executive session, 2) the MRC has the authority to approve management's decision to appoint or replace the CRO, 3) the MRC will assess the performance of the CRO and OCC's Enterprise Risk Management ("ERM") Department as well as oversee the structure, staffing and resources of the ERM Department, and 4) the MRC shall approve the CRO's salary, the MRC Chair will participate in the PC meeting in which compensation for senior management is determined and the MRC Chair has delegated authority to modify the CRO's prior approved salary based on the discussions at such PC meeting.

In addition, OCC proposes to amend the MRC Charter to expressly state that the MRC has authority to review and recommend the OCC Risk Appetite Statement<sup>5</sup> to the Board for approval, and to review and monitor OCC's risk profile for consistency with such statement.

#### *Audit Committee*

The AC assists the Board in overseeing OCC's financial reporting process, OCC's system of internal control and OCC's auditing, accounting and compliance processes. The AC has had longstanding authority to review OCC's independent accountant and, consistent with that authority, OCC proposes to amend the AC Charter to more clearly describe such authority. Specifically, OCC proposes to amend the AC Charter to expressly provide that the AC has the authority to pre-approve the appointment and dismissal of OCC's independent accountant as well as assess OCC's independent

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<sup>5</sup> OCC's Risk Appetite Statement is a key component of its enterprise risk management program. The Risk Appetite Statement assists OCC management and its Board to more effectively communicate and monitor OCC's tolerance for risk taking. The Risk Appetite Statement sets the standards on which all of OCC's risk identification, measurement, monitoring, and testing are based.

accountant's qualifications, performance and independence. These proposed changes align with best practices and reflect the AC's oversight of the external auditor to better assure independence in connection with the performance of the external auditors' function and services. In addition, OCC proposes to amend the AC Charter to reflect the AC's oversight role in the structure, staffing and resources of OCC's Internal Audit Department, to recognize that OCC's Internal Audit Department will utilize co-sourced resources<sup>6</sup> and that OCC's Chief Audit Executive ("CAE") will recommend to the AC a co-sourced resource hour budget. The CAE is the head of OCC's Internal Audit Department and reports to OCC's Chairman and to the AC Chair. The CAE is a new title provided to the current senior staff person in OCC's Internal Audit Department.

If the budget is approved, it is proposed that the CAE will be delegated authority to 1) hire internal audit co-sourced service providers to augment OCC's Internal Audit Department, as necessary, or for any other practical purpose, 2) review the performance of the internal audit co-sourcing service providers, and exercise final approval on the appointment, retention and discharge of such service providers, and 3) approve the scope of services to be performed by internal audit co-sourcing service providers. OCC proposes that the AC will oversee any co-sourcing activity while delegating the administrative aspects of the arrangement to the CAE in order to efficiently manage the process while not overburdening the AC.

Moreover, OCC proposes to amend the AC Charter to provide that the AC shall approve the CAE's salary, to require the AC Chair to participate in the PC meeting in

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<sup>6</sup> Co-sourced resources are consultants hired on a temporary basis to assist with a particular project when OCC's Internal Audit Department staff is otherwise fully engaged and requires additional resources or skill sets to complete a project on a timely basis.

which compensation for senior management is determined and to delegate authority to the AC Chair to modify the CAE's prior approved salary based on the discussion at such PC meeting.

*Performance Committee*

The PC assists the Board in (i) overseeing the overall performance of OCC in promptly and accurately delivering, clearance, settlement and other designated industry services, and the accomplishment of other periodically established corporate goals and objectives in light of OCC's role as a systemically important financial market utility; (ii) recommending the compensation of the Chairman, the Management Vice Chairman, and President to the Board and approving the compensation of certain other officers, and (iii) reviewing and approving the structure and design of employee compensation, incentive and benefit programs. In connection therewith, OCC proposes to amend the PC Charter to provide that 1) the PC Chair will meet at least annually in private sessions with the GC Chair to discuss the performance of key officers, and 2) the PC will meet annually to discuss compensation levels of key officers and that the Chairs of the AC and MRC will be invited to attend such meeting with respect to the compensations levels of the CAE and CRO, respectively.

(2) Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act<sup>7</sup> and the rules and regulations thereunder because the proposed amendments to the Committee Charters clarify the roles of the Committees and will help ensure that OCC's governance structure is designed to protect investors and the

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<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

public interest. By adopting certain proposed clarifying amendments to the MRC Charter, AC Charter and PC Charter that specify the duties and operations of such Committees, OCC will further ensure, as required under Rule 17Ad-22(d)(8), a clear and transparent governance structure that will fulfill the public interests requirements in Section 17A of the Act, support the objectives of OCC's owners and participants, and promote the effectiveness of OCC's risk management procedures.<sup>8</sup> The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

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

OCC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.<sup>9</sup> This proposed rule change will help ensure that OCC meets regulatory requirements that it has a clear and transparent governance structure, as well as clarify the duties and operation of the Committees, through the amendment of the Committee Charters. To the extent OCC's clearing members are affected by the proposed rule change, OCC believes that, by clarifying the terms of the Committee Charters, OCC will not disadvantage or favor any particular user in relationship to another user because all of its participants will equally have greater certainty and visibility concerning OCC's governance arrangements and that such clarification will facilitate the prompt and accurate settlement of securities transactions. Accordingly, OCC does not believe that

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<sup>8</sup> 17 CFR 240.17Ad-22(d)(8).

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(I).

the proposed rule will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(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 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](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2014-01 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 20549-1090.

All submissions should refer to File Number SR-OCC-2014-01. 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 20549-1090 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\\_14\\_01.pdf](http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_01.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-2014-01 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>10</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).