

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77938; File No. SR-OCC-2016-007)

May 27, 2016

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Related to The Options Clearing Corporation's Membership Approval Process

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 May 16, 2016, 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

The purpose of this proposed rule change is to: (i) vest the authority to approve or disapprove new membership applications with OCC's Risk Committee,³ and (ii) delegate authority to the Executive Chairman or President of OCC to approve new membership applications provided that: (a) it is not recommended that the Risk Committee impose additional membership criteria upon the applicant pursuant to Section 1, Interpretation and Policy .06 of Article V of OCC's By-Laws, and (b) the Risk Committee is given not less than five business days to determine that the application should be reviewed at a meeting of the Risk Committee and the Risk Committee has not requested that the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ OCC's Risk Committee is a committee of OCC's Board of Directors. *See* OCC's By-Laws Article III, Section 9.

application be reviewed at a meeting of the Risk Committee within such five day period.

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 streamline OCC's membership approval process by: (i) allowing OCC's Executive Chairman or President to approve pro forma applications for clearing membership, and (ii) to vest ultimate authority with OCC's Risk Committee, not its Board, to approve or disapprove applications for clearing membership that are not approved by either OCC's Executive Chairman or President. To this end, OCC is proposing to: (i) vest the authority to approve or disapprove new membership applications with OCC's Risk Committee, and (ii) delegate authority to the Executive Chairman or President of OCC to approve new membership applications provided that: (a) it is not recommended by the Risk Committee's designated delegates or agents that the Risk Committee impose additional membership criteria upon the applicant pursuant to Section 1, Interpretation and Policy .06 of Article V of OCC's By-Laws, and (b) the Risk Committee is given not less than five business days to determine that the application should be reviewed at a meeting of the Risk Committee and the Risk

Committee has not requested that the application be reviewed at a meeting of the Risk Committee within such five day period. The practical effect of the proposed rule change is that either OCC's Executive Chairman or President would be approving most applications for clearing membership at OCC since most applicants for clearing membership choose to have their application presented for approval only when such approval is pro forma in nature (i.e., the applicant meets all of the clearing membership requirements at OCC and there is no need to impose additional membership requirements). OCC believes that the proposed rule change would better allocate the time and resources of the Board and Risk Committee and ensure applications for clearing membership are considered in a timely manner.

Background

OCC believes that its membership criteria are objective standards that are designed not to unfairly discriminate in the admission of participants to OCC,⁴ as well as to provide for fair and open access to OCC.⁵ Currently, the authority to approve or disapprove new applications for clearing membership resides with the Board.⁶ Under Article V, Section 2 of OCC's By-Laws, OCC's Risk Committee, including its designated delegates or agents, is responsible for reviewing applications for clearing membership, and the Risk Committee is responsible for making a recommendation of approval or disapproval to the Board (in part, relying on OCC's Management's review

⁴ See 15 U.S.C. 78q-1(b)(3)(F).

⁵ See 7 U.S.C. 7a-1(c)(2)(C)(iii)(III).

⁶ See OCC's By-Laws Article V, Section 2.

and recommendation).⁷ OCC's management ("Management") performs the substantive review of applications for clearing membership on behalf of the Risk Committee. Management reviews a given application against OCC's membership criteria, which are set forth in Article V of OCC's By-Laws as well as Chapters 2 and 3 of OCC's Rules. Based on its review, Management, as the subject matter expert on OCC's membership criteria, either recommends an application for approval without conditions, recommends an application for approval with conditions (in accordance with OCC's By-Laws, Article V, Section 1, Interpretation and Policy .06), or does not recommend an application for approval. The Risk Committee, based on Management's review of the application, recommends a course of action to OCC's Board. OCC's Board then approves or disapproves applications for clearing membership based on the Risk Committee's recommendation.

Moreover, since the rules of the Commission and the Commodity Futures Trading Commission require OCC to have rules that do not unfairly discriminate in the admission of participants and provide fair and open access,⁸ OCC believes that, under its rules, it is required to admit applicants for clearing membership that clearly meet OCC's membership criteria, and therefore, the Board's ultimate approval of an application for clearing membership for which Management does not recommend approval with conditions or disapproval is pro forma. From a timing perspective, applications for clearing membership often do not track the Risk Committee or Board's regular meeting

⁷ See OCC's By-Laws Article V, Section 2. The Risk Committee, from a practical perspective, has designated OCC's management as its agent to review applications for clearing membership. OCC's management reviews applications for clearing membership and makes a recommendation to the Risk Committee concerning the applicant's satisfaction of OCC's membership criteria.

⁸ See 15 U.S.C. 78q-1(b)(3)(F) and 7 U.S.C. 7a-1(c)(2)(C).

schedule and, on occasion, the Board has had to convene a special meeting for the sole purpose of considering an application for clearing membership or otherwise seek [sic] approval via unanimous written consent, which is an inefficient use of the Board's time and resources. In an effort to better allocate the time and resources of OCC's Board and Risk Committee as well as streamline its clearing membership approval process, OCC is proposing the amendments to Articles V and VIII of its By-Laws as well as the Board and Risk Committee Charters described below. The effect of such amendments is that either OCC's Executive Chairman or President would approve most applications for clearing membership, thereby allowing the Board and the Risk Committee to better allocate their time and resources.

Changes to Vest Authority of New Applicant Approvals with the Risk Committee

OCC is proposing to amend Article V, Section 2 of its By-Laws to vest the authority to approve or disapprove new applicants for clearing membership with the Risk Committee. OCC believes that the members of the Board comprising the Risk Committee are capable of appropriately acting on membership applications. The Risk Committee is currently delegated the authority to (1) review applications for clearing membership and recommend approval or disapproval thereof to the Board, (2) conduct hearings if requested by applicants whose applications are proposed to be disapproved, and (3) review and approve or disapprove requests by clearing members to expand clearing activities.⁹ Therefore, OCC believes that requiring the Board to approve or disapprove an application for clearing membership that has already been reviewed by, and received a recommendation for approval or disapproval from, the Risk Committee is

⁹ See Section IV of the Risk Committee Charter attached hereto as Exhibit 5B.

redundant and represents an inefficient use of the Board's time. Accordingly, OCC believes that the Risk Committee is the appropriate governing body in which to vest ultimate authority to approve or disapprove applications for clearing membership.¹⁰ Should the Risk Committee propose to disapprove an application for clearing membership, the Risk Committee must first provide the applicant an opportunity to be heard and present evidence on its own behalf (as is currently the case today with respect to the Board's decision to disapprove an application for clearing membership).¹¹

In order to effect the foregoing, and in addition to proposed changes to Article V, Section 2 of the By-Laws, OCC is proposing conforming changes to Article V, Sections 1 and 3 of the By-Laws as well as the Board and Risk Committee Charters.¹² Such conforming changes would identify that the Risk Committee, and not the Board, would approve applications for clearing membership. Additionally, OCC is proposing changes to Article VIII, Section 2 of the By-Laws (as well as the Board and Risk Committee Charters) to identify that the Risk Committee, and not the Board, would set initial clearing fund requirements in connection with the approval of an application for clearing membership.

¹⁰ The Board would continue to oversee OCC's membership criteria and ongoing membership standards through its authority to approve changes to OCC's By-Laws and Rules (and specifically those By-Laws and Rules that concern membership). The Risk Committee would inform the Board, at the Board's next regularly scheduled meeting, of applications for clearing membership pursuant to proposed Article V, Section 2(c) of the By-Laws.

¹¹ *See* OCC's By-Laws Article V, Section 2. Typically, however, if OCC's due diligence review reveals issues that would prevent the Board or the Risk Committee from approving an application for clearing membership, the applicant voluntarily remediates such issues prior to the presentation of the application for clearing membership to the Risk Committee.

¹² Marked versions of the Board and Risk Committee Charters are attached as Exhibits 5A and 5B.

Delegation of Authority to Approve Applications for Membership to the
Executive Chairman or President of OCC

In order to better streamline OCC's membership application approval process, and allow the Board and the Risk Committee to more efficiently allocate their time, OCC is proposing additional amendments to Article V, Section 2 of its By-Laws to allow OCC's Executive Chairman or its President to approve certain applications for clearing membership. As described above: (i) OCC believes that, based on the applicable rules of the Commission and the Commodity Futures Trading Commission, applications for clearing membership that clearly meet OCC's membership criteria must be approved,¹³ and (ii) applications for clearing members do not necessarily track the Risk Committee or Board's regular meeting schedule and, on occasion, the Board has had to convene in a special meeting for the sole purpose of considering a clearing member application or otherwise seek approval via unanimous written consent, which is not a good use of either the Board or the Risk Committee's time and resources. Therefore, OCC is proposing to amend Article V, Section 2 of its By-Laws to delegate the authority to approve applications for clearing membership to the Executive Chairman or President of OCC provided that: (i) it is not recommended that the Risk Committee impose additional membership criteria upon the applicant pursuant to Section 1, Interpretation and Policy .06 of Article V of OCC's By-Laws, and (ii) the Risk Committee is given not less than five business days from the date it is notified by its designated delegates or agents that the Executive Chairman or President intends to approve a given application to determine that such application should be reviewed at a meeting of the Risk Committee and the Risk Committee has not requested that the application be reviewed at a meeting of the Risk

¹³ See 15 U.S.C. 78q-1(b)(3)(F) and 7 U.S.C. 7a-1(c)(2)(C).

Committee within such five day period. If five business days pass and no member of the Risk Committee notifies Management that a given application for clearing membership should be reviewed at a meeting of the Risk Committee, then the Executive Chairman and President shall have the authority to approve the application for clearing membership. This proposed change would have the effect of allowing either OCC's Executive Chairman or the President to approve most applications for clearing membership received by OCC. Neither the Executive Chairman nor the President would be allowed to disapprove an application for clearing membership. Instead, if either the Executive Chairman or President determined he could not approve an application for clearing membership, the application would be considered by the Risk Committee for approval or disapproval at its next regularly scheduled meeting. OCC believes that allowing the Executive Chairman or President to approve applications for clearing membership that clearly meet OCC's membership criteria would allow the Board and the Risk Committee to allocate their time to more efficiently and effectively.

(2) Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F)¹⁴ of the Act because it is designed to remove impediments to a national system for the prompt and accurate clearance and settlement of securities transactions by streamlining OCC's membership approval process. By vesting the authority to approve or disapprove applications for clearing membership with the Risk Committee and by delegating authority to the Executive Chairman or the President to approve new applications provided that: (i) it is not recommended that the Risk Committee impose

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

additional membership criteria upon the applicant pursuant to Section 1, Interpretation and Policy .06 of Article V of OCC's By-Laws, and (ii) the Risk Committee is given not less than five business days to determine that the application should be reviewed at a meeting of the Risk Committee and the Risk Committee has not requested that the application be reviewed at a meeting of the Risk Committee within such five day period, OCC will not subject applicants for clearing membership to the regular meeting cycle of the Board or the Risk Committee, particularly when the approval of an application for clearing membership is pro forma in nature. Additionally, by streamlining OCC's membership approval process in this manner, OCC's Board and Risk Committee will be able to deploy their time and resources in a more efficient manner and allow the Board and Risk Committee more time to focus on other matters of significance to OCC and its role as a systemically important financial market utility. As a result, OCC believes the proposed rule change is also reasonably designed to provide for governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act¹⁵ applicable to clearing agencies and support the objectives of owners and participants in accordance with Rule 17Ad-22(d)(8).¹⁶ The proposed rule change is not inconsistent with any rules of OCC, including those rules proposed to be amended.

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

OCC does not believe that the proposed rule change would impact or impose a burden on competition.¹⁷ OCC believes that the proposed rule change would not disadvantage or favor any particular user of OCC's services in relationship to another

¹⁵ 15 U.S.C. 78q-1.

¹⁶ 17 CFR 240.17Ad-22(d)(8).

¹⁷ 15 U.S.C. 78q-1(b)(3)(I).

user because it would apply equally to all potential users of OCC, and would not impact current users of OCC. For the foregoing reasons, OCC does not believe that the proposed rule change would have any impact or impose a burden on competition.

(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. Please include File Number SR-OCC-2016-007 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2016-007. 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

http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_16_007.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-2016-007 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.¹⁸

Robert W. Errett
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).