

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90416; File No. SR-OCC-2020-806)

November 13, 2020

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice Related to Proposed Changes to Update The Options Clearing Corporation's Recovery and Orderly Wind-Down Plan

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 ("Clearing Supervision Act")¹ and Rule 19b-4(n)(1)(i)² under the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),³ notice is hereby given that on October 20, 2020, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") an advance notice as described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is submitted in connection with a proposed change to update OCC's Recovery and Orderly Wind-Down Plan ("RWD Plan" or "Plan"), adopted pursuant to the requirement in Rule 17Ad-22(e)(3)(ii),⁴ to reflect: (i) changes to OCC's capital structure resulting from the disapproval of OCC's previously approved "Capital

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b-4(n)(1)(i).

³ 15 U.S.C. 78a et seq.

⁴ 17 CFR 240.17Ad-22(e)(3)(ii).

Plan”⁵ and the subsequent approval of OCC’s “Capital Management Policy,”⁶ and (ii) changes made to each chapter of the Plan during OCC’s annual internal review and update of the Plan, as required by OCC’s internal governance.

The RWD Plan is included as confidential Exhibit 5 to SR-OCC-2020-806. Material proposed to be added is marked by underlining and material proposed to be deleted is marked by strikethrough text.⁷ The proposed changes are described in detail in Item II below. All terms with initial capitalization not defined herein have the same meaning as set forth in OCC’s By-Laws and Rules.⁸

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. 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 and B below, of the most significant aspects of these statements.

⁵ Securities Exchange Act Release No. 85121 (Feb. 13, 2019), 84 FR 5157 (Feb. 20, 2019) (SR-OCC-2015-02).

⁶ Securities Exchange Act Release No. 86725 (Aug. 21, 2019), 84 FR 44952 (Aug. 27, 2019) (SR-OCC-2019-007).

⁷ OCC has also filed a proposed rule change with the Commission in connection with this proposal. See SR-OCC-2020-013.

⁸ 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>.

(A) Clearing Agency’s Statement on Comments on the Advance Notice Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the advance notice and none have been received. OCC will notify the Commission of any written comments received by OCC.

(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act

Description of the Proposed Change

Background

On August 23, 2018, the Commission approved OCC’s proposed rule change to formalize and update OCC’s RWD Plan, consistent with the requirements of Rule 17Ad-22(e)(3)(ii).⁹ As approved, the RWD Plan incorporated key pieces of OCC’s previously approved Capital Plan, including but not limited to the Capital Plan’s provision for “Replenishment Capital.”¹⁰ In OCC’s RWD Plan, Replenishment Capital was one of the tools by which OCC could have recapitalized in certain of its recovery and wind-down scenarios.

On February 13, 2019, the Commission disapproved OCC’s Capital Plan.¹¹ The disapproval of the Capital Plan left OCC’s RWD Plan with several invalid references to

⁹ Securities Exchange Act Release No. 83918 (Aug. 23, 2018), 83 FR 44091 (Aug. 29, 2018) (SR-OCC-2017-021).

¹⁰ Securities Exchange Act Release No. 74452 (Mar. 6, 2015), 80 FR 13058 (Mar. 12, 2015) (SR-OCC-2015-02). The Capital Plan was a previously approved plan for raising additional capital under which the securities options exchanges that own equity in OCC committed to contributing additional capital to OCC under certain conditions and provided for the provision of further Replenishment Capital in certain circumstances.

¹¹ See supra note 5.

the Capital Plan or to certain of its component parts, including references to Replenishment Capital as one of OCC's identified tools for recovery and wind-down and references to a trigger event within the Capital Plan as one of OCC's recovery triggers. As a result of the disapproval of the Capital Plan, OCC subsequently proposed the "Capital Management Policy," which among other things establishes a new mechanism for funding OCC's replenishment capital and changes OCC's "default waterfall" (i.e., the resources available to OCC in the event of a Clearing Member's suspension).¹² These changes to OCC's replenishment capital and default waterfall necessitated changes to existing passages concerning the same in the RWD Plan.

In addition, OCC has made changes to its RWD Plan as a result of its annual review and update process. As adopted, the RWD Plan itself recognizes OCC's internal governance requirement to review and update the Plan at least every twelve months. Accordingly, during the first several months of 2019 and 2020, an internal, cross-disciplinary working group within OCC conducted a review and recommended numerous changes to the RWD Plan, which were approved by OCC's management, the Risk Committee of OCC's Board of Directors ("Board") and OCC's Board. The changes resulting from the adoption of the Capital Management Policy and the changes from OCC's annual review process are discussed in greater detail below.

¹² See supra note 6.

Proposed Changes

The proposed rule change would update each of the eight chapters of the RWD Plan.¹³ A summary description of the types of changes proposed to each of the eight chapters of the RWD Plan is provided below:

Chapter 1: Executive Summary

Chapter 1 of the RWD Plan provides an executive summary and overview of OCC's proposed Plan. The proposed changes to Chapter 1 of the Plan would simply align the executive summary and overview to the changes made throughout subsequent chapters of the Plan.

Chapter 2: OCC Overview

Chapter 2 of the RWD Plan provides information that OCC believes would be essential to relevant authorities for purposes of recovery and orderly wind-down planning, as well as to provide readers of the Plan with necessary context for the subsequent discussion and analysis of OCC's "Critical Services" and "Critical Support Functions" in Chapter 4 (discussed below) and of OCC's wind-down process in Chapter 6 (discussed below). The proposed rule change would update several figures and factual discussions to reflect changes since the Plan's initial approval by the Commission. The types of changes being made to Chapter 2 would include: (i) updated figures and numbers about market share and contract volume; (ii) updated lists of securities options exchanges and futures exchanges cleared by OCC; (iii) updated organizational charts, headcount numbers, discussions of OCC's management structure and descriptions of management

¹³ In addition to the changes summarized below, OCC would also make administrative changes throughout the Plan to update various OCC internal policy and procedure names.

roles and responsibilities; (iv) updated descriptions of OCC's Board's responsibilities and procedures, lists of Board members, and descriptions of OCC's Board committees' roles and responsibilities;¹⁴ (v) revised descriptions that would acknowledge certain program changes that have occurred since the initial 2018 approval of the RWD Plan (e.g., changes to OCC's cross-margining arrangements, changes in credit facilities and changes concerning investment counterparties, exchanges and vendors); (vi) updated graphs of OCC's Clearing Fund total monthly deposits; and (vii) updated discussions of OCC's retirement plan obligations. In addition to these updated figures and factual discussions, the proposed rule change would (i) revise Chapter 2 to remove excerpts from OCC's most recent annual report (which would be relocated to one of the appendices); (ii) replace a lengthy overview of OCC's risk management program with a more concise summary; (iii) update a summary description of OCC's interconnections with external vendors and a list of vendors that provide OCC critical technology and information reporting services; and (iv) revise a fee management discussion to align with changes resulting from the implementation of the Capital Management Policy.¹⁵

Chapter 3: Support Functions

Chapter 3 of the RWD Plan identifies each of OCC's different internal support functions and provides a brief description of the activities performed by each such

¹⁴ Securities Exchange Act Release No. 84473 (Oct. 23, 2018), 83 FR 54385 (Oct. 29, 2018) (SR-OCC-2018-012).

¹⁵ The changes to the fee management discussion concern the potential for OCC's Board to lower the direct costs of participation if OCC's shareholder equity exceeds 110% of a predetermined "Target Capital Requirement." See Securities Exchange Act Release No. 86725 (Aug. 21, 2019), 84 FR 44944 (Aug. 27, 2019) (SR-OCC-2019-007).

support function. For purposes of the RWD Plan, “internal support functions” are the various departments within OCC that are necessary for OCC to provide its services to Clearing Members and other participants. Since the initial 2018 approval of the RWD Plan, OCC has added two additional internal support functions and expanded its Office of the Chief Executive Officer, renamed the “Corporate” support function, to include OCC’s executive officers and administrative support staff. Accordingly, the proposed rule change would add two new internal support functions (and descriptions thereof) and replace the Office of the Chief Executive Officer with the Corporate support function, bringing the total number of internal support functions from 14 to 16. Since the initial 2018 approval of the RWD Plan, OCC also has modified and updated its administrative descriptions of the roles and responsibilities of the 14 internal support functions that were discussed in the initial 2018 approval of the RWD Plan. Accordingly, the proposed rule change would update the descriptions of all OCC’s internal support functions so they align with the modified and updated internal administrative descriptions of such functions.

Chapter 4: Critical Services and Critical Support Functions

Chapter 4 of the RWD Plan identifies OCC’s “Critical Services”¹⁶ and “Critical Support Functions.”¹⁷ The proposed rule change would group two previously identified

¹⁶ A “Critical Service,” as defined in the proposed Plan, would be a service provided by OCC that, if interrupted, would likely have a material negative impact on participants or significant third parties, give rise to contagion, or undermine the general confidence of markets the FMU serves.

¹⁷ A “Critical Support Function,” as defined in the proposed Plan, would be a function within OCC that must continue in some capacity in order for OCC to be able to continue providing its Critical Services.

Critical Services into a single Critical Service (i.e., the changes would simply use a single term to refer to two services that were previously listed separately). The proposed rule change also would update dated factual references and make other minor changes to OCC’s description of its evaluations of Critical Services and Critical Support Functions, notably to recognize the consolidation of the two previously identified Critical Services into a single Critical Service and recalibrate the evaluation of an OCC service in considering whether it is a Critical Service. The proposed rule change also would change the mapping of Critical Services to Support Functions to recognize the “primary,” “secondary,” or “non-critical” nature of each Support Function, which better aligns with OCC’s internal taxonomy.

Chapter 5: Recovery Plan

Chapter 5 of OCC’s proposed Plan constitutes OCC’s recovery plan. The proposed rule change would make conforming edits to references to certain former provisions within OCC’s By-Laws that have since been relocated to OCC’s Rules.¹⁸ The proposed rule change also would revise the inventory and description of OCC’s available “Enhanced Risk Management Tools” and “Recovery Tools” to (i) replace references to and discussions of Replenishment Capital with references to and descriptions of the replenishment structure under the adopted Capital Management Policy; (ii) replace references to and discussions of the discretionary use of OCC’s current and/or retained earnings with references to and discussions of the mandatory contribution – immediately following the use of margin, deposits in lieu of margin and the Clearing Fund deposits of

¹⁸ See Securities Exchange Act Release No. 83735 (Jul. 27, 2018), 83 FR 37855 (Aug. 2, 2018) (SR-OCC-2010-008).

the suspended Clearing Member – of OCC’s current and retained earnings greater than 110% of OCC’s annually-established “Target Capital Requirement,” as implemented by the Capital Management Policy; (iii) update the description of how OCC could increase the minimum required cash contribution to the Clearing Fund to reflect enhancements to OCC’s liquidity risk management framework that the Commission approved in 2020;¹⁹ (iv) include a discussion of the mandatory contribution of any unvested portions of OCC’s Executive Deferred Compensation Plan (“EDCP”), in proportion to any charges against the mutualized portion of OCC’s Clearing Fund, as implemented by the Capital Management Policy; and (v) update the governance of the Recovery Tools to include OCC’s Chief Executive Officer and Chief Operating Officer in various communications to OCC’s Executive Chairman. The proposed rule change also would revise the list of “Recovery Trigger Events” in the recovery plan to (i) delete one of the Recovery Trigger Events that was derived from a defined term in the Capital Plan, (ii) consolidate two other Recovery Trigger Events into a single, operational loss-related recovery trigger, and (iii) add a qualification onto an existing liquidity loss-related recovery trigger. The proposed rule change would also delete unnecessary historical data on business volumes from the hypothetical stress scenarios in Chapter 5 that illustrate how OCC could use its recovery tools.

Chapter 6: Wind-Down Plan

Chapter 6 of OCC’s RWD Plan constitutes OCC’s orderly wind-down plan. The proposed rule change would revise the list of Wind-Down Plan Trigger Events (“WDP

¹⁹ See Securities Exchange Act Release No. 89014 (Jun. 4, 2020), 85 FR 35446 (Jun. 10, 2020) (SR-OCC-2020-003).

Triggers”) to consolidate two current WDP Triggers into a single WDP Trigger related to OCC’s financial resource requirements, and consolidate two other current WDP Triggers into a single WDP Trigger related to operational disruption. The proposed rule change would also update discussions of the tools by which OCC could have recapitalized in certain of its recovery and wind-down scenarios. As revised, these discussions would describe replenishment capital available under the adopted Capital Management Policy, deleting descriptions of Replenishment Capital available under the former Capital Plan. The proposed rule change also would update certain of the references to OCC’s internal support functions and certain references to headcount in Chapter 6.

Chapter 7: RWD Plan Governance

Chapter 7 of OCC’s RWD Plan section details the governance of OCC’s RWD Plan. The proposed rule change would revise the lists of OCC staff involved in the completion of the plan (largely to give effect to the fact that the titles of certain offices changed since the RWD Plan’s proposal in 2017).

Chapter 8: Appendices

Chapter 8 of OCC’s RWD Plan is comprised of several appendices. The proposed rule change would update several lists within the appendices to reflect changes that have occurred since the Plan’s initial approval by the Commission. The types of changes being made to Chapter 8 would include: (i) updated lists of OCC’s clearing membership; (ii) updated lists of participation on OCC’s Board; (iii) updated lists of settlement banks and letter of credit banks; (iv) updated lists of vendors and service providers that would be necessary to support a recovery or wind-down of OCC; (v) updates to the extreme hypothetical scenarios designed by OCC that, if such scenarios

occurred, could cause OCC to activate the RWD Plan; and (vi) updated lists of the key agreements to be maintained during recovery and wind-down efforts.

Expected Effect on and Management of Risk

OCC believes that the proposed change would reduce the nature and level of risk presented to OCC by maintaining and updating plans designed to enhance OCC's ability to address extreme stress events and minimize the risks of contagion to OCC's Clearing Members, market participants or to the wider financial system, including other FMIs. More specifically, the RWD Plan is designed to enhance OCC's ability to address extreme stresses or crises by establishing a framework that OCC could use to navigate the use its Enhanced Risk Management Tools and Recovery Tools, with the aim of maintaining OCC's viability as a going concern. In the event that OCC's recovery efforts are not successful, the wind-down plan would seek to improve the possibility that a resolution of OCC's operations can be conducted in an orderly manner, thereby minimizing the disruption to Clearing Members and market participants and improving the likelihood of minimizing the risk of contagion to the broader financial system. In this regard, OCC believes its maintenance and updating of the RWD Plan improves the possibility of maintaining market and public confidence during a time of unprecedented stress.

Consistency with the Payment, Clearing, and Settlement Supervision Act

The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities

and strengthening the liquidity of systemically important financial market utilities.²⁰

Section 805(a)(2) of the Clearing Supervision Act²¹ also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like OCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act²² states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and the Act in furtherance of these objectives and principles, including those standards adopted pursuant to the Commission rules cited below.²³ For the reasons set forth below, OCC believes that the proposed change is

²⁰ 12 U.S.C. 5461(b).

²¹ 12 U.S.C. 5464(a)(2).

²² 12 U.S.C. 5464(b).

²³ 17 CFR 240.17Ad-22. See Securities Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7-08-11) (“Clearing Agency Standards”); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14) (“Standards for Covered Clearing Agencies”). OCC is a “covered clearing agency” as defined in Rule 17Ad-22(a)(5) and therefore is subject to section (e) of Rule 17Ad-22.

consistent with the risk management standards promulgated under Section 805(a) of the Clearing Supervision Act.²⁴

As stated above, the RWD Plan is designed to enhance OCC's ability to address extreme stresses or crises by establishing a framework that OCC could use to navigate the use of its Enhanced Risk Management Tools and Recovery Tools, with the aim of maintaining OCC's viability as a going concern. In the event that OCC's recovery efforts are not successful, the RWD Plan would seek to improve the possibility that a resolution of OCC's operations can be conducted in an orderly manner, thereby minimizing the disruption to Clearing Members and market participants and improving the likelihood of minimizing the risk of contagion to the broader financial system. Accordingly, OCC believes the updates to the RWD Plan would improve the possibility of OCC's effectively addressing a variety of potential risks, thereby improving OCC's ability to ultimately maintain market and public confidence during a time of unprecedented stress. In this regard, OCC believes the proposed change would promote robust risk management and safety and soundness and thereby reduce systemic risks and support the stability of the broader financial system.

OCC also believes that the proposed change is consistent with Exchange Act Rule 17Ad-22(e)(3)(ii), which requires each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to include plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other

²⁴ 12 U.S.C. 5464(b)(1) and (4).

losses.²⁵ As stated above, the RWD Plan would describe OCC's plans to recover from, or orderly resolve its operations as a result of, severe stress brought about by credit losses, liquidity shortfalls, losses from general business risk or other losses.²⁶ The proposed updates to the RWD Plan would improve the accuracy of the inventory of OCC's Recovery Tools and improve OCC's evaluation of scenarios which may potentially prevent OCC from providing its Critical Services as a going-concern, as well as OCC's plans for recovery or orderly wind-down. Further, the proposed changes to the Plan would update and improve the information that a resolution authority may reasonably anticipate as necessary for purposes of recovery and orderly wind-down planning.²⁷ In this regard, OCC believes the proposed change is consistent with Rule 17Ad-22(e)(3)(ii).²⁸

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date the proposed change was filed with the Commission or (ii) the date any additional information requested by the Commission is received. OCC shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the

²⁵ 17 CFR 240.17Ad-22(e)(3)(ii).

²⁶ 17 CFR 240.17Ad-22(e)(3)(ii).

²⁷ See 81 FR at 70810.

²⁸ 17 CFR 240.17Ad-22(e)(3)(ii).

clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

OCC shall post notice on its website of proposed changes that are implemented. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision 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-2020-806 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2020-806. 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice 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 the filing also will be available for inspection and copying at the principal office of the self-regulatory organization.

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-2020-806 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

By the Commission.

J. Matthew DeLesDernier,
Assistant Secretary.