

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73785; File No. SR-OCC-2014-18)

December 8, 2014

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Provide that The Options Clearing Corporation's President Will be its Chief Operating Officer, and that the President Will Not be a Management Director

On October 31, 2014, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2014-18 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> The proposed rule change was published for comment in the Federal Register on November 7, 2014.<sup>3</sup> On November 11, 2014, OCC filed Amendment No. 1 to the proposal.<sup>4</sup> The Commission did not receive any comments on the proposal. The Commission is publishing this notice to solicit comments on Amendment No. 1 and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 73497 (November 3, 2014), 79 FR 66440 (November 7, 2014) (SR-OCC-2014-18).

<sup>4</sup> In Amendment No. 1, OCC amended the proposal to clarify that the proposal as described also amended Article IV, Section 1, of OCC's By-Laws to reflect OCC's Board of Directors' decision that the President should not be a Management Director. Specifically, OCC is amending Article IV, Section 1 of its By-Laws to refer only to the Executive Chairman, and not the President, as a Management Director.

I. Description of the Proposal

The purpose of this rule change, as amended, is to provide that OCC's President will be its Chief Operating Officer, rather than its Chief Executive Officer, and that the President will not be a management director on OCC's Board of Directors. These changes are being made in connection with the resignation of OCC's former President and Chief Executive Officer, a transition plan that includes the election of OCC's current Chief Operating Officer as President and Chief Operating Officer, and the appointment of an Ad Hoc Search Committee to identify an appropriate candidate to become OCC's Chief Executive Officer (collectively, the "Transition Plan"). According to OCC, OCC's Board of Directors has determined that in light of the resignation of the former President and Chief Executive Officer and the election of the current Chief Operating Officer as President, the positions of President and Chief Executive Officer should be separated and the position of President should instead be combined with the position of Chief Operating Officer. To reflect this change, OCC is revising Section 8 of Article IV of its By-Laws to state that the President will be OCC's Chief Operating Officer, rather than its Chief Executive Officer.

According to OCC, while OCC's existing By-Laws provide that the President, who is also the Chief Executive Officer, serves as a Management Director on OCC's Board of Directors, given the separation of the President and Chief Executive Officer positions and the pending search for a new Chief Executive Officer, OCC's Board of Directors has also determined that the President should not be a Management Director. Accordingly, OCC is revising Section 7 of Article III and Section 1 of Article IV of its By-Laws to refer only to the Executive Chairman, and not the President, as a

Management Director. OCC also is making a conforming revision to Section 8 of Article IV of its By-Laws to state that the President will not preside at meetings of the Board of Directors or the stockholders in the absence or disability of the Executive Chairman and the Management Vice Chairman because the President will no longer serve as a Management Director.

OCC is also amending its Stockholder Agreement, Board of Directors Charter and Fitness Standards for Directors, Clearing Members and Others. In each case, conforming changes are being made to provide that only the Executive Chairman, not the President, will serve as a Management Director.

Once a replacement Chief Executive Officer has been elected by the Board of Directors, OCC intends to reconsider the appropriate number of Management Directors. According to OCC, the rule change, as proposed and amended, represents a short-term measure to implement the Transition Plan and is not intended as a permanent change in the composition of the Board of Directors. As indicated in the filing, once OCC's Board of Directors has elected a Chief Executive Officer, OCC will propose further changes to its By-Laws, Stockholders Agreement, Board of Directors Charter and Fitness Standards for Directors, Clearing Members and Others. OCC believes that the short-term flexibility reflected in the foregoing changes will assist OCC and its Board of Directors in implementing the Transition Plan efficiently and governing OCC effectively.

## II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act<sup>5</sup> directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is

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<sup>5</sup> 15 U.S.C. 78s(b)(2)(C).

consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.

The Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,<sup>6</sup> which requires that the rules of a registered clearing agency be designed to, among other things, remove the impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and in general, to protect investors and the public interest. The proposed rule change, as amended, is consistent with Section 17A(b)(3)(F) because it should remove the impediments to and perfect the mechanism of a national clearance and settlement system and protecting investors and the public interest by providing transparency with respect to the composition of OCC's management structure and Board of Directors during the Transition Plan. By clarifying who from senior management is acting in the role of OCC's President and clarifying which senior management position is serving as a management director on OCC's Board of Directors during the Transition, both OCC's members and the public will have more information on the overall structure of management and the Board of Directors at OCC and more information on the level of authority of specific senior management positions. Additionally, this proposed rule change is consistent with Section 17A(b)(3)(F) because the Transition Plan will facilitate uninterrupted, ongoing, operations at OCC notwithstanding the above described changes at OCC.

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<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

III. Accelerated Approval of the Proposed Rule Change As Modified by Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Act,<sup>7</sup> for approving the proposed rule change, as modified by Amendment No. 1, earlier than 30 days after the date of publication of notice in the Federal Register.

As discussed above, OCC filed Amendment No. 1 to describe the proposed change to Article IV, Section 1 of OCC's By-Laws to reflect OCC's Board of Directors' decision that the President should not be a Management Director. Specifically, OCC is amending Article IV, Section 1 of its By-Laws to refer only to the Executive Chairman, and not the President, as a Management Director. Amendment No. 1 provides the Commission with clarifying information about how OCC is implementing and providing transparency about the Transition Plan. By allowing OCC to implement the proposed changes, as amended, on an accelerated basis, OCC will be able to implement the Transition Plan sooner, which should allow OCC to manage and govern OCC more efficiently and effectively.

Accordingly, the Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

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:

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<sup>7</sup> 15 U.S.C. 78s(b)(2)(C)(iii).

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-2014-18 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2014-18. 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. 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-2014-18 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>8</sup> and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-OCC-2014-18), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

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>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

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