

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83732; File No. SR-OCC-2017-021)

July 27, 2018

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Partial Amendments No. 1 and 2 to Proposed Rule Change Concerning Updates to and Formalization of OCC's Recovery and Orderly Wind-Down Plan

On December 8, 2017, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2017-021 ("Proposed Rule Change") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² concerning enhanced and new tools for recovery scenarios.³ The Proposed Rule Change was published for comment in the Federal Register on December 26, 2017.⁴ On March 22, 2018, the Commission instituted proceedings under Section 19(b)(2)(B)(i) of the Act⁵ to determine whether to approve or disapprove the Proposed Rule Change.⁶ On June 20, 2018 the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On December 8, 2017, OCC also filed a related advance notice (SR-OCC-2017-810) with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b-4(n)(1)(i) under the Act ("Advance Notice"). 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b-4(n)(1)(i), respectively. The Advance Notice was published in the Federal Register on January 23, 2018. Securities Exchange Act Release No. 82513 (Jan. 17, 2018), 83 FR 3224 (Jan. 23, 2018) (SR-OCC-2017-810).

⁴ Securities Exchange Act Release No. 82352 (Dec. 19, 2017), 82 FR 61072 (Dec. 26, 2017) (SR-OCC-2017-021) ("Initial Filing").

⁵ 15 U.S.C. 78s(b)(2)(B)(i).

⁶ See Securities Exchange Act Release No. 82927 (March 22, 2018), 83 FR 13176 (March 27, 2018) (SR-OCC-2018-021).

Commission designated a longer period for Commission action on proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁷ On July 11, 2018, OCC filed Partial Amendment No. 1 to the Proposed Rule Change. On July 13, 2018, OCC filed Partial Amendment No. 2 to the Proposed Rule Change to supersede and replace Partial Amendment No. 1 in its entirety, due to technical defects in Partial Amendment No. 1. Therefore, the Initial Filing, as modified by Amendment No. 2, reflects the changes proposed.

Pursuant to Section 19(b)(1) of the Act⁸ and Rule 19b-4 thereunder⁹ the Commission is publishing notice of these Partial Amendments No. 1 and 2 to 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, as modified by Amendments No. 1 and 2, from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of Partial Amendments to the Proposed Rule Change

This Partial Amendment No. 2 would make the following three amendments to the Initial Filing: (1) removal of sections of the RWD Plan concerning OCC's proposed authority to require cash settlement of certain physically delivered options and single stock futures; (2) updating the list of OCC's Critical Support Functions;¹⁰ and (3) making

⁷ See Securities Exchange Act Release No. 83485 (Jun. 20, 2018), 83 FR 29843 (Jun. 26, 2018) (SR-OCC-2017-021).

⁸ 15 U.S.C. 78s(b)(1).

⁹ 17 CFR 240.19b-4.

¹⁰ The amendment to the list of Critical Support Functions would be made to the confidential and redacted portions of the RWD Plan.

three changes to Chapter 5 of the RWD Plan in order to conform to a change contemporaneously proposed in Amendment No. 2 to OCC proposed rule change SR-OCC-2017-020 concerning enhanced and new tools for recovery scenarios.¹¹

With regard to the removal of sections of the RWD Plan concerning OCC's proposed authority to require cash settlement of certain physically delivered options and single stock futures, OCC proposes to amend the following text on pages 16 and 55-56 of the Initial Filing (new text is underlined and proposed deletions are marked in strikethrough text).

Proposed Chapter 5 would explain that OCC's Enhanced Risk Management Tools are designed to supplement OCC's existing processes and other existing tools in scenarios where OCC faces heightened stresses. Contrary to the Recovery Tools (which are described in greater detail below), the use of OCC's Enhanced Risk Management Tools would not be intended to be limited strictly to situations in which a Recovery Trigger Event has occurred. Rather, OCC's Enhanced Risk Management Tools have been designed such that they could be used prior to the occurrence of a Recovery Trigger Event (and preferably, the Enhanced Risk Management Tools would be used prophylactically in an effort to prevent the occurrence of a Recovery Trigger Event). As proposed, OCC would not anticipate there being a rigid order or timing for the deployment of its Enhanced Risk Management Tools, ~~subject to one caveat~~—“Cash Settlement of Physically Delivered Options and Single Stock Futures” would only be deployed in very narrow circumstances where a correspondent clearing organization has rejected the settlement obligations of an OCC Clearing Member and OCC does not believe it has sufficient liquid resources immediately available to facilitate settlement through a substitute broker.

OCC also proposes to amend the following text on pages 22-23 and 61-63 of the Initial Filing (including associated footnotes).

~~Cash Settlement of Physically Delivered Options and Single Stock Futures.~~ OCC is in the process of proposing a new Rule 913, which would provide OCC the ability to require cash settlement of otherwise physically settled delivery obligations arising from exercised or assigned stock options and/or physically settled matured stock futures in the event that a correspondent clearing

¹¹ See Amendment No. 2 to SR-OCC-2017-020. The three amendments to Chapter 5 also would be made to the confidential and redacted portions of the RWD Plan.

~~corporation rejects the settlement obligations for such stock options and/or stock futures (such rejected stock options and/or stock futures hereinafter, “Rejected Cleared Securities”) and either of the two following necessary conditions exists: (i) the liquidity demand on OCC to fund an alternative form of settlement for such Rejected Cleared Securities (i.e., settlement through the use of a “substitute broker”) would exceed the amount of liquid resources immediately available to OCC, or (ii) no agent is available to serve as substitute broker to facilitate alternative settlement for OCC. In these extremely limited circumstances, fixing cash settlement amounts pursuant to proposed Rule 913 would provide OCC with the ability to substantially reduce the liquidity demands that it might otherwise face if required to fund an alternative form of settlement to effect physical delivery. The Recovery Plan would include cash settlement of otherwise physically delivered options and single stock futures pursuant to proposed Rule 913 among OCC’s Enhanced Risk Management Tools.~~

~~The Recovery Plan would acknowledge that, assuming one of the two necessary conditions exists, the process for initiating cash settlement would be driven by the preparation of a “Close Out Action Plan,” which would recommend impacted options and single stock futures be cash settled in lieu of physical delivery. The Recovery Plan would also acknowledge that execution of cash settlement would occur in accordance with OCC’s “Alternative Cash Settlement of Cleared Contracts Procedure.” The Recovery Plan recognizes that a key risk of this particular tool would be the potentially detrimental impacts on Clearing Members and their customers, who would receive a cash settlement amount when they had anticipated receiving physical securities.~~

OCC plans to resubmit the proposed cash settlement tool previously filed in SR-OCC-2017-018 and SR-OCC-2017-807 on a separate timeline from the rest of its enhanced and new tools for recovery scenarios and would submit a subsequent filing to the Commission to amend the RWD Plan at that time.

In addition, OCC proposes to make the following amendments on pages 32 and 72 of the Initial Filing.

- *Tools to address liquidity shortfalls:* minimum Clearing Fund cash contribution, borrowing against Clearing Fund, OCC’s credit facility, and OCC’s non-bank facility ~~and cash settlement of physically delivered options and single stock futures.~~

With regard to updating the list of OCC's Critical Support Functions, the amendment would revise OCC's RWD Plan to consistently identify one of OCC's internal functions as a Critical Support Function.

Finally, OCC proposes to make two changes to Chapter 5 of the RWD Plan, which would align an exhibit, a related list and a related paragraph with the certain changes OCC is contemporaneously proposing in Amendment No. 2 to proposed rule change SR-OCC-2017-020 concerning enhanced and new tools for recovery scenarios.¹² Specifically, OCC would change the aforementioned exhibit, list and paragraph in Chapter 5 to recognize that while OCC does not intend, in the first instance for its tear-up process to serve as a means of loss allocation, circumstances may arise such that, despite best efforts, OCC has inadequate remaining financial resources to extinguish torn-up positions at their assigned Tear-Up Price without forcing a reduction in the amount of unpaid value of such positions (e.g., despite best efforts, market movements not accounted for by monitoring, additional Clearing Member defaults occur immediately preceding a tear-up). In such circumstances, despite best efforts, OCC would use its partial tear-up process as a means of loss allocation.

OCC has included an updated Exhibit 5 containing its RWD Plan as well as an Exhibit 4 showing the changes proposed in this Partial Amendment No. 2 to the proposed rule text in the Initial Filing, with the proposed changes in the Initial Filing marked in underlined and strikethrough text. Exhibits 4 and 5 have been redacted and filed separately with the Commission and confidential treatment for Exhibits 4 and 5 is requested pursuant to 17 CFR 240.24b-2.

¹² See Amendment No. 2 to SR-OCC-2017-020.

The partial amendment would not change the purpose of or basis for the proposed rule change. All other representations in the Initial Filing remain as stated therein and no other changes are being made.

II. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

As the Commission stated in Securities Exchange Act Release No. 83485, the Commission shall by order approve or disapprove the proposed rule change by August 23, 2018.¹³

III. 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-2017-021 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2017-021. 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

¹³ See Securities Exchange Act Release No. 83485 (June 20, 2018), 83 FR 29843 (June 26, 2018) (SR-OCC-2017-021).

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, N.E., 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/about/publications/bylaws.jsp>

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal or 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-2017-021 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Robert W. Errett
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).