

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93102; File No. SR-OCC-2021-007)

September 22, 2021

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Rule Change Concerning The Options Clearing Corporation's Governance Arrangements

I. INTRODUCTION

On July 30, 2021, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-OCC-2021-007 (“Proposed Rule Change”) pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4² thereunder to provide OCC’s Board of Directors (“Board”) with the discretion to elect either an Executive Chairman or a Non-Executive Chairman to preside over the Board, provide the Board and stockholders with the discretion to elect a Management Director, clarify the respective authority and responsibility of any Executive Chairman or Non-Executive Chairman, and make other clarifying, conforming, and administrative changes to OCC’s rules.³ The Proposed Rule Change was published for public comment in the Federal Register on August 11, 2021.⁴ The Commission has received no comments regarding the Proposed Rule Change. This order approves the Proposed Rule Change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing infra note 4, 86 Fed. Reg. at 44105.

⁴ Securities Exchange Act Release No. 92584 (Aug. 5, 2021), 86 Fed. Reg. 44105 (Aug. 11, 2021) (File No. SR-OCC-2021-007) (“Notice of Filing”).

II. BACKGROUND⁵

Article III, Section I of OCC's By-Laws currently requires that the Board be composed of nine Member Directors,⁶ five Exchange Directors,⁷ five Public Directors,⁸ and an Executive Chairman (who also serves as a Management Director⁹). OCC's Executive Chairman is responsible for managing the Board while also being involved with the "day-to-day" management decisions of OCC. By contrast, a "Non-Executive Chairman" is typically not an employee of the company and focuses solely on leading and supporting its board of directors.

As described in more detail below, OCC proposes to revise its governing documents, including its By-Laws, Rules, Board of Directors Charter and Corporate Governance Principles ("Board Charter"), Audit Committee Charter, Compensation and Performance Committee Charter, Governance and Nominating Committee Charter, Risk Committee Charter, Technology

⁵ Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at <https://www.theocc.com/about/publications/bylaws.jsp>.

⁶ Member Directors include Clearing Members or representatives of a Clearing Member. OCC endeavors to achieve balanced representation among Clearing Members on the Board of Directors to assure that (i) not all Member Directors are representatives of the largest Clearing Member organizations based on the prior year's volume, and (ii) the mix of Member Directors includes representatives of Clearing Member organizations that are primarily engaged in agency trading on behalf of retail customers or individual investors. See Article III, Section 5 of the OCC By-Laws.

⁷ Exchange Directors represent the equity exchanges that are holders of Class B Common Stock of the OCC. Exchange Directors need not be Clearing Members or be associated with a Clearing Member organization. See Article III, Section 6 of the OCC By-Laws.

⁸ Public Directors are independent directors who are not affiliated with any national securities exchange or national securities association or with any broker or dealer. See Article III, Section 6A of the OCC By-Laws.

⁹ Management Directors also serve as employees of OCC. See Article III, Section 7 of the OCC By-Laws.

Committee Charter (such committee charters collectively being the “Board Committee Charters”), and Amended and Restated Stockholders Agreement (“Stockholders Agreement”), to give the Board discretion to elect either an Executive or Non-Executive Chairman to preside over the Board. The Proposed Rule Change would also provide the Board and stockholders with discretion to elect Management Directors from OCC’s management, which would be necessary if OCC does not have an Executive Chairman. OCC notes that the Proposed Rule Change would provide clarity around the authority and responsibilities of an Executive Chairman versus a Non-Executive Chairman.¹⁰ OCC also proposes to make additional clarifying, conforming, and administrative changes to the documents listed above. OCC believes that the Proposed Rule Change would provide appropriate flexibility to the Board to evaluate OCC’s governance arrangements, including whether OCC should have an Executive or Non-Executive Chairman, and adjust the composition of the Board and leadership structure more quickly in response to changing business conditions and personnel and the knowledge, skills, and experience of its various Board members and senior officers.¹¹

Proposed Changes Relating to the Chairman Role and Responsibilities. Under OCC’s current By-Laws, the individual elected by the Board to be responsible for certain control functions of OCC and to preside at all meetings of the Board and stockholders is defined as the “Executive Chairman.”¹² OCC believes that as a result of this specificity, the Board likely would not consider Non-Executive Chairman candidates unless the By-Laws state explicitly that

¹⁰ See Notice of Filing supra note 4, 86 Fed. Reg. at 44106.

¹¹ See Notice of Filing supra note 4, 86 Fed. Reg. at 44106-07.

¹² See Article IV, Section 6 of the OCC By-Laws.

the Board has the ability to do so.¹³ Therefore, OCC proposes to revise Article III, Section 9 (currently Reserved) and Article IV, Sections 1 and 6 of its By-Laws to give its Board the discretion to elect either an Executive or Non-Executive Chairman. OCC believes that revising its By-Laws to provide this discretion would increase the potential pool of qualified candidates for the position and enable the Board to select the Chairman with the most suitable experience and skill set for OCC at any given time.¹⁴

OCC also proposes to update Article III, Section 9 to provide that, upon the nomination of the Governance and Nominating Committee, the Board shall elect from among its members a Chairman of the Board (as opposed to an Executive Chairman), and if the Chairman is elected from among the employees of OCC, such Chairman would be an “Executive Chairman” for purposes of OCC’s By-Laws and Rules. OCC proposes to revise Article I of its By-Laws to add a definition for the term “Chairman,” which would be defined to mean the individual elected by the Board as the Chairman of the Board pursuant to Article III, Section 9 of the By-Laws and that may be, but would not be required to be, an Executive Chairman.

OCC also proposes to revise Article III, Section 9 of the By-Laws to provide the Board with additional flexibility to define the Chairman’s role and responsibilities. The proposed language would be a general statement that the Chairman would have powers and perform such duties as the Board may designate.¹⁵ OCC asserts that the Proposed Rule Change would provide

¹³ See Notice of Filing supra note 4, 86 Fed. Reg. at 44107.

¹⁴ Id.

¹⁵ The proposed language would replace Article IV, Section 6, which currently states that the Executive Chairman is responsible for certain control functions of OCC, including internal audit and public affairs and government relations, and has supervision of the officers and agents appointed by him.

appropriate flexibility for the Board to assign or remove responsibilities of the Chairman based on whether such Chairman is an Executive or Non-Executive Chairman and based upon the needs of OCC at any given point in time.¹⁶

OCC proposes to revise the following sections of its By-Laws so that any Chairman (whether Executive or Non-Executive) would retain the following authority and responsibility currently given to the Executive Chairman: Article II, Sections 2 and 4 concerning the authority to call and provide notice of meetings of OCC's stockholders; Article III, Section 10 concerning the authority to receive notice of resignation of a member of the Board; Article III, Section 14 concerning the authority to call special meetings of the Board; Article III, Section 15 concerning the authority to exercise emergency powers and call special meetings of the Board during such an emergency; Article IV, Sections 2, 3, 9 and 13 concerning the authority to appoint officers, fix the salaries of any appointed officers, and remove such officers; Article VIIB, Section 1, Interpretation and Policy .01 concerning the responsibility to promptly provide Non-Equity Exchanges with information the Chairman considers to be of competitive significance to such Non-Equity Exchanges that was disclosed to Exchange Directors at or in connection with any meeting or action of the Board or one of its committees; Article IX, Section 12 concerning the authority to sign certificates for shares of OCC; and Article IX, Section 14 concerning the authority to suspend the rules of OCC in emergency circumstances. OCC wants the Chairman, whether Executive or Non-Executive, to retain these authorities and responsibilities which OCC believes relate to governance matters appropriately assigned to any Chairman of the Board.¹⁷

The Proposed Rule Change would revise the following Rules so that any Chairman

¹⁶ See Notice of Filing supra note 4, 86 Fed. Reg. at 44107.

¹⁷ Id.

(whether Executive or Non-Executive) would retain the following authority and responsibility currently given to the Executive Chairman: Rule 505 concerning the authority to extend settlement times upon a determination that an emergency or force majeure condition exists; Rule 609A concerning the authority to waive margin deposits in limited circumstances; Rule 1006(f) concerning the authority to use Clearing Fund assets to borrow or otherwise obtain funds from third parties; Rule 1104, Interpretation and Policy .02 concerning the authority to elect to use one or more private auctions to liquidate collateral, open positions and/or exercised/matured contracts of a suspended Clearing Member; and Rule 1110 concerning the authority to appoint an appeals panel to consider and decide appeals by suspended Clearing Members. OCC believes that updating these Rules to allow the Chairman to retain these critical responsibilities would help to ensure the efficient management and operation of OCC in emergency or exigent circumstances where other authorized officers are absent or otherwise unable to perform their duties.¹⁸

Proposed Changes Relating to Responsibilities of Other Senior Officers. OCC proposes to make conforming changes to Article IV, Section 8 of the By-Laws to clarify that OCC's Chief Executive Officer ("CEO") would be responsible for all aspects of OCC's business and for its day-to-day affairs, except for those that may report directly to the Chairman, as determined by the Board.

OCC proposes to revise several By-Law sections to transfer certain responsibilities currently belonging to the Executive Chairman to the CEO. OCC proposes to revise Article VI, Section 11 of the By-Laws to assign to the CEO the responsibility for participating in the Securities Committee and panels thereof for purposes of contract adjustments. OCC also

¹⁸ See Notice of Filing supra note 4, 86 Fed. Reg. at 44108.

proposes similar changes to its By-Laws concerning the fixing of: (i) underlying interest values of binary and range options (Article XIV, Section 5), (ii) exercise settlement amounts of yield-based Treasury options (Article XVI, Section 4), (iii) exercise settlement amounts of cash-settled securities options other than OTC index options (Article XVII, Section 4), (iv) exercise settlement amounts of cash-settled foreign currency options in circumstances where certain prices or values are determined to be unavailable or inaccurate for the contracts in question (Article XXII, Section 4), and (v) the Closing Price for BOUNDS contracts (Article XXIV). OCC believes that these responsibilities are best assigned to the CEO familiar with OCC's day-to-day operations, rather than to a Chairman who may or may not possess that familiarity.¹⁹

OCC also proposes conforming changes to its Rules concerning the following responsibilities, which would remain with an Executive Chairman (as well as the CEO and the Chief Operating Officer) if one has been elected by the Board: Rule 1104(b) concerning the authority to delay the immediate liquidation of a suspended Clearing Member's margin deposits and to use such deposits to borrow or otherwise obtain funds from third parties; Rule 1106(e) concerning the authority to determine not to close out a suspended Clearing Member's unsegregated long positions or short positions in options or BOUNDS, or long or short positions in futures; and Rule 1106(f) concerning the authority to execute hedging transactions to reduce the risk associated with any collateral or positions not immediately liquidated or closed out pursuant to Rules 1104(b) and 1006(e). OCC believes that these responsibilities do not rise to the level of emergency or exigent circumstances, and should therefore remain with senior executives more closely familiar with the day-to-day operations of OCC. As a result, OCC

¹⁹ See Notice of Filing supra note 4, 86 Fed. Reg. at 44107.

would not substantively change the requirements in these existing rules.²⁰

Proposed Changes Relating to OCC's Board and Committees. OCC proposes to revise Article III, Section I of the By-Laws to provide that the Board may have no less than five Public Directors, as opposed to the current requirement that OCC have exactly five Public Directors. The Proposed Rule Change would allow OCC to have a sixth Public Director serving on its Board if there is a Public Director serving as Chairman.²¹ The Chairman would preside at all meetings of the Board of Directors, be responsible for carrying out the policies of the Board, have general supervision over the Board and its activities, and provide overall leadership to the Board of Directors.

OCC proposes to revise Article VIIA, Section 3 of the By-Laws and Sections 2 and 3 of the Stockholder Agreement to provide the Board and stockholders with the discretion to elect a Management Director if the Board has elected a Non-Executive Chairman. OCC also proposes to revise Article III, Section 12 of the By-Laws to reflect that any vacancy in the position of Management Director may be filled by the Board until the next meeting of the stockholders. In addition, OCC proposes to revise Article IV, Sections 1 and 7 of the By-Laws to relocate certain provisions concerning the election of the Vice Chairman of the Board.

²⁰ See Notice of Filing supra note 4, 86 Fed. Reg. at 44108.

²¹ OCC notes that the proposed change, along with the potential election of a Management Director that is not an Executive Chairman (discussed below), could result in the Board having up to 21 total directors as opposed to its current 20 directors. OCC also notes that if the Board elects a Non-Executive Chairman that is determined to be an independent Public Director, such a Chairman would be eligible to serve as the chair of any of OCC's Board Committees pursuant to the requirements of each Board Committee Charter. OCC does not believe that the potential addition of a Public Director to its Board, increasing the overall Board size by one director, would materially impact the composition, representation, or decision-making process of the Board. See Notice of Filing supra note 4, 86 Fed. Reg. at 44107.

OCC proposes to revise Article III, Section 4 of the By-Laws to remove specific references to various Board committees and their compositions. OCC notes that each of the Board Committee Charters are filed with the Commission as rules of OCC, and as a result, this information is unnecessarily duplicated in OCC's By-Laws.²² OCC would relocate from the By-Laws to each of the Board Committee Charters the requirement that committee members are selected by the Board from among the directors recommended by the then-constituted Governance and Nominating Committee after consultation with the Chairman and serve at the pleasure of the Board.

OCC proposes to make conforming changes to its Board Charter. First, OCC would remove the qualifier "Executive" before most occurrences of "Executive Chairman" throughout the charter. OCC would revise the Board Charter to clarify that those provisions relating to management structure, evaluation, and succession would be applicable only to any Executive Chairman. The Proposed Rule Change would clarify that, with respect to employee compensation, the Board would be responsible for the compensation, incentive, and benefit programs and evaluating the performance of any Executive Chairman. OCC also proposes to revise the Board Charter to reflect that the election of a Management Director would be at the discretion of the Board and provide that a Management Director would no longer be eligible to serve if he or she ceases to hold a senior officer position at OCC, by virtue of which he or she was elected as a Management Director. OCC also proposes to revise the Board Charter to include the Regulatory Committee in the list of charters required to be established by the

²² See Notice of Filing supra note 4, 86 Fed. Reg. at 44108.

Board.²³ In addition, OCC proposes to revise its Board Charter to remove specific requirements around the composition of the Governance and Nominating Committee, which would align with proposed changes to the Governance and Nominating Committee.

OCC proposes changes to its Audit Committee Charter regarding the functional and administrative reporting lines for the Chief Audit Executive (“CAE”) and Chief Compliance Officer (“CCO”) and the review and oversight of OCC’s Internal Audit and Compliance functions to accommodate the proposed changes to OCC’s By-Laws. OCC would revise the Audit Committee Charter to state that the CAE would continue to report functionally to the Audit Committee and report administratively to a member of the Management Committee designated by the Audit Committee. The proposed rule change is intended to provide appropriate flexibility for the administrative reporting line of the CAE and in the officers that the committee may consult in their review of the Internal Audit function.²⁴ OCC also proposes similar changes to the functional and administrative reporting lines of the CCO, who currently reports functionally to the Audit Committee and administratively to the CEO, and to the consultation requirements in reviewing the performance of the CCO and Compliance Department. OCC believes that these changes would provide for a consistent approach and similar flexibility for the Audit Committee’s oversight of OCC’s Compliance function.²⁵

OCC proposes to revise its Compensation and Performance Committee Charter to conform to the proposed changes to OCC’s By-Laws. Specifically, the proposed revisions

²³ See Securities Exchange Act Release No. 87577 (November 20, 2019) 84 FR 65202 (November 26, 2019) (SR-OCC-2019-008).

²⁴ See Notice of Filing supra note 4, 86 Fed. Reg. at 44109.

²⁵ Id.

would reflect that the committee’s responsibilities for reviewing the performance and compensation of OCC’s management team, including the executive officers of OCC, would extend to any Executive Chairman of OCC.

OCC proposes to revise its Governance and Nominating Committee Charter to conform to the proposed changes to OCC’s By-Laws by clarifying that the Governance and Nominating Committee would consult with any Chairman in its oversight and advising responsibilities to the Board.

OCC proposes changes to its Risk Committee Charter regarding the functional and administrative reporting lines for the Chief Risk Officer (“CRO”). Currently, the Risk Committee Charter provides that the CRO reports functionally to the Risk Committee and administratively to the CEO and that the Risk Committee consults with the CEO and other committees as appropriate in reviewing the CRO’s performance. OCC proposes to revise the Risk Committee Charter to state that the CRO would continue to report functionally to the Risk Committee and would report administratively to a member of the Management Committee designated by the Committee. The proposed change is intended to provide flexibility for the administrative reporting line of the CRO and the particular officers and committees the Risk Committee may consult in their review of the CRO’s performance depending on the Board’s allocation of responsibilities at a given point in time.²⁶

Finally, OCC proposes to revise its Technology Committee Charter to require that the chair of the committee be a Public Director. The proposed change would align the Technology Committee Charter with OCC’s other Board Committee Charters, which also require that a Public Director serves as committee chair. OCC notes that the proposed change would not result

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Id.

in any practical change to the Technology Committee as it is currently chaired by a Public Director.²⁷

III. DISCUSSION AND COMMISSION FINDINGS

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.²⁸ After carefully considering the Proposed Rule Change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(A) of the Exchange Act,²⁹ and Rule 17Ad-22(e)(2)³⁰ thereunder, as described in detail below.

A. Consistency with Section 17A(b)(3)(A) of the Exchange Act

Section 17A(b)(3)(A) of the Exchange Act requires, among other things, that a clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible.³¹

Based on its review of the record, and for the reasons described below, the Commission believes that the proposed changes to revise OCC's governing documents to provide Board

²⁷ Id.

²⁸ 15 U.S.C. 78s(b)(2)(C).

²⁹ 15 U.S.C. 78q-1(b)(3)(A).

³⁰ 17 CFR 240.17Ad-22(e)(2).

³¹ 15 U.S.C. 78q-1(b)(3)(A).

discretion to elect either an Executive or Non-Executive Chairman is consistent with being organized to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which OCC is responsible. By providing the Board with discretion to choose a Chairman from a broader set of candidates, the Board would gain greater flexibility to select someone with the best and most appropriate experience for the role at any given point in time, whether as part of OCC's day-to-day operations or otherwise. The proposed changes allow the Board to reassign certain day-to-day responsibilities to other senior officers, depending on whether the Board elects a Chairman that is an Executive Chairman. Similarly, the proposed changes to provide the Board with greater flexibility to elect an additional Public Director under certain circumstances and to preserve the authority of the Board and stockholders to elect a Management Director are consistent with being organized to facilitate prompt and accurate clearance and settlement practices. This greater degree of flexibility would leave OCC better prepared to adjust its Board composition to changing market conditions and emerging business concerns, so that it can continue to successfully facilitate the prompt and accurate clearing and settlement of securities transactions and other transactions for which OCC is responsible.

OCC also proposes to change to its Audit and Risk Committee Charters to adjust the administrative reporting lines for the CAE, CCO, and CRO so that they each report administratively to a member of the Management Committee designated by the Board Committee to which they report functionally. These proposed changes are consistent with facilitating prompt and accurate clearing and settlement practices, as the changes would provide OCC with the flexibility to adjust these administrative reporting lines depending on the existing skill sets of the officers serving on OCC's Management Committee. This could in turn

strengthen OCC's administrative review processes and ensure greater accountability from the CAE, CCO, and CRO roles, which would support the facilitation of prompt and accurate clearing and settlement of transactions for which OCC is responsible.

The Commission believes, therefore, that the proposal to provide OCC's Board with the discretion to elect either an Executive Chairman or a Non-Executive Chairman, provide the Board and stockholders with the discretion to elect a Management Director, clarify the respective authority and responsibility of any Executive Chairman or Non-Executive Chairman, and make other clarifying, conforming, and administrative changes to OCC's rules is consistent with the requirements of Section 17A(b)(3)(A) of the Exchange Act.³²

B. Consistency with Rule 17Ad-22(e)(2) under the Exchange Act

Rule 17Ad-22(e)(2)(i), (iv), (v), and (vi) under the Exchange Act require covered clearing agencies to have governance arrangements that are clear and transparent, establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities, specify clear and direct lines of responsibility, and consider the interests of participants' customers, securities issues and holders, and other relevant stakeholders of the covered clearing agency.³³

Based on its review of the record, and for the reasons described below, the Commission believes that the proposed changes described above are consistent with Rule 17Ad-22(e)(2)(i) under the Exchange Act, in that the Proposed Rule Change increases the clarity and transparency of OCC's governance arrangements. In recognizing that there may be a number of ways to

³² 15 U.S.C. 78q-1(b)(3)(A).

³³ 17 CFR 240.17Ad-22(e)(2)(i), (iv), (v), and (vi).

address compliance with Rule 17Ad-22(e)(2), the Commission has stated that a covered clearing agency generally should consider, when establishing and maintaining policies and procedures that address governance, whether the roles and responsibilities of management have been clearly specified.³⁴ The proposal to update OCC's By-Laws to state explicitly that the Board may choose either a Non-Executive Chairman or an Executive Chairman rectifies current concerns that the Board likely would not consider Non-Executive Chairman candidates if the ability to do so were not already in the By-Laws.³⁵ The Proposed Rule Change clarifies that the Board need not disregard non-Executive Chairman candidates, and that it actually has the option to elect either an Executive Chairman who is closely involved in the day-to-day responsibilities of running OCC, or a Non-Executive Chairman primarily focused on the running of the Board. Additionally, OCC's proposal to relocate from the By-Laws to each of the Board Committee Charters the requirement that committee members are selected by the Board from among the directors recommended by the then-constituted GNC after consultation with the Chairman and serve at the pleasure of the Board is consistent with increasing the clarity and transparency of OCC's governance arrangements, as it would eliminate unnecessary duplication in the governing documents, since OCC already files each of the Board Committee Charters as OCC rules with the Commission. These proposed changes are thus consistent with Rule 17Ad-22(e)(2)(i).

The Commission believes that based on its review of the record and for the reasons described below, the proposed changes are consistent with Rule 17Ad-22(e)(2)(iv) under the Exchange Act, in that they help to ensure that the Board and senior management have the

³⁴ See Securities Exchange Act Release 78961, 81 Fed. Reg. 70786, 70806 (Oct. 13, 2016) (File No. S7-03-14).

³⁵ See supra note 4 at 44107.

appropriate experience and skills to discharge their duties and responsibilities. Specifically, OCC proposed changes to its By-Laws to ensure that the Board and stockholders retain the discretion to elect a Management Director to its Board if the Chairman is a Non-Executive Chairman, as well as to ensure that the Board has the discretion to elect an additional Public Director to its Board if the elected Chairman is a Public Director. These changes would provide the Board with the ability to increase the size of the Board by one Director to ensure that it continues to have members with the appropriate skills and incentives to fulfill the Board's multiple roles, by either replacing or supplementing the elected Chairman's skills and background depending on his or her competing demands.

The Commission believes that the Proposed Rule Change is also consistent with Rule 17Ad-22(e)(2)(v) under the Exchange Act, in that the Proposed Rule Change does provide clear and direct lines of responsibility. The Commission has previously stated that covered clearing agencies should have policies and procedures that generally entail documenting the responsibilities of the board of directors and senior management, which could help foster accountability and complement requirements that address the qualifications of the board and management. This requires the covered clearing agency to further specify the roles that each individual would fulfill and the lines of responsibility that would exist within the board and within management.³⁶ In the current instance, the Proposed Rule Change clarifies which authorities and responsibilities remain with the Chairman, whether Executive or Non-Executive, and which authorities and responsibilities are transferred to other senior officers such as the CEO or COO if the elected Chairman is Non-Executive.

Finally, the Commission believes that the Proposed Rule Change is also consistent with

³⁶ See supra note 34 at 70804.

Rule 17Ad-22(e)(2)(vi) under the Exchange Act, in that the Proposed Rule Change provides for governance arrangements that consider the interests of participants' customers, securities issues and holders, and other relevant stakeholders of the covered clearing agency. In recognizing that there may be a number of ways to address compliance with Rule 17Ad-22(e)(2), the Commission has stated that a covered clearing agency generally should consider, when establishing and maintaining policies and procedures that address governance, whether the major decisions of the covered clearing agency reflect appropriately the legitimate interests of its direct and indirect participants and other relevant stakeholders.³⁷ OCC's proposed changes to its Technology Charter to require an independent director as the chair of the committee would help to ensure that the interests of direct and indirect participants are considered as part of Technology Committee determinations, and also makes the Technology Charter consistent with the other Board Committee Charters.

The Commission believes, therefore, that the proposal to provide OCC's Board with the discretion to elect either an Executive Chairman or a Non-Executive Chairman, provide the Board and stockholders with the discretion to elect a Management Director, clarify the respective authority and responsibility of any Executive Chairman or Non-Executive Chairman, and make other clarifying, conforming, and administrative changes to OCC's rules is consistent with the requirements of Rule 17Ad-22(e)(2)(i), (iv), (v), and (vi) under the Exchange Act.³⁸

³⁷ Id. at 70806-07.

³⁸ 17 CFR 240.17Ad-22(e)(2)(i), (iv), (v), and (vi).

IV. CONCLUSION

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act³⁹ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,⁴⁰ that the Proposed Rule Change (SR-OCC-2021-007) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴¹

J. Matthew DeLesDernier
Assistant Secretary

³⁹ In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁴⁰ 15 U.S.C. 78s(b)(2).

⁴¹ 17 CFR 200.30-3(a)(12).