

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94283; File No. SR-OCC-2022-002)

February 18, 2022

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning The Options Clearing Corporation's Governance Arrangements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 7, 2022, The Options Clearing Corporation ("OCC" or "Corporation") 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

This proposed rule change would modify and enhance OCC's governance arrangements. Specifically, OCC is proposing to amend certain of its governing documents by: (i) clarifying that OCC's Public Directors may not be affiliated with any designated contract market ("DCM") or futures commission merchant ("FCM"); (ii) allowing the Board of Directors ("Board") to delegate authority to (a) Board-level committees ("Committees") to review and approve certain routine initiatives and policies, as well as to authorize certain regulatory filings and (b) an OCC Officer to authorize

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

certain regulatory filings in more limited cases;³ (iii) removing the portion of Article XI, Section 1 of the By-Laws that allows OCC to deem the affirmative vote or consent of an Exchange Director to be the approval of the stockholder that elected the Exchange Director for By-Law amendments that require stockholder consent; and (iv) applying additional amendments recommended as part of OCC’s annual review of certain governance arrangements.

Proposed amendments to the By-Laws can be found in Exhibit 5A to File No. SR-OCC-2022-002. Proposed amendments to the Board of Directors Charter and Corporate Governance Principles (“Board Charter”) can be found in Exhibit 5B to File No. SR-OCC-2022-002. Proposed amendments to OCC’s Fitness Standards for Directors, Clearing Members and Others (“Fitness Standards”), can be found in Exhibit 5C to File No. SR-OCC-2022-002. Proposed amendments to the Audit Committee Charter (“AC Charter”), Compensation and Performance Committee (“CPC”) Charter, Governance and Nominating Committee (“GNC”) Charter, Risk Committee Charter (“RC Charter”), and Technology Committee Charter (“TC Charter”) (collectively, “Committee Charters”)⁴ can be found in Exhibits 5D to 5H to File No. SR-OCC-2022-002, respectively. Material proposed to be added to OCC’s By-Laws, Fitness Standards, Board Charter, and

³ Under OCC’s By-Laws, the Board may elect one or more officers as it may from time to time determine are required for the effective management and operation of the Corporation. By-Laws Art. IV § 1. In addition, the Chairman, Chief Executive Officer and Chief Operational Officer each may appoint such officers, in addition to those elected by the Board, and such agents as they each shall deem necessary or appropriate to carry out the functions assigned to them. By-Laws Art. IV § 2.

⁴ The filing does not propose changes to the Regulatory Committee Charter.

Committee Charters, as currently in effect, is marked by underlining, and material proposed to be deleted is marked with strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.⁵

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, Uthe 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

This proposed rule change would enhance certain OCC governance arrangements. Specifically, OCC is proposing to: (i) amend OCC's By-Laws, Fitness Standards and Board Charter to clarify that OCC's Public Directors may not be affiliated with any DCM or FCM; (ii) amend OCC's By-Laws, Board Charter, and Committee Charters to enable standing delegation for (a) Committees to review and approve certain routine initiatives and policies, as well as to authorize certain regulatory filings and (b) an OCC officer to authorize certain regulatory filings in more limited cases; (iii) remove the portion of Article XI, Section 1 of the By-Laws that allows OCC to deem the affirmative vote or

⁵ 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>.

consent of an Exchange Director to be the approval of the stockholder that elected the Exchange Director for By-Law amendments that require stockholder consent; and (iv) implement other proposed changes to the Board Charter and Committee Charters arising from annual reviews of those governing documents.

Public Director Qualifications

The proposed rule change would amend Sections 6A and 12 of Article III of the By-Laws, the Fitness Standards adopted by the Board thereunder, and the Board Charter to codify OCC's practice of nominating Public Directors who are, in addition to other qualifications, unaffiliated with DCMs and FCMs. Currently, OCC's By-Laws and Fitness Standards preclude individuals from serving as Public Directors who are affiliated with a national securities exchange, national securities association, or a broker or dealer in securities.⁶ These restrictions were intended to broaden the mix of viewpoints and business expertise represented on the Board.⁷ Subsequent to implementing these restrictions, OCC added futures market clearing memberships and expanded its services to include clearance of futures and futures options.⁸ While it has been OCC's practice to nominate Public Directors who are independent from DCMs and FCMs, OCC believes it is appropriate to codify this practice in its By-Laws, Fitness Standards, and Board Charter. OCC believes that the proposal to exclude DCM- or FCM-affiliated Public Directors would serve the same purpose as those restrictions related to national securities

⁶ See By-Laws Art. III § 6A & Interpretation and Policy .01.

⁷ See Securities Exchange Act of 1934 Release ("Exchange Act Release") No. 30328 (Jan. 31, 1992), 57 FR 4784 (Feb. 7, 1992) (File No. SR-OCC-92-2).

⁸ See Exchange Act Release No. 44434 (June 15, 2001), 66 FR 33283 (June 21, 2001) (File No. SR-OCC-2001-05).

exchanges, securities associations, and brokers and dealers—namely, to broaden the mix of viewpoints and business expertise represented on the Board.

Delegated Authority

OCC proposes to amend the Board Charter and Committee Charters to delegate authority from the Board to Committees to review and approve certain routine initiatives and policies. In addition, OCC proposes to amend its By-Laws and Committee Charters to delegate authority to authorize certain regulatory filings to a Committee or, in limited cases, an OCC officer. However, as provided under the current Board Charter, in all instances, the Board would retain the obligation to oversee such delegated activity.

While the Board Charter and Committee Charters delegate many reviews of routine initiatives or policies to Committees, each Committee often must recommend approval of the initiatives or amendments to policies to the Board for final approval or seek delegated authority to approve from the Board on a case-by-case basis. Currently, all regulatory filings are approved by the Board except for changes to OCC's fees, for which the Board has delegated authority to the CPC pursuant to the CPC Charter,⁹ and individual filings that the Board delegates to a Committee on a case-by-case basis. The current governance process has several disadvantages, including mandating numerous matters be brought to the full Board for approval that otherwise would not occupy the time and attention of the Board. In addition, requiring Board approval makes it more difficult for OCC to obtain authorization to file regulatory submissions between regularly

⁹ See CPC Charter, available at <https://www.theocc.com/about/corporate-information/board-charter> (“The Committee is authorized to review and approve changes in OCC’s fees, including authorizing the filing of regulatory submissions related thereto”).

scheduled Board meetings absent a special Board meeting. In practice, the Board routinely delegates authority to Committees to approve initiatives, policy changes, and rule filings on a case-by-case basis when proposed changes are expected to be ready for Board-level review between regular Board meetings, in part because the Board relies on the business expertise of the directors appointed to the Committees to review and approve proposed changes within the scope of each Committee’s responsibilities. The proposal discussed below would create a framework for standing delegated authority to each Committee for the review and approval of certain initiatives and policies, as well as to approve proposed rule changes for matters within the scope of authority of each Committee. OCC believes that such delegated authority would reduce the number of matters that must be brought before the full Board and promote the more efficient and expeditious filing and implementation of proposed rule changes.

With respect to Committees, the proposal would allow the Board to delegate authority to each Committee to review and approve certain initiatives and policies without the need for separate Board approval. Specifically, OCC would amend the Board Charter and Committee Charters to allow for delegated authority for the Committees to review and approve the following initiatives and policies that currently require Board approval:

| Committee | Initiatives and Policies |
|------------------|--|
| Audit Committee | evaluation and appointment of an external auditor |
| CPC | review and approval of the: <ul style="list-style-type: none"> • corporate performance report (formerly the “Corporate Plan”); and • annual budget |

| | |
|----------------|---|
| GNC | review and approval of the: <ul style="list-style-type: none"> • Director Code of Conduct • Related Party Transaction Policy • Board self-evaluation questionnaire |
| Risk Committee | review and approval of: <ul style="list-style-type: none"> • risk appetites and risk tolerances • changes to existing models |

Each Committee generally would also have the authority to amend OCC policies filed with the Commission as rules of the clearing corporation for matters that are within the scope of the Committee’s responsibilities. With respect to risk management-related policies, OCC would amend the RC Charter by deleting the provisions requiring the committee to recommend changes to certain risk-related policies to the Board for approval—under this proposal, the Risk Committee would be delegated to authorize such regulatory filings. The Board would retain its annual review of OCC’s risk management policies, procedures and systems, as required by Rule 17Ad-22(e)(3)(i),¹⁰ but would delegate authority to approve intra-year changes to such policies and procedures to the Risk Committee. Delegated authority would not extend to the authorization of rule changes that would affect OCC policies for which the Board has determined to retain oversight. The Board would retain the authority to revoke delegated authority and limit or modify the scope of such delegated authority, either in whole or in part, by Board resolution.

OCC would also amend the Committee Charters to include among each Committee’s functions and responsibilities the authorization of regulatory submissions

¹⁰ 17 CFR 240.17Ad-22(e)(3)(i).

within the scope of the functions and responsibilities delegated to the Committee.¹¹ OCC would also amend Article XI, Section 2 of the By-Laws to allow the Board to delegate authority to Committees to authorize the filing of proposed amendments to OCC's Rules. Board approval would continue to be required for filings that would amend By-Laws or Rules that require a supermajority vote of the Board to amend pursuant to Article XI, Section 2 of the By-Laws.

The proposed changes would also allow the Board to delegate authority to an OCC officer to make certain regulatory filings. Such delegated authority would help OCC to more efficiently revise its Rules and rule-filed policies to improve their clarity and ensure their consistency. Factors the Board would consider in delegating such authority to an officer include, but are not limited to, the responsibilities and expertise of the officer to whom authority would be delegated and any limitations on the scope of the delegated authority, including limitations to the subject matter, materiality of the changes, the regulatory approval process required to implement the amendments, and the manner in which the officer must notify the Board or a Committee about filings approved pursuant to such authority. These factors are identified in proposed amendments to the Board Charter. To facilitate this delegated authority, OCC would also amend Section 2 of Article XI of the By-Laws to allow the Board to delegate authority to an officer to authorize regulatory filings that would amend OCC's Rules. OCC anticipates that when

¹¹ The Risk Committee Charter currently grants the Risk Committee authority to “authorize the filing of regulatory submissions pursuant to” the performance of the responsibilities and functions that the Board shall delegate to the Risk Committee from time to time. See Risk Committee Charter, available at <https://www.theocc.com/about/corporate-information/board-charter>.

implemented, the Board shall delegate authority to the Chief Legal Officer and Chief Regulatory Counsel to authorize regulatory filings that (1) may be filed for immediate effectiveness pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934, as amended (“Exchange Act”),¹² and (2) proposed rule changes that the Chief Legal Officer or Chief Regulatory Counsel determines in his or her discretion constitute clarifications, corrections or minor changes, in each case other than filings that would amend OCC’s By-Laws, Rules that require a supermajority vote of the Board to amend pursuant to Article XI, Section 2 of the By-Laws, or rule-filed policies for which the Board has retained oversight vis-à-vis the Committees. In addition, OCC anticipates that when implemented, the Board’s delegation of authority will be conditioned on the officers notifying the Board of regulatory filings approved by delegated authority at the next regularly scheduled Board meeting. OCC expects to implement procedures to ensure the Board is so notified.¹³ Based on the factors identified above, OCC believes that the Chief Legal Officer and Chief Regulatory Officer have the appropriate responsibility and expertise to identify matters suitable for delegated approval based on the limits imposed with respect to the method of filing the proposed changes under the Exchange Act and the materiality of the proposed changes, and that the obligation to report matters approved pursuant to such authority at the next regular Board meeting will provide the Board with appropriate notice to exercise its oversight function.

¹² 15 U.S.C. 78q-1.

¹³ See Confidential Exhibit 3 to File No. SR-OCC-2022-002 (anticipated changes to OCC procedures concerning internal approvals for regulatory filings).

By-Law Article XI

OCC is proposing to amend Article XI of the By-Laws to remove the provision that allows OCC to treat an Exchange Director's vote as the consent of the stockholder who elected the Exchange Director for those amendments to the By-Laws that require stockholder consent. That provision codified a long-standing understanding between OCC and the stockholders to consider the affirmative vote of each Exchange Director as the approval of the stockholder.¹⁴ To avoid potential conflicts between an Exchange Director's fiduciary duty as a director and the Exchange Director's fiduciary duty to the stockholder, the By-Laws provide that an Exchange Director may disclaim such stockholder consent.¹⁵ It is OCC's current practice to obtain written consent from the stockholders for all matters that require such consent. This proposed rule change would eliminate the outdated authority in OCC's By-Laws to impute an Exchange Director's vote to constitute stockholder consent and better reflect current practice.

Other Amendments to the Board Charter and Corporate Charters

The proposed change would make other housekeeping amendments to the Board Charter and Committee Charters arising from the annual review of OCC's governance arrangements. These proposed amendments are intended to increase consistency across OCC's governance arrangements and to make other conforming changes to improve their clarity and transparency.

¹⁴ See Exchange Act Release No. 43630 (Nov. 28, 2000), 65 FR 75991 (Dec. 5, 2000) (File No. SR-OCC-00-05).

¹⁵ Id.

Board Charter

This proposed rule change would amend the Board Charter by clarifying that the Board has delegated to Committees the “oversight” of specific risks, not the “management” of those risks. This proposed change better aligns the Board Charter with the Committee Charters and better distinguishes responsibilities of the Board, Committees, and management. The Board Charter would also be amended to replace reference to “senior management” or management in instances where referring to OCC’s Management Committee would more clearly delineate OCC’s governance structure. The proposed change would also amend the discussion of the Board’s mission to more accurately reflect that OCC’s services to the industry are not limited to clearance and settlement.¹⁶ The amendments would also clarify that the Board approves “material,” rather than “major,” changes in auditing and accounting principles and practices. This proposed change would align the Board Charter with language in the AC Charter.

The proposed change would also amend provisions governing the composition of the Board and the Risk Committees to reflect OCC’s belief that strong and transparent governance with robust member input on relevant risk issues is necessary to provide effective risk management, consistent with OCC’s current practice. Proposed changes to the Board Charter and RC Charter would codify that one of the factors OCC considers when nominating Directors to the Board and Risk Committee is to obtain input from a broad array of market participants on risk management issues. This amendment would align the Board Charter and RC Charter with the By-Laws, which require significant

¹⁶ For example, OCC provides thought leadership and education to market participants and the public about the prudent use of products that OCC clears.

Clearing Member representation on the Board.¹⁷ OCC believes this proposed change is consistent with the recommendation made by certain market participants that central counterparties like OCC have governance practices in place that obtain and address input from a broader array of market participants on risk issues.¹⁸

In addition, the proposed changes would amend the Board Charter to provide for a minimum of four meetings per year, rather than five. This proposed change would align the Board Charter with the Committee Charters, which generally require at least four meetings each year. The proposed changes would also modify the attendance guidelines to provide that attendance telephonically or by videoconference for meetings scheduled for in-person attendance is discouraged. This proposed change conforms with the current Director Code of Conduct and would be applied to each of the Committee Charters.

The proposed changes would also revise the description of the Conflict of Interest Policy. Specifically, OCC would streamline the discussion by defining “conflict of interest” to include actual, potential or apparent conflicts of interest. Accordingly, OCC would remove references to “potential” conflicts of interests or matters that may “be reasonably perceived by others to raise questions about potential conflicts of interest” because potential or apparent conflicts of interest would now be subsumed by the defined term. These changes would align the Board Charter with the current Director Code of Conduct, which employs the same defined term. The Board Charter’s discussion of

¹⁷ See By-Law Art. III § 1 (providing for nine Member Directors on the Board).

¹⁸ See Optimizing Incentives, Resilience and Stability in Central Counterparty Clearing: Perspective on CCP Issues from a Utility Model Clearinghouse at 7-8, available at <https://www.theocc.com/Newsroom/Insights/2020/09-22-Optimizing-Incentives,-Resilience-and-Stabil>.

ethics and conflicts of interest would also be amended to reflect the full title of the Director Code of Conduct and the corporate title for OCC's general counsel. In addition, the Board Charter would be updated to clarify that an Exchange Director's, Member Director's, or Public Director's qualification as independent for purposes of service on the Audit Committee is subject to the assessment of the Board and GNC for other disqualifying material relationships, as provided by the current Board Charter.

The proposed changes would also apply other administrative changes to remove unnecessary verbiage to certain provisions to enhance the clarity and concision of the Board Charter.¹⁹

¹⁹ Specifically, OCC is proposing to remove unnecessary words and phrases, or otherwise modify verbiage by: under the "Mission of the Board" heading, in the tenth bulleted item describing the Board's oversight role, removing "such officer" from "approving the compensation of each such officer"; under the "Board Issues" heading and "Membership" subheading: in the first paragraph of the "Selection of Member Directs and Public Directors" section, removing "in order" in "retain a search firm in order to assist [the GNC] in these efforts"; in the second paragraph of the same section, replacing "such annual meeting" with "the annual meeting," deleting "as in effect from time to time" from "the Director Nomination Procedure as in effect from time to time," and deleting the introductory clause beginning the sentence, "With respect to Member Directors"; in the "Member Directors Changing Their Employment" paragraph of the "Retirement" section, deleting "with respect thereto" and "requirements of the" in "the [GNC] . . . shall recommend to the Board any action to be taken with respect thereto, consistent with the requirements of the By-Laws concerning the continued eligibility of such person to remain a Member Director;" under the "Board Issues" heading and "Conduct" subheading, the second paragraph of "Distribution of Materials; Board Presentations" in the "Board Meetings" section, replacing "summaries/slides of presentations" with "materials"; and under the "Management Structure, Evaluation and Succession" heading and "Management Structure" section, deleting "what is in" in the phrase "the specific needs of the business and what is in the best interest of OCC and the market participants it serves."

AC Charter

The Audit Committee assists the Board in overseeing OCC's financial reporting process, OCC's system of internal control, OCC's auditing process, OCC's process for monitoring compliance with applicable laws and regulation, and OCC's compliance and legal risks.²⁰ The proposed rule change would amend the discussion of the Audit Committee's functions and responsibilities by adding the Audit Committee's oversight of management's responsibility to "measure" compliance and legal risks to conform with the Board Charter, which provides that the Board oversees OCC's processes and frameworks for comprehensively managing such risks. In addition, the proposed changes would provide that the Audit Committee recommends material changes in accounting principles and practices for Board approval, which aligns with the provision in the Board Charter providing that the Board oversees OCC's financial reporting, internal and external auditing, and accounting and compliance processes, including the approval of such major (i.e., material) changes.

OCC is also proposing to update the cadence of certain Audit Committee reviews to reflect that the Audit Committee shall conduct the review each regular meeting. The current AC Charter contemplates that the Audit Committee shall conduct certain reviews quarterly based on the assumption that regular meetings will occur quarterly. While it is generally the case that regular meetings are scheduled each quarter, the proposed change would avoid the need to call special meetings to address items on a quarterly cadence if a regularly scheduled meeting happens to fall at the beginning of the next quarter or the

²⁰ See AC Charter, available at <https://www.theocc.com/about/corporate-information/board-charter>.

end of the last quarter. The cadence of reviews for other certain reports described as “periodic” or occurring “regularly” would also be amended to reflect that that the review is conducted at each regular meeting of the Audit Committee. Similar changes would be made to the CPC Charter and TC Charter.

OCC is also proposing certain administrative edits to the AC Charter. Reference to the Audit Committee’s review of the “Compliance Policy” would be changed to the “Compliance Risk Policy” to align with the current title of that policy. The proposed change would also modify reference to the General Counsel to reflect that the General Counsel is OCC’s Chief Legal Officer. In addition, the proposed change would clarify that in the section addressing competencies of Audit Committee members, “working familiarity with basic finance and accounting practices” means “financial literacy.” The proposed changes would also remove unnecessary verbiage or otherwise modify the verbiage in certain provisions to enhance the clarity, concision and consistency of the AC Charter with other Committee Charters.²¹

²¹ Specifically, OCC is proposing to remove unnecessary words and phrases or otherwise modify verbiage by: under the “Membership and Organization” section, (i) in the first paragraph of the “Composition” section, abbreviating “Board of Directors” and removing extraneous references to the “full” Board and “full Committee membership,” and (ii) in the first paragraph of the “Meetings” section, replacing “The Committee will” with “The Committee shall” for consistency with the language of similar requirements; and under the “Functions and Responsibilities” section, in the ninth bulleted item concerning the Audit Committee’s functions and responsibilities in discharging its oversight role, replacing “at least once in a calendar year” with “at least once every calendar year.”

CPC Charter

The Board established the CPC to assist the Board in overseeing general business, regulatory capital, investment, corporate planning, and compensation and human capital risks, as well as executive management succession planning and performance assessment.²² Consistent with the proposed change to the AC Charter, this proposed rule change would amend the CPC Charter by adding the CPC's oversight of management's responsibility to "measure" general business risks, including as they relate to OCC's corporate performance report (formerly the "Corporate Plan") and corporate budget, capital requirements, human capital, compensation and benefit programs, management succession planning and management performance assessment processes, arising from OCC's business activities in light of OCC's role as a systemically important financial market utility, to conform with similar language in the Board Charter. With respect to oversight of OCC's human resources programs, the proposed changes would amend the CPC Charter to reflect the CPC's oversight of OCC's diversity, equity and inclusion efforts. OCC believes this change reflects OCC's commitment to recruit, retain and develop high performing, talented and engaged colleagues with diverse backgrounds and perspectives, to nurture an environment where colleagues with varied backgrounds feel included and valued, and to encourage diversity of thought, experiences, and perspectives to develop innovative solutions.

OCC is also proposing certain administrative edits to the CPC Charter. Specifically, OCC would amend the CPC Charter by removing gendered pronouns that

²² See CPC Charter, available at <https://www.theocc.com/about/corporate-information/board-charter>.

assume the Chairman and Chief Executive Officer necessarily will be individuals who identify as male. Similar changes would be applied to the Board Charter and AC Charter. The proposed changes would also provide for CPC oversight of OCC's succession planning for "critical roles," in alignment with terminology in OCC's policies and procedures that address succession planning. In addition, references to the "Corporate Plan" would be replaced with references to the "corporate performance report," which better describes the initiative by which the CPC assesses OCC's performance against its corporate goals.

The proposed changes would also include administrative changes by removing unnecessary verbiage or otherwise modifying the verbiage in certain provisions to enhance the clarity and concision, and consistency of the CPC Charter with other Committee Charters.²³

GNC Charter

The Board established the GNC to assist the Board in overseeing OCC's corporate governance processes, including assessing the clarity and transparency of

²³ Specifically, OCC is proposing to remove unnecessary words, phrases or punctuation, or otherwise modify verbiage by: in the "Membership and Organization" section, (i) in the first paragraph of the "Composition" section, replacing "The Committee shall consist of" with "The Committee shall be comprised of"; and (ii) in the first paragraph of the "Meetings" section, replacing "The Committee will" with "The Committee shall" and deleting "is" in the phrase "as is necessary"; in the "Authority" section and "Scope" subsection, correcting a reference to "employees of the OCC," which should be "employees of OCC;" for the bulleted items discussing the CPC's functions and responsibilities in discharging its oversight role in the "Functions and Responsibilities" section: in the fifth bulleted item, deleting the phrase "with respect thereto"; in the eighth bulleted item replacing "For each calendar year" with "Each calendar year"; and fifteenth bulleted item, replacing "every two years" with "every two calendar years."

OCC’s governance arrangements, establishing the qualifications necessary for Board service to ensure that the Board is able to discharge its duties and responsibilities, identifying and recommending to the Board candidates eligible for service as Public Directors and Member Directors, and resolving certain conflicts of interests.²⁴ The proposed changes to the GNC Charter would clarify the Board’s expectation that the GNC assist the Board in reviewing and proposing changes to the Board Charter.

The proposed changes would also include administrative changes by removing unnecessary verbiage or otherwise modifying the verbiage in certain provisions to enhance the clarity, concision, and consistency of the GNC Charter with other Committee Charters.²⁵

RC Charter

The Board established the Risk Committee to assist the Board in overseeing OCC’s financial, collateral, risk model and third-party risk management processes, among other responsibilities.²⁶ Consistent with the foregoing Committee Charter

²⁴ See GNC Charter, available at <https://www.theocc.com/about/corporate-information/board-charter>.

²⁵ Specifically, OCC is proposing to remove unnecessary words and phrases, or otherwise modify verbiage by: under the “Membership and Organization” section, in the first paragraph of the “Composition” section, (i) replacing “The Committee will be composed” with “The Committee shall be comprised,” (ii) inserting “at least” before the required number of Exchange Director and Member Director membership on the GNC, and (iii) replacing “The Committee Chair will be designated by the Board from among the Public Director Committee members” with “The Chair shall be a Public Director”; and for the bulleted items discussing the GNC’s functions and responsibilities in discharging its oversight role in the “Functions and Responsibilities” section: in the eleventh bulleted item, replacing “For each calendar year” with “Each calendar year”; and in the thirteenth bulleted item, replacing “the manner in which” with “how.”

²⁶ See RC Charter, available at <https://www.theocc.com/about/corporate-information/board-charter>.

changes, this proposed rule change would amend the RC Charter by adding the committee's oversight of management's responsibility to "measure" these risks arising from OCC's business activities in light of OCC's role as a systemically important financial market utility, which conforms with similar language in the Board Charter. The proposed rule change would also change the minimum number of meetings from six to four to align with the other Committee charters that require a minimum of four meetings each year. In addition, the proposed rule change would consolidate discussion of the Risk Committee's functions and responsibilities with respect to oversight and annual review of OCC's management of liquidity risks and the adequacy of OCC's committed liquidity facilities. This change would streamline the RC Charter's discussion of liquidity risks. OCC would also amend the RC Charter to provide that the Risk Committee shall review and have the authority to approve at least once every twelve months OCC's risk appetites and risk tolerances, consistent with the Board's delegation of authority for such routine reviews and approvals, discussed above.

OCC also proposes certain administrative changes to the RC Charter, including (i) to specify that the Risk Committee recommends changes to OCC's Recovery and Orderly Wind-Down Plan "for approval," consistent with language used with respect to policies for which the Board has retained oversight with respect to amendments; and (ii) to replace "examinations" with "audits" in the description of the Risk Committee's oversight of internal or external audits of OCC's financial, collateral, risk model and third party risk management processes, consistent with the use of the term "audit" elsewhere in that description.

TC Charter

The Board established the Technology Committee to assist the Board in overseeing OCC's information technology ("IT") strategy and other company-wide operational capabilities.²⁷ Consistent with the foregoing Committee Charter changes, this proposed rule change would amend the TC Charter by adding the Technology Committee's oversight of management's responsibility to "measure" IT and other operational risks arising from OCC's business activities in light of OCC's role as a systemically important financial market utility to conform with similar language in the Board Charter. The proposed rule change would also amend the TC Charter to reflect the Technology Committee's current practice of overseeing all security risks, not just information security risks. The proposed changes would also include administrative changes by removing unnecessary verbiage or otherwise modify the verbiage in certain provisions to enhance the clarity and concision of the TC Charter.²⁸

(2) Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A of the Exchange Act,²⁹ and the rules thereunder applicable to OCC. Specifically, Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that OCC's rules be

²⁷ See TC Charter, available at <https://www.theocc.com/about/corporate-information/board-charter>.

²⁸ Specifically, OCC is proposing to remove unnecessary words and phrases, or otherwise modify verbiage by replacing "The Committee will" with "The Committee shall," and deleting "is" in the phrase "as is necessary" in the first paragraph of the "Meetings" subsection of the "Membership and Organization" section.

²⁹ 15 U.S.C. 78q-1.

designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions and protect investors and the public interest.³⁰ In turn, Rule 17Ad-22(e)(2) under the Exchange Act³¹ requires that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that, among other things, are clear and transparent, clearly prioritize safety and efficiency, support the public interest and the objectives of owners and participants, specify clear and direct lines of responsibility, and consider the interests of other relevant stakeholders. OCC believes the proposed changes discussed above are consistent with Section 17A(b)(3)(F) of the Exchange Act and Rule 17Ad-22(e)(2) for the reasons discussed below.

Public Director Qualifications

OCC believes the proposed changes to codify OCC's practice of nominating Public Directors who are unaffiliated with DCMs and FCMs are consistent with Section 17A(b)(3)(F) of the Exchange Act.³² Excluding persons affiliated with a DCM or FCM from servicing as Public Directors would serve the same purpose as the current limitations for persons affiliated with national securities exchanges, securities associations, and brokers and dealers—namely, to broaden the mix of viewpoints and business expertise represented on the Board. As the Commission has recognized, diversity within organizations confers many benefits, including to improve decision-

³⁰ 15 U.S.C. 78q-1(b)(3)(F).

³¹ 17 CFR 240.17Ad-22(e)(2).

³² 15 U.S.C. 78q-1(b)(3)(F).

making and innovation.³³ As the governing body responsible for the oversight of OCC's activities, such benefits of diversity would aid the Board in exercising its oversight of OCC's clearance and settlement functions to ensure that they are prompt and accurate and that they are structured to protect investors and promote the public interest.

Amending OCC's governance arrangements to reflect OCC's current practice also provides better clarity and transparency for the general public into OCC's governance arrangements, thereby promoting the public interest. Accordingly, the proposed change is designed, in general, to promote the prompt and accurate clearance and settlement of securities transactions and protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Exchange Act.³⁴

In addition, OCC believes that proposed changes to Article III, Section 6A are consistent with Rule 17Ad-22(e)(2)(i) and (vi).³⁵ The Commission has stated that while there may be several ways to comply with Rule 17Ad-22(e)(2), a covered clearing agency governance arrangements generally should consider "whether the major decisions of the covered clearing agency reflect appropriately the legitimate interests of its direct and indirect participants and other relevant stakeholders."³⁶ Promoting diversity of viewpoints among OCC's Public Directors outside those already represented on the Board through Exchange and Member Directors helps to ensure that the Board's

³³ See SEC, Diversity and Inclusion Strategic Plan: Fiscal Years 2020-2022, available at https://www.sec.gov/files/2020_Diversity_and_Inclusion_Strategic_Plan.pdf.

³⁴ 15 U.S.C. 78q-1(b)(3)(F).

³⁵ 17 CFR 240.17Ad-22(e)(2)(i), (vi).

³⁶ Exchange Act Release No. 93102 (Sept. 22, 2021), 86 FR 53718, 53722 (Sept. 28, 2021) (SR-OCC-2021-007).

decisions consider the interests of OCC's direct and indirect participants. Codifying OCC's current practice into its governance arrangements also help ensure that OCC's governance arrangements are clear and transparent. Accordingly, the proposed changes are reasonably designed to be clear and transparent, support the public interest, and consider the interests of relevant stakeholders, in accordance with Rule 17Ad-22(e)(2)(i) and (vi).³⁷

Delegated Authority

OCC believes the proposed changes to establish a framework for delegated authority are consistent with Section 17A(b)(3)(F) of the Exchange Act.³⁸ OCC's rules are the foundation for OCC's clearance and settlement activities and, per the Exchange Act, must be designed to ensure the prompt and accurate clearance and settlement of securities transactions and protect the public interest. Establishing a clear and transparent framework for the efficient delegation of authority from the Board to Committees and officers to approve changes to those rules would facilitate their maintenance and administration, helping to ensure that such rules are capable of facilitating the prompt and accurate clearance and settlement of securities transactions and removing potential impediments thereto. In addition, other clearing agencies have implemented similar delegated authority frameworks.³⁹ Accordingly, OCC believes the proposed change is

³⁷ Id.

³⁸ 15 U.S.C. 78q-1(b)(3)(F).

³⁹ See Exchange Act Release No. 84458 (Oct. 19, 2018), 83 FR 53925 (Oct. 25, 2018) (File Nos. SR-DTC-2018-09; SR-FICC-2018-010; SR-NSCC-2018-009) (implementing a similar framework for rule filings by delegated authority for the Depository Trust Company, the Fixed Income Clearing Corporation, and the National Securities Clearing Corporation).

designed, in general, to promote the prompt and accurate clearance and settlement of securities transactions and protect the public interest.

In addition, OCC believes the proposed changes to facilitate delegated authority are consistent with Rule 17Ad-22(e)(2).⁴⁰ Delegated authority would reduce the number of matters that must be brought before the full Board and promote the more efficient and expeditious filing and implementation of proposed rule changes. With respect to Committees, authority to review and approve certain initiatives and policies, or direct certain regulatory filings, would reside with the applicable Committee that has oversight authority over the subject matter for which the initiatives, policies and proposed changes are associated. OCC believes standing delegated authority to Committees allows for the more efficient operation of OCC for matters that the Board routinely delegates to Committees on a case-by-case basis. With respect to authority delegated to OCC officers, the proposed change would allow the more efficient and expeditious filing of rule filings by authorizing changes to OCC's Rules or rule-filed policies, as the Board may from time to time delegate such authority to such officers. In addition, amending OCC's governance arrangements to facilitate this delegation framework would promote the clarity and transparency of OCC's governance arrangements and ensure that lines of responsibility remain clear and direct, including by amending OCC's By-Laws to allow the Board from time to time to delegate authority to Committees or officers to modify OCC's Rules, amending the Board Charter Committee Charters to identify the matters delegated to Committees, and amending the Board Charter to articulating the factors the Board would consider in delegating authority to an officer. The specific authority

⁴⁰ 17 CFR 240.17Ad-22(e)(2).

employed for a particular rule change would be made apparent in OCC's regulatory filings, which describe how OCC has completed the required actions under its governance arrangements with respect to the filing.⁴¹ Accordingly, OCC believes that these proposed changes are reasonably designed to provide for governance arrangements that are clear and transparent, prioritize safety and efficiency, and specify clear and direct lines of responsibility, in accordance with Rule 17Ad-22(e)(2).⁴²

Amendment to By-Law Article XI

OCC believes the proposed change to Article XI of OCC's By-Laws is consistent with Section 17A(b)(3)(F) of the Exchange Act.⁴³ Article XI governs amendments to OCC's By-Laws and Rules designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions and, in general, protect investors and the public interest. The proposed amendment will improve the clarity and transparency of the process for amending OCC's By-Laws and Rules by reflecting OCC's current practice of obtaining written stockholder consents for all By-Law amendments that require them, rather than treating an Exchange Director's vote as consent of the stockholder who elected the Exchange Director. OCC believes improving the clarity and transparency of the process for amending its By-Laws and Rules, which are central to OCC's clearance and settlement activities, will, in turn, promote the accurate clearance and settlement of securities transactions and, in general, to protect

⁴¹ See Form 19b-4 at "Procedures of the Self-Regulatory Organization," available at <https://www.sec.gov/files/form19b-4.pdf>.

⁴² Id.

⁴³ 15 U.S.C. 78q-1(b)(3)(F).

investors and the public interest in accordance with Section 17A(b)(3)(F) of the Exchange Act.⁴⁴

In addition, OCC believes the proposed change to Article XI is consistent with Rule 17Ad-22(e)(2).⁴⁵ By conforming the By-Laws to reflect current practice, the proposed change would promote the clarity and transparency of OCC's governance arrangements and ensure that OCC's lines of responsibility, vis-à-vis its stockholders, are clear and direct. Accordingly, OCC believes that these proposed changes are reasonably designed to provide for governance arrangements that are clear and transparent, and specify clear and direct lines of responsibility, in accordance with Rule 17Ad-22(e)(2).⁴⁶

Other Amendments to the Board Charter and Committee Charters

OCC believes the proposed changes to the Board Charter and Committee Charters to apply recommendations made as part of OCC's annual review of those governance arrangements are consistent with Section 17A(b)(3)(F) of the Exchange Act.⁴⁷ The Board Charter and Committee Charters are governance arrangements that are designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, protect investors and the public interest by governing the Board and Committee's oversight of OCC's provision of clearance and settlement services. Updating the charters to reflect the Board's determination as to how the Board, Committees and OCC's management should interact will enhance the effectiveness of the

⁴⁴ Id.

⁴⁵ 17 CFR 240.17Ad-22(e)(2).

⁴⁶ Id.

⁴⁷ 15 U.S.C. 78q-1(b)(3)(F).

Board and Committee’s oversight of OCC’s clearance and settlement services.

Accordingly, OCC believes the proposed changes are designed promote the accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Exchange Act.⁴⁸

In addition, for the reasons described below, OCC believes these proposed amendments increase consistency, accuracy, and transparency across these documents, consistent Rule 17Ad-22(e)(2)⁴⁹:

- Amendments to the Board Charter would better align the Board Charter with the Committee Charters and better distinguish responsibilities of the Board, Committees, and management by clarifying that the Board has delegated to Committees the “oversight” of specific risks, not the “management” of those risks, consistent with Rule 17Ad-22(e)(2), which requires, in part, that OCC’s governance arrangements specify clear and direct lines of responsibility.⁵⁰
- Further amendments to the Board Charter would replace references to “senior management” or “management” in instances where a reference to OCC’s Management Committee would more clearly delineate OCC’s governance structure, consistent with Rule 17Ad-22(e)(2), which requires, in part, that OCC’s governance arrangements specify clear and direct lines of responsibility.⁵¹

⁴⁸ Id.

⁴⁹ 17 CFR 240.17Ad-22(e)(2).

⁵⁰ 17 CFR 240.17Ad-22(e)(2)(i).

⁵¹ Id.

- Further amendments to the Board Charter and RC Charter would codify that one of the factors OCC considers when nominating Directors to the Board and Risk Committee is to obtain input from a broad array of market participants, consistent with Rule 17Ad-22(e)(2), which requires, in part, that OCC’s governance arrangements support the objectives of participants and consider the interests of other relevant stakeholders.⁵²
- Further amendments to the Board Charter and Committee Charters would align with the current Director Code of Conduct by (1) modifying the attendance guidelines to provide that attendance telephonically or by videoconference for meetings scheduled for in-person attendance is discouraged and (2) in the case of the Board Charter, revising the description of the Conflict of Interest Policy, consistent with Rule 17Ad-22(e)(2), which requires, in part, that OCC’s governance arrangements be clear and transparent.⁵³
- Amendments to the AC Charter, CPC Charter, RC Charter, and TC Charter to align with language in the Board Charter would clarify each Committee’s oversight of management’s responsibility to “measure” the risks within the scope of those risks that the Board has charged each Committee to assist the Board in overseeing, consistent with Rule 17Ad-22(e)(2), which requires, in part, that OCC’s governance arrangements be clear and transparent and specify clear and direct lines of responsibility.⁵⁴

⁵² 17 CFR 240.17Ad-22(e)(2)(iii), (vi).

⁵³ 17 CFR 240.17Ad-22(e)(2)(v).

⁵⁴ 17 CFR 240.17Ad-22(e)(2)(i), (v).

- Amendments to the Board Charter and RC Charter would align with other Committee Charters in providing for a minimum of four meetings per year, consistent with Rule 17Ad-22(e)(2), which requires, in part, that OCC's governance arrangements be clear and transparent.⁵⁵
- Amendments to the AC Charter, CPC Charter, and TC Charter would align the cadence of certain reviews by and reports to those committees with each regularly scheduled meeting, regardless of whether regularly scheduled meetings occur within each fiscal quarter, consistent with Rule 17Ad-22(e)(2), which requires, in part, that OCC's governance arrangements be clear and transparent and specify clear and direct lines of responsibility.⁵⁶
- Amendments to the AC Charter to clarify that the Audit Committee recommends such material changes for Board approval would better delineate the responsibilities between the Board and AC Charter, consistent with Rule 17Ad-22(e)(2), which requires, in part, that OCC's governance arrangements specify clear and direct lines of responsibility.⁵⁷
- Amendments to the CPC Charter would include the CPC's oversight of OCC's diversity, equity and inclusion efforts, reflecting OCC's commitment to a diverse and inclusive workplace, consistent with Rule 17Ad-22(e)(2), which requires, in part, that OCC's governance arrangements support the public interest requirements of the Exchange Act and establish that the board of directors and

⁵⁵ 17 CFR 240.17Ad-22(e)(2)(i).

⁵⁶ 17 CFR 240.17Ad-22(e)(2)(i), (v).

⁵⁷ 17 CFR 240.17Ad-22(e)(2)(v).

senior management have appropriate experience and skills to discharge their duties and responsibilities.⁵⁸

- Further amendments to the CPC Charter would remove gendered pronouns to help ensure the accuracy of the CPC Charter regardless of the gender identity of its senior management or directors, consistent with Rule 17Ad-22(e)(2), which requires, in part, that OCC's governance arrangements be clear and transparent.⁵⁹
- Amendments to the GNC Charter would delineate responsibilities between the Board and GNC by providing that in addition to recommending changes to the Committee Charters, as currently provided, the GNC shall also recommend changes to the Board Charter, as appropriate, consistent with Rule 17Ad-22(e)(2), which requires, in part, that OCC's governance arrangements specify clear and direct lines of responsibility.⁶⁰
- Amendments to the TC Charter would reflect that the Technology Committee is responsible for overseeing all security risks, consistent with Rule 17Ad-22(e)(2), which requires, in part, that OCC's governance arrangements specify clear and direct lines of responsibility.⁶¹
- Amendments to the RC Charter would reflect the Board's delegation to the Risk Committee to review and have the authority to approve at least once every twelve months OCC's risk appetites and risk tolerances, consistent with Rule

⁵⁸ 17 CFR 240.17Ad-22(e)(2)(iii), (iv).

⁵⁹ 17 CFR 240.17Ad-22(e)(2)(i).

⁶⁰ 17 CFR 240.17Ad-22(e)(2)(v).

⁶¹ Id.

17Ad-22(e)(2), which requires, in part, that OCC's governance arrangements specify clear and direct lines of responsibility.⁶²

- Other administrative amendments to the Board Charter and Committee Charters would help ensure the continued clarity and transparency of these governing documents and employ consistent language across the Board Charter and Committee Charters, consistent with Rule 17Ad-22(e)(2).⁶³

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

OCC does not believe that the proposed rule change would have any impact or impose any burden on competition.⁶⁴ The proposed modifications to OCC's governance arrangements would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user because they relate to the governance structure of OCC, which affects all users, and do not relate directly to any particular service or particular use of OCC's facilities. Accordingly, OCC does not believe that these proposed changes would have any impact between or among clearing agencies, Clearing Members, or other market participants.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Exchange Act applicable to clearing agencies, and would not 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

⁶² Id.

⁶³ 17 CFR 240.17Ad-22(e)(2)(i).

⁶⁴ 15 U.S.C. 78q-1(b)(3)(I).

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 such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 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-2022-002 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2022-002. 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 <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

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-2022-002 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.⁶⁵

J. Matthew DeLesDernier
Assistant Secretary

⁶⁵ 17 CFR 200.30-3(a)(12).