

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96246; File No. SR-OCC-2022-011)

November 7, 2022

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Options Clearing Corporation Concerning Corrections to Its By-Laws

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 October 24, 2022, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“SEC” or “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 amend OCC’s By-Laws to (i) correct an inadvertent omission and typographical error in a prior rule filing and (ii) correct an erroneous cross-reference and make other conforming changes consistent with a reorganization effected by another prior proposed rule change. Amendments to OCC’s By-Laws and Rules are included in Exhibit 5 of filing SR-OCC-2022-011. Material proposed to be added is marked by underlining, and material proposed to be deleted is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

marked with strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the By-Laws and Rules.³

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

As a self-regulatory organization (“SRO”) that is registered as a covered clearing agency under the Securities Exchange Act of 1934 (“Exchange Act”), as amended,⁴ and a derivatives clearing organization (“DCO”) under the Commodity Exchange Act,⁵ OCC files proposed changes to its rules with the SEC and the Commodity Futures Trading Commission (“CFTC”), including changes to OCC’s By-Laws and Rules.⁶ SEC and CFTC regulations require that SROs maintain clear and transparent governance

³ 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>.

⁴ 15 U.S.C. 78s.

⁵ 7 U.S.C. 7a-1.

⁶ See 17 CFR 240.19b-4 (SRO proposed rule changes filed with the SEC); 17 CFR 40.6 (DCO self-certifications filed with the CFTC).

arrangements.⁷ In order to enhance the clarity and transparency of its By-Laws, OCC is proposing amendments that would (1) correct an inadvertent omission and typographical error introduced by a prior rule filing and (2) correct an erroneous cross-reference and make other conforming changes consistent with a reorganization effected by another prior proposed rule change.

1. Typographical Error Correction

First, OCC has identified an inadvertent omission and typographical error in the text of a prior proposed rule change submitted to the SEC:

- The reference to “Treasurer” in Article IV, Section 2 would be replaced with “Chief Financial Officer,” consistent with the intent of the proposed rule change (SR-OCC-2021-010) that amended Section 11 of that Article to address the appointment and responsibilities of a Chief Financial Officer, rather than a Treasurer.⁸
- OCC would also amend Section 11 of Article IV (Chief Financial Officer), to correct an inadvertent reference to “Chief Compliance Officer,” rather than the Chief Financial Officer, also consistent with the intent of that proposed rule change.⁹

⁷ See 17 CFR 240.17Ad-22(e)(2)(i) (with respect to governance arrangements of covered clearing agencies); 17 CFR 39.24(a)(1)(iii) [sic] (with respect to DCO governance arrangements).

⁸ See Exchange Act Release No. 93436 (Oct. 27, 2021), 86 FR 60499, 60500 (Nov. 2, 2021) (SR-OCC-2021-010).

⁹ Id.

2. Correcting An Erroneous Cross-Reference

OCC has also identified an erroneous cross-reference to provisions that had been relocated by a prior rule change. Specifically, in a proposed rule change filing concerning the Board’s ability to appoint a non-executive Chairman (SR-OCC-2021-007), OCC also revised the provision of the By-Laws concerning the Member Vice Chairman of the Board by relocating the second and third sentence of Article IV, Section 1 (concerning the appointment of the Vice Chairman) to Article IV, Section 7 (concerning the responsibilities of the Vice Chairman).¹⁰ By relocating the second sentence of Section 1, the change orphaned a cross-reference to that sentence in Article XI, Section 1, which concerns those By-Laws that require stockholder approval to amend.

To correct the erroneous cross reference in Article XI, OCC proposes to move current Article IV, Section 7 in its entirety to Article III, which is the Article that concerns the make-up of the Board and the responsibilities of directors. Article IV, Section 7 would be re-titled “Member Vice Chairman of the Board”¹¹ and become Article III, Section 9A, consistent with the establishment of Article III, Section 9 (Chairman of the Board) by File No. SR-OCC-2021-007.¹² Accordingly, the proposed change would consolidate provisions concerning the appointment and responsibilities of the Chairman and Member Vice Chairman of the Board into a single By-Law Article. In turn, OCC

¹⁰ See Exchange Act Release No. 93102 (Sept. 22, 2021), 86 FR 53718, 53720 (Sept. 28, 2021) (SR-OCC-2021-007).

¹¹ As provided by current Article IV, Section 7, the Vice Chairman of the Board is selected from the Member Directors and is referred to as the “Member Vice Chairman.”

¹² Id. at 53719. [sic]

would amend Article XI, Section 1 by deleting the current cross-reference to the second sentence of Article IV, Section 1. No additional cross-reference to the relocated provisions would be necessary because Article XI, Section 1 already applies to Article III in its entirety.

(2) Statutory Basis

OCC believes the proposed rule changes are consistent with Section 17A of the Exchange Act and the rules and regulations thereunder. Section 17A(b)(3)(F)¹³ of the Exchange Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions and protect investors and the public interest. By correcting an inadvertent omission, typographical error, and erroneous cross-references in OCC's By-Laws and Rules, the proposed rule changes facilitate the administration of existing SRO rules designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions and protect investors and the public interest.

In addition, Rule 17Ad-22(e)(2)(i) requires OCC to maintain written policies and procedures reasonably designed to, among other things, provide for governance arrangements that are clear and transparent.¹⁴ By correcting errors and applying conforming changes consistent with certain reorganization of the By-Laws effected by SR-OCC-2021-007, the changes discussed above are intended to support the maintenance of OCC's By-Laws and improve the clarity and transparency of the governance arrangements addressed therein.

¹³ 15 U.S.C. 78q-1(b)(3)(F).

¹⁴ 17 CFR 240.17Ad-22(e)(2)(i).

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

Section 17A(b)(3)(I) of the Exchange Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.¹⁵ As discussed above, the proposed changes would correct an inadvertent omission, typographical error, and erroneous cross-references, and apply conforming edits to the provisions concerning the Member Vice Chairman consistent with a recent reorganization of the provisions concerning the Chairman. These proposed changes are technical in nature and would not impact the rights or obligations of Clearing Members or other participants in a way that would benefit or disadvantage any participant versus another participant. Accordingly, OCC does not believe that the proposed corrections to its By-Laws and Rules have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

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

Pursuant to Section 19(b)(3)(A)(i)¹⁶ of the Act, and Rule 19b-4(f)(1) thereunder,¹⁷ the proposed rule change is filed for immediate effectiveness. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily

¹⁵ 15 U.S.C. 78q-1(b)(3)(I).

¹⁶ 15 U.S.C. 78s(b)(3)(A)(i).

¹⁷ 17 CFR 240.19b-4(f)(1).

suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.¹⁸

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-2022-011 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-2022-011. 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

¹⁸ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

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-2022-011 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.¹⁹

J. Matthew DeLesDernier,
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).