

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97785; File No. SR-OCC-2023-005)

June 21, 2023

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing of Proposed Rule Change by the Options Clearing Corporation Concerning Amendment of its Recovery and Orderly Wind-Down Plan

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 June 7, 2023, the Options Clearing Corporation (“OCC” or “Corporation”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule changes described in Items I, II and III below, which Items have been prepared 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 Recovery and Orderly Wind-Down Plan. The RWD Plan is included as confidential Exhibit 5 to SR-OCC-2023-005. Material proposed to be added is marked by underlining, and material proposed to be deleted is marked by strikethrough text.³ The proposed rule change does not require any changes to the text of OCC’s By-Laws or Rules. All terms with initial capitalization that

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ OCC has also filed an advance notice with the Commission in connection with this proposal. See SR-OCC-2020-806.

are not otherwise defined herein have the same meaning as set forth in the RWD Plan or OCC By-Laws and Rules, as applicable.⁴

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

The RWD Plan was adopted on August 23, 2018⁵ and is maintained by OCC in accordance with the requirements of Rule 17Ad-22(e)(3)(ii).⁶ The Commission approved updates to the RWD Plan on December 17, 2020.⁷ The RWD Plan describes OCC's ability to provide critical services in the event of severe financial or operational stress. The Plan also describes OCC's approach to a wind-down in the unlikely event that it experiences a severe stress that causes it to exhaust its available tools and resources.

⁴ OCC's current 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>.

⁵ Securities Exchange Act Release No. 83918 (Aug. 23, 2018), 83 FR 44091 (Aug. 29, 2018) (SR-OCC-2017-021).

⁶ 17 CFR 240.17Ad-22(e)(3)(ii).

⁷ Securities Exchange Act Release No. 90712 (Dec. 17, 2020), 85 FR 84050 (Dec. 23, 2020) (SR-OCC-2020-013).

OCC posts a Recovery and Orderly Wind-Down Plan Participant Guide on its public website that is available to Clearing Members, Participant Exchanges, and the public.⁸

Proposed Changes

The proposed rule change would amend the RWD Plan by: (i) removing certain supporting information; (ii) incorporating references to certain documents and materials; (iii) implementing updates and amendments to all six chapters of the proposed Plan; and (iv) updating and revising the hypothetical stress scenarios set forth in Appendix A of the proposed RWD Plan. A summary description of the proposed changes to the RWD Plan and the purpose of those changes is provided below.

Removal of Supporting Information

The current version of OCC's RWD Plan includes information related to OCC's operations, management structure, personnel, support functions, banking relationships, vendors and key agreements. This supporting information provides background and context for parties that are reviewing the RWD Plan or utilizing it as part of an actual recovery or wind-down event. This information does not constitute a stated policy, practice, or interpretation of OCC and is, by its nature, prone to change. OCC proposes to remove certain supporting information from the RWD Plan and maintain it in a separate document (the "RWD Plan Supporting Information").⁹ The purpose of this change is to allow OCC to update the supporting information so that it is current, accurate

⁸ See Recovery and Orderly Wind-Down Plan Participant Guide, available at https://www.theocc.com/getmedia/a2fdfeaa-9526-4f16-a4c3-c81b3c905f6a/OCC_PartGuide_Sept_2020.pdf.

⁹ OCC has included a draft of the RWD Plan Supporting Information as confidential Exhibit 3 to SR-OCC-2023-005.

and most helpful to potential users of the RWD Plan. OCC will review and update the RWD Plan Supporting Information twice a year, or more frequently as needed.

Incorporate References to Certain Documents and Materials

The current version of OCC's RWD Plan restates certain information that is publicly available or separately maintained by OCC. Maintaining this information in multiple documents with distinct regulatory requirements creates a risk that the RWD Plan may not contain current information. To eliminate this risk, OCC proposes to incorporate references to certain materials rather than restating the information set forth in those materials in the RWD Plan. OCC proposes to move all of the RWD Plan Appendices to the RWD Plan Supporting Information document, with the exception of the current Appendix B ("Detailed Stress Scenarios"), which will become the new Appendix A. For example, references to current Appendix A and Appendix C of the RWD Plan, which currently include a list of Clearing Members and Members of OCC's Board of Directors as of a specific date, would be replaced by incorporating a link to the sections of OCC's website that maintain current information about OCC's Clearing Members and Board of Directors. Similarly, OCC proposes to replace certain financial information set forth in the RWD Plan, including the excerpts from OCC's audited financial statements provided in Appendix D and references to the amount of OCC's Target Capital Requirement, with a link to the section of OCC's website that displays OCC's Annual Reports, which include OCC's audited financial statements, and a link to OCC's fee schedule, which depicts the Target Capital Requirement. Finally, OCC proposes to delete the excerpted portions of its rule-filed Risk Management Framework Policy from Section 2.9 of the RWD Plan and Appendix I. OCC believes that

incorporating these materials by reference would allow the RWD Plan to better reflect current and accurate information. OCC intends to introduce the RWD Plan Supporting Information document to provide additional background and context on the RWD Plan in order to assist in reviewing or utilizing the Plan. Additionally, the RWD Plan Supporting Information document will allow OCC to more easily maintain and update information about the RWD Plan as quickly as possible.

Updates and Amendments to each Chapter of the RWD Plan

In addition to the changes described above, the proposed rule change includes updates and amendments to each of the six chapters of the proposed RWD Plan that were identified during the annual review of the Plan as required by OCC's internal governance. A summary description of the types of changes proposed to each chapter of the RWD Plan is provided below.

Chapter 1: Executive Summary. Chapter 1 of the RWD Plan contains an executive summary that provides a broader overview of the contents and purpose for the RWD Plan. Chapter 1 includes higher level background information about OCC, its designation as a systemically important financial market utility, relevant regulations, and descriptions of topics covered in more detail later in the RWD Plan, e.g., recovery trigger events, stress scenarios, and wind-down plan trigger events. The proposed changes to Chapter 1 of the Plan include a change reflecting that the Committee on Payment and Settlement Systems was renamed the Committee on Payments and Market Infrastructures,¹⁰ the inclusion of additional sources that OCC considered in updating the

¹⁰ See <https://www.bis.org/cpmi/history.htm>.

RWD Plan, and other conforming changes related to remainder of the RWD Plan. The proposed changes also incorporate a reference to the RWD Plan Supporting Information document described above, along with a brief description of its contents. The proposed changes also replace the language related to expense assumptions during a resolution process from “stay at historical normal levels during the wind-down period” to “generally follow the annual budget with timing and staffing considerations” to better reflect the intended meaning of this assumption by relating it to OCC’s budget. Finally, the proposal would incorporate several grammatical and non-substantive technical amendments to Chapter 1, including, but not limited to, modifying the use and location of certain defined terms for improved readability, using initial capitalization for the term “Clearing Member” consistently throughout the document, deleting unnecessary words, and modifying tense for clarity and readability.

Chapter 2: OCC Overview. Chapter 2 of the RWD Plan provides a detailed description of OCC’s business and provides the necessary context for the discussion and analysis of OCC’s Critical Services and OCC’s resolution process in the RWD Plan. Chapter 2 also provides information about OCC’s regulatory oversight, legal entity and governance structure, the services that OCC provides, and OCC’s financial and operational interconnections. The proposal would update any outdated information or practices set forth in Chapter 2, including the description of OCC’s services and facilities (i.e., OCC’s physical facilities as well as its credit and repurchase agreement liquidity facilities), and would add new references/links for users to access up-to-date information. Specifically, OCC has included a link to OCC’s Annual Report in lieu of including OCC’s Income Statement or other extracts from the Annual Report to ensure that a user

of the RWD Plan would have access to the most recent financial information. The proposal would also incorporate several grammatical and non-substantive technical amendments to Chapter 2, including, but not limited to, modifying the use and location of certain defined terms for improved readability, using initial capitalization for the term “Clearing Member” consistently throughout the document, and deleting references to the dollar size of OCC’s credit and repo facilities that are subject to change. The proposal would move a significant portion of existing section 2.1 “Business Overview” and existing section 2.5 “Management Structure” into the RWD Plan Supporting Information document, which will supplement the RWD Plan by providing additional foundational information about the organization and operation of OCC to users of the RWD Plan. The RWD Plan Supporting Information would be available to users of the RWD Plan and includes background information about the RWD Plan, an overview of OCC’s business, management structure, support functions, banking information, vendors, and key agreements related to supporting recovery and wind-down. This information is more readily subject to change and would be more easily maintained outside of the RWD Plan.

Finally, OCC is removing the section related to the Risk Appetite Framework and Tolerance. The Commission recently approved OCC’s adoption of a Risk Management Framework and Corporate Risk Management Policy.¹¹ These risk-related policies are available to the public and also maintained internally at OCC, where they are available for reference as needed. Accordingly, OCC determined this section is no longer needed in the RWD Plan.

¹¹ Securities Exchange Act Release No. 96566 (Dec. 22, 2022), 87 FR 80207 (Dec. 29, 2022) (SR-OCC-2022-010).

Chapter 3: Critical Services and Critical Support Functions. Chapter 3 of the RWD Plan identifies OCC’s (i) “Critical Services,” which, if interrupted or discontinued, could have a systemic impact on the financial system, and (ii) “Critical Support Functions,” which are functions within OCC that must continue in some capacity in order for OCC to be able to continue providing its Critical Services. As described above, the proposal would eliminate from the description of OCC’s clearing services specific information and data that is subject to change regularly (e.g., volume information, number of Clearing Members, etc.).¹² The RWD Plan Supporting Information document would replace Chapter 3 “Support Functions” of the existing RWD Plan, and provide additional context on the Business Operations, Corporate Risk Management and Security Services Departments at OCC. The proposal would also update OCC’s Critical Support Functions and Department Ratings. The purpose of this change is to conform the RWD Plan to reflect changes to OCC’s internal employee reporting structure and to provide a more granular view into the departments that make up each support function. The proposal would update the information and data set forth in Chapter 3, including the descriptions of OCC’s pricing and valuation services by adding detail on the processes and eliminating specific data subject to frequent change that has a potential to become outdated quickly. The proposal would remove the reference to letter of credit banks from Section 3.5 because letter of credit banks are used for less than 0.1% of margin requirements and could readily be substituted. Finally, the proposal would incorporate several grammatical and non-substantive technical amendments to Chapter 3, including

¹² This information is located at OCC’s public website at <https://www.theocc.com/>.

but not limited to modifying the use and location of certain defined terms for improved readability, using initial capitalization for the term “Clearing Member” consistently throughout the document, updating the names of internal support functions and departments and the related numbers of personnel.

Chapter 4: Recovery Plan. Chapter 4 of the RWD Plan constitutes OCC’s Recovery Plan. The purpose of the Recovery Plan is to provide succinct information about OCC’s Enhanced Risk Management and Recovery Tools, as defined in the RWD Plan, and to demonstrate the ways in which OCC’s risk management tools, Enhanced Risk Management and Recovery Tools, as well as other available resources, can be applied in stylized hypothetical scenarios considering extreme stress events that could be sufficient to threaten OCC’s viability as a going concern. The proposed changes to Chapter 4 include replacing a discussion of how OCC developed its original stress scenarios with a description of OCC’s current approach for developing and refining stress scenarios. The RWD Plan currently describes five enhanced risk management tools that are designed to be deployed in response to heightened or extreme stress scenarios. Under the proposal, OCC would provide additional description of these five tools and also add five additional enhanced risk management tools to the inventory of tools set forth in Chapter 4 of the RWD Plan, including: assessment powers, insurance coverage, OCC’s working capital line of credit, increased clearing fees, and OCC’s ability to extend the settlement window. In addition to the descriptions of the enhanced risk management tools outlined in Chapter 4, Section 4.2.1 of the proposed RWD Plan also introduces the ability for OCC to utilize the Executive Deferred Compensation Plan (“EDCP”) Unvested Balance to pay for a loss to the Clearing Fund pursuant to Rule 1006(e)(i). This is

clarified under the first enhanced risk management tool – OCC’s ability to make a form of “skin in the game” contribution in the event of a loss or deficiency to the Clearing Fund. The use of EDCP Unvested Balance would be deployed after utilizing OCC’s Minimum Corporate Contribution and after use of Liquid Net Assets Funded by Equity (“LNAFBE”) greater than 110% of the Target Capital Requirement. The purpose of these changes is to refine and expand the list of available enhanced risk management tools so that it reflects a more complete list of potential tools that OCC could deploy in response to extreme stress scenarios. A detailed description of each additional Enhanced Risk Management Tool will be reflected in Chapter 4 of the RWD Plan.

In addition, OCC proposes to make several changes to the Recovery Trigger Events currently set forth in the RWD Plan. OCC proposes amendments to various Recovery Trigger Events. OCC is proposing that a credit loss Recovery Trigger would occur upon a 100% depletion of the pre-funded Clearing Fund resources, as opposed to the current standard of a significant depletion of Clearing Fund resources. The proposal would also amend the liquidity loss Recovery Trigger Event to more closely align with OCC’s Liquidity Risk Management Framework by indicating that, instead of a recovery being triggered by a significant liquidity shortfall that requires OCC to utilize a majority of the capacity in its liquid resources with no apparent ability to complete settlement obligations within the required timeframe, a recovery would be triggered by a significant depletion of liquidity resources such that OCC may not be able to address foreseeable liquidity shortfalls to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations. OCC believes that this proposed standard is more accurate, because OCC could exhaust a majority of its liquidity resources without triggering a recovery in

certain circumstances. The proposed revisions would also separate the existing operational loss and disruption Recovery Trigger Event into two separate trigger events relating to either (i) an extended operational disruption to OCC's critical services ("operational disruption Recovery Trigger Event"), or (ii) an event arising from general business losses ("general business loss Recovery Trigger Event"). The current operational loss and disruption Recovery Trigger Event requires an operational loss, extended operational disruption of critical services (e.g. human capital, data center loss, cyber-attack), or decrease in OCC's profitability and cash flow (without a commensurate adjustment of expenses) that results in a breach of the minimum SEC capital requirements with no reasonable expectation that OCC will be able to timely return to satisfying the minimum SEC capital requirements or resume providing critical services. By contrast, the proposed operational disruption Recovery Trigger Event would include an extended operational disruption of critical services with no reasonable expectation that OCC will be able to timely resume providing critical services. The proposed general business loss Recovery Trigger Event would include a decrease in OCC's profitability and cash flow (without a commensurate adjustment of expenses) that results in a breach of the minimum SEC capital requirements with no reasonable expectation that OCC will be able to timely return to satisfying the minimum SEC capital requirements. OCC believes that separating these events is appropriate, because an operational disruption or general business losses could independently trigger a recovery.

OCC proposes to remove the paragraph titled "Expected Impact and Incentives" from Section 4.2.1.2 to maintain consistency with the rest of the RWD Plan, i.e., the

RWD Plan does not include a similar section for the remaining Enhanced Risk Management Tools in the RWD Plan.

The proposal would also update the information and data set forth in Chapter 4, including several changes to conform the RWD Plan to the requirements of OCC Rules. OCC is proposing to clarify certain key risks identified in Section 4.2.2.1 of the RWD Plan. OCC amended this section to conform the language to Rule 1006(h)(B) and to clarify that the risk of Clearing Members terminating their memberships during the cooling-off period may reduce the amount of mandatory assessments that OCC may leverage during the cooling-off period. However, any subsequent increase in the Clearing Fund requirement would be allocated among the remaining Clearing Members. In addition, the proposed RWD Plan would update section 4.2.4.3 of the current Plan to include clarification on timing for when certain Enhanced Risk Management and Recovery Tools must be implemented. The proposed Plan states that this information is clearly defined in Rule 1006(h)(A), which requires that Clearing Members replenish any deficiencies in the Clearing Fund by the first Settlement Time following notification to the Clearing Member of such deficiency or such later time as provided by the Corporation.

Finally, the proposal would incorporate several non-substantive technical amendments to Chapter 4, including, but not limited to, modifying the use and location of certain defined terms for improved readability and using initial capitalization for the term “Clearing Member” consistently throughout the document.

Chapter 5: Wind-Down Plan. Chapter 5 of the proposed RWD Plan constitutes OCC’s wind-down plan. The purpose of the Wind-Down Plan (“WDP”) is to establish

the objectives for a resolution process whereby OCC seeks to continuously deliver its Critical Services, even though its viability as a going concern is threatened and to provide a menu of actions that OCC's Management, Board and Stockholder Exchanges can consider to effectuate the resolution process. OCC's current RWD Plan identifies several WDP Trigger Events, including the inability to comply with financial resource requirements, loss of Clearing Member confidence in OCC's continued viability, a sustained disruption in services and a substantial modification or rescission of an emergency action made by OCC pursuant to Section 806(e)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Rather than rely on a few of many possible events that could trigger a wind-down, the proposed revisions to the RWD Plan would move to a single WDP Trigger Event based on a determination by OCC's Board of Directors that recovery efforts have not been or are unlikely to be successful in returning OCC to viability as a going concern. OCC is proposing this revised approach to avoid triggering a wind-down where OCC's recovery would still be viable, even if OCC were in technical breach of any of the current WDP Trigger Events. OCC believes that the proposed trigger is appropriate because it is broad and flexible enough to cover a variety of scenarios, and it would allow the Board of Directors to account for OCC's Recovery Tools and consider the facts and circumstances that would allow for a successful or unsuccessful recovery.

The proposed revisions to Chapter 5 also include updates to OCC's timing, cost, and employee retention assumptions. These updates reflect the results of a review conducted by OCC's Recovery and Wind-Down Working Group. Consistent with the existing authority set forth in OCC's current Rules, OCC proposes to replace discussion

of the potential for heightened capital requirements with a description of financial reporting requirements that OCC could impose on its Clearing Members to continually verify the financial position of Clearing Members. Under OCC Rule 306B, OCC may require any Clearing Member at any time to make more frequent net capital computations, filed reports, or financial statements for purposes of assessing whether the Clearing Member is meeting the financial requirements for Clearing Membership on an ongoing basis. The proposal would also provide further description of potential wind-down plan transaction structures and update the information and data set forth in Chapter 5. Furthermore, Chapter 5 of the proposed RWD Plan would eliminate reference to the “Material Agreements Policy” and replace it with the “Agreement Review Policy.” This change solely reflects the updated title of the document and does not impact the contents of the policy. Finally, the proposal would incorporate several non-substantive technical amendments to Chapter 5, including, but not limited to, updating targeted reductions in force, modifying the use and location of certain defined terms for improved readability and using initial capitalization for the term “Clearing Member” consistently throughout the document.

Chapter 6: RWD Plan Governance. Chapter 6 details the governance of OCC’s RWD Plan. OCC developed the governance structure for approval of the RWD Plan as well as maintenance of the Plan on an on-going basis. The proposal would make non-substantive edits to the numbering set forth in Chapter 6.

Hypothetical Stress Scenarios

OCC is proposing to move the Detailed Stress Scenarios in Appendix B into Appendix A. The RWD Plan currently identifies four hypothetical stress scenarios and

describes how OCC would respond to each scenario. As described in more detail below, the proposed RWD Plan would generally retain the same hypothetical stress scenarios with several updates and amendments that were identified during OCC's annual review of the Plan. An overview of the updates and amendments to each scenario is included below. To remind potential users of the Plan of OCC's escalation procedures, each scenario has been revised to include a description of the escalation to OCC's business continuity team. The changes to the hypothetical stress scenarios would also incorporate certain grammatical and non-substantive technical amendments, including renumbering of the relevant sections and using initial capitalization for the term "Clearing Member" consistently throughout the document.

Hypothetical Scenario 1. The proposed updates to the first hypothetical scenario would incorporate recent data for several areas, including: (i) the highest and second highest stressed Clearing Member liquidity demands; (ii) the size and cash component of the Clearing Fund; and (iii) the two largest Clearing Fund contributions made by Clearing Members. The proposed revisions to Hypothetical Scenario 1 would also remove references to energy futures and options and eliminate a related note indicating that the products reflected in this scenario may not be reflective of products cleared by OCC. OCC believes that these changes would better reflect its current operations. The proposal would also incorporate several grammatical and technical amendments, including adjusting the timing of several events so that the scenario more accurately reflects OCC's current processes and procedures and aligning the descriptions of the trigger events and enhanced risk management tools with the changes described above.

Hypothetical Scenario 2. The proposed revisions to the second hypothetical scenario would clarify several roles and responsibilities to ensure that the descriptions set forth in this scenario align with OCC's current practices and procedures. These changes would clarify that OCC's Head of Default Management or a delegate makes a recommendation to the OCEO, which authorizes the enactment of alternative settlement procedures and an extension of settlement. The proposal would also note that OCC's Legal Department is responsible for drafting an information memo notifying Clearing Members of alternate settlement procedures. The proposed revisions to the second hypothetical scenario would also revise the assumptions in the scenario to contemplate further communications between OCC and the hypothetical settling bank involved in the scenario and to contemplate the potential stock loan activity of Clearing Members. In addition, the proposed RWD Plan would update the settlement time in hypothetical scenario 1 and 2 of the existing Plan from 9:00 A.M. Central Time to 8:00 A.M. Central Time (9:00 A.M. Eastern Time) to comply with OCC's existing Rule 101 definition of "Settlement Time." Finally, the proposal would incorporate several grammatical and technical amendments, including aligning the descriptions of the trigger events and enhanced risk management tools with the changes described above.

Hypothetical Scenario 3. The proposed amendments to the third scenario would amend the assumptions to clarify that the scenario includes stock loan activity and add assumptions specifying that OCC's ability to communicate with its Clearing Members would not be impacted and that OCC would engage in any necessary regulatory communications and required regulatory reporting. The proposed revisions would also clarify several roles and responsibilities to help ensure that the descriptions set forth in

this scenario align with OCC's current practices and procedures. These changes would include clarifying that OCC's Collateral Services Department would be responsible for identifying and escalating issues with the normal processing of pledged collateral and stock loan activity. The description of Scenario 3 would also be expanded to describe several additional notifications and communications that OCC would expect to make in connection with this scenario (e.g., notices to Clearing Members, Depository and Correspondent Clearing Corporation). Finally, the proposal would also incorporate several grammatical and technical amendments, including aligning the description of the trigger events with the changes described above.

Hypothetical Scenarios 4A and 4B Consolidated Into Scenario 4. Presently, the RWD Plan contemplates a hypothetical Scenario 4A and a separate hypothetical scenario 4B. Each Scenario contemplates general business and operational risks presented to OCC but with different assumptions. Namely, Scenario 4A involves assumptions related to a cyberattack, and Scenario 4B involves assumptions related to a Clearing Member default and decreased OCC clearing volumes. The proposed revisions would streamline this structure by consolidating Scenarios 4A and 4B into a single Scenario 4 and would create greater efficiencies. Like current Scenarios 4A and 4B, Scenario 4 would continue to contemplate default and general business risks to OCC. Specifically, it would merge aspects of the current scenarios to contemplate a Clearing Member default coupled with a cyberattack that occurs while OCC is carrying out its default management processes.

In addition, the proposal would also make certain changes to the assumptions that are currently part of Scenarios 4A and 4B. For example, regarding certain of the assumptions in both Scenario 4A and 4B, the changes to create Scenario 4 would make

the assumptions less specific by deleting unnecessary details about the hypothetical event and the proposal would incorporate several grammatical and technical amendments, including aligning the description of the trigger events with the changes described above. Regarding what is currently Scenario 4A, the proposal would modify the current assumptions to increase the amount of the hypothetical loss and to reference OCC's current Early Warning Threshold and Target Capital Requirements without using specific amounts that are subject to change. Regarding what is currently Scenario 4B, the proposed revisions would modify the assumptions in the scenario to contemplate the default of a mid-sized Clearing Member, assume that the collateral available to OCC from the Clearing Member would be less than the settlement amount that gives rise to the Clearing Member default, and remove current assumptions related to substantial declines in OCC clearing volume and to cost-reducing measures taken by OCC. The changes would also update the accounting values described in the scenario to reflect current requirements and the effects of the Clearing Member default on those values and OCC's capital.

(2) Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A of the Act¹³ and the rules thereunder applicable to OCC. Section 17A(b)(3)(F) of the Act¹⁴ requires, in part, that the rules of a clearing agency be designed, in general, to protect investors and the public interest. The RWD Plan is designed to enhance OCC's ability to address extreme stresses or crises by establishing a framework that OCC could use to

¹³ 15 U.S.C. 78q-1.

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

navigate its Enhanced Risk Management Tools and Recovery Tools, with the aim of maintaining OCC's viability as a going concern. In the event that OCC's recovery efforts are not successful, the RWD Plan would seek to improve the possibility that a resolution of OCC's operations can be conducted in an orderly manner, thereby minimizing the disruption to Clearing Members and market participants and improving the likelihood of minimizing the risk of contagion to the broader financial system. OCC seeks to add a safeguard against a premature wind-down by replacing the current WDP Trigger Events with one new WDP Trigger Event, i.e., a determination by the OCC Board of Directors that recovery efforts have not been, or are unlikely to be, successful in returning OCC to viability as a going concern. OCC believes this proposed change would eliminate the possibility of triggering a wind-down by meeting the technical requirements of an existing WDP Trigger Event, even in cases where recovery may still be possible. The RWD Plan also contains information that changes frequently, e.g., information related to OCC's internal departments, personnel, and operations that is intended to provide background and context for parties that are reviewing the RWD Plan, but that is not essential to the RWD Plan guidelines or technical functioning of the RWD Plan. Accordingly, OCC is proposing to remove this information from the RWD Plan and maintain a separate RWD Plan Supporting Information document outside of the RWD Plan. Lastly, OCC is seeking to streamline its detailed stress scenarios by consolidating Scenarios 4A and 4B into a single Scenario 4. The new proposed Scenario 4 would continue to contemplate default and general business risks to OCC, but offer efficiencies and streamline the process. OCC believes the updates to the RWD Plan would improve the possibility of OCC's ability to effectively address a variety of potential risks, thereby

improving OCC's ability to ultimately maintain market and public confidence during a time of unprecedented stress. In this regard, OCC believes the proposed rule change ultimately would protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.¹⁵

OCC also believes that the proposed rule change is consistent with Exchange Act Rule 17Ad-22(e)(3)(ii), which requires each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to include plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.¹⁶ As stated above, the RWD Plan would describe OCC's plans to recover from, or wind-down its operations as a result of, severe stress brought about by credit losses, liquidity shortfalls, losses from general business risk or other losses.¹⁷ The proposed updates would improve the accuracy of the inventory of Enhanced Risk Management Tools set forth in the RWD Plan. Further, the proposed changes to the RWD Plan would update and improve the information that a resolution authority may reasonably anticipate as necessary for purposes of recovery and orderly wind-down planning.¹⁸ In this regard, OCC believes its proposed rule change is consistent with Rule 17Ad-22(e)(3)(ii).¹⁹

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ 17 CFR 240.17Ad-22(e)(3)(ii).

¹⁷ 17 CFR 240.17Ad-22(e)(3)(ii).

¹⁸ See 81 FR at 70810.

¹⁹ 17 CFR 240.17Ad-22(e)(3)(ii).

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended

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

Section 17A(b)(3)(I) of the Act²⁰ 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 Act. OCC does not believe that the proposed rule change would impact or impose any burden on competition.²¹ The proposed updates to the RWD Plan are the result of OCC's annual review and update process. None of the proposed updates to the RWD Plan would affect Clearing Members' access to OCC's services or impose any new, direct, or indirect burdens on Clearing Members. Accordingly, the proposed rule change would not unfairly inhibit access to OCC's services or disadvantage or favor any particular existing or new user in relationship to another existing or new user.

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

Written comments 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

²⁰ 15 U.S.C. 78q-1(b)(3)(I).

²¹ 15 U.S.C. 78q-1(b)(3)(I).

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.

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-2023-005 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2023-005. 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-Rules48T>.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-OCC-2023-005 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.²²

J. Matthew
DeLesDernier,
Deputy Secretary.

²² 17 CFR 200.30-3(a)(12).