

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101444; File No. SR-OCC-2024-015)

October 25, 2024

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning Modifications to its Governance Documents to Align with Recently Adopted SEC Governance Rules

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 21, 2024, The Options Clearing Corporation (“OCC” or “Corporation”) 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 make modifications to its governance documents, including OCC’s charters, Fitness Standards, and Third-Party Risk Management Framework, as part of an effort to achieve compliance with the recently adopted governance requirements³ by the Commission for clearing agencies registered with the Commission (“registered clearing agencies”) that became effective on February 5, 2024. Registered clearing agencies, like OCC, must comply with most of the governance requirements by December 5, 2024. However, the governance requirement

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 98959 (Dec. 5, 2023), 88 FR 84454 (Dec. 5, 2023) (File No. S7-21-22) (“SEC Adopting Release”), <https://www.govinfo.gov/content/pkg/FR-2023-12-05/pdf/2023-25807.pdf>.

for independent directors, as described in further detail below, has a compliance date of December 5, 2025.

In addition to the proposed modifications that OCC believes are necessary to comply with the recently adopted governance requirements, OCC is also including proposed modifications to its governance documents that reflect changes identified during OCC's annual review process. The proposed changes related to the governance requirements and the proposed changes related to OCC's annual review process are differentiated throughout this filing and described in further detail below. For clarification, OCC's Board of Directors Charter and Corporate Governance Principles ("Board Charter"), Governance and Nominating Committee ("GNC") Charter, Risk Committee Charter, Technology Committee Charter, Compensation and Performance Committee ("CPC") Charter, Regulatory Committee Charter, Audit Committee Charter, Fitness Standards, Third-Party Risk Management Framework, and Article III of OCC's By-Laws are collectively referred to in this proposed rule change as OCC's "governance documents."

The proposed changes to OCC's governance documents are contained in Exhibits 5A through 5J, respectively, to File No. SR-OCC-2024-015. Material proposed to be added 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.⁴

⁴ 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>.

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

OCC is the sole clearing agency registered with the Commission for standardized equity options listed on national securities exchanges. OCC operates under the jurisdiction of both the Commission and the Commodity Futures Trading Commission ("CFTC"). OCC also clears and settles certain stock loan transactions and transactions in futures and options on futures. In connection with its clearance and settlement of transactions in securities, OCC is a "covered clearing agency"⁵ regulated by the Commission. In connection with its clearance and settlement activities for transactions in futures and options on futures, OCC is a derivatives clearing organization ("DCO") regulated by the CFTC. OCC is also designated as a systemically important financial market utility ("SIFMU") by the Financial Stability Oversight Council pursuant to Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act").

⁵ The term "covered clearing agency" is defined in Exchange Act Rule 17Ad-22(a)(5) to mean "a registered clearing agency that provides the services of a central counterparty or central securities depository." 17 CFR 240.17Ad-22(a)(5).

As an SEC registered clearing agency and a CFTC registered DCO, OCC is already subject to regulations that impose requirements on its governance structure. For example, the Exchange Act requires OCC's rules to assure a fair representation of its shareholders and Clearing Members in the selection of its directors and the administration of its affairs.⁶ In addition, SEC rules, among other things, require OCC to have governance arrangements that are clear and transparent and that provide risk management and internal audit personnel with a direct reporting line to, and oversight by, a risk management committee and an independent audit committee of the Board.⁷ In July of 2023, the CFTC also finalized new governance requirements for DCOs.⁸ Those requirements, among other things, require the establishment of one or more market participant risk advisory working groups as a forum to seek risk-based input from a broad array of market participants. OCC previously filed a proposed rule change with the SEC to implement changes to address these requirements.⁹

OCC currently maintains a robust governance structure that is designed to comply with existing requirements of the Commission and CFTC. Recently, the Commission adopted new regulations regarding governance requirements for registered clearing agencies ("SEC Governance Rules") that supplement the existing governance

⁶ 17 U.S.C. 78q-1(b)(3)(C).

⁷ 17 CFR 240.17Ad-(22)(e)(2)(i) and (3)(iv).

⁸ See 88 FR 44675 (July 13, 2023) ("CFTC Adopting Release"), <https://www.govinfo.gov/content/pkg/FR-2023-07-13/pdf/2023-14361.pdf>

⁹ See Securities Exchange Act Release No. 100194 (May 21, 2024), 89 FR 46205 (May 28, 2024) (SR-OCC-2024-005).

requirements applicable to OCC as a registered clearing agency.¹⁰ The SEC Governance Rules require, among other things, that registered clearing agencies:

- (i) Establish requirements that a majority of the members of the board of directors of the registered clearing agency be independent directors, as defined in 17Ad-25(a), and that each registered clearing agency consider all the relevant facts and circumstances to affirmatively determine that a director does not have a material relationship with the registered clearing agency or an affiliate of the registered clearing agency that would preclude services as an independent director.¹¹
- (ii) Establish a nominating committee and a written evaluation process whereby such committee evaluates nominees for service as directors and evaluating the independence of nominees and directors,¹² and require that a majority of the directors on the nominating committee be independent directors, including the chair of the nominating committee.¹³ The fitness standards for service as a director must be specified by the nominating committee, documented in writing and approved by the board of directors.¹⁴ The nominating committee must also document the outcome of the written evaluation process consistent with the fitness standards required in 17Ad-25(c)(3).¹⁵

¹⁰ See SEC Adopting Release, 88 FR 84454.

¹¹ 17 CFR 240.17Ad-25(b)(1),(2).

¹² 17 CFR 240.17Ad-25(c)(1).

¹³ 17 CFR 240.17Ad-25(c)(2).

¹⁴ 17 CFR 240.17Ad-25(c)(3).

¹⁵ 17 CFR 240.17Ad-25(c)(4).

- (iii) Establish a risk management committee or committees of the board to assist the board of directors in overseeing the risk management of the registered clearing agency, and the membership of each risk management committee must be re-evaluated annually and at all times include representatives from the owners and participants of the registered clearing agency.¹⁶ The risk management committee must be able to provide a risk-based, independent, and informed opinion on all matters presented to the committee for consideration in a manner that supports the overall risk management, safety and efficiency of the registered clearing agency.¹⁷
- (iv) Establish composition requirements for committees that have authority to act on behalf of the board of directors, such that the composition of that committee must have at least the same percentage of independent directors as is required for the board of directors.¹⁸
- (v) Maintain policies and procedures to identify and document existing or potential conflicts of interest in the decision-making process of the clearing agency involving directors or senior managers of the registered clearing agency and mitigate or eliminate and document the mitigation or elimination of such conflicts of interest.¹⁹
- (vi) Maintain policies and procedures reasonably designed to require a director to document and inform the registered clearing agency promptly

¹⁶ 17 CFR 240.17Ad-25(d)(1).

¹⁷ 17 CFR 240.17Ad-25(d)(2).

¹⁸ 17 CFR 240.17Ad-25(e).

¹⁹ 17 CFR 240.17Ad-25(g)(1)(2).

of the existence of any relationship or interest that reasonably could affect the independent judgment or decision-making of the director.²⁰

- (vii) Maintain policies and procedures reasonably designed to: (1) require senior management to evaluate and document the risks related to an agreement with a service provider for core services, including under changes to circumstances and potential disruptions, and whether the risks can be managed in a manner consistent with the clearing agency's risk management framework; (2) require senior management to submit to the board of directors for review and approval any agreement that would establish a relationship with a service provider for core services, along with the risk evaluation; (3) require senior management to be responsible for establishing the policies and procedures that govern relationships and manage risks related to such agreements with service providers for core services and require the board of directors to be responsible for reviewing and approving such policies and procedures; and (4) require senior management to perform ongoing monitoring of the relationship, and report to the board of directors for its evaluation of any action taken by senior management to remedy significant deterioration in performance or address changing risks or material issues identified through such monitoring; or if the risks or issues cannot be remedied, require senior management to assess and document weaknesses or deficiencies in the relationship with

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17 CFR 240.17Ad-25(h).

the service provider for submission to the board of directors.²¹

- (viii) Maintain policies and procedures for the board to solicit, consider, and document its consideration of the views of participants and other relevant stakeholders of the registered clearing agency regarding material developments in the registered clearing agency's risk management and operations.²²

OCC already maintains risk and nominating committees of the Board, fitness standards for directors, and written procedures for directors to identify and disclose conflicts of interest. However, to implement a compliant approach with those requirements for which OCC believes changes will be necessary, OCC is proposing to revise its governance documents such that the documents set clear and transparent governance standards and provide a framework for compliance. OCC's proposed changes to its governance documents establish requirements that provide: (i) OCC's Board be comprised of a majority of independent directors; (ii) each Board-level committee that has delegated authority from the Board be comprised of a majority of independent directors; (iii) OCC's existing Risk Committee and GNC align with the related requirements in the SEC Governance Rules regarding the responsibilities and composition of the committees; (iv) OCC's Fitness Standards align with the related requirements in the SEC Governance Rules for directors; and (v) OCC's Board Charter and Third-Party Risk Management Framework incorporate the requirements in the SEC Governance Rules regarding review, approval, and monitoring of agreements with service providers for core services. OCC also plans to revise other internal policies and

²¹ 17 CFR 240.17Ad-25(i)(1)-(4).

²² 17 CFR 240.17Ad-25(j).

procedures to align with the remaining requirements in the SEC Governance Rules that include, among other things, the identification and analysis of directors for independence, and the management of risks from relationships with service providers for core services.²³ OCC believes that the proposed changes will allow OCC to appropriately comply with the SEC Governance Rules by including the proposed provisions in OCC's governance documents.

1. Purpose

The purpose of this proposed rule change by OCC is to modify its governance documents to implement changes that are designed to comply with requirements in the SEC Governance Rules, which are found in 17 CFR 240.17Ad-25 ("Rule 17Ad-25").²⁴ In the Commission's adopting release, the Commission clarifies that it is adopting new rules to improve the governance of registered clearing agencies by reducing the likelihood that conflicts of interest may influence a board of directors or equivalent governing body of a registered clearing agency.²⁵ In addition, the SEC Governance Rules identify certain responsibilities of a clearing agency board, increase transparency into board governance, and, more generally, improve the alignment of incentives among owners and participants of a registered clearing agency.²⁶

In addition to the proposed rule changes necessary to comply with the SEC Governance Rules, OCC proposes a series of rule changes identified during OCC's

²³ OCC has included as confidential Exhibits 3A through 3E to File No SR-OCC-2024-015 the other internal policies and procedures referenced here.

²⁴ 17 CFR 240.17Ad-25.

²⁵ See SEC Adopting Release at 84454.

²⁶ Id.

annual review process. While these proposed changes to OCC's governance documents are described in further detail below, thematically, they consist of the following:

- i. Proposed changes in effort to achieve compliance with the SEC Governance Rules:
 - Revisions to OCC's Board Charter to specify: (i) a majority of OCC's Board be comprised of independent directors (ii) that each Board-level committee established by the Board and that has delegated authority from the Board be comprised of a majority of independent directors, and (iii) the Board's oversight role of senior management as it relates to management of risks from relationships with service providers for core services.
 - Revisions to the charters for OCC's six Board-level committees that have delegated authority from the Board of Directors, including the GNC Charter, Risk Committee Charter, Technology Committee Charter, CPC Charter, Regulatory Committee Charter, and Audit Committee Charter, to specify that each committee be comprised of a majority of directors who are independent.
 - Revisions to OCC's GNC Charter to specify the responsibilities of the GNC, including that: (i) the GNC specify fitness standards for serving as a director that are documented in writing and approved by the Board; (ii) the GNC maintain a written evaluation process to evaluate all nominees for potential service as directors and evaluate the independence of nominees and directors for consistency with regulatory requirements; and (iii) the

outcome of that evaluation process be documented consistent with regulatory requirements.

- Revisions to OCC's Risk Committee Charter to specify that in making their nominations for the Risk Committee, the GNC and the Board will take into consideration the ability of the Risk Committee to provide a risk-based, independent, and informed opinion on all matters presented to the Risk Committee for consideration.
- Revisions to OCC's Fitness Standards to include the consideration of: (i) whether the nominee would help demonstrate that the Board, taken as a whole, has a diversity of skills, knowledge, experience, and perspectives, and (ii) the views of other stakeholders, aside from owners and participants, who may be affected by decisions of OCC's Board.
- Revisions to OCC's Third-Party Risk Management Framework to incorporate the requirements in the SEC Governance Rules related to management of risks from relationships with service providers for core services. This includes requiring senior management to: (i) evaluate and document risks related to an agreement with a service provider for core services; (ii) submit to the Board for review and approval any agreement establishing a relationship with a service provider for core services along with a risk evaluation; and (iii) perform ongoing monitoring of service providers for core services and report to the Board any action taken by senior management to remedy significant deterioration in performance,

address material issues, and assess and document weaknesses or deficiencies that cannot be remedied.

- ii. Proposed changes identified during OCC's annual review process:
- Revisions to OCC's Board Charter to provide specific requirements used to determine what constitutes a Public Director.
 - Revisions to Article III, Section 6A of OCC's By-Laws to incorporate the proposed changes to OCC's definition of a Public Director.
 - Revisions to OCC's Fitness Standards to incorporate the proposed changes to OCC's definition of a Public Director.
 - Revisions to OCC's CPC Charter to expand the description of the role of the CPC as it relates to oversight of the development and administration of OCC's Human Resources programs.
 - Revisions to OCC's Regulatory Charter to incorporate minor grammatical updates.
 - Revisions to OCC's Third-Party Risk Management Framework to: (i) define "Exchange Relationship" as it relates to risks arising from third-party relationships; (ii) update the description of "Information Technology and Security risks" and "Legal and Regulatory risks" to align with current practice; (iii) update the name and abbreviation of OCC's working group to reflect the combination of two pre-existing working groups; and (iv) provide additional clarifying information on how OCC engages and manages vendor relationships.

OCC's Existing Governance Structure

Currently, OCC's Board of Directors is composed of Public Directors,²⁷ Exchange Directors,²⁸ Member Directors,²⁹ and a Management Director.³⁰ OCC's current Board is comprised of up to twenty-one directors total, including nine Member Directors, up to six Public Directors, five Exchange Directors, and one Management Director. In this way, the directors that serve on the Board represent a range of different stakeholders from the markets that OCC serves. OCC's Board already reviews the independence of each director through its Director Questionnaire, which is used to facilitate the analysis of whether a director appropriately can be considered independent, as defined by the Board, and to identify and document any potential conflicts of interest. OCC's current processes require, among other things, an annual attestation of the information included in the Director Questionnaire. OCC also maintains a Code of Conduct for OCC Directors that requires that directors update the necessary documents and information if there are any changes.

OCC also already maintains a Board-level Risk Committee and GNC, as required by the SEC Governance Rules. In addition to the Risk Committee and GNC, OCC's Board oversees four other Board-level committees that are

²⁷ Terms regarding service by Public Directors are set forth in OCC's By-Laws and in OCC's Fitness Standards. See e.g., OCC By-Laws Article III, Section 6A; Fitness Standards at "Additional Criteria for the Public Directors," See supra note 4.

²⁸ Terms regarding service by Exchange Directors are set forth in OCC's By-Laws and in OCC's Fitness Standards. See e.g., OCC By-Laws Article III, Section 6; Fitness Standards at "Additional Criteria for Exchange Directors" Id.

²⁹ Terms regarding service by Member Directors are set forth in OCC's By-Laws and in OCC's Fitness Standards. See e.g., OCC By-Laws Article III, Section 2; Fitness Standards at "Additional Criteria for Member Directors" Id.

³⁰ Terms regarding service by the Management Director are set forth in OCC's By-Laws. For example, the Management Director must be an OCC employee. See e.g., OCC By-Laws Article III, Section 7 Id.

comprised of certain Board directors and that assist the Board in carrying out its supervisory role. The other committees include the Regulatory Committee, the Technology Committee, the Audit Committee, and the CPC. In connection with OCC's existing Board and Board committee structure, OCC maintains charters for the Board and all Board-level committees, and Fitness Standards for Directors, Clearing Members and Others ("Fitness Standards"). The charters, Fitness Standards, and Code of Conduct are all publicly available on OCC's website.³¹

In addition to maintaining a Board-level Risk Committee, OCC also maintains a non-Board-level risk management committee. This non-Board-level risk management committee is a subset of OCC's existing Financial Risk Advisory Council ("FRAC") and is comprised of clearing members and customers of clearing members. As required by the recently adopted CFTC governance rules,³² OCC consults with this non-Board-level risk committee on all matters that could materially affect the risk profile of OCC.³³ As such, OCC believes this also satisfies the SEC Governance Rules requirement for the board of directors to solicit and consider viewpoints of participants and other relevant stakeholders regarding material developments in its risk management and operations.³⁴

Lastly, OCC already maintains a Third-Party Risk Management Framework that is reviewed and approved at least annually by OCC's Risk

³¹ See Board Charters, Board Committee Charters and Other Governance Documents, available at <https://www.theocc.com/company-information/documents-and-archives/board-charters>.

³² See 88 FR 44675 (July 13, 2023) ("CFTC Adopting Release"), <https://www.govinfo.gov/content/pkg/FR-2023-07-13/pdf/2023-14361.pdf>

³³ OCC's FRAC Guiding Principles is included as confidential Exhibit 3F to File No. SR-OCC-2024-015, and provides more information on the responsibilities and composition of the non-Board-level risk management committee.

³⁴ 17 CFR 240.17Ad-25(j).

Committee and Board. OCC’s Third-Party Risk Management Framework outlines OCC’s approach to identify, measure, monitor, and manage risks arising from third-party relationships, consistent with certain requirements in the SEC Governance Rules that require senior management to be responsible for establishing policies and procedures that govern relationships and manage risks related to agreements with service providers for core services, and that require the board of directors to review and approve such policies and procedures.³⁵

Proposed Changes to OCC’s Board Charter

The Mission of the Board

The SEC Governance Rules require the Board to be comprised of a majority of “independent directors” as that term is defined in the SEC Governance Rules.³⁶ To align with this requirement, OCC proposes to modify its Board Charter to clarify that a majority of directors, rather than a substantial portion of directors, be independent directors, as defined by the SEC Governance Rules³⁷ and the judgement of the Board. Specifically, OCC’s proposed changes to the Board Charter would provide that as part of the Board’s mission, the Board fulfills its oversight role by ensuring that at least a majority of the directors on the Board are independent as determined by the Board and in accordance with Securities and Exchange Commission Rule 17Ad-25(b) adopted on December 5, 2023.³⁸ OCC’s proposed changes expand the requirement that all Board-level

³⁵ 17 CFR 240.17Ad-25(i)(3).

³⁶ 17 CFR 240.17Ad-25(a).

³⁷ 17 CFR 240.17Ad-25(b).

³⁸ Id.

committees, not just the Audit Committee, be comprised of independent directors. Specifically, OCC's proposed changes eliminate the reference that only the Audit Committee of the Board be comprised of independent directors and provide that at least a majority of the directors on each Board-level committee be comprised of independent directors.

The SEC Governance Rules also require OCC to have written policies and procedures designed to address certain aspects of risk management in connection with relationships with service providers for core clearing agency services, and require senior management to be responsible for establishing the policies and procedures and the Board to be responsible for reviewing and approving such policies and procedures.³⁹ The SEC Governance Rules also require senior management to perform ongoing monitoring of the relationship with a service provider for core services and report to the Board for its evaluation of any action taken by senior management to remedy significant deterioration in performance or address changing risks or material issues identified through such monitoring.⁴⁰ If the risks or issues cannot be remedied, the SEC Governance Rules require that senior management assess and document weaknesses or deficiencies in the relationship with the service provider for submission to the Board.⁴¹ To align with these requirements, OCC's proposed changes to the Board Charter would provide that as part of the Board's mission, the Board fulfills its oversight role by overseeing service providers that provide core services for OCC, including

³⁹ 17 CFR 240.17Ad-25(i)(2),(3).

⁴⁰ 17 CFR 240.17Ad-25(i)(4).

⁴¹ Id.

reviews of risk assessments for current vendors and approving terms for new vendors that will provide core services for OCC. OCC's proposed changes would also provide that the Board fulfills its oversight role by overseeing senior management's review and approval of an agreement that establishes a relationship with a service provider for core services, and overseeing senior management's risk assessment for such agreements. In addition, OCC's proposed changes provide that the Board review and approve policies and procedures established by senior management that govern relationships and manage risks related to agreements with service providers for core services. Lastly, OCC's proposed changes provide that the Board evaluate any action taken by senior management to remedy significant deterioration in performance or address changing risks or material issues identified through senior management's monitoring of relationships with a service provider for core services, and oversee senior management's assessment and document of weaknesses or deficiencies with the service provider if such risks or issues cannot be remedied.

Board Issues – Size of Board; Composition

The SEC Governance Rules define independent director as “a director of the registered clearing agency who has no material relationship with the registered clearing agency or any affiliate thereof.”⁴² The SEC Governance Rules require that the Committee affirmatively determine and document whether a nominee or director is appropriately categorized as an independent director, as defined in the

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17 CFR 240.17Ad-25(a).

SEC Governance Rules.⁴³ To align with this requirement, OCC proposes to modify its Director Questionnaire to align OCC’s analysis of potential conflicts with the applicable regulatory requirements in the SEC Governance Rules and facilitate the analysis of whether a nominee or director appropriately can be considered independent.

Furthermore, to reflect the definition of independent director as defined by the SEC Governance Rules⁴⁴, OCC’s proposed changes to the Board Charter would also state that it is the policy of the Board that the Board at all times reflect that a majority, rather than a substantial portion, of directors be “independent” as defined by the SEC Governance Rules and the judgment of the Board. OCC’s proposed changes remove the reference that a substantial portion of directors must be independent “of OCC and OCC’s management.” OCC believes these proposed changes to the Board composition section of the Board Charter will satisfy the independent director requirement, as defined in the SEC Governance Rules.

Board Issues – Selection of Exchange Directors

As described in more detail below, the SEC Governance Rules contain several requirements related to the responsibilities of a nominating committee.⁴⁵ Currently, all OCC directors are subject to a standard criterion outlined in OCC’s existing Fitness Standards that is applicable to all directors and used when determining the nomination of a director. The SEC Governance Rules require that the nominating committee must have a written evaluation process whereby the

⁴³ 17 CFR 240.17Ad-25(b)(2).

⁴⁴ 17 CFR 240.17Ad-25(a).

⁴⁵ 17 CFR 240.17Ad-25(c).

nominating committee shall evaluate nominees under consideration for a directorship and evaluate the independence of nominees and directors. OCC's proposed changes to the Board Charter clarify this requirement and the role of the GNC when describing the selection of Exchange Directors. OCC's proposed changes state that as provided in the By-Laws, each Exchange Director shall, after evaluation by the Governance and Nominating Committee, be elected by the Equity Exchange entitled to vote for such Exchange Director at each annual meeting of stockholders.

Committees – Board Committees

As noted above, OCC maintains six Board-level committees including the GNC, the Risk Committee, Technology Committee, CPC, Regulatory Committee and Audit Committee. Subject to the direction of the Board, all six committees are empowered to act on behalf of the Board with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the committee charters. The SEC Governance Rules specify that any Board committee that has the authority to act on behalf of the Board must have at least the same percentage of independent directors as the Board itself as identified in paragraph (b)(1) of Rule 17Ad-25.⁴⁶ To reflect this requirement, OCC's proposed changes to its Board Charter provide that each committee established by the Board must be comprised of a majority of directors who are deemed independent by the Board and in accordance with the SEC Governance Rules.

Committees – Independence for Audit Committee Service

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17 CFR 240.17Ad-25(e).

For clarity and consistency, OCC also proposes to add the word “additional” prior to the word “independence” when describing the independence criteria for the Audit Committee service. This helps to clarify that OCC maintains separate independence requirements for the Audit Committee, which are also consistent with listed company Audit Committee standards⁴⁷ and are in addition to the requirements outlined in the SEC Governance Rules.

Proposed Changes to OCC’s Board Charter and By-Laws Identified During OCC’s Annual Review Process

As part of OCC’s annual review of its Board Charter, OCC is proposing changes to its Board Charter and Article III of the By-Laws to provide specific requirements used to determine whether an individual director meets the definition of a Public Director. As outlined in Article III of OCC’s current By-Laws, OCC’s existing Board of Directors must be composed of nine Member Directors, up to five Exchange directors, no less than five Public Directors, and may include one Management Director.⁴⁸ To account for changes in regulatory requirements, OCC’s proposed changes to the Board Charter provide that OCC’s Board must be comprised of no less than five directors who are not an associated person or employee of (i) an entity that is registered or exempt from registration with the Securities and Exchange Commission or Commodity Futures Trading Commission or (ii) affiliate of such an entity described in (i). OCC proposes to remove reference to the language that the director must not be affiliated with any

⁴⁷ See Nasdaq Listing Rule 5605(c)(2) and Section 303A.06 of NYSE Listed Company Manual.

⁴⁸ See supra note 4, Article III, Section I of the By-Laws.

national securities exchange, national securities association, designated contract market, futures commission merchant, or broker or dealer in securities.

To incorporate these proposed changes in the definition of a Public Director as described in OCC's Board Charter, OCC also proposes to modify Article III, Section 6A of the By-Laws.⁴⁹ OCC's proposed changes to Article III, Section 6A of the By-Laws provide that prior to each annual meeting of stockholders at which one or more Public Directors are to be elected, the GNC shall, for each directorship among the Public Directors to be filled at such annual meeting, nominate one person who is not an associated person or employee of an: (i) entity that is registered or exempt from registration with the Commission or CFTC; or (ii) affiliate of such an entity described in (i) and submit a list of its nominations in writing to the Board of Directors. To remain consistent with the proposed changes in OCC's Board Charter and provide specific requirements for Public Directors, OCC proposes to eliminate reference to the language that the person must not be affiliated with any national securities exchange, national securities association, designated contract market, futures commission merchant, or broker or dealer in securities.

OCC believes these proposed changes to its Board Charter and By-Laws identified during the annual review process provide specific requirements for how OCC determines whether a director is affiliated in the industry and the requirements applicable to a Public Director.

Proposed Changes to OCC's GNC Charter

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Id.

Purpose

The SEC Governance Rules require, among other things, that registered clearing agencies establish a nominating committee and a written evaluation process for evaluating board nominees and the independence of nominees and directors and specify requirements with respect to its composition, director fitness standards, and documentation of the outcome of the written evaluation process.⁵⁰

As noted above, OCC already maintains a GNC, and maintenance of OCC's existing GNC is consistent with the requirement in the SEC Governance Rules that OCC must have a nominating committee. OCC's existing GNC Charter provides that the purpose of the GNC is to assist the Board in overseeing OCC's corporate governance processes, including assessing that OCC's governance arrangements are clear and transparent, 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 interest. To clarify the role of the GNC and more closely align with the language in the SEC Governance Rules requirement that the nominating committee evaluate board nominees, OCC's proposed changes to the GNC Charter provide that the GNC is to assist the Board in overseeing OCC's corporate governance processes, including evaluating candidates for Board service.

Membership and Organization

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17 CFR 240.17Ad-25(c).

The SEC Governance Rules require a majority of directors serving on the nominating committee be independent directors, and the chair of the nominating committee be an independent director.⁵¹ To reflect this requirement, OCC's proposed changes to the GNC Charter provide that at least a majority of the Committee must be comprised of directors who are independent directors, consistent with the Securities and Exchange Commission Rule 17Ad-25(c)(2) and the judgment of the Board. OCC's proposed changes also specify that the Chair must be a Public Director, who is also an independent director as defined in accordance with Securities and Exchange Commission Rule 17Ad-25(c)(2).⁵² OCC believes these proposed changes align with the SEC Governance Rules requirements related to composition requirements for a nominating committee.

Functions and Responsibilities

The SEC Governance Rules also contain several other requirements related to the responsibilities of a nominating committee. These requirements provide that: (i) the nominating committee must have a written evaluation process that includes the evaluation of all nominees, no matter the source of nomination, and an evaluation of all nominees and directors regarding status as independent directors⁵³; and (ii) the nominating committee must document the outcome of its written evaluation processes, including identification of whether each nominee or director meets the definition of independent director, as defined in the SEC

⁵¹ 17 CFR 240.17Ad-25(c)(2).

⁵² Id.

⁵³ 17 CFR 240.17Ad-25(c)(1).

Governance Rules.⁵⁴ To align with these responsibilities, OCC's proposed changes to the GNC Charter provide that the GNC must maintain a written evaluation process, which will be documented in meeting materials and minutes, to evaluate all nominees for potential service as directors and evaluate the independence of nominees and directors for consistency with regulatory requirements. As part of OCC's written evaluation process that will be documented in meeting materials and minutes, the GNC will review a packet of materials that contains background information for all Board candidates as well as any other documentation that describes other relevant information and criteria for Board candidates. Additionally, OCC maintains various written documents that would guide the GNC's evaluation of director candidates (e.g. Fitness Standards, director questionnaire). These documents provide the requirements for director candidates and articulate what the GNC must consider when evaluating prospective Board members. OCC's proposed changes also specify that the outcome of the written evaluation process must be documented consistent with applicable regulatory requirements. OCC's existing GNC Charter provides that the GNC identifies, screens and reviews individuals qualified to be elected or appointed as Member Directors or Public Directors. The nomination of Exchange Directors is separately the responsibility, under the By-Laws, of each OCC stockholder exchange.⁵⁵ To reflect the requirements outlined in the SEC Governance Rules, OCC's proposed changes provide that the GNC must identify, screen, and review individuals qualified to be elected or appointed, as the case

⁵⁴ 17 CFR 240.17Ad-25(c)(4)(iv).

⁵⁵ See supra note 4.

may be, to serve as Directors. Here, OCC's proposed changes eliminate the specific terms "Member Directors" and "Public Directors" and generally use the term "Directors" because the SEC Governance Rules require that the GNC perform the same evaluation process for all nominees for potential service as directors.

An additional requirement of the nominating committee that is outlined in the SEC Governance Rules is that the fitness standards for serving as a director must be specified by the nominating committee, documented in writing, and approved by the Board.⁵⁶ Although OCC already maintains fitness standards for directors, OCC's proposed changes to the GNC Charter state that the GNC must specify fitness standards for serving as a director that are documented in writing and approved by the Board in order to comply with Rule 17Ad-25(c)(3).

The SEC Governance Rules also require that the nominating committee document the outcome of the written evaluation process consistent with the fitness standards such that the process demonstrate that the nominating committee considered the views of other stakeholders who may be affected by the decisions of the registered clearing agency.⁵⁷ To align with this requirement, OCC's proposed changes in the GNC Charter provide that the Committee shall, in its evaluation of nominees for serving as directors, consider the views of other stakeholders who may be affected by the decisions of the Board of Directors, other than owners of the Corporation and Clearing Members.

⁵⁶ 17 CFR 240.17Ad-25(c)(3).

⁵⁷ 17 CFR 240.17Ad-25(c)(4)(iii).

To align with the process of evaluation for determining an independent director as described by the SEC Governance Rules and the requirement for the nominating committee to evaluate the independence of nominees and directors,⁵⁸ OCC's proposed changes provide that the GNC must review and advise the Board with regard to whether directors are independent directors in accordance with Securities and Exchange Commission Rule 17Ad-25(c)(1).

OCC's GNC Charter provides that the GNC advises the Board with respect to committee structure, operations and charters, including recommending to the Board for its approval the appointment of directors to Board committees and assignment of committee Chairs, in each case after consultation with the Chairman. To incorporate the requirement that the membership of each risk management committee be re-evaluated annually as defined by 17Ad-25(d)(1),⁵⁹ OCC's proposed changes to the GNC Charter include the requirement that each calendar year, the GNC must recommend to the Board for its approval the appointment of directors to Board committees and assignment of committee Chairs, in each case after consultation with the Chairman.

Proposed Changes to OCC's Risk Committee Charter

Membership and Organization

The SEC Governance Rules require, among other things, the establishment of a risk management committee of the Board to assist the Board in overseeing the risk management of the clearing agency.⁶⁰ As noted above, OCC

⁵⁸ 17 CFR 240.17Ad-25(c)(1).

⁵⁹ 17 CFR 240.17Ad-25(d)(1).

⁶⁰ 17 CFR 240.17Ad-25(d)(1).

already satisfies this requirement through the maintenance of its Risk Committee of the Board. In the performance of its duties, the SEC Governance Rules require the Risk Committee to be able to provide a risk-based, independent, and informed opinion on all matters presented to the committee for consideration in a manner that supports the overall risk management, safety, and efficiency of the registered clearing agency.⁶¹ To promote clear consistency with these requirements, OCC's proposed changes to the Risk Committee Charter provide that in making their nominations, the GNC and the Board take into consideration the desire to obtain input from a broad array of market participants on risk management issues and the ability of the Committee to provide a risk-based, independent, and informed opinion on all matters presented to it for consideration.

The SEC Governance Rules also require that any Board committee with the authority to act on behalf of the Board must have at least the same percentage of independent directors as the Board itself.⁶² Because the Risk Committee, subject to the direction of the Board, is empowered to act on behalf of the Board, with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the Risk Committee Charter, OCC's proposed changes to the Risk Committee Charter provide that at least a majority of the Committee must be composed of directors who are independent directors, consistent with Securities and Exchange Commission Rule 17Ad-25(e) and the judgment of the Board.

Functions and Responsibilities

⁶¹ 17 CFR 240.17Ad-25(d)(2).

⁶² 17 CFR 240.17Ad-25(e).

The SEC Governance Rules require, among other things, that a clearing agency address the management of risks from relationships with service providers for core services, as defined by the SEC Governance Rules.⁶³ These requirements include that each registered clearing agency must establish, implement, maintain, and enforce written policies and procedures reasonably designed to require senior management to evaluate and document the risks related to an agreement with a service provider for core services.⁶⁴ OCC's existing Risk Committee Charter provides that the Committee shall receive a quarterly report from management that provides information on the effectiveness of OCC's management of third-party risks, including key linked and vendor relationships. To incorporate the SEC Governance Rules requirements that senior management must evaluate and document the risks related to an agreement with a service provider for core services, OCC's proposed changes to the Risk Committee Charter provide that the Committee shall also provide risk assessments to the Board for any service providers providing core services to OCC, consistent with the SEC Governance Rules.⁶⁵

Proposed Changes to OCC's Technology Committee Charter

Membership and Organization

The SEC Governance Rules require that any Board committee with the authority to act on behalf of the Board must have at least the same percentage of

⁶³ 17 CFR 240.17Ad-25(i).

⁶⁴ 17 CFR 240.17Ad-25(i)(1).

⁶⁵ Id.

independent directors as the Board itself.⁶⁶ Because the Technology Committee, subject to the direction of the Board, is empowered to act on behalf of the Board, with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the Technology Committee Charter, OCC's proposed changes to the Technology Committee Charter provide that at least a majority of the Committee must be composed of directors who are independent directors, consistent with the Securities and Exchange Commission Rule 17Ad-25(e) and the judgment of the Board.

Proposed Changes to OCC's CPC Charter

Membership and Organization

The SEC Governance Rules require that any Board committee with the authority to act on behalf of the Board must have at least the same percentage of independent directors as the Board itself.⁶⁷ Because the CPC, subject to the direction of the Board, is empowered to act on behalf of the Board with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the CPC Charter, OCC's proposed changes to the CPC Charter provide that at least a majority of the Committee must be composed of directors who are independent directors, consistent with Securities and Exchange Commission Rule 17Ad-25(e) and the judgment of the Board.

Proposed Changes to OCC's CPC Charter Identified During OCC's Annual Review Process

⁶⁶ 17 CFR 240.17Ad-25(e).

⁶⁷ Id.

As part of OCC's annual review of the CPC Charter, OCC also proposes to make updates to the CPC Charter to expand the description of the role of the CPC as it relates to oversight of the development and administration of OCC's Human Resources programs. OCC's proposed changes provide that the CPC must oversee the development and administration of OCC's Human Resources programs and policies, including talent acquisition, compensation performance management, diversity, equity, and inclusion programs, training and development, benefits, and succession planning for critical roles. The purpose of these proposed changes to the CPC Charter is to more closely align with OCC's existing Human Resources programs and policies.

Proposed Changes to OCC's Regulatory Committee Charter

Membership and Organization

The SEC Governance Rules require that any Board committee with the authority to act on behalf of the Board must have at least the same percentage of independent directors as the Board itself.⁶⁸ Because the Regulatory Committee, subject to the direction of the Board, is empowered to act on behalf of the Board, with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the Regulatory Committee Charter, OCC's proposed changes to the Regulatory Charter provide that at least a majority of the Committee must be composed of directors who are independent directors, consistent with Securities and Exchange Commission Rule 17Ad-25(e) and the judgment of the Board.

⁶⁸ 17 CFR 240.17Ad-25(e).

*Proposed Changes to OCC's Regulatory Committee Charter Identified
During OCC's Annual Review Process*

As part of OCC's annual review process, OCC also proposes to make one minor grammatical update to the Regulatory Committee Charter by replacing the word "in" with the word "is" where needed in a sentence under section II subpart B of the document.

Proposed Changes to OCC's Audit Committee Charter

Membership and Organization

The SEC Governance Rules require that any Board committee with the authority to act on behalf of the Board must have at least the same percentage of independent directors as the Board itself.⁶⁹ Because the Audit Committee, subject to the direction of the Board, is empowered to act on behalf of the Board, with respect to any matter necessary or appropriate to the accomplishment of the purpose and responsibilities set forth in the Audit Committee Charter, OCC's proposed changes to the Audit Committee Charter provide that at least a majority of the Committee must be composed of directors who are independent directors, consistent with Securities and Exchange Commission Rule 17Ad-25(e) and the judgment of the Board.

Proposed Changes to OCC's Fitness Standards

Criteria Applicable to all Directors

As described above, OCC already maintains Fitness Standards for directors. In addition to the requirement that the GNC specify the Fitness

⁶⁹ Id.

Standards and that the Fitness Standards be approved by the Board, the SEC Governance Rules also require that the GNC's written evaluation process in regards to the Fitness Standards consider: (i) the nominee's expertise, availability, and integrity, and demonstrate that the Board, taken as a whole, has a diversity of skills, knowledge experience and perspectives; (ii) the views of other stakeholders who may be affected by OCC's decisions; and (iii) whether each nominee or director would meet the definition of independent director in the SEC Governance Rules and whether each nominee or director has a known material relationship with OCC or other specified persons.⁷⁰ To align with these requirements more closely, OCC's proposed changes to the Fitness Standards provide that in considering nominees for election or appointment to the Board, the GNC must consider whether the individual would help demonstrate that the Board, taken as a whole, has a diversity of skills, knowledge, experience, and perspectives and whether the individual understands and is able to consider the general position and views of other stakeholders who may be affected by the decisions of the Board of Directors, other than the owners of OCC and Clearing Members.

Proposed Changes to OCC's Fitness Standards Identified During OCC's Annual Review Process

To incorporate the proposed changes identified during OCC's annual review process as it relates to the description of a Public Director, OCC also proposes changes to the criteria for Public Directors as outlined in the Fitness Standards. To align with the proposed changes in OCC's Board Charter and By-

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17 CFR 240.17Ad-25(c)(4)(i),(iii), (iv).

Laws, OCC's proposed changes to the Fitness Standards remove language that states the director must not have an affiliation with any national securities exchange, national securities association, designated contract market, futures commission merchant, or broker-dealer in securities, and replaces that with the additional criterion that the director must not be an associated person or employee of an: (i) entity that is registered or exempt from registration with the Securities and Exchange Commission or Commodity Futures Trading Commission; or (ii) affiliate of such an entity described in (i). OCC's proposed changes also provide that for the avoidance of doubt, this criterion will not preclude a person from service as a Public Director solely based on some other relationship with an entity described in (i) or (ii) above that does not involve being an associated person or employee of the entity, such as might be the case, depending on the circumstances, in connection with serving as a director. OCC believes these proposed changes more closely align with the requirements under the SEC Governance Rules.

Proposed Changes to OCC's Third-Party Risk Management Framework

The SEC Governance Rules require OCC to have written policies and procedures designed to address certain aspects of risk management in connection with relationships with service providers for core clearing agency services and require senior management to be responsible for establishing and the Board to be responsible for reviewing and approving such policies and procedures.⁷¹ More specifically, the SEC Governance Rules require, among other things, that senior

⁷¹ 17 CFR 240.17Ad-25(i).

management: (i) evaluate and document risks related to an agreement with a service provider for core services, as defined by the SEC Governance Rules; (ii) submit to the Board for review and approval any agreement establishing a relationship with a service provider for core services along with a risk evaluation; (iii) be responsible for establishing the policies and procedures that govern relationships and manage risks related to such agreements with service providers for cores service and require the Board to be responsible for review and approving such policies and procedures; and (iv) perform ongoing monitoring of service providers for core services and to report to the Board any action taken by senior management to remedy significant deterioration in performance, to address material issues, or to assess and document deficiencies that cannot be remedied.⁷²

OCC's existing Third-Party Risk Management Framework already meets certain requirements in the SEC Governance Rules.⁷³ OCC's Third-Party Risk Management Framework outlines OCC's approach to identify, measure, monitor, and manage risks arising from third-party relationships including, but not limited to, those relationships with Clearing Members, Clearing Banks, custodians, liquidity providers, financial institutions, financial market utilities, exchanges, and vendors. In addition, OCC's Third-Party Risk Management Framework is reviewed and approved by OCC's Risk Committee and Board pursuant to OCC's internal policies and procedures.⁷⁴

⁷² 17 CFR 240.17Ad-25(i)(1)-(4).

⁷³ 17 CFR 240.17Ad-25(i)(3).

⁷⁴ OCC has included its Policy Governance Policy, which requires Board review and approval of the Third-Party Risk Management Framework, as confidential Exhibit 3G to File No SR-OCC-2024-015.

To incorporate the remaining requirements of the SEC Governance Rules regarding review, approval, and monitoring of agreements with service providers for core services, OCC proposes several updates to section III of the Third-Party Risk Management Framework.⁷⁵ First, OCC’s proposed changes revise the header in section III to include the words “Third-Party” before “Relationship Lifecycle” to provide further clarity and remain consistent with other headers throughout the document.

In addition, OCC’s proposed changes to the Third-Party Risk Management Framework provide that certain third-parties may constitute service providers for core services and are subject to enhanced lifecycle management by OCC’s management and Board. OCC’s proposed changes specify that this enhanced management applies at the initial on-boarding stage and on an ongoing basis. Consistent with the requirements in the SEC Governance Rules,⁷⁶ OCC’s proposed changes provide that during the on-boarding stage and prior to entering into an agreement with a service provider for core services, OCC’s Management Committee will evaluate and document the risks related to the agreement, including under changes to circumstances and potential disruptions, and assess whether the risks can be managed in a manner consistent with the Third-Party Risk Management Framework (the “Risk Analysis”). OCC’s proposed changes also clarify that prior to entering agreements establishing a relationship with a service provider for core services, OCC’s Management Committee will submit

⁷⁵ 17 CFR 240.17Ad-25(i).

⁷⁶ 17 CFR 240.17Ad-25(i)(1).

the agreement, as well as its Risk Analysis, to the Board for review and approval, in compliance with the requirements in the SEC Governance Rules.⁷⁷

Furthermore, OCC's proposed changes state that service providers for core services will be monitored on an ongoing basis. OCC's proposed changes provide that OCC's Management Committee evaluates performance of service providers for core services and either: (i) remedies significant deterioration in performance of the service provider for core services; (ii) addresses changing risks or material issues with the service provider for core services identified through such monitoring; or (iii) if such risks or material issues cannot be remedied, assesses and documents weaknesses or deficiencies with the service provider for core services. In addition, OCC's proposed changes provide that OCC's Management Committee will report to the Board for its evaluation any action taken by the Management Committee to remedy significant deterioration in performance of the service provider for core services or address changing risks or material issues with the service provider for core services. OCC's proposed changes will clarify that if the risks or issues with the service provider for core services cannot be remedied, OCC's Management Committee will assess and document the weaknesses and deficiencies and submit to the Board the documented weaknesses or deficiencies in the relationship with the service provider for core services.

OCC's existing Third-Party Risk Management Framework states that risks identified throughout the relationship lifecycle are reported and escalated through associated working groups. OCC's proposed changes provide that each working

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17 CFR 240.17Ad-25(i)(2).

group has a chair and designated Management Committee member who are responsible for identifying the matters to be escalated to the Management Committee, “in accordance with this Framework.” By including the reference “in accordance with this Framework,” OCC believes this language aligns more closely with the requirements in the SEC Governance Rules.⁷⁸

To align with the defined terms in the SEC Governance Rules,⁷⁹ OCC’s proposed changes to the Third-Party Risk Management Framework include the definition of “Service Provider for Core Services.” OCC’s proposed changes define service provider for core services as any person that, through a written services provider agreement for services provided to or on behalf of OCC, on an ongoing basis, directly supports the delivery of clearance or settlement functionality or any other purposes material to the business of OCC. OCC believes these proposed changes to the Third-Party Risk Management Framework satisfy the requirements outlined in the SEC Governance Rules.⁸⁰

*Proposed Changes to OCC’s Third Party-Risk Management Framework
Identified During OCC’s Annual Review Process*

OCC also proposes to incorporate additional edits to the Third-Party Risk Management Framework, as outlined below, to reflect the proposed changes determined through OCC’s annual review process.

Under section I, Executive Summary, OCC proposes to expand the description of risks arising from “Exchanges” to risks arising from “Exchange

⁷⁸ 17 CFR 240.17Ad-25(i)(1).

⁷⁹ 17 CFR 240.17Ad-25(a).

⁸⁰ 17 CFR 240.17Ad-25(i).

Relationships.” This proposed change, which is also reflected in section IV, Third-Party Relationship Management, and throughout the remainder of the document, encompasses risks arising from third-party relationships including options exchanges, futures markets, OTC trade sources or loan markets. OCC believes this proposed change more clearly describes the current risk management activities related to third-party relationships including exchanges and those relationships that are not registered exchanges. OCC’s proposed changes also relocate the definition of Exchange Relationships from footnote 2 to section V, Definitions, to promote clarity and consistency throughout the document.

Under section II, Risk Identification, OCC proposes to expand the description of (i) Information Technology and Security risks and (ii) Legal and Regulatory risks. For Information Technology and Security risks, the current description acknowledges that risks arise when third-parties are unable to safeguard OCC data or maintain capabilities to support OCC’s operations. While the current description is accurate, it does not encompass the full scope of the current third-parties’ obligations required by OCC. OCC proposes to include that Information Technology and Security risks also arise when third- parties are unable to safeguard OCC’s systems, in addition to OCC data. OCC also proposes to incorporate the language “in accordance with OCC’s service standards” into the description to clearly outline the enforcement of responsibilities. OCC believes this change will better define Information Technology and Security risks from relationships with third-parties related to OCC. For Legal and Regulatory risks, OCC’s proposed changes provide that Legal and Regulatory risks arise

when a third-party fails to fulfill its obligations to OCC or when OCC fails to fulfill its obligations to a third-party. OCC's proposed changes provide that Legal and Regulatory risks also arise when a third-party fails to comply with regulatory standards and protocols agreed to with OCC. OCC believes these proposed changes more clearly define Legal and Regulatory risks that arise from relationships with third-parties. OCC also proposes to make minor, non-substantive changes to section II, such as decapitalizing the words "clearing fund" when needed.

Under section III, Relationship Lifecycle, OCC proposes to revise specific language related to off-boarding of third-parties. The off-boarding section currently provides that OCC finalizes its third-party relationship lifecycle by completing "any operational tasks necessary to off-board the relationship." OCC proposes to include the language "in compliance with agreement terms" to clarify current risk management expectations and responsibilities relating to third-party off-boarding. This revision would be consistent with OCC's current operations and off-boarding processes. OCC also proposes to make several minor, non-substantive changes to this section, including changing language from "determination to terminate" to "termination of," and replacing the word "relationship" with "engagement" when describing third-party arrangements with OCC to promote additional clarity. In addition, to provide additional clarity, OCC proposes to replace the word "defined" with "specified" when explaining the decision-making authority, functions and responsibilities in the working group procedure.

Under section IV, Third-Party Relationship Management, OCC proposes to revise the header from “Exchanges” to “Exchange Relationships” to reflect the proposed changes in section I. OCC’s proposed changes update the On-Boarding section under “Exchange Relationships” by revising the distribution methods of the summary activities of exchange relationship. The current description states that summaries of due diligence and on-boarding activities are presented to the Board of Directors for approval to launch. OCC proposes to clarify the reporting requirements by specifying where they should be reported. OCC’s proposed changes would direct the reporting of due diligence and on-boarding activities to the Management Committee. Further, the proposed revisions would direct summaries of legal documents and requirements to the Board of Directors. These proposed revisions would update and clarify the description of OCC’s current approach to on-boarding third-parties without impacting current OCC operations. Also under section IV, Third-Party Relationship Management, OCC proposes to make changes to the Ongoing Monitoring sub-section by removing reference of legal risk related to Exchange Relationships, and including the language “and escalate identified legal risks to OCC’s Legal Department.” This proposed change clarifies the responsibilities of OCC’s business operations and TPRM teams. Legal risks related to Exchange Relationships are monitored by OCC legal, but if legal risks are identified by business operations or TPRM during the ongoing monitoring process, these legal risks should be escalated. OCC believes the proposed change will better describe current risk management activities related to ongoing monitoring of third-party relationships with exchanges. OCC also

proposes to update language in the Off-Boarding sub-section by eliminating the specific language that states “such as limiting connectivity with the Exchange” when referencing the immediate actions OCC can take upon the termination of an Exchange Relationship. OCC proposes to remove this language to provide further clarification that limiting connectivity with an Exchange is not specific only to off-boarding situations; OCC’s action of limiting connectivity with an Exchange can occur in other situations as well. OCC believes the elimination of this language better aligns with OCC’s overall responsibility related to off-boarding and provides for greater flexibility related to OCC’s immediate actions. Finally, OCC proposes several non-substantive, grammatical changes to the Ongoing Monitoring sub-section such as replacing the word “communicate” with “communication of” and “seek” with “solicitation of.”

Also under section IV, Third-Party Relationship Management, OCC proposes to make changes to the Vendors sub-section of the document. OCC’s proposed changes provide that prior to commencing on-boarding of a new technology vendor, implementing new capabilities, or services to existing technology, Information Technology reviews the request to identify solutions and analyze requirements to verify that they are in line with enterprise strategic requirements. OCC believes these proposed changes more clearly assign ownership and accountability for expectations around risk management for new vendors throughout OCC. In addition, in the On-Boarding section under Vendors, OCC’s proposed changes state that an agreement that addresses control and business requirements is then negotiated with the vendor and executed by

authorized signatories designated through the process outlined in the Legal Services Policy. OCC's proposed changes revise the language that "authorized signatories" rather than an "OCC officer" will be responsible for executing agreements that address control and business requirements. OCC believes the revised text more closely aligns with current practices. Furthermore, this revision would encourage OCC's longstanding practices to update internal policies, directing staff towards correct procedures and personnel requirements.

OCC's Third-Party Risk Management Framework also states that vendor relationship managers ("VRMs") and Third-Party Risk Management ("TPRM") monitor vendors to assess whether they are delivering services as required by applicable agreements. To align with current OCC business practice and promote clear accountability, OCC's proposed changes eliminate reference to "TPRM" because it is the VRMs who are responsible for monitoring vendors, while TPRM gathers information and escalates if necessary.

Under section V, Definitions, OCC's proposed changes in the Watch Level section include the addition of "risk management" in its list of deteriorations which signal a risk response. OCC believes this revision would better describe the current risk management methods related to watch level monitoring and would not substantively alter existing processes.

Lastly, OCC's proposed changes to the Third-Party Risk Management Framework reflect the name change as a result of the combination of two working groups. OCC's Exchange Working Group and Vendor Risk Working Group will be combined to form the Exchange and Vendor Working Group, therefore OCC's

proposed changes throughout the Third-Party Risk Management Framework reflect the merger of these two groups. OCC's proposed changes also reflect the change in the acronym of the new combined working group's name.

2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Exchange Act.⁸¹ Section 17A(b)(3)(F) of the Act⁸² requires, among other things, that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions, safeguard securities and funds in its custody or control or for which it is responsible, and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.⁸³ OCC believes that the proposed rule changes are consistent with these requirements because the proposed changes are designed to, among other things, modify OCC's governance documents such that: (i) OCC's Board and Board-level committees are composed of independent directors, as defined by the SEC Governance Rules, (ii) OCC's policies and procedures identify, mitigate or eliminate and document the identification, mitigation, or elimination of conflicts of interest, and (iii) OCC's policies and procedures address certain aspects of risk management in connection with relationships with service providers for core clearing agency services.

OCC believes the proposed changes to incorporate the independent director requirement help to promote the ability of the Board to perform its oversight of management function, support a plurality of viewpoints voiced at the Board level, ensure

⁸¹ 15 U.S.C. 78q-1.

⁸² 15 U.S.C. 78q-1(b)(3)(F).

⁸³ Id.

a balance between stakeholders with divergent views, and reduce the likelihood that conflicts of interest may influence the Board. OCC believes that establishing requirements that the Board be comprised of a majority of directors who do not have a material relationship with the registered clearing agency or affiliate thereof helps to promote the integrity of OCC's risk management function, and therefore helps to promote prompt and accurate clearance and settlement of securities transactions and safeguard the securities and funds which are in the custody or control of OCC or for which OCC is responsible, consistent with Section 17A(b)(3)(F).

OCC believes the proposed changes regarding the Board's oversight role of senior management as it relates to management of risks from relationships with service providers for core services also help to promote the prompt and accurate clearance and settlement of securities transactions and safeguard securities and funds in its custody or control or for which OCC is responsible, consistent with Section 17A(b)(3)(F). The potential failure of a service provider for core services to perform its obligations could pose a significant operational risk to OCC and impact the ability for OCC to facilitate prompt and accurate clearance and settlement. Therefore, by requiring that senior management establish policies and procedures that govern relationships with service providers for core services, manage risks related to those relationships, and perform ongoing monitoring of those relationships, OCC believes these proposed changes help to promote the prompt and accurate clearance and settlement of securities transactions and safeguard securities and funds which are in the custody or control of OCC or for which OCC is responsible, consistent with Section 17A(b)(3)(F).

OCC's proposed changes to its governance documents establish policies and procedures to identify, mitigate or eliminate and document the identification, mitigation, or elimination of conflicts of interest in the decision-making process involving directors or senior managers of OCC. OCC believes these proposed changes assist in promoting the integrity of OCC's governance arrangements by helping to ensure that potential conflicts of interests are identified when they arise, and that such conflicts are subject to a transparent and uniform process of review, mitigation or elimination and documentation. By incorporating the proposed changes intended to address conflicts of interest related to directors and senior managers, OCC believes this will help to reduce conflicts that could undermine the decision-making process or interfere with fair representation and equitable treatment of clearing members or market participants. Therefore, OCC believes the proposed changes help to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F).

Finally, OCC also believes the proposed changes are consistent with Rule 17Ad-22(e)(2). Rule 17Ad-22(e)(2) requires OCC to, among other things, provide for governance arrangements that are clear and transparent, establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities, and specify clear and direct lines of responsibility.⁸⁴ Modifying OCC's governance documents through the proposed changes described in Item III above would be consistent with these requirements because the changes would document in a clear, direct, and transparent way the independent director composition of

⁸⁴ 17 CFR 240.17Ad-22(e)(2)(i),(iv),(v).

the Board and Board-level committees, the responsibilities of the Board and Board-level committees as it relates to management of conflicts of interest, Board oversight, and management of risks for service providers for core services. In addition, OCC's proposed changes clearly specify the Fitness Standards for serving as a director and the criteria applicable to all directors, which includes the consideration of whether the director nominee would help demonstrate that the Board, taken as a whole, has a diversity of skills, knowledge, experience and perspectives consistent with Rule 17Ad-22(e)(2)(iv).

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

Section 17A(b)(3)(I) of the Act⁸⁵ 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 changes to modify OCC's governance documents would impact or impose any burden on competition. The proposed changes would promote OCC's compliance with the SEC Governance Rules that OCC must comply with by December 5, 2024 and December 5, 2025. The proposed changes to OCC's governance documents are designed to clearly articulate the newly established requirements of the SEC Governance Rules including, but not limited to, the Board and committee composition, independent directors, management of conflicts of interest, board oversight, and management of risks from relationships with service providers for core services. The proposed changes to OCC's governance documents also aim to, among other things, increase transparency into board governance and improve the alignment of incentives among owners and participants of OCC by ensuring that a majority of Board members and Board-level committee members be independent

⁸⁵ 15 U.S.C. 78q-1(b)(3)(I).

directors, as defined by the SEC Governance Rules, and that functions and responsibilities of the Board and Board-level committees are clearly outlined. In addition, the proposed changes to OCC's governance documents help to reduce the likelihood that conflicts of interest may influence the Board. These changes to OCC's governance documents would apply to all Equity Exchanges and Clearing Members equally and would not disadvantage or favor any particular user in relation to another user. Therefore, OCC believes that the proposed changes would not 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 were not and are not intended to be solicited with respect to the proposed 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 selfregulatory 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 (<https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-OCC-2024-015 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-2024-015. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3

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>.

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-2024-015 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸⁶

J. Matthew DeLesDernier,
Deputy Secretary.

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17 CFR 200.30-3(a)(12).