

February 29, 2024

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Concerning the Option Clearing Corporation's Interpretative Guidance on Contract Adjustments for Cash Dividends and Distributions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 20, 2024, The Options Clearing Corporation ("OCC" or "Corporation") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i)³ of the Act and Rule 19b-4(f)(1)⁴ thereunder, such that the proposed rule change was immediately effective upon filing with the Commission. 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 re-issue interpretative guidance relating to the adjustment of stock options for cash dividends and distributions on underlying securities with certain amendments, including (1) to reflect previously approved changes in the process for making such adjustment determinations; and (2) to address OCC's general approach to certain additional scenarios. Amendments to the interpretative guidance, are

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

included in Exhibit 5 of File No. SR-OCC-2024-003. 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 By-Laws and Rules.⁵

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 issuer of and sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission. In accordance with OCC's By-Laws, adjustments may be made to some of the standardized terms of outstanding options upon the occurrence of certain events related to the underlying security, such as a stock dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, reclassification in respect of an underlying security, or a merger, consolidation, dissolution or liquidation of the issuer of the underlying security.⁶ The determination whether to adjust outstanding options in

⁵ OCC's By-Laws and Rules can be found on OCC's public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

⁶ Adjustments for listed options are discussed at length in the Characteristics and Risks of Standardized Options ("Options Disclosure Document" or "ODD"), which broker-dealers are required to provide to a customer prior to accepting an order to purchase or sell a listed option. See 17 CFR 240.9b-1. The Options Disclosure Document is also available on OCC's website:

response to a particular event, and, if so, what the adjustment should be, is made by OCC, taking into consideration policies and interpretations established in OCC's By-Laws and any policies and interpretations having general application to specific types of events or specified kinds of cleared contracts established by a committee (the "Securities Committee") consisting of representatives of each of the U.S. options markets and a representative of OCC.⁷

OCC previously filed with the Commission and issued interpretative guidance concerning the application of OCC's adjustment policies and procedures and other adjustment rules for cash dividends.⁸ In the interest of promoting clarity and transparency for market participants, OCC is proposing to re-issue that interpretative guidance subject to proposed amendments that would (1) update the interpretative guidance's discussion of how adjustment determinations are made to reflect subsequent changes to the determination process since the interpretative guidance was last issued, and (2) provide additional guidance on certain underlying events.⁹ OCC does not

<https://www.theocc.com/company-information/documents-and-archives/options-disclosure-document>.

⁷ See OCC By-Laws, Art. VI § 11.

⁸ See, e.g., Exchange Act Release No. 68531 (Dec. 21, 2012), 77 FR 77157 (Dec. 31, 2012) (SR-OCC-2012-26).

⁹ Consistent with prior practice, the interpretative guidance would be issued as an OCC Information Memorandum that would supersede the previously published Information Memoranda related to this interpretative guidance. The Information Memorandum would contain prefatory material intended to provide context for its issuance, remind readers of its relationship to the prior Information Memoranda and this proposed rule change, and summarize the relevant OCC By-Laws that are the subject of the interpretation. OCC does not believe this prefatory material is a rule within the meaning of Section 19(b) of the Exchange Act, 15 U.S.C. 78s(b), and the regulations thereunder because unlike the interpretative guidance promulgated through this proposed rule change, the prefatory material it is not a stated policy, practice or interpretation that establishes or changes any standard, limit, or guideline with respect to the rights, obligations or privileges of specified persons or the meaning, administration, or enforcement of an existing rule. See 17 CFR 240.19b-4(a)(6)(ii). Nor does the prefatory material constitute a material aspect of the operation of OCC. See 17 CFR 240.19b-4(a)(6)(i). OCC is providing a copy of the

propose to change its policies or practices with respect to such contract adjustments. OCC merely proposes to publish guidance reflecting its current policies and practices. Accordingly, OCC does not believe that this proposed change would have any impact on market participants other than to provide them with additional information.

(1) Purpose

Background

OCC's By-Laws and Rules authorize OCC to make adjustments to listed options when certain events occur related to the underlying security, such as a stock dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or reclassification with respect to the underlying security or the merger, consolidation, dissolution or liquidation of the issuer of the underlying security. The By-Laws provide policies and procedures for making such determinations, including that OCC determines whether to adjust a contract, taking into account such factors as fairness to holders and writers (or purchasers and sellers) of the affected contracts, the maintenance of a fair and orderly market in the affected contracts, consistency of interpretation and practice, efficiency of exercise settlement procedures, and the coordination with other clearing agencies of the clearance and settlement of transactions in the underlying interest.¹⁰ OCC applies these factors to a particular corporate action on a case-by-case basis, considering the circumstances known to it at the time the determination is made, subject to OCC's discretion to depart from policy and

Information Memorandum it intends to issue upon implementation of the new guidance as Exhibit 3 to File No. SR-OCC-2024-003.

¹⁰ See OCC By-Laws, Art. VI § 11(a).

precedent when the Corporation determines that unusual circumstances make such a departure appropriate.¹¹

OCC's By-Laws also provide general rules applicable to specific types of corporate actions, including with respect to cash dividends or distributions made by the issuer of an underlying security. For example, the By-Laws establish a general rule that OCC does not adjust listed options to reflect "ordinary cash dividends or distributions," which the By-Laws define to mean "[c]ash dividends or distributions (regardless of size) by the issuer of the underlying security which [OCC] believes to have been declared pursuant to a policy or practice of paying such dividends or distributions on a quarterly or other regular basis or which [OCC] believes represents an acceleration or deferral of such payments."¹² OCC established this general rule because when an issuer's policy or practice of paying such dividends is public, such ordinary dividends can be priced into options premiums.¹³ OCC's By-Laws also provide that for cash dividends not declared pursuant to an issuer's policy or practice of paying such distributions at regular intervals (i.e., "special" cash dividends and distributions), OCC will not adjust if the amount distributed is less than \$0.125 per share (or \$12.50 per contract for listed options with a unit of trading larger than 100 shares). OCC established this de minimis threshold in part to avoid the proliferation of outstanding option symbols and series.¹⁴

¹¹ Id.

¹² See OCC By-Laws, Art. VI § 11A, Interpretation and Policy .01.

¹³ See Exchange Act Release No. 55258 (Feb 8, 2007), 72 FR 7701, 7703 (Feb. 16, 2007) (SR-OCC-2006-01).

¹⁴ Symbols can proliferate when a dividend amount is added to the deliverable, yielding a non-standard option. Id., at note 14 and accompanying text. The resulting non-standard options may be illiquid and difficult to trade. Following an adjustment, exchanges typically introduce standard options with the same strikes.

In connection with the adoption of the general rules against adjustments for cash dividends and distributions that are ordinary or below the de minimis threshold, OCC previously filed and published interpretative guidance promulgated by its Securities Committee to address questions about how those rules would be administered and applied.¹⁵ Presented in question and answer (“Q&A”) format, the interpretative guidance provided an overview of OCC’s adjustment policies with respect to cash dividends and guidance on the application of those policies in a variety of scenarios. OCC has since updated and re-issued that interpretative guidance, the last time in 2012.¹⁶ Based on its continued relevance to market participants seeking to understand how OCC applies its adjustment policies, OCC proposes to re-issue the interpretative guidance with certain updates discussed below.

(1) Conforming Changes to Reflect the Current Determination Process

The proposed changes would remove references to the adjustment panel of the Securities Committee in the interpretative guidance’s discussion of how options adjustments are made. Since the interpretative guidance was last issued in 2012, the Commission approved a proposed rule change that affected the determination process.¹⁷ Previously, an adjustment panel of the Securities Committee, consisting of representatives from the exchanges on which an option was listed and OCC’s Chairman, would make determinations about whether that option should be adjusted in response to a

¹⁵ See Exchange Act Release No. 58059 (June 30, 2008), 73 FR 39367 (July 9, 2008) (SR-OCC-2008-10).

¹⁶ See Exchange Act Release No. 68531, *supra* note 8 [sic]. See also Exchange Act Release No. 66742 (Apr. 5, 2012), 77 FR 21819 (Apr. 11, 2012) (SR-OCC-2012-05); Exchange Act Release No. 59442 (Feb. 24, 2009), 74 FR 9654 (Mar. 5, 2009) (SR-OCC-2009-01).

¹⁷ See Exchange Act Release No. 69977 (July 11, 2013), 78 FR 42815 (July 17, 2013) (SR-OCC-2013-05).

corporate action. Currently, adjustment determinations are made by OCC rather than adjustment panels of the Securities Committee.¹⁸ However, the Securities Committee still maintains a role in promulgating statements of policy and interpretations having general application to specified types of corporate actions or specified kinds of cleared contracts.¹⁹ In making adjustment determinations, OCC must consider such policy statements and interpretations in addition to the factors and general rules set forth in the By-Laws in light of the circumstances known to OCC at the time such determination is made, subject to OCC's discretion to depart from policy or precedent when the OCC determines that unusual circumstances make such a departure appropriate.²⁰ OCC assumed sole responsibility for making adjustment determinations after corresponding updates to the Options Disclosure Document were approved by the Commission in 2018.²¹ Accordingly, when OCC re-issues the interpretative guidance on cash dividends and distributions, OCC proposes to replace references to determinations made by an adjustment panel of the Securities Committee with references to OCC and make other non-substantive, textual edits to the interpretative guidance consistent with that change. These changes are intended to reflect the current, Commission-approved process for adjustment determinations made by OCC.

¹⁸ This change in governance arose from a request by the options exchanges promoted by a desire to consider ways to lessen investor confusion and enhance consistency in making option contract adjustments. See Exchange Act Release No. 69642 (May 28, 2013), 78 FR 33138, 33139 (June 3, 2013) (SR-OCC-2013-05).

¹⁹ See OCC By-Laws, Art. VI § 11(a).

²⁰ Id.

²¹ See Exchange Act Release No. 84565 (Nov. 9, 2018), 83 FR 57778, 57779 (Nov. 16, 2018) (SR-ODD-2018-01).

(2) Additional Interpretative Guidance

OCC also proposes to add additional Q&As that would provide guidance for several situations OCC has observed since the interpretative guidance was last issued, including (a) specific guidance with respect to variable dividends, and (b) additional guidance with respect to dividends issued by real estate investment trusts (“REITs”).

a. Variable Dividends

OCC has seen an increase in the number of issuers that have established policies or practices of distributing “variable dividends.” Typically, such variable dividends are paid at regular intervals if issuer-defined thresholds for paying the dividends are met. The amount of the variable dividend may increase or decrease (sometimes significantly) from dividend to dividend based on issuer-established thresholds and, on occasion, may not be paid at all if the issuer-established thresholds are not met. These variable dividends may also be in addition to regular dividends paid pursuant to the issuer’s policy or practice.

For example, on May 19, 2022, Arch Resources, Inc. (ARCH) announced an \$8.11 quarterly dividend, which included a fixed component of \$0.25 and a variable component of \$7.86 per share. In making its adjustment determination, OCC considered an ARCH press release, issued on February 15, 2022, communicating that ARCH was launching a capital return program pursuant to which it planned to “return to stockholders approximately 50 percent of the prior quarter’s discretionary cash flow . . . via a variable quarterly cash dividend in conjunction with its existing fixed quarterly cash dividend.”²² OCC determined that the quarterly variable dividend was an “ordinary dividend” as

²² See Arch Resources Reports Fourth Quarter 2021 Results (Feb. 15, 2022), <https://investor.archrsc.com/2022-02-15-Arch-Resources-Reports-Fourth-Quarter-2021-Results>.

defined in Interpretation and Policy .01 to Article VI, Section 11A of OCC's By-Laws, and therefore not subject to adjustment, because the dividend had been declared pursuant to a policy or practice of paying such dividend on a quarterly or other regular basis.²³

As another example, on March 9, 2022, Zim Integrated Shipping Services Ltd. (ZIM) announced a cash dividend of \$17.00 per share, representing 50% of ZIM's 2021 net income, taking into account the quarterly dividends paid during the first three fiscal quarters of the year.²⁴ Pursuant to the issuer's stated policy, ZIM intended to "distribute a dividend to shareholders on a quarterly basis at a rate of approximately 20% of the net income derived during such fiscal quarter with respect to the first three fiscal quarters of the year" and that the "cumulative annual dividend amount to be distributed by [ZIM] (including the interim dividends paid during the first three fiscal quarters of the year) [would] total 30-50% of the annual net income."²⁵ OCC determined that the \$17 dividend was an "ordinary dividend" declared pursuant to a policy or practice of paying such dividend on a quarterly or other regular basis, and therefore not subject to adjustment.²⁶

OCC proposes to add a Q&A to the interpretative guidance reflecting that if OCC determines such variable dividends are paid pursuant to an issuer's policy or practice of paying such variable dividends at regular intervals, OCC generally considers them to be

²³ See Info Memo #50473 (May 20, 2022). OCC does not issue Info Memos notifying market participants that OCC has determined not to adjust options (a "No-Adjustment" Info Memo) each time an issuer announces a dividend OCC determines to be ordinary and therefore not subject to adjustment. In general, OCC considers whether a No-Adjustment Info Memo may be warranted based on inquiries made by Clearing Members or others with respect to a particular corporate action.

²⁴ See ZIM Reports Record Financial Results for the Fourth Quarter and Full Year 2021 (March 9, 2022), <https://investors.zim.com/news/news-details/2022/ZIM-Reports-Record-Financial-Results-for-the-Fourth-Quarter-and-Full-Year-2021/default.aspx>.

²⁵ Id.

²⁶ See Info Memo #50158 (March 9, 2022).

ordinary dividends and not adjustable, even if, on occasion, no variable dividend is paid or if the amount of the dividend increases or decreases based on the issuer-established thresholds. OCC believes this guidance would align with the precedent described above and provide market participants with greater clarity about how OCC applies the adjustment policies outlined in the By-Laws to variable dividends.

b. REITs

OCC proposes to add further guidance about situations in which an issuer may pay a dividend outside of its normal schedule of dividend payments that the issuer describes as necessary to maintain its tax status as a particular type of organization, such as a REIT. The existing interpretative guidance answered several questions concerning dividends paid by REITs and similar companies. For example, the existing interpretative guidance addressed that while REITs may pay dividends at irregular intervals, these companies often have regular dividend policies, but will actually pay dividends only when certain conditions are met, or in response to market conditions. Similar to the variable dividend situation, in which, on occasion, no variable dividend is paid if issuer-established thresholds are not met, the prior interpretative guidance provided that such REIT distributions generally would be considered ordinary distributions when they occur pursuant to the policy of the company.

However, OCC has observed at least one case in which an issuer has declared a dividend outside of its normal schedule of dividend payments to maintain its tax status as a particular type of organization, such as a REIT. Specifically, On July 22, 2022, Public Storage (“PSA”) announced a “special,” “one-time” dividend of \$13.15 per common

share.²⁷ As explained in the issuer’s press release, PSA was distributing a projected tax gain in connection with its investment in another company that had been acquired “in order to meet the distribution requirements as a [REIT].”²⁸ Nevertheless, OCC determined that the dividend was non-ordinary under its By-Laws and issued an Info Memo concerning an adjustment to options on PSA.²⁹

As OCC would clarify in the further guidance, such a dividend would most likely be considered non-ordinary and warrant an adjustment if OCC determines that the dividend is not being made pursuant to the issuer’s established dividend policies and practices based on the company’s departure from its regular dividend schedule and any characterization the company may make about the pay-out as “special” or “one time.” In other words, an issuer’s characterization of a dividend as necessary to maintain its tax status as a particular type of organization is not determinative of whether a dividend is “ordinary” under OCC’s By-Laws. Rather, the question is whether the dividend is paid pursuant to an issuer’s policy of paying such a dividend at regular intervals to maintain its tax status. If such an issuer announces a special dividend outside of its regular dividend policies and practices, such dividend will most likely be considered non-ordinary and warrant an adjustment even if the issuer is paying the dividend to maintain its tax status. OCC proposes to add a Q&A to the interpretative guidance to reflect OCC’s practices in this situation.

²⁷ See Public Storage Announces \$2.3 Billion Special Dividend Related to PS Business Parks Merger Consideration (July 22, 2022), <https://investors.publicstorage.com/news-events/press-releases/news-details/2022/Public-Storage-Announces-2.3-Billion-Special-Dividend-Related-to-PS-Business-Parks-Merger-Consideration/default.aspx>.

²⁸ Id.

²⁹ See Info Memo #50775 (July 25, 2022).

(2) Statutory Basis

OCC believes the proposed rule changes are consistent with Section 17A of the Exchange Act and the rules and regulations thereunder. Section 17A(b)(3)(F) of the Exchange Act³⁰ requires, among other things, that the rules of a clearing agency be designed to protect investors and the public interest. OCC believes that by allowing it to amend and re-issue the interpretative guidance, the proposed changes would protect investors and the public interest by providing market participants with up-to-date information about OCC's current process for making adjustment determinations. In addition, OCC believes the additional interpretative guidance would provide investors and the general public further clarity about the application of OCC's adjustment policies and procedures to scenarios not specifically addressed in the existing guidance. Providing this information will help investors make more informed decisions in connection with their participation in the listed options market. Accordingly, OCC believes the proposed changes are consistent with Section 17A(b)(3)(F) of the Exchange Act.³¹

In addition, Exchange Act Rule 17Ad-22(e)(23) requires OCC to maintain written policies and procedures reasonably designed to, among other things, publicly disclose all relevant rules and material procedures and provide sufficient information to enable participants to identify and evaluate the risks they incur by participating in OCC.³² The proposed changes would allow OCC to update interpretative guidance concerning its adjustment policies and procedures previously filed as a rule with the Commission,

³⁰ 15 U.S.C. 78q-1(b)(3)(F).

³¹ Id.

³² 17 CFR 240.17Ad-22(e)(23)(i), (ii).

thereby facilitating the re-issuance of guidance about material procedures that remain relevant. OCC believes that by updating the guidance to reflect current precedent, the proposed changes will help participants in the listed options market to better understand the risks related to contract adjustments in the scenarios addressed, consistent with the requirements of Rule 17Ad-22(e)(23).³³

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

Section 17A(b)(3)(I) of the Exchange Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.³⁴ The proposed changes would amend interpretative guidance applicable to the adjustment of all listed options issued for a particular underlying security. These proposed changes would not impact the rights or obligations of Clearing Members or other participants in a way that would benefit or disadvantage any participant versus another participant. To the contrary, this proposed change would provide all market participants with information relevant to understanding the risks of participation. Accordingly, OCC does not believe that the proposed changes have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comment 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.

³³ 17 CFR 240.17Ad-22(e)(23).

³⁴ 15 U.S.C. 78q-1(b)(3)(I).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act³⁵ and paragraph (f) of Rule 19b-4³⁶ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.³⁷

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/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-OCC-2024-003 on the subject line.

³⁵ 15 U.S.C. 78s(b)(3)(A).

³⁶ 17 CFR 240.19b-4(f).

³⁷ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

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-2024-003. 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-2024-003 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.³⁸

Sherry R. Haywood,

Assistant Secretary.

³⁸ 17 CFR 200.30-3(a)(12).