

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81058; File No. SR-OCC-2017-803)

June 30, 2017

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice of and No Objection to The Options Clearing Corporation's Proposal to Enter Into a New Credit Facility Agreement

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing and Settlement Supervision Act of 2010 ("Clearing Supervision Act")¹ and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 ("Act"),² notice is hereby given that, on May 4, 2017, the Options Clearing Corporation ("OCC") filed an advance notice (SR-OCC-2017-803) with the Securities and Exchange Commission ("Commission"). The advance notice is described in Items I and II below, which have been prepared by OCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons, and to provide notice that the Commission does not object to the changes set forth in the advance notice.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is being filed in connection with a proposed change in the form of the replacement of a revolving credit facility that OCC maintains for a 364-day term for the purpose of meeting obligations arising out of the default or suspension of a Clearing Member, in anticipation of a potential default by a Clearing Member, or the failure of a bank or securities or commodities clearing organization to perform its

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b-4(n)(1)(i).

obligations due to its bankruptcy, insolvency, receivership or suspension of operations.

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

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. 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) and (B) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the advance notice and none have been received.

(B) Advance Notice Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act

Description of Proposed Change

Background

This advance notice is being filed in connection with a proposed change in the form of the replacement of a revolving credit facility that OCC maintains for a 364-day term for the purpose of meeting obligations arising out of the default or suspension of a Clearing Member, in anticipation of a potential default by a Clearing Member, or the failure of a bank or securities or commodities clearing organization to perform its obligations due to its bankruptcy, insolvency, receivership or suspension of operations. In such circumstances, OCC has certain conditional authority under its By-Laws and Rules to borrow or otherwise obtain funds from third parties using Clearing Member

margin deposits and/or Clearing Fund contributions.³

OCC's existing credit facility ("Existing Facility") was implemented as of September 30, 2016, through the execution of a credit agreement among OCC, Bank of America, N.A. ("BofA"), as administrative agent, and the lenders that are parties to the agreement from time to time. The Existing Facility provides short-term secured borrowings in an aggregate principal amount of \$2 billion but may be increased to \$3 billion if OCC so requests and sufficient commitments from lenders are received and accepted. To obtain a loan under the Existing Facility, OCC must pledge as collateral U.S. dollars or securities issued or guaranteed by the U.S. Government or the Government of Canada. Certain mandatory prepayments or deposits of additional collateral are required depending on changes in the collateral's market value. In connection with OCC's past implementation of the Existing Facility, OCC filed an advance notice with the Commission on August 29, 2016, and the Commission published a Notice of No-Objection on September 21, 2016.⁴

Proposed Changes

The Existing Facility is not set to expire until September 29, 2017; however, OCC is seeking an early termination of the Existing Facility and is currently negotiating the terms of a new credit facility ("New Facility") on substantially similar terms as the

³ See generally Article VIII, Sections 5(a), (b) and (e) of OCC's By-Laws; Interpretation and Policy .06 to Article VIII, Section 5; OCC Rules 1102 and 1104(b).

⁴ See Securities Exchange Act Release No. 78893 (September 21, 2016), 81 FR 66318 (September 27, 2016) (SR-OCC-2016-803).

Existing Facility together with certain additional proposed modifications described herein. The proposed modifications would, among other things: (i) change the renewal timing to an approximate June 30 annual cycle; (ii) expand the types of permitted collateral under the credit agreement to include S&P 500 Market Index equities, Exchange Traded Funds (“ETFs”), and American Depositary Receipts (“ADRs”) and certain GSE debt securities; (iii) expand the definition of “Liquidity Needs”⁵ in the credit agreement to allow OCC to borrow from the New Facility to satisfy anticipated same-day settlement obligations as a result of circumstances where a bank or securities or commodities clearing organization has failed to achieve daily settlement with OCC; and (iv) modify certain other terms and definitions in the agreement (including the replacement of the backup collateral agent).

The proposed terms and conditions that are expected to be applicable to the New Facility, subject to agreement by the lenders, are set forth in the Summary of Terms and Conditions, which is not a public document.⁶ OCC has separately submitted a request for confidential treatment to the Commission regarding the Summary of Terms and Conditions, which is included in this filing as Exhibit 3. The conditions regarding the availability of the New Facility, which OCC anticipates will be satisfied on or about July 5, 2017, include the execution and delivery of (i) a credit agreement between OCC and

⁵ Under the Existing Facility, OCC’s “Liquidity Needs” are defined as the use of loan proceeds to obtain funds projected to be required by OCC in anticipation of a potential default by a Clearing Member.

⁶ The Summary of Terms and Conditions for the New Facility clarifies certain terms regarding mandatory prepayments or deposits of additional collateral, which, as described above, are also features of the Existing Facility.

the administrative agent, collateral agent and various lenders under the New Facility, (ii) a pledge agreement between OCC and the administrative agent or collateral agent, and (iii) such other documents as may be required by the parties. The definitive documentation concerning the New Facility is expected to be consistent with the Summary of Terms and Conditions and substantially similar to the definitive documentation concerning the Existing Facility, although it may include certain changes to business terms as may be necessary to obtain the agreement of lenders with sufficient funding commitments and certain changes as may be necessary regarding administrative and operational terms being finalized between the parties.

The proposed changes to terms and conditions that are expected to be applicable to the New Facility are described in detail below.

Change in Renewal Timing

OCC is seeking an early termination of the Existing Facility, which is not set to expire until September 29, 2017, and proposes to change the renewal timing of the New Facility. OCC's purpose in early termination is to change to a different renewal cycle so that the credit facility will be renewed on or around June 30 every year. OCC believes that this renewal cycle is preferable because August and September, on account of traditional vacation times and the Labor Day holiday, have historically been a challenging period during which to schedule negotiations and for participating banks to schedule credit committee meetings.

Expansion of Permitted Collateral

OCC also proposes to expand the types of permitted collateral under the New Facility. As proposed, OCC would be permitted to pledge a wider range of collateral

under the New Facility that Clearing Members are permitted to use in making margin deposits and Clearing Fund contributions. As discussed above, to obtain a loan under the Existing Facility, OCC must pledge as collateral certain cash or securities that Clearing Members have contributed to the Clearing Fund or deposited as margin. The Summary of Terms and Conditions for the New Facility contemplates that it will expand the scope of such collateral that OCC may pledge to include other categories of securities that OCC accepts as margin deposits or that it may accept upon prior approval by the Risk Committee (*i.e.*, certain GSE debt securities).⁷

Specifically, the new collateral in respect of Clearing Member margin deposits that OCC would be permitted to pledge would include: (i) common equities included in the S&P 500 Index, but not including securities of any type issued by or on behalf of any lender or lender's affiliate ("Pledged S&P Equities"); (ii) U.S. dollar exchange traded funds for equity, fixed income or commodity asset classes with a market capitalization of \$300 million or more, subject to certain additional restrictions with respect to volume and bid/asks, among other things, as agreed upon by OCC and the administrative agent ("Pledged ETFs"); (iii) U.S. dollar denominated shares of foreign based companies traded on a U.S. national exchange with a market price of \$5.00 or more per share or unit ("Pledged ADRs," and together with Pledge S&P Equities and Pledged ETFs, "Pledged Equities");⁸ (iv) U.S. Government Sponsored Enterprise mortgage backed securities,

⁷ See infra note 9.

⁸ Limits would be applied so that Pledged S&P Equities and Pledged ADRs of a single issuer would not, at any time, exceed 5% of the cash or securities that OCC pledges, and total Pledged Equities would not, at any time, exceed 37.5% of the total cash or securities pledged. These limits, and the other limits that are part of the terms of the Existing Facility, would not apply to borrowings in an amount of

excluding collateralized mortgage obligations and real estate mortgage investment conduits, rated at least AA by two out of three of S&P, Moody's and Fitch ("Pledged GSE MBS"); and (v) non-callable debt securities issued by Freddie Mac within the reference debt program, securities issued by Fannie Mae within its benchmark debt program, or non-callable short-term discount notes from either Freddie Mac or Fannie Mae ("Other Pledged GSE Securities," and together with Pledged GSE MBS, "Pledged GSE Securities").⁹ OCC would be able to pledge these securities to support the New Facility using pledge infrastructure that is already contemplated under the terms of the Existing Facility.

Adding these additional categories of permitted collateral to the New Facility serves the purpose of aligning the scope of permitted collateral for the New Facility with the scope of Clearing Member collateral that may become available to OCC for borrowing purposes. Specifically, in the event of a Clearing Member default, the cash and securities deposited as margin by the Clearing Member may be used by OCC for borrowing. Should OCC draw upon the New Facility in connection with such a default, OCC believes that it would be appropriate for it to have the increased flexibility to pledge a greater range of securities, which are permitted to be included in the defaulted Clearing

\$50 million or less.

⁹ Article I, Section 1.G.(6) of OCC's By-Laws provides that the term "GSE debt securities" means "such debt securities issued by Congressionally chartered corporations as the Risk Committee may from time to time approve for deposit as margin." OCC currently does not accept Pledged GSE MBS for deposit as margin. As a result, the specific expansion of permitted collateral to include Pledged GSE MBS under the New Facility would not become available to OCC until such time, if at all, as OCC's Risk Committee approves such securities for deposit as margin.

Member's margin deposit.

The Summary of Terms and Conditions contemplates that the New Facility would also modify the ratings standards for securities that are issued or guaranteed by the Government of Canada. Such securities would be acceptable as permitted collateral provided that they have minimum ratings of AA (S&P) or Aa2 (Moody's) — rather than AAA or Aaa as under the Existing Facility.

The terms and conditions of the New Facility would also differ from the Existing Facility in connection with how the amount of funds available to OCC is calculated. As under the Existing Facility, the amount would be determined in part by applying haircuts to the market value of the different categories of collateral pledged by OCC. However, to accommodate the new categories of collateral it is expected that Pledged S&P Equities and Pledged ETFs would be valued at 70% of their market value, and Pledged ADRs will be valued at 50% of their market value. Depending on their tenor, Pledged GSE Securities would also be subject to haircuts on their market value as follows: (i) under one year, 95%; (ii) one year or greater but less than five years, 94%; (iii) five years or greater but less than 10 years, 92%; and (iv) ten years or greater, 88%. For the purpose of determining the fund availability, and also for determining the amount of mandatory prepayments under the terms of the New Facility, the assets in OCC's Clearing Fund would continue to be valued at 90% of their market value, except under the New Facility, U.S. cash would be valued at 100%. These haircuts would represent commercial terms negotiated at arms-length by the parties.

Expansion of Use of Proceeds

Under the Existing Facility, OCC is permitted to finance Liquidity Needs in

anticipation of a potential default by or suspension of a Clearing Member to the extent permitted under OCC's By-Laws and Rules. OCC has requested that the New Facility also provide it with flexibility to be able to borrow to address reasonably anticipated same-day settlement obligations under certain conditions, such as the failure of any bank or securities or commodities clearing organization to make daily settlement, to the extent such borrowing is permitted under the By-Laws and Rules.¹⁰ OCC believes that this expanded use of proceeds under the New Facility would enhance OCC's ability to effectively address and manage its liquidity risks as they related to its daily settlement obligations, specifically when any bank or securities or commodities clearing organization has failed to make daily settlement with OCC.

Other Proposed Changes

The New Facility may also limit the scope of those eligible to act as lenders in the New Facility to: (i) banks within the meaning of Section 3(a)(6) of the Act;¹¹ (ii) any

¹⁰ Article VIII, Section 5(e) of OCC's By-Laws authorizes OCC to take possession of Clearing Fund assets and to use such assets for purposes of securing a borrowing in circumstances concerning the default or suspension of a Clearing Member or where OCC has otherwise sustained a loss reimbursable out of the Clearing Fund (but OCC has elected to borrow to meet such obligations instead of immediately charging the Clearing Fund). OCC has requested that the definition of "Liquidity Needs" under the New Facility would include the ability to borrow to address reasonably anticipated same-day obligations as a result of the failure of any bank or securities or commodities clearing organization to achieve daily settlement, but would continue to be limited to the extent that such borrowing is permitted under the By-Laws and Rules. By limiting the ability to borrow for purposes of financing Liquidity Needs always to the extent permitted under the By-Laws and Rules, this borrowing authority in the agreement would not become operative until OCC receives all necessary regulatory approvals for any amendments to By-Laws and Rules necessary to effect such a borrowing, which would be the subject of a separate regulatory filing.

¹¹ 15 U.S.C. 78c(a)(6).

subsidiary of such a bank; (iii) any corporation organized under Section 25A of the Federal Reserve Act;¹² and (iv) any agency or branch of a foreign bank located within the United States.¹³ As discussed above, the Summary of Terms and Conditions contemplates that the New Facility would permit the pledge of certain equity securities as collateral. Lending secured by such securities is required to be conducted in compliance with Federal Reserve regulations regarding securities lending, including Regulation U,¹⁴ and this change would be designed to promote general consistency with such requirements.

Finally, under the New Facility, OCC also expects that a new backup collateral agent will be named.

Anticipated Effect on and Management of Risk

Completing timely settlement is a key aspect of OCC's role as a clearing agency performing central counterparty services. Overall, the New Facility would continue to promote the reduction of risks to OCC, its Clearing Members and the options market in general because it would allow OCC to obtain short-term funds to address liquidity demands arising out of the default or suspension of a Clearing Member, in anticipation of a potential default or suspension of Clearing Members or the insolvency of a bank or another securities or commodities clearing organization. The existence of the New Facility would therefore help OCC minimize losses in the event of such a default,

¹² 12 U.S.C. 611.

¹³ This explicitly does not include any savings and loan association, any credit union, any lending institution that is an instrumentality of the United States, or any member of a national securities exchange.

¹⁴ 12 CFR 221.6.

suspension or insolvency, by allowing it to obtain funds on extremely short notice to ensure clearance and settlement of transactions in options and other contracts without interruption. OCC believes that the reduced settlement risk presented by OCC resulting from the New Facility would correspondingly reduce systemic risk and promote the safety and soundness of the clearing system. By drawing on the New Facility, OCC would also be able to avoid liquidating margin deposits or Clearing Fund contributions in what would likely be volatile market conditions, which would preserve funds available to cover any losses resulting from the failure of a Clearing Member, bank or other clearing organization. Expanding the scope of collateral that OCC is permitted to pledge to the New Facility to include the Pledged Equities and Pledged GSE Securities that OCC permits its Clearing Members to deposit as margin would further this purpose by giving OCC greater flexibility to pledge a broader range of collateral to the New Facility that it determines is appropriate under the circumstances. Expanding the uses of proceeds under the New Facility to support Liquidity Needs in respect of OCC's settlement obligations would also further this purpose to the extent such borrowing is authorized under OCC's By-Laws and Rules. OCC believes that the change would not otherwise affect or alter the management of risk at OCC because the New Facility generally preserves the same terms and conditions as the Existing Facility.

Consistency with the Payment, Clearing and Settlement Supervision Act

The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities

and strengthening the liquidity of systemically important financial market utilities.¹⁵

Section 805(a)(2) of the Clearing Supervision Act¹⁶ also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like OCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act¹⁷ states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and the Act in furtherance of these objectives and principles.¹⁸ In particular, Rule 17Ad-22(e)(7)¹⁹ requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is

¹⁵ 12 U.S.C. 5461(b).

¹⁶ 12 U.S.C. 5464(a)(2).

¹⁷ 12 U.S.C. 5464(b).

¹⁸ 17 CFR 240.17Ad-22. See Securities Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7-08-11) (“Clearing Agency Standards”); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14) (“Standards for Covered Clearing Agencies”). The Standards for Covered Clearing Agencies became effective on December 12, 2016. OCC is a “covered clearing agency” as defined in Rule 17Ad-22(a)(5) and therefore OCC must comply with new section (e) of Rule 17Ad-22 as of April 11, 2017.

¹⁹ 17 C.F.R. 240.17Ad-22(e)(7).

borne by it, including measuring, monitoring and managing its settlement and funding flows on an ongoing and timely basis and its use of intraday liquidity.

OCC believes that the New Facility is consistent with Section 805(b)(1) of the Clearing Supervision Act²⁰ and Rule 17Ad-22(e)(7)²¹ because it promotes robust risk management by OCC of its liquidity risks to ensure that OCC can continue meeting its settlement obligations. The New Facility would provide OCC with timely access to a stable and reliable liquidity funding source to help it complete timely clearing and settlement. Expanding the purposes for which borrowing proceeds may be used and the scope of permitted collateral under the New Facility would further the timeliness and reliability of OCC's access to liquidity funding, by providing greater flexibility regarding (i) the use of proceeds under the New Facility to address and manage settlement obligations and (ii) the collateral that OCC may determine is appropriate to pledge to support borrowing in the event of a Clearing Member default. The expansion of permitted collateral would better enable OCC to manage liquidity risk associated with its settlement obligations by having access to a broader range of collateral to pledge to the New Facility in the form margin collateral that a defaulting Clearing Member may have on deposit. Expanding the uses of proceeds under the New Facility to support Liquidity Needs in respect of OCC's settlement obligations would also promote management of settlement and funding flows (to the extent such borrowing is authorized under OCC's By-Laws and Rules). In these ways, the proposed changes are consistent with Section

²⁰ 12 U.S.C. 5464(b)(1).

²¹ 17 C.F.R. 240.17Ad-22(e)(7).

805(b)(1) of the Clearing Supervision Act²² and Rule 17Ad-22(e)(7).²³

Accelerated Commission Action Requested

Pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,²⁴ OCC requests that the Commission notify OCC that it has no objection to the New Facility not later than Friday, June 30, 2017, which shall be fifty-seven calendar days from the date of OCC's submission of this proposed change and two business days prior to the expected July 5, 2017 availability of the New Facility. OCC requests Commission action by this date to ensure that the New Facility is able to become effective and will launch according to the new renewal cycle. For the reasons described above, OCC believes that the new renewal cycle will help it manage certain commercial structuring and administrative coordination risks associated with the renewal process.

III. **Date of Effectiveness of the Advance Notice and Timing for Commission Action**

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of: (i) the date the proposed change was filed with the Commission; or (ii) the date any additional information requested by the Commission is received. OCC shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be

²² 12 U.S.C. 5464(b)(1).

²³ 17 C.F.R. 240.17Ad-22(e)(7).

²⁴ 12 U.S.C. 5465(e)(1)(I).

implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

OCC shall post notice on its website of proposed changes that are implemented.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2017-803 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2017-803. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

amendments, all written statements with respect to the advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at

http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_17_803.pdf.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-OCC-2017-803 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Commission Findings and Notice of No Objection

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, its stated purpose is instructive: to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.²⁵

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities

²⁵ 12 U.S.C. 5461(b).

of designated clearing entities and financial institutions engaged in designated activities for which it is the supervisory agency or the appropriate financial regulator.²⁶ Section 805(b) of the Clearing Supervision Act²⁷ states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.²⁸

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act²⁹ and Section 17A of the Exchange Act (“Rule 17Ad-22”).³⁰ Rule 17Ad-22 requires registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.³¹ Therefore, it is appropriate for the Commission to review changes proposed in advance notices against Rule 17Ad-22 and the objectives and principles of the risk management standards described in Section 805(b) of the Clearing Supervision

²⁶ 12 U.S.C. 5464(a)(2).

²⁷ 12 U.S.C. 5464(b).

²⁸ Id.

²⁹ 12 U.S.C. 5464(a)(2).

³⁰ See 17 CFR 240.17Ad-22.

³¹ Id.

Act.³² The Commission believes that the proposal in the Advance Notice is consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,³³ and in Rule 17Ad-22 under the Exchange Act, particularly Rule 17Ad-22(e)(7).³⁴

A. Consistency with Section 805(b) of the Clearing Supervision Act

As discussed below, the Commission believes that the changes proposed in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act because they: (i) promote robust risk management; (ii) are consistent with promoting safety and soundness; and (iii) are consistent with reducing systemic risks and promoting the stability of the broader financial system.

The Commission believes that the changes proposed in the Advance Notice are consistent with promoting robust risk management, in particular management of liquidity risk. In particular, the terms of the proposed New Facility give OCC expanded flexibility to manage liquidity stresses arising from a Clearing Member default by broadening the range of collateral that OCC can pledge to the facility. The expanded range of collateral that may be pledged therefore affords OCC a new option of pledging margin assets other than cash, U.S. Government Securities, and Canadian Government Securities as an alternative to its existing choices of either liquidating other margin collateral or pledging primarily Clearing Fund collateral in order to access the Existing Facility.³⁵ The broader

³² 12 U.S.C. 5464(b).

³³ Id.

³⁴ See 17 CFR 240.17Ad-22(e)(7).

³⁵ The Commission notes that OCC does not currently accept Pledged GSE MBS for deposit as margin, and that OCC has represented that it will not do so unless and

collateral eligibility reflected in the proposed New Facility also would bring OCC's liquidity risk management resources in line with those of other CCPs that already have the ability to pledge equities to their revolving credit facility liquidity lines.³⁶ In addition, broadening the definition of "Liquidity Needs" in the New Facility to address losses that may arise when a bank or securities or commodities clearing organization has failed to make daily settlement with OCC (as opposed to the narrower instance under the Existing Facility of losses from a bankruptcy or insolvency of a bank or securities or commodities clearing organization) – subject to necessary amendments of OCC's By-Laws and Rules and concomitant regulatory approvals³⁷ – would further enhance OCC's ability to continue to meet its settlement obligations. As such, the Commission believes that the proposal would promote robust risk management practices at OCC, consistent with Section 805(b) of the Clearing Supervision Act.³⁸

The Commission also believes that the changes proposed in the Advance Notice

until OCC's Risk Committee approves such securities for deposit as margin, in accordance with OCC's By-laws. See supra note 9.

³⁶ The Commission notes that the National Securities Clearing Corporation has the right to post equity securities as part of its revolving credit facility. See Securities Exchange Act Release No. 69557 (May 10, 2013), 78 FR 28936, 28936 & n.5 (May 16, 2013) (SR-NSCC-2013-803); see also NSCC Rules and Procedures, Rule 4 (http://dtcc.com/legal/rules_proc/nscc_rules.pdf).

³⁷ The Commission notes that OCC has represented that the expanded borrowing authority in this agreement would not become operative unless and until OCC receives all necessary regulatory approvals for any amendments to its By-Laws and Rules necessary to effect such a borrowing, which would be subject to a separate regulatory filing with the Commission. See supra note 10. For the purposes of the findings herein, the Commission relies on this representation and expects that OCC will make a separate regulatory filing in connection with effecting consistent changes of this sort to its By-Laws and Rules.

³⁸ 12 U.S.C. 5464(b).

are consistent with promoting safety and soundness. The New Facility would continue to provide OCC with a liquidity resource in the event of a participant default or of losses due to the bankruptcy or insolvency of a bank or securities or commodities clearing organization. Subject to amendment of OCC's By-Laws and Rules and related regulatory approvals, the New Facility also would provide liquidity to OCC in the event of a failure by a bank or securities or commodities clearing organization to perform same-day settlement obligations outside the context of such bank or clearing organization's bankruptcy or insolvency. This expanded set of circumstances in which OCC could access liquidity would promote safety and soundness for OCC and its Clearing Members because it would provide OCC with a readily available liquidity resource that would enable it to continue to meet its settlement obligations in a timely fashion, thereby helping OCC to contain losses and liquidity pressures that otherwise might cause financial distress to OCC or its Clearing Members. As such, the Commission believes the proposed change is consistent with promoting safety and soundness, as contemplated in Section 805(b) of the Clearing Supervision Act.

Finally, the Commission believes that the Advance Notice is consistent with reducing systemic risks and promoting the stability of the broader financial system. The New Facility would provide OCC, which has been designated a systemically important financial market utility, with a more flexible and thus improved, liquidity resource. The Commission believes that the New Facility should bolster the likelihood that OCC will meet its settlement obligations, thereby reducing the risk of loss contagion and enhancing the ability of OCC and its Clearing Members to provide reliability, stability, and safety to the financial markets that they serve. Accordingly, the Commission believes that the

proposal could help to reduce systemic risk and support the stability of the broader financial system, consistent with Section 805(b) of the Clearing Supervision Act.

B. Consistency with Rule 17Ad-22(e)(7)

The Commission believes that the proposed changes associated with the New Facility are consistent with the requirements of Rule 17Ad-22(e)(7) under the Exchange Act.³⁹ This rule requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to “effectively measure, monitor, and manage the liquidity risk that arises in or is borne by [it], including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity.”⁴⁰

In particular, Rule 17Ad-22(e)(7)(i) directs that a covered clearing agency meet this obligation by, among other things, “[m]aintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day ... settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible conditions.”⁴¹

The Commission believes that the proposal is consistent with Exchange Act Rule 17Ad-22(e)(7)(i). The proposed New Facility would permit OCC to pledge a broader range of collateral to the facility, and therefore would allow OCC to utilize a greater range

³⁹ 17 CFR 240.17Ad-22(e)(7).

⁴⁰ Id.

⁴¹ 17 CFR 240.17Ad-22(e)(7)(i).

of margin collateral to obtain liquidity from the facility, as an alternative to selling such collateral under what may be stressed and volatile market conditions and as an alternative to pledging collateral deposited to the Clearing Fund. The proposal thus increases OCC's flexibility to respond to a clearing member default by providing OCC with greater opportunity, depending on prevailing market conditions, to select among different types of collateral assets and make efficient use of margin collateral and to preserve Clearing Fund assets in managing a Clearing Member default. The New Facility also would permit OCC to cover any losses resulting from the failure of a bank or other clearing organization to achieve same-day settlement, subject to further internal governance and concomitant regulatory approvals that OCC must obtain.⁴² This would provide OCC with additional liquidity to manage scenarios outside of a Clearing Member default, thereby mitigating the likelihood of liquidity stress to OCC. The additional features of the New Facility described above would support OCC's ability to meet liquidity needs and to effect same-day, intraday, and multiday settlement payment obligations under a wider range of stress scenarios than under the Existing Facility. Therefore, the Commission believes that the proposal is consistent with Rule 17Ad-22(e)(7)(i).⁴³

Finally, Rule 17Ad-22(e)(7)(ii) under the Exchange Act requires that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to hold qualifying liquid resources sufficient to satisfy payment obligations owed

⁴² As stated above, OCC's ability to utilize borrowings for these purposes would be subject to a further OCC regulatory filing to make the changes to its By-Laws and Rules. See note 10, supra.

⁴³ Id.

to clearing members.⁴⁴ Rule 17Ad-22(a)(14) of the Exchange Act defines “qualifying liquid resources” to include, among other things, lines of credit without material adverse change provisions, that are readily available and convertible into cash.⁴⁵ Based upon review of the relevant provisions of the Summary of Terms and Conditions, the Commission believes that the New Facility would not be subject to any material adverse change provision, and is thus consistent with Rule 17Ad-22(a)(14).⁴⁶ Further, and as described above, the New Facility is designed to help ensure that OCC has sufficient, readily-available qualifying liquid resources to meet the cash settlement obligations of OCC’s largest family of affiliated Clearing Members. Therefore, the Commission believes that the proposal is consistent with Rule 17Ad-22(e)(7)(ii).⁴⁷

VI. Conclusion

IT IS THEREFORE NOTICED, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission DOES NOT OBJECT to the Advance Notice SR-OCC-2017-803 and OCC can and hereby is AUTHORIZED to implement the change as of the date of this notice.

By the Commission.

Brent J. Fields
Secretary

⁴⁴ 17 CFR 240.17Ad-22(e)(7)(ii).

⁴⁵ 17 CFR 240.17Ad-22(a)(14).

⁴⁶ Id.

⁴⁷ 17 CFR 240.17Ad-22(e)(7)(ii).