

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70076; File No. SR-OCC-2013-09)

July 30, 2013

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, to Separate the Powers and Duties Currently Combined in the Office of OCC's Chairman into Two Offices, Chairman and President, and Create an Additional Directorship to be Occupied By the President

I. Introduction

On June 4, 2013 The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2013-09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> On June 10, 2013, OCC filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on June 21, 2013.<sup>4</sup> The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The purpose of this rule change is to provide for separation of the powers and duties currently combined in the office of OCC's Chairman of the Board of Directors into two offices, Chairman<sup>5</sup> and President, and create an additional directorship to be occupied by the President.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 corrects an administrative oversight related to a sentence reference in OCC's Certificate of Incorporation.

<sup>4</sup> Release No. 34-69771 (June 17, 2013), 78 FR 37640 (June 21, 2013).

<sup>5</sup> Pursuant to Article IV, Section 6, of OCC's By-Laws, the Chairman of the Board is also

### Proposal Overview

In the course of OCC's review of the structure of the Board of Directors, OCC determined that dividing the powers and duties of the Chairman of the Board into two positions, Chairman and President, would enhance oversight of OCC management by making the Chairman independent of most management functions. Pursuant to the rule change, the Chairman will be responsible for oversight of: (i) the control functions of OCC, including enterprise risk management, internal audit and compliance; (ii) external affairs; and (iii) presiding at all meetings of OCC's Board of Directors and OCC's stockholders. The President will report to the Chairman and be responsible for all aspects of OCC's business that do not report directly to the Chairman. Under OCC's rule change, OCC's President, who will also serve as Chief Executive Officer, will focus on the effectiveness of OCC's day-to-day operations, as well as strategic initiatives for the future.

OCC expects that the Chairman's direct oversight of control functions will increase independence by limiting management's influence over such functions. In addition, OCC notes that the significance of these control functions for a clearing agency warrants full-time oversight, which can only be provided by an executive of OCC.

To reflect the above changes in its governance structure, OCC will revise Section 7 of Article III of its By-Laws to include OCC's President as a Management Director, along with OCC's Chairman.<sup>6</sup> OCC will also revise Article IV of its By-Laws to include references to the

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the Executive Chairman.

<sup>6</sup> Sections 1, 7 and 12 of Article III will also be amended to reflect the existence of an additional Management Director. Furthermore, OCC will amend Section 15 of Article III to grant the President the same authority to act in the case of an emergency as the Chairman and,

President in certain provisions governing OCC's officers.<sup>7</sup> OCC will also amend Articles IV and V of its Certificate of Incorporation to reflect the existence of an additional Management Director. Finally, OCC will also amend Sections 2 and 3 of the Stockholders Agreement to provide for the election of the President, in addition to the Chairman, as a Management Director.

#### Implementation Timeframe

OCC will notify members of the date on which it intends to implement the rule change through the posting of an information memo on the OCC website. The change will not take effect until such date OCC designates as the date of implementation. OCC expects to implement the rule change no later than December 31, 2013.

#### III. Discussion

Section 19(b)(2)(C) of the Act<sup>8</sup> directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such

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consequently, OCC will remove the President as one of the "Designated Officers" to whom such authority would devolve if certain enumerated officers are unavailable.

<sup>7</sup> The amended Section 1 of Article IV will include the President, along with the Chairman, as an officer required to be elected by the Board of Directors. Section 8 of Article IV, as amended, will no longer give the Board the option of electing a President, but will make such office required. Sections 6 and 8 of Article IV will be amended to specify the duties of the Chairman and President, respectively. Sections 2, 3, and 13 of Article IV will be amended to give the President power, like the Chairman, to appoint and remove certain officers and agents to carry out the functions assigned to him and may determine the salaries of these appointees and agents. Sections 7 and 9 will be amended to add references to the President, in addition to the Chairman, when referencing the highest-ranking officers of OCC.

<sup>8</sup> 15 U.S.C. 78s(b)(2)(C).

organization. Section 17A(b)(3)(A) of the Act<sup>9</sup> requires that a clearing agency that is registered with the Commission be organized and have the capacity to be able to, among other things, facilitate the prompt and accurate clearance and settlement of securities transactions.

The Commission finds that the rule change is consistent with Section 17A(b)(3)(A) of the Act<sup>10</sup> because by separating the powers and duties currently combined in the office of OCC's Chairman into two offices, the rule change should enhance oversight of management by ensuring that the Chairman is independent of most management functions and that the separation of powers and duties over OCC operations is not overly concentrated in the hands of a single individual, thereby promoting greater accountability of management to the Board of Directors. In so doing, OCC's rule change should improve its corporate governance structure and provide for an appropriate checks and balance between oversight by OCC's Board of Directors and OCC management of day-to-day operations, which in turn, should facilitate the prompt and accurate clearance and settlement of securities transactions.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>11</sup> and the rules and regulations thereunder.

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<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(A).

<sup>10</sup> Id.

<sup>11</sup> 15 U.S.C. 78q-1.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (File No. SR-OCC-2013-09) be and hereby is APPROVED.<sup>13</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> 17 CFR 200.30-3(a)(12).