

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78277; File No. SR-OCC-2016-007)

July 11, 2016

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Related to The Options Clearing Corporation's Membership Approval Process

On May 16, 2016, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2016-007 pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

I. Description

OCC is changing its rules to: (i) vest the authority to approve or disapprove new membership applications with OCC's Risk Committee,³ and (ii) delegate authority to the Executive Chairman or President of OCC to approve new membership applications provided that: (a) it is not recommended that the Risk Committee impose additional membership criteria upon the applicant pursuant to Section 1, Interpretation and Policy .06 of Article V of OCC's By-Laws, and (b) the Risk Committee is given not less than five business days to determine that the application should be reviewed at a meeting of the Risk Committee and the Risk Committee has not requested that the application be reviewed at a meeting of the Risk Committee within such five day period.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ OCC's Risk Committee is a committee of OCC's Board of Directors. *See* OCC's By-Laws Article III, Section 9.

This proposed rule change will streamline OCC's membership approval process by: (i) allowing OCC's Executive Chairman or President to approve pro forma applications for clearing membership, and (ii) vesting ultimate authority with OCC's Risk Committee, not its Board, to approve or disapprove applications for clearing membership that are not approved by either OCC's Executive Chairman or President. The practical effect of the proposed rule change is that either OCC's Executive Chairman or President will approve most applications for clearing membership at OCC since most applicants for clearing membership choose to have their application presented for approval only when such approval is pro forma in nature (i.e., the applicant meets all of the clearing membership requirements at OCC and there is no need to impose additional membership requirements). OCC believes that the proposed rule change will better allocate the time and resources of the Board and Risk Committee and ensure applications for clearing membership are considered in a timely manner.

Background

OCC believes that its membership criteria are objective standards that are designed not to unfairly discriminate in the admission of participants to OCC,⁴ as well as to provide for fair and open access to OCC.⁵ Currently, the authority to approve or disapprove new applications for clearing membership resides with the Board.⁶ Under Article V, Section 2 of OCC's By-Laws, OCC's Risk Committee, including its designated delegates or agents, is responsible for reviewing applications for clearing membership, and the Risk Committee is responsible for making a recommendation of

⁴ See 15 U.S.C. 78q-1(b)(3)(F).

⁵ See 7 U.S.C. 7a-1(c)(2)(C)(iii)(III).

⁶ See OCC's By-Laws Article V, Section 2.

approval or disapproval to the Board (in part, relying on OCC's Management's review and recommendation).⁷ OCC's management ("Management") performs the substantive review of applications for clearing membership on behalf of the Risk Committee. Management reviews a given application against OCC's membership criteria, which are set forth in Article V of OCC's By-Laws as well as Chapters 2 and 3 of OCC's Rules. Based on its review, Management, as the subject matter expert on OCC's membership criteria, either recommends an application for approval without conditions, recommends an application for approval with conditions (in accordance with OCC's By-Laws, Article V, Section 1, Interpretation and Policy .06), or does not recommend an application for approval. The Risk Committee, based on Management's review of the application, recommends a course of action to OCC's Board. OCC's Board then approves or disapproves applications for clearing membership based on the Risk Committee's recommendation.

Moreover, since the rules of the Commission and the Commodity Futures Trading Commission require OCC to have rules that do not unfairly discriminate in the admission of participants and provide fair and open access,⁸ OCC believes that, under its rules, it is required to admit applicants for clearing membership that clearly meet OCC's membership criteria, and therefore, that the Board's ultimate approval of an application for clearing membership for which Management does not recommend approval with conditions or disapproval is pro forma. From a timing perspective, applications for

⁷ See OCC's By-Laws Article V, Section 2. The Risk Committee, from a practical perspective, has designated OCC's management as its agent to review applications for clearing membership. OCC's management reviews applications for clearing membership and makes a recommendation to the Risk Committee concerning the applicant's satisfaction of OCC's membership criteria.

⁸ See 15 U.S.C. 78q-1(b)(3)(F) and 7 U.S.C. 7a-1(c)(2)(C).

clearing membership often do not track the Risk Committee or Board's regular meeting schedule and, on occasion, the Board has had to convene a special meeting for the sole purpose of considering an application for clearing membership or otherwise has had to seek approval via unanimous written consent, which OCC believes is an inefficient use of the Board's time and resources. In an effort to better allocate the time and resources of OCC's Board and Risk Committee as well as streamline its clearing membership approval process, OCC proposed the amendments to Articles V and VIII of its By-Laws as well as the Board and Risk Committee Charters described below. The effect of such amendments is that either OCC's Executive Chairman or President will approve most applications for clearing membership, thereby allowing the Board and the Risk Committee to better allocate their time and resources.

Changes to Vest Authority of New Applicant Approvals with the Risk Committee

OCC proposed amending Article V, Section 2 of its By-Laws to vest the authority to approve or disapprove new applicants for clearing membership with the Risk Committee. OCC believes that the members of the Board comprising the Risk Committee are capable of appropriately acting on membership applications. The Risk Committee is currently delegated the authority to (1) review applications for clearing membership and recommend approval or disapproval thereof to the Board, (2) conduct hearings if requested by applicants whose applications are proposed to be disapproved, and (3) review and approve or disapprove requests by clearing members to expand clearing activities.⁹ Therefore, OCC believes that requiring the Board to approve or disapprove an application for clearing membership that has already been reviewed by,

⁹ See Section IV of the Risk Committee Charter provided as Exhibit 5B to the proposed rule change.

and received a recommendation for approval or disapproval from, the Risk Committee is redundant and represents an inefficient use of the Board's time. Accordingly, OCC believes that the Risk Committee is the appropriate governing body in which to vest ultimate authority to approve or disapprove applications for clearing membership.¹⁰ Should the Risk Committee propose to disapprove an application for clearing membership, the Risk Committee must first provide the applicant an opportunity to be heard and present evidence on its own behalf (as is currently the case today with respect to the Board's decision to disapprove an application for clearing membership).¹¹

In order to effect the foregoing, and in addition to proposed changes to Article V, Section 2 of the By-Laws, OCC proposed conforming changes to Article V, Sections 1 and 3 of the By-Laws as well as the Board and Risk Committee Charters.¹² Such conforming changes identify that the Risk Committee, and not the Board, will approve applications for clearing membership. Additionally, OCC proposed changes to Article VIII, Section 2 of the By-Laws (as well as the Board and Risk Committee Charters) to identify that the Risk Committee, and not the Board, will set initial clearing fund requirements in connection with the approval of an application for clearing membership.

¹⁰ The Board will continue to oversee OCC's membership criteria and ongoing membership standards through its authority to approve changes to OCC's By-Laws and Rules (and specifically those By-Laws and Rules that concern membership). The Risk Committee will inform the Board, at the Board's next regularly scheduled meeting, of applications for clearing membership pursuant to proposed Article V, Section 2(c) of the By-Laws.

¹¹ See OCC's By-Laws Article V, Section 2. Typically, however, if OCC's due diligence review reveals issues that would prevent the Board or the Risk Committee from approving an application for clearing membership, the applicant voluntarily remediates such issues prior to the presentation of the application for clearing membership to the Risk Committee.

¹² Marked versions of the Board and Risk Committee Charters were provided as Exhibits 5A and 5B to the proposed change..

Delegation of Authority to Approve Applications for Membership to the Executive Chairman or President of OCC

OCC has stated that, in order to better streamline OCC's membership application approval process, and allow the Board and the Risk Committee to more efficiently allocate their time, it proposed additional amendments to Article V, Section 2 of its By-Laws to allow OCC's Executive Chairman or its President to approve certain applications for clearing membership. As described above: (i) OCC believes that, based on the applicable rules of the Commission and the Commodity Futures Trading Commission, applications for clearing membership that clearly meet OCC's membership criteria must be approved,¹³ and (ii) applications for clearing members do not necessarily track the Risk Committee or Board's regular meeting schedule and, on occasion, the Board has had to convene in a special meeting for the sole purpose of considering a clearing member application or otherwise seek approval via unanimous written consent, which is not a good use of either the Board or the Risk Committee's time and resources. Therefore, OCC proposed amending Article V, Section 2 of its By-Laws to delegate the authority to approve applications for clearing membership to the Executive Chairman or President of OCC provided that: (i) it is not recommended that the Risk Committee impose additional membership criteria upon the applicant pursuant to Section 1, Interpretation and Policy .06 of Article V of OCC's By-Laws, and (ii) the Risk Committee is given not less than five business days from the date it is notified by its designated delegates or agents that the Executive Chairman or President intends to approve a given application to determine that such application should be reviewed at a meeting of the Risk Committee and the Risk Committee has not requested that the application be reviewed at a meeting of the Risk

¹³ See 15 U.S.C. 78q-1(b)(3)(F) and 7 U.S.C. 7a-1(c)(2)(C).

Committee within such five day period. If five business days pass and no member of the Risk Committee notifies Management that a given application for clearing membership should be reviewed at a meeting of the Risk Committee, then the Executive Chairman and President shall have the authority to approve the application for clearing membership. This proposed change will allow either OCC's Executive Chairman or the President to approve most applications for clearing membership received by OCC. Neither the Executive Chairman nor the President will be allowed to disapprove an application for clearing membership. Instead, if either the Executive Chairman or President determined he cannot approve an application for clearing membership, the application will be considered by the Risk Committee for approval or disapproval at its next regularly scheduled meeting. OCC believes that allowing the Executive Chairman or President to approve applications for clearing membership that clearly meet OCC's membership criteria will allow the Board and the Risk Committee to allocate their time to more efficiently and effectively.

II. Discussion

Section 19(b)(2)(C) of the Act¹⁴ directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the rule change, as proposed, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.

The Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F)¹⁵ of the Act. This section requires, among other things, that the rules of a

¹⁴ 15 U.S.C. 78s(b)(2)(C).

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

clearing agency be designed to protect investors and the public interest while not being designed to permit unfair discrimination in the admission of participants. The proposed rule change will preserve Board-level oversight for the membership approval process by vesting the authority to approve or disapprove applications for clearing membership with the Risk Committee, a Board-level committee. A considerable portion of the Risk Committee's functions and responsibilities, as listed in its charter, pertains to the oversight of membership and membership standards generally. Therefore it is reasonable to expect that the Risk Committee should have the requisite expertise and authority to carry out the membership application approval or disapproval process previously tasked to the entire Board.

The proposed rules also delegate to the Executive Chairman or the President the authority to approve new applications provided that: (i) it is not recommended that the Risk Committee impose additional membership criteria upon the applicant pursuant to Section 1, Interpretation and Policy .06 of Article V of OCC's By-Laws, and (ii) the Risk Committee is given not less than five business days to determine that the application should be reviewed at a meeting of the Risk Committee and the Risk Committee has not requested that the application be reviewed at a meeting of the Risk Committee within such five day period. The authority to disapprove applications is not delegated to the Executive Chairman or the President. The rules, as revised, continue to provide Board-level oversight of the membership approval process by ensuring involvement of the Risk Committee. For the above reasons, although the revised rules will streamline the membership approval process, the Commission believes that they are designed to protect investors and the public interest. Additionally, the revised rules are not designed to

permit unfair discrimination because they do not alter the criteria considered for the approval of new membership.

Additionally, the Commission finds that the revised rules are consistent with Rule 17Ad-22(d)(8) under the Act.¹⁶ Rule 17Ad-22(d)(8) requires that a clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable, have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act¹⁷ applicable to clearing agencies and support the objectives of owners and participants. OCC's revised rules provide clarity and transparency in its governance processes by identifying, in OCC's public rulebook, the parties authorized to approve or disapprove membership applications, and fulfill the public interest requirements of Section 17A of the Act as described above.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of Act, and in particular, with the requirements of Section 17A of the Act¹⁸ and the rules and regulations thereunder.

¹⁶ 17 CFR 240.17Ad-22(d)(8).

¹⁷ 15 U.S.C. 78q-1.

¹⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-OCC-2016-007) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Robert W. Errett
Deputy Secretary

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).