SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80531; File No. SR-OCC-2017-002)

April 26, 2017

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Concerning Changes to The Options Clearing Corporation's Management Structure

On February 22, 2017, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2017-002 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder.[2] The proposed rule change was published for comment in the Federal Register on March 13, 2017.[3] The Commission did not receive any comment letters on the proposed rule change. This order approves the proposed rule change.

I. Description of the Proposed Rule Change

This proposed rule change by OCC will amend OCC's By-Laws, Rules, Board of Directors Charter ("Board Charter"), Compensation and Performance Committee Charter ("CPC Charter"), Dividend Policy, and Refund Policy to address organizational changes within OCC's management structure. Specifically, OCC is proposing the following: (1) amendments to OCC's By-Laws to provide that the Executive Chairman will also serve as Chief Executive Officer ("CEO"); (2) amendments to OCC's By-Laws and Rules to reflect that the President will no longer be a recognized officer of OCC; (3) amendments to OCC's By-Laws to provide that the Board will elect the Chief Operating Officer

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 80168 (March 7, 2017), 82 FR 13522 (March 13, 2017) (SR-OCC-2017-002).

(“COO”) and a newly recognized Chief Administrative Officer (“CAO”); (4) amendments to OCC’s By-Laws and Rules to provide that the COO and CAO will each have authority to take certain actions or grant exceptions where that authority was previously granted to the President; (5) conforming changes to OCC’s Board Charter, CPC Charter, and the Dividend and Refund Policies reflecting the proposed amendments described above; (6) amendments to OCC’s By-Laws to separate the positions of Treasurer and Chief Financial Officer (“CFO”); and (7) a number of administrative changes and refinements to the By-Laws and Rules.

(1) The Executive Chairman Also Serves as a Newly Recognized CEO

Under the proposed rule change, the Executive Chairman will continue to be appointed by the Board and be responsible for OCC’s control functions. However, OCC proposes to amend Article IV, Section 6 of the By-Laws to provide that the Executive Chairman will also serve as a newly recognized CEO. In that capacity, the Executive Chairman and CEO will be responsible for all aspects of OCC’s business and the day-to-day administration of its affairs that are not otherwise assigned to the COO or CAO.

OCC notes that, under its current By-Laws, the President is responsible for all aspects of OCC’s business that do not report directly to the Executive Chairman and is responsible for the day-to-day administration of OCC’s affairs in accordance with the directions of the Executive Chairman. The proposed rule change will provide the Executive Chairman/CEO with explicit responsibility for overseeing all aspects of OCC’s business and the day-to-day administration of its affairs, with the COO and CAO each being responsible for aspects of the business of OCC that do not report directly to the Executive Chairman and CEO and administering the day to day affairs and business of

OCC in accordance with the directions of the Executive Chairman and CEO. In connection with this change, OCC's senior management will be reorganized within an Office of the Executive Chairman that will be comprised of the Executive Chairman (who will also serve as CEO), the COO and the CAO. OCC believes that this new management structure will combine the breadth and depth of experience and skill necessary within OCC's senior management team to provide for the efficient and effective management and operation of OCC, improve OCC's ability to serve Clearing Members and the markets for which it clears, and help to ensure that OCC is so organized and has the capacity to facilitate the prompt and accurate clearance and settlement of the transactions it clears.

(2) The President is No Longer a Recognized Officer of OCC

OCC proposes a number of amendments throughout its By-Laws and Rules to remove references to the office of President to reflect the fact that the President will no longer be a recognized officer within OCC's management. As described in more detail below, all references to the authority and responsibilities of the President will be removed and such references will be replaced as appropriate with references to the COO and newly appointed CAO. OCC believes that eliminating the role of President and distributing the wide range of authority and responsibilities associated therewith to two senior officers (the CAO and COO) will provide for a broader range of knowledge, skills, and experience within OCC's senior management team, promote more efficient and effective management and operation of OCC, improve OCC's ability to serve Clearing Members and the markets for which it clears, and help to ensure that OCC is so organized and has the capacity to facilitate the prompt and accurate clearance and settlement of the transactions it clears.

(3) Election of the COO and CAO

OCC proposes to amend Article IV, Sections 1, 8 and 13 of the By-Laws to provide that the Board will elect a COO and a CAO and will set the salaries for such officers. Accordingly, OCC will continue to have a COO within its management structure because, as noted above, the President also serves as COO under OCC's existing By-Laws. The CAO, however, is a newly recognized officer within OCC's management structure. As is currently the case regarding the President, neither the COO nor the CAO will be required to be a member of the Board upon election. Also, consistent with the existing prohibition against the same person holding any two of the offices of Executive Chairman, President and Member Vice Chairman,[4] the restriction will continue to apply but will reference the COO and CAO rather than the President. As noted above, OCC believes that eliminating the role of President and distributing the wide range of responsibilities associated therewith to the COO and a newly appointed CAO will provide for more efficient and effective management and operation of OCC, improve OCC's ability to serve Clearing Members and the markets for which it clears, and help to ensure that OCC is so organized and has the capacity to facilitate the prompt and accurate clearance and settlement of the transactions it clears.

(4) Assignment of Certain Responsibilities to the COO and CAO

The responsibility of management to carry out OCC's affairs is frequently assigned to groups of officers, including the Executive Chairman, President, and other

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4 See Article IV, Section 1 of the By-Laws.

officers of appropriate seniority. This approach provides flexibility to help ensure that responsibility is not concentrated in any one officer, that OCC's affairs are carried out efficiently, and that management has the capacity to continue carrying out OCC's business and day-to-day affairs even if a particular officer is absent or becomes disabled. To preserve the benefits of this structure given the elimination of the office of President, OCC proposes that the COO and CAO will instead assume certain responsibilities in the By-Laws and Rules where they are currently assigned, at least in part, to the President.

Under the proposed changes to Article IV, Section 8 of the By-Laws, the COO and CAO will be responsible for the aspects of OCC's business that do not report directly to the Executive Chairman, as determined by the Board to promote the efficient and effective management and operation of OCC, and they will administer their responsibilities in accordance with directions from the Executive Chairman. Under the proposed management structure changes, the COO initially will be responsible for the oversight of OCC's technology and operations functions while the CAO will be responsible for the oversight of the finance, human resources, financial risk management, corporate planning, product and business development, and project management aspects of OCC's business. In addition, in the event of any absence or disability of the Executive Chairman, the COO and CAO will each have the authority and responsibility to fulfill the duties and have the powers of the Executive Chairman. However, in the absence or disability of the Executive Chairman, neither the COO nor the CAO will be permitted to preside at meetings of the Board or stockholders.

Under the proposed amendments to Article IV, Sections 2, 3, 9, and 13 of the By-Laws, the COO and CAO each will have authority, consistent with the authority previously granted to the President, to appoint officers and agents as they deem necessary or appropriate to carry out the functions assigned to them. This includes, but is not limited to, the authority to appoint certain Vice Presidents within management. Any officers or agents who are appointed by the COO or CAO will be subject to their supervision and will be able to be removed by the COO and CAO, respectively, at any time, with or without cause. Such officers or agents will exercise powers and perform duties as determined by the COO or the CAO and the term and salary[5] of any such positions will also be determined by the COO or CAO, respectively. The Executive Chairman and CEO will also have the authority to set the terms, powers, duties, and salaries of any officer or agent appointed by the COO or CAO and to remove officers or agents appointed by the COO and CAO.

Other examples of the responsibilities of the President being reallocated to the COO and CAO in the By-Laws and Rules include, but are not limited to, that the COO and CAO will, under certain conditions, have shared authority with the Executive Chairman and other officers to do the following: (1) approve banks or trust companies as Approved Custodians; (2) declare the existence of an emergency and take related actions; (3) approve clearing membership applications and grant related extensions; (4) impose restrictions on options exercises; (5) determine reasonable means through which to borrow or otherwise obtain funds using Clearing Fund contributions; (6) sign certificates representing shares in OCC; (7) waive or suspend OCC's By-Laws, Rules, policies, procedures or any other of OCC's rules in emergency circumstances to protect OCC or

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5 Any salary fixed by the COO or CAO will be subject to any contrary action taken by the Board, as is the case today regarding any officers or agents appointed by the Executive Chairman or the President. See Article IV, Section 13 of the By-Laws.

the public interest; (8) impose restrictions on certain Clearing Member transactions, positions and activities; (9) extend settlement times in emergency conditions; (10) waive the required margin deposit of a Clearing Member in the interest of maintaining fair and orderly markets;[6] and (11) authorize late filing of an exercise notice by a Clearing Member.[7]

OCC believes the proposed changes described above will result in an appropriate and effective management structure that combines the breadth and depth of experience and skill necessary within OCC's senior management team to (i) provide for the efficient and effective management and operation of OCC, (ii) improve OCC's ability to serve Clearing Members and the markets for which it clears, and (iii) help to ensure that OCC is so organized and has the capacity to facilitate the prompt and accurate clearance and settlement of the transactions it clears. Moreover, the proposed changes to OCC's management structure will provide important flexibility to help ensure that responsibility is not unduly concentrated in any one officer, that OCC's affairs are carried out efficiently, and that management has the capacity to continue carrying out OCC's business and day-to-day affairs even if a particular officer is absent or becomes disabled.

OCC also proposes to amend Article IV, Section 12 of the By-Laws to provide that, in the event of a vacancy of the office of Controller, the Executive Chairman (in addition to the Board) will have the authority to designate a person to serve as chief

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[6] See Rule 609A. OCC also proposes to make a ministerial change to this rule to clarify a reference to the Securities and Exchange Commission.

[7] See proposed changes in (1) OCC By-Laws Article I, Section 1; (2) Article III, Section 15; (3) Article V, Sections 1 – 3, I&P .01; (4) Article VI, Section 17; (5) Article VIII, Section 5; (6) Article IX, Section 12; (7) Article IX, Section 14; (8) OCC Rule 305; (9) Rule 505; (10) Rule 609A; and (11) Rule 801.

accounting officer of OCC until the office of Controller is filled. OCC believes it will be appropriate for the Executive Chairman to replace the President in this role given the Executive Chairman's capacity as Management Director.

(5) Conforming Changes to Certain OCC Charters and Policies

In connection with the proposed changes described above, OCC also proposes to change certain references to the President that appear in its Board Charter, CPC Charter, Dividend Policy and Refund Policy. These changes are described below and will not otherwise modify OCC's management structure.

OCC proposes to amend the Board Charter to reflect that the Board has responsibility for selecting, overseeing and, where appropriate, replacing the COO and CAO, and that the Board evaluates and sets the compensation of these officers. The proposed amendments will also state that the Board provides counsel and advice to the COO and CAO and oversees those officers as part of the Board's evaluation of whether OCC's business is being appropriately managed. OCC notes that the proposed amendments are consistent with the Board's existing obligations with respect to the election and oversight of the President.

Additionally, OCC proposes to amend the CPC Charter to reflect that the CPC will generally oversee the compensation, benefits and perquisites of the COO and CAO, including responsibility for making associated recommendations to the Board, and to identify that the CPC is responsible for reviewing and approving the annual goals and objectives of the COO and CAO. OCC also proposes to amend the CPC Charter to reflect that the CPC will now meet at least annually with the COO and CAO (instead of the President) to discuss and review compensation and performance levels of senior management and other key officers. In addition, the CPC Charter will be amended to reflect that the CPC reviews OCC's employment contracts with the COO and CAO (in place of the President) and makes recommendations to the Board regarding related approvals.

OCC's Refund Policy will be amended to reflect that, in addition to the Executive Chairman, the COO or CAO will have authority under certain conditions to determine the payment date of refunds. This authority is currently reserved to the Executive Chairman and the President. OCC will also amend the Dividend Policy to reflect that, in addition to the Executive Chairman, the COO or CAO (rather than the President) will have authority under certain conditions to determine the payment date of dividends if for any reason OCC's Refund Policy is not in effect. As a housekeeping matter that is unrelated to the COO and CAO assuming certain responsibilities of the President, OCC is also updating its Dividend Policy and Refund Policy to reflect that the Commission recently adopted its Standards for Covered Clearing Agencies.[8]

(6) Separation of Treasurer and Chief Financial Officer Positions

OCC proposes to amend Article IV, Section 11 of the By-Laws to eliminate a sentence that provides that OCC's Treasurer shall also serve as CFO absent another person being designated by the Board to serve in that capacity. OCC believes that separating these positions and eliminating this provision of the By-Laws will allow for greater flexibility relative to the structure, management and operation of OCC's corporate finance group. Under the proposed rule change, the Board will continue to appoint OCC's Treasurer as currently required under Article IV, Section 1 of the By-Laws;

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8 See Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016).

however, the Treasurer will no longer automatically serve as CFO, and the Board will not be responsible for appointing OCC's CFO.

(7) Administrative Changes and Refinements

OCC is proposing a number of administrative changes and refinements to its By-Laws and Rules. Specifically, OCC proposes to add a definition of "Designated Officer" in Article I, Section 1 of the By-Laws. The term is already used elsewhere in OCC's By-Laws and Rules (e.g., Article III, Section 15 of the By-Laws and Rule 1102). OCC believes that locating this definition in Article, I, Section 1 of the By-Laws with the majority of the other definitions that are used in OCC's By-Laws and Rules promotes organizational consistency and clarity in OCC's legal framework. OCC also proposes to amend Interpretation and Policy .01 of Rule 309 to change a reference to "OCC" to "the Corporation" to conform to existing convention in OCC's By-Laws and Rules.

Additionally, OCC proposes to amend Interpretation and Policy .01 of Article III, Section 7 of the By-Laws, which concerns the use of the criteria of OCC's Fitness Standards for Directors, Clearing Members and Others in the election of Management Directors, to remove a reference to the President. OCC notes that, in addition to the proposed elimination of the office of President in this proposed rule change, in 2014, the Commission approved a proposed rule change providing that OCC's President will no longer be considered a Management Director.[9] OCC also proposes to amend Interpretation and Policy .02 of Rule 1104 to remove references to the Management Vice Chairman. In September 2016, the Commission approved a proposed rule change by

[9] See Securities Exchange Act Release No. 73785 (December 8, 2014), 79 FR 73915 (December 12, 2014) (SR-OCC-2014-18).

OCC to eliminate the role of Management Vice Chairman.[10] OCC is proposing to remove remaining references to this position that were intended to be removed as part of SR-OCC-2016-002.

Finally, OCC proposes a number of non-substantive amendments to correct typographical errors in the By-Laws and Rules (e.g., correction of typographical error in Rule 305(c) to refer to the "Executive" Chairman and in Rule 309A to state "an" Appointed Clearing Member).

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[11] 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 rules and regulations thereunder applicable to such organization. The Commission finds that the proposal is consistent with Section 17A(b)(3)(A) of the Act[12] and Rules 17Ad-22(e)(1)[13] and 17Ad-22(e)(2)[14] thereunder, as described in detail below.

A. *Consistency with Section 17A(b)(3)(A) of the Act*

The Commission finds OCC's proposed changes to be consistent with Section 17A(b)(3)(A) of the Act.[15] Section 17A(b)(3)(A) of the Act[16] requires, among other

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10 See Securities Exchange Act Release No. 78862 (September 16, 2016), 81 FR 65415 (September 22, 2016) (SR-OCC-2016-002).

11 15 U.S.C. 78s(b)(2)(C).

12 15 U.S.C. 78q-1(b)(3)(A).

13 17 CFR 240.17Ad-22(e)(1).

14 17 CFR 240.17Ad-22(e)(2).

15 15 U.S.C. 78q-1(b)(3)(A).

16 Id.

things, that a clearing agency be so organized and have the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. As noted above, after implementation of the proposed changes, OCC's Executive Chairman will also serve as OCC's CEO, the President's duties and powers will be reallocated among the Executive Chairman, COO and CAO, the COO and CAO will have authority to take action or grant exceptions under certain conditions, and the positions of Treasurer and CFO will be separated. According to OCC, these leadership and organizational changes are intended to promote efficient management and operation by doing the following: (i) providing for a broad range of knowledge, skills, and experience within OCC's management team, (ii) improving the alignment of officers' responsibilities with their skills and experience and thereby enhancing efficiency and effectiveness within OCC's management, and (iii) ensuring that there continues to be an appropriate allocation of duties and powers among officers such that management has the capacity to continue carrying out OCC's affairs even if a particular officer is absent or disabled. By promoting OCC's efficient management and operation, the proposed leadership and organizational changes will support OCC's efforts to ensure that it is organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions.

B. *Consistency with Rule 17Ad-22(e)(1)*

The Commission finds that the proposed changes are consistent with Rule 17Ad-22(e)(1).[17] Rule 17Ad-22(e)(1)[18] requires each covered clearing agency to establish,

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[17] 17 CFR 240.17Ad-22(e)(1).

implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. Pursuant to this proposal, OCC is centralizing the definition of "Designated Officer" in Article I, Section 1 and making other clarifying and conforming changes to OCC's governing documents. OCC states that such conforming and clarifying changes will promote organizational consistency and clarity in OCC's legal framework to ensure that the legal framework remains well-founded, transparent and enforceable in all relevant jurisdictions.

C. *Consistency with Rule 17Ad-22(e)(2)*

The Commission finds that the proposed changes to specify the responsibilities of the Chairman/CEO, COO and CAO, as well as the proposed changes to specify which positions are board-appointed, are consistent with the requirements in Rule 17Ad-22(e)(2).[19] Rule 17Ad-22(e)(2)[20] requires each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that, among other things, are clear and transparent and specify clear and direct lines of responsibility. According to OCC, the proposed amendments to OCC's By-Laws, Rules, charters and policies will provide clear and transparent statements of the responsibilities of its Executive Chairman/CEO, COO and CAO within the overall management structure of OCC. In addition, the proposed amendments support clarity and transparency by reflecting in OCC's By-Laws and Rules organizational changes to provide that the President will no longer be a recognized

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18 Id.

19 17 CFR 240.17Ad-22(e)(2).

20 Id.

officer of OCC, to provide that the Board will appoint the COO and CAO, and to separate the positions of Treasurer and CFO. Finally, the proposed changes, in specifying the responsibilities of the Chairman/CEO, COO and CAO, support the requirement that OCC provide for governance arrangements that specify clear and direct lines of responsibility, helping to clarify the roles that each individual will fulfill and fostering accountability at OCC.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A of the Act[21] and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,[22] that the proposed rule change (SR-OCC-2017-002) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Eduardo A. Aleman
Assistant Secretary

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21 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).

22 15 U.S.C. 78s(b)(2).

23 17 CFR 200.30-3(a)(12).