

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82927; File No. SR-OCC-2017-021)

March 22, 2018

Self-Regulatory Organizations; The Options Clearing Corporation; Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Concerning Updates to and Formalization of OCC's Recovery and Orderly Wind-Down Plan

I. Introduction

On December 8, 2017, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2017-021 ("Proposed Rule Change"), pursuant to Section 19(b) 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 December 26, 2017.³ On January 25, 2018, the Commission designated a longer period within which to approve the Proposed Rule Change, disapprove the Proposed Rule Change, or institute proceedings to determine whether to approve or disapprove

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 82352 (Dec. 19, 2017), 82 FR 61072 (Dec. 26, 2017) (SR-OCC-2017-021) ("Notice"). On December 8, 2017, OCC also filed a related advance notice (SR-OCC-2017-810) with the Commission 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 and Rule 19b-4(n)(1)(i) under the Act ("Advance Notice"). 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b-4(n)(1)(i), respectively. The Advance Notice was published in the Federal Register on January 23, 2018. Securities Exchange Act Release No. 82513 (Jan. 17, 2018), 83 FR 3224 (Jan. 23, 2018) (SR-OCC-2017-810).

The Financial Stability Oversight Council designated OCC a systemically important financial market utility on July 18, 2012. See Financial Stability Oversight Council 2012 Annual Report, Appendix A, available at <http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf>. Therefore, OCC is required to comply with the Payment, Clearing and Settlement Supervision Act and file advance notices with the Commission. See 12 U.S.C. 5465(e).

the Proposed Rule Change.⁴ The Commission is publishing this order pursuant to Section 19(b)(2)(B) of the Act⁵ to institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.

Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the Proposed Rule Change, nor does it mean that the Commission will ultimately disapprove the Proposed Rule Change. Rather, as discussed below, the Commission seeks additional input on the Proposed Rule Change and issues presented by the proposal.

II. Description of the Proposed Rule Change⁶

The Proposed Rule Change would formalize and update OCC's Recovery and Wind-Down ("RWD") Plan. In its proposal,⁷ OCC stated that the purpose of the proposed RWD Plan is to (i) demonstrate that OCC has considered the scenarios which may potentially prevent it from being able to provide its "Critical Services" (defined below) as a going-concern,⁸ (ii) provide appropriate plans for OCC's recovery or orderly wind-down based on the results of

⁴ Securities Exchange Act Release No. 82586 (Jan. 25, 2018), 83 FR 4527 (Jan. 31, 2018) (File No. SR-OCC-2017-021).

⁵ 15 U.S.C. 78s(b)(2)(B).

⁶ The description of the Proposed Rule Change is substantially excerpted from the Notice. See Notice, supra note 3, 82 FR at 61073-80.

⁷ See id. at 61073.

⁸ As defined by Rule 17Ad-22(e)(3)(ii), those scenarios are: "credit losses, liquidity shortfalls, losses from general business risks and other losses." 17 CFR 240.17Ad-22(e)(3)(ii).

such consideration;⁹ and (iii) impart to relevant authorities the information reasonably anticipated to be necessary for purposes of recovery and orderly wind-down planning.¹⁰

The proposed RWD Plan consists of eight chapters.¹¹ Chapter 1 of the RWD Plan would provide an executive summary and overview of the proposed Plan.¹² Chapter 2 of the proposed RWD Plan is designed to impart information that OCC believes would be essential to relevant authorities for purposes of recovery and orderly wind-down planning, as well as to provide readers of the RWD Plan with necessary context for the subsequent discussion and analysis of OCC’s “Critical Services” and “Critical Support Functions” in Chapter 4 (discussed below) and of OCC’s resolution process in Chapter 6 (discussed below).¹³ In Chapter 3 of the proposed RWD Plan, OCC would identify each of its fourteen different internal support functions and provide a brief description of the activities performed by each such support function.¹⁴ The primary purpose of Chapter 4 of the proposed RWD Plan would be to identify OCC’s “Critical Services” and “Critical Support Functions.”¹⁵

⁹ See Standards for Covered Clearing Agencies, 81 Fed. Reg. 70786, 70810 (Oct. 13, 2016).

¹⁰ Id.

¹¹ Notice, supra note 3, 82 FR at 61073.

¹² Id.

¹³ Id. at 61074.

¹⁴ Id.

¹⁵ Id. The RWD Plan would define a “Critical Service” as a service provided by OCC that, if interrupted, would likely have a material negative impact on participants or significant third parties, give rise to contagion, or undermine the general confidence of markets the FMU serves. Id.

Chapter 5 of OCC’s proposed RWD Plan would constitute OCC’s Recovery Plan.¹⁶ the purpose of Chapter 5 would be to demonstrate that OCC has considered scenarios which may potentially prevent it from being able to provide its Critical Services as a going-concern and that, based on the scenarios considered, OCC has prepared appropriate plans for its recovery.¹⁷ Chapter 6 of OCC’s proposed RWD Plan would constitute OCC’s Wind-Down Plan (“WDP”).¹⁸ Chapter 6 would demonstrate that OCC has considered scenarios which may potentially prevent it from being able to provide its Critical Services as a going-concern and that OCC has adequately evaluated plans for its orderly wind-down.¹⁹ Chapter 7 of OCC’s proposed Plan would memorialize the prior governance for approval of the earlier drafts of OCC’s recovery and

¹⁶ Id. at 61075.

¹⁷ Id. For the purposes of the RWD Plan, OCC would define “recovery” consistent with the definition advanced by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions, which is “the actions of [a Financial Market Utility (“FMI”)], consistent with its rules, procedures, and other ex-ante contractual arrangements, to address any uncovered credit loss, liquidity shortfall, capital inadequacy, or business, operational or other structural weakness, including the replenishment of any depleted pre-funded financial resources and liquidity arrangements, as necessary to maintain the FMI’s viability as a going concern.” Id., note 30 (citation omitted).

¹⁸ Id. at 61080.

¹⁹ Id. For the purposes of the RWD Plan, OCC would frame its wind-down objective consistent with the objective advanced by the Financial Stability Board for CCP resolution: “CCP resolution should have as its objective the pursuit of financial stability and ensure the continuity of critical CCP functions in all jurisdictions where those functions are critical and without exposing taxpayers to risk of loss....The objectives of CCP resolution can be achieved either by: (i) restoring the ability of the CCP to continue to perform its critical functions as a going concern; or (ii) ensuring continued performance of those functions by another entity or arrangement (including a bridge entity established by the resolution authority) coupled with the orderly wind-down of the residual CCP in resolution.” Id., note 54 (citation omitted).

orderly wind-down plan and would establish an internal governance process for the maintenance, review and approval of the proposed RWD Plan.²⁰

III. Proceedings to Determine Whether to Approve or Disapprove File No. SR-OCC-2017-021 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the Proposed Rule Change should be approved or disapproved.²¹ Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. As noted above, institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the Proposed Rule Change and provide arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to Section 19(b)(2)(B) of the Act,²² the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis, and input from, commenters with respect to the Proposed Rule Change's consistency with the Act and the rules thereunder, including the following:

- Section 17A(b)(3)(F) of the Act,²³ which requires, in part, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and

²⁰ Id. at 61080.

²¹ 15 U.S.C. 78s(b)(2)(B).

²² Id.

²³ 15 U.S.C. 78q-1(b)(3)(F).

funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest; and

- Rule 17Ad-22(e)(3)(ii) of the Act,²⁴ which requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to plan for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.

IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the Proposed Rule Change with respect to the issues identified above, as well as any other concerns they may have with the Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with Section 17A(b)(3)(F) and Rule 17Ad-22(e)(3)(ii) under the Act, cited above, or any other provision of the Act, rules, and regulations thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.²⁵

²⁴ 17 C.F.R. 17Ad-22(e)(3)(ii).

²⁵ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Rule Change should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert 35 days from publication in the Federal Register].

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 No. SR-OCC-2017-020 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-OCC-2017-020. 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 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 10:00 a.m. and 3:00 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/about/publications/bylaws.jsp>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File No. SR-OCC-2017-021 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. If comments are received, any rebuttal comments should be submitted on or before [insert date 35 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Eduardo A. Aleman
Assistant Secretary

²⁶ 17 CFR 200.30-3(a)(12).