

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-90712; File No. SR-OCC-2020-013)

December 17, 2020

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1, to Update The Options Clearing Corporation's Recovery and Orderly Wind-Down Plan

**I. INTRODUCTION**

On October 20, 2020, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-OCC-2020-013, (“Proposed Rule Change”) pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder to make changes to OCC’s Recovery and Orderly Wind-Down Plan (“RWD Plan”).<sup>3</sup> The Proposed Rule Change was published for public comment in the Federal Register on November 9, 2020.<sup>4</sup> The Commission has received no comments regarding the Proposed Rule Change.<sup>5</sup> On October 20, 2020, OCC filed a partial

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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> See Notice of Filing infra note 4, 85 Fed. Reg. at 71384.

<sup>4</sup> Securities Exchange Act Release No. 90315 (Nov. 3, 2020), 85 Fed. Reg. 71384 (Nov. 9, 2020) (File No. SR-OCC-2020-013) (“Notice of Filing”). OCC also filed a related advance notice (SR-OCC-2020-806) (“Advance Notice”) 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 Exchange Act. 12 U.S.C. 5465(e)(1). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4, respectively. The Advance Notice was published in the Federal Register on November 18, 2020. Securities Exchange Act Release No. 90416 (Nov. 13, 2020), 85 Fed. Reg. 73553 (Nov. 18, 2020) (File No. SR-OCC-2020-806).

<sup>5</sup> Since the proposal contained in the Proposed Rule Change was also filed as an advance notice, all public comments received on the proposal are considered regardless of

amendment (“Partial Amendment No. 1”) to modify the Proposed Rule Change.<sup>6</sup> The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Partial Amendment No. 1, on an accelerated basis.<sup>7</sup>

## II. BACKGROUND<sup>8</sup>

The Proposed Rule Change concerns changes to OCC’s RWD Plan. As described in greater detail below, OCC proposes to (1) update the RWD Plan to reflect changes to OCC’s capital structure resulting from the disapproval of OCC’s previously approved “Capital Plan”<sup>9</sup> and the subsequent approval of OCC’s “Capital Management Policy,”<sup>10</sup> and (2) implement changes identified during OCC’s annual review of the RWD Plan. The changes arise out of OCC’s annual review of the RWD Plan and include factual updates (e.g., market share and contract volume data) and streamlined discussions in the RWD Plan (e.g., replacement of detailed overview of OCC’s risk management program with a more concise summary).

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whether the comments are submitted on the Proposed Rule Change or the Advance Notice.

<sup>6</sup> In Partial Amendment No. 1, OCC corrects and updates a confidential Exhibit 5 to the materials filed on October 20, 2020 regarding File No. SR-OCC-2020-013. Partial Amendment No. 1 corrects an error in the proposed rule text and updates the list of vendor agreements attached to the RWD Plan, but did not change the purpose of or basis for the Proposed Rule Change.

<sup>7</sup> References to the Proposed Rule Change from this point forward refer to the Proposed Rule Change as modified by Partial Amendment No. 1.

<sup>8</sup> Capitalized terms used but not defined herein have the meanings specified in OCC’s Rules and By-Laws, available at <https://www.theocc.com/about/publications/bylaws.jsp>.

<sup>9</sup> See Securities Exchange Act Release No. 85121 (Feb. 13, 2019), 84 Fed. Reg. 5157 (Feb. 20, 2019) (File No. SR-OCC-2015-02).

<sup>10</sup> See Securities Exchange Act Release No. 86725 (Aug. 21, 2019), 84 Fed. Reg. 44952 (Aug. 27, 2019) (File No. SR-OCC-2019-007).

*Capital Management Policy Updates.* As a result of the implementation of the Capital Management Policy, OCC is proposing changes to Chapters 2, 5, and 6 of its RWD Plan. In Chapter 2, OCC is proposing to revise its discussion of fee management for consistency with the Capital Management Policy. In Chapter 5, OCC is proposing to (i) replace its discussion of the Replenishment Plan established under the disapproved Capital Plan with a discussion of the replenishment structure adopted under the Capital Management Policy; (ii) replace references to the discretionary use of OCC’s current and/or retained earnings with references to the mandatory contribution –immediately following the use of margin, deposits in lieu of margin and the Clearing Fund deposits of the suspended Clearing Member– of OCC’s current and retained earnings greater than 110% of OCC’s annually-established “Target Capital Requirement;” (iii) update the description of how OCC could increase the minimum required cash contribution to the Clearing Fund to reflect enhancements to OCC’s liquidity risk management framework that the Commission approved in 2020;<sup>11</sup> and (iv) include a discussion of the mandatory contribution of any unvested portions of OCC’s Executive Deferred Compensation Plan (“EDCP”) in proportion to any charges against the mutualized portion of OCC’s Clearing Fund. OCC also proposes to revise the list of “Recovery Trigger Events” in Chapter 5 to: (a) delete one of the Recovery Trigger Events that was derived from a defined term in the Capital Plan; (b) consolidate two other Recovery Trigger Events into a single, operational loss-related recovery trigger; and (c) add a qualification onto an existing liquidity loss-related recovery trigger. In Chapter 6, OCC is proposing to update discussion of the tools by which OCC could recapitalize in certain recovery and wind-down scenarios. Further, OCC is proposing to revise the list of

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<sup>11</sup> See Securities Exchange Act Release No. 89014 (Jun. 4, 2020), 85 Fed. Reg. 35446 (Jun. 10, 2020) (File No. SR-OCC-2020-003).

Wind-Down Plan Trigger Events (“WDP Triggers”): Specifically, OCC proposes to consolidate two current WDP Triggers into a single WDP Trigger related to OCC’s financial resource requirements and to consolidate two other WDP Triggers into a single WDP Trigger related to operational disruption. Similar to the changes OCC proposes in Chapter 5, the changes proposed in Chapter 6 would be designed to reflect OCC’s current replenishment plan under the Capital Management Policy.

*Annual Review Updates.* As a result of its annual review and update process, OCC is proposing changes to Chapters 2, 3, 5, 6, 7, and 8 of its RWD Plan. In Chapter 2, OCC is proposing to update (i) market share and contract volume data; (ii) lists of the securities options exchanges and other markets for which OCC provides clearing services; (iii) organizational charts, headcount numbers, discussions of OCC’s management structure and descriptions of management roles and responsibilities; (iv) updated descriptions of OCC’s Board’s responsibilities and procedures, lists of Board members and descriptions of OCC’s Board committees’ roles and responsibilities; and (v) graphs of total monthly deposits to OCC’s Clearing Fund. OCC is also proposing revisions to reflect certain program changes that have occurred at OCC since the initial approval of the RWD Plan in 2018 (e.g., changes to cross-margining arrangements, credit facilities, investment counterparties, and vendors) as well as changes to OCC’s retirement plan obligations. In Chapter 3, the RWD Plan lists OCC’s internal support functions. OCC is proposing the addition of two new internal support functions to that list and the removal of the Office of the Corporate Executive from the list. The net result of the proposed changes would bring the total number of internal support functions listed from fourteen to sixteen. OCC also proposes to update the descriptions of all OCC’s internal support functions so they align with OCC’s internal descriptions of such functions.

In Chapter 6, OCC is proposing to (i) update references to OCC’s internal support functions; and (ii) certain references to headcount. In Chapter 7, OCC is proposing to update staff titles to reflect changes in related office titles. In Chapter 8, OCC is proposing to update lists of (i) Clearing Members; (ii) Board participation; (iii) settlement bank and letter of credit bank; (iv) OCC’s vendors and service providers; (v) updates to the extreme hypothetical scenarios designed by OCC that, if such scenarios occurred, could cause OCC to activate the RWD Plan; and (vi) key agreements.

*Administrative and Streamlining Changes.* In addition to the updates described above, OCC is also proposing several administrative and streamlining changes throughout the RWD Plan. OCC proposes to align the executive summary and overview section of the RWD Plan with the changes described above. OCC also proposes moving annual report excerpts from Chapter 2 to an appendix to the RWD Plan, replace the current overview of OCC’s risk management program with a more concise summary, and update a summary description of OCC’s interconnections with external vendors and a list of vendors that provide OCC critical technology and information reporting services. In Chapter 4, OCC proposes to update certain factual references and make other minor changes to reflect the use of a single term for Critical Services that are currently identified separately. OCC also proposes to revise the mapping of Critical Services to Support Functions in Chapter 4 to reflect the categorization of Support Functions as either “primary,” “secondary,” or “non-critical.” In Chapter 5, OCC proposes to (i) clean up references to its by-laws that are now rules; (ii) consolidate two recovery triggers into a single, operational loss-related recovery trigger; and (iii) add qualifying language to an existing liquidity loss-related recovery trigger.

### III. DISCUSSION AND COMMISSION FINDINGS

Section 19(b)(2)(C) of the Exchange Act 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 Exchange Act and the rules and regulations thereunder applicable to such organization.<sup>12</sup> After carefully considering the Proposed Rule Change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act<sup>13</sup> and Rule17Ad-22(e)(3)(ii) thereunder.<sup>14</sup>

#### A. Consistency with Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.<sup>15</sup> As a central counterparty, it is important for OCC to have a plan in place to address extreme stresses or crises with the aim of maintaining OCC's viability and ability to provide critical services. In the event that OCC's recovery efforts are not successful, the RWD Plan would seek to increase the possibility that a resolution of OCC's operations could be conducted in an orderly manner. The Commission continues to believe that OCC specifying the steps that it would take in either a

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

<sup>13</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>14</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

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

recovery or orderly wind-down would enhance OCC's ability to address circumstances specific to an extreme stress event. The Commission also continues to believe that, by increasing the likelihood that recovery would be orderly, efficient, and successful, the RWD Plan enhances OCC's ability to maintain the continuity of its critical services (including clearance and settlement services) during, through, and following periods of extreme stress giving rise to the need for recovery, thereby promoting the prompt and accurate clearance and settlement of securities transactions.<sup>16</sup> Further, the Commission continues to believe that the RWD Plan is designed to assure the safeguarding of securities or funds in the custody or control of OCC by reducing the likelihood of a disorderly or unsuccessful recovery or wind-down, which could otherwise disrupt access to such securities or funds.<sup>17</sup>

As described above, OCC proposes to (1) update the RWD Plan to reflect changes to OCC's capital structure resulting from the disapproval of OCC's previously approved "Capital Plan"<sup>18</sup> and the subsequent approval of OCC's "Capital Management Policy,"<sup>19</sup> and (2) implement changes identified during OCC's annual review of the RWD Plan. Consistent with the Commission's prior statements regarding disclosure of documents describing a covered

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<sup>16</sup> See Securities Exchange Act Release No. 83918 (Aug. 23, 2018), 83 Fed. Reg. 44091, 44094 (Aug. 29, 2018) (File No. SR-OCC-2017-021); Securities Exchange Release No. 83928 (Aug. 23, 2018), 83 Fed. Reg. 44109, 44112 (Aug. 29, 2018) (File No. SR-OCC-2017-810).

<sup>17</sup> See Securities Exchange Act Release No. 83918 (Aug. 23, 2018), 83 Fed. Reg. 44091, 44094 (Aug. 29, 2018) (File No. SR-OCC-2017-021).

<sup>18</sup> See Securities Exchange Act Release No. 85121 (Feb. 13, 2019), 84 Fed. Reg. 5157 (Feb. 20, 2019) (File No. SR-OCC-2015-02).

<sup>19</sup> See Securities Exchange Act Release No. 86725 (Aug. 21, 2019), 84 Fed. Reg. 44952 (Aug. 27, 2019) (File No. SR-OCC-2019-007).

clearing agency's recovery and wind-down plans, the Commission believes that such recovery and wind-down plans should be updated regularly or more frequently as necessary.<sup>20</sup> OCC also proposes to update and streamline the data and descriptions provided in the RWD Plan.<sup>21</sup> The Commission believes that keeping the RWD Plan updated with current information, and refining the descriptions to make it more concise, makes it a more accurate and useful document. As such, the Commission believes, therefore, that the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.<sup>22</sup>

B. Consistency with Rule 17Ad-22(e)(3)(ii) under the Exchange Act

Rule 17Ad-22(e)(3)(ii) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes plans 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.<sup>23</sup>

The Commission continues to believe that the RWD Plan (i) clearly describes OCC's

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<sup>20</sup> See Securities Exchange Act Release No. 34-78961 (Oct. 13, 2016), 81 Fed. Reg. 70786, 70808 (Oct. 13, 2016) (File No. S7-03-14).

<sup>21</sup> For example, OCC is proposing to update its market share and contract volume data, lists of the securities options exchanges and other markets for which OCC provides clearing services, organizational charts, and headcount numbers. OCC also proposes to replace the detailed overview of OCC's risk management program with a more concise summary.

<sup>22</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>23</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

recovery tools, which enhance OCC's ability to recover from credit losses, liquidity shortfalls, general business risk losses, or other losses, consistent with Rule 17Ad-22(e)(3)(ii); and (ii) supports OCC's ability to use risk management and recovery tools effectively to bring about a recovery by identifying in advance which tools may be most effective for different situations or needs, consistent with Rule 17Ad-22(e)(3)(ii).<sup>24</sup> As described above, the RWD Plan sets forth OCC's plans to recover or wind-down its operations as a result of severe financial or operational stress in an orderly fashion. The proposed updates will make the information provided in the RWD Plan more accurate and useful. The revised RWD Plan would, in turn, provide a more accurate and usable playbook for OCC or source of information for a resolution authority. Accordingly, the Commission believes that the proposed changes to the RWD Plan are consistent with Rule 17Ad-22(e)(3)(ii) under the Exchange Act.<sup>25</sup>

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<sup>24</sup> See Securities Exchange Act Release No. 83918 (Aug. 23, 2018), 83 Fed. Reg. 44091, 44095 (Aug. 29, 2018) (File No. SR-OCC-2017-021); Securities Exchange Release No. 83928 (Aug. 23, 2018), 83 Fed. Reg. 44109, 44113 (Aug. 29, 2018) (File No. SR-OCC-2017-810).

<sup>25</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

#### IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the Exchange Act. 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](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2020-013 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2020-013. 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/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

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 Number SR-OCC-2020-013 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

**V. ACCELERATED APPROVAL OF THE PROPOSED RULE CHANGE, AS MODIFIED BY PARTIAL AMENDMENT NO. 1**

The Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,<sup>26</sup> to approve the proposed rule change prior to the 30th day after the date of publication of Partial Amendment No. 1 in the Federal Register. As discussed above, Partial Amendment No. 1 corrects an error in the proposed rule text and updates the list of vendor agreements attached to the RWD Plan. Correcting typographical errors Partial Amendment No. 1 improves the efficiency of the filing process by obviating the need for OCC to propose another change to its rules to resolve the error in the future while not changing the purpose of or basis for the Proposed Rule Change. Updating the list of vendor agreements as part of the immediate proposal would similarly reduce the need for future filings without changing the purpose of or basis for the Proposed Rule Change.

For similar reasons as discussed above, the Commission finds that Partial Amendment No. 1 is consistent with the requirement that OCC's rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of

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<sup>26</sup> 15 U.S.C. 78s(b)(2).

securities and funds which are in the custody or control of the clearing agency or for which it is responsible under Section 17A(b)(3)(F) of the Exchange Act.<sup>27</sup> Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Partial Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Exchange Act.<sup>28</sup>

## VI. CONCLUSION

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act<sup>29</sup> and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,<sup>30</sup> that the Proposed Rule Change (SR-OCC-2020-013), as modified by Partial Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>27</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</sup> In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>30</sup> 15 U.S.C. 78s(b)(2).

<sup>31</sup> 17 CFR 200.30-3(a)(12).