

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97178; File No. SR-OCC-2022-012)

March 21, 2023

Self-Regulatory Organizations; Options Clearing Corporation; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Concerning The Options Clearing Corporation’s Collateral Haircuts and Standards for Clearing Banks and Letters of Credit

I. Introduction

On December 5, 2022, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-OCC-2022-012 (“Proposed Rule Change”) pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4² thereunder to change rules, policies, and procedures regarding collateral haircuts, minimum standards for clearing banks and letter-of-credit issuers, and concentration limits for letters of credit.³ The Proposed Rule Change was published for public comment in the Federal Register on December 23, 2022.⁴ The Commission has received comments regarding the Proposed Rule Change.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing infra note 4, at 87 FR at 79015.

⁴ Securities Exchange Act Release No. 96533 (Dec. 19, 2022), 87 FR 79015 (Dec. 23, 2022) (File No. SR-OCC-2022-012) (“Notice of Filing”).

⁵ Comments on the Proposed Rule Change are available at <https://www.sec.gov/comments/sr-occ-2022-012/srocc2022012.htm>.

On February 3, 2023, pursuant to Section 19(b)(2) of the Exchange Act,⁶ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁷ This order institutes proceedings, pursuant to Section 19(b)(2)(B) of the Exchange Act,⁸ to determine whether to approve or disapprove the Proposed Rule Change.

II. Summary of the Proposed Rule Change

OCC is a central counterparty (“CCP”), which means it interposes itself as the buyer to every seller and seller to every buyer for financial transactions. As the CCP for the listed options markets in the U.S.,⁹ as well as for certain futures, OCC is exposed to certain risks arising from its relationships with its members as well as the banks that support OCC’s clearance and settlement services. Such risks include credit risk because OCC is obligated to perform on the contracts it clears even where one of its members defaults. OCC manages credit risk, in part, by collecting collateral from members (*i.e.*, margin and Clearing Fund resources) sufficient to cover OCC’s credit exposure to Clearing Members under a wide range of stress scenarios. In doing so, OCC requires its Clearing Members to deposit collateral as margin to support obligations on short options, futures contracts, and other obligations arising within the members’ accounts at OCC.

⁶ 15 U.S.C. 78s(b)(2).

⁷ Securities Exchange Act Release No. 96797 (Feb. 3, 2023), 88 FR 8505 (Feb. 9, 2023) (File No. SR-OCC-2022-012).

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ OCC describes itself as “the sole clearing agency for standardized equity options listed on a national securities exchange registered with the Commission (‘listed options’).” See Notice of Filing supra note 4, 87 FR at 79015.

OCC also requires its members to deposit collateral serving as Clearing Fund assets to protect OCC, should the margin of a defaulting member be insufficient to address the potential losses from the defaulting member's positions. OCC imposes a haircut to collateral to address the risk that such collateral may be worth less in the future than at the time it was pledged to OCC. With regard to risks posed by the banks that support OCC's clearance and settlement services, OCC maintains standards for third-party relationships, such as those with banks through which OCC conducts settlement ("Clearing Banks"), and banks that issue letters of credit that Clearing Members may deposit as margin collateral.

As described in the Notice of Filing,¹⁰ OCC proposes to revise its rules, including certain policies,¹¹ to make the following three changes related to the management of collateral haircuts and banking relationships:

- (1) Replace the current processes for applying haircuts to Government and Government-Sponsored Enterprise ("GSE") debt securities provided as collateral¹² with a new process for applying fixed collateral haircuts that it would set and adjust from time to time, based on a process defined in OCC's Collateral Risk Management Policy;
- (2) Codify internal standards for Clearing Banks and letter-of-credit issuers in OCC's Rules to provide transparency on minimum standards for banking relationships that are critical to OCC's clearance and settlement services; and

¹⁰ See Notice of Filing supra note 4.

¹¹ These policies include the Collateral Risk Management Policy, Margin Policy, and System for Theoretical Analysis and Numerical Simulation Methodology Description. Id.

¹² Generally, OCC defines, by rule, specific haircuts for Government and GSE debt securities. For margin collateral specifically, OCC currently also has authority to value such securities using Monte Carlo simulations as part of its margin methodology.

- (3) Authorize OCC to set more restrictive concentration limits for letters of credit than those limits currently codified in its Rules.

III. Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act¹³ to determine whether the Proposed Rule Change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. 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 comment on the Proposed Rule Change, providing the Commission with 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 Exchange Act,¹⁴ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change's consistency with Section 17A of the Exchange Act,¹⁵ and the rules thereunder, including the following provisions:

- Section 17A(b)(3)(F) of the Exchange Act,¹⁶ which requires, among other things, that the rules of a clearing agency are designed to promote the prompt and

¹³ 15 U.S.C. 78s(b)(2)(B).

¹⁴ Id.

¹⁵ 15 U.S.C. 78q-1.

¹⁶ 15 U.S.C. 78q-1(b)(3)(F).

accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions; and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; and

- Section 17A(b)(3)(I) of the Exchange Act,¹⁷ which requires that the rules of a clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments 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 Sections 17A(b)(3)(F) and (I) of the Exchange Act,¹⁸ or any other provision of the Exchange Act, or the 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(g) under the Exchange

¹⁷ 15 U.S.C. 78q-1(b)(3)(I).

¹⁸ 15 U.S.C. 78q-1(b)(3)(F) and (I).

Act,¹⁹ any request for an opportunity to make an oral presentation.²⁰

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 15 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 date 29 days from publication in the Federal Register].

The Commission asks that commenters address the sufficiency of OCC's statements in support of the Proposed Rule Change, which are set forth in the Notice of Filing,²¹ in addition to any other comments they may wish to submit about the Proposed Rule Change.

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 Number SR-OCC-2022-012 on the subject line.

Paper Comments:

¹⁹ 17 CFR 240.19b-4(g).

²⁰ Section 19(b)(2) of the Exchange Act grants to 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 Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

²¹ See Notice of Filing, supra note 4.

- 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-2022-012. 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-2022-012 and should be submitted on or before [insert date 15 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 29 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Sherry R. Haywood,
Assistant Secretary.

²² 17 CFR 200.30-3(a)(31).