



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71627; File No. SR-OCC-2014-01)

February 27, 2014

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Concerning Amendments to the Charters for the Membership/Risk Committee, Audit Committee and Performance Committee of OCC's Board of Directors

I. Introduction

On January 2, 2014, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2014-01 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 January 22, 2014.³ The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

Pursuant to the proposed rule change, as approved, OCC is amending its charters for the Membership/Risk Committee ("MRC Charter"), Audit Committee ("AC Charter") and Performance Committee ("PC Charter") (collectively, "Committee Charters") of OCC's Board of Directors ("Board").

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 71311 (January 15, 2014), 79 FR 3653 (January 22, 2014).

Changes Common to the MRC, AC, and PC

OCC is amending the Committee Charters⁴ to more clearly set forth certain uniform administrative functions to provide that: (i) each committee chair is responsible for ensuring that important issues discussed at committee meetings are reported timely to the Board; (ii) each committee chair shall determine if minutes of executive sessions are to be maintained, taking into consideration the sensitivity of the matters discussed and the possibility that candor might be limited if minutes are maintained; (iii) each committee confirm annually that all responsibilities outlined in its Committee Charter have been carried out; and (iv) each committee evaluate its performance, and the performance of its individual members, on a regular basis and provide results of such assessment to the Governance Committee (“GC”) for review. As described in more detail below, OCC is also amending the Committee Charters to reflect certain changes specific to the charters of MRC, AC, and PC, respectively.

Changes Specific to the Committee

Membership/Risk Committee

Section I of the MRC Charter states, in relevant part, that the Board established the MRC to assist the Board in overseeing OCC’s policies and processes for identifying and addressing strategic, operational, and financial risks. OCC is amending the MRC Charter to more clearly provide for the MRC’s oversight of the Chief Risk Officer

⁴ The original versions of the Committee Charters were approved on December 6, 2013. See Securities Exchange Act Release No. 71022 (December 6, 2013), 78 FR 75659 (December 12, 2013) [File No. SR-OCC-2013-17].

(“CRO”) activities by requiring that the MRC: (i) meet at least annually with the CRO and other corporate officers deemed appropriate in separate executive sessions; (ii) decide whether to approve management’s recommendation to appoint or replace the CRO; (iii) assess the performance of the CRO and the Enterprise Risk Management (“ERM”) Department; (iv) oversee the structure, staffing and resources of the ERM Department; (v) decide whether to approve any CRO annual compensation or salary adjustments, but delegate to the MRC Chair the ability to modify the approved amount as a result of the MRC Chair’s participation in the annual meeting of the PC; (vi) review and recommend OCC’s “Risk Appetite Statement”⁵ for annual Board approval; and (vii) review and monitor OCC’s risk profile for consistency with OCC’s “Risk Appetite Statement.”

Audit Committee

Section I of the AC Charter states, in relevant part, that the Board established an AC to assist the Board in overseeing OCC’s financial reporting process, OCC’s system of internal control, and OCC’s auditing, accounting, and compliance processes. OCC is amending the AC Charter to more clearly provide that the AC: (i) monitor and evaluate the independent accountant’s qualifications, performance, and independence and, based upon such evaluations, recommend the independent accountant’s appointment or

⁵ The “Risk Appetite Statement” sets the standards on which all of OCC’s risk identification, measurement, monitoring, and testing are based. OCC believes that the OCC’s Risk Appetite Statement is a key component of its enterprise risk management program.

dismissal;⁶ (ii) resolve any disagreements between management and the independent accountant regarding financial reporting; and (iii) review reports obtained from and prepared by the independent accountant to evaluate the independent accountant's qualifications, performance, and independence.

OCC is also amending the AC Charter to clarify the committee's duties and responsibilities with respect to OCC's Internal Audit Department by requiring that the AC: (i) review and approve the Internal Audit Department Charter to ensure that there are no unjustified scope restrictions or limitations placed on the Internal Audit Department; (ii) decide whether to approve management's recommendation to appoint or replace the Chief Audit Executive ("CAE"); (iii) review the Internal Audit Department process for establishing the risk-based annual internal audit plan and monitor progress against the plan; (iv) review reports and other communications prepared by the Internal Audit Department and inquire of management regarding steps taken to deal with items raised; (v) assess the performance of the CAE and Internal Audit Department; (vi) decide whether to approve the CAE's annual compensation, but delegate to the AC Chair the ability to modify the approved amount as a result of the MRC Chair's participation in the annual meeting of the PC; and (vii) oversee the structure, staffing and resources of the Internal Audit Department.

⁶ OCC believes that this change will align with best practices and reflect the AC's oversight of the external auditor to better assure independence in connection with the performance of the external auditors' function and services.

In addition, OCC is amending the AC Charter to provide that the Internal Audit Department may utilize co-sourcing service providers.⁷ Specifically, the amended rule change, as approved, allows the AC to delegate authority to the CAE to: (i) hire internal audit co-sourcing service providers, on an as needed basis, to review particular areas of OCC, augment resources available within the Internal Audit Department, or for any other practical purpose; (ii) review the performance of the internal audit co-sourcing service providers; (iii) exercise final approval on the appointment, retention, or discharge of the audit firm; and (iv) approve the scope of services to be performed by the internal audit-co sourcing service provider.

Finally, OCC is amending the AC Charter to provide that the AC will meet at least annually with management, the Chief Compliance Officer, the CAE, and the independent accountants, in separate executive sessions, to discuss any matters that either side believes warrants private discussion.

Performance Committee

OCC is amending the PC Charter to require, among other things, that: (i) the PC Chair meet at least annually in private session with the GC Chair to discuss the performance of key officers; (ii) the PC meet at least annually with the Chief Executive Officer and any other corporate officers deemed appropriate by the PC to discuss and review key officers' performance and compensation levels; (iii) the PC meet annually to

⁷ Co-sourcing service providers are consultants hired on a temporary basis to assist with a particular project when OCC's Internal Audit Department staff is otherwise fully engaged and requires additional resources or skill sets to complete a project on a timely basis.

determine compensation levels of key officers;⁸ (iv) the PC Chair recuse himself from discussion of his individual compensation, benefits, or perquisites, except as otherwise requested by the other members of the Committee; and (v) the functions and responsibilities of the PC be amended to also include review performance and compensation of key employees, to appoint and remove members of the Administrative Committee and to oversee the Administrative Committee, confirm annually that all charter responsibilities have been carried out, and to evaluate the committee's and PC members' performance on a regular basis.

III. Discussion

Section 19(b)(2)(C) of the Act⁹ directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act¹⁰ requires that the rules of a clearing agency that is registered with the Commission be designed to, among other things, protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act¹¹ because the amendments to the Committee Charters should

⁸ The AC and MRC Chairs shall be invited to attend such meeting to discuss the performance of the CAE and CRO, respectively, and to advise on the compensation levels approved for such officers as provided for in each Committee's Charter.

⁹ 15 U.S.C. 78s(b)(2)(C).

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

¹¹ Id.

clarify the role and responsibilities of each of the Committees within OCC's governance structure. Furthermore, consistent with Rule 17Ad-22(d)(8)¹² under the Act, the amendments to the Committee Charters should help ensure that OCC has governance arrangements that are clear and transparent, support the objectives of OCC's owners and participants, and promote the effectiveness of OCC's risk management procedures.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act¹³ and the rules and regulations thereunder.

¹² 17 CFR 240.17Ad-22(d)(8).

¹³ 15 U.S.C. 78q-1.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (File No. SR-OCC-2014-01) be and hereby is APPROVED.¹⁵

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

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Deputy Secretary

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¹⁴ 15 U.S.C. 78s(b)(2).

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

¹⁶ 17 CFR 200.30-3(a)(12).