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SECURITIES AND EXCHANGE COMMISSION  
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September 4, 2018

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Related to The Options Clearing Corporation's Board of Directors and Board Committee Charters

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 24, 2018, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change by OCC concerns changes to its (1) Audit Committee Charter, (2) Compensation and Performance Committee Charter, (3) Governance and Nominating Committee Charter, (4) Risk Committee Charter, (5) Technology Committee Charter and (6) Board of Directors Charter in connection with requirements applicable to OCC under Rules 17Ad-22(e)(2) (Governance) and (3) (Framework for the Comprehensive Management of Risks).<sup>3</sup>

The charters are attached as Exhibits 5A through F to the filing [sic]. Material proposed to be added to the charters as currently in effect is marked by double

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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> 17 CFR 240.17Ad-22(e)(2) and (3).

underlining and material proposed to be deleted is marked by strikethrough text. The proposed rule change, including Exhibits 5A through F, is available on OCC's website at <https://www.theocc.com/about/publications/bylaws.jsp>. The proposed rule change does not require any changes to the text of OCC's By-Laws or Rules. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.<sup>4</sup>

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to make certain changes to OCC's (1) Audit Committee ("AC") Charter ("AC Charter"), (2) Compensation and Performance Committee ("CPC") Charter ("CPC Charter"), (3) Governance and Nominating Committee ("GNC") Charter ("GNC Charter"), (4) Risk Committee ("RC") Charter ("RC Charter"), (5) Technology Committee ("TC") Charter ("TC Charter") and (6) Board of

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<sup>4</sup> OCC's By-Laws and Rules can be found on OCC's public website: <http://optionsclearing.com/about/publications/bylaws.jsp>.

Directors (“Board”) Charter (“Board Charter”)<sup>5</sup> for consistency with requirements that are applicable to OCC under Rules 17Ad-22(e)(2) (Governance) and (3) (Framework for the Comprehensive Management of Risks).<sup>6</sup> As described in greater detail below, the proposed changes are designed, in general, to clarify and assign certain responsibilities for the governance and oversight of OCC among the Board and its respective committees in order to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility. In turn, these changes would help ensure that OCC has governance arrangements that are organized to support its ability to promptly and accurately serve Clearing Members and the markets for which it clears and effectively manage the range of risks that arise in the course of providing such clearance and settlement services.

### **Background**

On September 28, 2016, the Commission adopted amendments to Rule 17Ad-22<sup>7</sup> and added new Rule 17Ab2-2<sup>8</sup> pursuant to Section 17A of the Securities Exchange Act of 1934, as amended (“Exchange Act” or “Act”),<sup>9</sup> and the Payment, Clearing, and Settlement Supervision Act of 2010<sup>10</sup> to establish enhanced standards for the operation

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<sup>5</sup> As discussed below, the changes to the Board Charter would involve incorporating provisions from OCC’s Corporate Governance Principles (“CGP”) and changing the title of the document to the Board Charter and Corporate Governance Principles.

<sup>6</sup> 17 CFR 240.17Ad-22(e)(2) and (3).

<sup>7</sup> Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786, 70812 (October 13, 2016) (“CCA Adopting Release”); see also 17 CFR 240.17Ad-22.

<sup>8</sup> 17 CFR 240.17Ab2-2.

<sup>9</sup> 15 U.S.C. 78q-1.

<sup>10</sup> 12 U.S.C. 5461 et. seq.

and governance of those clearing agencies registered with the Commission that meet the definition of a “covered clearing agency,” as defined by Rule 17Ad-22(a)(5)<sup>11</sup> (collectively, the new and amended rules are herein referred to as the “CCA rules”). OCC meets the definition of a covered clearing agency and is therefore subject to the requirements of the CCA rules.<sup>12</sup>

#### Relevance of CCA Rules Regarding OCC Charters

Certain of the CCA rules impose requirements regarding governance arrangements and OCC’s risk management framework that relate to its (1) AC Charter, (2) CPC Charter, (3) GNC Charter, (4) RC Charter, (5) TC Charter and (6) Board Charter. Specifically, Rules 17Ad-22(e)(2) and (3) require OCC to, among other things, establish, implement, maintain, and enforce written policies and procedures reasonably designed to, as applicable:

- provide for governance arrangements that are clear and transparent; clearly prioritize safety and efficiency of the covered clearing agency; support the public interest requirements in Section 17A of the Act<sup>13</sup> and the objectives of owners and participants; establish that the board of directors and senior management have appropriate experience and skills to discharge their duties

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<sup>11</sup> 17 CFR 240.17Ad-22(a)(5).

<sup>12</sup> Id.

<sup>13</sup> 17 CFR 240.17Ad-22(e)(2). The public interest requirements in Section 17A of the Act include that the “prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating and acting on behalf of investors.” See 15 U.S.C. 78q-1(a)(1)(A).

and responsibilities; specify clear and direct lines of responsibility; consider the interests of enumerated stakeholders;<sup>14</sup> and

- 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.<sup>15</sup>

OCC is proposing changes to its Board and Board committee charters to better align its governance and risk management processes with these requirements, including by shifting responsibility to the Board for enterprise risk management and aligning committee responsibilities accordingly. These changes are described below regarding each charter and key aspects of the proposed changes are noted by bullets at the beginning of each section. Many of the proposed changes are intended only to reduce redundancy and better organize the content of the charters and in some cases would remove provisions for readability in light of the fact that they are not required. Therefore, OCC proposes to relocate existing content and change word choices for readability and to more clearly state what a committee is authorized to do or must do, which OCC believes would not substantively alter the responsibilities or activities of the relevant committee.<sup>16</sup> Because such changes would not change the operation or meaning

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<sup>14</sup> See 17 CFR 240.17Ad-22(e)(2).

<sup>15</sup> See 17 CFR 240.17Ad-22(e)(3).

<sup>16</sup> The following are examples of such changes. All of the charters would be amended to state that the Board or the relevant committee will review the charter “at least once every twelve months” instead of “annually” to provide further clarity around the intended frequency. The statement in the TC Charter that the TC “shall also have the authority to perform any other duties” consistent with the TC Charter would be revised to provide that the TC “is authorized to perform any other duties” consistent with the TC Charter. The statement in the AC Charter that the committee shall “approve material changes in accounting principles and

of the charter provisions, they are not further described herein. OCC also notes that the Board Charter and committee charters are intended to set forth key responsibilities, procedures, and guiding principles for the Board and the committees. The charters therefore do not enumerate every action that may be taken by the Board or committees, and OCC notes that its By-Laws, Rules and policies also set forth certain duties and responsibilities of the Board and committees (e.g., Sections 4 (Committees) and 8 (Power of the Board of Directors) of Article III of OCC's By-Laws).

### **Common Changes**

Certain of the proposed changes represent common changes that would be made in all or most of the charters.<sup>17</sup> For instance, OCC proposes to amend the charters to provide that in carrying out their responsibilities the Board and the committees shall prioritize the safety and efficiency of OCC, generally support the stability of the broader financial system and consider legitimate interests of Clearing Members, customers of Clearing Members and other relevant stakeholders, including its Exchange Shareholders and other participant exchanges, taking into account prudent risk management standards (including systemic risk mitigation) and industry best practices, as is consistent with Rules 17Ad-22(e)(2)(ii), (iii) and (vi).<sup>18</sup> OCC also proposes to amend the committee

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practices” would instead state that it “is authorized to approve material changes in accounting principles and practices.” Consistent with this change, where a charter currently states that the Board or a committee “shall approve” a particular matter, certain changes are proposed, as appropriate, to state instead that the Board or a committee is “authorized to approve.” OCC believes such changes properly clarify the oversight role of the Board and the committees and that approval is not mandatory.

<sup>17</sup> Certain variations on some of these changes that are specific to the Board Charter are also described below in the section addressing the Board Charter.

<sup>18</sup> See 17 CFR 240.17Ad-22(e)(2)(ii) (requiring governance arrangements that prioritize the covered clearing agency’s “safety and efficiency”), (e)(2)(iii)

charters to address committee member vacancies to provide that in the event of a vacancy, the applicable committee will continue to undertake its responsibilities, so long as the remaining committee members are capable of satisfying the quorum requirement.<sup>19</sup> In addition, to promote compliance with the requirement in Rule 17Ad-22(e)(2)(v)<sup>20</sup> that governance arrangements provide for clear and direct lines of responsibility, OCC proposes to amend all of the charters to specify that the Board and each committee may delegate authority to one or more designated officers of OCC or may refer a risk under its oversight to another committee or the Board as advisable or appropriate. The proposed revisions would further provide, however, that the Board or the committee would retain the obligation to oversee any such delegation or referral and assure itself that delegation and reliance on the work of any delegate is reasonable. OCC also proposes amendments to acknowledge, where relevant, that its Executive Chairman (“EC”) also serves as its Chief Executive Officer (“CEO”) and therefore certain responsibilities and considerations that currently apply to the EC would also apply regarding the CEO. All charters would also be revised to state that a role of the Board or the committee, as applicable, is to advise management. In addition, committees would be required to submit their charters to the GNC for potential approval in addition to submitting them to the Board in connection with a required review once every twelve months of committee charters,

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(requiring governance arrangements that support the “public interest requirements” applicable to covered clearing agencies), and (e)(2)(vi) (requiring governance arrangements that consider the interests of all “relevant stakeholders”).

<sup>19</sup> This same change would not be added to the Board charter. It would also not be added to the GNC Charter because it is already addressed.

<sup>20</sup> 17 CFR 240.17Ad-22(e)(2)(v).

consistent with Rule 17Ad-22(e)(3)(i).<sup>21</sup> Moreover, consistent with Rules 17Ad-22(e)(2)(i) and (v) regarding the establishment of governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility,<sup>22</sup> changes would be made to clarify that where the Board or a committee has authority to approve reports or other proposals in its business judgment, such as materials provided by management, it is not obligated to approve, and related modifications would articulate a clear means of recourse for the committee or the Board if it does not approve.<sup>23</sup>

The committee charters would also be amended to provide that each committee shall perform and is authorized to perform such other responsibilities and functions as shall from time to time be assigned to it under the By-Laws and Rules, other policies, or delegated to it by the Board.<sup>24</sup> OCC also proposes to amend the committee charters to provide that each committee shall perform any other duties consistent with their respective charters as the committee deems necessary or appropriate, or as the Board shall further delegate to the particular committee.<sup>25</sup> OCC believes that these changes will provide for flexibility for each committee to supervise and account for matters naturally within the scope of their responsibility or that may be assigned to them by the Board.

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<sup>21</sup> See 17 CFR 240.17Ad-22(e)(3)(i) (requiring periodic review and annual Board approval of the CCA's risk management framework).

<sup>22</sup> 17 CFR 240.17Ad-22(e)(2)(i) and (v).

<sup>23</sup> The purpose of these changes is to promote governance arrangements that clearly prioritize the safety and efficiency of OCC and specify clear and direct lines of responsibility in its governance arrangements. See 17 CFR 240.17Ad-22(e)(2)(ii) and (v).

<sup>24</sup> OCC notes that a comparable provision to this exists in the RC Charter.

<sup>25</sup> OCC notes that comparable language currently appears in the AC Charter, GNC Charter, and TC Charter.

OCC believes these changes also promote compliance with Rule 17Ad-22(e)(3)<sup>26</sup> by establishing a sound risk management framework to comprehensively manage the varying risks and other matters each committee must manage and to effectively identify new risks that may arise.

Finally, in order to the promote compliance with the requirement in Rule 17Ad-22(e)(2)(i)<sup>27</sup> that OCC's governance arrangements be clear and transparent, OCC proposes to make a number of changes to its Board committee charters to clarify that, where certain actions were required to be performed "annually" under the charters, those actions would now be required to occur "each calendar year." OCC believes that it is appropriate to make clear it in its rules actions which the Board or a committee may be required to perform on an every twelve months-basis, particularly in cases where a regulatory requirement exists (e.g., Risk Committee requirement to review and have the authority to approve at least once every twelve months the adequacy of OCC's Recovery and Orderly Wind-Down Plan and recommend approval thereof to the Board) and those which they would only be required to perform on a calendar year basis. These changes include amending the committee charters to provide that the following activities must occur on a calendar year basis: (i) the appointment of directors to particular committees; (ii) that committees meet regularly, and no less than once per calendar year, with certain members of management in separate executive sessions; (iii) that each committee must provide reports to the Board summarizing its activities for the prior year; (iv) that each committee confirm to the Board that all responsibilities outlined in its Charter have been

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<sup>26</sup> 17 CFR 240.17Ad-22(e)(3).

<sup>27</sup> 17 CFR 240.17Ad-22(e)(2)(i).

carried out; and (v) that each committee assess its and its individual members' performance and provide results of such assessment to the GNC<sup>28</sup> for review.

### **AC Charter**

OCC proposes modifications to its AC Charter. Key aspects of the proposed changes regarding the AC Charter include:

- New responsibility for oversight of legal risks, including existing, pending and threatened litigation;
- Transfer of the oversight of Clearing Member investigations and enforcement matters to the RC;
- Increased oversight of OCC's compliance department, including its structure, resources and budget; and
- Introduction of mandatory periodic reporting from OCC's Chief Audit Executive ("CAE"), Chief Compliance Officer ("CCO") and General Counsel ("GC").

OCC proposes to amend the AC Charter to establish new responsibilities for the AC that include reviewing the impact of litigation and other legal matters that may have a material impact on OCC's financial statements and overseeing the structure, independence and objectivity, staffing, resources, and budget of OCC's compliance and audit departments. OCC believes that it is appropriate to extend these responsibilities to the AC since they are highly germane to its current functions (e.g., assisting the Board in overseeing OCC's financial reporting process, OCC's system of internal control, OCC's auditing process, and OCC's process for monitoring compliance with applicable laws and

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<sup>28</sup> The GNC is required to provide the results of its own assessment to the Board.

regulation) and would promote compliance with Rule 17Ad-22(e)(2)(v)<sup>29</sup> by specifying clear and direct lines of responsibility. In addition, the responsibility for the oversight of Clearing Member investigations and enforcement would be transferred to the RC as the RC has the required expertise to properly oversee the process (as discussed further below). The AC Charter would also be amended to clarify that the AC shall oversee the independence and objectivity of the internal audit department, consistent with OCC's obligations under Rules 17Ad-22(e)(3)(iii) and (iv)<sup>30</sup> to provide internal audit personnel with sufficient authority, resources, independence from management, and access to the board of directors and provide for oversight of internal audit personnel by an independent audit committee of the board of directors. Under the proposed rule change, the AC Charter would also be amended to provide that the AC is authorized to approve deviations to the audit plan that may arise over the course of an audit, which OCC believes is a natural extension of the AC's role and responsibilities. In addition, OCC proposes to amend the AC Charter to provide that the AC shall identify risk issues relating to the areas that the committee oversees that should be escalated to the Board for its review and consideration, which OCC believes promotes compliance with Rule 17Ad-22(e)(2)(v)<sup>31</sup> by specifying clear and direct lines of responsibility.

OCC also proposes to amend the AC Charter to provide that certain mandatory reports be sent to the AC for review, including quarterly reports from the CAE regarding

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<sup>29</sup> 17 CFR 240.17Ad-22(e)(2)(v).

<sup>30</sup> 17 CFR 240.17Ad-22(e)(3)(iii) and (iv).

<sup>31</sup> 17 CFR 240.17Ad-22(e)(2)(v).

the internal audit plan and the GC regarding existing, pending, or threatened litigation.<sup>32</sup> OCC notes that either the AC or another committee already has responsibilities in these areas and OCC believes that such quarterly reports will help provide the AC with the necessary information to appropriately discharge its duties and responsibilities.<sup>33</sup>

OCC also proposes to streamline its description of the AC's responsibility with respect to its compliance department by providing more generally that the AC shall review ongoing compliance monitoring activities by reviewing reports and other communications prepared by the CCO and inquire of management regarding steps taken to deal with items raised. As a result of this change, the AC Charter would no longer specify that the AC is responsible for approving the annual Compliance Testing Plan, monitoring progress against the annual Compliance Testing Plan, and approving any recommendations by the CCO relating to that plan. The purpose of this change is to shift OCC's compliance department to a monitoring role and away from its historic role of creating a specific plan to follow. This change would also help facilitate the transition of validation responsibilities to OCC's internal audit department, over which the compliance department would have monitoring responsibilities. OCC believes that this change

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<sup>32</sup> OCC proposes certain other streamlining changes to the AC Charter, such as providing that the AC will review OCC's Reporting Concerns and Whistleblower Policy (and specifying that such review will occur each calendar year) rather than providing a more detailed description of what the reporting concerns and whistleblower procedures under the relevant policy entail.

<sup>33</sup> OCC also believes that these quarterly reports to the AC help specify clear and direct lines of responsibility in OCC's governance arrangements by ensuring that these officers keep the AC apprised of OCC's ongoing performance or handling of these matters, which in turn will allow the AC to more effectively carry out its oversight functions and the responsibilities associated therewith. See 17 CFR 240.17Ad-22(e)(2)(v) and (e)(3).

promotes governance arrangements that are clear and transparent in accordance with Rule 17Ad-22(e)(2)(i).<sup>34</sup>

In a number of instances, OCC proposes to amend the AC charter to provide that the AC is authorized to perform certain functions. For example, OCC proposes to amend the AC charter to provide that the AC is authorized to approve management's recommendation to appoint or replace the CCO or CAE, which is a governance arrangement that OCC believes is consistent with Rules 17Ad-22(e)(3)(iii) and (iv)<sup>35</sup> in that it furthers the AC's oversight of the CCO and CAE and their independence from management.<sup>36</sup> OCC believes that framing the AC's responsibilities in this manner would provide appropriate flexibility for the committee to carry out its oversight and advisory responsibilities using its business judgment. OCC also proposes to amend the AC Charter (and the RC Charter) to transfer responsibility for reviewing the investigation and enforcement outcomes of disciplinary actions taken by OCC against Clearing Members from the AC to the RC. OCC believes that the RC is appropriately situated to review disciplinary actions against Clearing Members given its broader role in overseeing OCC's management of third party risks, (which includes OCC counterparties such as Clearing Members).

OCC proposes to further amend the AC Charter to provide that the AC shall review the effectiveness of the internal audit function, including conformance with the

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<sup>34</sup> 17 CFR 240.17Ad-22(e)(2)(i).

<sup>35</sup> 17 CFR 240.17Ad-22(e)(3)(iii) and (iv).

<sup>36</sup> OCC similarly proposes to amend the AC charter to provide that the AC is authorized to approve OCC's audited financial statements after review, is authorized to oversee the timing and process for implementing a rotation of the engagement partner of the external auditor, and is authorized to discuss certain significant issues with the external auditor.

Institute of Internal Auditor’s Code of Ethics and the International Standards for Professional Practice of Internal Auditing. OCC believes that this is a natural extension of the AC’s role and responsibility to help ensure the integrity of OCC’s audits and is consistent with the public interest and the protection of investors.<sup>37</sup>

In addition, the AC Charter currently provides that the AC is authorized to determine appropriate compensation for audit services and pre-approve all audit services, subject to annual approval by the Board. As proposed, the AC charter would no longer expressly require annual Board approval regarding these items. However, under the AC Charter the committee would still be required to confirm annually to the Board that all of its responsibilities have been carried out and provide an annual report to the Board summarizing its activities during the previous year, consistent with Rules 17Ad-22(e)(2)(v) and 17Ad-22(e)(3)(i) and (iii).<sup>38</sup> OCC also proposes to amend the AC Charter to provide that, in addition to the CAE and CCO, the Chief Financial Officer (“CFO”) also would be authorized to communicate directly with the Chair of the AC with respect to any of the responsibilities of the AC between meetings of the AC given the CFO’s role as part of OCC’s executive team and his/her responsibility for OCC finances.<sup>39</sup>

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<sup>37</sup> See 15 U.S.C. 78q-1(b)(3)(F).

<sup>38</sup> See 17 CFR 240.17Ad-22(e)(2)(v) (requiring governance arrangements with clear and direct lines of responsibility), (e)(3)(i) (requiring periodic review and annual Board approval of risk management policies, procedures and systems) and (e)(3)(iii) (requiring a risk management framework that provides internal audit personnel with sufficient authority, but also access to the Board).

<sup>39</sup> As described below, OCC also proposes certain other non-substantive changes to the AC Charter to provide additional clarity. For example, OCC proposes to replace reference to “financial and senior management” to OCC’s “Corporate Finance Department” in describing the AC’s responsibility to facilitate open communication between external auditors and certain groups within OCC. As an

## **CPC Charter**

OCC proposes a number of revisions to its CPC Charter, the key aspects of which would include:

- New responsibility to oversee and monitor certain activities of OCC's Administrative Committee, including the approval of the Administrative Committee's charter and changes thereto, and approval of the members of the Administrative Committee;
- Introduction of mandatory quarterly reporting on OCC's corporate plan, corporate budget and capital plan; and
- Annual requirement to review succession planning activities regarding OCC's Management Committee ("Management Committee").

OCC proposes to amend the CPC Charter to state that the CPC assists the Board in overseeing risks related to OCC's general business, regulatory capital, investments, corporate planning, compensation and human capital in addition to assisting the Board in executive management succession planning and performance assessments. The existing CPC Charter already addresses these aspects of the committee's responsibilities generally. The proposed revisions are designed to emphasize the committee's

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additional example, the AC Charter would be amended to provide that the AC is authorized to approve the "issuance of the annual financial" statements after its review of such statements. Similarly, OCC proposes to enhance certain descriptions of the AC's responsibilities. For example, OCC proposes to revise text describing the role of the AC, along with external auditors, as responsible for "planning and carrying out audit work, as appropriate" rather than "planning and carrying out a proper audit." OCC's description of the AC's power to delegate to the CAE "within the external audit limits" would be changed for accuracy to read "within the co-sourced audit hour limits." This change is meant to reflect the fact that OCC co-sources its internal audit function through a partnership between OCC's in-house internal audit department and a third party internal audit service provider.

responsibility to help the Board oversee such risks and to clarify that the committee has an oversight role while it remains OCC management’s responsibility to identify, manage, monitor and report the associated risks, as is consistent with the Rule 17Ad-22(e)(3)(i) requirement that risk management policies, procedures and systems be subject to periodic review and annual approval by the Board<sup>40</sup> and the Rule 17Ad-22(e)(2)(v) requirement that governance arrangements “specify clear and direct lines of responsibility.”<sup>41</sup>

The CPC Charter would continue to provide that the committee oversees the corporate plan and corporate budget and makes recommendations to the Board regarding their approval. However, the proposed changes would clarify that the corporate plan and budget are annual arrangements and that the committee oversees their alignment with OCC’s business strategy. In addition, a new provision would require management to provide a quarterly report to the committee that contains information on OCC’s performance against the corporate plan and the budget.<sup>42</sup>

The CPC Charter would continue to provide that the committee oversees OCC’s capital plan and would be revised to clarify that this oversight includes the written policies adopted thereunder, which include OCC’s fee, dividend and refund policies (which are existing responsibilities of the CPC). Revisions also would clarify that the committee must review the capital plan at least once every twelve months and that the

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<sup>40</sup> 17 CFR 240.17Ad-22(e)(3)(i).

<sup>41</sup> 17 CFR 240.17Ad-22(e)(2)(v).

<sup>42</sup> OCC believes that quarterly reporting by management to the CPC, as described in this discussion of the CPC Charter, helps specify clear and direct lines of responsibility in OCC’s governance arrangements by ensuring that management keeps the CPC apprised of OCC’s ongoing performance on these matters, which in turn will allow the CPC to more effectively carry out its oversight functions and the responsibilities associated therewith. See 17 CFR 240.17Ad-22(e)(2)(v) and (e)(3).

committee makes recommendations to the Board concerning capital requirements, refund payments, and dividend payments. In addition, a provision would be added to require management to provide a quarterly performance report to the committee against the capital plan.

OCC proposes to revise the CPC Charter to provide that the Committee would oversee and monitor the activities of OCC's Administrative Committee, including the approval of the Administrative Committee's charter and changes thereto and of the members of the Administrative Committee. OCC believes that these allocations of responsibility are appropriate given the CPC's current oversight of the Administrative Committee, whereby the CPC is responsible for, among other things, appointing members of the Administrative Committee and overseeing and monitoring the activities of the Administrative Committee with respect to retirement and retirement savings plans.

In addition, OCC proposes changes to clarify the role that the committee plays in oversight of succession planning regarding OCC's Management Committee. A new provision would also provide that the committee must review the results of Management Committee succession planning activities at least once every twelve months.

Regarding the committee's review of Public Director compensation and the recommendations that it provides to the Board related thereto, a requirement would be added to the CPC Charter for the committee to engage in these activities not less than once every two years. OCC believes that a two year period is appropriate for such a review because the overall trends in industry compensation generally do not change dramatically from year to year. The CPC would continue to look at overall Public Director compensation each year for informational purposes, but it would not be required

to perform a full review of each of the components of Public Director compensation packages and recommend adjustments to the Board on a yearly basis.

The CPC Charter would also be amended to clarify that that committee is not authorized to adopt or amend compensation, retirement and welfare benefit plans that require Board approval and to add a new requirement that the committee must review OCC's insurance program at least once every twelve months.

Certain specific responsibilities stated in the CPC Charter would be removed in favor of a more general statement that the committee is required to perform activities consistent with the CPC Charter as it deems necessary or appropriate or as are delegated to the committee by the Board, furthering the purposes of the Rule 17Ad-22(e)(2)(v) requirement that a covered clearing agency's governance arrangements specify clear and direct lines of responsibility.<sup>43</sup> For example, an existing provision would be removed that states that the committee reviews special financial matters as requested by the Board. Provisions would also be removed that specifically address the committee's review and approval of policies and programs regarding salary compensation and incentive compensation and its review of material changes to executive management benefits.

### **GNC Charter**

OCC also proposes changes to its GNC Charter. The key aspects of the proposed changes regarding the GNC Charter include:

- New responsibility for review and approval of related party transactions; and
- New responsibility for advising on matters pertaining to director leadership development and succession planning.

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<sup>43</sup> 17 CFR 240.17Ad-22(e)(2)(v).

OCC proposes to amend the GNC Charter to establish new responsibilities for the GNC to approve all material changes to written policies concerning related party transactions and recommend such changes to the Board for approval. The GNC Charter would also be amended to provide that the GNC shall review and, if appropriate, approve or ratify any related party transactions involving OCC in accordance with the written policy governing such transactions. Because the GNC is already responsible for the review of conflicts of interests of directors and the manner in which such conflicts will be monitored and resolved, OCC believes that it is appropriate for the GNC to assume the additional responsibility of reviewing related party transactions. OCC also believes that it would be appropriate for the GNC to advise the Board on matters pertaining to director leadership and development to promote compliance with the Rule 17Ad-22(e)(2)(iv)<sup>44</sup> requirement that OCC's governance arrangements establish that Board directors have appropriate experience and skills to discharge their duties and responsibilities.<sup>45</sup>

OCC also proposes a number of other changes to the GNC charter, which include:

(i) reframing the GNC's responsibilities with respect to ensuring that directors are appropriately qualified,<sup>46</sup> (ii) removing the ability for a designee of the chair of the GNC

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<sup>44</sup> 17 CFR 240.17Ad-22(e)(2)(iv).

<sup>45</sup> OCC also proposes to reframe the introductory paragraph of the GNC charter to explicitly reference relevant provisions of Rule 17Ad-22(e)(2) and specify that the GNC is responsible for assessing the clarity and transparency of OCC's governance arrangements, consistent with Rule 17Ad-22(e)(2)(i). See 17 CFR 240.17Ad-22(e)(2)(i).

<sup>46</sup> For example, rather than providing that the GNC would work toward developing a Board with a broad spectrum of experience and expertise, OCC proposes to provide that the GNC shall identify, for purposes of making recommendations to the Board, the criteria, skills, experience, expertise, attributes and professional backgrounds (collectively, the "Standards") desirable in directors to ensure the Board is able to discharge its duties and responsibilities. In this same vein, OCC proposes to delete language providing that the GNC is responsible for

to call an additional meeting beyond the four times per year that the GNC will meet,<sup>47</sup> (iii) specifying that the GNC shall review the composition of the Board for consistency with public interest and regulatory requirements at least every three years rather than periodically,<sup>48</sup> (iv) expanding the GNC’s yearly review of the Board Charter for consistency with the public interest and other regulatory requirements to also include a review of the charters of the Board committees,<sup>49</sup> (v) specifying that the GNC shall identify risk issues that should be escalated to the Board for its review and consideration, and (vi) providing that the GNC shall annually review and advise the Board with regard to whether directors are independent as defined by the Board. In addition, OCC proposes to revise the GNC charter to no longer provide that the GNC is responsible for recommending to the Board candidates for nomination for election or re-election by the stockholders and any Board vacancies that are to be filled by the Board. The requirement that the GNC nominate candidates is provided explicitly in the By-Laws, and OCC

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recommending to the Board for approval and overseeing the implementation and effectiveness of OCC’s policies and procedures for identifying and reviewing Board nominee candidates, including the criteria for Board nominees. OCC believes that this deletion is appropriate because it is adequately covered by the other provisions in the GNC charter regarding directors’ qualifications, as revised, and contemplates that the Standards are approved by the Board. These changes are designed to be consistent with Rule 17Ad-22(e)(2)(iv) (regarding the establishment of governance arrangements that ensure “board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities”). See 17 CFR 240.17Ad-22(e)(2)(iv).

<sup>47</sup> OCC believes this change would help ensure that the committee’s time and resources would be utilized appropriately, furthering the purpose of Rule 17Ad-22(e)(2)(ii) requiring that a covered clearing agency’s governance arrangements prioritize the “efficiency” of the covered clearing agency. See 17 CFR 240.17Ad-22(e)(2)(ii).

<sup>48</sup> This is intended to be consistent with 17 CFR 17Ad-22(e)(2)(iii) (requiring governance arrangements that support the “public interest requirements” in 17 U.S.C. 78q-1).

<sup>49</sup> Id.

further believes that this responsibility is adequately captured in OCC's revised description of the GNC's role to identify, screen, and review individuals qualified to be elected or appointed to serve as Member Directors or Public Directors.<sup>50</sup>

### **RC Charter**

OCC also proposes a number of changes to its RC Charter. The key aspects of the proposed changes regarding the RC Charter include:

- Transition of responsibilities regarding Enterprise Risk Management ("ERM") to the Board;
- Increased responsibilities with respect to OCC's risk management related to credit, collateral, liquidity and third party risks;
- Transfer of the oversight of Clearing Member investigations and enforcement matters to the RC; and
- Introduction of mandatory periodic reporting on the effectiveness of OCC's management of risks.

OCC proposes to amend the RC Charter's statement of the committee's responsibilities. First, the RC Charter currently provides that the RC assists the Board in overseeing OCC's policies and processes for identifying and addressing strategic, operational and financial (e.g., credit, market, liquidity and systemic) risks. This would be replaced by a narrower and more specific statement that the RC would have responsibility for assisting the Board in its oversight of financial, collateral, risk model

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<sup>50</sup> See OCC By-Law Article III, Sections 5 and 6A. OCC proposes to specify in the GNC Charter that the GNC's role in this context applies specifically to Public Directors and Member Directors to promote consistency with the By-Laws.

and third party risk management processes.<sup>51</sup> In addition, the oversight of responsibility for Clearing Member investigations and enforcement outcomes of disciplinary actions would be transferred from the AC to the RC as the RC has the required expertise to properly oversee the process given its current responsibility for overseeing the framework for Clearing Membership, including (i) periodically reviewing and revising, as appropriate, OCC's initial and ongoing requirements for Clearing Membership, (ii) overseeing the processes established for reviewing and monitoring Clearing Membership (including in respect of the continuance of potentially problematic members), and (iii) making recommendations to the Board, as applicable, for final determinations in respect of the foregoing.

The committee would also continue to be responsible for functions delegated to it under the By-Laws and Rules and as may be delegated to it by the Board. A removal of continued responsibility for strategic and operational risks would be consistent with additional changes to the RC Charter that provide that the RC would no longer have responsibilities related to the ERM program and such responsibilities would be transitioned to the Board (which is discussed in further detail below). OCC believes that

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<sup>51</sup> The RC Charter currently provides that the committee is responsible for overseeing OCC's overall ERM framework, including "reviewing material policies and processes relating to (i) membership criteria and financial safeguards, (ii) member and other counterparty risk exposure assessments, (iii) liquidity requirements and maintenance of financial resources, (iv) risk modeling and assessments, (v) default management planning, and (vi) risks related to new initiatives." As described in greater detail below, the revised descriptions in the RC Charter regarding its oversight of these areas would continue to involve responsibilities related to credit, market, liquidity and systemic risk but would no longer include responsibility for overseeing those aspects related to the ERM program. The committee would also continue to be responsible for identifying risks associated with its responsibilities that should be escalated to the Board for its review and consideration.

these changes are appropriate because issues regarding enterprise risk management are central to OCC's comprehensive management of risk and would therefore benefit from the experience and attention of the full Board.

Corresponding changes would also be made to clarify that the committee has an oversight role regarding its responsibilities and that it remains OCC management's responsibility to identify, manage, monitor and report risks in these areas.

A clarifying statement would also be added to the RC Charter to state that the RC is required to perform its responsibilities in accordance with the provisions of the RC Charter and applicable regulatory requirements. A new provision would provide that, from time to time, the committee may receive reports and guidance relating to financial risk issues from, among others, OCC's Financial Risk Advisory Council ("FRAC"). The committee would consider and discuss such reports in respect of financial risk issues that may impact the options and futures industries. The committee would take such guidance into account in the exercise of its fiduciary judgment and the performance of its functions and responsibilities.

Regarding meetings of the RC, a change would be made to the RC Charter to specify that joint meetings with other Board committees count toward the requirement to meet at least six times a year. A change would also clarify that in-person attendance of meetings is preferred.

In connection with the RC no longer having responsibilities regarding the ERM program, several related provisions would be removed from the RC Charter. For example, the committee would no longer have responsibility to oversee the structure, staffing and resources of the ERM program or approve its goals and objectives on an

annual basis. Additionally, it would no longer be responsible for reviewing OCC's risk appetite statements and risk tolerances because the Board would assume responsibility for approval of these matters.

As noted, the proposed changes to the RC Charter would clarify the RC's broad responsibilities for overseeing credit, collateral, liquidity and third party risks in a manner consistent with the Rule 17Ad-22(e)(3)(iii) and (iv) requirements that risk management personnel be provided with sufficient authority, resources, independence, and access to the board of directors, as well as a direct reporting line to and oversight by the RC, and with the Rule 17 Ad-22(e)(2)(v) requirement that OCC's governance arrangements specify clear and direct lines of responsibility.<sup>52</sup> The RC Charter currently contains provisions that address the responsibility that the committee has for these areas, but they would be removed in favor of the more specific provisions described below. At least once every twelve months the committee would be required to review the adequacy of OCC's management of credit, collateral, liquidity, and third party risks. In connection with these responsibilities, the RC would receive monthly reports from OCC management regarding the effectiveness of OCC's management of credit exposures<sup>53</sup> and liquidity risks.<sup>54</sup> Management would also provide the committee with quarterly reports

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<sup>52</sup> 17 CFR 240.17Ad-22(e)(2)(v), (e)(3)(iii) and (iv).

<sup>53</sup> For example, the report regarding the effectiveness of the management of credit exposures would include the results of: (i) a comprehensive analysis of OCC's existing stress testing scenarios, models and underlying parameters and assumptions, and (ii) a sensitivity analysis of OCC's margin models and a review of the associated parameters and assumptions for back testing.

<sup>54</sup> The committee would also be required to review the adequacy of OCC's secured committed liquidity facilities at least once every twelve months and recommend the size and composition of such facilities to the Board for approval.

regarding the effectiveness of OCC's management of collateral and third party risks.<sup>55</sup>

And, the RC would also be responsible for approval of all material changes to written policies regarding risk management in these areas and recommending such changes to the Board, consistent with the Rule 17Ad-22(e)(3)(i) requirement that a covered clearing agency's risk management policies, procedures and systems be subject to periodic review and annual approval by the Board.<sup>56</sup>

The RC Charter would continue to provide that the committee has responsibility regarding OCC's risk models, including margin models, but it would be revised to more specifically identify the committee's oversight role regarding model validations,<sup>57</sup> its responsibility for approving any material changes to written policies regarding model risk management, and for recommending any such change to the Board, consistent with the Rule 17Ad-22(e)(3)(i) requirement that a covered clearing agency's risk management policies, procedures and systems be subject to periodic review and annual approval by the Board.<sup>58</sup>

Responsibilities would also be made explicit in connection with the review and approval of any new products that materially impact OCC's established risk profile or

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<sup>55</sup> OCC believes that this quarterly reporting helps specify clear and direct lines of responsibility in OCC's governance arrangements by ensuring that management keeps the RC apprised of OCC's ongoing performance on these matters, which in turn will allow the RC to more effectively carry out its oversight functions and the responsibilities associated therewith. See 17 CFR 240.17Ad-22(e)(2)(v) and (e)(3).

<sup>56</sup> 17 CFR 240.17Ad-22(e)(3)(i).

<sup>57</sup> This would include the review and approval of OCC's risk model validation plan, plan deviations, and related reports and recommendations by OCC's Chief Risk Officer ("CRO").

<sup>58</sup> 17 CFR 240.17Ad-22(e)(3)(i).

introduce novel or unique financial, risk model and third party risks. The RC would refer any such new products that it approves to the Board for its potential approval.

The RC Charter would also be amended to codify the committee's existing responsibility to oversee OCC's Recovery and Orderly Wind-down Plan, consistent with the requirement in Rule 17Ad-22(e)(3)(ii).<sup>59</sup> At least once every twelve months, this would include reviewing the adequacy of the plan. If the committee approves the plan, it would next recommend the plan to the Board for potential Board approval. The committee would also have responsibility for reviewing and approving any material changes to the plan; however, in the event the committee approves any such changes, it would in turn recommend the changes to the Board for its potential approval.<sup>60</sup>

The committee would continue to have responsibility regarding the structure and staffing of OCC's financial risk management group; however, detail would be added to the RC Charter to clarify the same responsibility for OCC's corporate risk management functions and that the RC must review structure and staffing in these areas at least once every twelve months. A provision would also be added to provide that the committee would review and approve the CRO's goals and objectives, and any material changes thereto, at least once every twelve months. OCC believes these changes are consistent with the Rule 17Ad-22(e)(3)(iv) requirement that the RC provide oversight of risk

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<sup>59</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

<sup>60</sup> In relevant part, the RC Charter states the following. "The Committee shall review and have the authority to approve at least once every twelve months the adequacy of OCC's Recovery and Orderly Wind-Down Plan and recommend approval thereof to the Board. The Committee shall have the authority to approve all material changes to the Recovery and Orderly Wind-Down Plan and recommend such changes to the Board."

management personnel,<sup>61</sup> as well as the Rule 17Ad-22(e)(2)(v) requirement that a covered clearing agency's governance arrangements provide for clear and direct lines of responsibility.<sup>62</sup>

As noted above, OCC also proposes to amend the RC Charter to transfer responsibility for reviewing the investigation and enforcement outcomes of disciplinary actions taken by OCC against Clearing Members from the AC to the RC. OCC believes that the RC is appropriately situated to review disciplinary actions against Clearing Members given the committee's broader role in overseeing OCC's management of third party risks, which includes OCC counterparties such as Clearing Members. Finally, the RC Charter would continue to provide that the RC reviews the results of internal and external audits and regulatory examinations. However, a statement would be added to clarify that the committee is responsible for reviewing third party assessment reports as to financial, collateral, risk model and third party risk management processes and for reviewing OCC management's remediation efforts pertaining to any such examination and reports.

### **TC Charter**

In addition, OCC proposes a number of changes to its TC Charter. Key aspects of the proposed changes regarding the TC Charter include:

- New responsibility for oversight of material changes to the operational execution and delivery of core clearing and settlement services with the authority to recommend approval thereof to the Board;

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<sup>61</sup> 17 CFR 240.17Ad-22(e)(3)(iv).

<sup>62</sup> 17 CFR 240.17Ad-22(e)(2)(v).

- New responsibility for OCC’s operational initiatives, including approving major information technology (“IT”) and operational initiatives, recommending any major capital expenditures to implement to the Board, and approving the information technology and operational budget for each calendar year;
- New responsibility to review at least every twelve months the adequacy of OCC’s management of information security risks, approve all material changes to written policies related to the managing information security risks and recommend such changes to the Board;
- Introduction of mandatory periodic reporting from management on major IT initiatives;<sup>63</sup> and
- New responsibility to oversee and receive a quarterly report from management on OCC’s Business Continuity and Disaster Recovery Programs.

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<sup>63</sup> OCC proposes that the TC would oversee and receive quarterly reports from management that provide information on: (i) executing on major IT initiatives, technology architecture decisions (as applicable) and IT priorities as well as overall IT performance; (ii) the effectiveness of the management of information security risks; (iii) OCC’s Business Continuity and Disaster Recovery Programs, including the progress on executing the annual test plan and achieving recovery time objectives; and (iv) major operational initiatives and metrics on the effectiveness of OCC’s operations with reference to key indicators. OCC believes that such reports would provide the TC with the necessary information to discharge its oversight duties and responsibilities appropriately and will facilitate dialogue between the TC and OCC’s senior IT management team. OCC believes that this reporting also helps specify clear and direct lines of responsibility in OCC’s governance arrangements by ensuring that management keeps the TC apprised of OCC’s ongoing performance on these matters, which in turn will allow the TC to more effectively carry out its oversight functions and the responsibilities associated therewith. See 17 CFR 240.17Ad-22(e)(2)(v) and (e)(3).

OCC proposes to amend the TC Charter to specify clear and direct lines of responsibility that provide that the TC's role is one of oversight and that it remains the responsibility of OCC management to identify, manage, monitor and report on IT and other operational risks arising from OCC's business activities, consistent with Rule 17Ad-22(e)(2)(v).<sup>64</sup> In addition, OCC proposes to amend the TC Charter so that it would no longer require that the TC work with or report to the AC and RC to monitor the quality and effectiveness of IT systems and processes that relate to or affect OCC's internal control systems and risk management systems. As noted above in the discussion of common changes to the charters, however, the TC and any other committee or the Board would have certain authority to refer risks under their oversight to promote the smooth functioning of OCC's governance arrangements. OCC also proposes to revise the TC Charter to remove specific references to the committee's oversight of OCC's physical security and instead more accurately describe the committee's responsibility for overseeing the adequacy of OCC's management of information security risks (which generally includes oversight of the confidentiality, integrity, and availability of OCC data; the security of the information systems used to process, transmit, and store OCC information; and the physical, personnel, procedural, administrative, and environment security disciplines).

The TC Charter would continue to provide that the TC is responsible for assisting the Board in overseeing OCC's IT strategy and other company-wide operational capabilities. OCC proposes, however, to delete certain general statements regarding the TC's duty to make recommendations to the Board with respect to IT-related projects and

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<sup>64</sup> 17 CFR 240.17Ad-22(e)(2)(v).

investments and critically review the progress of such projects and/or technology architecture decisions. OCC proposes to replace these general statements with more specific duties of the TC to, for example, receive a report on management’s progress in executing on major IT initiatives, technology architecture decisions (as applicable) and IT priority, and review material changes to the operational execution and delivery of core clearing and settlement services as well as material changes to written policies concerning information security risk and to recommend such changes to the Board for approval.<sup>65</sup>

OCC also proposes to remove the language stating that the TC will “periodically review and appraise . . . OCC’s crisis management plans,” and, instead, add language that the TC will oversee and receive a quarterly report on “OCC’s Business Continuity and Disaster Recovery Programs” as the crisis management plans are incorporated within its Business Continuity and Disaster Recovery Programs. As such, the proposed revision will better clarify the full oversight responsibility of the committee and better align with the internal practices at OCC.

In addition, OCC proposes to amend the TC Charter to provide that the TC shall identify risk issues relating to areas that the TC oversees that should be escalated to the Board for its review and consideration. OCC believes that this change promotes compliance with the Rule 17Ad-22(e)(3) requirement to maintain a sound risk management framework for comprehensively managing risks that arise in or are borne by

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<sup>65</sup> OCC proposes similar changes to the TC Charter with respect to certain responsibilities of the TC. For example, OCC proposes to reframe the TC’s responsibility to monitor and assess OCC’s management of IT-related compliance risks as a responsibility to monitor and oversee the overall adequacy of OCC’s IT and operational control environment, including the implementation of key controls in response to regulatory requirements.

OCC by charging the TC with the task of identifying emerging risks that may arise over time.<sup>66</sup>

### **Board Charter**

As discussed above, OCC would amend its Board Charter by incorporating its existing CGP and retiring the separate CGP document. The title of the consolidated document would be changed to reflect that it represents OCC's "Board of Directors Charter and Corporate Governance Principles." Both the Board Charter and CGP are publicly available on OCC's website today.<sup>67</sup> OCC believes this step is appropriate to eliminate significant overlap between the contents of the two existing documents and thereby make the consolidated provisions in the Board Charter easier for Clearing Members and other OCC stakeholders to access, use and understand, and thereby further the purposes of Rule 17Ad-22(e)(2)(i) by improving the clarity and transparency of OCC's governance arrangements.<sup>68</sup> For example, the existing CGP and Board Charter each address aspects of the Board such as its size and composition. In addition, the Board Charter and CGP also cross-reference one another, such as regarding qualification standards for directors, term limitations, the number of meetings per year and the Board's authority to hire specialists and advisors, which reduces clarity because it requires a reader to turn between the two documents to understand the Board's operation. In incorporating the CGP within the proposed Board Charter, OCC would make changes to the contents of the CGP, as appropriate, to conform the existing provisions to the

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<sup>66</sup> 17 CFR 240.17Ad-22(e)(3).

<sup>67</sup> OCC's CGP and Board Charter are available at <http://www.theocc.com/about/corporate-information/what-is-occ.jsp>.

<sup>68</sup> 17 CFR 240.17Ad-22(e)(2)(i).

structure and organization of the Board Charter and related requirements in the By-Laws and Rules.<sup>69</sup> However, the majority of the provisions in the CGP would be incorporated in their existing form and these provisions would address in the Board Charter, for example, the size of the Board and its composition, membership criteria, appointment of the GNC, the selection of Member, Public, Exchange and Management Directors, conduct matters, ethics and conflicts of interest, compensation, access to senior management, and Board and Board committee evaluations.

As a result of these incorporated provisions, OCC proposes to remove certain existing provisions in the Board Charter that specifically reference or are duplicative of more comprehensive descriptions from the CGP or where the imported text from the CGP otherwise covers the more truncated discussions of these items in the Board Charter. Specifically, OCC's discussions in the Board Charter would be supplanted by more detailed explanations drawn from the CGP with respect to: (i) Board composition; (ii) qualification standards for directors; (iii) election of directors, resignation and disqualification; (iv) tenure, term and age limitations; and (v) calling of Board meetings, selection of agenda items, and attendance.

OCC also proposes to amend the Board Charter to set forth certain key considerations and responsibilities in the Board Charter consistent with Rule 17Ad-22 that include and expand upon those described above in connection with the discussion of

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<sup>69</sup> For example, the CGP provides in one instance that all materials for Board meetings are made available online by the office of the secretary. This particular provision in the CGP would not be imported and the Board Charter would be amended to provide that OCC operates a portal for the general dissemination of meeting and other written materials to directors to reflect how OCC actually operates. In addition, OCC proposes to make clear that Public Directors do not have term limits, consistent with the requirements in Article III, Section 6 of the OCC By-Laws.

proposed changes that are common to the charters.<sup>70</sup> These include providing that the Board shall exercise its authority to provide for governance arrangements that, among other things, “support [applicable] public interest requirements . . . and the objectives of owners and participants,”<sup>71</sup> establish that the Board and senior management “have appropriate experience and skills to discharge their duties and responsibilities,”<sup>72</sup> specify “clear and direct lines of responsibility”<sup>73</sup> and consider the interests of Clearing Members’ customers.<sup>74</sup> OCC also proposes changes designed to provide for “clear and direct lines of responsibility”<sup>75</sup> by noting that the Board has explicitly delegated management of specific risks to the Board committees and to the extent a specific risk is not retained by the Board or otherwise assigned to a Board committee, such risk shall be overseen by the RC.<sup>76</sup>

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<sup>70</sup> See supra notes 16-18 and accompanying text.

<sup>71</sup> 17 CFR 240.17Ad-22(e)(2)(iii).

<sup>72</sup> 17 CFR 240.17Ad-22(e)(2)(iv).

<sup>73</sup> 17 CFR 240.17Ad-22(e)(2)(v).

<sup>74</sup> OCC would also provide as a guiding principle that the Board is, among other things, mindful of the public interest as it fulfills its duties by complying with the obligations imposed on it under relevant law and that it discloses major decisions to relevant stakeholders and the public. 17 CFR 240.17Ad-22(e)(2)(iii).

<sup>75</sup> 17 CFR 240.17Ad-22(e)(2)(v).

<sup>76</sup> The amended Board Charter would further specify that the Board may form and delegate authority to committees and may delegate authority to one or more of its members and to one or more designated officers of OCC but would note that the Board would retain the obligation to oversee any such delegation or referral and assure itself that delegation and reliance on the work of any delegate is reasonable. Specifying this delegation in the Board Charter is consistent with the requirement in Rule 17Ad-22(e)(2)(v) that a covered clearing agency’s governance arrangements specify clear and direct lines of responsibility. See 17 CFR 240.17Ad-22(e)(2)(v).

Currently, the Board Charter sets forth a number of functions and responsibilities of the Board. OCC proposes to reorganize this list of functions and responsibilities in a new section regarding the mission of the Board and proposes non-substantive changes to some of the descriptions of the Board's responsibilities. For example, the Board Charter currently provides that the Board is responsible for advising, approving, and overseeing OCC's business strategies, including expansions of clearing and settlement services to new business lines, as well as monitoring OCC's performance in delivering clearance and settlement services. OCC proposes to amend the Board Charter to provide that the Board is responsible for overseeing OCC's business strategies, including expansions of clearance and settlement services to new business lines and product types, to ensure they reflect the legitimate interests of relevant stakeholders and are consistent with the public interest.<sup>77</sup> These changes are designed to improve the readability of the document as well as to specify additional, specific considerations of the Board with respect to particular responsibilities.<sup>78</sup> OCC notes that the Board Charter would provide that the Board is responsible for the business and affairs of OCC and that the Board would continue to be responsible for performing such other functions as the Board believes appropriate or

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<sup>77</sup> As a further example, OCC proposes to revise the Board's responsibility to oversee "OCC's information technology strategy, infrastructure, resources and risks" to provide that the Board's responsibility is to oversee "OCC's technology infrastructure, resources, and capabilities to ensure resiliency with regard to OCC's provision of its clearing, settlement, and risk management services." OCC also proposes to remove oversight of human resources programs from the Board Charter because that responsibility has been delegated to the CPC.

<sup>78</sup> For example, OCC also proposes to specify that the Board's authority extends to performing such functions as it believes are appropriate or necessary, or as otherwise prescribed by rules or regulation, including OCC's By-Laws and Rules, "or other policies." This change is intended to clarify that the scope of the Board's authority extends to all of OCC's policies.

necessary or as otherwise prescribed by rules or regulations, including OCC's By-Laws and Rules.<sup>79</sup>

In addition to the changes described above, OCC proposes to modify the description of the Board's functions and responsibilities as part of the description of the mission of the Board to include: (i) overseeing OCC's governance structures and processes to ensure that the Board is positioned to fulfill its responsibilities effectively and efficiently consistent with applicable requirements and through performance assessments, consistent with the requirements of Rule 17Ad-22(e)(3)(i);<sup>80</sup> (ii) ensuring that risk management, compliance, and internal audit personnel have sufficient authority, resources, independence from management, access to the Board, and a direct reporting line to, and oversight by, certain committees, consistent with the requirements of Rules 17Ad-22(e)(3)(iii) and (iv);<sup>81</sup> (iii) ensuring that the audit committee of the Board is independent, consistent with the requirements of Rule 17Ad-22(e)(3)(v);<sup>82</sup> (iv) transitioning the overall oversight of ERM to the Board; and (v) assigning responsibility for risk decisions and policies to address decision-making during a crisis. The Board

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<sup>79</sup> Pursuant to this broad responsibility, OCC believes that the functions and responsibilities of the Board would remain consistent notwithstanding certain proposed deletions or rephrasing regarding the existing list of responsibilities. For example, the Board Charter would no longer specify that the Board would review committee charters and reports of committee activities; however, it would nevertheless provide that the Board is responsible for establishing a written charter for each committee and that each committee would be responsible for providing an annual report to the Board regarding its activities.

<sup>80</sup> 17 CFR 240.17Ad-22(e)(3)(i).

<sup>81</sup> 17 CFR 240.17Ad-22(e)(3)(iii) and (iv).

<sup>82</sup> 17 CFR 240.17Ad-22(e)(3)(v).

Charter would also be amended to codify the Board's existing responsibility for overseeing and approving OCC's Recovery and Orderly Wind-Down Plan.<sup>83</sup>

As noted above, OCC proposes to transfer responsibility for the oversight of ERM from the RC to the Board. The proposed change would allow the Board to retain responsibility for the comprehensive oversight of OCC's overall risk management framework, while retaining the ability to delegate oversight of specific risks to designated committees, which would then report to and be subject to oversight by the Board. Moreover, shifting enterprise risk oversight responsibility from the RC to the Board would promote even further engagement by and attention from the Board regarding OCC's risk universe and how such risks impact OCC's strategic direction and priorities as well as provide for more meaningful dialogue and discussion at Board meetings. Moreover, it would alleviate the potential for overburdening the RC and establish clearer lines of oversight responsibilities for particular risks across the Board's committees. Additionally, the expertise represented on the Board collectively would be available to provide appropriate guidance relative to each key risk within OCC's risk universe.

OCC also proposes a number of other changes to the Board Charter, such as deletion of the provision noting that the Member Vice Chairman of the Board has the responsibilities set forth in the By-Laws. OCC believes this is appropriate because the responsibilities of the Member Vice Chairman are already set forth in OCC's By-Laws. OCC also proposes to amend the Board Charter to no longer specify that the Board is responsible for an annual self-evaluation of its performance and the performance of its

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<sup>83</sup> See supra note 60 and accompanying text.

committees and individual directors.<sup>84</sup> Because the Board has delegated responsibility to the GNC for the annual self-evaluation of the Board and its committees, which is described in text that OCC proposes to import from the CGP, OCC believes that it is no longer necessary to specify that the Board would have this annual self-evaluation obligation.<sup>85</sup> Similarly, OCC proposes to amend the Board Charter to no longer provide that the Board is responsible for evaluating and fixing the compensation of the Executive Chairman and certain other officers because the Board has delegated this responsibility to the CPC.<sup>86</sup> Finally, OCC proposes to delete the current footnote one (1) from the Board Charter, which provides an example of an instance in which certain provisions of the By-Laws provide that the Board should not take action. The amended Board Charter would continue to provide that the Board's responsibilities and duties are subject to any exceptions provided in OCC's Amended and Restated Certificate of Incorporation or the By-Laws and Rules, but OCC believes that the footnote providing an example of such an instance is unnecessary and its deletion would improve readability of the Board Charter.

OCC also proposes to amend the Board Charter to provide that a number of different activities related to the conduct and functioning of the Board would involve

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<sup>84</sup> The Board Charter would provide more generally that the Board is responsible for overseeing OCC's activities through regular assessments of Board and individual director performance.

<sup>85</sup> OCC also proposes to amend the Board Charter to provide that the annual self-evaluations shall no longer include a focus on individual directors' performances but will instead focus primarily on the performance of the Board and each committee as a whole. OCC has found that because not every director has the opportunity to work with each other director, focusing the annual self-evaluation on individual director performance is less effective than focusing on the performance of each committee as a whole.

<sup>86</sup> However, the amended Board Charter would specify that the Board is responsible for approving the compensation of such officers.

participation by or input from certain other officers of OCC that serve functions relevant to the topic being discussed. For example, with respect to setting the agenda for Board meetings, the Board Charter currently provides that the Executive Chairman, in consultation with other directors or officers of OCC, as well as the Corporate Secretary, will establish an agenda for Board meetings. OCC proposes to amend this provision to provide that the Executive Chairman and CEO, in consultation with the COO and CAO, other directors or officers of OCC, and the Corporate Secretary shall establish the agenda for Board meetings.<sup>87</sup> These changes are designed to help specify clear and direct lines of responsibility and promote clear and transparent governance arrangements in the public interest pursuant to Rule 17Ad-22(e)(2) by making clear the roles and authority of certain officers and ensuring that input from additional officers is included where appropriate.

(2) Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Act<sup>88</sup> and the rules thereunder applicable to OCC. Section 17A(b)(3)(F) of the Act<sup>89</sup> requires, among other things, that the rules of a clearing agency be designed, in general, to protect investors and the public interest. When considered together, the proposed

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<sup>87</sup> Similarly, OCC proposes to amend the Board Charter to provide that the CEO, COO and CAO would have the authority to invite employees to Board meetings, that such officers encourage members of senior management to respond to questions posed by directors relating to their areas of expertise, and that directors shall coordinate access to members of senior management and outside advisors through such officers. The criteria for Board member eligibility would also be expanded to ensure that candidates' experience and expertise are not only adequate to offer advice and guidance to the Executive Chairman, but also to the CEO, COO, and CAO.

<sup>88</sup> 15 U.S.C. 78q-1.

<sup>89</sup> 15 U.S.C. 78q-1(b)(3)(F).

changes described herein are designed, in general, to clarify and assign certain responsibilities for the governance and oversight of OCC among the Board and its respective committees in order to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility. In turn, these changes would help ensure that OCC has governance arrangements that are organized to support its ability to promptly and accurately serve Clearing Members and the markets for which it clears and effectively manage the range of risks that arise in the course of providing such clearance and settlement services. OCC therefore believes that the proposed rule change would provide for governance arrangements that are designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act<sup>90</sup> and that are consistent with the rules thereunder, as discussed in further detail below.<sup>91</sup>

### **Common Changes**

As described in Item II.(A)(1) above, OCC believes that all of the proposed common changes to the charters are designed to provide for governance arrangements that clearly prioritize the safety and efficiency of OCC, support the public interest requirements in Section 17A of the Act<sup>92</sup> and the objectives of owners and participants, and consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of OCC. First, the proposed rule change would require the

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<sup>90</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>91</sup> See supra notes 18, 20, 22, 23, 27, 29, 31, 33, 38, 41-48, 52, 55, 62-64, 71-76 and accompanying text for changes related to Rules 17Ad-22(e)(2). 17 CFR 240.17Ad-22(e)(2). See supra notes 21, 26, 30, 33-35, 38, 40, 42, 52, 55-56, 58-59, 60, 63, 66, 80-83 and accompanying text for changes related to Rules 17Ad-22(e)(3). 17 CFR 240.17Ad-22(e)(3).

<sup>92</sup> 15 U.S.C. 78q-1.

Board and the committees to prioritize the safety and efficiency of OCC in carrying out their responsibilities.<sup>93</sup> Second, the charters, as revised, would require the Board and the committees to carry out their responsibilities to generally support the stability of the broader financial system, which OCC believes requires them to act in a manner that would, in part, also promote the prompt and accurate clearance and settlement of securities transactions for the protection of investors and persons facilitating transactions by and acting on behalf of investors, which is one of the public interest findings in Section 17A of the Act.<sup>94</sup> Third, the revised charters would require the Board and the committees to consider the legitimate interests of Clearing Members, customers of Clearing Members and other relevant stakeholders, taking into account prudent risk management standards (including systemic risk mitigation) and industry best practices, which is consistent with providing for governance arrangements that consider the interests of Clearing Member's customers and other relevant stakeholders of OCC.<sup>95</sup> Moreover, OCC would amend the committee charters to provide that in the event of a committee vacancy, the applicable committee would continue to undertake its responsibilities (including those enumerated above), so long as the remaining committee members are capable of satisfying the quorum requirement, to ensure that the committee can continue to effectively carry out its responsibilities in such a scenario.<sup>96</sup> OCC believes the proposed changes would enhance the clarity of OCC's Board and committee governance arrangements and help ensure that OCC has governance arrangements that

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<sup>93</sup> See supra notes 18, 23, and 47 and accompanying text.

<sup>94</sup> See supra notes 18, 48-49, 71, and 74 and accompanying text.

<sup>95</sup> See supra note 18 and accompanying text.

<sup>96</sup> This same change would not be added to the Board Charter. It would also not be added to the GNC Charter because it is already addressed.

are organized to support its ability to promptly and accurately serve Clearing Members and the markets for which it clears and effectively manage the range of risks that arise in the course of providing such clearance and settlement services and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.<sup>97</sup> OCC also believes the proposed changes are reasonably designed to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that clearly prioritize the safety and efficiency of OCC, support the public interest requirements in Section 17A of the Act applicable to clearing agencies and the objectives of owners and participants, and consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of a covered clearing agency consistent with Rules 17Ad-22(e)(2)(ii), (iii) and (vi).<sup>98</sup>

OCC believes the proposed common changes also would help to provide governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility. For example, all charters would be revised to clearly state that a role of the Board or the committee, as applicable, is to advise management. In addition, all of the charters would be amended to provide that the Board and the committees may delegate authority to one or more designated officers of OCC but that in any such instance the Board or the committee retains responsibility to oversee the activity and assure itself that the reliance on the work of any delegate is reasonable.<sup>99</sup> As a further example, OCC also proposes amendments to acknowledge, where relevant, that its EC

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<sup>97</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>98</sup> 17 CFR 240.17Ad-22(e)(2)(ii), (iii), and (vi).

<sup>99</sup> See supra notes 20, 43, and 75-76 and accompanying text.

also serves as the CEO and therefore certain responsibilities and considerations that currently apply to the EC would also apply regarding the CEO. The charters would also be amended to specify clear and direct lines of responsibility by providing that, in cases where the Board or a committee has authority to approve reports or other matters that are provided to it, the Board or the committee is not obligated to approve and has clear means of recourse if it does not.<sup>100</sup> In addition, committees would be required to submit their charters to the GNC for potential approval in addition to submitting them to the Board. OCC believes the proposed changes would enhance the clarity of OCC's Board and committee governance arrangements and help ensure that OCC has governance arrangements that are organized to support its ability to promptly and accurately serve Clearing Members and the markets for which it clears and effectively manage the range of risks that arise in the course of providing such clearance and settlement services and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.<sup>101</sup> OCC also believes the proposed changes are reasonably designed to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility consistent with the requirements in Rules 17Ad-22(e)(2)(i)<sup>102</sup> and (v).<sup>103</sup>

OCC also proposes to make a number of changes to the charters to clarify that, where certain actions were required to be performed "annually" under the charters, those

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<sup>100</sup> See supra notes 22-23 and accompanying text.

<sup>101</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>102</sup> 17 CFR 240.17Ad-22(e)(2)(i).

<sup>103</sup> 17 CFR 240.17Ad-22(e)(2)(v).

actions would now be required to occur “each calendar year.”<sup>104</sup> OCC believes that adding more specificity in its charters regarding the frequency of these activities would provide for governance arrangements that are clear and transparent by eliminating ambiguity as to when the Board or a committee is responsible for taking certain actions. OCC believes the proposed changes would enhance the clarity of OCC’s Board and committee governance arrangements and the effectiveness of the Board and Board committees’ oversight and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.<sup>105</sup> OCC also believes the proposed changes are reasonably designed to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent consistent with the requirements in Rule 17Ad-22(e)(2)(i).<sup>106</sup>

### **AC Charter Changes**

As described in Item II.(A)(1) above, OCC believes certain of the proposed changes applicable to the AC Charter are generally designed to achieve a risk management framework that provides: (i) risk management and internal audit personnel with sufficient authority, resources, independence from management, and access to OCC’s Board;<sup>107</sup> (ii) risk management and internal audit personnel with a direct reporting line to, and oversight by, a risk management committee and an independent audit

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<sup>104</sup> See supra note 27 and accompanying text.

<sup>105</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>106</sup> 17 CFR 240.17Ad-22(e)(2)(i).

<sup>107</sup> See supra notes 35, 38, and accompanying text. See also supra notes 52 and 81 and accompanying text for similar changes to other charters.

committee of the Board;<sup>108</sup> and (iii) an independent audit committee.<sup>109</sup> For example, the AC Charter would be amended to clarify that the AC shall oversee the independence and objectivity along with the budget and resources of OCC's internal audit department so that OCC's risk framework provides internal audit personnel with sufficient authority, resources, independence from management, and access to the Board and a direct reporting line to, and oversight by, an independent audit committee of the Board. OCC also proposes to amend the AC charter to provide that the AC is authorized to review and approve OCC's audited financial statements, oversee the timing and process for implementing a rotation of the engagement partner of the external auditor, and discuss certain significant issues with the external auditor. OCC believes that framing the AC's responsibilities in this manner would provide appropriate flexibility for the committee to carry out its oversight and advisory responsibilities with respect to OCC's internal audit function. OCC believes the proposed changes to the AC Charter would provide additional clarity regarding OCC's governance arrangements and allow the AC to more effectively carry out its oversight functions concerning those matters for which it has responsibility and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.<sup>110</sup> OCC believes the proposed changes are also consistent with the requirements of Rules 17Ad-22(e)(3)(iii), (iv) and (v)<sup>111</sup> that OCC's risk management framework provide: (i) risk

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<sup>108</sup> See supra note 35 and accompanying text. See also supra notes 52, 62, and 81 and accompanying text for similar changes to other charters.

<sup>109</sup> See supra note 82 and accompanying text (describing a change to the Board Charter to ensure an independent audit committee).

<sup>110</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>111</sup> 17 CFR 240.17Ad-22(e)(3)(iii), (iv), and (v).

management and internal audit personnel with sufficient authority, resources, independence from management, and access to the board of directors; (ii) risk management and internal audit personnel with a direct reporting line to, and oversight by, a risk management committee and an independent audit committee of the board of directors; and (iii) an independent audit committee.

OCC also believes that certain of the proposed amendments to the AC Charter are designed to provide for governance arrangements that specify clear and direct lines of responsibility. For example, OCC proposes to amend the AC Charter to establish the AC's responsibility for reviewing the impact of litigation and other legal matters that may have a material impact on OCC's financial statements and overseeing the staffing, resources, and budget of OCC's compliance and audit departments.<sup>112</sup> As an additional example, OCC proposes to amend the AC Charter to provide that certain mandatory reports must be sent to the AC for review, which OCC believes would help specify clear and direct lines of responsibility in OCC's governance arrangements by ensuring that the AC remains apprised of OCC's ongoing performance in respect of matters covered by the reports. OCC believes these proposed changes to the AC Charter would provide additional clarity regarding OCC's governance arrangements and allow the AC to more effectively carry out its oversight functions concerning those matters for which it has responsibility and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.<sup>113</sup> OCC believes the proposed changes are also consistent with Rule 17Ad-22(e)(2)(v),<sup>114</sup> which requires

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<sup>112</sup> See supra note 29 and accompanying text.

<sup>113</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>114</sup> 17 CFR 240.17Ad-22(e)(2)(v).

OCC to provide for governance arrangements that specify clear and direct lines of responsibility.

### **CPC Charter Changes**

As described in Item II.(A)(1) above, OCC believes that certain of the proposed changes applicable to the CPC Charter are designed to provide for governance arrangement that specify clear and direct lines of responsibility. For example, OCC proposes to amend the CPC Charter to clarify that the CPC assists the Board in overseeing risks related to OCC's general business, regulatory capital, investments, corporate planning, compensation, and human capital in addition to assisting the Board in executive management succession planning and performance assessments. While the CPC Charter already addresses these aspects of the committee's responsibilities generally, the proposed revisions are designed to emphasize the committee's responsibility to help the Board oversee such risks and to clarify that the committee has an oversight role while it remains OCC management's responsibility to identify, manage, monitor and report the associated risks.

OCC also proposes to remove certain specific responsibilities stated in the CPC Charter in favor of a more general statement that the committee is required to perform activities consistent with the CPC Charter as it deems necessary or appropriate or as are delegated to the committee by the Board, which OCC believes further specifies clear and direct lines of responsibility. Changes would be made to clarify the role that the committee plays in oversight of succession planning regarding OCC's Management Committee, and a new provision would also provide that the committee must review the results of Management Committee succession planning activities at least once every

twelve months. Changes would also be made to clarify the CPC's role with respect to the oversight of OCC's Administrative Committee, including the CPC's authority to approve the Administrative Committee charter. OCC believes that these allocations of responsibility are appropriate given the CPC's current oversight of the Administrative Committee, whereby the CPC is responsible for, among other things, appointing members of the Administrative Committee overseeing and monitoring the activities of the Administrative Committee with respect to retirement and retirement savings plans.

OCC believes these proposed changes to the CPC Charter would provide clarity regarding the responsibilities of the CPC and allow the CPC to more effectively carry out its oversight functions concerning those risks for which it has responsibility and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.<sup>115</sup> Moreover, OCC believes the proposed changes to the CPC Charter are consistent with, among other provisions, the Rule 17Ad-22(e)(3)(i) requirement that risk management policies, procedures, and systems be subject to periodic review and annual approval by the Board<sup>116</sup> and the Rule 17Ad-22(e)(2)(v) requirement that governance arrangement specify clear and direct lines of responsibility.<sup>117</sup>

### **GNC Charter Changes**

As described in Item II.(A)(1) above, OCC believes that certain of the proposed changes applicable to the GNC Charter are designed to ensure that Board directors have appropriate experience and skills to discharge their duties and responsibilities and to

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<sup>115</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>116</sup> 17 CFR 240.17Ad-22(e)(3)(i).

<sup>117</sup> 17 CFR 240.17Ad-22(e)(2)(v).

ensure that OCC's governance arrangements specify clear and direct lines of responsibility. For example, OCC proposes to amend the GNC Charter to reframe the GNC's responsibilities with respect to ensuring that directors are appropriately qualified,<sup>118</sup> and to specify that the GNC shall review the composition of the Board for consistency with public interest and regulatory requirements at least every three years rather than periodically. OCC also proposes to expand the GNC's yearly review of the Board Charter for consistency with the public interest and other regulatory requirements to also include a review of the charters of the Board committees, to specify that the GNC shall identify risk issues that should be escalated to the Board for its review and consideration, and to provide that the GNC shall annually review and advise the Board with regard to whether directors are independent as defined by the Board. Under the proposed rule change, the GNC Charter would also be amended to assign new responsibility for advising on matters pertaining to director leadership development and succession planning. OCC believes that these proposed changes to the GNC Charter would enhance OCC's governance arrangements by helping to ensure that OCC's directors are appropriately qualified and would help promote clear and direct lines of responsibility and are therefore designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act.<sup>119</sup> OCC also believes the proposed changes are consistent with the requirement of Rule 17Ad-22(e)(2)(iv)<sup>120</sup> that a covered clearing agency's governance arrangements establish that Board directors have appropriate experience and skills to discharge their duties and responsibilities and the

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<sup>118</sup> See supra note 46 and accompanying text.

<sup>119</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>120</sup> 17 CFR 240.17Ad-22(e)(2)(iv).

Rule 17Ad-22(e)(2)(v) requirement that a covered clearing agency's governance arrangements specify clear and direct lines of responsibility.<sup>121</sup>

### **RC Charter Changes**

As described in Item II.(A)(1) above, OCC believes that certain of the proposed changes applicable to the RC Charter are designed to provide for a sound risk management framework for managing legal, credit, liquidity, operational, general business, investment, custody and other risks that arise in or are borne by OCC, including risk management policies, procedures, and systems that are designed to identify, measure, monitor, and manage such risks and that are subject to review on a periodic basis and approved annually by the Board.<sup>122</sup> The RC Charter currently contains provisions that address certain narrow responsibilities that the committee has for the oversight of credit, collateral, liquidity and third party risks. These provisions would be removed in favor of new provisions that more accurately reflect the RC's broader responsibility to oversee these particular risks. For example, changes to the RC Charter, including those related to the committee's general function and responsibilities, would be made to better align the RC's responsibilities with OCC's regulatory requirements and would provide that, among other things, the RC would be required to review OCC's management of credit, collateral, liquidity, and third party risks at least once every twelve months and that management would be required to provide the RC with monthly reports regarding the effectiveness of OCC's management of credit exposures and liquidity risks and quarterly reports regarding the effectiveness of OCC's management of collateral and third party

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<sup>121</sup> 17 CFR 240.17Ad-22(e)(2)(v).

<sup>122</sup> See supra notes 54-55, and 58, and accompanying text. See also supra notes 21, 33, 38, 40, 42, 63, and 80 and accompanying text for similar changes with respect to other committee charters.

risks.<sup>123</sup> OCC believes the proposed changes to the RC Charter would provide additional clarity regarding OCC's governance arrangements and improve the effectiveness of the RC's oversight, particularly with respect to OCC's credit, collateral, liquidity and third party risks, and are therefore designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act.<sup>124</sup> OCC also believes that the proposed changes to the RC Charter are generally consistent with, among other provisions, the requirements of Rule 17Ad-22(e)(3)(i)<sup>125</sup> to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for managing legal, credit, liquidity, operational, general business, investment, custody and other risks that arise in or are borne by OCC, including risk management policies, procedures, and systems that are designed to identify, measure, monitor, and manage such risks and that are subject to review on a periodic basis and approved annually by the Board.

OCC also proposes changes to the RC Charter to specify the RC's responsibilities concerning plans for OCC's recovery and orderly wind-down ("Recovery and Orderly Wind-down Plan").<sup>126</sup> OCC believes the proposed changes would provide additional clarity regarding OCC's governance arrangements concerning matters of critical importance and are therefore designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act.<sup>127</sup> OCC also believes these

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<sup>123</sup> See supra note 55 and accompanying text.

<sup>124</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>125</sup> 17 CFR 240.17Ad-22(e)(3)(i).

<sup>126</sup> See supra note 59 and accompanying text.

<sup>127</sup> 15 U.S.C. 78q-1(b)(3)(F).

proposed changes to the RC Charter are consistent with the requirements in Rule 17Ad-22(e)(3)(ii) that OCC maintain a sound risk management framework that 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>128</sup>

Finally, OCC proposes to reassign the oversight of the investigations and enforcement outcomes of disciplinary actions taken by OCC against Clearing Members to the RC because OCC believes that the RC is more appropriately situated to review investigations and enforcement outcomes of disciplinary actions given its oversight of OCC's Clearing Membership framework. OCC believes the proposed changes to the RC Charter would establish clear and direct responsibility for the oversight of investigations and enforcement outcomes of disciplinary actions taken by OCC by an appropriate committee of OCC's Board and are therefore designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act<sup>129</sup> and are consistent with the Rule 17Ad-22(e)(2)(v) requirement that a covered clearing agency's governance arrangements specify clear and direct lines of responsibility.<sup>130</sup>

### **TC Charter Changes**

As described in Item II.(A)(1) above, OCC believes that certain of the proposed changes applicable to the TC Charter are designed to provide for governance arrangements that specify clear and direct lines of responsibility and to ensure that OCC maintains a sound risk management framework for comprehensively managing risks that arise in or are borne by OCC. For example, OCC proposes to amend the TC Charter to

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<sup>128</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

<sup>129</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>130</sup> 17 CFR 240.17Ad-22(e)(2)(v).

provide that the TC shall identify risk issues relating to areas that the TC oversees that should be escalated to the Board for its review and consideration. As a further example, OCC also proposes to amend the TC Charter to provide that the TC's role is one of oversight and that it remains the responsibility of OCC management to identify, manage, monitor and report on IT and other operational risks arising from OCC's business activities while the Committee will oversee the progress in executing on major IT initiatives, technology architecture decisions and IT priorities. Other language was also revised to more clearly describe the TC's responsibilities related to the oversight of internal controls, and review of the crisis management plans as these topics often fall within other areas (such as Business Continuity and Disaster Recovery). OCC believes these revisions will strengthen the transparency and clarity of its governance structure. Finally, OCC would revise the TC Charter to remove specific references to the committee's oversight of OCC's physical security and to more accurately describe the committee's responsibility for overseeing the adequacy of OCC's management of information security risks (which generally includes oversight of the confidentiality, integrity, and availability of OCC data; the security of the information systems used to process, transmit, and store OCC information; and the physical, personnel, procedural, administrative, and environment security disciplines). OCC believes that these changes will promote a sound risk management framework and add greater clarity to the responsibilities of the TC.

For the reasons set forth above, OCC believes that the proposed changes to the TC Charter would provide additional clarity to OCC's governance arrangements and improve the effectiveness of the TC's oversight of OCC's IT and other operational risks

and are therefore designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act.<sup>131</sup> Moreover, OCC believes the proposed changes are reasonably designed to meet the requirements of Rule 17Ad-22(e)(2)(v)<sup>132</sup> to provide for governance arrangements that specify clear and direct lines of responsibility and Rule 17Ad-22(e)(3)<sup>133</sup> to maintain a sound risk management framework for comprehensively managing risks that arise in or are borne by OCC.

### **Board Charter Changes**

As described in Item II.(A)(1) above, OCC believes that certain of the proposed changes applicable to the Board Charter are designed to improve the clarity and transparency of OCC's governance arrangements and provide for governance structures and processes that are designed to ensure that the Board is positioned to fulfill its responsibilities effectively and efficiently consistent with applicable requirements and through performance assessments. For example, as noted above, incorporating the CGP within the Board Charter would promote clarity and transparency by eliminating significant overlap between the two existing documents and thereby making the consolidated provisions in the Board Charter easier for Clearing Members and other OCC stakeholders to access, use and understand.<sup>134</sup> As a further example, OCC proposes to amend the Board Charter to provide that the Executive Chairman and CEO, in consultation with the COO and CAO, other directors or officers of OCC, and the Corporate Secretary shall establish the agenda for Board meetings, which is designed to

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<sup>131</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>132</sup> 17 CFR 240.17Ad-22(e)(2)(v).

<sup>133</sup> 17 CFR 240.17Ad-22(e)(3).

<sup>134</sup> See supra note 68 and accompanying text.

help specify clear and direct lines of responsibility and promote clear and transparent governance arrangements by making clear the roles and authority of certain officers and ensuring that input from additional officers is included where appropriate. As a further example, OCC believes the proposed changes to the Board Charter would make clear that the Board is responsible for ensuring that the AC of the Board is independent.<sup>135</sup> OCC believes that the proposed changes to the Board Charter would enhance the clarity of OCC's governance arrangements and improve the effectiveness of the Board's oversight and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.<sup>136</sup> Moreover, OCC believes the proposed changes are generally consistent with, among other things, the Rule 17Ad-22(e)(2)(i)<sup>137</sup> requirement to provide for governance arrangements that are clear and transparent, the Rule 17Ad-22(e)(3)<sup>138</sup> requirement 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, and the Rule 17Ad-22(e)(3)(iii)<sup>139</sup> requirement to provide internal audit personnel with sufficient authority, resources, independence from management, and access to the board of directors.

In addition, OCC proposes to transfer responsibility for the oversight of the ERM function from the RC to the Board. The proposed change would allow the Board to

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<sup>135</sup> See supra note 82 and accompanying text.

<sup>136</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>137</sup> 17 CFR 240.17Ad-22(e)(2)(i).

<sup>138</sup> 17 CFR 240.17Ad-22(e)(3).

<sup>139</sup> 17 CFR 240.17Ad-22(e)(3)(iii).

retain responsibility for the comprehensive oversight of OCC's overall risk management framework, while retaining the ability to delegate oversight of specific risks to designated committees, which would then report to and be subject to oversight by the Board. Moreover, shifting enterprise risk oversight responsibility from the RC to the Board would promote even greater director engagement and attention regarding OCC's risk universe (i.e., the range of risks to which OCC is exposed) and how such risks impact OCC's strategic direction and priorities as well as provide for more meaningful dialogue and discussion at Board meetings. Moreover, it would alleviate the potential for overburdening the RC and establish clearer lines of oversight responsibilities for particular risks across the Board's committees. Additionally, the expertise represented on the Board collectively would be available to provide appropriate guidance relative to each key risk within OCC's risk universe. OCC believes that the proposed changes to the Board Charter would enhance the effectiveness of the Board's oversight, particularly with respect to OCC's ERM functions, and are therefore designed, in general, to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.<sup>140</sup> In addition, OCC believes the proposed change is reasonably designed to provide for 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 OCC consistent with Rule 17Ad-22(e)(3).<sup>141</sup>

Finally, OCC notes that the proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

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<sup>140</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>141</sup> 17 CFR 240.17Ad-22(e)(3).

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act<sup>142</sup> requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule change would impact or impose any burden on competition. The proposed rule change addresses the charters used in OCC's governance structure, and all Clearing Members would be equally subject to these governance arrangements. Consequently, the amended charters would not provide any Clearing Member with a competitive advantage over any other Clearing Member. Further, the proposed rule change would not affect Clearing Member's access to OCC's services or impose any direct burdens on Clearing Members. Accordingly, the proposed rule change would not unfairly inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another user.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds

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<sup>142</sup> 15 U.S.C. 78q-1(b)(3)(I).

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self- regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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-2018-012 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-2018-012. 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/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 Number SR-OCC-2018-012 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>143</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>143</sup> 17 CFR 200.30-3(a)(12).

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