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SECURITIES AND EXCHANGE COMMISSION
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December 21, 2018

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning Changes to The Options Clearing Corporation's Management Structure

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 20, 2018, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared 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 would: (1) reestablish the separation of the roles of Executive Chairman and Chief Executive Officer (“CEO”) and reallocate authority and responsibilities between the two roles; (2) remove the requirement from OCC’s By-Laws that the Board of Directors (“Board”) elect a Chief Administrative Officer (“CAO”) and delete the references to a CAO throughout OCC’s By-Laws, Rules, and charters; and (3) provide additional flexibility regarding the Management Director seat on the Board, including providing that such a director is not required. As described below, the proposed rule change amends multiple provisions of OCC’s By-Laws and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Rules to effectuate the separation of the Executive Chairman and CEO roles and the elimination of the CAO as a required officer. The proposed rule change also amends OCC's By-Laws to provide additional flexibility for the Management Director seat on the Board and makes conforming changes to several OCC charters to implement the above amendments.

The proposed changes to OCC's By-Laws, Rules, and other governing documents ("OCC Requirements") are attached as Exhibit 5A - 5G. Material proposed to be added to the OCC Requirements as currently in effect is marked by underlining. Material proposed to be deleted from the OCC Requirements as currently in effect is marked by strikethrough. The proposed rule change, including Exhibits 5A - 5G, is available on OCC's website at <https://www.theocc.com/about/publications/bylaws.jsp>. 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.³

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.

³ OCC's By-Laws and Rules can be found on OCC's public website: <http://optionsclearing.com/about/publications/bylaws.jsp>. OCC's Board and Board Committee Charters are also available on OCC's public website: <https://www.theocc.com/about/>.

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

(1) Purpose

OCC is proposing amendments to its By-Laws, Rules, and certain committee charters to effectuate several changes to its governance structure. First, OCC is seeking to reestablish the separation of the Executive Chairman and CEO roles at OCC and allocate authority and responsibilities for each of the roles.⁴ In connection with this separation, the proposed rule change also would provide that having a Management Director on the Board, which is currently filled by the Executive Chairman/CEO, is not required. In addition, the proposed rule change would remove the requirement from OCC's By-Laws that the Board elect a CAO and, consequently, delete the references to a CAO throughout OCC's By-Laws, Rules, and charters. The purpose of the proposed rule change is to re-establish the separation of the Executive Chairman and CEO roles and to implement additional organizational changes to OCC's governance structure, including providing additional flexibility to the Management Director on the Board and removing the requirement that the Board elect a CAO, that the Board has concluded would benefit OCC's operation and, consequently, OCC's ability to serve Clearing Members and the markets for which it clears and settles transactions for the reasons set forth below. Because the proposed rule change would eliminate references to the CAO throughout OCC's By-Laws and Rules, the proposed rule change would permit delegation of authority by the CEO or Chief Operating Officer ("COO") in those instances where there

⁴ Prior to the creation of an officer with the title of "Chief Executive Officer," that function was performed by the President of OCC. See Securities Exchange Act Release No. 70076 (July 30, 2013), 78 FR 47449 (August 5, 2013) (SR-OCC-2013-09) (stating that the President will also "serve as [CEO]").

are only two named officers. In those instances, OCC believes that delegation is appropriate to ensure that authority can be exercised if the CEO and COO are unavailable. Finally, the proposed rule change would make conforming changes throughout OCC's By-Laws, Rules, and certain Board charters to ensure consistency throughout those documents.

Background

OCC's Board, as an integral part of its oversight function, may be called upon to evaluate OCC's governance structure to assess potential ways in which that structure could be improved or enhanced. Consequently, OCC has made changes to its governance structure to promote the efficient and effective management of its business designed to support OCC's management.⁵ More specifically, and most recently, on April 26, 2017, the SEC approved a proposed rule change that made multiple changes to OCC's management structure ("2017 Amendments").⁶ The 2017 Amendments amended OCC's By-Laws, Rules, Board of Directors Charter ("Board Charter"), Compensation and

⁵ See, e.g., Securities Exchange Act Release No. 80531 (April 26, 2017), 82 FR 20502 (May 2, 2017) (SR-OCC-2017-002) (Order Approving Proposed Rule Change Concerning Changes to The Options Clearing Corporation's Management Structure); Securities Exchange Act Release No. 73785 (December 8, 2014), 79 FR 73915 (December 12, 2014) (SR-OCC-2014-18) (Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Provide that The Options Clearing Corporation's President Will be its Chief Operating Officer, and that the President Will Not be a Management Director); Securities Exchange Act Release No. 70076 (July 20, 2013), 78 FR 47449 (August 5, 2013) (SR-OCC-2013-09) (Order Approving Proposed Rule Change to Separate the Powers and Duties Currently Combined in the Officer of OCC's Chairman in Two Offices, Chairman and President, and Create an Additional Directorship to be Occupied By the President).

⁶ See Securities Exchange Act Release No. 80531 (April 26, 2017), 82 FR 20502 (May 2, 2017) (SR-OCC-2017-002) (Order Approving Proposed Rule Change Concerning Changes to The Options Clearing Corporation's Management Structure).

Performance Committee Charter (“CPC Charter”), Dividend Policy, and Refund Policy to address the organizational changes. At that time, the Board concluded that the changes represented enhancements to OCC’s existing leadership structure that would promote OCC’s more efficient management and operation. The changes were intended to be a temporary measure to enable OCC to strengthen and build out its senior management team under the direction of the Executive Chairman and CEO. Consequently, OCC proposed, and the SEC approved, a number of changes to OCC’s management structure, including: (1) providing that the Executive Chairman would also serve as a newly-recognized CEO; (2) removing the President as a recognized officer of OCC; (3) providing that the Board would appoint the COO and a newly recognized CAO; (4) giving the COO and CAO authority to take certain actions or grant exceptions in instances where that authority had previously been granted to the President; (5) making conforming changes to OCC’s Board Charter, CPC Charter, and the Dividend and Refund Policies reflecting the changes; and (6) separating the positions of Treasurer and Chief Financial Officer (“CFO”).⁷

Following the SEC’s approval of the 2017 Amendments, the current management structure of OCC as set forth in its By-Laws requires election by the Board of: (1) an Executive Chairman, who in this role also serves as CEO⁸ and as a Management

⁷ See Securities Exchange Act Release No. 80531 (April 26, 2017), 82 FR 20502 (May 2, 2017) (SR-OCC-2017-002). The 2017 Amendments also made a number of administrative and clean-up edits to OCC’s By-Laws and Rules. Id.

⁸ See OCC By-Laws, Art. IV, Sec. 6(a) (“The Executive Chairman shall also serve as the Corporation’s Chief Executive Officer, who shall be an officer responsible for all aspects of the Corporation’s business and the of its day to day affairs.”).

Director;⁹ (2) a COO,¹⁰ and (3) a CAO.¹¹ Under the By-Laws, the Executive Chairman is responsible for the control functions of OCC, including enterprise risk management, internal audit and compliance, and external affairs, and has supervision over the officers and agents he appoints.¹² In his role as CEO, the Executive Chairman is also “an officer responsible for all aspects of [OCC’s] business and the administration of its day to day affairs.”¹³ These three positions (Executive Chairman/CEO, COO, and CAO) also are specifically identified in numerous provisions of OCC’s By-Laws and Rules that authorize these specific officers (and, in some instances, their delegates) to exercise decision-making involving various issues; however, because the roles of Executive Chairman and CEO are currently combined into a single individual, these provisions generally refer to that individual only in his capacity as Executive Chairman and do not use the term “Chief Executive Officer.”¹⁴ The Board now believes that the OCC management team has been substantially enhanced with the installation of key new senior

⁹ See OCC By-Laws, Art. III, Sec. 7 (“The Executive Chairman of the Corporation, by virtue of holding his office, shall be elected as a Management Director by the stockholders at each annual meeting of the stockholders.”).

¹⁰ See OCC By-Laws, Art. IV, Sec. 1.

¹¹ See OCC By-Laws, Art. IV, Sec. 1.

¹² See OCC By-Laws, Art. IV, Sec. 6(a).

¹³ OCC By-Laws, Art. IV, Sec. 6(a).

¹⁴ See, e.g., OCC Rule 305, OCC Rule 309, OCC Rule 609A, OCC Rule 1001, OCC Rule 1002.

members,¹⁵ and thus the OCC is well positioned to return to its previous leadership structure.

Proposed Changes to OCC's Governance Structure

As part of its oversight of OCC's governance structure, the Board determined that certain aspects of the changes made as part of the 2017 Amendments should be modified to further enhance OCC's governance structure and re-separate the roles of the Executive Chairman and CEO. Specifically, OCC is proposing to separate the roles of the Executive Chairman and the CEO, and thus create a separate CEO role, and reallocate responsibilities and authority between the two roles. With the addition of the CEO as a separate officer, OCC is proposing to remove the requirement that the Board elect a CAO and to delete the references to a CAO throughout the OCC Requirements. The proposed rule change would not amend the Board's overall authority to appoint officers; rather, it would create an obligation for the Board to elect a CEO who is separate from the Executive Chairman and would eliminate the requirement for the Board to elect a CAO.¹⁶

¹⁵ For example, starting in 2016, and throughout 2017, OCC's senior leadership has been staffed with highly qualified and experienced executives capable of stabilizing and strengthening OCC's operations and compliance posture. These include, among others, the hiring of a new President and Chief Operating Officer (April, 2017), a Chief Administrative Officer (September, 2016), a Chief Security Officer (May, 2017), a Chief Information Officer (May, 2017), a Chief Financial Officer (December, 2016), a Chief Compliance Officer (December, 2016), and a new head of government relations (September, 2016).

¹⁶ The By-Laws currently provide that: (i) "[t]he Board of Directors shall also elect a Chief Operating Officer, who it may, in its discretion, designate as President of the Corporation, a Chief Administrative Officer, a Secretary and a Treasurer, none of whom need be a member of the Board of Directors at the time of such election" and (ii) "[t]he Board of Directors may, but need not, elect one or more Vice Presidents or such other officers as it may from time to time determine are required for the efficient management and operation of the Corporation." See OCC By-Laws, Art. IV, Sec. 1

In addition, OCC is proposing changes to the Management Director provisions of the By-Laws to reflect the separation of the Executive Chairman and CEO roles and to provide additional flexibility in the provisions concerning the Management Director.¹⁷ Finally, the proposed rule change would amend the Board and certain committee charters to conform to the amendments to the By-Laws and Rules.

(1) Separation of the Executive Chairman and CEO Roles

The 2017 Amendments amended Article IV, Section 6 of OCC's By-Laws to provide that the Executive Chairman would also serve as a newly recognized CEO. In that capacity, the Executive Chairman/CEO is responsible for all aspects of OCC's business and the day to day administration of its affairs that are not otherwise assigned to the COO or CAO.¹⁸ This approach was adopted as part of the 2017 Amendments in part to enable OCC to strengthen and build out its senior management team under the direction of the Executive Chairman and CEO and to provide flexibility and avoid concentrating responsibility in any single officer; thus, the COO and CAO assumed certain responsibilities that were previously assigned to the President.

OCC believes that at this time it would benefit from a separation of the functions of the Executive Chairman and CEO roles. Since the implementation of the 2017 Amendments, OCC has taken significant steps to enhance its senior management team so

¹⁷ The proposed rule change would also make non-substantive changes to the use of the term "Executive Chairman." The proposed rule change would define the term "Executive Chairman" and amend its use in certain provisions to ensure the term is used consistently throughout the By-Laws and Rules (for example, by replacing "Executive Chairman of the Corporation" with "Executive Chairman").

¹⁸ Before the 2017 Amendments, the President was responsible for all aspects of OCC's business that did not report directly to the Executive Chairman and was responsible for the day to day administration of OCC's affairs in accordance with the directions of the Executive Chairman.

that it has a broad range of knowledge, skills, and experience and an alignment of officers' responsibilities with their skills and experience.¹⁹ As a result, OCC believes it would now benefit further from re-separating the Executive Chairman and CEO roles. Under the proposed rule change, the Executive Chairman would retain responsibility for facilitating Board leadership and management oversight as well as overseeing the work of internal audit, public affairs, and government relations, while the CEO would oversee all of OCC's business, operational and corporate support functions, with key operational and corporate support functions reporting indirectly to the CEO through the COO function. The proposed rule change would provide several benefits to OCC. For example, the separation of the Executive Chairman and CEO would provide for an effective counterbalance in the management and oversight of OCC and allow for a broader range of skill, experience and perspectives between the roles of Executive Chairman and CEO. In addition, the separation of these roles would enable the Executive Chairman to serve a valuable advisory role in assisting the CEO with strategic plan development as well as management succession planning by assisting in developing, coaching and mentoring members of the senior management team in a separate capacity than that of the CEO.

Article IV of the By-Laws generally sets forth the selection and authorities of OCC's officers and the Executive Chairman. Section 1 establishes the selection of the Executive Chairman by the Board, and provides that the Executive Chairman "shall be elected by the Board of Directors from among the full-time employees of the Corporation."²⁰ Because, as currently structured, the Executive Chairman also serves as

¹⁹ See supra n. 15.

²⁰ See OCC By-Laws, Art. IV, Sec. 1.

CEO by virtue of his role as Executive Chairman, there is no separate provision in the By-Laws for selection or appointment of a CEO. Under the By-Laws, the Executive Chairman is responsible for the control functions of OCC, including enterprise risk management, internal audit and compliance, and external affairs, and has supervision over the officers and agents he appoints.²¹ In his role as CEO, the Executive Chairman is also “an officer responsible for all aspects of [OCC’s] business and . . . its day to day affairs.”²²

The proposed rule change would amend Sections 6 and 8 of Article IV of the By-Laws to separate these functions and divide them between the Executive Chairman and the CEO. Under the proposed rule change, the Executive Chairman would be less involved in day to day management decisions of the type more typically made by an executive but would retain his role vis-à-vis the Board.²³ In addition, the Executive Chairman would retain responsibility over internal audit, public affairs, and government relations.²⁴ The CEO will be responsible for all aspects of the OCC’s business and of its day to day affairs, including enterprise risk management and compliance, and would be responsible for all aspects of the business of the Corporation that do not report directly to

²¹ See OCC By-Laws, Art. IV, Sec. 6(a).

²² OCC By-Laws, Art. IV, Sec. 6(a).

²³ Because the Executive Chairman would be less involved in day to day operational issues, the proposed rule change removes the requirement that the Executive Chairman must be selected from “among the full-time employees of OCC” to require only that the Executive Chairman be selected from “among the employees of OCC.” This amendment would allow the Executive Chairman to be a part-time employee.

²⁴ Although the Chief Audit Executive will report administratively to the Executive Chairman, he or she will report functionally to the Audit Committee of the Board pursuant to the Audit Committee charter.

the Executive Chairman.²⁵ The COO would administer the day to day affairs and business of the Corporation in accordance with the directions of the CEO.

In addition to establishing separate By-Law provisions addressing the selection and roles of the Executive Chairman and CEO, there are numerous provisions throughout OCC's By-Laws and Rules that the proposed rule change would amend to change the list of officers authorized to act under the relevant provision. In each case, the proposed rule change would remove the CAO from the list of officers because the office of CAO would no longer be required by OCC's By-Laws. In some instances, the Executive Chairman will continue to be listed as an authorized individual; in other instances, the reference to the Executive Chairman would be replaced by the CEO. Specifically, the proposed rule change would replace the reference to the Executive Chairman with the CEO in the following By-Law and Rule provisions:

- Approval of a bank or trust company as an approved custodian (By-Laws, Art. I, Sec. 1)
- Ability to delegate authority to Designated Officers (By-Laws, Art. I, Sec. 1)
- Temporary appointment of a controller/chief accounting officer (By-Laws, Art. IV, Sec. 12)
- Temporary approval of a Clearing Member application if expedited treatment is requested (By-Laws, Art. V, Sec. 1)
- Limited delegation of authority to approve Clearing Member applications (By-Laws, Art. V, Sec. 2)

²⁵ Although the Chief Compliance Officer would report administratively to the CEO, he or she would continue to report functionally to the Audit Committee of the Board pursuant to the committee's charter. Similarly, the Chief Risk Officer would report administratively to the CEO; however, he or she would continue to report functionally to the Risk Committee of the Board pursuant to the Risk Committee charter.

- Authority to extend the deadline to meet membership conditions (By-Laws, Art. V, Sec. 3.01)
- Ability to impose exercise restrictions (By-Laws, Art. VI, Sec. 17.01)
- Restricting certain Clearing Member transactions, positions, and activities (Rule 305)
- Imposing limitations on Managing Clearing Members with insufficient net capital (Rule 309)
- Temporarily approving a facilities management agreement (Rule 309.01, 309.02)
- Imposing limitations or restrictions on Appointed Clearing Members with insufficient net capital (Rule 309A)
- Temporarily accepting a letter of credit that does not meet rule requirements as a margin asset under unusual circumstances (Rule 604)
- Permitting filing of an exercise notice after the deadline to correct a bona fide error (Rule 801)
- Requiring reports regarding exercise allocation under certain circumstances (Rule 804)
- Remitting a filing fee (Rule 805)
- Extending or postponing the time for delivery to a date regarding settlements to be made through the facilities of the correspondent clearing corporation (Rule 901)
- Extending or postponing the time for delivery on broker-to-broker settlements (Rule 903)
- Determining whether good cause exists for failure to deliver or receive (Rule 1309)
- Extending or postponing the exercise settlement date for Treasury security options (Rule 1402)
- Determining whether good cause exists for a failure to match (Rule 1405)
- Advancing or postponing the exercise settlement date for foreign currency options (Rule 1604)

- Determining whether good cause exists for failure to deliver or pay (Rule 1610).

These provisions generally involve more routine day to day business decisions or are, by their terms, temporary. Consequently, OCC believes these provisions are therefore more appropriately authorized by a member of management such as the CEO or COO rather than at the Board level by the Executive Chairman.

With respect to other provisions, the proposed rule change would add the CEO as an authorized officer but would not remove the authority of the Executive Chairman to act. These provisions include:

- those related to declaring and acting in an emergency (By-Laws, Art. III, Sec. 15; Art. IX, Sec. 14)
- the ability to appoint officers, including Vice Presidents (By-Laws, Art. IV, Secs. 2, 3 and 9)
- the suspension of Clearing Members (By-Laws, Art. IV, Sec. 6)
- signing OCC share certificates (By-Laws, Art. IX, Sec. 12)
- extending settlements (Rule 505)
- waiving margin in extraordinary circumstances (Rule 609A)
- increasing the size or amount of cash in the clearing fund (Rules 1001, 1002)
- determining reasonable methods to borrow or obtain funds using clearing fund assets (Rule 1006)
- determining not to liquidate a Clearing Member's assets (Rule 1104)
- the use of private auctions to liquidate a suspended Clearing Member's assets (Rule 1104.02)
- determining not to liquidate a suspended Clearing Member's assets or take protective actions (Rule 1106).

OCC believes that these provisions should continue to include the Executive Chairman as an authorized individual to maintain appropriate flexibility in these critical decisions,

which primarily involve emergency or other exigent circumstances, determinations around OCC's management structure, and other activities generally outside of OCC's day to day activities (e.g., signing OCC share certificates), so that management has the capacity to carry out OCC's affairs in such circumstances even if a particular officer is absent or is otherwise unable to perform his or her duties.

(2) Elimination of a Mandatory CAO

In addition to separating the roles of the Executive Chairman and CEO, the proposed rule change would eliminate the requirement in the By-Laws for the Board to elect a CAO. As part of the 2017 Amendments, the By-Laws require the Board to elect both a COO and a CAO.²⁶ The 2017 Amendments added the requirement of a CAO in part to ensure flexibility and avoid concentration of authority and responsibility in any one officer.²⁷ As discussed above, with the separation of the Executive Chairman and CEO roles to establish a separate CEO, the need for a CAO to ensure sufficient flexibility is no longer necessary. Consequently, the proposed rule change would eliminate the requirement for the Board to elect a CAO; however, OCC notes that the Board would retain authority under the existing By-Laws to "elect one or more Vice Presidents or such other officers as it may from time to time determine are required for the efficient management and operation of the Corporation."²⁸ Finally, in those instances where the elimination of the CAO role reduces the number of named authorized individuals to two,

²⁶ See OCC By-Laws, Art. IV, Sec. 8.

²⁷ See Securities Exchange Act Release No. 80531 (April 26, 2017), 82 FR 20502 (May 2, 2017) (SR-OCC-2017-002) (Order Approving Proposed Rule Change Concerning Changes to The Options Clearing Corporation's Management Structure).

²⁸ OCC By-Laws, Art. IV, Sec. 1.

the proposed rule change would allow the CEO and COO to delegate authority to certain “Designated Officers” if the CEO and COO were unavailable to exercise the authority. In these cases, the Designated Officer must be of the rank of Senior Vice President or higher²⁹ and delegated by either the CEO or COO. OCC believes delegation in these instances to senior officers of the Corporation is appropriate to ensure that the authority can be exercised if necessary in the event the CEO and COO are both unavailable.

The ability to have multiple officers (and, in some instances, their delegates) authorized to take action and assume responsibility helps to ensure that responsibility is not concentrated in any one officer, that OCC’s affairs are carried out efficiently, and that management has the capacity to continue carrying out OCC’s business and day to day affairs even if a particular officer is absent or is otherwise unable to perform his or her duties. Consequently, although the proposed rule change would eliminate the CAO as a required officer, the separation of the Executive Chairman and CEO roles would create another officer; thus, there will generally remain multiple officers authorized to act and assume responsibility (i.e., the CEO and COO), which will retain the current level of flexibility.

(3) Amendments to the Management Director Provisions in OCC’s By-Laws

Article III of OCC’s By-Laws mandates that the Board include one “Management Director” and that the Executive Chairman be elected to fill that seat.³⁰ In light of the

²⁹ OCC notes that such delegations would therefore be limited to Senior Vice Presidents and Executive Vice Presidents of OCC.

³⁰ See OCC By-Laws, Art. III, Sec. 1 (“The Board of Directors of the Corporation shall be composed of nine Member Directors, the number of Exchange Directors fixed by or pursuant to Section 6 of this Article III, five Public Directors, and one Management Director.”); see also OCC By-Laws, Art. III, Sec. 7 (“The Executive Chairman of the Corporation, by virtue of holding his office, shall be elected as a

changes to the role of the Executive Chairman as part of the proposed rule change, OCC is also proposing to provide flexibility with respect to this Board seat. Although the concept of a Management Director would be retained, the proposed rule change would amend the By-Laws to provide a wider degree of flexibility. Specifically, the proposed rule change would amend the By-Laws to: (1) allow, but not require, a Management Director on the Board; and (2) eliminate the requirement that the Management Director also be the Executive Chairman.

OCC believes that these changes would create more flexibility for filling the role of Management Director and could more easily accommodate potential future scenarios, for example, if the Management Director seat shifts from the Executive Chairman to the CEO.

(4) Conforming Changes to Certain OCC Charters and Policies

In connection with the proposed changes described above, OCC is also proposing to make certain conforming amendments to the following charters: (1) Board Charter; (2) Audit Committee Charter (“AC Charter”); (3) CPC Charter; (4) Governance and Nominating Committee Charter (“GNC Charter”); and (5) Risk Committee Charter (“RC Charter”).³¹

OCC is proposing to amend the Board Charter to remove the references to the CAO and to conform provisions regarding the Executive Chairman and CEO to reflect the separation of those roles and the revised duties each has pursuant to the amendments in the proposed rule change and to reflect the removal of the CEO’s role in certain Board

Management Director by the stockholders at each annual meeting of the stockholders.”).

³¹ OCC notes that there would be no changes to its Technology Committee Charter.

matters due the CEO position no longer being linked to the position of Executive Chairman. In addition, OCC is proposing to conform the description of the Management Director in the Board Charter to the changes described in the proposed rule change.

OCC is also proposing to amend the AC Charter to conform provisions regarding the Executive Chairman and CEO to reflect the separation of those roles and the revised duties each has pursuant to the amendments in the proposed rule change. OCC is proposing to clarify in the AC Charter that, following the separation of the Executive Chairman and CEO roles, OCC's Chief Compliance Officer would report administratively to the CEO and functionally to the Audit Committee, and OCC's Chief Audit Executive would report administratively to the Executive Chairman and functionally to the Audit Committee. The proposed changes would further clarify that the Audit Committee would consult with the Executive Chairman in reviewing the performance of the Internal Audit function and the Chief Audit Executive and consult with the CEO in reviewing the performance of the Compliance function and Chief Compliance Officer.

OCC is also proposing to amend the CPC Charter and the GNC Charter to conform provisions regarding the Executive Chairman and CEO to reflect the separation of those roles and the revised duties each has pursuant to the amendments in the proposed rule change and to reflect the elimination of CAO as a required officer of OCC. Finally, OCC is proposing to amend the RC Charter to conform provisions regarding the Executive Chairman and CEO to reflect the separation of those roles and the revised duties each has pursuant to the amendments in the proposed rule change. OCC is proposing to clarify in the RC Charter that, following the separation of the Executive

Chairman and CEO roles, OCC's Chief Risk Officer will report administratively to the CEO and functionally to the Risk Committee.

(2) Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Act³² and the rules thereunder applicable to OCC. Section 17A(b)(3)(A) of the Act requires, among other things, that a clearing agency be so organized and have the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible.³³ Rule 17Ad-22(e)(2) further requires, in part, that each registered clearing agency have governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility.³⁴

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(A) of the Act and the rules thereunder because it is designed to ensure that OCC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transaction for which it is responsible. By implementing certain leadership changes intended to promote OCC's efficient management and operation, OCC believes it enhances its organization and its ability to operate effectively and efficiently. Specifically, OCC believes that by reallocating certain responsibilities currently held by the Executive Chairman/CEO to two individuals, those responsibilities would be less

³² 15 U.S.C. 78q-1.

³³ 15 U.S.C. 78q-1(b)(3)(A).

³⁴ 17 CFR 17Ad-22(e)(2).

concentrated in a single individual. As noted above, since the implementation of the 2017 Amendments, OCC has taken significant steps to enhance its senior management team. OCC has taken significant steps to enhance its senior management team so that it has a broad range of knowledge, skills, and experience and an alignment of officers' responsibilities with their skills and experience.³⁵ As a result, OCC believes it would now benefit further from re-separating the Executive Chairman and CEO roles so that the Executive Chairman would remain focused on facilitating Board leadership and management oversight as well as overseeing the work of internal audit, while the CEO would oversee all of OCC's business, operational and corporate support functions, with key operational and corporate support functions reporting indirectly to the CEO through the COO function. OCC believes the proposed separation of the Executive Chairman and CEO would provide for an effective counterbalance in the management and oversight of OCC and allow for a broader range of skill, experience and perspectives between the roles of Executive Chairman and CEO. In addition, the separation of these roles would enable the Executive Chairman to serve a valuable advisory role in assisting the CEO with strategic plan development as well as management succession planning by assisting in developing, coaching and mentoring members of the senior management team in a separate capacity than that of the CEO.

Moreover, by separating the Executive Chairman and CEO roles to establish a separate CEO, OCC believes it is no longer necessary for its By-Laws to explicitly require a CAO to ensure sufficient flexibility in its management structure. OCC notes that the Board would retain authority under the existing By-Laws to "elect one or more

³⁵ See supra n. 15.

Vice Presidents or such other officers as it may from time to time determine are required for the efficient management and operation of the Corporation.”³⁶ Additionally, in those instances where the elimination of the CAO role reduces the number of named authorized individuals to two, the proposed rule change would allow the CEO and COO to delegate authority to certain delegated officers if the CEO and COO were unavailable to exercise the authority. In these cases, the Designated Officer must be of the rank of Senior Vice President or higher and delegated by either the CEO or COO. OCC believes delegation in these instances to senior officers of the Corporation is appropriate to ensure that the authority can be exercised if necessary in the event the CEO and COO are both unavailable.

As discussed above, in light of the changes to the role of the Executive Chairman as part of the proposed rule change, OCC is also proposing to provide flexibility with respect to the Management Director seat on the Board. The proposed rule change would provide a wider degree of flexibility by allowing, but not requiring, a Management Director on the Board and eliminating the requirement that the Management Director also be the Executive Chairman. These changes would create more flexibility for filling the role of Management Director and more easily accommodate potential future scenarios.

For the reasons set forth above, OCC believes the proposed rule change is designed to ensure that OCC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative

³⁶ OCC By-Laws, Art. IV, Sec. 1.

agreements, contracts, and transaction for which it is responsible consistent with the requirements of Section 17A(b)(3)(A) of the Act.³⁷

Rule 17Ad-22(e)(2) requires covered clearing agencies to maintain written policies and procedures reasonably designed to, among other things, provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility.³⁸ The proposed rule change would amend OCC's By-Laws, Rules, and charters, which are publicly available documents, to provide explicit, clear, and transparent statements of the responsibilities and authority of the newly separated Executive Chairman and CEO roles (and the elimination of a required CAO) and direct reporting lines thereunder within the overall management structure of OCC. For example, the proposed rule change would explicitly state that the Executive Chairman would oversee the work of internal audit, public affairs, and government relations, while the CEO would oversee all of OCC's business, operational and corporate support functions, with key operational and corporate support functions reporting indirectly to the CEO through the COO function. Moreover, in those instances where the elimination of the CAO role reduces the number of individuals authorized to take certain actions, the proposed rule change would provide a clear and transparent mechanism for the CEO and COO to delegate authority to certain Designated Officers if the CEO and COO were unavailable to exercise the authority. Additionally, the proposed changes to provide additional flexibility regarding the Management Director role would also be clearly and transparently described in OCC's By-Laws and Board Charter. As a result, OCC

³⁷ 15 U.S.C. 78q-1(b)(3)(A).

³⁸ 17 CFR 17Ad-22(e)(2)(i) and (v).

believes the proposed rule change is reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility in accordance with Rule 17Ad-22(e)(2).³⁹

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

Section 17A(b)(3)(I) of the Exchange Act⁴⁰ requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the Act. OCC does not believe that the proposed rule change would impose any burden on competition. The proposed rule change would implement certain leadership changes within OCC's management to separate the Executive Chairman and CEO roles and to remove the CAO as a required officer. This proposed rule change would not inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another. As a result, OCC believes the proposed rule change 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

³⁹ 17 CFR 17Ad-22(e)(2).

⁴⁰ 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. Please include File Number SR-OCC-2018-015 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-2018-015. 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-2018-015 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.⁴¹

Brent J. Fields
Secretary

⁴¹ 17 CFR 200.30-3(a)(12).

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