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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87577; File No. SR-OCC-2019-008)

November 20, 2019

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change to Establish a Regulatory Committee of The Options Clearing Corporation's Board of Directors

I. INTRODUCTION

On September 25, 2019, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-OCC-2019-008 (“Proposed Rule Change”) pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4² thereunder to establish a new committee under OCC’s Board of Directors.³ The Proposed Rule Change was published for public comment in the Federal Register on October 9, 2019.⁴ The Commission has received no comments regarding the Proposed Rule Change. This order approves the Proposed Rule Change.

II. BACKGROUND

OCC proposes to establish the OCC Regulatory Committee (“Committee”) and adopt the OCC Regulatory Committee Charter (“Committee Charter”). The Committee would be composed solely of members of OCC’s Board of Directors (“Board”). To facilitate the establishment of the Committee, OCC also proposes to amend Article III, Section 4 of the OCC

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing infra note 4, at 84 Fed. Reg. 54240.

⁴ Securities Exchange Act Release No. 87207 (Oct. 3, 2019), 84 Fed. Reg. 54239 (Oct. 9, 2019) (SR-OCC-2019-008) (“Notice of Filing”).

By-Laws (“By-Laws”) and the OCC Board of Directors Charter and Corporate Governance Principles (“Board Charter”).

Specifically, OCC proposes to amend the Board Charter and Article III, Section 4 of OCC’s By-Laws to list the Committee alongside the other OCC Board committees. OCC also proposes to amend its By-Laws consistent with the Committee Charter regarding the delegation of authority from the Board to the Committee as well as the composition of the Committee. The Committee Charter would further define the scope of the Committee’s authority. For example, the Committee Charter would authorize the Committee to access OCC’s books, records, facilities and personnel and to hire specialists or rely upon other outside advisors.

Consistent with the charters of OCC’s other Board-level committees,⁵ the Committee Charter would define the purpose and functions of the Committee and would set out requirements related to the composition and meetings of the Committee, which would, in part, relate to the governance arrangements supporting OCC’s compliance with its regulatory obligations. For example, in defining the Committee’s purpose, the Committee Charter would state that the Board established the Committee to assist in overseeing OCC’s efforts to demonstrate compliance with its regulatory obligations. The functions and responsibilities with which the Committee would be charged under the Committee Charter would include (1) overseeing OCC management’s action plans to achieve compliance with any proposed new regulation; (2) meeting with regulators to discuss OCC’s efforts to enhance its regulatory compliance posture; (3) reviewing annual regulatory compliance reports provided by OCC management; and (4) reviewing documents related to examinations conducted by OCC’s

⁵ See Securities Exchange Act Release 84473 (Oct. 23, 2019), 83 Fed. Reg. 54385 (Oct. 29, 2018) (SR-OCC-2018-012).

regulators (e.g., examination report letters provided by regulators, responses to such letters from OCC). Regarding the composition and meetings of the Committee, the Committee would be composed of all OCC Public Directors, and the Committee would be obligated to meet at least quarterly and to maintain minutes of all Committee meetings.⁶

The proposed Committee Charter would also clearly describe direct lines of responsibility between the Committee and, as appropriate, either the Board or members of OCC's management team. For example, the Committee Charter would require that the Committee make such reports to the Board as deemed necessary or advisable. The Committee Charter would also require that OCC's Chief Compliance Officer ("CCO"), or one of his or her deputies if the CCO is unavailable, attend meetings of the Committee. Additionally, the Committee Charter would require the Committee to review its charter at least once every twelve months and submit the Committee Charter to the Board for approval.

III. DISCUSSION AND COMMISSION FINDINGS

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.⁷ After carefully considering the Proposed Rule Change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission

⁶ The Committee Charter would permit the Committee's Chair to determine whether to record minutes of any executive session called by the Committee.

⁷ 15 U.S.C. 78s(b)(2)(C).

finds that the proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act⁸ and Rule 17Ad-22(e)(2) thereunder.⁹

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

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency be designed to, in general, protect investors and the public interest.¹⁰ Based on its review of the record, the Commission believes that the proposed changes are designed to, in general, protect investors and the public interest for the reasons set forth below.

The Committee, as described in the Proposed Rule Change, would be established to assist the Board in overseeing OCC's efforts to demonstrate compliance with its regulatory obligations. The Committee's responsibilities would include meeting with regulators as well as reviewing compliance reports and materials related to examinations conducted by OCC's regulators. Moreover, the Committee Charter and By-Laws would require that the Committee be composed of OCC's Public Directors. The Commission believes that establishing a Board-level committee for the purpose of overseeing OCC's efforts to demonstrate compliance with its regulatory obligations would help ensure that such efforts are being reviewed and overseen at appropriately senior levels within the organization, which in turn should enhance OCC's efforts to demonstrate compliance with its regulatory obligations.

Further, the proposed Committee Charter would clearly define the authority and function of the Committee. For example, the Committee Charter would provide the Committee with authority to (1) act on the behalf of the Board; (2) access OCC's books, records, facilitates and

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 17 CFR 240.17Ad-22(e)(2).

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

personnel; and (3) hire specialists or rely upon outside advisors. The authority described in the proposed Committee Charter would be consistent with the authority granted to OCC's other Board-level committees.¹¹ The Committee Charter would also clearly describe the Committee's obligations regarding meeting frequency, minutes, and reporting. Further, the Committee would be obligated to review the Committee Charter at least once every twelve months. Formally defining the Committee's characteristics in this manner—consistent with the characteristics of OCC's other Board-level committees—should help ensure that the Committee is imbued with and sustains a level of attention and stature consistent with that of OCC's other Board-level committees, which in turn should enhance the Committee's ability to achieve its stated mission of supporting OCC's efforts to demonstrate compliance with its regulatory obligations.

The Commission believes generally that a clearing agency's compliance the applicable securities laws protects investors and the public interest. As discussed above, the Commission believes that the Proposed Rule Change is designed to ensure that the Committee's work will be reviewed, supervised, and supported at the Board level, which in turn should enhance the Committee's ability to achieve its stated goal of supporting OCC's efforts to demonstrate compliance with its regulatory obligations. The Commission believes, therefore, that OCC's proposal to establish a Board-level Regulatory Committee is consistent with, in general, protecting investors and the public interest consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.¹²

¹¹ See Securities Exchange Act Release 84473 (Oct. 23, 2019), 83 Fed. Reg. 54385 (Oct. 29, 2018) (SR-OCC-2018-012).

¹² 15 U.S.C. 78q-1(b)(3)(F).

B. Consistency with Rule 17Ad-22(e)(2) under the Exchange Act

Rule 17Ad-22(e)(2) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that address certain criteria.¹³ Rules 17Ad-22(e)(2)(i) and (v) under the Exchange Act require that such governance arrangements are clear and transparent and specify clear and direct lines of responsibility.¹⁴ Further, the Commission has expressed the belief that policies and procedures specifying clear and direct lines of responsibility should generally entail documenting the responsibilities of the board of directors and senior management.¹⁵

As described above, OCC proposes amend its By-Laws and Board Charter to list the Committee among OCC's other Board-level committees and to specify the required composition of the Committee. Additionally, the Committee Charter would clearly define the authority and function of the Committee. For example, the Committee Charter would provide the Committee with authority to (1) act on the behalf of the Board; (2) access OCC's books, records, facilitates and personnel; and (3) hire specialists or rely upon outside advisors. The Committee Charter would also obligate OCC's CCO, or one of his or her deputies if the CCO is unavailable, to attend meetings of the Committee. Moreover, the Committee Charter would obligate the Committee to review its charter at least once every twelve months and submit the Committee Charter to the Board for approval. The Commission believes, therefore, that the changes to

¹³ 17 CFR 240.17Ad-22(e)(2).

¹⁴ 17 CFR 240.17Ad-22(e)(2)(i) and 17 CFR 240.17Ad-22(e)(2)(v).

¹⁵ See Securities Exchange Act Release No. 78961 (Sep. 28, 2016), 81 Fed. Reg. 70786, 70804 (Oct. 13, 2016) (S7-03-14) ("Covered Clearing Agency Standards").

OCC's By-Laws and Board Charter as well as the organizational aspects of the proposed Committee Charter are consistent with Exchange Act Rule 17Ad-22(e)(2)(i) and (v).¹⁶

Rule 17Ad-22(e)(2)(iii) under the Exchange Act requires, in part, that the governance arrangements required by Rule 17Ad-22(e)(2) support the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies.¹⁷

As described above, certain aspects of the Committee Charter relate to the governance of OCC's compliance with its regulatory obligations. For example, the Committee Charter would state that the Committee was established to assist the Board in overseeing OCC's efforts to demonstrate compliance with its regulatory obligations. The Committee's functions and responsibilities, as specified in the Committee Charter, would include meeting with regulators to discuss OCC's efforts to enhance its compliance posture and reviewing reports related to OCC's compliance posture (e.g., annual regulatory compliance reports provided by OCC management, final exam report letters from OCC's regulators, and OCC's response to regulatory examination letters). As discussed above, the Commission believes OCC's proposal to establish a Board-level Regulatory Committee is consistent with, in general, protecting investors and the public interest consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.¹⁸ The Commission believes, therefore, that the establishment of the Committee through a detailed charter document is consistent with Exchange Act Rule 17Ad-22(e)(2)(iii).¹⁹

¹⁶ 17 CFR 240.17Ad-22(e)(2)(i) and 17 CFR 240.17Ad-22(e)(2)(v).

¹⁷ 17 CFR 240.17Ad-22(e)(2)(iii).

¹⁸ 15 U.S.C. 78q-1(b)(3)(F).

¹⁹ 17 CFR 240.17Ad-22(e)(2)(iii).

IV. CONCLUSION

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act²⁰ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,²¹ that the Proposed Rule Change (SR-OCC-2019-008) be, and hereby is, approved.

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

Jill M. Peterson
Assistant Secretary

²⁰ In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).

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