

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89037; File No. SR-OCC-2020-006]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Administrative Updates to The Options Clearing Corporation's Risk Management Policies

June 10, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 27, 2020, 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 by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii)<sup>3</sup> of the Act and Rule 19b-4(f)(6)<sup>4</sup> thereunder so that the proposal was effective upon filing with the Commission. 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 make conforming edits to the following policies: OCC's Risk Management Framework Policy, OCC's Default Management Policy and OCC's Clearing Fund Methodology Policy. In each case, the conforming edits would ensure that descriptions of OCC's process for replenishing operating capital and OCC's waterfall of default resources are aligned with changes that took effect with the approval of OCC's Capital Management Policy.<sup>5</sup> Further conforming edits to the Risk Management Framework Policy would establish that the Capital Management Policy must detail the principles used to

determine, monitor, and measure OCC's capital levels such that OCC maintains liquid net assets funded by equity ("LNAFBE") consistent with the requirements of Rule 17Ad-22(e)(15),<sup>6</sup> aligned with the current Capital Management Policy.<sup>7</sup> The proposed rule change would also add one footnote to the Clearing Fund Methodology Policy, which would simply clarify that the Capital Management Policy's changes to OCC's waterfall of default resources would not change OCC's definition of "pre-funded financial resources," as used for purposes of the calculating OCC's Clearing Fund.

The Risk Management Framework Policy, Default Management Policy and Clearing Fund Methodology Policy are included as confidential Exhibits 5A, 5B and 5C, respectively. Material proposed to be added is marked by underlining and material proposed to be deleted is marked by strikethrough text. The proposed rule change 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.<sup>8</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

###### Background

On February 13, 2019, the Commission disapproved OCC's Capital Plan.<sup>9</sup> The Capital Plan had provided for OCC's operating capital structure and had included a contingency for replenishing OCC's operating capital, if necessary, by raising additional capital from the options exchanges that have

equity ownership interests in OCC.<sup>10</sup> As a result of the disapproval of the Capital Plan, OCC subsequently proposed its "Capital Management Policy," which proposed a new operating capital structure, a new process for replenishing OCC's operating capital and certain changes to OCC's "default waterfall" (*i.e.*, the resources available to OCC in the event of a Clearing Member's suspension).<sup>11</sup> On January 24, 2020, the Commission approved OCC's Capital Management Policy.<sup>12</sup>

OCC's Risk Management Framework Policy, Default Management Policy and Clearing Fund Methodology Policy each include discrete references to aspects of the disapproved Capital Plan or to OCC's default waterfall prior to the changes implemented by the Capital Management Policy. Specifically, OCC's Risk Management Framework Policy contains a paragraph summarizing the disapproved Capital Plan and its appendix includes two references to the disapproved Capital Plan. OCC's Default Management Policy includes a summary of the default waterfall predating the approval of the Capital Management Policy and a list of OCC's "Recovery Tools" for default scenarios, which includes Replenishment Capital. OCC's Clearing Fund Methodology Policy contains two paragraphs that summarize OCC's default waterfall as it existed prior to the approval of the Capital Management Policy. Each of these now-outdated references needs to be revised to conform to the changes implemented by the Capital Management Policy.

#### Proposed Changes

##### Proposed Changes to the Risk Management Framework Policy

OCC's Risk Management Framework Policy includes a paragraph summarizing the disapproved Capital Plan and its appendix includes two references to the disapproved Capital Plan. Accordingly, the disapproval of the Capital Plan and adoption of the Capital Management Policy requires that conforming changes be made to OCC's Risk Management Framework Policy. The proposed rule change would effectively replace in its entirety a short paragraph that summarizes the disapproved Capital Plan with a short paragraph summarizing the Capital Management Policy. Specifically, the

<sup>10</sup> Exchange Act Release No. 74452 (Mar. 6, 2015), 80 FR 13058 (Mar. 12, 2015) (SR-OCC-2015-02). The contingency in the Capital Plan for replenishing OCC's operating capital was referred to as "Replenishment Capital."

<sup>11</sup> Exchange Act Release No. 86725 (Aug. 21, 2019), 84 FR 44944 (Aug. 27, 2019) (SR-OCC-2019-007).

<sup>12</sup> See *supra* note 5.

<sup>33</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> Exchange Act Release No. 88029 (Jan. 24, 2020), 85 FR 5500 (Jan. 30, 2020) (SR-OCC-2019-007).

<sup>6</sup> 17 CFR 240.17Ad-22(e)(15).

<sup>7</sup> See *supra* note 5.

<sup>8</sup> OCC's By-Laws and Rules can be found on OCC's public website: <http://optionsclearing.com/about/publications/bylaws.jsp>.

<sup>9</sup> Exchange Act Release No. 85121 (Feb. 13, 2019), 84 FR 5157 (Feb. 20, 2019) (SR-OCC-2015-02).

revised paragraph would require that OCC maintain a Capital Management Policy that details the principles used to determine, monitor, and manage OCC's capital levels such that OCC maintains sufficient LNAFBE in a manner consistent with the requirements of Rule 17Ad-22(e)(15).<sup>13</sup> The proposed rule change also would amend the appendix of the Risk Management Framework Policy to replace two references to the Capital Plan with references to the Capital Management Policy.

#### Proposed Changes to the Default Management Policy

OCC's Default Management Policy includes a summary of the default waterfall and a list of OCC's "Recovery Tools," each of which predates the approval of the Capital Management Policy. Accordingly, the implementation of the Capital Management Policy requires conforming changes to OCC's Default Management Policy. The proposed rule change would revise a list in the Default Management Policy that summarizes the default waterfall. As revised, the list would: (1) Include a summary description—immediately following the use of margin, deposits in lieu of margin and the Clearing Fund deposits of the suspended Clearing Member—of OCC's use of current and retained earnings greater than 110% of OCC's annually-established Target Capital Requirement, as implemented by the Capital Management Policy, and (2) describe the contribution of unvested portions of OCC's EDCP, in proportion to any charges against the mutualized portion of OCC's Clearing Fund, as implemented by the Capital Management Policy.

Also, the proposed rule change would revise a list in the Default Management Policy that summarizes OCC's Recovery Tools. As revised, the list would delete the use of OCC's current and/or retained earnings from the list of OCC's Recovery Tools. As implemented by the Capital Management Policy, OCC's current and retained earnings greater than 110% of OCC's annually-established Target Capital Requirement would be mandatorily contributed in advance of any charges against the mutualized portion of OCC's Clearing Fund, and thusly, would not be available as a recovery tool for the purpose of managing a Clearing Member default after OCC charges a loss to the Clearing Fund.

#### Proposed Changes to the Clearing Fund Methodology Policy

The Clearing Fund Methodology Policy contains two paragraphs summarizing the process for levying charges against OCC's Clearing Fund and for Clearing Member's to replenish OCC's Clearing Fund, as each process existed prior to the implementation of the Capital Management Policy. Accordingly, the adoption of the Capital Management Policy requires conforming changes to OCC's Clearing Fund Methodology Policy. As revised, the first paragraph would describe OCC's use of current and retained earnings greater than 110% of OCC's annually-established Target Capital Requirement before OCC levies charges against its Clearing Fund, as implemented by the Capital Management Policy (this paragraph would continue to immediately follow a reference to the use of the margin and Clearing Fund deposits of the suspended Clearing Member). The second paragraph would be revised to describe the contribution of unvested portions of OCC's EDCP, in proportion to any charges against the mutualized portion of OCC's Clearing Fund, as implemented by the Capital Management Policy.

In addition to the foregoing revisions, the proposed rule change also would add a footnote making clear that OCC does not consider assessment powers, available current and retained earnings exceeding 110% of the Target Capital Requirement or available unvested portions of OCC's EDCP to be "pre-funded financial resources" for purposes of sizing or measuring the sufficiency of the Clearing Fund. This change would simply clarify that the Capital Management Policy's changes to OCC's waterfall of default resources would not change OCC's definition of "pre-funded financial resources," as used for purposes of the calculating OCC's Clearing Fund.

#### (2) Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act<sup>14</sup> because the proposed change to update OCC's Risk Management Framework Policy, Default Management Policy and Clearing Fund Methodology Policy ultimately would protect investors and the public interest. OCC's Risk Management Framework Policy is designed to enable OCC to identify, measure, monitor and manage the range of risks that arise in or are borne by OCC. OCC's Default Management Policy is designed to

facilitate OCC's authority and operational capacity to take timely action to contain losses arising from the suspension of a Clearing Member. OCC's Clearing Fund Methodology Policy is designed to summarize the manner by which OCC determines the level of Clearing Fund resources to cover a wide range of foreseeable stress scenarios. OCC believes that making conforming edits to the Risk Management Framework Policy, Default Management Policy and Clearing Fund Methodology Policy would improve the possibility of OCC effectively addressing a variety of potential risks. In turn, OCC believes this would improve its ability to ultimately maintain market and public confidence during a time of unprecedented stress. In this regard, OCC believes the proposed rule change ultimately would protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.<sup>15</sup>

OCC also believes that the proposed rule change is consistent with Rules 17Ad-22(e)(3)(i)<sup>16</sup> and 17Ad-22(e)(13).<sup>17</sup> The proposed conforming edits to the Risk Management Framework Policy would improve the accuracy of the policy's descriptions of OCC's capital structure and replace outdated references to the Capital Plan. Each of these conforming changes would improve the accuracy of OCC's Risk Management Framework Policy. In this regard, OCC believes its proposed rule change is consistent with Rule 17Ad-22(e)(3)(i).<sup>18</sup> Similarly, proposed conforming edits to the Default Management Policy would improve the accuracy of the policy's descriptions of OCC's default waterfall and recovery tools. The improved accuracy of the Default Management Policy would facilitate OCC's operational capacity to take timely action to contain losses arising from the suspension of a Clearing Member. In this regard, OCC believes its proposed rule change is consistent with Rule 17Ad-22(e)(13).<sup>19</sup>

OCC also believes that the proposed rule change is consistent with Rule 17Ad-22(e)(4).<sup>20</sup> The proposed conforming edits to the Clearing Fund Methodology Policy would improve the accuracy of the policy's descriptions of OCC's default waterfall and would clarify the resources that would be counted as "pre-funded financial resources" in determining the sizing

<sup>13</sup> 17 CFR 240.17Ad-22(e)(15).

<sup>14</sup> 15 U.S.C. 78q-1(b)(3)(F).

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

<sup>16</sup> 17 CFR 240.17Ad-22(e)(3)(i).

<sup>17</sup> 17 CFR 240.17Ad-22(e)(13).

<sup>18</sup> 17 CFR 240.17Ad-22(e)(3)(i).

<sup>19</sup> 17 CFR 240.17Ad-22(e)(13).

<sup>20</sup> 17 CFR 240.17Ad-22(e)(4).

and sufficiency of OCC's Clearing Fund. Together, the improved accuracy and clarification of these proposed conforming edits would facilitate OCC's ability to, among other things, effectively manage its credit exposures to participants. In this regard, OCC believes its proposed rule change is consistent with Rule 17Ad-22(e)(4).<sup>21</sup>

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

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

Section 17A(b)(3)(I) of the Act<sup>22</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.<sup>23</sup> The proposed rule change would update OCC's Risk Management Framework Policy, Default Management Policy and Clearing Fund Methodology Policy. The proposed changes to the Risk Management Framework Policy, Default Management Policy and Clearing Fund Methodology Policy would simply recognize the disapproval of OCC's Capital Plan and its subsequent replacement with the adopted Capital Management Policy, and in the case of the Clearing Fund Methodology Policy, add a clarifying footnote. None of the proposed updates to the Risk Management Framework Policy, Default Management Policy or Clearing Fund Methodology Policy would affect Clearing Members' 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**

Pursuant to Section 19(b)(3)(A)(iii) of the Act,<sup>24</sup> and Rule 19b-4(f)(6)<sup>25</sup> thereunder, the proposed rule change is filed for immediate effectiveness because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms would not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate. Additionally, OCC provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2020-006 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-2020-006. This file number should be included on the subject line if email 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-2020-006 and should be submitted on or before July 7, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-89039; File No. SR-OCC-2020-803]

**Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection To Advance Notice Related to Changes to the Options Clearing Corporation's Non-Bank Repo Facility Program as Part of Its Overall Liquidity Plan**

June 10, 2020.

**I. Introduction**

On April 15, 2020, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") advance notice SR-OCC-2020-803 ("Advance Notice") pursuant to Section 806(e)(1) of

<sup>21</sup> *Id.*

<sup>22</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>23</sup> *Id.*

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>25</sup> 17 CFR 240.19b-4(f)(6).

<sup>26</sup> 17 CFR 200.30-3(a)(12).