## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83928; File No. SR–OCC–2017–810]**

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice, as Modified by Partial Amendment No. 3, Concerning Updates to and Formalization of OCC's Recovery and Orderly Wind-Down Plan

August 23, 2018.

### I. Introduction

On December 8, 2017, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–OCC–2017–810 (''Advance Notice'') pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) [2] under the Securities Exchange Act of 1934 (''Exchange Act'') [3] to formalize and update its Recovery and Orderly Wind-Down Plan (''RWD Plan''). The Advance Notice was published for public comment in the **Federal Register** on January 23, 2018.[4] On January 23, 2018, the Commission requested that OCC provide it with additional information regarding the Advance Notice.[5] OCC responded to the request, and the Commission received the information on July 13, 2018.[6]

On July 11, 2018, OCC filed Partial Amendment No. 1 to the Advance Notice.[7] On July 12, 2018, OCC filed Partial Amendment No. 2 and Partial Amendment No. 3 to the Advance Notice.[8] Notice of the Amendments to the Advance Notice was published for public comment in the **Federal Register** on August 7, 2018,[9] and the Commission has received no comments in response.

This publication serves as notice that the Commission does not object to the changes set forth in the Advance Notice, as amended by Partial Amendment No. 3 (''Amended Advance Notice'').

### II. Background [10]

OCC's proposal would formalize and update its RWD Plan. The purpose of the RWD Plan is to: (i) Demonstrate that OCC has considered the scenarios which may potentially prevent it from being able to provide the services OCC determined to be critical as a going-concern; (ii) provide appropriate plans for OCC's recovery or orderly wind-down based on the results of such consideration; and (iii) impart to relevant authorities the information reasonably anticipated to be necessary for purposes of recovery and orderly wind-down planning.

The RWD Plan would identify the services provided by OCC that OCC has determined to be critical, and it would set forth five qualitative events that could trigger a recovery scenario and six qualitative events that could trigger an orderly wind-down. It would also address six scenarios that describe OCC's possible responses to series of stresses. The RWD Plan would also include an overview designed to provide information that OCC believes would be essential to relevant authorities for purposes of recovery and orderly wind-down planning, as well as to provide readers of the Plan with necessary context for subsequent discussion and analysis. The overview would also include a detailed description of OCC's business, summarizing the role OCC has in the options market as well as the services and products it provides to its clearing members and market participants. The RWD Plan would identify fourteen internal support functions at OCC and provide a brief description of the activities performed by each support function. Similar to the information regarding OCC's business, this information is designed to inform the relevant authorities for orderly wind-down planning and as necessary context for understanding other elements of the RWD Plan.

#### *A. Designating Critical Services and Critical Support Functions*

The RWD Plan would define the terms ''Critical Services'' and ''Critical Support Functions.'' Specifically, a Critical Service would be a service provided by OCC that, if interrupted, would likely have a material negative impact on participants or significant third parties, give rise to contagion, or undermine the general confidence of markets that OCC serves. A Critical Support Function would be a function within OCC that must continue in some capacity for OCC to be able to continue providing its Critical Services.

The RWD Plan would describe the framework that OCC uses to determine whether a service is critical. This framework includes four criteria to determine if failure or discontinuation of a particular service would impact financial and operational capabilities of OCC's clearing members, other FMUs, or the broader financial system: (1) Market dominance, (2) substitutability, (3) interconnectedness, and (4) barriers to entry. The current set of services designated as Critical Services under the RWD Plan is based on the analysis of these measureable indicators and subsequent internal discussion at OCC. The Critical Services currently include, but are not limited to, clearance services for listed options and clearance services for futures.

#### *B. Recovery Plan*

The RWD Plan would include plans for recovery from scenarios that could prevent OCC from providing Critical Services.[11] After discussing particular

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] *See* Exchange Act Release No. 82514 (January 17, 2018), 83 FR 3224 (January 23, 2018) (SR–OCC–2017–810) (hereinafter referred to as the ''Notice of Filing''). On December 18, 2017, OCC also filed a related proposed rule change (SR–OCC–2017–020) with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder, seeking approval of changes to its rules necessary to implement the Advance Notice (''Proposed Rule Change''). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Proposed Rule Change was published in the **Federal Register** on December 26, 2017. Exchange Act Release No. 82352 (Dec. 19, 2017), 82 FR 61072 (Dec. 26, 2017) (SR–OCC–2017–021).

[5] *See* Memorandum from Office of Clearance and Settlement, Division of Trading and Markets, dated January 23, 2018, available at *https://www.sec.gov/rules/sro/occ-an/2018/34-83305.pdf.*

[6] *See* Memorandum from Office of Clearance and Settlement, Division of Trading and Markets, dated July 17, 2018, available at *https://www.sec.gov/comments/sr-occ-2017-810/occ2017810-4062513-169149.pdf.*

[7] In Amendment No. 1, OCC made three modifications to the Notice of Filing: (1) Removal of sections of the RWD Plan concerning OCC's proposed authority to require cash settlement of certain physically delivered options and single stock futures; (2) updating the list of OCC's Critical Support Functions; and (3) making three changes to the RWD Plan to conform to a change contemporaneously proposed in Amendment No. 2 to OCC filing SR–OCC–2017–809 concerning enhanced and new tools for recovery scenarios.

[8] Partial Amendment No. 2 superseded and replaced Partial Amendment No. 1 in its entirety, due to technical defects in Partial Amendment No. 1. Partial Amendment No. 3 then superseded and replaced Partial Amendment No. 1 in its entirety, due to technical defects in Partial Amendment No. 2.

[9] *See* Exchange Act Release No. 83762 (Aug. 1, 2018), 83 FR 38750 (Aug. 7, 2018) (''Notice of Amendment'').

[10] Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at *https://www.theocc.com/about/publications/bylaws.jsp.*

[11] For the purposes of the RWD Plan, OCC defines ''recovery'' as ''the actions of [a financial market utility], consistent with its rules, procedures, and other ex-ante contractual arrangements, to address any uncovered credit loss, liquidity shortfall, capital inadequacy, or business, operational or other structural weakness, including the replenishment of any depleted pre-funded financial resources and liquidity arrangements, as necessary to maintain the [financial market utility's] viability as a going concern.''

scenarios, the RWD Plan identifies the tools that OCC could use as warranted in such scenarios. These tools fall into two categories: (1) Enhanced Risk Management Tools, and (2) Recovery Tools. An Enhanced Risk Management Tool is a tool that is designed to supplement OCC's existing processes and other existing tools in scenarios where OCC faces heightened stresses, while a Recovery Tool is a tool that is generally limited to a scenario in which a specific trigger has occurred. In its RWD Plan, OCC would define a set of five such qualitative trigger events (''Recovery Trigger Events'').

The sequence and timing of the deployment of each Recovery Tool is more structured and lacks the flexibility inherent in the sequence and timing for use of the Enhanced Risk Management Tools. For each tool, the RWD Plan provides an overview of the tool, and, as appropriate, a discussion of its implementation with an estimated time frame for use of the tool, key risks associated with use of the tool, and the expected impact and incentives of using the tool.

1. Enhanced Risk Management Tools

OCC stated that the Enhanced Risk Management Tools would be used prophylactically in an effort to prevent the occurrence of a Recovery Trigger Event and would not be limited to recovery. OCC would not anticipate applying a rigid order or timing for the deployment of the Enhanced Risk Management Tools. The RWD Plan would include five Enhanced Risk Management Tools: (1) Use of Current/Retained Earnings; (2) Minimum Clearing Fund Cash Contribution; (3) Borrowing Against Clearing Fund; (4) Credit Facility; and (5) Non-Bank Facility.

*Use of Current/Retained Earnings.* Under its By-Laws, OCC may use current and/or retained earnings to discharge a loss that would be chargeable against the Clearing Fund, but would require unanimous consent from the holders of OCC's Class A and Class B common stock. The RWD Plan acknowledges that the utility of this tool is limited by the requirement for shareholder consent and that OCC's retained earnings presently amount to a small fraction of OCC's existing prefunded Clearing Fund resources. OCC stated that, given this amount, the maximum utility of this tool may be realized in specific circumstances at either the beginning of OCC's loss waterfall or toward the end of OCC's loss waterfall, where it would be sufficient to fully extinguish liabilities without triggering the use of another tool.

*Minimum Clearing Fund Cash Contribution.* Under its current rules, OCC Clearing Members collectively contribute $3 billion in cash to OCC's Clearing Fund.[12] In addition, OCC may, in certain limited circumstances, increase the minimum cash requirement up to the then-minimum size of the Clearing Fund.[13] The RWD Plan would acknowledge that increasing the minimum cash requirement would require preparation of OCC documentation that considers the projected liquidity demands for successful management of a defaulted Clearing Member.

*Borrowing Against Clearing Fund.* OCC has the authority to borrow against the Clearing Fund in three circumstances: (1) To meet obligations arising out of the default or suspension of a Clearing Member or any action taken by OCC under Chapter XI of its rules pertaining to the suspension of a clearing member; (2) to borrow or otherwise obtain funds from third parties in lieu of immediately charging the Clearing Fund for a loss that is reimbursable out of the Clearing Fund; and (3) to meet liquidity needs for same-day settlement as a result of the failure of any bank or securities or commodities clearing organization to achieve daily settlement.[14] The RWD Plan would acknowledge that any borrowing would require preparation of OCC documentation in accordance with OCC procedures. Further, the RWD Plan would recognize that the availability of this tool in advance of a heightened stress scenario would be unknown because OCC's primary liquidity facilities could already be fully or partially utilized.

*Credit Facility and Non-Bank Liquidity Facility.* OCC maintains a $2 billion dollar senior secured 364-day revolving credit facility with a syndicate of lenders for the purpose of providing OCC with liquidity to meet settlement obligations as a central counterparty. The RWD Plan would recognize that an inherent risk of the credit facility is that a portion of the syndicate may not provide funds in timely response to OCC's request. OCC also maintains a $1 billion dollar secured non-bank liquidity facility for the purpose of providing OCC with a non-bank liquidity resource to meet settlement obligations as a central counterparty. Similar to the risk associated with the credit facility, the RWD Plan would recognize the risk that OCC's counterparty may not timely execute the transaction under the non-bank liquidity facility.

2. Recovery Tools

Under the RWD Plan, Recovery Tools would be different from Enhanced Risk Management Tools because OCC's use of a Recovery Tool is generally limited to a scenario in which a Recovery Trigger has occurred. The RWD Plan would identify five Recovery Tools, the last four of which would generally be deployed in the order they are described here: (1) Replenishment Capital; (2) Assessment Powers; (3) Voluntary Payments; (4) Voluntary Tear-Up; and (5) Partial Tear-Up.[15] As noted above, the sequence and timing of deployment of the Recovery Tools would be more structured than the sequence and timing of the use of Enhanced Risk Management Tools.

*Replenishment Capital.* OCC holds capital contributed by its stockholder exchanges who have committed to replenish OCC's capital if it falls below a certain threshold.[16] The RWD Plan would include the replenishment of capital by OCC's stockholder exchanges as a recovery tool.

*Assessment Powers.* Under OCC's rules, OCC has authority to assess a non-defaulting Clearing Member during any cooling-off period for an amount equal to 200 percent of the Clearing Member's then-required contribution to the Clearing Fund.[17] Following the end of

[12] *See* OCC By-Laws, Art. VIII, Section 3(a)(i). The Commission recently approved a proposal by OCC that, after implementation, would move this section of the OCC By-Laws to OCC Rule 1002(a)(i). *See* Exchange Act Release No. 83735 (Jul. 27, 2018), 83 FR 37855, 37859 (Aug. 2, 2018) (SR–OCC–2018–008) (''Order Approving Proposed Rule Change, as Modified by Amendments No. 1 and 2, Related to OCC's Stress Testing and Clearing Fund Methodology'').

[13] *See* OCC By-Laws, Art. VIII, Section 3(a)(i).

[14] *See* OCC By-Laws, Art. VIII, Section 5(e). The Commission recently approved a proposal by OCC that, after implementation, would move this section of the OCC By-Laws to OCC Rule 1006(f). *See* Order Approving Proposed Rule Change Related to OCC Stress Testing and Clearing Fund Methodology, *supra* note 12, 83 FR at 37859.

[15] For a more detailed description of the Recovery Tools numbered (2) through (5) here, please see Exchange Act Release No. 83927 (Aug. 23, 2018).

[16] The requirement to replenish OCC's capital was adopted as part of OCC's plan to raise and maintain capital at a specified level (''Capital Plan''). *See* Exchange Act Release No. 77112 (February 11, 2016), 81 FR 8294 (February 18, 2016) (SR–OCC–2015–02). The Capital Plan was later subject to judicial review by the U.S. Court of Appeals for the District of Columbia Circuit, which remanded for the Commission to further analyze whether the Capital Plan is consistent with the Exchange Act. *Susquehanna Int'l Grp., LLP* v. *SEC*, 866 F.3d 442 (D.C. Cir. 2017). The Commission's review of the Capital Plan on remand is ongoing, and the Capital Plan remains in effect during this ongoing review.

[17] The cooling-off period is the period following a proportionate charge assessed by OCC against the Clearing Members' Clearing Fund contributions. It

the cooling-off period, each remaining Clearing Member must replenish the Clearing Fund in the amount necessary to meet its then-required contribution.[18] The RWD Plan would recognize the risk that the use of assessment powers may incentivize Clearing Members to withdraw from membership in OCC to avoid replenishment, and that such withdrawals would limit the resources available to OCC for future assessments.

*Voluntary Payments.* OCC's rules provide a framework by which OCC can receive voluntary payments in response to a Clearing Member default. Use of this tool is permissible only where OCC has determined that it may not have sufficient resources to satisfy its obligations and liabilities arising out of the default. The RWD Plan would describe the processes involved in calling for and receiving voluntary payments, including the issuance of a notice to Clearing Members. The RWD Plan would recognize the risk that Clearing Members would be unwilling or unable to make voluntary payments. As an incentive for Clearing Members to provide voluntary payments, a non-defaulting Clearing Member who made a voluntary payment would receive priority in reimbursement from amounts recovered by OCC from the estate of a defaulting Clearing Member.

*Voluntary Tear-up.* OCC's rules provide a framework by which non-defaulting Clearing Members and customers could be permitted to voluntarily extinguish (*i.e.,* voluntarily tear-up) open positions in response to a Clearing Member default. Voluntary Tear-up is permissible only where OCC has determined that it may not have sufficient resources to satisfy its obligations and liabilities arising out of the default. The RWD Plan would contemplate that OCC would initiate any tear-up process after the market close on the day that OCC determines it may have insufficient resources. The RWD Plan would further anticipate that OCC would publish notice of tear-up no later than the following morning (prior to the market open), and that positions would be extinguished following the market close. The RWD Plan would also recognize the risk that Clearing Members would be unwilling or unable to participate in the voluntary tear-up process. A non-defaulting Clearing Member that faced losses, costs, or expenses in reestablishing voluntarily torn-up positions could receive compensation from amounts recovered by OCC from the estate of a defaulting Clearing Member ahead of other Clearing Members that faced such losses, costs, or expenses after reestablishing torn up positions.

*Partial Tear-up.* OCC's rules provide a framework by which OCC could extinguish the remaining open positions of a defaulted Clearing Member or its customers (*i.e.,* Partial Tear-up) in response to a Clearing Member default. The RWD Plan would anticipate that the Partial Tear-up process would be intertwined with the Voluntary Tear-up process described above. The RWD Plan also would contemplate the compensation of Clearing Members facing losses, costs, or expenses after reestablishing torn up positions from Clearing Fund contributions.

The RWD Plan also would provide a mapping of Enhanced Risk Management Tools and Recovery Tools to different types of risk exposures. Such risk exposures include: (1) Uncovered credit losses; (2) liquidity shortfalls; (3) replenishment of financial resource; (4) losses related to business, operational, or other structural weaknesses; and (5) re-establishment of a matched book. The RWD Plan discusses how each tool would apply to these risk categories and would reference the stress scenarios contemplated by the RWD Plan.

The RWD Plan would outline an escalation process for the occurrence of each Recovery Trigger.[19] Under the RWD Plan, OCC's Enterprise Risk Management and Financial Risk Management groups would be responsible for recommending which, if any, of the tools described above should be used in a given situation. Further, OCC's Chief Executive Officer and Executive Chairman would be responsible for approval of such recommendations, and OCC's Chief Risk Officer and Management Committee would be responsible for overseeing deployment of such tools. Finally, OCC's Board and the Risk Committee of the Board would be responsible for generally overseeing OCC's recovery efforts.

### C. Orderly Wind-Down Plan

The RWD Plan would also include OCC's wind-down plan and include scenarios that could prevent OCC from being able to provide Critical Services as a going-concern. OCC would identify its wind-down objective as the pursuit of financial stability and ensuring the continuity of critical functions. The RWD Plan would provide OCC's assumptions concerning the wind-down process regarding: (1) Duration of wind-down; (2) cost of wind-down; (3) OCC's capitalization; and (4) the maintenance of Critical Services and Critical Support Functions. It also would identify six wind-down triggers (''WDP Trigger Events''), the occurrence of which could jeopardize the viability of OCC's recovery. Under the RWD Plan, the occurrence of a WDP Trigger Event would necessitate notification of regulators, including the Commission, the U.S. Commodity Futures Trading Commission, and the Federal Deposit Insurance Corporation, as well as internal notifications to OCC senior management.

The RWD Plan would reference critical interconnections and key agreements for consideration in the context of wind-down. The RWD Plan also would discuss OCC's key actions in wind-down including the: (1) Decision by OCC's Board to initiate wind-down; (2) institution of heightened clearing member requirements; (3) imposition of heightened capital requirements for clearing members; (4) imposition of increased margin requirements; (5) cessation of investment by OCC; (6) institution of new operational practices; and (7) targeted reductions in force.

The RWD Plan also would identify transactions that could be entered into to accomplish OCC's wind-down objectives: (1) Stock transactions; (2) merger transactions; and (3) asset transactions. The RWD Plan focuses discussion of wind-down transactions on issues including, but not limited to, governance and regulatory issues. The goal of any such transaction would be to transfer ownership of OCC in a manner that ensures the continuation of OCC's critical services; however, the RWD Plan also would contemplate the cessation of Critical Services through OCC's existing close-out netting rules.[20]

### D. Governance

The RWD Plan would also memorialize the governance processes for maintenance, review, and approval of the RWD Plan. Under the RWD Plan, all changes would originate in a recommendation from OCC's RWD Working Group. Changes would go through a series of consecutive rounds of review and approval by OCC's Management Committee, the Risk Committee of OCC's Board of Directors, and the full Board of Directors, which would have final approval authority.

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is a minimum of fifteen days, but could extend to as much as twenty days from the date of the proportionate charge based on intervening events.

[18] A Clearing Member may avoid liability for replenishment by terminating its membership in OCC prior to the end of the cooling-off period.

[19] The RWD Plan also would discuss notification of regulators, including the Commission, the U.S. Commodity Futures Trading Commission, and the Federal Deposit Insurance Corporation, in response to the occurrence of a Recovery Trigger.

[20] *See also* OCC By-Laws, Art. VI, Section 27.

## III. Discussion and Commission Findings

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the stated purpose of the Clearing Supervision Act is instructive: To mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities (''SIFMUs'') and strengthening the liquidity of SIFMUs.[21]

Section 805(a)(2) of the Clearing Supervision Act [22] authorizes the Commission to prescribe regulations containing risk-management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act [23] provides the following objectives and principles for the Commission's risk-management standards prescribed under Section 805(a):

- To promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk-management standards may address such areas as risk-management and default policies and procedures, among others areas.[24]

The Commission has adopted risk-management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act (the ''Clearing Agency Rules'').[25] The Clearing Agency Rules require, among other things, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk-management practices on an ongoing basis.[26] As such, it is appropriate for the Commission to review advance notices against the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act and the Clearing Agency Rules.[27] As discussed below, the Commission believes the proposal in the Amended Advance Notice is consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,[28] and in the Clearing Agency Rules, in particular Rules 17Ad–22(e)(2)(i), (iii), and (v), 17Ad–22(e)(3)(ii), and 17Ad–22(e)(15)(i) under the Exchange Act.[29]

### *A. Consistency With Section 805(b) of the Clearing Supervision Act*

The Commission believes that the proposal contained in OCC's Amended Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act. Specifically, as discussed below, the Commission believes that the changes proposed in the Amended Advance Notice are consistent with promoting robust risk management, promoting safety and soundness, reducing system risks, and supporting the stability of the broader financial system.[30]

First, the Commission believes that the proposed changes are consistent with reducing systemic risks and supporting the stability of the broader financial system. OCC is the sole registered clearing agency for the U.S. listed options markets and a SIFMU. By specifying the steps that OCC would take in either a recovery or an orderly wind-down, the Commission believes that the proposed changes would enhance OCC's ability to address circumstances specific to an extreme stress event, thereby increasing the likelihood that it could execute a successful recovery or orderly wind-down in such an event. As such, the Commission believes that the RWD Plan would help reduce systemic risk by decreasing the likelihood of a disorderly or unsuccessful recovery or wind-down, which could otherwise disrupt the markets for which OCC clears, thereby leading to the transmission of risk across market participants. For the same reason, the Commission also believes the RWD Plan would support the stability of the broader financial system.

Second, the RWD Plan would, as described above, specify the Enhanced Risk Management Tools and Recovery Tools available to OCC in recovery, as well as the governance framework applicable to the use of such tools. It would analyze the use of the Enhanced Risk Management Tools and Recovery Tools, the incentives created by such tools, and the risks associated with using such tools. The Commission believes that by specifying the tools that OCC would use to address, or preferably prevent, a recovery scenario, the RWD Plan would increase the likelihood that recovery would be orderly, efficient, and successful. By doing so, the Commission believes that the RWD Plan would enhance OCC's ability to maintain the continuity of its critical services (including clearance and settlement services) during, through, and following periods of extreme stress giving rise to the need for recovery, thereby promoting both robust risk management and safety and soundness in the clearance and settlement in the listed-options and futures markets.

Similarly, the Commission believes that the RWD Plan would enhance OCC's ability to promote robust risk management and safety and soundness by establishing a plan to effectuate an orderly wind-down. The RWD Plan's governance processes and regulatory notice provisions could facilitate either the orderly transfer of OCC's Critical Services to another entity or the orderly close-out of positions. Providing additional information regarding the potential orderly transfer of services or close-out of positions would benefit Clearing Members and their customers by providing greater transparency and certainty regarding the potential disposition or treatment of their positions and assets at OCC, thereby benefiting market participants more broadly. Therefore, the Commission believes that these provisions would enhance OCC's ability to promote robust risk management and safety and soundness in the clearance and settlement of the listed-options and futures markets by assuring that transactions are transferred to another entity or closed out in an orderly and transparent manner.

Accordingly, and for the reasons stated, the Commission believes the changes proposed in the Amended Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.[31]

### *B. Consistency With Rules 17Ad–22(e)(2)(i), (iii), and (v) Under the Exchange Act*

Rules 17Ad–22(e)(2)(i), (iii), and (v) require that OCC establish, implement,

[21] *See* 12 U.S.C. 5461(b).

[22] 12 U.S.C. 5464(a)(2).

[23] 12 U.S.C. 5464(b).

[24] 12 U.S.C. 5464(c).

[25] 17 CFR 240.17Ad–22. *See* Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11). *See also* Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (''Covered Clearing Agency Standards''). The Commission established an effective date of December 12, 2016, and a compliance date of April 11, 2017, for the Covered Clearing Agency Standards. OCC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5).

[26] 17 CFR 240.17Ad–22.

[27] 12 U.S.C. 5464(b) and 17 CFR 240.17Ad–22.

[28] 12 U.S.C. 5464(b).

[29] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v); (e)(3)(ii); (e)(15)(i).

[30] 12 U.S.C. 5464(b).

[31] 12 U.S.C. 5464(b).

maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent, that support the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies, and the objectives of owners and participants, and that specify clear and direct lines of responsibility.[32]

The RWD Plan would outline an escalation process for the occurrence of a Recovery Trigger Event, which would provide a governance framework for the use and functioning of the Enhanced Risk Management Tools and Recovery Tools in addition to those specified elsewhere in OCC's rules. It would also identify the internal notification requirements that would apply to WDP Trigger Events and establish the role of the Board in determining whether to enter into a wind-down or take other key actions, consistent with the governance specified elsewhere in OCC's rules.

Moreover, the RWD Plan would identify the internal governance process for the approval of subsequent changes to OCC's RWD Plan. The RWD Plan would also specify the process OCC would take to receive input from various parties at OCC, including management and the Board.

Taken together, the Commission believes that these lines of control could contribute to establishing, implementing, maintain and enforcing clear and transparent governance arrangements that support the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies, and the objectives of owners and participants.

Therefore, the Commission believes that the proposed changes are consistent with Rules 17Ad–22(e)(2)(i), (iii), and (v).[33]

### *C. Consistency With Rule 17Ad–22(e)(3)(ii) Under the Exchange Act*

Rule 17Ad–22(e)(3)(ii) requires that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed 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 OCC, which includes plans for the recovery and orderly wind-down of OCC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[34]

The Commission believes that the information the RWD Plan would provide about the OCC's recovery tools would enhance OCC's ability to recover from credit losses, liquidity shortfalls, general business risk losses, or other losses, consistent with Rule 17Ad–22(e)(3)(ii).[35] Specifically, the information from the RWD Plan would enable OCC to prepare in advance for the use of such tools, which would in turn enhance OCC's ability to use such tools effectively to carry out a successful recovery. In addition, by establishing a single source of information about, and steps needed to effectuate, a recovery of OCC, the RWD Plan would allow OCC personnel to effectuate a recovery in a consistent and coordinated fashion, and would thereby increase the likelihood of a successful recovery. Moreover, by identifying and assessing available Enhanced Risk Management Tools and Recovery Tools, the Commission believes that the RWD Plan would enhance OCC's ability to use such tools effectively to bring about a recovery by identifying in advance which tools may be most effective for different situations or needs, consistent with Rule 17Ad–22(e)(3)(ii).[36]

Similarly, in providing detailed information about the assumptions, actions, and objectives related to triggering and implementing the wind-down portion of the RWD Plan, discussed in more detail above, the Commission believes that the RWD Plan would enhance OCC's ability to effectuate an orderly wind-down, consistent with Rule 17Ad–22(e)(3)(ii).[37] Specifically, by setting out in advance the potential events that could cause OCC to trigger, and transactions by which OCC would effectuate, a wind-down, the RWD Plan would enable OCC to prepare in advance for a wind-down, which the Commission believes would enhance OCC's ability to use the RWD Plan effectively to carry-out an orderly wind-down. In addition, by establishing a single source of information about, and steps needed to effectuate, a wind-down of OCC, the Commission believes the RWD Plan would allow OCC personnel to effectuate a wind-down in a consistent and coordinated fashion, and would thereby increase the likelihood of an orderly wind-down. Finally, the RWD Plan would identify the legal basis for OCC's actions with respect to a potential wind-down, including relevant citations to provisions of the rule books of its various clearing services and contractual agreements, which the Commission believes would further facilitate an orderly wind-down process by providing OCC with a single source of information and steps needed for a wind-down, consistent with Rule 17Ad–22(e)(3)(ii).[38]

Therefore, the Commission believes that the proposed changes to adopt plans for the orderly recovery and wind down of OCC are consistent with Rule 17Ad–22(e)(3)(ii).[39]

### *D. Consistency With Rules 17Ad–22(e)(15)(i) Under the Exchange Act*

Rule 17Ad–22(e)(15)(i) requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that OCC can continue operations and services as a going concern if those losses materialize, including by determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken.[40]

OCC's RWD Plan would estimate costs related to a wind-down based on a series of assumptions laid out in the RWD Plan. These assumptions include duration of the wind-down process, OCC's capitalization through the wind-down process, the maintenance of Critical Services and Critical Support Functions, and the retention of personnel and contractual relationships. OCC also provided information regarding its assumption about the cost of the wind-down process. Further, the RWD Plan identifies potential transactions that could be effected to accomplish the objectives of wind-down with the ultimate goal of transferring ownership of OCC itself by the consummation or a consensual sale or similar transaction, in a manner that ensures the continuation of OCC's Critical Services. The Commission considered the assumptions that the RWD Plan makes regarding wind-down as well as the potential transactions in which OCC might engage in the event of a wind-down. The Commission also considered the estimated cost of wind-down noted in the RWD Plan in light of OCC's rules regarding the maintenance of certain capital levels and qualifying liquid resources. The Commission

[32] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

[33] 17 CFR 240.17Ad–22(e)(2)(i), (iii), and (v).

[34] 17 CFR 240.17Ad–22(e)(3)(ii).

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] 17 CFR 240.17Ad–22(e)(15)(i).

believes that the RWD Plan, which indicates the cost at which OCC could effectuate an orderly wind-down, *i.e.,* at a lower cost than the amount of its liquid resources is consistent with Rule 17Ad–22(e)(15)(i).[41]

Therefore, the Commission believes that the proposed changes that would determine costs associated with an orderly wind-down and that would further ensure that OCC holds liquid net assets greater than these costs, are consistent with Rule 17Ad–22(e)(15)(i).[42]

### IV. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[43] that the Commission does not object to Advance Notice (SR–OCC–2017–810), as modified by Partial Amendment No. 3, and that OCC is authorized to implement the proposed change as of the date of this notice or the date of an order by the Commission approving proposed rule change SR–OCC–2017–021, as modified by Partial Amendment No. 3, whichever is later.

By the Commission.

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83926; File No. SR–CboeBZX–2018–060]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending the Fee Schedule To Eliminate Fee Code IX on Cboe BZX Exchange, Inc.

August 23, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 9, 2018, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Exchange's fee schedule applicable to its equities trading platform to eliminate fee code IX, which applies to orders routed to Investors Exchange LLC using the Exchange's TRIM or TRIM2 routing strategies.

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*(A) Self-Regulatory Organization'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 amend the Exchange's fee schedule applicable to its equities trading platform (''BZX Equities'') to eliminate fee code IX,[5] which applies to orders routed to Investors Exchange LLC (''IEX'') using the Exchange's TRIM or TRIM2[6] routing strategies. Currently, the fee schedule provides that orders routed to IEX using the TRIM or TRIM2 routing strategies are charged a fee of $0.0010 per share under fee code IX. In May 2018, the Exchange removed IEX from the System routing table for its TRIM and TRIM2 routing strategies,[7] which are designed to route to low cost away markets, due to increased costs associated with routing to IEX. Since IEX is no longer considered as a potential routing destination for those strategies, the Exchange proposes to eliminate fee code IX. Orders routed to IEX using other routing strategies will not be impacted by this proposed rule change and will continue to be charged the same rates as in place today.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change to eliminate fee code IX is consistent with the public interest and the protection [sic] investors as this is a non-substantive change being made because the Exchange no longer routes to IEX using the routing strategies specified in that fee code. The Exchange had previously routed orders to IEX using the TRIM and TRIM2 order routing strategies, which are designed to route to low cost venues, but recently stopped doing so due to increased routing costs associated with trading on IEX. As such, the Exchange believes that updating the fee schedule to reflect that these two routing strategies are not available for routing to IEX will increase transparency around the operation of the Exchange to the benefit of Members and investors. Because the proposed changes apply only to a fee code that is no longer in use on the Exchange, the proposed rule change will have no impact on the transaction fees actually assessed to Members.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not

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[41] 17 CFR 240.17Ad–22(e)(15)(i).

[42] 17 CFR 240.17Ad–22(e)(15)(i).

[43] 12 U.S.C. 5465(e)(1)(I).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] IX is associated with order [sic] routed to IEX using TRIM or TRIM2 routing strategy.

[6] TRIM and TRIM2 are both routing options under which an order checks the System for available shares and then is sent to destinations on the applicable System routing table. *See* Rule 11.13(b)(3)(G).

[7] The term ''System routing table'' refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. *See* Rule 11.13(b)(3). Rule 11.13(b)(3) permits the Exchange to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).