

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As noted above, Nasdaq faces competition in the market for listing services, and competes, in part, by offering valuable services to companies. Nasdaq believes that it is reasonable to offer complimentary services to attract and retain listings as part of this competition. The proposed rule changes reflect that competition, but do not impose any burden on the competition with other exchanges. Other exchanges can also offer similar services to companies, thereby increasing competition to the benefit of those companies and their shareholders.

Further, all similarly situated companies are eligible for the same package of services. While the proposed services will be available only to Eligible Switches with a market capitalization of \$5 billion or more, Nasdaq does not believe that it is unfairly discriminatory to offer different services based on a company's market capitalization given that larger companies generally will need more and different ESG services, and that those issuers will likely bring greater future value to Nasdaq by switching to its market than would other issuers.

Accordingly, Nasdaq does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or 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 (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2023-017 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-NASDAQ-2023-017. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2023-017 and should be submitted on or before July 31, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Vanessa A. Countryman,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, July 13, 2023.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings;
- Resolution of litigation claims; and
- Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Authority: 5 U.S.C. 552b.

²⁴ 17 CFR 200.30-3(a)(12).

Dated: July 6, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–14636 Filed 7–6–23; 4:15 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97832; File No. SR–OCC–2023–003]

Self-Regulatory Organizations; Options Clearing Corporation; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Partial Amendment No. 1, Concerning Clearing Member Cybersecurity Obligations

July 3, 2023.

I. Introduction

On March 21, 2023, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR–OCC–2023–003 pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b–4² thereunder to amend certain provisions in OCC’s Rules relating to each Clearing Member’s obligation to address a “Security Incident” (*i.e.*, the occurrence of a cyber-related disruption or intrusion) of that Clearing Member.³ The proposed rule change was published for public comment in the **Federal Register** on April 5, 2023.⁴ The Commission has received comments regarding the proposed rule change.⁵

On May 18, 2023, pursuant to Section 19(b)(2) of the Exchange Act,⁶ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁷ On May 24, 2023, OCC filed Partial Amendment No. 1 to the proposed rule change.⁸ This order institutes proceedings, pursuant to

Section 19(b)(2)(B) of the Exchange Act,⁹ to determine whether to approve or disapprove the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter defined as “Proposed Rule Change”).

II. Summary of the Proposed Rule Change

Currently, the only OCC Rule governing a Clearing Member’s cybersecurity obligations to OCC is Rule 219, titled “Cybersecurity Confirmation.” It requires Clearing Members and applicants for clearing membership to submit to OCC a form called the “Cybersecurity Confirmation” at least every two years or as part of its application materials, respectively. Through the form, Clearing Members and applicants confirm that they maintain a comprehensive cybersecurity program that meets certain criteria (*e.g.*, it is approved by senior management, reviewed and updated periodically, protects the segment of the Clearing Member’s or applicant’s system that interacts with OCC, establishes a process for the Clearing Member to remediate cyber issues, etc.). However, current Rule 219 does not require Clearing Members to notify OCC if they experience a cybersecurity incident that could impact OCC or otherwise address OCC’s processes, or the Clearing Member’s obligations with respect to OCC, in the event a Clearing Member experiences a cybersecurity incident.

The substantive changes in the proposed rule change would be the addition of two new subsections—(d) and (e)—titled “Occurrence of a Security Incident” and “Procedures for Connecting Following a Security Incident,” respectively. New subsection (d) would require a Clearing Member that experiences a Security Incident (as defined in the Rule) to immediately notify OCC of the Security Incident. It would also specify that OCC may take actions it deems reasonably necessary to mitigate any effects on its operations following a Security Incident. New subsection (e) would require a Clearing Member wishing to reconnect its systems to OCC’s systems to provide OCC with a new form, titled “Reconnection Attestation,” that describes the Security Incident and attests to certain security requirements, as well as an associated checklist, titled “Reconnection Checklist,” that describes the affected Clearing Member’s remediation efforts and other key information.

OCC submitted Partial Amendment No. 1 in response to comments received

on the scope of the proposed definition of Security Incident and potential conflicts with other existing and proposed Commission rules.¹⁰ OCC also submitted Partial Amendment No. 1 in response to comments about (i) the requirement that Clearing Members provide immediate notice of a Security Incident to OCC, (ii) the standards OCC would apply when determining whether to disconnect a Clearing Member from OCC, and (iii) the process for reconnection following a Security Incident that results in disconnection.¹¹

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act¹² to determine whether the Proposed Rule Change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, providing the Commission with arguments to support the Commission’s analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,¹³ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change’s consistency with Section 17A of the Exchange Act,¹⁴ and the rules thereunder, including the following provisions:

- Section 17A(b)(3)(F) of the Exchange Act,¹⁵ which requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions; and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; and

¹⁰ See Partial Amendment No. 1, *supra* note 8.

¹¹ *Id.*

¹² 15 U.S.C. 78s(b)(2)(B).

¹³ *Id.*

¹⁴ 15 U.S.C. 78q–1.

¹⁵ 15 U.S.C. 78q–1(b)(3)(F).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Notice of Filing *infra* note 4, at 88 FR at 20195.

⁴ Securities Exchange Act Release No. 97225 (Mar. 30, 2023), 88 FR 20195 (Apr. 5, 2023) (File No. SR–OCC–2023–003) (“Notice of Filing”).

⁵ Comments on the proposed rule change are available at <https://www.sec.gov/comments/sr-occ-2023-003/srocc2023003.htm>.

⁶ 15 U.S.C. 78s(b)(2).

⁷ Securities Exchange Act Release No. 97525 (May 18, 2023), 88 FR 33655 (May 24, 2023) (File No. SR–OCC–2023–003).

⁸ Securities Exchange Act Release No. 97602 (May 26, 2023), 88 FR 36351 (Jun. 2, 2023) (File No. SR–OCC–2023–003) (“Partial Amendment No. 1”).

⁹ 15 U.S.C. 78s(b)(2)(B).