

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-90701; File No. SR-OCC-2020-806)

December 17, 2020

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Partial Amendment No. 1 and Notice of No Objection to Advance Notice, as Modified by Partial Amendment No. 1, Related to Proposed Changes to Update The Options Clearing Corporation's Recovery and Orderly Wind-Down Plan

**I. INTRODUCTION**

On October 20, 2020, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") advance notice SR-OCC-2020-806 ("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")<sup>1</sup> and Rule 19b-4(n)(1)(i)<sup>2</sup> under the Securities Exchange Act of 1934 ("Exchange Act")<sup>3</sup> to make changes to OCC's Recovery and Orderly Wind-Down Plan ("RWD Plan").<sup>4</sup> The Advance Notice was published for public comment in the Federal Register on November 18, 2020,<sup>5</sup> and the Commission has received no comments regarding the changes

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<sup>1</sup> 12 U.S.C. 5465(e)(1).

<sup>2</sup> 17 CFR 240.19b-4(n)(1)(i).

<sup>3</sup> 15 U.S.C. 78a et seq.

<sup>4</sup> See Notice of Filing infra note 5, at 85 Fed. Reg. 73553.

<sup>5</sup> Securities Exchange Act Release No. 90416 (Nov. 13, 2020), 85 Fed. Reg. 73553 (Nov. 18, 2020) (File No. SR-OCC-2020-806) ("Notice of Filing"). On October 20, 2020, OCC also filed a related proposed rule change (SR-OCC-2020-013) with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder ("Proposed Rule Change"). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4, respectively. In the Proposed Rule Change, which was published in the Federal Register on November 9, 2020, OCC seeks approval of proposed changes to its rules necessary to implement the Advance Notice. Securities

proposed in the Advance Notice.<sup>6</sup> On November 18, 2020, OCC filed a partial amendment (“Partial Amendment No. 1”) to modify the Advance Notice.<sup>7</sup> The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons and, for the reasons discussed below, is hereby providing notice of no objection to the Advance Notice.

## II. BACKGROUND<sup>8</sup>

The Advance Notice concerns changes to OCC’s RWD Plan. As described in greater detail below, OCC proposes to (1) update the RWD Plan to reflect changes to OCC’s capital structure resulting from the disapproval of OCC’s previously approved “Capital Plan”<sup>9</sup> and the subsequent approval of OCC’s “Capital Management Policy,”<sup>10</sup>

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Exchange Act Release No. 90315 (Nov. 3, 2020), 85 Fed. Reg. 71384 (Nov. 9, 2020) (File No. SR-OCC-2020-013). The comment period for the related Proposed Rule Change filing closed on November 30, 2020.

<sup>6</sup> Since the proposal contained in the Advance Notice was also filed as a proposed rule change, all public comments received on the proposal are considered regardless of whether the comments are submitted on the Proposed Rule Change or the Advance Notice.

<sup>7</sup> In Partial Amendment No. 1, OCC corrects and updates a confidential Exhibit 5 to the materials filed on October 20, 2020 regarding File No. SR-OCC-2020-806. Partial Amendment No. 1 corrects an error in the proposed rule text and updates the list of vendor agreements attached to the RWD Plan, but did not change the purpose of or basis for the Advance Notice. References to the Advance Notice from this point forward refer to the Advance Notice, as amended by Partial Amendment No. 1.

<sup>8</sup> 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>.

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

<sup>10</sup> See Securities Exchange Act Release No. 86725 (Aug. 21, 2019), 84 Fed. Reg. 44952 (Aug. 27, 2019) (File No. SR-OCC-2019-007).

and (2) implement changes identified during OCC’s annual review of the RWD Plan. The changes arise out of OCC’s annual review of the RWD Plan and include factual updates (e.g., market share and contract volume data) and streamlined discussions in the RWD Plan (e.g., replacement of detailed overview of OCC’s risk management program with a more concise summary).

*Capital Management Policy Updates.* As a result of the implementation of the Capital Management Policy, OCC is proposing changes to Chapters 2, 5, and 6 of its RWD Plan. In Chapter 2, OCC is proposing to revise its discussion of fee management for consistency with the Capital Management Policy. In Chapter 5, OCC is proposing to (i) replace its discussion of the Replenishment Plan established under the disapproved Capital Plan with a discussion of the replenishment structure adopted under the Capital Management Policy; (ii) replace references to the discretionary use of OCC’s current and/or retained earnings with references to the mandatory contribution – immediately following the use of margin, deposits in lieu of margin and the Clearing Fund deposits of the suspended Clearing Member – of OCC’s current and retained earnings greater than 110% of OCC’s annually-established “Target Capital Requirement;” (iii) update the description of how OCC could increase the minimum required cash contribution to the Clearing Fund to reflect enhancements to OCC’s liquidity risk management framework that the Commission approved in 2020<sup>11</sup>; and (iv) include a discussion of the mandatory contribution of any unvested portions of OCC’s Executive Deferred Compensation Plan (“EDCP”) in proportion to any charges against the mutualized portion of OCC’s

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<sup>11</sup> See Securities Exchange Act Release No. 89014 (Jun. 4, 2020), 85 Fed. Reg. 35446 (Jun. 10, 2020) (File No. SR-OCC-2020-003).

Clearing Fund. OCC also proposes to revise the list of “Recovery Trigger Events” in Chapter 5 to: (a) delete one of the Recovery Trigger Events that was derived from a defined term in the Capital Plan; (b) consolidate two other Recovery Trigger Events into a single, operational loss-related recovery trigger; and (c) add a qualification onto an existing liquidity loss-related recovery trigger. In Chapter 6, OCC is proposing to update discussion of the tools by which OCC could recapitalize in certain recovery and wind-down scenarios. Further, OCC is proposing to revise the list of Wind-Down Plan Trigger Events (“WDP Triggers”). Specifically, OCC proposes to consolidate two current WDP Triggers into a single WDP Trigger related to OCC’s financial resource requirements and to consolidate two other WDP Triggers into a single WDP Trigger related to operational disruption. Similar to the changes OCC proposes in Chapter 5, the changes proposed in Chapter 6 would be designed to reflect OCC’s current replenishment plan under the Capital Management Policy.

*Annual Review Updates.* As a result of its annual review and update process, OCC is proposing changes to Chapters 2, 3, 5, 6, 7, and 8 of its RWD Plan. In Chapter 2, OCC is proposing to update (i) market share and contract volume data; (ii) lists of the securities options exchanges and other markets for which OCC provides clearing services; (iii) organizational charts, headcount numbers, discussions of OCC’s management structure and descriptions of management roles and responsibilities; (iv) updated descriptions of OCC’s Board’s responsibilities and procedures, lists of Board members and descriptions of OCC’s Board committees’ roles and responsibilities; and (v) graphs of total monthly deposits to OCC’s Clearing Fund. OCC is also proposing revisions to reflect certain program changes that have occurred at OCC since the initial

approval of the RWD Plan in 2018 (e.g., changes to cross-margining arrangements, credit facilities, investment counterparties, and vendors) as well as changes to OCC's retirement plan obligations. In Chapter 3, the RWD Plan lists OCC's internal support functions. OCC is proposing the addition of two new internal support functions to that list and the removal of the Office of the Corporate Executive from the list. The net result of the proposed changes would bring the total number of internal support functions listed from fourteen to sixteen. OCC also proposes to update the descriptions of all OCC's internal support functions so they align with OCC's internal descriptions of such functions.

In Chapter 6, OCC is proposing to (i) update references to OCC's internal support functions; and (ii) certain references to headcount. In Chapter 7, OCC is proposing to update staff titles to reflect changes in related office titles. In Chapter 8, OCC is proposing to update lists of (i) Clearing Members; (ii) Board participation; (iii) settlement bank and letter of credit bank; (iv) OCC's vendors and service providers; (v) updates to the extreme hypothetical scenarios designed by OCC that, if such scenarios occurred, could cause OCC to activate the RWD Plan; and (vi) key agreements.

*Administrative and Streamlining Changes.* In addition to the updates described above, OCC is also proposing several administrative and streamlining changes throughout the RWD Plan. OCC proposes to align the executive summary and overview section of the RWD Plan with the changes described above. OCC also proposes moving annual report excerpts from Chapter 2 to an appendix to the RWD Plan, replace the current overview of OCC's risk management program with a more concise summary, and update a summary description of OCC's interconnections with external vendors and a list of vendors that provide OCC critical technology and information reporting services.

In Chapter 4, OCC proposes to update certain factual references and make other minor changes to reflect the use of a single term for Critical Services that are currently identified separately. OCC also proposes to revise the mapping of Critical Services to Support Functions in Chapter 4 to reflect the categorization of Support Functions as either “primary,” “secondary,” or “non-critical.” In Chapter 5, OCC proposes to (i) clean up references to its by-laws that are now rules; (ii) consolidate two recovery triggers into a single, operational loss-related recovery trigger; and (iii) add qualifying language to an existing liquidity loss-related recovery trigger.

### **III. COMMISSION FINDINGS AND NOTICE OF NO OBJECTION**

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 SIFMUs and strengthening the liquidity of SIFMUs.<sup>12</sup>

Section 805(a)(2) of the Clearing Supervision Act 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.<sup>13</sup> Section 805(b) of the Clearing Supervision Act provides the following objectives and principles for the Commission’s risk management standards prescribed under Section 805(a):<sup>14</sup>

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<sup>12</sup> See 12 U.S.C. 5461(b).

<sup>13</sup> 12 U.S.C. 5464(a)(2).

<sup>14</sup> 12 U.S.C. 5464(b).

- 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 other areas.<sup>15</sup>

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”).<sup>16</sup> 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.<sup>17</sup> As such, it is appropriate for the Commission to review advance notices against the Clearing Agency Rules and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act. As discussed below, the Commission believes the changes proposed in the Advance Notice are consistent with the objectives

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<sup>15</sup> 12 U.S.C. 5464(c).

<sup>16</sup> 17 CFR 240.17Ad-22. See Securities Exchange Act Release No. 68080 (Oct. 22, 2012), 77 Fed. Reg. 66220 (Nov. 2, 2012) (S7-08-11). See also Covered Clearing Agency Standards, 81 Fed. Reg. 70786. 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).

<sup>17</sup> 17 CFR 240.17Ad-22.

and principles described in Section 805(b) of the Clearing Supervision Act,<sup>18</sup> and in the Clearing Agency Rules, in particular Rule 17Ad-22(e)(3)(ii).<sup>19</sup>

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

The Commission believes that the proposal contained in OCC’s 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 Advance Notice are consistent with promoting robust risk management, promoting safety and soundness, reducing systemic risks, and supporting the stability of the broader financial system.<sup>20</sup>

The Commission believes that the proposed changes to OCC’s RWD Plan are consistent with promoting robust risk management, in particular risks arising out of severe financial or operational stress that could be presented to OCC as well as promoting safety and soundness, reducing systemic risk, and supporting the broader financial system. As a central counterparty and SIFMU,<sup>21</sup> it is imperative for OCC to have a plan in place to address extreme stresses or crises with the aim of maintaining OCC’s viability and ability to provide critical services. In the event that OCC’s recovery efforts are not successful, the RWD Plan would seek to increase the possibility that a resolution of

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<sup>18</sup> 12 U.S.C. 5464(b).

<sup>19</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

<sup>20</sup> 12 U.S.C. 5464(b).

<sup>21</sup> See Financial Stability Oversight Council (“FSOC”) 2012 Annual Report, Appendix A, available at <https://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf>.

OCC's operations could be conducted in an orderly manner. The Commission continues to believe that OCC specifying the steps that it would take in either a recovery or orderly wind-down would enhance OCC's ability to address circumstances specific to an extreme stress event.<sup>22</sup> The Commission also continues to believe that, by increasing the likelihood that recovery would be orderly, efficient, and successful, the RWD Plan enhances 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.<sup>23</sup>

As described above, OCC proposes to (1) update the RWD Plan to reflect changes to OCC's capital structure resulting from the disapproval of OCC's previously approved "Capital Plan"<sup>24</sup> and the subsequent approval of OCC's "Capital Management Policy,"<sup>25</sup> and (2) implement changes identified during OCC's annual review of the RWD Plan. Consistent with the Commission's prior statements regarding disclosure of documents describing a covered clearing agency's recovery and wind-down plans, the Commission believes that such recovery and wind-down plans should be updated regularly or more

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<sup>22</sup> See Securities Exchange Act Release No. 83918 (Aug. 23, 2018), 83 Fed. Reg. 44091, 44094 (Aug. 29, 2018) (File No. SR-OCC-2017-021); Securities Exchange Release No. 83928 (Aug. 23, 2018), 83 Fed. Reg. 44109, 44112 (Aug. 29, 2018) (File No. SR-OCC-2017-810).

<sup>23</sup> See id.

<sup>24</sup> See Securities Exchange Act Release No. 85121 (Feb. 13, 2019), 84 Fed. Reg. 5157 (Feb. 20, 2019) (File No. SR-OCC-2015-02).

<sup>25</sup> See Securities Exchange Act Release No. 86725 (Aug. 21, 2019), 84 Fed. Reg. 44952 (Aug. 27, 2019) (File No. SR-OCC-2019-007).

frequently as necessary.<sup>26</sup> OCC also proposes to update and streamline the data and descriptions provided in the RWD Plan.<sup>27</sup> The Commission believes that keeping the RWD Plan updated with current information, and refining the descriptions to make it more concise, makes it a more accurate and useful document. As such, the Commission believes that the proposal would promote both robust risk management and safety and soundness, reduce systemic risk, and support the broader financial system consistent with Section 805(b) of the Clearing Supervision Act.<sup>28</sup>

Accordingly, and for the reasons stated above, the Commission believes the changes proposed in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.<sup>29</sup>

**B. Consistency with Rule 17Ad-22(e)(3)(ii) under the Exchange Act**

Rule 17Ad-22(e)(3)(ii) under the Exchange Act requires that a covered clearing agency 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 the covered clearing

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<sup>26</sup> See Securities Exchange Act Release No. 34-78961 (Oct. 13, 2016), 81 Fed. Reg. 70786, 70808 (Oct. 13, 2016) (File No. S7-03-14).

<sup>27</sup> For example, OCC is proposing to update its market share and contract volume data, lists of the securities options exchanges and other markets for which OCC provides clearing services, organizational charts, and headcount numbers. OCC also proposes to replace the detailed overview of OCC's risk management program with a more concise summary.

<sup>28</sup> 12 U.S.C. 5464(b).

<sup>29</sup> 12 U.S.C. 5464(b).

agency, which includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.<sup>30</sup>

The Commission continues to believe that the RWD Plan (i) clearly describes OCC's recovery tools, which 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); and (ii) supports OCC's ability to use risk management and recovery 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).<sup>31</sup> As described above, the RWD Plan sets forth OCC's plans to recover or wind-down its operations as a result of severe financial or operational stress in an orderly fashion. The proposed updates will make the information provided in the RWD Plan more accurate and useful. The revised RWD Plan would, in turn, provide a more accurate and usable playbook for OCC or source of information for a resolution authority. Accordingly, the Commission believes that the proposed changes to the RWD Plan are consistent with Rule 17Ad-22(e)(3)(ii) under the Exchange Act.<sup>32</sup>

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<sup>30</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

<sup>31</sup> See Securities Exchange Act Release No. 83918 (Aug. 23, 2018), 83 Fed. Reg. 44091, 44095 (Aug. 29, 2018) (File No. SR-OCC-2017-021); Securities Exchange Release No. 83928 (Aug. 23, 2018), 83 Fed. Reg. 44109, 44113 (Aug. 29, 2018) (File No. SR-OCC-2017-810).

<sup>32</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

#### **IV. CONCLUSION**

IT IS THEREFORE NOTICED, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission DOES NOT OBJECT to Advance Notice (SR-OCC-2020-806) 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-2020-013, as modified by Partial Amendment No. 1, whichever is later.

By the Commission.

Vanessa A. Countryman  
Secretary