

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-88971; File No. SR-OCC-2020-804)

May 28, 2020

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice of and No Objection to The Options Clearing Corporation's Proposal to Enter Into a New Credit Facility Agreement

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" or "Act"),<sup>3</sup> notice is hereby given that on April 27, 2020, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") an advance notice as described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons, and to provide notice that the Commission does not object to the changes set forth in the advance notice.

**I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice**

This advance notice is submitted in connection with a proposed change to OCC's operations in the form of the replacement of a revolving credit facility that OCC maintains for a 364-day term and that it may use: (i) in anticipation of a potential default by or suspension of a Clearing Member; (ii) to meet obligations arising out of

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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.

the default or suspension of a Clearing Member; (iii) to meet reasonably anticipated 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; or (iv) to meet obligations arising out of the failure of a bank or securities or commodities clearing organization to perform its obligations due to its bankruptcy, insolvency, receivership or suspension of operations. OCC has provided a summary of the terms and conditions of the proposed renewal in confidential Exhibit 3 to File No. SR-OCC-2020-804.

The advance notice 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>4</sup>

## **II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice**

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. 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 and B below, of the most significant aspects of these statements.

### **A. Clearing Agency's Statement on Comments on the Advance Notice Received from Members, Participants or Others**

Written comments were not and are not intended to be solicited with respect to

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<sup>4</sup> OCC's By-Laws and Rules can be found on OCC's public website: <http://optionsclearing.com/about/publications/bylaws.jsp>.

the advance notice and none have been received. OCC will notify the Commission of any written comments received by OCC.

B. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act

**Description of Proposed Change**

***Background***

This advance notice is being filed in connection with a proposed change in the form of the replacement of a revolving credit facility that OCC maintains for a 364-day term and that it may use: (i) in anticipation of a potential default by or suspension of a Clearing Member; (ii) to meet obligations arising out of the default or suspension of a Clearing Member; (iii) to meet reasonably anticipated 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; or (iv) to meet obligations arising out of the failure of a bank or securities or commodities clearing organization to perform its obligations due to its bankruptcy, insolvency, receivership or suspension of operations (“Permitted Use Circumstances”). In any such Permitted Use Circumstance, OCC has certain conditional authority under its By-Laws and Rules to borrow or otherwise obtain funds from third parties using Clearing Member margin deposits and/or Clearing Fund contributions.<sup>5</sup>

OCC’s existing credit facility (“Existing Facility”) was implemented as of June 26, 2019, through the execution of a credit agreement among OCC, the administrative agent, the collateral agent, and the lenders that are parties to the agreement from time to

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<sup>5</sup> See generally Article VIII of OCC’s By-Laws and OCC Rules 1006(f), 1102, and 1104(b).

time. The Existing Facility provides short-term secured borrowings in an aggregate principal amount of \$2 billion but may be increased to \$3 billion if OCC so requests and sufficient commitments from lenders are received and accepted.<sup>6</sup> To obtain a loan under the Existing Facility, OCC must pledge as collateral: (i) U.S. dollars; (ii) securities issued or guaranteed by the U.S. Government, the Government of Canada, the Federal Republic of Germany, the Republic of France, Japan or the United Kingdom; (iii) S&P 500 Market Index equities; (iv) Exchange-Traded Funds (“ETFs”); (v) American Depositary Receipts (“ADRs”); or (vi) certain government-sponsored enterprise (“GSE”) debt securities. Certain mandatory prepayments or deposits of additional collateral are required depending on changes in the collateral’s market value. In connection with OCC’s past implementation of the Existing Facility, OCC filed an advance notice with the Commission on April 26, 2019, and the Commission published a Notice of No Objection on June 24, 2019.<sup>7</sup>

### ***Description of the Proposal***

*Renewal.* The Existing Facility is set to expire on June 24, 2020. OCC is currently negotiating the terms of a new credit facility (“New Facility”) on substantially similar terms as the Existing Facility, and the definitive documentation concerning the New Facility is expected to be substantially similar to the definitive documentation

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<sup>6</sup> OCC notes that it previously exercised this accordion feature under the Existing Facility to increase the commitment amount from \$2 billion to \$2.5 billion, and then subsequently reduced the commitment amount back to \$2 billion. As a result, OCC may only increase the commitment amount under the Existing Facility by another \$500 million (to a total of \$2.5 billion).

<sup>7</sup> See Securities Exchange Act Release No. 86182 (June 24, 2019), 84 FR 31128 (June 28, 2019) (SR-OCC-2019-803).

concerning the Existing Facility. The proposed terms and conditions that are expected to be applicable to the New Facility, subject to agreement by the lenders, are set forth in the Summary of Terms and Conditions, which is not a public document.<sup>8</sup> The New Facility would include changes to the list of joint lead arrangers and bookrunners, the back-up administrative agent, the back-up collateral agent, and the syndication agents. The New Facility would also include changes to certain commercial terms, such as the interest rate, commitment fee, and upfront fees, which OCC believes are generally aligned with current market rates for this type of facility. In addition, the New Facility would update language concerning European Union (“EU”) bail-in provisions to recognize the United Kingdom (“UK”) bail-in regime now that the UK is no longer part of the EU. Finally, the Summary of Terms and Conditions would be updated to include provisions that are currently included in the credit agreement for the Existing Facility but not previously included as part of the Summary of Terms and Conditions. For example, the Summary of Terms and Conditions would contain updates regarding the lenders’ ability to assign and sell participations in their loans and commitments to eligible banks. It would also be updated to clarify the timing requirements for calculating the market value of certain pledged equities.

The conditions regarding the availability of the New Facility, which OCC anticipates will be satisfied on or about June 23, 2020, include the execution and delivery of: (i) a credit agreement between OCC and the administrative agent, collateral agent and various lenders under the New Facility; (ii) a pledge agreement between

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<sup>8</sup> OCC has separately submitted a request for confidential treatment to the Commission regarding the Summary of Terms and Conditions, which OCC has provided in Exhibit 3 to File No. SR-OCC-2020-804.

OCC and the administrative agent or collateral agent; and (iii) such other documents as may be required by the parties. The definitive documentation concerning the New Facility is expected to be consistent with the Summary of Terms and Conditions that is provided in confidential Exhibit 3, although it may include certain changes to business terms as may be necessary to obtain the agreement of lenders with sufficient funding commitments and certain changes as may be necessary regarding administrative and operational terms being finalized between the parties.

*Future Renewals.* OCC expects to continue to renew its revolving credit facility annually on substantially similar terms and conditions as the New Facility. The terms and conditions of any such future renewal (each a “Future Renewal”) would be specified in subsequent credit agreements among OCC, the lenders that are parties thereto, the administrative agent, and the collateral agent. To provide OCC and market participants with greater certainty regarding a continuing source of committed liquidity to meet OCC’s settlement obligations, and thus mitigate OCC’s liquidity risk, OCC proposes to be able to enter Future Renewals without an additional advance notice provided that the terms of the Future Renewal adhere to certain conditions specified in (a) and (b) and (1) through (4) below (collectively, “Evergreen Provisions”). OCC believes these Evergreen Provisions would be consistent with similar terms regarding committed credit facility renewals by other registered clearing agencies, for which the Commission issued a Notice of No Objection.<sup>9</sup>

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<sup>9</sup> See Securities Exchange Act Release No. 80605 (May 5, 2017), 82 FR 21850 (May 10, 2017) (SR-DTC-2017-802; SR-NSCC-2017-802).

### Evergreen Provisions

OCC does not currently expect to make changes to:

- (a) the financial institution acting as lead administrative agent; or
- (b) the commitment period (which would continue to be 364 calendar days unless changes are necessary to avoid the expiration of the term falling on a weekend or other day that is not a business day) in connection with Future Renewals, but OCC would treat any such change in a Future Renewal as subject to the requirement to file an advance notice pursuant to Section 806(e)(1) of the Clearing Supervision Act.<sup>10</sup>

OCC may consider changes to:

- (1) the aggregate and potential additional commitment amounts that it may seek, so long as such amounts considered:
  - (i) increase by no more than \$500 million in total (whether in the initial commitment amount, additional commitment amount, or both) above the amount being sought by OCC under the New Facility, or
  - (ii) decrease by no more than \$500 million below the amount being sought by OCC under the New Facility, provided that any decrease in the initial commitment amount is replaced by other qualifying liquid resources (as defined in Exchange Act Rule 17Ad-22(a)(14))<sup>11</sup> of an equal amount;<sup>12</sup>

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<sup>10</sup> 12 U.S.C. 5465(e)(1).

<sup>11</sup> 17 CFR 240.17Ad-22(a)(14).

<sup>12</sup> For example, this may include an increase in OCC's Cash Clearing Fund Requirement as required under Rule 1002(a) or other committed liquidity resources for which the Commission has issued a Notice of No Objection. See,

- (2) the syndicate so long as all lenders party to future credit facilities are subject to the same credit review as those lenders that are party to the New Facility;
- (3) pricing and collateral haircuts,<sup>13</sup> so long as such terms are consistent with the then current market practice; or
- (4) representations, warranties, covenants, and terms of events of default,<sup>14</sup> so long as any modifications are immaterial to OCC as a borrower and do not impair materially OCC's ability to borrow under the line of credit consistent with the Evergreen Provisions. OCC would not consider changes to the Evergreen Provisions within these specified parameters as materially altering the terms and conditions of the New Facility or Future Renewals.

So long as any Future Renewal adheres to the conditions specified in the Evergreen Provisions, as described above, OCC would consider such Future Renewal as being on substantially the same terms and conditions as the New Facility such that it would not need to be subject to the requirement to file an advance notice filing pursuant to Section 806(e)(1) of the Clearing Supervision Act.<sup>15</sup> In the event that any annual Future Renewal of the New Facility is not on terms and conditions that adhere to the

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e.g., Securities Exchange Act Release No. 88317 (March 4, 2020), 85 FR 13681 (March 9, 2020) (SR-OCC-2020-801).

<sup>13</sup> “Collateral haircuts” with respect to the collateral for any borrowing under the credit facility refers to the schedule of percentages of market value by type of collateral, determining the collateral value of that type of collateral, for purposes of securing a borrowing.

<sup>14</sup> “Events of default” refers to those events or conditions which trigger or constitute a default of OCC under the credit agreement.

<sup>15</sup> 12 U.S.C. 5465(e)(1).

Evergreen Provisions, such renewal would be subject to an advance notice filing pursuant to Section 806(e)(1) of the Clearing Supervision Act. If OCC determines to address Future Renewals in such a filing, it would include in that filing the proposed conditions to the terms of any subsequent renewals that could be done without an additional advance notice.

### **Anticipated Effect on and Management of Risk**

Completing timely settlement is a key aspect of OCC's role as a clearing agency performing central counterparty services. Overall, the New Facility and Future Renewals would continue to promote the reduction of risks to OCC, its Clearing Members, and the markets OCC serves in general because it would allow OCC to obtain short-term funds in the Permitted Use Circumstances. The existence of the New Facility and Future Renewals would therefore help OCC minimize losses in the event of a Permitted Use Circumstance by allowing it to obtain funds on extremely short notice to ensure clearance and settlement of transactions in options and other contracts without interruption. OCC believes that the reduced settlement risk presented by OCC resulting from the New Facility and Future Renewals would correspondingly reduce systemic risk and promote the safety and soundness of the clearing system. By drawing on the New Facility or under any Future Renewals, OCC would also be able to avoid liquidating margin deposits or Clearing Fund contributions in what would likely be volatile market conditions, which would preserve funds available to cover any losses resulting from the failure of a Clearing Member, bank, or other clearing organization.

OCC believes that the proposed change would not otherwise affect or alter the management of risk at OCC because the New Facility would generally preserve the

same terms and conditions as the Existing Facility.

### **Consistency with the Payment, Clearing and Settlement Supervision Act**

The stated purpose of the Clearing Supervision Act is 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 and strengthening the liquidity of systemically important financial market utilities.<sup>16</sup> Section 805(a)(2) of the Clearing Supervision Act<sup>17</sup> also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like OCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act<sup>18</sup> states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to:

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

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and the Exchange Act in furtherance of these objectives and principles.<sup>19</sup> Rule 17Ad-22 requires registered clearing agencies, like

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<sup>16</sup> 12 U.S.C. 5461(b).

<sup>17</sup> 12 U.S.C. 5464(a)(2).

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

<sup>19</sup> 17 CFR 240.17Ad-22. See Securities Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7-08-11) (“Clearing

OCC, to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.<sup>20</sup> Therefore, the Commission has stated<sup>21</sup> that it believes it is appropriate to review changes proposed in advance notices against Rule 17Ad-22 and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act.<sup>22</sup>

OCC believes that the proposed changes are consistent with Section 805(b)(1) of the Clearing Supervision Act<sup>23</sup> because the New Facility and Future Renewals would provide OCC with continued access to a stable and reliable source of committed liquidity that can be accessed in a timely manner to meet its settlement obligations, contain losses and liquidity pressures, and mitigate OCC's liquidity risk. Accordingly, OCC believes that the proposed changes: (i) are designed to promote robust risk management; (ii) are consistent with promoting safety and soundness; and (iii) are consistent with reducing systemic risks and promoting the stability of the broader financial system.

OCC believes that the New Facility and Future Renewals that adhere to the Evergreen Provisions are also consistent with the requirements of Rule 17Ad-22(e)(7)

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Agency Standards"); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14) ("Standards for Covered Clearing Agencies").

<sup>20</sup> 17 CFR 240.17Ad-22.

<sup>21</sup> See supra note 7.

<sup>22</sup> 12 U.S.C. 5464(b).

<sup>23</sup> 12 U.S.C. 5464(b)(1).

under the Act.<sup>24</sup> Rule 17Ad-22(e)(7) requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage liquidity risk that arises in or is borne by OCC, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity, as specified in the rule.<sup>25</sup> In particular, Rule 17Ad-22(e)(7)(i) under the Act<sup>26</sup> directs that OCC meet this obligation by, among other things, “[m]aintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day . . . settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for [OCC] in extreme but plausible market conditions.” As described above, the New Facility would provide OCC with a readily available liquidity resource that would enable it to, among other things, continue to meet its obligations in a timely fashion in a Permitted Use Circumstance and as an alternative to selling Clearing Member collateral under what may be stressed and volatile market conditions. Additionally, because the Evergreen Provisions would ensure that any Future Renewals that adhere to those terms would be substantially similar to the New Facility, such Future Renewals also would provide OCC with a readily available liquidity resource that would enable it to, among other things, continue to meet its obligations in a timely fashion in a Permitted Use Circumstance,

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<sup>24</sup> 17 CFR 240.17Ad-22(e)(7).

<sup>25</sup> Id.

<sup>26</sup> 17 CFR 240.17Ad-22(e)(7)(i).

thereby helping to contain losses and liquidity pressures. Allowing OCC to enter Future Renewals pursuant to the Evergreen Provisions without filing an additional advance notice would also reduce the risk of gaps in liquidity coverage and better allow OCC to continually maintain sufficient liquidity resources. For these reasons, OCC believes that the proposal is consistent with Rule 17Ad-22(e)(7)(i).<sup>27</sup>

Rule 17Ad-22(e)(7)(ii) under the Act requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to hold qualifying liquid resources sufficient to satisfy payment obligations owed to Clearing Members.<sup>28</sup> Rule 17Ad-22(a)(14) defines “qualifying liquid resources” to include, among other things, lines of credit without material adverse change provisions, that are readily available and convertible into cash.<sup>29</sup> As with the Existing Facility, the New Facility would not be subject to any material adverse change provision and would continue to be designed to permit OCC to, among other things, help ensure that OCC has sufficient, readily-available qualifying liquid resources to meet the cash settlement obligations of its largest Clearing Member Group. Similarly, because the Evergreen Provisions would ensure that any Future Renewals that adhere to them would be substantially similar to the New Facility, such Future Renewals also would permit OCC to enter into a future credit facility designed to, among other things, help ensure that OCC has sufficient, readily-available qualifying liquid resources to meet the cash settlement obligations of its largest Clearing Member Group. Therefore, OCC believes

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<sup>27</sup> Id.

<sup>28</sup> 17 CFR 240.17Ad-22(e)(7)(ii).

<sup>29</sup> 17 CFR 240.17Ad-22(a)(14).

that the proposal is consistent with Rule 17Ad-22(e)(7)(ii).<sup>30</sup>

For the foregoing reasons, OCC believes that the proposed changes are consistent with Section 805(b)(1) of the Clearing Supervision Act<sup>31</sup> and Rule 17Ad-22(e)(7)<sup>32</sup> under the Act.

### **Accelerated Commission Action Requested**

Pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,<sup>33</sup> OCC requests that the Commission notify OCC that it has no objection to the New Facility not later than Friday, June 19, 2020, which shall be two business days prior to the expected June 23, 2020, availability of the New Facility. OCC requests Commission action by this date to ensure that there is no period that OCC operates without this essential liquidity resource, given its importance to OCC's borrowing capacity in connection with its management of liquidity and settlement risk and timely completion of clearance and settlement.

### **III. Date of Effectiveness of the Advance Notice and Timing for Commission Action**

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date the proposed change was filed with the Commission or (ii) the date any additional information requested by the Commission is received. OCC shall not implement the proposed change if the

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<sup>30</sup> 17 CFR 240.17Ad-22(e)(7)(ii).

<sup>31</sup> 12 U.S.C. 5464(b)(1).

<sup>32</sup> 17 C.F.R. 240.17Ad-22(e)(7).

<sup>33</sup> 12 U.S.C. 5465(e)(1)(I).

Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

OCC shall post notice on its website of proposed changes that are implemented. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2020-804 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR- OCC-2020-804. This file number should be included on the subject line if e-mail 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice 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 the filing also will be available for inspection and copying at the principal office of the self-regulatory organization.

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-2020-804 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

**V. Commission Findings and Notice of No Objection**

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, its stated purpose 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 and strengthening the liquidity of systemically important financial market utilities.<sup>34</sup> Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the supervisory agency or the appropriate financial regulator.<sup>35</sup> Section 805(b) of the Clearing Supervision Act<sup>36</sup> states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.<sup>37</sup>

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<sup>34</sup> 12 U.S.C. 5461(b).

<sup>35</sup> 12 U.S.C. 5464(a)(2).

<sup>36</sup> 12 U.S.C. 5464(b).

<sup>37</sup> Id.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act<sup>38</sup> and Section 17A of the Exchange Act (“Rule 17Ad-22”).<sup>39</sup> Rule 17Ad-22 requires registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.<sup>40</sup> Therefore, it is appropriate for the Commission to review changes proposed in advance notices against Rule 17Ad-22 and the objectives and principles of the risk management standards described in Section 805(b) of the Clearing Supervision Act.<sup>41</sup> As discussed below, the Commission believes that the proposal in the Advance Notice is consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,<sup>42</sup> and in Rule 17Ad-22 under the Exchange Act, particularly Rule 17Ad-22(e)(7).<sup>43</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

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<sup>38</sup> 12 U.S.C. 5464(a)(2).

<sup>39</sup> See 17 CFR 240.17Ad-22.

<sup>40</sup> Id.

<sup>41</sup> 12 U.S.C. 5464(b).

<sup>42</sup> Id.

<sup>43</sup> See 17 CFR 240.17Ad-22(e)(7).

management, including in the area of liquidity risk, promoting safety and soundness, reducing systemic risks, and supporting the stability of the broader financial system.<sup>44</sup>

The Commission believes that the changes proposed in the Advance Notice are consistent with promoting robust risk management, in particular management of liquidity risk presented to OCC. Renewing and maintaining a credit facility for this purpose and in the manner proposed by OCC would provide OCC with continued access to a stable and reliable source of committed liquidity that can be accessed in a timely manner to meet its settlement obligations, contain losses and liquidity pressures, and mitigate OCC's liquidity risk, while also helping to maintain the current diversity of liquidity resources that OCC may use to resolve a Clearing Member default.<sup>45</sup> Additionally, allowing OCC annually to renew the credit facility under certain specified circumstances without an additional advance notice and subject to the Evergreen Provisions described above would facilitate OCC's ability to secure a continuing source of committed liquidity to meet its settlement obligations. Further, because the Evergreen Provisions would ensure that any such annual renewals would be substantially similar to the currently proposed credit facility, the Commission believes that any such renewals would promote robust risk management by diversifying the liquidity resources that OCC may use to resolve a Clearing Member default in the same manner as the currently proposed credit facility. As such, the Commission believes that

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<sup>44</sup> 12 U.S.C. 5464(b).

<sup>45</sup> OCC also maintains a minimum amount of cash in its Clearing Fund as well as a non-bank liquidity facility. See Securities Exchange Act Release No. 82501 (Jan. 12, 2018), 83 Fed. Reg. 2843 (Jan. 19, 2018) (File No. SR-OCC-2017-808) and Securities Exchange Act Release No. 76821 (Jan. 4, 2016), 81 Fed. Reg. 3208 (Jan. 20, 2016) (File No. SR-OCC-2015-805), respectively.

the proposal would promote robust risk management practices at OCC, consistent with Section 805(b) of the Clearing Supervision Act.<sup>46</sup>

The Commission also believes that the changes proposed in the Advance Notice are consistent with promoting safety and soundness. As described above, the New Facility would maintain OCC's access to a significant liquidity resource in the event of a Clearing Member default. The Evergreen Provisions would preserve access to this resource by ensuring that any annual renewals implemented without filing an advance notice would be substantially similar to the currently proposed credit facility, the Commission believes that any such annual renewals can be expected to promote safety and soundness for the same reasons. Further, by ensuring the continuity and consistency of any subsequent renewals, the Advance Notice would support OCC's continued access to a readily available liquidity resource that could enable OCC to continue to meet its obligations to Clearing Members in a timely fashion in the event of a Clearing Member default, thereby helping to contain losses and liquidity pressures from that default. As such, the Commission believes it is consistent with promoting safety and soundness as contemplated in Section 805(b) of the Clearing Supervision Act.<sup>47</sup>

In addition, the Commission believes that the changes proposed in the Advance Notice are consistent with reducing systemic risks and promoting the stability of the broader financial system. As mentioned above, allowing OCC to enter into the New Facility would enable OCC, which has been designated a systemically important

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<sup>46</sup> 12 U.S.C. 5464(b).

<sup>47</sup> Id.

FMU,<sup>48</sup> to maintain an additional liquidity resource that OCC may access to help manage a Clearing Member default. In addition, as noted above, because the Evergreen Provisions would ensure that any annual renewals entered into without filing an advance notice would be on substantially similar terms to the currently proposed credit facility, such future renewals also would enable OCC to maintain an additional liquidity resource that OCC may access to help manage a Clearing Member default. Moreover, allowing the annual renewal of the credit facility under the proposed Evergreen Provisions without filing an additional advance notice would facilitate the continued availability of this liquidity resource. These provisions would provide heightened certainty and stability for OCC and market participants that OCC would be able to maintain access to liquidity resources to help manage a Clearing Member default and would have flexibility to increase the size of its liquidity resources in response to market developments. Accordingly, the Commission believes that the proposal would help to reduce the systemic risk of OCC, which in turn would help to support the stability of the broader financial system, consistent with Section 805(b) of the Clearing Supervision Act.<sup>49</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

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<sup>48</sup> The Financial Stability Oversight Council designated OCC a systemically important financial market utility on July 18, 2012. See Financial Stability Oversight Council 2012 Annual Report, Appendix A, <http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf>.

<sup>49</sup> Id.

Clearing Supervision Act.<sup>50</sup>

B. Consistency with Rule 17Ad-22(e)(7) under the Exchange Act

Rule 17Ad-22(e)(7)(ii) requires, in part, OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage liquidity risk that arises in or is borne by OCC, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum, holding qualifying liquid resources sufficient to meet the minimum liquidity resource requirement under Rule 17Ad-22(e)(7)(i)<sup>51</sup> in each relevant currency for which the covered clearing agency has payment obligations owed to Clearing Members.<sup>52</sup> Rule 17Ad-22(a)(14) of the Exchange Act defines “qualifying liquid resources” to include, among other things, lines of credit without material adverse change provisions that are readily available and convertible into cash.<sup>53</sup>

As described above, the implementation of the New Facility would provide

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<sup>50</sup> 12 U.S.C. 5464(b).

<sup>51</sup> Rule 17Ad-22(e)(7)(i) requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage liquidity risk that arises in or is borne by OCC, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum, maintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment of obligation for the covered clearing agency in extreme but plausible conditions. 17 CFR 240.17Ad-22(e)(7)(i).

<sup>52</sup> 17 CFR 240.17Ad-22(e)(7)(ii).

<sup>53</sup> 17 CFR 240.17Ad-22(a)(14).

OCC with continued access to a \$2 billion revolving credit facility on substantially similar terms to the Existing Facility. As the Commission noted previously, the Existing Facility provides OCC with access to a single credit facility designed to help ensure that OCC has sufficient, readily available qualifying liquid resources to meet the cash settlement obligations of its largest family of affiliated members.<sup>54</sup>

Implementation of the New Facility on substantially similar terms to the Existing Facility would ensure that OCC maintains continued access to such a credit facility.

Because the Evergreen Provisions would ensure that any annual renewals also would be substantially similar to both the Existing Facility and the New Facility, the provisions would help ensure that OCC has sufficient, readily-available qualifying liquid resources to meet the cash settlement obligations of its largest family of affiliated members.

Therefore, the Commission believes that the proposal is consistent with Rule 17Ad-22(e)(7)(ii).

## **VI. Conclusion**

IT IS THEREFORE NOTICED, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission DOES NOT OBJECT to the Advance Notice SR-OCC-2020-804 and OCC can and hereby is AUTHORIZED to implement the change as of the date of this notice.

By the Commission.

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>54</sup> Securities Exchange Act Release No. 83529 (Jun. 27, 2018), 83 Fed. Reg. 31237, 31241 (Jul. 3, 2018) (SR-OCC-2018-802).