

Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2022 - * 802

Amendment No. (req. for Amendments *)

Filing by Options Clearing Corporation

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Advance Notice Related to a Master Repurchase Agreement as Part of The Options Clearing Corporation's Overall Liquidity Plan

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Mark Last Name * Brown

Title * Associate General Counsel

E-mail * mcbrown@theocc.com

Telephone * (312) 322-1801 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Options Clearing Corporation has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 07/07/2022

(Title *)

By Mark C. Brown

Associate General Counsel

(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Mark C. Brown
Digitally signed by Mark C. Brown
Date: 2022.07.07 14:40:48 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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SR-OCC-2022-802 - 19b4 - Bank Liqu

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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SR-OCC-2022-802 - Exhibit 1A (7.7.20

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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SR-OCC-2022-802 - Exhibit 3_Redact

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item 1 and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 19b-4

Advance Notice
by

THE OPTIONS CLEARING CORPORATION

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

Item 1. Text of the Advance Notice

In accordance with Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (“Payment, Clearing and Settlement Supervision Act”)¹ and Rule 19b-4(n)(i)² of the Securities Exchange Act of 1934 (“Exchange Act”),³ this advance notice is filed by The Options Clearing Corporation (“OCC”) in connection a proposed change to its operations in the form of executing a committed master repurchase agreement with a bank counterparty as part of OCC’s overall liquidity plan. The proposed change is described in detail in Item 10 below. 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.⁴

Item 2. Procedures of the Self-Regulatory Organization

The proposed change was approved for filing with the Commission by the Board of Directors (“Board”) of OCC at a March 25, 2022 meeting.

Questions should be addressed to Mark C. Brown, Executive Director & Associate General Counsel, at (312) 322-1801.

Item 3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Advance Notice

Not applicable.

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 OCC’s By-Laws and Rules can be found on OCC’s public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

Item 4. Self-Regulatory Organization’s Statement on Burden on Competition

Not applicable.

Item 5. Self-Regulatory Organization’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 the proposed change and none have been received.

Item 6. Extension of Time Period for Commission Action

Not applicable.

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Not applicable.

Item 8. Advance Notice Based on Rule of Another Self-Regulatory Organization or of the Commission

Not applicable.

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Exchange Act

Not applicable.

Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**Description of Change**

As the sole clearing agency for standardized U.S. securities options listed on national securities exchanges registered with the Commission (“listed options”), OCC is obligated to make certain payments. In the event of a Clearing Member default, OCC would be obligated to make payments, on time, related to that member’s clear transactions. To meet such payment obligations, OCC maintains access to cash from a variety of sources, including, a requirement for members to pledge cash collateral to OCC and various agreements with banks and other

counterparties (“liquidity facilities”) to provide OCC with cash in exchange for collateral, such as U.S. Government securities. OCC routinely considers potential market stress scenarios that could affect such payment obligations. Based on such considerations, OCC now believes that it should seek to expand its liquidity facility to increase OCC’s access to cash to manage a member default.

OCC is proposing to expand its liquidity facilities to include a new arrangement with a bank to provide cash to OCC. Specifically, this advance notice concerns a change to OCC’s operations to execute a master repurchase agreement with a bank counterparty as part of OCC’s overall liquidity plan, which includes OCC’s arrangements to access cash in exchange for U.S. Government securities deposited by Clearing Members in respect of their Clearing Fund requirements to meet OCC’s settlement obligations. OCC is not, as part of this advance notice, proposing to require its members or other market participants provide additional or different collateral to OCC. Rather, the purpose of the proposal is to provide OCC with another vehicle for accessing cash to meet its payment obligations, including in the event that one of its members fails to meet its payment obligations to OCC.⁵

Background

OCC’s current liquidity plan provides it with access to a diverse set of funding sources, including banks (i.e., OCC’s syndicated credit facility),⁶ the Non-Bank Liquidity Facility

⁵ OCC may also use the Clearing Fund to address liquidity shortfalls arising from the failure of any bank, securities or commodities clearing organization, or investment counterparty to perform any obligation to OCC when due. See OCC Rule 1006(f)(1)(C); Exchange Act Release No. 94304 (Feb. 24, 2022), 87 FR 11776 (Mar. 2, 2022) (SR-OCC-2021-014).

⁶ See Exchange Act Release No. 88971 (May 28, 2020), 85 FR 34257 (June 3, 2020) (SR-OCC-2020-804).

program,⁷ and Clearing Members' Cash Clearing Fund Requirement.⁸ OCC is proposing to add to these sources a master repurchase agreement (“MRA”) with a bank counterparty (the “Bank Repo Facility program”). This program would mirror the Repo Liquidity Facility that OCC executed with a bank counterparty in 2020 after obtaining a notice of no objection from the Commission (“2020 Bank Repo Facility”),⁹ except that in this case, the committed amount will be up to \$1 billion (as opposed to \$500 million) and the bank counterparty will be one to which OCC has minimal other credit exposure. The counterparty would be one that has already been approved by OCC as a liquidity provider and would be subject to routine monitoring under OCC’s Third-Party Risk Management Framework,¹⁰ which meets or exceeds the monitoring process discussed in the advance notice for the 2020 Bank Repo Facility.¹¹

Although the MRA would be based on the standard form of master repurchase agreement,¹² OCC would require the MRA, or an annex thereto, to contain certain additional provisions tailored to help ensure certainty of funding and operational effectiveness, as described

⁷ See Exchange Act Release No. 89039 (June 10, 2020), 85 FR 36444 (June 16, 2020) (SR-OCC-2020-803); Exchange Act Release No. 76821 (Jan. 4, 2016), 81 FR 3208 (Jan. 20, 2016) (SR-OCC-2015-805); Exchange Act Release No. 73979 (Jan. 2, 2015), 80 FR 1062 (Jan. 8, 2015) (SR-OCC-2014-809).

⁸ See OCC Rule 1002.

⁹ See Exchange Act Release No. 88317 (Mar. 4, 2020), 85 FR 13681 (Mar. 9, 2020) (SR-OCC-2020-801).

¹⁰ See Exchange Act Release No. 90797 (Dec. 23, 2020), 85 FR 86592 (Dec. 30, 2020) (SR-OCC-2020-014). The Third-Party Risk Management Framework is available on OCC’s public website. See Documents & Archives, <https://www.theocc.com/Company-Information/Documents-and-Archives>.

¹¹ See Exchange Act Release No. 88120 (Feb. 5, 2020), 85 FR 7812 (Feb. 11, 2020) (SR-OCC-2020-801).

¹² The standard form master repurchase agreement is published by the Securities Industry and Financial Markets Association (“SIFMA”) and is commonly used in the repurchase market by institutional investors.

in more detail below. OCC believes that these provisions are necessary and appropriate to integrate the program into its operations and in order to promote safety and soundness consistent with OCC's systemic responsibilities. OCC provided a summary of the additional terms and conditions ("Summary of Terms") as presented to the Board in confidential Exhibit 3 to File No. SR-OCC-2022-802.¹³ Because the arrangements between OCC and the bank counterparty have not been fully negotiated, OCC has identified the following as key standards that would need to be incorporated into the MRA.

The Proposed Program: Standard Repurchase Agreement Terms

The MRA would be structured like a typical repurchase arrangement in which the buyer (i.e., the bank counterparty) would purchase from OCC, from time to time, U.S. Government securities ("Eligible Securities").¹⁴ OCC, as the seller, would transfer Eligible Securities to the buyer in exchange for a payment by the buyer to OCC in immediately available funds ("Purchase Price"). The buyer would simultaneously agree to transfer the purchased securities back to OCC at a specified later date ("Repurchase Date") or on OCC's demand against the transfer of funds by OCC to the buyer in an amount equal to the outstanding Purchase Price plus the accrued and unpaid price differential (together, "Repurchase Price"), which is the interest component of the Repurchase Price.

¹³ In addition to the Summary of Terms, the confidential Exhibit 3 to File No. SR-OCC-2022-802 includes a summary of OCC management's recommendation to expand OCC's external liquidity sources as well as a discussion of the analysis underlying that recommendation.

¹⁴ OCC would use U.S. government securities that are included in Clearing Fund contributions by Clearing Members and margin deposits of any Clearing Member that has been suspended by OCC for the repurchase arrangements. OCC Rule 1006(f) and OCC Rule 1104(b) authorize OCC to obtain funds from third parties through securities repurchases using these sources. The officers who may exercise this authority include the Chairman, Chief Executive Officer, and Chief Operating Officer.

At all times while a transaction is outstanding, OCC would be required to maintain a specified amount of securities or cash margin with the buyer.¹⁵ The market value of the securities supporting each transaction would be determined daily, typically based on a price obtained from a generally recognized pricing source. If the market value of the purchased securities is determined to have fallen below OCC's required margin, OCC would be required to transfer to the buyer sufficient cash or additional securities reasonably acceptable to the buyer so that OCC's margin requirement is satisfied.¹⁶ If the market value of the purchased securities is determined to have risen to above OCC's required margin, OCC would be permitted to require the return of excess purchased securities from the buyer.

As in a typical master repurchase agreement, an event of default would occur with respect to the buyer if the buyer failed to purchase securities on a Purchase Date, failed to transfer purchased securities on any applicable Repurchase Date, or failed to transfer any interest, dividends or distributions on purchased securities to OCC within a specified period after receiving notice of such failure. An event of default would occur with respect to OCC if OCC failed to transfer purchased securities on a Purchase Date or failed to repurchase purchased securities on an applicable Repurchase Date. The MRA would also provide for standard events of default for either party, including a party's failure to maintain required margin or an insolvency event with respect to the party. Upon the occurrence of an event of default, the non-defaulting party, at its option, would have the right to accelerate the Repurchase Date of all outstanding transactions between the defaulting party and the non-defaulting party, among other

¹⁵ OCC expects that it would be required to maintain margin equal to 102% of the Repurchase Price, which is a standard rate for arrangements involving Government securities.

¹⁶ OCC expects that it would use Clearing Fund securities and securities posted as margin by defaulting Clearing Members, as more fully discussed in footnote 14.

rights. For example, if OCC were the defaulting party with respect to a transaction and the buyer chose to terminate the transaction, OCC would be required to immediately transfer the Repurchase Price to the buyer. If the buyer were the defaulting party with respect to a transaction and OCC chose to terminate the transaction, the buyer would be required to deliver all purchased securities to OCC. If OCC or the buyer did not timely perform, the non-defaulting party would be permitted to buy or sell, or deem itself to have bought or sold, securities as needed to be made whole and the defaulting party would be required to pay the costs related to any covering transactions. Additionally, if OCC was required to obtain replacement securities as a result of an event of default, the buyer would be required to pay the excess of the price paid by OCC to obtain replacement securities over the Repurchase Price.

The Proposed Program: Customized Features to Promote Certainty of Funding and Operational Effectiveness

In addition to the typical repurchase arrangements, OCC would require the MRA, or an annex thereto, to contain certain additional provisions tailored to help ensure certainty of funding and operational effectiveness.¹⁷

Commitment to Fund

The buyer would provide a funding commitment of up to \$1 billion, with the commitment extending for one year (plus or minus one day). The buyer would be obligated to enter into transactions under the MRA up to its committed amount so long as no default had occurred and OCC transferred sufficient Eligible Securities. The buyer would be obligated to enter into transactions even if OCC had experienced a material adverse change, such as the

¹⁷ OCC expects that the MRA will also include other, more routine, provisions such as the method for giving notices and basic due authorization representations by the parties.

failure of a Clearing Member. This commitment to provide funding would be a key departure from ordinary repurchase arrangements and a key requirement for OCC.

Funding Mechanics

Funding mechanics would be targeted so that OCC would receive the Purchase Price in immediately available funds within 60 minutes of its request for funds and delivery of Eligible Securities and, if needed, prior to OCC's regular daily settlement time.¹⁸ These targeted funding mechanics would allow OCC to receive needed liquidity in time to satisfy settlement obligations, even in the event of a default by a Clearing Member or a market disruption. The funding mechanism may be, for example, delivery versus payment/receive versus payment¹⁹ or another method acceptable to OCC that both satisfies the objectives of the Bank Repo Facility and presents limited operational risks.²⁰

No Rehypothecation

The buyer would not be permitted to grant any third party an interest in purchased securities. This requirement is important to reduce the risk that a third party could interfere with the buyer's transfer of the purchased securities on the Repurchase Date. Further, the buyer would agree to provide OCC with daily information about the account the buyer uses to hold the

¹⁸ This would include OCC's regular daily settlement time and any extended settlement time implemented by OCC in an emergency situation under Rule 505.

¹⁹ Delivery versus payment/receive versus payment is a method of settlement under which payment for securities must be made prior to or simultaneously with delivery of the securities.

²⁰ Unlike for the Non-Bank Liquidity Facility, OCC would not require the Bank Repo Facility counterparty to maintain cash and investments in a designated account in which OCC has visibility. OCC required a designated account for Non-Bank Liquidity Facility counterparties in order to facilitate prompt funding by counterparties that, unlike the Bank Repo Facility counterparty, are not commercial banks and therefore are not in the business of daily funding.

purchased securities. This visibility would allow OCC to act quickly in the event the buyer violates any requirements.

Early Termination Rights

OCC would have the ability to terminate any transaction upon written notice to the buyer, but the buyer would only be able to terminate a transaction upon the occurrence of an event of default with respect to OCC, as further described below. A notice of termination by OCC would specify a new Repurchase Date prior to the originally agreed upon Repurchase Date. Upon the early termination of a transaction, the buyer would be required to return all purchased securities to OCC and OCC would be required to pay the Repurchase Price. This optional early termination right is important to OCC because OCC's liquidity needs may change unexpectedly over time and as a result OCC may not want to keep a transaction outstanding as long as originally planned.

Substitution

OCC would have the ability to substitute any Eligible Securities for purchased securities in its discretion by a specified time, so long as the Eligible Securities satisfy any applicable criteria contained in the MRA and the transfer of the Eligible Securities would not create a margin deficit, as described above.²¹ This substitution right is important to OCC because it must be able to manage requests of Clearing Members to return excess or substitute Eligible Securities in accordance with established operational procedures.

²¹ In addition to its substitution rights, OCC could cause the return of purchased securities by exercising its optional early termination rights under the Master Repurchase Agreement. If OCC were to terminate the transaction, the buyer would be required to return purchased securities to OCC against payment of the corresponding Repurchase Price.

Events of Default

Beyond the standard events of default for a failure to purchase or transfer securities on the applicable Purchase Date or Repurchase Date, as described above, OCC would require that the MRA not contain any additional events of default that would restrict OCC's access to funding. Most importantly, OCC would require that it would not be an event of default if OCC suffers a "material adverse change."²² This provision is important because it provides OCC with certainty of funding, even in difficult market conditions.

The agreement also provides that upon the occurrence of an event of default, in addition to the non-defaulting party's right to accelerate the Repurchase Date of all outstanding transactions or to buy or sell securities as needed to be made whole, the non-defaulting party may elect to take the actions specified in a "mini close-out" provision of the MRA rather than declaring an event of default. For example, if the buyer fails to transfer purchased securities on the applicable Repurchase Date, rather than declaring an event of default, OCC may (1) if OCC has already paid the Repurchase Price, require the buyer to repay the Repurchase Price, (2) if there is a margin excess, require the buyer to pay cash or delivered purchased securities in an amount equal to the margin excess, or (3) declare that the applicable transaction, and only that transaction, will be immediately terminated, and apply default remedies under the MRA to only that transaction. Therefore, if the buyer fails to deliver purchased securities on any Repurchase Date, OCC would have remedies that allow it to mitigate risk with respect to a particular transaction, without declaring an event of default with respect to all transactions under the MRA.

²² When included in a contract, a "material adverse change" is typically defined as a change that would have a materially adverse effect on the business or financial condition of a company.

The Proposed Program: Annual Renewal

As discussed above, MRA would be for an annual term. OCC anticipates that it will renew the MRA with the same bank counterparty based on the same or substantially similar terms. At each renewal, OCC would evaluate the commitment amount so that OCC's available liquidity resources remain properly calibrated to its activities and settlement obligations. OCC would submit another advance notice with respect to such renewal for the same term only if: (i) OCC determines its liquidity needs merit funding levels above the \$1 billion, (ii) OCC should seek to change the terms and conditions of the MRA in a manner that materially affects the nature or level of risk presented by OCC,²³ (iii) OCC should seek to add counterparties or substitute the bank counterparty to the Bank Repo Facility program, or (iv) the bank counterparty has experienced a negative change to its credit profile or a material adverse change since the latest renewal of the MRA. As such, annual renewals for the Bank Liquidity Facility would proceed in a similar manner to renewals of term commitments under the Non-Bank Liquidity Facility—another MRA liquidity source.²⁴

²³ For the purposes of clarity, OCC would not consider changes to pricing or changes in representations, covenants, and terms of events of default, to be changes to a term or condition that would require the filing of a subsequent advance notice provided that pricing is at the then prevailing market rate and changes to such other provisions are immaterial to OCC as the seller and do not impair materially OCC's ability to draw against the facility.

²⁴ See Exchange Act Release No. 76821, 81 FR at 3209 (describing OCC's proposal to submit an advance notice in connection with a renewal of commitments under the Non-Bank Liquidity Facility if: (i) OCC determined that its liquidity needs merited commitments above or below certain levels; (ii) OCC should seek to change the terms and conditions of the Non-Bank Liquidity Facility; and (iii) the commitment counterparty experienced a negative change to its credit profile or a material adverse change since entering the commitment or the latest renewal of the commitment). OCC subsequently submitted an advance notice pursuant to that commitment to support its ability to onboard multiple liquidity providers below the identified thresholds and with different term lengths to replace expiring commitments, see Exchange Act Release No. 89039, 85 FR at 36445-46, and has, concurrent with the filing of SR-OCC-2022-802, submitted another

OCC does not believe that, absent one or more of the changes described above, renewal of the MRA would constitute a change to OCC's operations that could materially affect the nature or level of risks presented by OCC so as to require an advance notice under Section 806(e)(1) of the Clearing Supervision Act.²⁵ Accordingly OCC would consider such a renewal to be on substantially the same terms and conditions such that executing such renewal would not be subject to the requirement to file an advance notice filing pursuant to Section 806(e)(1) of the Clearing Supervision Act.²⁶ If OCC determines to make changes to the Bank Repo Facility in a subsequent filing, it would include in that filing the proposed conditions to the terms of any 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. OCC believes that the overall impact of the Bank Repo Facility on the risks presented by OCC would be to reduce settlement risk associated with OCC's operations as the clearing agency for all listed options. The Bank Repo Facility would reduce settlement risk by providing an additional source of liquidity that would promote the reduction of risks to OCC, its Clearing Members and the options market in general because it would allow OCC to obtain short-term funds to address liquidity demands arising out of the default or suspension of a Clearing Member, in anticipation of a potential default or suspension

advance notice to eliminate the current cap to that program in favor of a floor for external liquidity across all sources. The Bank Repo Facility would retain a cap and a limit on adding new counterparties because OCC is proposing this facility as a discrete MRA with a single counterparty. To the extent OCC determines to add additional commitments or counterparties to the Bank Repo Facility in the future, OCC would first file an advance notice.

²⁵ 12 U.S.C. 5465(e)(1).

²⁶ Id.

of Clearing Members, the insolvency of a bank, another securities or commodities clearing organization, or a counterparty with which OCC has invested Clearing Member funds, or the failure of such a bank, clearing organization or investment counterparty to meet an obligation to OCC when due. The resulting reduction in OCC settlement risk would lead to a corresponding reduction in systemic risk and would have a positive impact on the safety and soundness of the clearing system by enabling OCC to have continuous access to funds to settle its obligations to its Clearing Members. In order to sufficiently perform this key role in promoting market stability, it is critical that OCC continuously has access to funds to settle its obligations.

Providing for another committed source of liquidity resources would also help OCC manage the allocation between its sources of liquidity by giving OCC more flexibility to adjust the mix of liquidity resources based on market conditions, availability and shifting liquidity needs. If circumstances arise that affect OCC's current liquidity resources from another of its facilities, an additional source of liquidity resources would allow OCC to reallocate liquidity resources as necessary to avoid a shortfall in its overall liquidity resources.²⁷

The Bank Repo Facility, like any liquidity source, would involve certain risks, but OCC would structure the program to mitigate those risks. Most of these risks are standard in any master repurchase agreement. For example, the buyer could fail to deliver, or delay in delivering, purchased securities to OCC by the applicable Repurchase Date. OCC will address this risk by seeking a security interest from the buyer in that portion of the purchased securities representing the excess of the market value over the Repurchase Price, or by obtaining other comfort from the buyer that the purchased securities will be timely returned. Further, the

²⁷ For example, OCC has authority under OCC Rule 1002(a)(i) to temporarily increase the cash funding requirement in its Clearing Fund for the protection of OCC, Clearing Members or the general public.

purchased securities generally will not be “on-the-run” securities, i.e., the most recently issued Treasury securities. The demand in the marketplace for Treasury securities, for uses other than collateral, is much greater for on-the-run Treasury securities, and therefore, OCC believes the buyer will have little incentive to retain the securities transferred by OCC.

The mechanics under the Bank Repo Facility would be structured so that OCC could avoid losses by paying the Repurchase Price. For example, OCC will have optional early termination rights, under which OCC would be able to accelerate the Repurchase Date of any transaction by providing written notice to the buyer and paying the Repurchase Price. Through this mechanism, OCC can maintain the benefit of the Bank Repo Facility, while mitigating any risk associated with a particular transaction.

The Bank Repo Facility would be structured to avoid potential third-party risks, which are typical of repurchase arrangements. The prohibition on buyer rehypothecation and use of purchased securities would reduce the risk to OCC of a buyer default.

As with any repurchase arrangement, OCC is subject to the risk that it may have to terminate existing transactions and accelerate the applicable Repurchase Date with respect to the buyer due to changes in the financial health or performance of the buyer. Terminating transactions could negatively affect OCC’s liquidity position. However, any negative effect is reduced by the fact that OCC maintains a number of different financing arrangements, and thus will have access to liquidity sources in the event the Bank Repo Facility is no longer a viable source.

Under the MRA, OCC would be obligated to transfer additional cash or securities as margin in the event the market value of any purchased securities decreases. OCC seeks to ensure it can meet any such obligation by monitoring the value of the purchased securities and

maintaining adequate cash resources to make any required payments. Such payments are expected to be small in comparison to the total amount of cash received for each transfer of purchased securities.

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.²⁸ Section 805(a)(2) of the Clearing Supervision Act²⁹ 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 Act³⁰ 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.³¹ Rule 17Ad-22 requires registered clearing agencies, like OCC, to establish,

²⁸ 12 U.S.C. 5461(b).

²⁹ 12 U.S.C. 5464(a)(2).

³⁰ 12 U.S.C. 5464(b).

³¹ 17 CFR 240.17Ad-22. See Securities Exchange Act Release Nos. 68080 (October 22,

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.³² Therefore, the Commission has stated³³ 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.³⁴

OCC believes that the proposed changes are consistent with Section 805(b)(1) of the Clearing Supervision Act³⁵ because the proposed Bank Repo Facility would provide OCC with an additional source of committed liquidity to meet its settlement obligations while at the same time being structured to mitigate certain operational risks, as described above, that arise in connection with this committed liquidity source. In this way, the proposed changes are designed to promote robust risk management; promote safety and soundness; reduce systemic risks; and support the stability of the broader financial system.

OCC believes that the Bank Repo Facility is also consistent with the requirements of Rule 17Ad-22(e)(7) under the Act.³⁶ 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,

2012), 77 FR 66220 (November 2, 2012) (S7-08-11) (“Clearing Agency Standards”); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14) (“Standards for Covered Clearing Agencies”).

³² 17 CFR 240.17Ad-22.

³³ See, e.g., Securities Exchange Act Release No. 86182 (June 24, 2019), 84 FR 31128, 31129 (June 28, 2019) (SR-OCC-2019-803).

³⁴ 12 U.S.C. 5464(b).

³⁵ 12 U.S.C. 5464(b)(1).

³⁶ 17 CFR 240.17Ad-22(e)(7).

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.³⁷ In particular, Rule 17Ad-22(e)(7)(i) under the Act³⁸ 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 Bank Repo 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 and as an alternative to selling Clearing Member collateral under what may be stressed and volatile market conditions. For these reasons, OCC believes that the proposal is consistent with Rule 17Ad-22(e)(7)(i).³⁹

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.⁴⁰ Rule 17Ad-22(a)(14) of the 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.⁴¹ The MRA under the Bank Repo Facility would not be subject to any material adverse change

³⁷ Id.

³⁸ 17 CFR 240.17Ad-22(e)(7)(i).

³⁹ Id.

⁴⁰ 17 CFR 240.17Ad-22(e)(7)(ii).

⁴¹ 17 CFR 240.17Ad-22(a)(14).

provision and would 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. Therefore, OCC believes that the proposal is consistent with Rule 17Ad-22(e)(7)(ii).⁴²

For the foregoing reasons, OCC believes that the proposed changes are consistent with Section 805(b)(1) of the Clearing Supervision Act⁴³ and Rule 17Ad-22(e)(7)⁴⁴ under the Act.

Item 11. Exhibits

Exhibit 1A. Completed Notice of Advance Notice for publication in the Federal Register.

Exhibit 3. OCC Bank Repo Facility Summary of Terms as presented to the Board.

Exhibit 3 is omitted and filed separately with the Commission in connection with a request for confidential treatment pursuant to 17 CFR 240.24b-2.

⁴² 17 CFR 240.17Ad-22(e)(7)(ii).

⁴³ 12 U.S.C. 5464(b)(1).

⁴⁴ 17 CFR 240.17Ad-22(e)(7).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, The Options Clearing Corporation has caused this filing to be signed on its behalf by the undersigned hereunto duly authorized.

THE OPTIONS CLEARING CORPORATION

By: _____

Mark C. Brown
Associate General Counsel

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-[_____]; File No. SR-OCC-2022-802)

[July __], 2022

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice Related to a Master Repurchase Agreement as Part of The Options Clearing Corporation's Overall Liquidity Plan

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 of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),³ notice is hereby given that on July 7, 2022, The Options Clearing Corporation ("OCC" or "Corporation") filed with the Securities and Exchange Commission ("SEC" or "Commission") an advance notice as described in Items I, II and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

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

This advance notice is submitted in connection a proposed change to its operations in the form of executing a committed master repurchase agreement with a bank counterparty as part of OCC's overall liquidity plan. The proposed changes do not require any changes to the text of OCC's By-Laws or Rules. All terms with initial

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.

capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.⁴

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 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 the Proposed Change

As the sole clearing agency for standardized U.S. securities options listed on national securities exchanges registered with the Commission ("listed options"), OCC is obligated to make certain payments. In the event of a Clearing Member default, OCC would be obligated to make payments, on time, related to that member's clear transactions. To meet such payment obligations, OCC maintains access to cash from a

⁴ OCC's By-Laws and Rules can be found on OCC's public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

variety of sources, including, a requirement for members to pledge cash collateral to OCC and various agreements with banks and other counterparties (“liquidity facilities”) to provide OCC with cash in exchange for collateral, such as U.S. Government securities. OCC routinely considers potential market stress scenarios that could affect such payment obligations. Based on such considerations, OCC now believes that it should seek to expand its liquidity facility to increase OCC’s access to cash to manage a member default.

OCC is proposing to expand its liquidity facilities to include a new arrangement with a bank to provide cash to OCC. Specifically, this advance notice concerns a change to OCC’s operations to execute a master repurchase agreement with a bank counterparty as part of OCC’s overall liquidity plan, which includes OCC’s arrangements to access cash in exchange for U.S. Government securities deposited by Clearing Members in respect of their Clearing Fund requirements to meet OCC’s settlement obligations. OCC is not, as part of this advance notice, proposing to require its members or other market participants provide additional or different collateral to OCC. Rather, the purpose of the proposal is to provide OCC with another vehicle for accessing cash to meet its payment obligations, including in the event that one of its members fails to meet its payment obligations to OCC.⁵

⁵ OCC may also use the Clearing Fund to address liquidity shortfalls arising from the failure of any bank, securities or commodities clearing organization, or investment counterparty to perform any obligation to OCC when due. See OCC Rule 1006(f)(1)(C); Exchange Act Release No. 94304 (Feb. 24, 2022), 87 FR 11776 (Mar. 2, 2022) (SR-OCC-2021-014).

Background

OCC's current liquidity plan provides it with access to a diverse set of funding sources, including banks (i.e., OCC's syndicated credit facility),⁶ the Non-Bank Liquidity Facility program,⁷ and Clearing Members' Cash Clearing Fund Requirement.⁸ OCC is proposing to add to these sources a master repurchase agreement ("MRA") with a bank counterparty (the "Bank Repo Facility program"). This program would mirror the Repo Liquidity Facility that OCC executed with a bank counterparty in 2020 after obtaining a notice of no objection from the Commission ("2020 Bank Repo Facility"),⁹ except that in this case, the committed amount will be up to \$1 billion (as opposed to \$500 million) and the bank counterparty will be one to which OCC has minimal other credit exposure. The counterparty would be one that has already been approved by OCC as a liquidity provider and would be subject to routine monitoring under OCC's Third-Party Risk Management

⁶ See Exchange Act Release No. 88971 (May 28, 2020), 85 FR 34257 (June 3, 2020) (SR-OCC-2020-804).

⁷ See Exchange Act Release No. 89039 (June 10, 2020), 85 FR 36444 (June 16, 2020) (SR-OCC-2020-803); Exchange Act Release No. 76821 (Jan. 4, 2016), 81 FR 3208 (Jan. 20, 2016) (SR-OCC-2015-805); Exchange Act Release No. 73979 (Jan. 2, 2015), 80 FR 1062 (Jan. 8, 2015) (SR-OCC-2014-809).

⁸ See OCC Rule 1002.

⁹ See Exchange Act Release No. 88317 (Mar. 4, 2020), 85 FR 13681 (Mar. 9, 2020) (SR-OCC-2020-801).

Framework,¹⁰ which meets or exceeds the monitoring process discussed in the advance notice for the 2020 Bank Repo Facility.¹¹

Although the MRA would be based on the standard form of master repurchase agreement,¹² OCC would require the MRA, or an annex thereto, to contain certain additional provisions tailored to help ensure certainty of funding and operational effectiveness, as described in more detail below. OCC believes that these provisions are necessary and appropriate to integrate the program into its operations and in order to promote safety and soundness consistent with OCC's systemic responsibilities. OCC provided a summary of the additional terms and conditions ("Summary of Terms") as presented to the Board in confidential Exhibit 3 to File No. SR-OCC-2022-802.¹³ Because the arrangements between OCC and the bank counterparty have not been fully negotiated, OCC has identified the following as key standards that would need to be incorporated into the MRA.

¹⁰ See Exchange Act Release No. 90797 (Dec. 23, 2020), 85 FR 86592 (Dec. 30, 2020) (SR-OCC-2020-014). The Third-Party Risk Management Framework is available on OCC's public website. See Documents & Archives, <https://www.theocc.com/Company-Information/Documents-and-Archives>.

¹¹ See Exchange Act Release No. 88120 (Feb. 5, 2020), 85 FR 7812 (Feb. 11, 2020) (SR-OCC-2020-801).

¹² The standard form master repurchase agreement is published by the Securities Industry and Financial Markets Association ("SIFMA") and is commonly used in the repurchase market by institutional investors.

¹³ In addition to the Summary of Terms, the confidential Exhibit 3 to File No. SR-OCC-2022-802 includes a summary of OCC management's recommendation to expand OCC's external liquidity sources as well as a discussion of the analysis underlying that recommendation.

The Proposed Program: Standard Repurchase Agreement Terms

The MRA would be structured like a typical repurchase arrangement in which the buyer (i.e., the bank counterparty) would purchase from OCC, from time to time, U.S. Government securities (“Eligible Securities”).¹⁴ OCC, as the seller, would transfer Eligible Securities to the buyer in exchange for a payment by the buyer to OCC in immediately available funds (“Purchase Price”). The buyer would simultaneously agree to transfer the purchased securities back to OCC at a specified later date (“Repurchase Date”) or on OCC’s demand against the transfer of funds by OCC to the buyer in an amount equal to the outstanding Purchase Price plus the accrued and unpaid price differential (together, “Repurchase Price”), which is the interest component of the Repurchase Price.

At all times while a transaction is outstanding, OCC would be required to maintain a specified amount of securities or cash margin with the buyer.¹⁵ The market value of the securities supporting each transaction would be determined daily, typically based on a price obtained from a generally recognized pricing source. If the market value of the purchased securities is determined to have fallen below OCC’s required margin, OCC would be required to transfer to the buyer sufficient cash or additional securities

¹⁴ OCC would use U.S. government securities that are included in Clearing Fund contributions by Clearing Members and margin deposits of any Clearing Member that has been suspended by OCC for the repurchase arrangements. OCC Rule 1006(f) and OCC Rule 1104(b) authorize OCC to obtain funds from third parties through securities repurchases using these sources. The officers who may exercise this authority include the Chairman, Chief Executive Officer, and Chief Operating Officer.

¹⁵ OCC expects that it would be required to maintain margin equal to 102% of the Repurchase Price, which is a standard rate for arrangements involving Government securities.

reasonably acceptable to the buyer so that OCC's margin requirement is satisfied.¹⁶ If the market value of the purchased securities is determined to have risen to above OCC's required margin, OCC would be permitted to require the return of excess purchased securities from the buyer.

As in a typical master repurchase agreement, an event of default would occur with respect to the buyer if the buyer failed to purchase securities on a Purchase Date, failed to transfer purchased securities on any applicable Repurchase Date, or failed to transfer any interest, dividends or distributions on purchased securities to OCC within a specified period after receiving notice of such failure. An event of default would occur with respect to OCC if OCC failed to transfer purchased securities on a Purchase Date or failed to repurchase purchased securities on an applicable Repurchase Date. The MRA would also provide for standard events of default for either party, including a party's failure to maintain required margin or an insolvency event with respect to the party. Upon the occurrence of an event of default, the non-defaulting party, at its option, would have the right to accelerate the Repurchase Date of all outstanding transactions between the defaulting party and the non-defaulting party, among other rights. For example, if OCC were the defaulting party with respect to a transaction and the buyer chose to terminate the transaction, OCC would be required to immediately transfer the Repurchase Price to the buyer. If the buyer were the defaulting party with respect to a transaction and OCC chose to terminate the transaction, the buyer would be required to deliver all purchased securities to OCC. If OCC or the buyer did not timely perform, the non-

¹⁶ OCC expects that it would use Clearing Fund securities and securities posted as margin by defaulting Clearing Members, as more fully discussed in footnote 14.

defaulting party would be permitted to buy or sell, or deem itself to have bought or sold, securities as needed to be made whole and the defaulting party would be required to pay the costs related to any covering transactions. Additionally, if OCC was required to obtain replacement securities as a result of an event of default, the buyer would be required to pay the excess of the price paid by OCC to obtain replacement securities over the Repurchase Price.

The Proposed Program: Customized Features to Promote Certainty of Funding and Operational Effectiveness

In addition to the typical repurchase arrangements, OCC would require the MRA, or an annex thereto, to contain certain additional provisions tailored to help ensure certainty of funding and operational effectiveness.¹⁷

Commitment to Fund

The buyer would provide a funding commitment of up to \$1 billion, with the commitment extending for one year (plus or minus one day). The buyer would be obligated to enter into transactions under the MRA up to its committed amount so long as no default had occurred and OCC transferred sufficient Eligible Securities. The buyer would be obligated to enter into transactions even if OCC had experienced a material adverse change, such as the failure of a Clearing Member. This commitment to provide funding would be a key departure from ordinary repurchase arrangements and a key requirement for OCC.

¹⁷ OCC expects that the MRA will also include other, more routine, provisions such as the method for giving notices and basic due authorization representations by the parties.

Funding Mechanics

Funding mechanics would be targeted so that OCC would receive the Purchase Price in immediately available funds within 60 minutes of its request for funds and delivery of Eligible Securities and, if needed, prior to OCC's regular daily settlement time.¹⁸ These targeted funding mechanics would allow OCC to receive needed liquidity in time to satisfy settlement obligations, even in the event of a default by a Clearing Member or a market disruption. The funding mechanism may be, for example, delivery versus payment/receive versus payment¹⁹ or another method acceptable to OCC that both satisfies the objectives of the Bank Repo Facility and presents limited operational risks.²⁰

No Rehypotheication

The buyer would not be permitted to grant any third party an interest in purchased securities. This requirement is important to reduce the risk that a third party could interfere with the buyer's transfer of the purchased securities on the Repurchase Date. Further, the buyer would agree to provide OCC with daily information about the account the buyer uses to hold the purchased securities. This visibility would allow OCC to act quickly in the event the buyer violates any requirements.

¹⁸ This would include OCC's regular daily settlement time and any extended settlement time implemented by OCC in an emergency situation under Rule 505.

¹⁹ Delivery versus payment/receive versus payment is a method of settlement under which payment for securities must be made prior to or simultaneously with delivery of the securities.

²⁰ Unlike for the Non-Bank Liquidity Facility, OCC would not require the Bank Repo Facility counterparty to maintain cash and investments in a designated account in which OCC has visibility. OCC required a designated account for Non-Bank Liquidity Facility counterparties in order to facilitate prompt funding by counterparties that, unlike the Bank Repo Facility counterparty, are not commercial banks and therefore are not in the business of daily funding.

Early Termination Rights

OCC would have the ability to terminate any transaction upon written notice to the buyer, but the buyer would only be able to terminate a transaction upon the occurrence of an event of default with respect to OCC, as further described below. A notice of termination by OCC would specify a new Repurchase Date prior to the originally agreed upon Repurchase Date. Upon the early termination of a transaction, the buyer would be required to return all purchased securities to OCC and OCC would be required to pay the Repurchase Price. This optional early termination right is important to OCC because OCC's liquidity needs may change unexpectedly over time and as a result OCC may not want to keep a transaction outstanding as long as originally planned.

Substitution

OCC would have the ability to substitute any Eligible Securities for purchased securities in its discretion by a specified time, so long as the Eligible Securities satisfy any applicable criteria contained in the MRA and the transfer of the Eligible Securities would not create a margin deficit, as described above.²¹ This substitution right is important to OCC because it must be able to manage requests of Clearing Members to return excess or substitute Eligible Securities in accordance with established operational procedures.

²¹ In addition to its substitution rights, OCC could cause the return of purchased securities by exercising its optional early termination rights under the Master Repurchase Agreement. If OCC were to terminate the transaction, the buyer would be required to return purchased securities to OCC against payment of the corresponding Repurchase Price.

Events of Default

Beyond the standard events of default for a failure to purchase or transfer securities on the applicable Purchase Date or Repurchase Date, as described above, OCC would require that the MRA not contain any additional events of default that would restrict OCC's access to funding. Most importantly, OCC would require that it would not be an event of default if OCC suffers a "material adverse change."²² This provision is important because it provides OCC with certainty of funding, even in difficult market conditions.

The agreement also provides that upon the occurrence of an event of default, in addition to the non-defaulting party's right to accelerate the Repurchase Date of all outstanding transactions or to buy or sell securities as needed to be made whole, the non-defaulting party may elect to take the actions specified in a "mini close-out" provision of the MRA rather than declaring an event of default. For example, if the buyer fails to transfer purchased securities on the applicable Repurchase Date, rather than declaring an event of default, OCC may (1) if OCC has already paid the Repurchase Price, require the buyer to repay the Repurchase Price, (2) if there is a margin excess, require the buyer to pay cash or delivered purchased securities in an amount equal to the margin excess, or (3) declare that the applicable transaction, and only that transaction, will be immediately terminated, and apply default remedies under the MRA to only that transaction.

Therefore, if the buyer fails to deliver purchased securities on any Repurchase Date, OCC

²² When included in a contract, a "material adverse change" is typically defined as a change that would have a materially adverse effect on the business or financial condition of a company.

would have remedies that allow it to mitigate risk with respect to a particular transaction, without declaring an event of default with respect to all transactions under the MRA.

The Proposed Program: Annual Renewal

As discussed above, MRA would be for an annual term. OCC anticipates that it will renew the MRA with the same bank counterparty based on the same or substantially similar terms. At each renewal, OCC would evaluate the commitment amount so that OCC's available liquidity resources remain properly calibrated to its activities and settlement obligations. OCC would submit another advance notice with respect to such renewal for the same term only if: (i) OCC determines its liquidity needs merit funding levels above the \$1 billion, (ii) OCC should seek to change the terms and conditions of the MRA in a manner that materially affects the nature or level of risk presented by OCC,²³ (iii) OCC should seek to add counterparties or substitute the bank counterparty to the Bank Repo Facility program, or (iv) the bank counterparty has experienced a negative change to its credit profile or a material adverse change since the latest renewal of the MRA. As such, annual renewals for the Bank Liquidity Facility would proceed in a similar manner to renewals of term commitments under the Non-Bank Liquidity Facility—another MRA liquidity source.²⁴

²³ For the purposes of clarity, OCC would not consider changes to pricing or changes in representations, covenants, and terms of events of default, to be changes to a term or condition that would require the filing of a subsequent advance notice provided that pricing is at the then prevailing market rate and changes to such other provisions are immaterial to OCC as the seller and do not impair materially OCC's ability to draw against the facility.

²⁴ See Exchange Act Release No. 76821, 81 FR at 3209 (describing OCC's proposal to submit an advance notice in connection with a renewal of commitments under the Non-Bank Liquidity Facility if: (i) OCC determined that its liquidity needs merited commitments above or below certain levels; (ii) OCC should seek to

OCC does not believe that, absent one or more of the changes described above, renewal of the MRA would constitute a change to OCC's operations that could materially affect the nature or level of risks presented by OCC so as to require an advance notice under Section 806(e)(1) of the Clearing Supervision Act.²⁵ Accordingly OCC would consider such a renewal to be on substantially the same terms and conditions such that executing such renewal would not be subject to the requirement to file an advance notice filing pursuant to Section 806(e)(1) of the Clearing Supervision Act.²⁶ If OCC determines to make changes to the Bank Repo Facility in a subsequent filing, it would include in that filing the proposed conditions to the terms of any 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. OCC believes that the overall impact of the Bank Repo Facility on the risks presented by OCC would be to reduce settlement risk

change the terms and conditions of the Non-Bank Liquidity Facility; and (iii) the commitment counterparty experienced a negative change to its credit profile or a material adverse change since entering the commitment or the latest renewal of the commitment). OCC subsequently submitted an advance notice pursuant to that commitment to support its ability to onboard multiple liquidity providers below the identified thresholds and with different term lengths to replace expiring commitments, see Exchange Act Release No. 89039, 85 FR at 36445-46, and has, concurrent with the filing of SR-OCC-2022-802, submitted another advance notice to eliminate the current cap to that program in favor of a floor for external liquidity across all sources. The Bank Repo Facility would retain a cap and a limit on adding new counterparties because OCC is proposing this facility as a discrete MRA with a single counterparty. To the extent OCC determines to add additional commitments or counterparties to the Bank Repo Facility in the future, OCC would first file an advance notice.

²⁵ 12 U.S.C. 5465(e)(1).

²⁶ Id.

associated with OCC's operations as the clearing agency for all listed options. The Bank Repo Facility would reduce settlement risk by providing an additional source of liquidity that would promote the reduction of risks to OCC, its Clearing Members and the options market in general because it would allow OCC to obtain short-term funds to address liquidity demands arising out of the default or suspension of a Clearing Member, in anticipation of a potential default or suspension of Clearing Members, the insolvency of a bank, another securities or commodities clearing organization, or a counterparty with which OCC has invested Clearing Member funds, or the failure of such a bank, clearing organization or investment counterparty to meet an obligation to OCC when due. The resulting reduction in OCC settlement risk would lead to a corresponding reduction in systemic risk and would have a positive impact on the safety and soundness of the clearing system by enabling OCC to have continuous access to funds to settle its obligations to its Clearing Members. In order to sufficiently perform this key role in promoting market stability, it is critical that OCC continuously has access to funds to settle its obligations.

Providing for another committed source of liquidity resources would also help OCC manage the allocation between its sources of liquidity by giving OCC more flexibility to adjust the mix of liquidity resources based on market conditions, availability and shifting liquidity needs. If circumstances arise that affect OCC's current liquidity resources from another of its facilities, an additional source of liquidity resources would

allow OCC to reallocate liquidity resources as necessary to avoid a shortfall in its overall liquidity resources.²⁷

The Bank Repo Facility, like any liquidity source, would involve certain risks, but OCC would structure the program to mitigate those risks. Most of these risks are standard in any master repurchase agreement. For example, the buyer could fail to deliver, or delay in delivering, purchased securities to OCC by the applicable Repurchase Date. OCC will address this risk by seeking a security interest from the buyer in that portion of the purchased securities representing the excess of the market value over the Repurchase Price, or by obtaining other comfort from the buyer that the purchased securities will be timely returned. Further, the purchased securities generally will not be “on-the-run” securities, i.e., the most recently issued Treasury securities. The demand in the marketplace for Treasury securities, for uses other than collateral, is much greater for on-the-run Treasury securities, and therefore, OCC believes the buyer will have little incentive to retain the securities transferred by OCC.

The mechanics under the Bank Repo Facility would be structured so that OCC could avoid losses by paying the Repurchase Price. For example, OCC will have optional early termination rights, under which OCC would be able to accelerate the Repurchase Date of any transaction by providing written notice to the buyer and paying the Repurchase Price. Through this mechanism, OCC can maintain the benefit of the Bank Repo Facility, while mitigating any risk associated with a particular transaction.

²⁷ For example, OCC has authority under OCC Rule 1002(a)(i) to temporarily increase the cash funding requirement in its Clearing Fund for the protection of OCC, Clearing Members or the general public.

The Bank Repo Facility would be structured to avoid potential third-party risks, which are typical of repurchase arrangements. The prohibition on buyer rehypothecation and use of purchased securities would reduce the risk to OCC of a buyer default.

As with any repurchase arrangement, OCC is subject to the risk that it may have to terminate existing transactions and accelerate the applicable Repurchase Date with respect to the buyer due to changes in the financial health or performance of the buyer. Terminating transactions could negatively affect OCC's liquidity position. However, any negative effect is reduced by the fact that OCC maintains a number of different financing arrangements, and thus will have access to liquidity sources in the event the Bank Repo Facility is no longer a viable source.

Under the MRA, OCC would be obligated to transfer additional cash or securities as margin in the event the market value of any purchased securities decreases. OCC seeks to ensure it can meet any such obligation by monitoring the value of the purchased securities and maintaining adequate cash resources to make any required payments. Such payments are expected to be small in comparison to the total amount of cash received for each transfer of purchased securities.

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.²⁸

²⁸ 12 U.S.C. 5461(b).

Section 805(a)(2) of the Clearing Supervision Act²⁹ 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 Act³⁰ 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.³¹ Rule 17Ad-22 requires registered clearing agencies, like 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.³² Therefore, the Commission has stated³³ that it believes it is appropriate to review changes proposed in advance notices against Rule

²⁹ 12 U.S.C. 5464(a)(2).

³⁰ 12 U.S.C. 5464(b).

³¹ 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 Agency Standards”); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14) (“Standards for Covered Clearing Agencies”).

³² 17 CFR 240.17Ad-22.

³³ See, e.g., Securities Exchange Act Release No. 86182 (June 24, 2019), 84 FR 31128, 31129 (June 28, 2019) (SR-OCC-2019-803).

17Ad-22 and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act.³⁴

OCC believes that the proposed changes are consistent with Section 805(b)(1) of the Clearing Supervision Act³⁵ because the proposed Bank Repo Facility would provide OCC with an additional source of committed liquidity to meet its settlement obligations while at the same time being structured to mitigate certain operational risks, as described above, that arise in connection with this committed liquidity source. In this way, the proposed changes are designed to promote robust risk management; promote safety and soundness; reduce systemic risks; and support the stability of the broader financial system.

OCC believes that the Bank Repo Facility is also consistent with the requirements of Rule 17Ad-22(e)(7) under the Act.³⁶ 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.³⁷ In particular, Rule 17Ad-22(e)(7)(i) under the Act³⁸ 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

³⁴ 12 U.S.C. 5464(b).

³⁵ 12 U.S.C. 5464(b)(1).

³⁶ 17 CFR 240.17Ad-22(e)(7).

³⁷ Id.

³⁸ 17 CFR 240.17Ad-22(e)(7)(i).

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 Bank Repo 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 and as an alternative to selling Clearing Member collateral under what may be stressed and volatile market conditions. For these reasons, OCC believes that the proposal is consistent with Rule 17Ad-22(e)(7)(i).³⁹

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.⁴⁰ Rule 17Ad-22(a)(14) of the 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.⁴¹ The MRA under the Bank Repo Facility would not be subject to any material adverse change provision and would 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. Therefore, OCC believes that the proposal is consistent with Rule 17Ad-22(e)(7)(ii).⁴²

³⁹ Id.

⁴⁰ 17 CFR 240.17Ad-22(e)(7)(ii).

⁴¹ 17 CFR 240.17Ad-22(a)(14).

⁴² 17 CFR 240.17Ad-22(e)(7)(ii).

For the foregoing reasons, OCC believes that the proposed changes are consistent with Section 805(b)(1) of the Clearing Supervision Act⁴³ and Rule 17Ad-22(e)(7)⁴⁴ under the Act.

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 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.

⁴³ 12 U.S.C. 5464(b)(1).

⁴⁴ 17 CFR 240.17Ad-22(e)(7).

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 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. Please include File Number SR-OCC-2022-802 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2022-802. 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

such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

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-2022-802 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

Secretary

⁴⁵ 17 CFR 200.30-3(a)(12).

Exhibit 3

[Redacted Pursuant to Rule 24b-2 and Filed Separately with the Commission]

[Redacted Pursuant to Rule 24b-2 and Filed Separately with the Commission]

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