

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-146 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-NASDAQ-2013-146. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-

NASDAQ-2013-146 and should be submitted on or before January 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71022; File No. SR-OCC-2013-17]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Concerning Charters for the Board of Directors, the Membership/Risk Committee, the Audit Committee and the Performance Committee

December 6, 2013.

#### I. Introduction

On October 17, 2013, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2013-17 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The proposed rule change was published for comment in the **Federal Register** on October 30, 2013.<sup>3</sup> The Commission received no comments concerning the proposed rule change. For the reasons set forth below, the Commission is approving the proposed rule change.

#### II. Description

The proposed rule change concerns the charter of OCC's Board of Directors ("Board"), as well as the charters of the Board's Membership/Risk Committee ("MRC"), Audit Committee ("AC"), and Performance Committee ("PC") (collectively, "Committee Charters").<sup>4</sup>

##### *Board of Directors Charter*

The Board's new charter ("Board Charter") does not impose any new responsibilities on the Board, but rather reflects the existing powers and duties of the Board under OCC's By-Laws and

Rules, as well as the underlying practices that have been developed to aid the Board in meeting its obligations. According to OCC, the Board adopted a charter in an effort to provide outside parties with greater transparency into the Board's oversight activities, to promote accountability, and to align OCC with current best practices in corporate governance.

The Board Charter addresses the organization, composition, authority, functions, and responsibilities of the Board. With respect to membership, the Board Charter sets forth the size and composition of the Board, the qualifications for Board membership, and the term, tenure, and age limits applicable to each category of Board member. The Board Charter also addresses Board meetings, specifying that the Board will meet at least five times annually, that the Chairman of the Board will establish the agenda for each meeting in consultation with the President and Secretary, and that individual Directors must prepare for and attend each Board meeting. Additionally, the Board Charter incorporates many provisions of OCC's existing By-Laws, including those governing the election, resignation, and disqualification of Directors,<sup>5</sup> the establishment of Board committees and subcommittees, and the existence of a quorum.

The Board Charter also defines the scope of the Board's authority, providing, among other things, that the Board may make any inquiries it deems appropriate in executing its duties, and that the Board may confer with OCC management or employees as needed.<sup>6</sup> The Board Charter reiterates the Board's authority under the By-Laws to elect certain corporate officers annually, to form such committees and subcommittees as it deems appropriate, and to delegate authority to committee members.

The Board Charter describes the Board's cardinal duty as overseeing OCC to ensure that it is managed and operates in a manner that is consistent with OCC's regulatory responsibilities. The Board is also tasked with

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 70753 (October 24, 2013), 78 FR 65027 (October 30, 2013) (SR-OCC-2013-17).

<sup>4</sup> OCC's Board adopted its charter on March 7, 2013. Although OCC has had charters for its MRC, AC, and PC in place for a number of years, it has not previously submitted those as proposed rule changes pursuant to Section 19(b) of the Act.

<sup>5</sup> The Board Charter currently reflects that the Board has one Management Director, who is both the Chairman of the Board and Chief Executive Officer of OCC. OCC intends to split the office of the Chairman into two offices, Executive Chairman and President, both of whom will be elected as Management Directors. See Securities Exchange Act Release No. 70076 (July 30, 2013), 78 FR 47449 (August 5, 2013) (SR-OCC-2013-09).

<sup>6</sup> The Chairman is permitted to ask OCC management or others to attend meetings and provide pertinent information. The Board may also hire specialists or rely on outside advisors or specialists.

stewarding OCC to ensure it has the ability to achieve its objectives in a safe, sound, and prudent manner. The Board Charter reiterates many of the Board's responsibilities under OCC's By-Laws, including the obligations to determine disqualifications from Board service, to fill vacancies, to conduct hearings in connection with a denial or suspension of membership, and to suspend clearing members when appropriate. The Board Charter also lists additional Board responsibilities that do not appear in the By-Laws.<sup>7</sup>

The Board Charter also sets forth the duties and responsibilities of individual Directors, including the duty to act in good faith in the best interests of OCC, as well as with due regard for the fiduciary responsibilities owed to OCC as a systemically important financial market utility.<sup>8</sup> Directors are also required to comply with the provisions of the Code of Conduct for OCC Directors, including the provisions relating to conflicts of interest and confidentiality.

#### Committee Charters

OCC has long maintained Charters for the MRC, AC, and PC (each, a "Committee," and collectively, the "Committees"). These Committee Charters describe the purpose of each Committee as assisting the Board in fulfilling certain of its oversight responsibilities. The Committee Charters further specify the policies and procedures governing the membership,<sup>9</sup> organization, scope of authority,

<sup>7</sup> These additional responsibilities include the following: (i) To oversee OCC's governance processes; (ii) to approve and oversee OCC's business strategies; (iii) to monitor OCC's performance in delivering clearance and settlement services; (iv) to oversee OCC's processes and framework for assessing, managing, and monitoring strategic, financial, and operational risk; (v) to oversee OCC's financial reporting, auditing, accounting, and compliance processes; (vi) to oversee OCC's system of internal controls; (vii) to foster processes designed to ensure that OCC complies with applicable laws and regulations, and that OCC operates in an ethical manner; (viii) to oversee OCC's major capital expenditures and approve the annual budget and corporate plan; (ix) to oversee the development and design of employee compensation, incentive, and benefit programs; (x) to evaluate senior management performance regularly and approve the compensation of the Chairman and President; and (xi) to assure management succession.

<sup>8</sup> On July 18, 2012, the Financial Stability Oversight Council ("FSOC") designated OCC as a systemically important financial market utility under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Financial Stability Oversight Council, 2012 Annual Report, Appendix A, p.145, available at <http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf>.

<sup>9</sup> Each Committee Charter requires the inclusion of at least one Public Director and empowers the Board to remove or replace any Committee member at any time.

functions, and responsibilities of each Committee.

With respect to meetings, each Committee Charter establishes the Committee's meeting schedule, quorum rules, minute-keeping, and reporting requirements. Each Committee Charter further provides that the meeting agenda is established by the Committee's chairman, or his or her designee, in consultation with the Secretary and OCC's management. A majority of the Committee members constitutes a quorum, and if the chairman is not present at a meeting, the members who are present must designate one of their number to serve as acting chairman. All Committees are permitted to call executive sessions from which guests of such Committee may be excluded, and Committee members are permitted to participate in all meetings by teleconference or similar means.<sup>10</sup>

Each Committee's charter describes the scope of its authority, which includes the power to act, subject to the Board's direction, with respect to any matter necessary or appropriate to accomplish the purpose and responsibilities set forth in the Committee's Charter, as well as the power to delegate this authority to any subcommittee that the Committee may form. Each Committee is also authorized to make inquiries into any matter related to its respective purpose and responsibilities,<sup>11</sup> and to confer with OCC's management and other employees as it deems appropriate. Additionally, the chair of each Committee is authorized to act on behalf of his or her Committee in the event immediate action is required and it is impractical to convene such Committee.<sup>12</sup>

Each Committee Charter sets forth a detailed list of the Committee's respective functions and responsibilities, and also requires each Committee to review its charter annually and to submit any revised charters to OCC's Board for reapproval.

#### III. Discussion

Section 19(b)(2)(C) of the Act<sup>13</sup> directs the Commission to approve a

<sup>10</sup> Meeting minutes must be kept and shared with the Board.

<sup>11</sup> The Committee Charters further permit each Committee to hire specialists or rely on outside advisors or specialists to assist in carrying out the Committee's activities, and further confirm the Committees' authority to approve any related terms of retention and fees. The MRC and PC's authority under these provisions, however, is subject to Board approval.

<sup>12</sup> In such instances, the committee chair must, as soon as practicable, seek ratification from the full committee for any actions the chair has taken unilaterally.

<sup>13</sup> 15 U.S.C. 78s(b)(2)(C).

proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act<sup>14</sup> requires that the rules of a registered clearing agency be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions, as well as protect investors and the public interest. The Commission finds that the proposed rule change is consistent with the Act's requirements because the new and revised Board charters will clarify the responsibilities and operations of OCC's Board and its committees. This clarity will help ensure that OCC maintains a robust and transparent governance structure that should promote the prompt and accurate clearance and settlement of securities transactions, and should further safeguard investors and the public interest.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, particularly the requirements of Section 17A of the Act<sup>15</sup> and the rules and regulations thereunder applicable to OCC.

It is therefore *ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that proposed rule change SR-OCC-2013-17 be and hereby is *approved*.<sup>17</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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<sup>14</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>15</sup> 15 U.S.C. 78q-1.

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>18</sup> 17 CFR 200.30-3(a)(12).