

with access to the internet or television. Conversely, the value of such products to Distributors and investors decreases if order flow falls, because the products contain less content.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. The Exchange pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an “excessive” price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

Indeed, in approving the fees for TOPO Plus in 2010, the Commission noted that the Exchange was subject to competitive pressures in setting its fees for TOPO Plus. First, the Commission noted that the Exchange had a “compelling need” to attract order flow, which imposed “significant pressure” on the Exchange to act reasonably in setting its fees for PHLX market data, particularly given that “the market participants that will pay such fees often will be the same market participants from whom Phlx must attract order flow.”²⁸ The Commission also found that there were a number of alternative sources of information that imposed significant competitive

pressures on the Exchange in setting the terms for distributing TOPO Plus. The Commission found that the availability of those alternatives, as well as the Exchange’s compelling need to attract order flow, imposed “significant competitive pressure on Phlx to act equitably, fairly, and reasonably in setting the terms of its proposal.”²⁹ The Exchange believes that the same analysis and conclusions apply here.

In sum, the proposed fee structure is designed to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup costs while continuing to offer its data products at competitive rates to firms

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.³⁰

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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. Please include File Number SR-Phlx-2018-08 on the subject line.

Paper Comments

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

²⁹ *Id.*

³⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

All submissions should refer to File Number SR-Phlx-2018-08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<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 website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-Phlx-2018-08, and should be submitted on or before February 9, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82501; File No. SR-OCC-2017-808]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice, as Modified by Amendment No. 1, Concerning the Adoption of a New Minimum Cash Requirement for the Clearing Fund

January 12, 2018.

The Options Clearing Corporation (“OCC”) filed on November 14, 2017

³¹ 17 CFR 200.30-3(a)(12).

²⁸ See TOPO Plus approval order, 75 FR at 31833.

with the Securities and Exchange Commission (“Commission”) advance notice SR–OCC–2017–808 (“Advance Notice”) pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 (“Payment, Clearing and Settlement Supervision Act”)¹ and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (“Exchange Act”)² to propose a new minimum cash contribution requirement for its Clearing Fund³ (“Cash Clearing Fund Requirement”) and also provide for the pass-through of interest income earned on such deposits to its Clearing Members. The proposed changes are intended to enhance OCC’s liquidity risk management by increasing the amount of qualifying liquid resources available, as well as to provide for a more consistent level of cash available in its prefunded financial resources. The Advance Notice was published for comment in the **Federal Register** on December 14, 2017.⁴ The Commission did not receive any comments on the Advance Notice. This publication serves as notice of no objection to the Advance Notice.

I. Background

OCC maintains a Clearing Fund, composed of contributions required to be made by all Clearing Members, to make good losses suffered by OCC under a number of circumstances, including the default or failure of a Clearing Member to make good on any obligation for which OCC may be responsible in the exercise of its duties as a central counterparty. Presently, Article VIII, Section 3(a) of OCC’s By-Laws provides that Clearing Fund contributions shall be in the form of cash and Government securities, but neither OCC’s By-Laws nor Rules provides a minimum cash requirement for contributions to the Clearing Fund. Article VIII, Section 4(a) of OCC’s By-Laws allows for OCC to invest cash contributions to the Clearing Fund, partially or wholly, in OCC’s account in Government securities, and to the extent that such contributions are not so

invested, they shall be deposited by OCC in a separate account or accounts for Clearing Fund contributions in approved custodians. Article VIII, Section 4(a) of OCC’s By-Laws, however, presently does not account for the treatment of interest earned on cash deposits held in OCC’s bank account at the Federal Reserve.

II. Description of the Advance Notice

A. Proposed Change To Establish the Cash Clearing Fund Requirement

OCC proposes to establish a Cash Clearing Fund Requirement for its Clearing Fund to increase the amount of qualifying liquid resources available to OCC to account in the event there is an extreme scenario in the financial markets and OCC has to address any resultant liquidity demands. Further, the proposal seeks to ensure that OCC holds, and maintains access to, a more consistent level of cash clearing fund resources in its available prefunded financial resources. Specifically, the proposed rule change would require that Clearing Members collectively contribute \$3 billion in cash to the Clearing Fund. Each Clearing Member’s proportionate share of the Cash Clearing Fund Requirement shall be determined by the current Clearing Fund allocation methodology in OCC Rule 1001.

OCC’s current liquidity resources are sized to cover historically observed liquidity demands and potential demands based on forecasts with a 12 month time horizon. The sizing calculations, in turn, are based on the potential exposure resulting from the default of a single clearing member. Further, the current clearing fund is sized, at a minimum, to ensure that OCC maintains sufficient collateral to access its committed liquidity facilities. OCC represented that it maintains committed liquidity facilities of \$3 billion to cover its calculated historical and forecasted demands.⁵

After analyzing its liquidity demands in extreme stress scenarios,⁶ OCC

determined that it would propose the \$3 billion Cash Clearing Fund Requirement to increase the amount and reliability of its liquid resources. OCC represented that, based upon its analysis, the peak stressed liquidity demands of the largest or two largest Clearing Members, which normally occur in conjunction with certain monthly expirations, could exceed the capacity of OCC’s current committed liquidity facilities. Although OCC believes that it would be able to cover the resulting shortfall with cash already present in the Clearing Fund, OCC stated that it could not rely on such cash always being available because, under OCC’s current By-Laws and Rules, there is no ability for OCC to ensure that a minimum amount of cash is maintained in the Clearing Fund at all times. As a result, OCC believes that the proposed \$3 billion Cash Clearing Fund Requirement, combined with OCC’s \$3 billion of committed liquidity facilities, would provide liquid resources sufficient to cover the peak stressed liquidity demands of the largest one or two Clearing Members observed in the analysis.

B. Proposed Change To Allow Temporary Increase of Cash Clearing Fund Requirement

The proposed change would also provide authority for OCC to temporarily increase the amount of the Cash Clearing Fund Requirement. OCC’s Executive Chairman, Chief Administrative Officer (“CAO”), or Chief Operating Officer (“COO”), would have the authority, upon providing notice to the Risk Committee, to temporarily raise the Cash Clearing Fund Requirement up to an amount that includes the size of the Clearing Fund as determined in accordance with Rule 1001 for the month in question. A Clearing Member will be required to satisfy any increase in its required cash contribution pursuant to an increase in the Cash Clearing Fund Requirement no later than one hour before the close of the Fedwire on the business day following OCC’s issuance of an instruction to increase cash contributions.

In such circumstances, the Risk Committee, by rule, would be obligated to review any such temporary increase as soon as practicable, but in any event within 20 calendar days of the increase. In its review, the Risk Committee shall determine whether (1) the increase in the minimum Cash Clearing Fund Requirement is no longer required, or (2) OCC’s Clearing Fund contribution

the proposed stress tests scenario to determine the stressed peak demand.

¹ 12 U.S.C. 5465(e)(1). The Financial Stability Oversight Council designated OCC a systemically important financial market utility (“SIFMU”) on July 18, 2012. See Financial Stability Oversight Council 2012 Annual Report, Appendix A, <http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf>. Therefore, OCC is required to comply with the Payment, Clearing and Settlement Supervision Act and file advance notices with the Commission.

² 17 CFR 240.19b–4(n)(1)(i).

³ Unless specified otherwise, capitalized terms shall have the meaning OCC ascribes in its By-Laws and Rules.

⁴ Exchange Act Release No. 34–82247 (Dec. 8, 2017), 82 FR 59031 (Dec. 14, 2017) (“Notice of Filing of Advance Notice”).

⁵ See Exchange Act Release No. 81058 (June 30, 2017), 82 FR 31371 (July 6, 2017) (SR–OCC–2017–803); Exchange Act Release No. 76641 (December 14, 2015), 80 FR 79114 (December 18, 2015) (SR–OCC–2015–805). Both facilities allow OCC to obtain cash in exchange for government securities 60 minutes after notice is given and collateral is posted.

⁶ OCC represented that it performed an analysis of its stress liquidity demands based on a 1-in-70 year hypothetical market event. Specifically, OCC started its analysis by selecting the largest historical peak monthly settlements that occurred over the historical look-back period of data generated by the stress test system. It then also selected certain large non-expiration days to supplement the analysis. From this it estimated the mark-to-market and cash settled exercise and assignment obligations for the members driving the historical peak demand under

requirements and other related rules should be modified to ensure that OCC continues to maintain sufficient liquid resources to cover its largest aggregate payment obligations in extreme but plausible market conditions. In the event that the Risk Committee would determine to permanently increase the Cash Clearing Fund Requirement, OCC would initiate any regulatory approval process required to effect such a change.⁷

OCC acknowledged that increasing the Cash Clearing Fund Requirement could impose a liquidity constraint on its clearing members. Accordingly, OCC has proposed to limit the circumstances in which it could make such an increase. By rule, OCC would only be able to exercise this authority to protect OCC, its clearing members, or the general public. Further, any Cash Clearing Fund Requirement increase would have to: (i) Be based upon then-existing facts and circumstances, (ii) be in furtherance of the integrity of OCC and the stability of the financial system, and (iii) take into consideration the legitimate interests of Clearing Members and market participants.

These changes would be reflected in new paragraph (a)(i) of Section 3 of Article VIII of OCC's By-Laws, as well as in new Interpretation and Policy .04 to Section 3 of Article VIII.

C. Proposed Changes to Pass-Through Interest on Clearing Fund Cash to Clearing Members

Under the proposal, OCC stated that substantially all the cash deposits in the Clearing Fund would be held in an account established by OCC at a Federal Reserve Bank. OCC proposes that it would pass the interest income earned in such account through to its Clearing Members. Specifically, OCC proposes to revise Article VIII, Section 4(a) of OCC's By-Laws to provide that any interest earned on cash deposits held at an account at the Federal Reserve shall accrue to the benefit of Clearing Members (calculated daily based on each Clearing Member's pro rata share of Clearing Fund cash deposits), provided that such Clearing Members have provided OCC with all tax documentation as OCC may from time to time require in order to effectuate such payment.

To accommodate the pass through of interest income, OCC would also amend

its Fee Policy to add definitions for "Pass-Through Interest Revenue" and "Operating Expenses" to exclude from the calculation of the Business Risk Buffer projected interest revenue and expense, respectively, related to the pass-through of earned interest from OCC to Clearing Members.⁸ OCC also proposes to add a new example of the Business Risk Buffer calculation reflecting this change and make clarifying changes throughout the policy to incorporate the use of the new defined terms. In addition, OCC proposes to amend the Fee Policy to remove references to "Proposed Rule 17Ad-22(e)(15)" to reflect the adoption of the Commission's Covered Clearing Agency Standards.

D. Proposed Conforming Changes

In conjunction with the aforementioned changes, OCC is also proposing to make four related conforming changes. First, OCC proposes to revise Interpretation and Policy .01 of Rule 1001 to reflect that the new minimum Clearing Fund size is \$3 billion (instead of \$1 billion) plus 110% of the size of OCC's committed liquidity facilities, which conforms to the Cash Clearing Fund Requirement. Second, OCC proposes to amend the definition of "Approved Custodian" in Article I, Section 1 of the By-Laws to clarify that the Federal Reserve Bank may also be an Approved Custodian, to the extent it is available to OCC. Third, OCC is proposing to delete existing Article VIII, Section 4(b), regarding the establishment of a segregated funds account for cash contributions to the Clearing Fund. The segregated funds account allows a Clearing Member to contribute cash to a bank or trust company account maintained in the name of OCC, subject to OCC's exclusive control, but the account also includes the name of the Clearing Member and any interest accrues to the Clearing Member rather than OCC. OCC proposes to eliminate the account type because Clearing Members have not expressed interest in using such an account, no such accounts are in use today, and moving forward, substantially all cash Clearing Fund contributions will be held in OCC's account at the Federal Reserve Bank. Fourth, OCC proposes to introduce new

language to Article VIII, Section 4(a) to clarify that cash contributions to the Clearing Fund that are deposited at approved custodians may be commingled with the Clearing Fund contributions of different Clearing Members.

III. Discussion and Commission Findings

Although the Payment, Clearing and Settlement Supervision Act does not specify a standard of review for an advance notice, the stated purpose is instructive.⁹ The stated purpose of the Payment, Clearing and Settlement 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 SIFMUs and strengthening the liquidity of SIFMUs.¹⁰

Section 805(a)(2) of the Payment, Clearing and Settlement Supervision Act¹¹ authorizes the Commission to prescribe regulations containing risk-management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency. Section 805(b) of the Payment, Clearing and Settlement Supervision Act¹² provides the following objectives and principles for the Commission's risk-management standards prescribed under Section 805(a):

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

Section 805(c) provides, in addition, that the Commission's risk-management standards may address such areas as risk-management and default policies and procedures, among others areas.¹³

The Commission has adopted risk-management standards under Section 805(a)(2) of the Payment, Clearing and Settlement Supervision Act and the Exchange Act (the "Clearing Agency Rules").¹⁴ The Clearing Agency Rules

⁹ See 12 U.S.C. 5461(b).

¹⁰ *Id.*

¹¹ 12 U.S.C. 5464(a)(2).

¹² 12 U.S.C. 5464(b).

¹³ 12 U.S.C. 5464(c).

¹⁴ 17 CFR 240.17Ad-22. See Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7-08-11). See also Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14) ("Covered Clearing Agency Standards"). The Commission established an effective date of December 12, 2016, and a compliance date of April 11, 2017, for the Covered Clearing Agency Standards. On March 4, 2017, the

⁷ However, OCC represented that it would not decrease the Cash Clearing Fund Requirement while the regulatory approvals for a change in the Cash Clearing Fund Requirement are being obtained to ensure that OCC continues to maintain sufficient liquid resources to cover its liquidity demands during that time.

⁸ While interest income earned by OCC from its bank account at the Federal Reserve would be passed on to its Clearing Members, OCC anticipates that it would charge a cash management fee to cover associated costs (*i.e.*, administrative and similar costs). OCC would file a separate proposed rule change with the Commission, subject to receiving all necessary regulatory approvals for the proposed changes described herein, prior to implementing any cash management fee

require each covered clearing agency, among other things, to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for operations and risk-management practices on an ongoing basis. As such, it is appropriate for the Commission to review advance notices for consistency with the objectives and principles for risk-management standards described in Section 805(b) of the Payment, Clearing and Settlement Supervision Act and the Clearing Agency Rules.

A. Consistency With Section 805(b) of the Payment, Clearing and Settlement Supervision Act

The Commission believes the Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Payment, Clearing and Settlement Supervision Act of promoting robust risk management, promoting safety and soundness, reducing systemic risks, and supporting the stability of the broader financial system.¹⁵

The Commission believes that the Cash Clearing Fund Requirement would enhance OCC's ability to manage its liquidity risk exposure, thereby promoting robust risk management. Similarly, the Commission believes that increasing the amount of cash, and therefore the overall amount of qualifying liquid resources, available to cover OCC's liquidity demands arising in stressed scenarios is consistent with promoting safety and soundness. Based on the analysis provided by OCC, the Commission believes that OCC's conclusion is reasonable, *i.e.*, that under certain stressed conditions as set forth in the analysis, the peak stressed liquidity demands of the largest clearing member could exceed the size of OCC's committed liquidity facilities. Moreover, the Commission understands that OCC is unable to rely on the fact that there will always be deposits of cash in the Clearing Fund sufficient to cover such demands because, under its current By-laws and Rules, there is no ability for OCC to ensure that a minimum amount of cash is maintained in the Clearing Fund at all times. Therefore, there is a risk that OCC could face liquidity shortfalls in the event of a default by a clearing member whose payment obligations exceed OCC's liquid

Commission granted covered clearing agencies a temporary exemption from compliance with Rule 17Ad-22(e)(3)(ii) and certain requirements in Rules 17Ad-22(e)(15)(i) and (ii) until December 31, 2017, subject to certain conditions. OCC is a "covered clearing agency" as defined in Rule 17Ad-22(a)(5).

¹⁵ 12 U.S.C. 5464(b).

resources. OCC determined to address this risk by proposing to establish the Cash Clearing Fund Requirement. Establishing the Cash Clearing Fund Requirement would provide OCC with more qualifying liquid resources, which, in turn, enhances OCC's ability to cover payment obligations that could arise in stressed conditions. Further, the proposal to give OCC the authority to temporarily increase the Cash Clearing Fund Requirement gives OCC additional means to address liquidity shortfalls in extreme scenarios.

The Commission also believes that the proposed changes are consistent with reducing systemic risks and supporting the stability of the broader financial system. OCC is the sole registered clearing agency for the U.S. listed options markets and a SIFMU. As such, it is important for OCC to implement measures that enhance its ability to manage risks that could cause a financial loss or settlement disruption and threaten the stability of the U.S. listed options markets and the broader financial system. The Commission believes that the proposed change is designed to enhance OCC's ability to continue to make timely settlement of payment obligations and otherwise service the U.S. options markets while in the midst of experiencing an extreme market event in the form of the default of up to two of its largest clearing members. As such, the Commission believes the proposed change is consistent with reducing systemic risks and supporting the stability of the broader financial system.

B. Consistency With Rules 17Ad-22(e)(7)(i), (iii), and (viii) Under the Exchange Act

The Commission further believes that the proposed change is consistent with the Covered Clearing Agency Standards, specifically Rule 17Ad-22(e)(7), which requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage its liquidity risk. This includes measuring, monitoring, and managing the covered clearing agency's settlement and funding flows on an ongoing and timely basis, as well as its use of intraday liquidity.¹⁶ The Division believes that the proposed change is consistent with several particular sub-parts of Rule 17Ad-22(e)(7), which require that OCC's liquidity risk management policies and procedures be reasonably designed to achieve the following:

¹⁶ 17 CFR 240.17Ad-22(e)(7).

- Maintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday 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 the covered clearing agency in extreme but plausible market conditions;¹⁷

- using the access to accounts and services at a Federal Reserve Bank or other relevant central bank, when available and where the board of directors of the covered clearing agency has determined that it would be practical to enhance its management of liquidity risk;¹⁸ and

- addressing foreseeable liquidity shortfalls that would not be covered by a covered clearing agency's liquid resources and seeking to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations.¹⁹

By proposing the Cash Clearing Fund Requirement, OCC has taken measures consistent with the standard in Rule 17Ad-22(e)(7)(i). OCC also represented that substantially all of OCC's Clearing Fund deposits consisting of cash would be held in an account established by OCC at a Federal Reserve Bank and further clarified that interest earned in such an account would be paid to its members on a specified basis. By proposing to use its access to accounts at a Federal Reserve Bank to support the maintenance of the Cash Clearing Fund Requirement, OCC has taken measures consistent with the standard in Rule 17Ad-22(e)(7)(iii) which provides for using access to a central bank account, where available and determined to be practical. Further, the proposed authority to temporarily increase the Cash Clearing Fund Requirement is intended to address a foreseeable liquidity shortfall and is therefore consistent with the requirement in Rule 17Ad-22(e)(7)(viii).

IV. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(G) of the Payment, Clearing and Settlement Supervision Act,²⁰ that the Commission *does not object* to Advance Notice (SR-OCC-2017-808) and that OCC is *authorized* to implement the proposed change.

By the Commission.

Brent J. Fields,
Secretary.

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¹⁷ 17 CFR 240.17Ad-22(e)(7)(i).

¹⁸ 17 CFR 240.17Ad-22(e)(7)(iii).

¹⁹ 17 CFR 240.17Ad-22(e)(7)(viii).

²⁰ 12 U.S.C. 5465(e)(1)(G).