17A(b)(3)(F) of the Act[8] and Rule 17Ad–22(e)(1) thereunder.[9]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.[10]

As noted above, the proposed rule changes would introduce provisions that support the operation of the settlement finality provisions of EU and UK law. These provisions ensure that transfer orders by a Clearing Participant that is domiciled in an EU member state or in the UK will be cleared even if that Clearing Participant enters into insolvency proceedings after the transfer order was entered into the system. As noted in more detail above, the proposed rule change would accomplish this by adopting key definitions relating to the Settlement Finality Laws, set out general principles relevant to implementation of the EU and UK settlement finality arrangements (such as participant acknowledgement of the applicability of the settlement finality rules to margin and collateral), specify timing that each transfer order becomes irrevocable for purposes of the relevant Settlement Finality Laws, circumstances under which transfer orders are deemed satisfied, and specify that Rules providing for default rights and remedies would constitute default rules, procedures and similar arrangements as defined for purposes of relevant EU and UK law, including EMIR, UK EMIR, and the Settlement Finality Laws.

The Commission believes that these proposed rule changes, while not changing any of the existing default rights or remedies of ICC but rather by adopting explicit provisions relating to settlement finality of transfer orders of Clearing Participants in insolvency, will help support the payment and transfer of margin and collateral and thus the prompt and accurate clearance and settlement of securities transactions by ensuring that its rules facilitate explicit reference and participant awareness and acknowledgement of the applicability of EU and UK Settlement Finality Laws.

For these reasons, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.[11]

B. Consistency With Rule 17Ad–22(e)(1)

Rule 17Ad–22(e)(1) requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed, as applicable, to provide for a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[12]

As noted above, ICC proposes to rely on provisions of the Settlement Finality Laws regulations that provide additional support for the enforceability of the ICC's default rights and remedies. For example, under the Settlement Finality Directive, transfer orders and related netting arrangements are enforceable, even in the event of insolvency proceedings against a participant. The Commission believes that by proposing to align key definitions and rules to the Settlement Finality Laws as noted above and by requiring relevant Clearing Participants to comply with and acknowledge the settlement finality provisions, the proposed rule changes would provide a well-founded and clear legal basis for ICC to enforce its clearing rules during an insolvency of a Clearing Participant domiciled in the EU or the UK.

For these reasons, the Commission believes that the proposed rule changes are consistent with Rule 17Ad–22(e)(1).[13]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[14] and Rule 17Ad–22(e)(1) hereunder.[15]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[16] that the proposed rule change (SR–ICC–2022–012), be, and hereby is, approved.[17]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19348 Filed 9–7–22; 8:45 am]

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[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22(e)(1).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad–22(e)(1).

[13] 17 CFR 240.17Ad–22(e)(1).

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 17 CFR 240.17Ad–22(e)(1).

[16] 15 U.S.C. 78s(b)(2).

[17] 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).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95670; File No. SR–OCC–2022–803]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice Related to an Expansion of The Options Clearing Corporation's Non-Bank Liquidity Facility Program as Part of Its Overall Liquidity Plan

September 2, 2022.

I. Introduction

On July 7, 2022, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–OCC–2022–803 (''Advance Notice'') pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'')[1] and Rule 19b–4(n)(1)(i)[2] under the Securities Exchange Act of 1934 (''Exchange Act'')[3] in connection with a proposed change to its operations to expand capacity under OCC's program for accessing additional committed sources of liquidity that do not increase the concentration of OCC's counterparty exposure (''Non-Bank Liquidity Facility'') as part of OCC's overall liquidity plan.[4] The Advance Notice was published for public comment in the **Federal Register** on July 26, 2022.[5] The Commission has received comments regarding the changes proposed in the Advance Notice.[6] The Commission is hereby providing notice of no objection to the Advance Notice.

II. Background[7]

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,

[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] *See* Notice of Filing, *infra* note 5, at 87 FR 44477.

[5] *See* Exchange Act Release No. 95327 (Jul. 20, 2022), 87 FR 44477 (Jul. 26, 2022) (File No. SR–OCC–2022–803) (''Notice of Filing'').

[6] Comments on the Advance Notice are available at *https://www.sec.gov/comments/sr-occ-2022-803/srocc2022803.htm.*

[7] Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at *https://www.theocc.com/about/publications/bylaws.jsp.*

related to that member's clearing 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 facilities to increase OCC's access to cash to manage a member default.[8]

OCC's liquidity plan already provides access to a diverse set of funding sources, including banks (*i.e.,* OCC's syndicated credit facility),[9] the Non-Bank Liquidity Facility program (defined above),[10] and Clearing Members' Clearing Fund Cash Requirement.[11] OCC currently maintains $8 billion in qualifying liquid resources,[12] consisting of $5 billion of required Clearing Fund cash contributions, $2 billion in the syndicated bank credit facility, and $1 billion in the Non-Bank Liquidity Facility. OCC intends to increase such resources by $2.5 billion to a new total of $10.5 billion. OCC's proposed expansion of its liquidity plan includes several components: (1) creating a new committed repurchase facility with a commercial bank counterparty (''Bank Repo Facility'');[13] (2) expanding OCC's existing Non-Bank Liquidity Facility program;[14] (3) expanding OCC's existing syndicated credit facility; and (4) establishing a target for the aggregate amount of all external liquidity resources (*i.e.,* the syndicated credit facility, Bank Repo Facility and the Non-Bank Liquidity Facility).[15] The Advance Notice concerns the second component described above, namely, a change to OCC's operations to expand its Non-Bank Liquidity Facility program.[16]

Under OCC's existing Non-Bank Liquidity Facility program, OCC maintains a series of arrangements to access cash in exchange for Government securities (''Eligible Securities'') deposited by Clearing Members in respect of their Clearing Fund requirements to meet OCC's settlement obligations. Currently, the aggregate amount OCC may seek through the Non-Bank Liquidity Facility program is limited to $1 billion.[17] Through this Advance Notice, OCC is proposing to remove the $1 billion funding limit and increase the capacity of its Non-Bank Liquidity Facility to an amount to be determined by OCC's Board from time to time, based on OCC's liquidity needs at the time and a number of other factors.[18] Instead of retaining the $1 billion funding limit for the Non-Bank Liquidity Facility program, OCC proposes to establish a target across all external liquidity resources of at least $3 billion, which is the current aggregate amount of external liquidity.[19] OCC is not, as part of this Advance Notice, requiring its members or other market participants to provide additional or different collateral to OCC. Rather, the purpose of the proposal is to provide OCC with increased capacity 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.[20]

With respect to OCC's overall liquidity plan, the Non-Bank Liquidity Facility program reduces the concentration of OCC's counterparty exposure by diversifying its base of liquidity providers among banks and non-bank, non-Clearing Member institutional investors, such as pension funds or insurance companies.

The currently approved Non-Bank Liquidity Facility consists of two parts: a Master Repurchase Agreement (''MRA''), and confirmations with one or more institutional investors, which contain certain individualized terms and conditions of transactions executed between OCC, the institutional investors, and their agents. The MRA is structured so that the buyer (*i.e.,* the institutional investor) would purchase Eligible Securities from OCC from time to time.[21] OCC, the seller, would transfer Eligible Securities to the buyer in exchange for a buyer payment 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 from OCC to the buyer, where the funds would be equal to the outstanding Purchase Price plus the accrued and unpaid price differential (together, ''Repurchase Price'').

The confirmations establish tailored provisions of repurchase transactions permitted under the Non-Bank Liquidity Facility that are designed to reduce concentration risk and promote certainty of funding and operational effectiveness based on the specific needs of a party. For example, OCC would only enter into confirmations with an institutional investor that is not a Clearing Member or affiliated bank, such as a pension fund or an insurance company, in order to allow OCC to access stable and reliable sources of funding without increasing the concentration of its exposure to counterparties that are affiliated banks, broker-dealers, or futures commission merchants. In addition, any such institutional investor is obligated to enter repurchase transactions even if OCC experiences a material adverse

[8] *See* Notice of Filing, 87 FR at 44477.

[9] *See* Exchange Act Release No. 88971 (May 28, 2020), 85 FR 34257 (Jun. 3, 2020) (File No. SR–OCC–2020–804).

[10] *See* Exchange Act Release No. 89039 (Jun. 10, 2020), 85 FR 36444 (Jun. 16, 2020) (File No. SR–OCC–2020–803) (''Notice of No Objection to 2020 Advance Notice''); Exchange Act Release No. 76821 (Jan. 4, 2016), 81 FR 3208 (Jan. 20, 2016) (File No. SR–OCC–2015–805) (''Notice of No Objection to 2015 Advance Notice''); Exchange Act Release No. 73979 (Jan. 2, 2015), 80 FR 1062 (Jan. 8, 2015) (File No. SR–OCC–2014–809) (''Notice of No Objection to 2014 Advance Notice'').

[11] *See* OCC Rule 1002.

[12] *See* 17 CFR 240.17Ad-22(a)(14) (defining qualifying liquid resources).

[13] In a separate advance notice, OCC is proposing to enter a new MRA with a commercial bank counterparty. *See* Exchange Act Release No. 95326 (Jul. 20, 2022), 87 FR 44457 (Jul. 26, 2022) (File No. SR–OCC–2022–802).

[14] *See* Notice of Filing, 87 FR at 44477.

[15] As discussed below, OCC would be required to file an advance notice with the Commission if it were to seek to reduce the commitments under the Non-Bank Liquidity Facility so as to reduce external liquidity below the $3 billion target.

[16] The third and fourth components of OCC's proposed expansion of its liquidity plan are briefly discussed below.

[17] In 2020, OCC set the aggregate amount it may seek through the Non-Bank Liquidity Facility program to an amount up to $1 billion. *See* Notice of No Objection to 2020 Advance Notice, 85 FR at 36446. $1 billion is the same as the aggregate value established at the inception of the Non-Bank Liquidity Facility program. *See* Notice of No Objection to 2014 Advance Notice, 80 FR at 1064 & n.11. In 2015, OCC filed an advance notice that set an aggregate value of at least $1 billion and up to $1.5 billion. *See* Notice of No Objection to 2015 Advance Notice, 81 FR at 3208.

[18] OCC's Board has authorized OCC to seek up to an additional $2.5 billion in external liquidity.

[19] *See* Notice of Filing, 87 FR at 44479.

[20] *See* OCC Rule 1006(f)(1)(A). 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) (File No. SR–OCC–2021–014).

[21] OCC would use Eligible 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 use these sources to obtain funds from third parties through securities repurchases. The officers who may exercise this authority include the Executive Chairman, Chief Executive Officer, and Chief Operating Officer.

change,[22] funds must be made available to OCC within 60 minutes of OCC's delivering Eligible Securities, and the institutional investor is not permitted to rehypothecate purchased securities.[23] Additionally, the confirmations set forth the term and maximum dollar amounts of the transaction permitted under the MRA.

In 2020, OCC set the aggregate amount it may seek through the Non-Bank Liquidity Facility program to an amount of up to $1 billion.[24] OCC has since secured commitments from multiple pension funds in an aggregate amount of $1 billion. Since setting and securing commitments up to that aggregate commitment limit, OCC has experienced an increase in its stressed liquidity demands. Under OCC's Liquidity Risk Management Framework (''LRMF''), OCC performs daily liquidity stress testing to assess its Base Liquidity Resources [25] and Available Liquidity Resources [26] against OCC's liquidity risk tolerance (''Adequacy Scenarios''). Based in part on the results of this stress testing, OCC has periodically adjusted Clearing Member's Clearing Fund Cash Requirement to ensure that OCC maintains sufficient liquidity resources to cover its liquidity risk exposures at all times.[27] Through this Advance Notice OCC proposes a change to its Non-Bank Liquidity Facility program to give OCC greater capacity to source liquidity from its non-bank liquidity providers as needed.

The Proposed Change

In order to give OCC greater capacity to source liquidity from external liquidity providers as needed, OCC would modify the Non-Bank Liquidity Facility program to remove the aggregate commitment limit of $1 billion, identified in the 2020 advance notice.[28] OCC proposes that its Board of Directors (''Board'') set, by resolution and from time to time, the level of aggregate commitments under the program to ensure that OCC maintains sufficient liquidity resources to cover its liquidity risk exposures at all times.[29]

OCC's Board has authorized OCC to seek up to an additional $2.5 billion in external liquidity, including through the Non-Bank Liquidity Facility, which would give OCC access to a total of $5.5 billion in external liquidity.[30] For the additional $2.5 billion, OCC expects that it will source $1.5 billion from bank counterparties and $1 billion under the Non-Bank Liquidity Facility. In the event that OCC is unable to obtain the full $1.5 billion from its bank counterparties, however, OCC would source the full $2.5 billion under the Non-Bank Liquidity Facility program.[31]

Removing the present $1 billion funding limit to the Non-Bank Liquidity Facility program would remove one of the specified terms that could require OCC to file an advance notice.[32] Consistent with the proposal to establish a target for external liquidity, and drawing from applicable conditions for filing advance notices with respect to renewals of OCC's syndicated credit facility and proposed Bank Repo Facility, OCC would submit another advance notice to execute individual commitments under the Non-Bank Liquidity Facility only if: (1) OCC should seek to execute a commitment at a level that would have the effect of reducing total external liquidity below the target of $3 billion; (2) OCC should seek to change the terms and conditions of the MRA or commitments thereunder in a manner that materially affects the nature or level of risk presented by OCC; [33] or (3) OCC should seek to execute a commitment with a counterparty that has experienced a negative change to its credit profile or a material adverse change since OCC last executed a commitment with that counterparty. Consistent with another prior advance notice, OCC may consider changes to (1) liquidity providers, provided that any new counterparty is subject to a credit review under OCC's Third-Party Risk Management Framework; [34] and (2) term lengths consistent with those approved by OCC's Board, considering factors including, but not limited to, the initial committed length of the term, market conditions, and OCC's liquidity needs.[35] OCC would not consider additional counterparties or different commitment terms within these specified parameters as materially altering the terms and conditions of MRAs or commitments

[22] A ''material adverse change'' is typically defined contractually as a change that would have a materially adverse effect on the business or financial condition of a company.

[23] *See* Notice of No Objection to 2014 Advance Notice, 80 FR at 1064.

[24] *See* Notice of No Objection to 2020 Advance Notice, 85 FR at 36446. $1 billion is the same as the aggregate value established at the inception of the Non-Bank Liquidity Facility program. *See* Notice of No Objection to 2014 Advance Notice, 80 FR at 1064 & n.11. In 2015, OCC filed an advance notice that set an aggregate value of at least $1 billion and up to $1.5 billion. *See* Notice of No Objection to 2015 Advance Notice, 81 FR at 3208.

[25] The LRMF defines ''Base Liquidity Resources'' to mean the amount of committed liquidity resources maintained at all times by OCC to meet its Cover 1 liquidity resource requirements under the applicable regulations. Base Liquidity Resources are comprised of qualifying liquid resources in the form of Clearing Fund cash deposited in respect of the Clearing Fund Cash Requirement and assets that are readily available and convertible into cash (*i.e.,* U.S. Government securities) through prearranged funding arrangements, such as the Non-Bank Liquidity Facility.

[26] The LRMF defines ''Available Liquidity Resources'' to include Base Liquidity Resources plus allowable Clearing Fund cash deposited in excess of the Clearing Fund Cash Requirement. Any Clearing Member request to substitute U.S. Government securities for cash deposits in excess of such Clearing Member's proportionate share of the Clearing Fund Cash Requirement is subject to a two-day notice period. *See* OCC Rule 1002(a)(iv).

[27] In response to increased stressed liquidity demands in 2021, OCC exercised authority under OCC Rule 1002(a) to increase the Clearing Fund Cash Requirement from $3.5 billion to $4 billion in July 2021, and from $4 billion to $5 billion in October 2021.

[28] *See* Notice of No Objection to 2020 Advance Notice, 85 FR at 36446.

[29] In setting the level of aggregate commitments for the Non-Bank Liquidity Facility, the Board would consider factors including, but not limited to: (1) the size and make-up of the Clearing Fund; (2) the aggregate amount of OCC's other liquidity sources; and (3) changing market and business conditions.

[30] OCC performs daily liquidity stress testing to assess its liquidity resources. *See* Notice of Filing, 87 FR at 44478. Based on the results of such stress testing, OCC increased Clearing Fund requirements twice in 2021. *Id.* OCC management recommended that OCC increase the capacity of its Non-Bank Liquidity Facility, which would provide OCC flexibility in how it increases liquidity resources in response to stress testing. *See* Confidential Exhibit 3 to File No. SR–OCC–2022–803.

[31] *See* Notice of Filing, 87 FR at 44479.

[32] The facility is designed to allow OCC to seek individual commitments from counterparties on specified terms. *See e.g.,* Exchange Act Release No. 89039 (Jun. 10, 2020), 85 FR 36444, 36446 (Jun. 16, 2020) (File No. SR–OCC–2020–803) (stating that OCC may negotiate individual commitments within an aggregate commitment limit). In 2015, the Commission acknowledged that changes to specified terms (*e.g.,* funding levels) would require the further submissions to the Commission for review. *See* Exchange Act Release No. 76821 (Jan. 4, 2016), 81 FR 3208, 3209 (Jan. 20, 2016) (File No. SR–OCC–2015–805). The terms of the current facility, which OCC implemented the terms of its current facility in 2020 following publication of a Notice of No Objection from the Commission, set an aggregate commitment amount OCC may seek under the Non-Bank Repo Facility program at $1 billion so that OCC may negotiate individual commitment amounts, each less than $1 billion, with multiple counterparties. *See* Exchange Act Release No. 89039 (Jun. 10, 2020), 85 FR 36444, 36446 (Jun. 16, 2020) (File No. SR–OCC–2020–803).

[33] 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.

[34] *See* Third-Party Risk Management Framework, *available at* Documents & Archives, *https://www.theocc.com/Company-Information/Documents-and-Archives.* While credit monitoring of insurance companies that may become liquidity providers would necessarily be different than credit monitoring of existing pension fund counterparties, any new liquidity would be subject to the same credit review for counterparties of the same type.

[35] *See* Notice of No Objection to 2020 Advance Notice, 85 FR at 36445–46.

under the Non-Bank Liquidity Facility program.

Provided that none of the conditions under which OCC would file a subsequent advance notice are present, OCC would consider a new or renewed commitment as being on substantially the same terms and conditions as existing commitments under the Non-Bank Liquidity Facility program, such that executing such commitments would not be subject to the requirement to file an advance notice filing pursuant to Section 806(e)(1) of the Clearing Supervision Act.[36] Conversely, a new commitment or renewal under different conditions would necessitate OCC providing advance notice to the Commission for consideration.

III. Commission Findings and Notice of No Objection

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the stated purpose of the Clearing Supervision Act is instructive: to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities (''SIFMUs'') and strengthening the liquidity of SIFMUs.[37]

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe regulations containing risk management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency.[38] Section 805(b) of the Clearing Supervision Act provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a):[39]

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

Section 805(c) provides, in addition, that the Commission's risk management standards may address such areas as risk management and default policies and procedures, among other areas.[40]

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act (the ''Clearing Agency Rules'').[41] The Clearing Agency Rules require, among other things, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk management practices on an ongoing basis.[42] As such, it is appropriate for the Commission to review advance notices against the Clearing Agency Rules and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act. As discussed below, the Commission believes the changes proposed in the Advance Notice are consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,[43] and in the Clearing Agency Rules, in particular Rule 17Ad-22(e)(7).[44]

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

The Commission believes that the proposal contained in OCC's Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act. Specifically, as discussed below, the Commission believes that the changes proposed in the Advance Notice are consistent with promoting robust risk management, promoting safety and soundness, reducing systemic risks, and supporting the stability of the broader financial system.[45]

The Commission believes that the proposed changes are consistent with promoting robust risk management, in particular the management of liquidity risk presented to OCC. As a central counterparty and a SIFMU,[46] it is imperative that OCC have adequate resources to be able to satisfy liquidity needs arising from its settlement obligations, including in the event of a Clearing Member default.[47] To support this objective, OCC proposes to remove the $1 billion aggregate commitment limit it may seek through the Non-Bank Liquidity Facility program, so that OCC's Board could adjust the level of aggregate commitments under the program to ensure that OCC maintains sufficient liquidity resources to cover its liquidity risk exposures.[48] The Commission believes that approving these changes would give OCC greater flexibility to obtain additional liquidity resources in the form of commitments under the Non-Bank Liquidity Facility. Therefore, the Commission believes that the Advance Notice could increase OCC's access to liquidity resources, which in turn would strengthen OCC's overall ability to manage its liquidity risk exposures. As such, the Commission believes that the proposal would promote robust liquidity risk management at OCC consistent with Section 805(b) of the Clearing Supervision Act.[49]

The Commission also believes that the changes proposed in the Advance Notice are consistent with promoting safety and soundness, reducing systemic risks, and promoting the stability of the broader financial system. By removing the $1 billion aggregate commitment limit, OCC will be in a position to increase the aggregate commitments of the Non-Bank Liquidity Facility program to $2 billion.[50] Allowing OCC to increase aggregate commitments under the facility would, in turn, reduce the likelihood that OCC would have insufficient financial resources to address liquidity demands arising out of a Clearing Member default. Further, the Commission believes that, to the extent the proposed changes are consistent with promoting OCC's safety and soundness, they are also consistent with supporting the stability of the broader financial system. OCC has been designated as a SIFMU, in part, because its failure or disruption could increase the risk of significant liquidity or credit problems spreading among financial institutions or markets.[51] The Commission believes that the proposed changes would support OCC's ability to

[36] 12 U.S.C. 5465(e)(1).

[37] *See* 12 U.S.C. 5461(b).

[38] 12 U.S.C. 5464(a)(2).

[39] 12 U.S.C. 5464(b).

[40] 12 U.S.C. 5464(c).

[41] 17 CFR 240.17Ad–22. *See* Exchange Act Release No. 68080 (Oct. 22, 2012), 77 FR 66220 (Nov. 2, 2012) (S7–08–11). *See also* Covered Clearing Agency Standards, 81 FR 70786. The Commission established an effective date of December 12, 2016 and a compliance date of April 11, 2017 for the Covered Clearing Agency Standards. OCC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5).

[42] 17 CFR 240.17Ad–22.

[43] 12 U.S.C. 5464(b).

[44] 17 CFR 240.17Ad–22(e)(7).

[45] 12 U.S.C. 5464(b).

[46] *See* Financial Stability Oversight Council (''FSOC'') 2012 Annual Report, Appendix A, available at *https://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.*

[47] *See* Notice of No Objection to 2014 Advance Notice, 80 FR at 1065.

[48] As proposed, the facility would not limit the total aggregate commitments OCC may seek. As a practical matter, OCC expressed its intent to source approximately $1 billion in additional liquidity under the Non-Bank Liquidity Facility following removal of the aggregate commitment limit. *See* Notice of Filing, 87 FR at 44479.

[49] 12 U.S.C. 5464(b).

[50] As noted above, OCC intends to expand its aggregate external liquidity by $2.5 billion. While OCC intends to seek $1 billion of that amount under the Non-Bank Liquidity Facility, the removal of the commitment limit would allow OCC to seek additional commitments if it is unable to obtain access to external liquidity through other facilities.

[51] *See* FSOC 2012 Annual Report, Appendix A, *https://home.treasury.gov/system/files/261/here.pdf* (last visited Mar. 17, 2021).

continue providing services to the options markets by addressing losses and shortfalls arising out of the default of a Clearing Member. OCC's continued operations would, in turn, help support the stability of the financial system by reducing the risk of significant liquidity or credit problems spreading among market participants that rely on OCC's central role in the options market. As such, the Commission believes the proposed changes are consistent with promoting safety and soundness, reducing systemic risks, and promoting the stability of the broader financial system.[52]

The Commission received comments asserting that the proposal would put public retirement funds at risk to cover investing choices made by Clearing Members.[53] The Commission has carefully considered the risk to investors' retirement funds relative to the benefits of expanding the Non-Bank Liquidity Facility. Given that the Non-Bank Liquidity Facility has included non-bank institutional investors such as pension funds and insurance companies among its liquidity providers since its implementation in 2015, and has retained substantially the same terms throughout, the Commission does not believe that the proposed expansion to the Non-Bank Liquidity Facility would introduce new risks to OCC's counterparties.[54] Further, the terms of the facility would require OCC to provide Eligible Securities (*e.g.,* Treasuries) subject to haircuts negotiated by OCC and its counterparties to address the potential credit risk to OCC's counterparties. Moreover, the terms of the facility would require OCC to pay the costs of any covering transactions required if OCC were to fail to perform its obligation. As described above, the expansion of commitments in the Non-Bank Liquidity Facility would reduce the likelihood that OCC would have insufficient financial resources resulting from a Clearing Member default. Taken together, the Commission believes that the terms of the agreement to protect OCC and its counterparties, combined with the reduced likelihood of OCC's failure to manage a default, would in fact promote the safety and soundness of the U.S. markets.

The Commission also received comments asserting that ''changing the rules regarding advance notice'' (likely referring to OCC not having to file an advance notice at renewal) has ''no value to the public.'' [55] The Commission has carefully considered the risk of allowing new or renewed commitments under the terms of Non-Bank Liquidity Facility without requiring additional advance notice filings from OCC. Given that such additional commitments would only be permitted without an advance notice if executed on substantially similar terms as the current Non-Bank Liquidity Facility, to which the Commission has previously not objected, the Commission does not believe that such additional commitments would necessarily present a material change to the risks that OCC presents. Any change to the Non-Bank Liquidity Facility that could materially affect the nature or level of risk posed by OCC would necessitate an advance notice filing.[56]

Accordingly, and for the reasons stated above, the Commission believes the changes proposed in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.[57]

B. Consistency With Rule 17Ad–22(e)(7) Under the Exchange Act

Rule 17Ad–22(e)(7)(ii) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum, holding qualifying liquid resources sufficient to meet the minimum liquidity resource requirement under Rule 17Ad–22(e)(7)(i) [58] in each relevant currency for which the covered clearing agency has payment obligations owed to clearing members.[59] For any covered clearing agency, ''qualifying liquid resources'' means assets that are readily available and convertible into cash through prearranged funding arrangements, such as committed arrangements without material adverse change provisions, including, among others, repurchase agreements.[60]

The Non-Bank Liquidity Facility provides OCC with prearranged commitments to convert assets into cash even if OCC experiences a material adverse change, and the Commission believes that the Non-Bank Liquidity Facility provides OCC access to qualifying liquid resources to the extent that OCC has sufficient collateral to access the facility.[61] The Commission believes, therefore, that the proposed changes—to remove the existing aggregate commitment limit, and to allow the OCC Board to increase the Non-Bank Liquidity Facility program aggregate commitment levels as needed to maintain sufficient liquidity—will further enhance OCC's ability to hold qualifying liquid resources to meet its liquidity resource requirements, consistent with the requirements of Rule 17Ad–22(e)(7)(ii) under the Exchange Act.[62]

The Commission received comments raising concerns about the inability of liquidity providers to deny funding in

[52] 12 U.S.C. 5464(b).

[53] Comments on the Advance Notice are available at *https://www.sec.gov/comments/sr-occ-2022-803/srocc2022803.htm.*

[54] When OCC proposed the first iteration of the Non-Bank Liquidity Facility, it acknowledged that, like any liquidity source, it would involve certain risks. *See* Exchange Act Release No. 73726 (Dec. 3, 2014), 79 FR 73116, 73119 (Dec. 9, 2014) (File No. SR–OCC–2014–809). Upon review of the terms of the facility, the Commission stated its belief that the proposal should promote robust risk management, promote safety and soundness in the marketplace, reduce systemic risks, and support the stability of the broader financial system by giving OCC access to additional committed liquidity that will help OCC meet its settlement obligations in a timely manner, while also limiting the exposure that OCC has to its counterparties. *See* Exchange Act Release No. 73979 (Jan. 2, 2015), 80 FR 1062, 1065 (Jan. 8, 2015) (File No. SR–OCC–2014–809).

[55] Comments on the Advance Notice are available at *https://www.sec.gov/comments/sr-occ-2022-803/srocc2022803.htm.*

[56] OCC would submit another advance notice only if: (1) OCC should seek to execute a commitment at a level that would have the effect of reducing external liquidity below the target of $3 billion; (2) OCC seeks to change the terms and conditions of the agreements underlying the facility or commitments thereunder in a manner that materially affects the nature or level of risk presented by OCC; or (3) OCC seeks to execute a commitment with a counterparty that has experienced a negative change to its credit profile or a material adverse change since OCC last executed a commitment with that counterparty.

[57] 12 U.S.C. 5464(b).

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

[59] 17 CFR 240.17Ad–22(e)(7)(ii).

[60] 17 CFR 240.17Ad–22(a)(14)(ii)(3).

[61] OCC would use Eligible Securities that are included in Clearing Fund contributions by Clearing Members (separate from any required cash contributions to the Clearing Fund) and margin deposits of any Clearing Member that has been suspended by OCC for the repurchase arrangements. *See* Notice of Filing, 85 FR at 31235 n.9.

[62] 17 CFR 240.17Ad–22(e)(7)(ii).

the event of a material adverse change.[63] As noted above, under Rule 17Ad–22(a)(14), committed arrangements, such as repurchase agreements, are only qualifying liquid resources where such agreements do not include material adverse change provisions.[64] Moreover, the non-banks are voluntarily participating in the facility. These liquidity providers may consider the benefits and costs of participation, including the adverse change provision, before determining that their participation in the facility would be preferable to alternative investments and would benefit their shareholders and beneficiaries.

Commenters also raised concerns regarding the speed with which a counterparty would be required to provide funding.[65] As discussed above, a fundamental attribute of liquidity resources is that OCC can quickly access liquidity in the event of a Clearing Member default or market disruption. By necessity, funds must be made available to OCC within 60 minutes of OCC's delivering Eligible Securities, and the institutional investor is not permitted to rehypothecate purchased securities. Any requirement to allow liquidity providers to deny or delay funding would potentially delay OCC's access to liquidity resources, which could negatively affect the safety and soundness of the U.S. markets.

Accordingly, the Commission believes that the changes proposed in the Advance Notice are consistent with Rule 17Ad–22(e)(7) under the Exchange Act.[66]

IV. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission does not object to Advance Notice (SR–OCC–2022–803) and that OCC is authorized to implement the proposed change as of the date of this notice.

[63] Comments on the Advance Notice are available at *https://www.sec.gov/comments/sr-occ-2022-803/srocc2022803.htm.*

[64] 17 CFR 240.17Ad–22(a)(14)(ii)(A).

[65] Comments on the Advance Notice are available at *https://www.sec.gov/comments/sr-occ-2022-803/srocc2022803.htm.*

[66] 17 CFR 240.17Ad–22(e)(7).

By the Commission.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19417 Filed 9–7–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95657; File No. SR–CBOE–2022–038]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Approving a Proposed Rule Change To Amend CBOE Rule 5.32 With Respect to the Handling of Cancel/Replace Messages

September 1, 2022.

I. Introduction

On July 7, 2022, Cboe Exchange, Inc. (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish that a cancel/replace message received for an order already resting on the Exchange's order book will cause such resting order to lose its original priority position, subject to certain exceptions. The proposed rule change was published for comment in the **Federal Register** on July 26, 2022.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Summary of the Proposal

The Exchange proposes to amend CBOE Rule 5.32(e) to describe the impact on priority of a ''no-change'' order[4] (*i.e.,* an order submitted to cancel or replace a resting order that does not change any terms of an order) and of a cancel/replace message that does not change the price or size of a resting order but changes another term of an order. CBOE Rule 5.32(e) describes whether a resting order's priority position may change if it is modified with a cancel/replace message. Specifically, current CBOE Rule 5.32(e) states if the price of an order is changed, the order loses position and is placed in a priority position as if the Exchange's system (''System'') received the order at the time the order was changed. If the quantity of an order is decreased, it retains its priority position. If the quantity of an order is increased, it loses its priority position and is placed in a priority position as if the System received the order at the time the quantity of the order is increased.

The Exchange explains, however, that CBOE Rule 5.32(e) is currently silent regarding how the System handles a cancel/replace message comprised of a no-change order or an order that changes terms other than price and size.[5] The Exchange further represents that it recently determined that the System does not handle all no-change orders and messages uniformly with respect to how they affect resting orders. Specifically, the Exchange explains that currently, when the System receives a no-change order, the resting order would lose its priority position; however, if the System receives a no-change bid or offer in a bulk message, the resting bid or offer would not lose its priority position.[6]

The Exchange proposes to amend CBOE Rule 5.32(e) so that it states as follows: if a User submits a cancel/replace message for a resting order, regardless of whether the cancel/replace message modifies any terms of the resting order, the order loses its priority position and is placed in a priority position based on the time the System receives the cancel/replace message, unless the User only (1) decreases the quantity of an order (as is currently set forth in the Rules), (2) modifies the Max Floor (if a Reserve Order), or (3) modifies the stop price (if a Stop or Stop-Limit order), in which case the order retains its priority position.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 95328 (July 20, 2022), 87 FR 44438 (''Notice'').

[4] In this context, the term ''order'' includes bids and offers submitted in bulk messages. A bulk message means a single electronic message a user submits with an M (Market-Maker) capacity to the Exchange in which the User may enter, modify, or cancel up to an Exchange-specified number of bids and offers. *See* CBOE Rule 1.1 (definition of bulk message, which provides that the System handles a bulk message bid or offer in the same manner as it handles an order or quote, unless the Rules specify otherwise).

[5] *See* Notice, *supra* note 3, at 44439.

[6] *See id.*