

All submissions should refer to file number SR–CboeBZX–2023–061. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2023–061 and should be submitted on or before September 6, 2023.

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

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98107; File No. SR–OCC–2023–005]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1, by the Options Clearing Corporation Concerning Amendment of Its Recovery and Orderly Wind-Down Plan

August 10, 2023.

I. Introduction

On June 7, 2023, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR–OCC–2023–005 pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”) ¹ and Rule 19b–4 ² thereunder. The proposed rule change would amend OCC’s Recovery and Orderly Wind-Down Plan (“RWD Plan”) by: (i) removing certain supporting information; (ii) incorporating references to certain documents and materials; (iii) implementing updates and amendments to all six chapters of the proposed Plan; and (iv) updating and revising the hypothetical stress scenarios set forth in Appendix A of the proposed RWD Plan. The proposed rule change was published for public comment in the **Federal Register** on June 27, 2023.³ The Commission has received comments regarding the proposed rule change.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Securities Exchange Act Release No. 97785 (June 21, 2023), 88 FR 41695 (June 27, 2023) (File No. SR–OCC–2023–005) (“Notice of Filing”).

⁴ Comments on the Proposed Rule Change are available at <https://www.sec.gov/comments/sr-occ-2023-005/srocc2023005.htm>. The commenters raised a concern regarding the confidentiality of certain exhibits. *Id.* OCC asserted that the exhibits to the filing were entitled to confidential treatment because they contained commercial and financial information that is not customarily released to the public and is treated as the private information of OCC. Under Section 23(a)(3) of the Exchange Act, the Commission is not required to make public statements filed with the Commission in connection with a proposed rule change of a self-regulatory organization if the Commission could withhold the statements from the public in accordance with the Freedom of Information Act (“FOIA”), 5 U.S.C. 552. 15 U.S.C. 78w(a)(3). The Commission has reviewed the documents for which OCC requests confidential treatment and concludes that they could be withheld from the public under the FOIA. FOIA Exemption 4 protects confidential commercial or financial information. 5 U.S.C. 552(b)(4). Under Exemption 4, information is confidential if it “is both customarily and actually treated as private by its owner and provided to government under an assurance of privacy.” *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356, 2366 (2019).

On July 28, 2023, OCC amended SR–OCC–2023–005 to correct an error in the narrative summary of proposed rule changes (“Partial Amendment No. 1”). Specifically, the narrative, as filed on June 7, 2023, stated that OCC proposed to remove a section of the RWD Plan describing OCC’s Risk Management Framework. However, the relevant text was already removed from the RWD Plan as part of a recent filing.⁵ The amendment did not change the purpose or basis of the proposed rule change. The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons, and, for the reasons discussed below, is approving the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter, the “proposed rule change”), on an accelerated basis.

II. Background

OCC is a central counterparty (“CCP”), which means it interposes itself as the buyer to every seller and seller to every buyer for financial transactions. As the CCP for the listed options markets in the U.S., as well as for certain futures, OCC is exposed to certain risks arising from its relationships with its members as well as general business risk. OCC maintains various tools for managing such risks.⁶ OCC also maintains tools to manage the risk of liquidity shortfalls and credit losses that exceed its routine risk management tools.⁷ OCC describes such tools and the governance related to them in its RWD Plan.⁸

Over the years, OCC has made substantive and non-substantive

In its requests for confidential treatment, OCC stated that it has not disclosed the confidential exhibits to the public, and the information is the type that would not customarily be disclosed to the public. In addition, by requesting confidential treatment, OCC had an assurance of privacy because the Commission generally protects information that can be withheld under Exemption 4. Thus, the Commission has determined to accord confidential treatment to the confidential exhibits.

⁵ Securities Exchange Act Release No. 96566 (Dec. 22, 2022), 87 FR 80207 (Dec. 29, 2022) (File No. SR–OCC–2022–010).

⁶ See e.g., Securities Exchange Act Release No. 96566 (Dec. 22, 2022), 87 FR 80207 (Dec. 29, 2022) (File No. SR–OCC–2022–010); Securities Exchange Act Release No. 87718 (Dec. 11, 2019), 84 FR 68992 (Dec. 17, 2019) (File No. SR–OCC–2019–010); and Securities Exchange Act Release No. 88029 (Jan. 24, 2020), 85 FR 5500 (Jan. 30, 2020) (File No. SR–OCC–2019–007).

⁷ See Securities Exchange Act Release No. 82351 (Dec. 19, 2017), 82 FR 61107 (Dec. 26, 2017) (File No. SR–OCC–2017–020). 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>.

⁸ See Securities Exchange Act Release No. 83918 (Aug. 23, 2018), 83 FR 44091 (Aug. 29, 2018) (File No. SR–OCC–2017–021) (Order approving the adoption of OCC’s RWD Plan).

¹⁸ 17 CFR 200.30–3(a)(12).

changes to the RWD Plan.⁹ With regard to the substance of the RWD Plan, OCC proposes to change the trigger events defined in the RWD Plan. With regard to recovery, the changes would focus the trigger events on OCC's ability to meet future obligations (as opposed to a focus on current resources). With regard to wind-down, the changes would clarify the Board's role in starting the wind-down process and provide flexibility to avoid triggering a wind-down where recovery is still a viable option.

OCC also proposes to make a series of non-substantive changes, including changes to improving the accuracy and consistency of information in the RWD Plan by moving dynamic, contextual information (e.g., annual volume data) out of the RWD Plan to a supporting document that could more easily be maintained as such information changes from time to time. Similarly, OCC proposes to strike language found in other OCC sources from the RWD Plan to avoid potential future inconsistencies across OCC's internal documentation. Further, OCC would update information and references in the RWD Plan that are currently out of date. Lastly, OCC proposes to streamline the hypothetical stress scenarios describing how OCC would employ its recovery and wind-down tools without affecting the substance covered in the scenarios.¹⁰

A. Trigger Events

Recovery Triggers. In its RWD Plan, OCC has identified events that would indicate OCC is facing an extreme stress event that potentially threatens OCC's viability, the occurrence of which would signal that OCC has entered into recovery (the "Recovery Trigger Events").¹¹ The RWD Plan currently defines a set of three such Recovery Trigger Events arising out of (i) credit

losses, (ii) liquidity shortfalls, and (iii) operational losses and disruption. OCC proposes to revise the credit and liquidity triggers and to separate the third trigger out into two separate triggers based on operational disruptions and general business losses.

The credit loss-Recovery Trigger change is merely a rephrasing of the current trigger clarify that it would be based on a 100 percent depletion of the pre-funded Clearing Fund resources. OCC proposes to change the liquidity shortfall Recovery Trigger to better align with OCC's Liquidity Risk Management Framework. The current trigger focuses on the inability to complete settlement within the time required. In contrast, the proposed trigger would focus on the potential inability to address foreseeable shortfalls.

For events not triggered by a member default, OCC proposes to replace the current trigger focused on loss and disruption into two separate triggers, one of which would be based on loss and the other on disruption. With regard to loss, OCC proposes to replace references to operational loss with references to broader general business losses. With regard to disruption, the trigger would continue to focus on the disruption of critical services. Both the general business loss and operational disruption triggers would focus on OCC having no reasonable expectation of timely return to business as usual (i.e., meeting minimum capital requirements or resumption of critical services).

Wind-Down Triggers. Similar to the Recovery Trigger Events, OCC has identified events that could jeopardize the viability of OCC's ability to recover, the occurrence of which would signal the need for OCC to initiate its Wind-Down Plan (Wind-Down Trigger Events). The RWD Plan currently defines four Wind-Down Trigger Events that relate to (i) an inability to comply with regulatory financial resource requirements; (ii) a loss of confidence by members; (iii) the sustained disruption of critical services; and (iv) modification or rescission of an emergency filed pursuant to Section 806(e)(2) of the Payment, Clearing, and Settlement Supervision Act.¹² To reduce the chance of initiating a wind-down where a successful recovery would still be possible, OCC proposes to replace the four Wind-Down Trigger Events with a single, flexible trigger that grants discretion to OCC's Board of Directors. The proposed trigger would rest on the Board's determination that OCC's recovery efforts have not been or are unlikely to be successful in returning

OCC to viability as a going concern. The revised approach would allow more flexible consideration of the facts and circumstances of a given event.

B. Changes for Consistency and Accuracy

As noted above, OCC is also proposing a set of non-substantive changes to the RWD Plan. Such changes (described further below) include the (i) relocation of context and background information from the Plan into a supplemental document; (ii) removal of duplicative information maintained elsewhere in OCC's documentation; (iii) updating of information in the plan that is out of date or inconsistent with current practices; and (iv) streamlining of hypothetical stress scenarios describing how OCC would employ its recovery and wind-down tools. OCC also proposes grammatical and technical edits throughout the entirety of the RWD Plan, such as modifying the use and location of certain defined terms for improved readability, using initial capitalization for term "Clearing Member" consistently throughout the document, deleting unnecessary words, and modifying tense for clarity.

1. RWD Plan Supporting Information

OCC's RWD Plan currently includes information related to OCC's operations, management structure, personnel, support functions, banking relationships, vendors, and key agreements. This supporting information provides background and context for parties that are reviewing the RWD Plan or using it as part of an actual recovery or wind-down event. OCC is proposing to move supporting information from the RWD Plan to a separate document (the "RWD Plan Supporting Information"). Placing such information in the RWD Plan Supporting Information would allow OCC to maintain the accuracy of such information without revising OCC's rules.¹³

The proposed rule change would move portions from the current RWD, such as significant portions of the existing "Business Overview" and "Management Structure" sections into the RWD Plan Supporting Information document.¹⁴ OCC would also move

¹³ OCC intends to review and update the RWD Plan Supporting Information twice a year, or more frequently as needed. See Notice of Filing, 88 FR at 41696.

¹⁴ OCC proposes to move the details of OCC's business overview to Section 2.1 ("Business Overview") of the RWD Plan Supporting Information, details of OCC's management structure and executives to Sections 2.2 ("Management

⁹ See e.g., Securities Exchange Act Release No. 90712 (Dec. 17, 2020), 85 FR 84050 (Dec. 23, 2020) (File No. SR-OCC-2020-013) (Order approving updates to OCC's RWD Plan to reflect changes to OCC's capital structure resulting from the disapproval of OCC's previously approved "Capital Plan" and the subsequent approval of OCC's "Capital Management Policy" and implementing changes identified during OCC's annual review of the RWD Plan).

¹⁰ OCC also proposes conforming changes throughout the plan as required by the changes described here (e.g., renumbering sections, fixing grammar).

¹¹ Once in recovery, OCC would likely look to apply its recovery tools, which include the ability of OCC to (i) levy assessments against non-defaulting members; (ii) receive voluntary payments from its non-defaulting members; (iii) allow non-defaulting members and customers to voluntarily extinguish certain positions; (iv) tear-up a defaulter's open positions; and (v) charge members a fee to replenish OCC's capital in response to certain non-default losses.

¹² See 12 U.S.C. 5465(e)(2).

background information about OCC's 12 support functions from the RWD Plan to the RWD Plan Supporting Information.¹⁵ The proposed rule change would also move information and data subject to regular change from the RWD Plan's description of OCC's clearing services to a similar section of the RWD Plan Supporting Information. Lastly, OCC proposes to move information about OCC's current settlement banks, custodian banks, letter-of-credit banks, vendors needed to support recovery and wind-down, and key agreements to be maintained, currently listed in several of the RWD Plan Appendices, to the RWD Plan Supporting Information document.¹⁶

2. Removal of Duplicative Information

OCC proposes to remove information from the RWD Plan to the extent OCC already maintains such information elsewhere. The purpose of removing duplicative information is to reduce the complexity of maintaining information that could lead to inconsistencies across multiple documents. For example, OCC proposes to replace financial information currently set forth in the RWD Plan with a link to the section of OCC's website that displays OCC's Annual Reports, which include OCC's audited financial statements, and a link to OCC's fee schedule, which depicts the Target Capital Requirement.¹⁷

Structure"), and details of its staffing to Section 2.3 ("People").

¹⁵ In the RWD Plan Supporting Information, Chapter 3, OCC would provide additional context on the Business Operations, Corporate Risk Management and Security Services Departments.

¹⁶ Specifically, OCC proposes to move information from current Appendices E, F, G, H, and J to the new RWD Plan Supporting Information document. Current Appendix E of the RWD Plan is a list of OCC's current settlement banks; current Appendix F is a list of OCC's current custodian banks; current Appendix G is a list of OCC's current letter-of-credit banks; and current Appendix H is a list of OCC's current vendors needed to support recovery and wind-down. OCC also intends to provide additional information about its Tier 1 vendors (*i.e.*, vendors that involve or materially support critical processes) in the RWD Plan Supporting Information. The information in these RWD Plan Appendices would be moved to Chapter 4 ("Interconnectedness") of the RWD Plan Supporting Information. Current Appendix J of the RWD Plan includes information on OCC's key agreements to be maintained with third-party products and services. This would be moved to Chapter 5 ("Key Agreements to be Maintained") of the RWD Plan Supporting Information. This new Chapter 5 itself does not list the agreements with the third-party products and services, but provides a link to OCC's internal SharePoint website.

¹⁷ Current Appendix D of the RWD Plan would be removed altogether. OCC proposes to add the link to OCC's annual reports and audited financial statements to current section 2.6 ("Financial Summary").

3. Updating of Inaccurate or Outdated Information

OCC also proposes to update text in the RWD Plan that was either inaccurate in its original form, or is no longer consistent with OCC's current practices. For example, in Chapter 1 of the Plan, OCC proposes to change the language related to expense assumptions during a resolution process, to convey the intended meaning of the assumption more accurately.¹⁸ OCC proposes to update outdated descriptions of its services and facilities in Chapter 2 of the RWD Plan.¹⁹ In Chapter 3 of the Plan, OCC proposes to update the descriptions of its pricing and valuation services by adding detail on the processes and eliminating specific data that become outdated quickly because it is subject to frequent changes (*e.g.*, trading data from 2019, such as the average daily gross volume of options contracts cleared, the average daily gross value of premium exchanged, etc.). OCC also proposes removing a reference to letter of credit banks from Section 3.5 because letter of credit banks comprise less than 0.1 percent of margin pledged to OCC. Further, OCC proposes conforming changes describing critical support functions the document that would reflect OCC's internal employee reporting structure and to provide a more granular view into the departments that make up each support function. In Chapter 5 of the Plan, OCC proposes to update timing, cost, and employee assumptions to reflect the results of an internal review. OCC also proposes replacing a discussion of heightened capital requirements with discussion of increased financial reporting for members consistent with OCC's Rule 306 and 307.

Similar to the updates regarding current practice, OCC proposes to change how it describes its existing enhanced risk management tools (*e.g.*, margin and Clearing Fund collateral) in the RWD Plan.²⁰ For example, OCC proposes to clarify the inclusion of executive compensation as a component of its "skin in the game" consistent with current OCC Rule 1006(e)(i).²¹ OCC also

¹⁸ The language would change from "stay at historical normal levels during the wind-down period" to "generally follow the annual budget with timing and staffing considerations."

¹⁹ OCC also proposes adding links to the RWD Plan that would point a reader to up-to-date information more generally, which is consistent with the changes to remove duplicative information.

²⁰ OCC is not proposing to remove or significantly change four of the five current enhanced risk management tools, but merely to align descriptions in the Plan with OCC's current thinking.

²¹ OCC already has authority to use such executive compensation, and is now updating the

proposes to expand the list of enhanced risk management tools described Section 4 of the Plan to include its existing assessment powers for managing a member default pursuant to OCC's Rule 1006, as well as several tools related to the management of risks other than a member's default: (i) insurance coverage, (ii) a working line of credit, (iii) authority to increase fees, and (iv) authority to extend settlement time pursuant to OCC rule 505.²² The changes are intended to reflect a more complete list of tools that OCC may use to respond to extreme stress scenarios.²³

4. Hypothetical Scenarios

Consistent with the revised risk management tool descriptions, OCC proposes to revise the hypothetical scenarios described in Chapter 7 of the RWD Plan. The hypothetical scenarios describe how OCC would deploy its risk management and recovery tools to respond to potential events such as a member default or settlement bank disruption. OCC is proposing updates to the hypothetical scenarios to reflect current data and operational procedures as well as to resolve grammatical issues. For example, OCC proposes to incorporate recent data regarding peak liquidity demands; the cash component of the Clearing Fund; and the two largest Clearing Fund contributions made by Clearing Members. OCC also proposes to remove references to energy futures and options and eliminate a related note indicating that the products reflected in this scenario may not be reflective of products cleared by OCC. Similarly, OCC would update references to settlement time for consistency with OCC's Rule 101.²⁴

OCC is also proposing to revise the hypothetical scenarios in which OCC would clarify current roles and responsibilities to ensure that the descriptions set forth in this scenario align with OCC's current practices and procedures. For example, the revised Plan would reflect the Head of Default Management's role in recommending an extension of settlement timing to OCC's Office of the CEO. Similarly, OCC

Plan for consistency with its current rules. The proposed revisions would add detail to the description already provided in the Plan.

²² The proposed changes include both addition of such tools to the list of enhanced risk management tools as well as the addition of more detailed description of tools and how they operate.

²³ OCC also proposes to conform the RWD discussion of minimum clearing fund cash to other sections discussing risk management tools by removing a paragraph discussing the expected impact and incentives related to the tool.

²⁴ See Securities Exchange Act Release No. 94950 (May 19, 2022), 87 FR 31916 (May 25, 2022) (File No. SR-OCC-2022-004).

proposes various changes to expand the description of roles and responsibilities related to its stock loan program under a scenario in which the Depository Trust Company is inaccessible (e.g., describing the roles of the Collateral Services and Members Services teams with regard to notifications and escalations).

Lastly, OCC proposes combining the fact patterns presented of two of its hypothetical scenarios. Specifically, OCC would combine scenarios focused on cyberattack and member default to describe how OCC would respond to such a combined set of stresses. The combination of scenarios would require certain changes in assumptions and data, but would not affect OCC's available risk management and recovery tools.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.²⁵ After carefully considering the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act,²⁶ and Rule 17Ad-22(e)(3)(ii)²⁷ thereunder as described in detail below.

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

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that a clearing agency's rules are designed to promote the prompt and accurate clearance and settlement of securities transactions.²⁸

As a central counterparty, it is important for OCC to have a plan in place to address extreme stresses or crises with the aim of maintaining OCC's viability and ability to provide critical services. In the event that OCC's recovery efforts are not successful, the RWD Plan would seek to increase the possibility that a resolution of OCC's operations could be conducted in an orderly manner. The Commission

continues to believe that OCC specifying the steps that it would take in either a recovery or orderly wind-down would enhance OCC's ability to address circumstances specific to an extreme stress event.²⁹ The Commission also continues to believe that, by increasing the likelihood that recovery would be orderly, efficient, and successful, the RWD Plan enhances OCC's ability to maintain the continuity of its critical services (including clearance and settlement services) during, through, and following periods of extreme stress giving rise to the need for recovery, thereby promoting the prompt and accurate clearance and settlement of securities transactions.³⁰

As above, OCC proposes to make changes to the trigger events defined in the RWD Plan. With regard to recovery, the changes primarily shift focus to OCC's ability to meet future obligations in recovery. These changes continue to provide a roadmap for actions OCC may employ to monitor and manage its risks, and, as needed, to stabilize its financial condition in the event those risks materialize with a focus on its ability to continue providing critical services. Maintaining OCC's ability to continue providing clearance and settlement services would reduce the likelihood of disruption to the markets it service and is consistent with promoting the prompt and accurate clearance and settlement of securities transactions.

With regard to wind-down, OCC proposes clarifying the role of the Board in making a wind-down determination and consolidating its current Wind-Down Trigger Events into a trigger based on a scenario's specific facts and circumstances. The propose changed would provide more flexibility and could potentially cover a wider variety of scenarios, including actual insolvency events, that could affect OCC. The clarification of the Board's role is consistent with prior Commission statements regarding the importance of governance in the design of recovery and wind-down plans.³¹ The changes would therefore increase the likelihood that OCC could continue providing critical services, thus promoting the prompt and accurate clearance and settlement of securities transactions.

²⁹ See Securities Exchange Act Release No. 90712 (Dec. 17, 2020), 85 FR 84050, 84051 (Dec. 23, 2020) (File No. SR-OCC-2020-013).

³⁰ See *id.* at 84052.

³¹ See e.g., Standards for Covered Clearing Agencies, Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70809 (Oct. 13, 2016) (File No. S7-03014) ("Covered Clearing Agency Standards Adopting Release").

Given the importance of a clearing agency's recovery and wind-down plan, such plans should be carefully and maintained to ensure that both the clearing agency and the relevant regulators have up-to-date information when such a plan is implemented. As described above, OCC proposes a number of changes designed to update the current plan and provide for the future maintenance of relevant information. Specifically, the proposal includes the (i) relocation of context and background information from the Plan into a supplemental document; (ii) removal of duplicative information maintained elsewhere in OCC's documentation; (iii) updating of information in the plan that is out of date or inconsistent with current practices; and (iv) streamlining of hypothetical stress scenarios describing how OCC would employ its recovery and wind-down tools.

The Commission believes, therefore, that the proposal is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.³²

B. Consistency With Rule 17Ad-22(e)(3)(ii) Under the Exchange Act

Rule 17Ad-22(e)(3)(ii) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.³³

The Commission stressed the importance of the context of the recovery plan and clearing agency as a whole when assessing the utility of a particular approach to establishing trigger criteria.³⁴ As described above, OCC proposes changes that would focus its Recovery Trigger Events on OCC's ability to meet its future obligations in recovery. OCC also proposes separating out operational disruptions from general business losses, which would provide more granularity in describing its trigger events. With regard to wind-down, OCC proposes to replace four triggers with one flexible trigger. Such a change, while reducing granularity, may cover a

³² 15 U.S.C. 78q-1(b)(3)(F).

³³ 17 CFR 240.17Ad-22(e)(3)(ii).

³⁴ *Id.*

²⁵ 15 U.S.C. 78s(b)(2)(C).

²⁶ 15 U.S.C. 78q-1(b)(3)(F).

²⁷ 17 CFR 240.17Ad-22(e)(3)(ii).

²⁸ 15 U.S.C. 78q-1(b)(3)(F).

wider range of potential scenarios.³⁵ Further, the revised Wind-Down Event Trigger would specify the Board's role in determining whether to trigger an orderly wind-down.

In adopting Rule 17Ad-22(e)(3)(ii), the Commission provided guidance, stating that a covered clearing agency generally should consider, among other things, whether it has provided relevant resolution authorities with the information needed for purposes of recovery and resolution planning.³⁶ As described above, OCC proposes non-substantive updates focused primarily on keeping information accurate and up-to-date. To achieve this focus, OCC proposes (i) relocating of context and background information from the Plan into a supplemental document; (ii) removing of duplicative information maintained elsewhere in OCC's documentation; (iii) updating of information in the plan that is out of date or inconsistent with current practices; and (iv) streamlining of hypothetical stress scenarios describing how OCC would employ its recovery and wind-down tools., OCC proposes the removal of background and supporting information from the RWD Plan into a new and separate Supporting Information document. The Commission believes that, in moving such information to a separate document, resolution authorities will still be able to use the RWD Plan to identify the support functions that are necessary to maintain critical services and operations, yet also cross-reference to additional detail in the RWD Plan Supporting Information as needed. OCC also proposes the removing duplicative information and providing links to other sources of information, such as the OCC's website, which would allow OCC to update any supporting information in only one place, thus reducing the risk of providing redundant information. OCC is also proposing to update outdated information and to streamline its hypothetical stress scenarios to reflect current OCC operations more accurately. The Commission believes that the proposed non-substantive

³⁵ The Commission approved a similar single wind-down trigger event for the National Securities Clearing Corporation ("NSCC"). See Securities Exchange Act Release No. 83974 (Aug. 28, 2018), 83 FR 44988 (Sept. 4, 2018). NSCC Rule 42 authorizes NSCC's Board to authorize initiation of NSCC's wind-down plan if it determines that application of NSCC's recovery tools either (i) has not restored or likely will not restore NSCC to viability or (ii) that implementing the wind-down plan is in the best interests of NSCC, its shareholders and creditors, members, and the U.S. financial markets.

³⁶ See Covered Clearing Agency Standards Adopting Release, 81 FR at 70810.

updates will make the information provided in the RWD Plan more accurate and useful; provide a more accurate and usable playbook for OCC or source of information for a resolution authority; eliminate the risk that the RWD Plan may not contain current information; support OCC's ability to use risk management and recovery tools effectively to bring about a recovery by clarifying which tools may be most effective for different situations or needs; and eliminate redundancy across OCC's by-laws and rules. As such, the non-substantive changes would provide a more up-to-date set of information for the relevant authorities to carry out any needed recovery and resolution planning more expeditiously.

The Commission believes, therefore, that the proposal is consistent with the requirements of Rule 17Ad-22(e)(3)(ii) under the Exchange Act.³⁷

IV. Solicitation of Comments on Partial Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the Exchange 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-OCC-2023-005 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. All submissions should refer to file number SR-OCC-2023-005. 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 of submission. The Commission will post all comments on the Commission's website (<http://www.sec.gov/rules/sro.shtml>). Comments are also 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 a.m. and 3 p.m. Operating conditions may limit access to the

Commission's Public Reference Room. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-OCC-2023-005 and should be submitted on or before September 6, 2023.

V. Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,³⁸ to approve the proposed rule change prior to the 30th day after the date of publication of notice of the filing of Partial Amendment No. 1 in the **Federal Register**. As discussed above, Partial Amendment No. 1 modified the original proposed rule change to correct an error in the narrative summary of proposed rule changes. Partial Amendment No. 1 does not change the purpose of or basis for the proposed changes.

For similar reasons as discussed above, the Commission finds that Partial Amendment No. 1 is consistent with the requirement that OCC's rules be designed to promote the prompt and accurate clearance and settlement of securities transactions under Section 17A(b)(3)(F) of the Exchange Act.³⁹ Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act, to approve the proposed rule change, as modified by Partial Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Exchange Act.⁴⁰

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change, as modified by Partial Amendment No. 1, is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act⁴¹ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,⁴² that the proposed rule change (SR-OCC-2023-005), as modified by Partial

³⁸ 15 U.S.C. 78s(b)(2).

³⁹ 15 U.S.C. 78q-1(b)(3)(F).

⁴⁰ 15 U.S.C. 78s(b)(2).

⁴¹ In approving this proposed rule change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁴² 15 U.S.C. 78s(b)(2).

³⁷ 17 CFR 240.17Ad-22(e)(3)(ii).

Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴³

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98108; File No. SR-CboeEDGX-2023-054]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule Related to the Options Regulatory Fee

August 10, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 8, 2023, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) proposes to amend its Fee Schedule related to the Options Regulatory Fee. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Options Fee Schedule, to harmonize the language and processes relating to the Options Regulatory Fee (“ORF”).³ By way of background, the ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Member customer options business, including performing routine surveillances, investigations, examinations, financial monitoring, as well as policy, rulemaking, interpretive and enforcement activities. The revenue generated from the ORF, when combined with all of the Exchange’s other regulatory fees and fines, covers a material portion, but not all, of the Exchange’s regulatory costs.

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange’s total regulatory costs. The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange notifies Members of adjustments to the ORF via an exchange notice. The Exchange provides Members with such notice at least 30 calendar days prior to the effective date of the change.

The Options Regulatory Fee section of the fees schedule sets forth the details and description of how and when the ORF is assessed. For example, the fee schedule explicitly specifies that the Exchange may only increase or decrease the ORF semi-annually, and any such fee change will be effective on the first business day of February or August. The fee schedule further states that the Exchange will notify participants of any change in the amount of the fee at least 30 calendar days prior to the effective

date of the change, except in the case of the September 30th ORF rate change.

The Exchange proposes to update the fee schedule language relating to the timing of ORF changes.⁴ Particularly, the Exchange proposes to eliminate the strict requirement that the ORF may only be modified on the first business day of February or August, and also the explicit requirement that it must provide at least 30 calendar days prior to the effective date.

The Exchange first proposes to eliminate the requirement that ORF may only be modified on the first business day of February or August to afford the Exchange increased flexibility in amending the ORF. As noted above, the ORF is based in part on options transactions volume, and as such the amount of ORF collected is variable. If options transactions reported to OCC in a given month increase, the ORF collected from Members may increase as well. Similarly, if options transactions reported to OCC in a given month decrease, the ORF collected from Members may decrease as well. Accordingly, the Exchange monitors the amount of ORF collected to ensure that it does not exceed the Exchange’s total regulatory costs. If the Exchange determines the amount of ORF collected exceeds costs over an extended period, the proposed rule change allows the Exchange to adjust the ORF by submitting a fee change filing to the Securities and Exchange Commission (the “Commission”) in a month other than just February or August. Although the Exchange proposes to eliminate the explicit language in the fee schedule that provides the Exchange will adjust the ORF only semi-annually, and only on the first business day of February or August, it would continue to monitor its regulatory costs and revenues at a minimum on a semi-annual basis and submit a proposed rule change for each modification of the ORF as needed.

The Exchange also proposes to eliminate the explicit language in the fee schedule that it will notify participants of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change. Although the Exchange proposes to eliminate this language from the fee schedule, it notes that it will endeavor to notify Members of any planned change to the ORF by Exchange Notice at least 30 calendar days prior to the effective date of such change. The Exchange believes this proposed change

³ The Exchange initially filed the proposed rule change on August 1, 2023 (SR-CboeEDGX-2023-053). On August 8, 2023, the Exchange withdrew that filing and submitted this proposal.

⁴ It also proposes to eliminate the reference to the September 30 ORF rate, as that reference pertains to a change made back in 2019 and is therefore now obsolete.

⁴³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.