

become operative immediately upon filing.

The Exchange states that waiver of the operative delay would permit the Exchange's Routing Broker to immediately implement the order handling behavior described in the proposal, which would benefit Users who submit a routable order to the Exchange and receive an execution on an away Trading Center in fractional pennies. The Exchange further states the proposed rule change does not present any new or novel issues, as at least one other exchange indicated that its routing broker performed similar rounding behavior for orders received in odd-lot or sub-penny increments that were filled on away market centers and were not compatible with existing exchange system behavior.²³ For these reasons, and because the proposal does not raise any new or novel issues, the Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²⁴

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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁵ of the Act to determine whether the proposed rule change 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-

CboeEDGA-2024-015 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-CboeEDGA-2024-015. 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-CboeEDGA-2024-015 and should be submitted on or before June 18, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100194; File No. SR-OCC-2024-005]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Options Clearing Corporation Concerning Modifications to Its Board Charter and Risk Committee Charter To Align With Recently Adopted CFTC Governance Requirements for Derivatives Clearing Organizations

May 21, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 8, 2024, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(6)⁴ thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change would make modifications to its Board of Directors Charter and Corporate Governance Principles ("Board Charter") and Risk Committee Charter ("Risk Committee Charter") to comply with recently adopted governance requirements⁵ by the Commodity Futures Trading Commission ("CFTC") for derivatives clearing organizations ("DCOs") that became effective on July 13, 2023, and with which DCOs, like OCC, must comply by July 12, 2024.

The proposed changes to OCC's Board Charter are included [sic] as Exhibit 5A to File No. SR-OCC-2024-005 and proposed changes to the Risk Committee Charter are included [sic] as Exhibit 5B to File No. SR-OCC-2024-005. Material proposed to be added is underlined and material proposed to be deleted is marked in strikethrough text.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See 88 FR 44675 (July 13, 2023) ("CFTC Adopting Release"), <https://www.govinfo.gov/content/pkg/FR-2023-07-13/pdf/2023-14361.pdf>.

²³ See *supra* note 9.

²⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78s(b)(2)(B).

²⁶ 17 CFR 200.30-3(a)(12), (59).

All terms with initial capitalization that are not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.⁶

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC is the sole clearing agency registered with the Commission for standardized equity options listed on national securities exchanges. OCC also clears and settles certain stock loan transactions and transactions in futures and options on futures. In connection with its clearance and settlement of transactions in securities, OCC is a "covered clearing agency"⁷ regulated by the Commission. In connection with its clearance and settlement activities for transactions in futures and options on futures, OCC is a DCO regulated by the CFTC. OCC is also designated as a systemically important financial market utility by the Financial Stability Oversight Council pursuant to Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

As a covered clearing agency and DCO, OCC maintains a robust governance structure that is designed to comply with existing requirements of the Commission and the CFTC. Recently, the CFTC adopted new regulations regarding governance requirements for DCOs that supplement the existing governance requirements applicable to OCC as a DCO ("Governance Rules").⁸ The CFTC Governance Rules require, among other things, that: (i) DCOs establish and consult with a risk management committee on all matters that could

materially affect the risk profile of the DCO; (ii) DCOs implement certain composition, rotation, and documentation requirements for the risk management committee; and (iii) DCOs establish a risk advisory working group that must convene at least two times per year, and adopt written policies and procedures related to the formation and role of the risk management working group. While OCC's current governance structure meets many of the requirements of the Governance Rules, OCC is proposing to clarify: (i) a smaller subset of OCC's existing Financial Risk Advisory Committee ("FRAC") will serve as a non-Board-level risk management committee described in the Governance Rules; (ii) the entire FRAC will serve as a non-Board-level risk advisory working group described in the Governance Rules; and (iii) governance charters to reflect the requirements in the Governance Rules described above. DCOs, including OCC, are required to comply with these new regulations by July 12, 2024.

1. Purpose

The purpose of this proposed rule change by OCC is to modify its Board Charter and Risk Committee Charter to implement changes that are designed to comply with certain of the Governance Rules. The Governance Rules are found in CFTC Regulation 39.24.⁹ As part of the Governance Rules, DCOs are required to establish one or more risk management committees that meet certain composition requirements and to require the DCO's board of directors to consult with such risk management committee(s) on all matters that could materially affect the risk profile of the DCO and to consider and respond to input from the risk management committee(s) on such matters. In the CFTC Adopting Release, the CFTC clarifies that a DCO may structure the required risk management committee as either a non-Board-level advisory committee or as a Board-level committee.¹⁰ In this proposed rule change, OCC intends to structure the required risk management committee as a non-Board-level committee. Therefore, OCC is revising its Board Charter and Risk Committee Charter to articulate the role of the non-Board-level committee and its responsibility to provide OCC's existing Board-level Risk Committee with pertinent information to be disseminated, as appropriate, for the Board's review and consideration on all

matters that could materially affect OCC's risk profile.

As described below, OCC already maintains a robust governance structure that is designed to promote clear and transparent governance arrangements that, among other things, help effectively manage risks that arise in or are borne by OCC as a covered clearing agency and DCO. This structure is shaped by existing Commission and CFTC requirements, which are also described in part below. Within OCC's existing governance structure, the FRAC serves a similar purpose as the risk management committee and risk advisory working group described in the Governance Rules. OCC intends to make modifications to the FRAC to satisfy both the risk management committee and risk advisory working group Governance Rules requirements by designating a rotating smaller group of FRAC members to comprise the non-Board-level risk management committee, and the FRAC will function as the risk advisory working group. The changes that OCC is proposing to its Board Charter and Risk Committee Charter to address the Governance Rules for DCOs would become one facet of OCC's larger and overall governance structure. Because OCC treats the Board Charter and Risk Committee Charter as "rules" for purposes of Section 19(b) of the Exchange Act, it is therefore submitting the changes in connection with this proposed rule change.¹¹

OCC believes that the material aspects of its operations will appropriately comply with the new Governance Rules by including the proposed provisions in OCC's Board Charter and Risk Committee Charter. As detailed below, these proposed provisions include requiring the Board and the Risk Committee to consult with and respond to input from a new, non-Board-level risk management committee on all matters that could materially affect OCC's risk profile.

Existing Governance Structure

As part of OCC's existing governance structure, OCC already maintains a Board-level Risk Committee. Therefore, the new non-Board-level risk management committee is not and will not be the only aspect of OCC's governance structure that is designed to provide appropriate consideration and supervision over matters that could materially affect OCC's risk profile.

¹¹ OCC intends to implement written policies and procedures to comply with the remaining requirements in the new CFTC requirements for DCOs, and OCC believes that those written policies and procedures will not require separate rule filings with the Commission or the CFTC.

⁶ OCC's By-Laws and Rules can be found on OCC's public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

⁷ The term "covered clearing agency" is defined in Exchange Act Rule 17Ad-22(a)(5) to mean "a registered clearing agency that provides the services of a central counterparty or central securities depository."

⁸ See 88 FR 44675 (July 13, 2023) ("CFTC Adopting Release"), <https://www.govinfo.gov/content/pkg/FR-2023-07-13/pdf/2023-14361.pdf>.

⁹ 17 CFR 39.24.

¹⁰ See CFTC Adopting Release at 44678.

Rather, such governance structure mechanisms are already in place at OCC and compliance with the new Governance Rules will supplement those existing mechanisms.

For example, as specified in the Risk Committee Charter, the duties of the Risk Committee in discharging oversight include, but are not limited to, reviewing the adequacy of OCC's management of risks related to credit exposures (including margin and clearing fund methodologies), overseeing OCC's risk models and risk model validation process, reviewing and approving new products that materially impact OCC's established risk profile (and referring such products to the Board for potential approval), overseeing OCC's framework for membership of Clearing Members, and considering and discussing input and guidance from the FRAC relating to financial risk issues.¹²

The Risk Committee is also just one part of the more robust overall governance structure that OCC maintains to promote best practices and to comply with existing Commission and CFTC regulatory requirements that apply to OCC as a covered clearing agency and as a DCO. Certain of these regulatory requirements concerning OCC's governance structure are described in more detail below to provide greater context about the existing regulatory landscape to which the new Governance Rules are being added.

In connection with OCC's existing Board and Board committee structure, OCC maintains charters for the Board and all Board committees, Fitness Standards for Directors, Clearing Members and Others ("Fitness Standards"), and a Code of Conduct for OCC Directors ("Code of Conduct"). The charters, Fitness Standards, and Code of Conduct are all publicly available on OCC's website.¹³ The Board is composed of directors who are Public

Directors,¹⁴ Exchange Directors,¹⁵ Member Directors,¹⁶ and a Management Director.¹⁷ In this way, the directors serving on the Board represent a range of different stakeholders from the markets that OCC serves. In addition, the Board oversees six Board-level committees that are composed of certain Board directors and that assist the Board in carrying out its supervisory responsibilities. Aside from the Risk Committee, the other committees are the Audit Committee, Compensation and Performance Committee, Governance and Nominating Committee, Regulatory Committee, and Technology Committee. OCC also maintains the FRAC that operates as a forum in which OCC seeks feedback on financial risk initiatives. Members of OCC management participate in the FRAC along with representatives of parties that participate in the markets that OCC serves, such as Clearing Members, customers of Clearing Members, exchanges, and other stakeholders.

Existing Regulatory Requirements Regarding OCC's Governance Structure

OCC's existing governance structure, as partially described above, is already shaped by significant regulatory requirements under the Exchange Act and the Commodity Exchange Act ("CEA") that apply to OCC as a covered clearing agency and DCO. Accordingly, the Governance Rules for DCOs are supplementary to these existing regulatory obligations applicable to OCC's governance structure.

For example, the DCO core principles in the CEA already require OCC to have governance arrangements that are transparent to permit the consideration of the views of owners and

participants.¹⁸ Similarly, because OCC is a registered clearing agency its rules must assure a fair representation of its shareholders and participants in the selection of its Directors and the administration of its affairs.¹⁹ Part 39.24 of the CFTC's regulations for DCOs also requires OCC to have governance arrangements that, among other things, are clear and documented, describe the structure in which the board of directors, committees, and management operate, and clearly specify the roles and responsibilities of the board of directors and its committees.²⁰ Similarly, Exchange Act Rules 17Ad-22(e)(2) and (3) require OCC as a covered clearing agency to have governance arrangements that, among other things, provide for governance arrangements that are clear and transparent, specify clear and direct lines of responsibility, consider the interests of Clearing Members' customers and other relevant stakeholders, and that establish a risk management committee of the board of directors and an independent audit committee of the board of directors.²¹ These obligations work in coordination with a further obligation to maintain a sound risk management framework for managing risks that arise in or are borne by OCC and for Board review and approval of related policies and procedures.²² In addition, provisions in the CEA and CFTC regulations and Commission rules under the Exchange Act obligate OCC to have fitness standards for Board directors, Clearing Members and others.²³ OCC's governance structure currently reflects all of these requirements.

New CFTC DCO Governance Requirements and Creation of a Non-Board-Level Risk Management Committee

As part of OCC's approach to comply with the Governance Rules, OCC will create a separate, non-Board-level risk management committee. As noted above, OCC already has a Risk Committee that is a Board-level committee. Creation of the new risk management committee as a non-Board-level advisory committee will be consistent with the CFTC Adopting Release guidance that a DCO may structure the required risk management committee as either a non-Board-level

¹⁴ Terms regarding service by Public Directors are set forth in OCC's By-Laws and in OCC's Fitness Standards. For example, a Public Director must have no affiliation with any national securities exchange, national securities association, designated contract market, futures commission merchant, or broker or dealer in securities. *See e.g.*, OCC By-Laws Article III, Section 6A; Fitness Standards at "Additional Criteria for the Public Directors".

¹⁵ Terms regarding service by Exchange Directors are set forth in OCC's By-Laws and in OCC's Fitness Standards. For example, the exchange nominating the Exchange Director must own common stock of OCC. *See e.g.*, OCC By-Laws Article III, Section 6; Fitness Standards at "Additional Criteria for Exchange Directors".

¹⁶ Terms regarding service by Member Directors are set forth in OCC's By-Laws and in OCC's Fitness Standards. *See e.g.*, OCC By-Laws Article III, Section 2; Fitness Standards at "Additional Criteria for Member Directors".

¹⁷ Terms regarding service by the Management Director are set forth in OCC's By-Laws and in OCC's Fitness Standards. For example, the Management Director must be an OCC employee. *See e.g.*, OCC By-Laws Article III, Section 7.

¹² As described in more detail below, the participants in the FRAC include members of OCC's management as well as representatives of parties that participate in the markets that OCC serves, such as Clearing Members, customers of Clearing Members, exchanges, and other stakeholders.

¹³ *See* Board Charters, Board Committee Charters and Other Governance Documents, available at <https://www.theocc.com/company-information/documents-and-archives/board-charters>.

¹⁸ 7 U.S.C. 7a-1(c)(2)(O)(i)(II).

¹⁹ 15 U.S.C. 78q-1(b)(3)(C).

²⁰ 17 CFR 39.24(b)(1), (3), (5).

²¹ 17 CFR 240.17Ad-(22)(e)(2)(i), (v), (vi), (3)(iv) and (v).

²² 17 CFR 240.17Ad-(22)(e)(3)(i).

²³ 7 U.S.C. 7a-1(c)(2)(O)(ii); 17 CFR 240.17Ad-22(e)(2)(iv); 17 CFR 240.17Ad-25(c)(3).

advisory committee or as a Board-level committee.

While OCC's existing governance structure, including the consideration of the FRAC's input on risk initiatives, is robust and meets the CFTC's overall objective in requiring governance arrangements that are transparent, fulfill the public interest, and permit the consideration of the views of owners and participants, OCC's existing FRAC requires slight modifications to ensure continued compliance with the Governance Rules. Specifically, modifications are required to OCC's existing FRAC that are important to include within OCC's Risk Committee's delegation. These modifications, as outlined in the proposed Risk Committee Charter, (i) codify the required oversight and consultation between OCC's existing Board-level Risk Committee and the non-Board-level risk management committee, and (ii) establish the responsibility of OCC's existing Board-level Risk Committee to provide the Board with pertinent information for the Board's review and consideration for all matters that could materially affect OCC's risk profile from the non-Board-level risk management committee. Furthermore, modifications to OCC's existing FRAC are required to codify a regular rotation of membership and refine the current membership composition. By proposing modifications to OCC's existing FRAC to create a non-Board-level risk management committee and a risk advisory working group, OCC will satisfy the membership composition and rotation requirements outlined in the Governance Rules.

The operation of the non-Board-level risk management committee will be controlled by written policies and procedures that OCC will design to ensure compliance with the new DCO requirements. For example, the DCO must maintain written policies and procedures to make certain that the risk management committee consultation process is described in detail and to include requirements for the DCO to document the board's consideration of and response to risk management committee input.²⁴ A DCO is also required to have written policies and procedures related to the creation and maintenance of minutes for each risk management committee meeting.²⁵

The changes that OCC is proposing to its Board Charter and Risk Committee Charter to comply with part of the Governance Rules are described below, and they are designed to ensure that the

Risk Committee and the Board work in coordination to consult with the new non-Board-level risk management committee and to respond to input from that committee on all matters that could materially affect OCC's risk profile. Consistent with the descriptions above of OCC's existing governance structure and the current Commission and CFTC requirements that already shape it, the proposed changes to the Board Charter and Risk Committee Charter would become part of the larger overall governance structure that OCC maintains to promote clear and transparent governance arrangements and to effectively manage risks that arise within or are borne by OCC as a covered clearing agency and DCO.

Proposed Changes to Board Charter

OCC proposes to modify the Board Charter to provide two new aspects of how the Board fulfills its oversight role. Specifically, the Board Charter would state that the Board would oversee OCC's process for consultation with the new, non-Board-level risk management committee and the consideration of, and responses to, input from the non-Board-level risk management committee by the Board through reports from the Risk Committee. The Board would provide oversight of this process and would review and consider the discussions with the Risk Committee regarding the Risk Committee's consultation with the non-Board-level risk management committee.²⁶ The Board would also become more directly involved in the consultation and response process led by the Risk Committee as it determines appropriate in its business judgment.

In addition to the proposed changes described above, OCC proposes to incorporate several non-substantive changes to the Board Charter, including but not limited to, using initial capitalization for the term "Executive Session" consistently throughout the document, eliminating unnecessary words, and adding minor grammatical updates and terms for clarity.

Proposed Changes to Risk Committee Charter

OCC also proposes to modify the Risk Committee Charter in a manner consistent with the proposed changes to the Board Charter. Specifically, the Risk Committee Charter would be revised to state that the Risk Committee would have responsibility for consulting with the non-Board-level risk management

committee²⁷ and for considering and responding to input from that committee on all matters that could materially affect OCC's risk profile. It would also state that the Risk Committee would provide relevant non-Board-level risk management committee input to the Board for its review and consideration.

In addition to the proposed changes described above, OCC proposes to incorporate several non-substantive changes to the Risk Committee Charter, including but not limited to, eliminating unnecessary words, and adding minor grammatical updates and terms for clarity and consistency.

2. Statutory Basis

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions, safeguard securities and funds in its custody or control or for which it is responsible, and, in general, protect investors and the public interest.²⁸ In addition, Rule 17Ad-22(e)(3) requires OCC, as a covered clearing agency, 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.²⁹

OCC believes that the proposed rule changes are consistent with these requirements because the proposed rule change is designed to modify OCC's Board Charter and Risk Committee Charter to reflect how the Board and Risk Committee would work in coordination to consult with and consider input from a new, non-Board-level risk management committee on all matters that could materially affect OCC's risk profile and to consider and respond to input from the non-Board-level risk management committee on such matters. Implementation of these proposed changes would promote OCC's compliance with the new Governance Rules,³⁰ which all DCOs must comply with by July 12, 2024. Compliance with applicable CFTC regulations is part of OCC's sound risk management framework to manage legal and regulatory risk. In addition,

²⁷ As of the July 12, 2024, CFTC compliance date, OCC's FRAC will act as the non-Board-level risk management committee. Although not anticipated, changes to the name of the committee serving as the non-Board-level risk committee could happen in the future.

²⁸ 15 U.S.C. 78q-1(b)(3)(F).

²⁹ 17 CFR 240.17Ad-22(e)(3).

³⁰ 17 CFR 39.24.

²⁴ 17 CFR 39.24(b)(11)(i).

²⁵ *Id.*

²⁶ The oversight process will be documented in OCC's FRAC Guiding Principles Document.

implementing the proposed duties of the Board and Risk Committee within the Board Charter and Risk Committee Charter would promote management of risk consistent with the requirements in Rule 17Ad-22(e)(3)³¹ and OCC's prompt and accurate clearance and settlement of securities transactions, safeguarding of securities and funds in its custody or control or for which it is responsible, and the protection of investors consistent with 17A(b)(3)(F) of the Exchange Act³² because it would involve the new, non-Board-level risk management committee in OCC's process of assessing and managing risks that could materially affect OCC's risk profile in a way that supplements OCC existing process for managing such risks, including through oversight by the Risk Committee and the Board.

In addition, OCC believes the proposed changes are consistent with Rule 17Ad-22(e)(2). Specifically, Rule 17Ad-22(e)(2) requires OCC to, among other things, provide for governance arrangements that are clear and transparent, clearly prioritize the safety and efficiency of the covered clearing agency and specify clear and direct lines of responsibility. Modifying the Board Charter and Risk Committee Charter through the proposed changes described above would be consistent with these requirements because the changes would document in a clear, direct and transparent way the material aspects of the process through which the Board and Risk Committee would work in coordination to consult with and consider input from a new, non-Board-level risk management committee on all matters that could materially affect OCC's risk profile and to consider and respond to input from the non-Board-level risk management committee on such matters.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Exchange Act³³ requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. OCC does not believe that the proposed rule changes to modify the Board Charter and Risk Committee Charter to comply with the Governance Rules would impact or impose any burden on competition. The proposed changes would promote OCC's compliance with the Governance Rules that OCC must comply with by July 12, 2024. The

proposed changes to the Board Charter and Risk Committee Charter are designed to clearly, directly and transparently document the material aspects of the process through which the Board and Risk Committee would work in coordination to consult with and consider input from a new, non-Board-level risk management committee on all matters that could materially affect OCC's risk profile and to consider and respond to input from the non-Board-level risk management committee on such matters. These changes to OCC's governance structure would apply to all Clearing Members equally and would not disadvantage or favor any particular user in relation to another user. Therefore, OCC believes that the proposed changes would not impose any burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

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

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act³⁴ and Rule 19b-4(f)(6)³⁵ thereunder.

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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.³⁶

³⁴ 15 U.S.C. 78s(b)(3)(A).

³⁵ 17 CFR 240.19b-4(f)(6).

³⁶ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-OCC-2024-005 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-2024-005. 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. 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 such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

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-2024-005 and should be submitted on or before June 18, 2024.

³¹ 17 CFR 240.17Ad-22(e)(3).

³² 15 U.S.C. 78q-1(b)(3)(F).

³³ 15 U.S.C. 78q-1(b)(3)(I).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-11572 Filed 5-24-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100204; File No. SR-FINRA-2024-008]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 12800 (Simplified Arbitration) To Clarify and Amend the Applicability of the Document Production Lists

May 21, 2024.

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 May 13, 2024, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend the FINRA Code of Arbitration Procedure for Customer Disputes (“Customer Code”) to clarify and, in some instances, amend the applicability of the Document Production Lists to simplified customer arbitrations administered under FINRA Rule 12800.

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

I. Overview of the Document Production Lists and Simplified Customer Arbitrations

FINRA Dispute Resolution Services (“DRS”) provides a Discovery Guide to supplement the discovery rules contained in the Customer Code and help guide the parties and arbitrators through the discovery process in customer arbitrations.³ The Document Production Lists, which are included in the Discovery Guide and described in FINRA Rule 12506, outline presumptively discoverable documents that the parties should exchange, without arbitrator or DRS staff intervention. Document Production Lists 1 and 2 describe the documents that are presumed to be discoverable in all arbitrations between a customer and a member firm or associated person except in simplified customer arbitrations as explained below.⁴ List 1 outlines the documents that member firms and associated persons shall produce; List 2 outlines the documents that customers shall produce.⁵

The proposed rule change would affect the applicability of the Document Production Lists in simplified customer arbitrations. Simplified customer arbitrations are arbitrations in which the dispute between a customer and member firm or associated person involves \$50,000 or less, exclusive of interest and expenses.⁶ There are three types of simplified customer arbitrations. If the customer does not request a hearing, the arbitrator will render an award based on the pleadings and other materials submitted by the parties (“paper cases”).⁷ If the customer requests a hearing, the customer must select between one of two hearing options.⁸ If the customer requests an

Option One hearing under FINRA Rule 12800(c)(3)(A), the regular provisions of the Customer Code relating to prehearings and hearings, including all fee provisions, apply (“regular hearing”). The customer may also request an Option Two special proceeding, an abbreviated hearing, under FINRA Rule 12800(c)(3)(B) (“special proceeding”).

Currently, the Document Production Lists do not apply in paper cases and special proceedings.⁹ However, under FINRA Rule 12800(g)(1), the arbitrator may exercise discretion to choose to use relevant portions of the Document Production Lists in paper cases and special proceedings “in a manner consistent with the expedited nature of simplified proceedings.” Absent such an exercise of discretion by the arbitrator, to obtain discovery in paper cases and special proceedings, the parties must request documents and other information from each other, pursuant to FINRA Rule 12800(g)(2).¹⁰ Therefore, under the current Customer Code, no documents or information are presumptively discoverable in paper cases and special proceedings.

By contrast, the Document Production Lists do apply in simplified customer arbitrations in which the customer requests a regular hearing. As noted above, if the customer requests a regular hearing during the simplified customer arbitration, FINRA Rule 12800(c)(3)(A) states that the “regular provisions” of the Customer Code “relating to prehearings and hearings” apply. DRS has issued guidance clarifying this language to mean that the Document Production Lists apply in simplified customer arbitrations in which the customer requests a regular hearing.¹¹ Consistent with this guidance, the

⁹ FINRA Rule 12800(g)(1) provides that the Document Production Lists “do not apply to arbitrations subject to this rule” (*i.e.*, paper cases and special proceedings).

¹⁰ FINRA Rule 12800(g)(2) provides that all production requests must be served on all other parties and filed with the Director within 30 days from the date that the last answer is due; any response or objection to a production request must be served on all other parties and filed with the Director within 10 days of the receipt of the request. The term “Director” means the Director of DRS and, unless the Customer Code provides that the Director may not delegate a specific function, the term includes FINRA staff to whom the Director has delegated authority. See FINRA Rule 12100(m).

¹¹ See FINRA DRS Party’s Reference Guide, p. 31, <https://www.finra.org/sites/default/files/Party-Reference-Guide.pdf> (explaining that “[t]he Document Production Lists in the Discovery Guide as described in FINRA Rule 12506 do not apply to simplified [customer] arbitrations decided on the papers or decided by special proceeding. However, the Discovery Guide does apply to simplified cases in which a customer requests a regular hearing.”). See also <https://www.finra.org/arbitration-mediation/simplified-arbitrations>.

³ See <https://www.finra.org/sites/default/files/ArbMed/p394527.pdf>. The FINRA Discovery Guide and Document Production Lists do not apply to arbitrations administered under the Code of Arbitration Procedure for Industry Disputes.

⁴ See FINRA Rule 12506(a).

⁵ See <https://www.finra.org/sites/default/files/ArbMed/p394527.pdf>.

⁶ See FINRA Rule 12800(a).

⁷ See FINRA Rule 12800(c)(2).

⁸ See FINRA Rule 12800(c)(3).

³⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.