



May 5, 2017

**VIA ELECTRONIC MAIL**

Christopher J. Kirkpatrick  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

**Re: Rule Filing SR-OCC-2017-012 Rule Certification**

Dear Secretary Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and Commodity Futures Trading Commission (“CFTC”) Regulation 40.6, enclosed is a copy of the above-referenced rule filing submitted by The Options Clearing Corporation (“OCC”). The date of implementation of the rule is at least 10 business days following receipt of the rule filing by the CFTC or the date the proposed rule is approved by the Securities and Exchange Commission (“SEC”) or otherwise becomes effective under the Securities Exchange Act of 1934 (the “Exchange Act”). This rule filing has been, or is concurrently being, submitted to the SEC under the Exchange Act.

In conformity with the requirements of Regulation 40.6(a)(7), OCC states the following:

**Explanation and Analysis**

On March 13, 2017, OCC certified a proposed rule change with the CFTC that, among other things, amended OCC’s By-Laws and Rules to: (1) remove all references to OCC’s President to reflect the fact that the President would no longer be a recognized officer within OCC’s management and (2) reallocate the authority and responsibilities previously granted to the President between the COO and a newly appointed Chief Administrative Officer (“CAO”).<sup>1</sup> OCC is now proposing to amend Article IV, Section 1 of the By-Laws to provide that the Board may, in its discretion, designate that the COO also serve as President of OCC. The purpose of the proposed rule change is to provide further clarity and transparency around OCC’s management structure and the roles and titles of its senior management.

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<sup>1</sup> The proposed rule change was subsequently approved by the SEC on April 26, 2017. See Securities Exchange Act Release No. 80531 (April 26, 2017), 82 FR 20502 (May 2, 2017) (SR-OCC-2017-002).

Prior to the certification and approval of SR-OCC-2017-002,<sup>2</sup> OCC's By-Laws stipulated that its President would also serve as COO, with the authority and responsibilities of the COO and President primarily being addressed throughout the By-Laws and Rules in terms of this officer's capacity as President. As a result of SR-OCC-2017-002, OCC's By-Laws and Rules were amended to eliminate all references to the President; however, the position of COO was retained, and OCC's senior management was reorganized within an Office of the Executive Chairman comprised of the Executive Chairman and Chief Executive Officer, the COO and the CAO. Pursuant to Article IV, Section 8 of the By-Laws, the COO and CAO are responsible for the aspects of OCC's business that do not report directly to the Executive Chairman, with such responsibilities being determined by the Board to promote the efficient and effective management and operation of OCC. The By-Laws and Rules also address various other authorities and responsibilities of the COO and CAO.<sup>3</sup>

The proposed rule change would provide that the Board may, in its discretion, designate that the COO also serve as President. The two roles would not, however, be tied together by operation of the By-Laws as it was prior to the approval of SR-OCC-2017-002 and would instead provide the Board with the discretionary authority to make this determination as it deems appropriate. The proposed rule change is not intended to modify OCC's current management structure or the allocation of duties and responsibilities currently associated with the roles of COO or CAO as set forth in By-Laws and Rules. If the Board determines to designate that the COO also serve as President, the authority and responsibilities of the COO and President would continue to be governed by the allocation of authority and responsibilities of the COO as currently set forth in OCC's By-Laws and Rules. The proposed rule change would take a similar approach to the previous construction of OCC's By-Laws and Rules regarding the role of COO and President; however, the proposed approach would now articulate the authority and responsibilities of the President and COO throughout the By-Laws and Rules in terms of this officer's capacity as COO (as opposed to President).

OCC notes that, under Article IV, Section 1 of the By-Laws, the Board may, but need not, elect such other officers (*i.e.*, officers in addition to the Executive Chairman, Member Vice Chairman, COO, CAO, Secretary, and Treasurer) as it may from time to time determine are required for the efficient management and operation of OCC. While this provision of Article IV, Section 1 of the By-Laws currently provides the Board with discretionary authority to elect or

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<sup>2</sup> See supra note 1 and associated text.

<sup>3</sup> For example, OCC's Rules provide the Executive Chairman, COO and CAO with the authority to, among other things, impose certain restrictions on a Clearing Member's transactions, positions and activities based on the financial or operational condition of the Clearing Member (Rule 305); extend settlement times in emergency conditions; (Rule 505); waive the required margin deposit of a Clearing Member in the interest of maintaining fair and orderly markets (Rule 609A); and make a determination as to whether the immediate liquidation of some or all of a suspended Clearing Member's margin deposits and/or contributions to the Clearing Fund would not be in the best interests of the OCC, other Clearing Members, or the general public (Rule 1104).

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otherwise designate an officer of OCC to serve as President, OCC believes that the proposed rule change would provide additional clarity and transparency around the Board's authority to elect a President, particularly in light of recent OCC filing SR-OCC-2017-002.

OCC reviewed the derivatives clearing organization ("DCO") core principles ("Core Principles") as set forth in the Act. During this review, OCC identified the following Core Principles as potentially being impacted:

**Public Information.** OCC believes that by implementing the proposed rule change it will be better able to provide market participants with information to identify and evaluate OCC's management structure. OCC will post the amended By-Laws on its public website thereby providing the public with relevant information regarding OCC's governance arrangements.

#### Opposing Views

No opposing views were expressed related to the rule amendments.

#### Notice of Pending Rule Certification

OCC hereby certifies that notice of this rule filing has been given to Clearing Members of OCC in compliance with Regulation 40.6(a)(2) by posting a copy of the submission on OCC's website concurrently with the filing of this submission.

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Certification

OCC hereby certifies that the rule set forth at Item 1 of the enclosed filing complies with the Act and the CFTC's regulations thereunder.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,



Justin W. Byrne  
Vice President, Regulatory Filings

Enclosure

**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

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Form 19b-4

Proposed Rule Change

by

THE OPTIONS CLEARING CORPORATION

Pursuant to Rule 19b-4 under the  
Securities Exchange Act of 1934

**Item 1. Text of the Proposed Rule Change**

This proposed rule change by The Options Clearing Corporation (“OCC”) concerns the amendment of OCC’s By-Laws to provide that the Board of Directors (“Board”) may, in its discretion, designate the Chief Operating Officer (“COO”) to act as President of OCC.

Material proposed to be added to OCC’s By-Laws as currently in effect is underlined and material proposed to be deleted is marked in strikethrough text. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.<sup>1</sup>

**THE OPTIONS CLEARING CORPORATION****BY-LAWS**

\* \* \*

**ARTICLE IV****Officers****Selection by Board of Directors**

SECTION 1. Upon the nomination of the Governance and Nominating Committee, an Executive Chairman of the Board, who shall by virtue of his office be a Management Director of the Corporation, shall be elected by the Board of Directors from among the full-time employees of the Corporation. Also upon the nomination of the Governance and Nominating Committee, a Vice Chairman of the Board shall be elected by the Board of Directors from among the Member Directors. Such Vice Chairman shall be referred to as the Member Vice Chairman. The Board of Directors shall also elect a Chief Operating Officer, who it may, in its discretion, designate as President of the Corporation, a Chief Administrative Officer, a Secretary and a Treasurer, none of whom need be a member of the Board of Directors at the time of such election. The Board of Directors may, but need not, elect one or more Vice Presidents or such other officers as it may from time to time determine are required for the efficient management and operation of the Corporation. An officer shall hold his office for one year and until his successor is elected and qualified or until his earlier death, resignation or removal. Two or more offices may be held by the same person except the offices of Executive Chairman of the Board, Chief Operating Officer, Chief Administrative Officer and Member Vice Chairman.

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<sup>1</sup> OCC’s By-Laws and Rules can be found on OCC’s public website:  
<http://optionsclearing.com/about/publications/bylaws.jsp>.

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**Item 2. Procedures of the Self-Regulatory Organization**

The proposed rule change was approved for filing with the Commission by OCC's Board at a meeting held on March 23, 2017.

Questions should be addressed to Justin Byrne, Vice President, Regulatory Filings, at (202) 971-7238.

**Item 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

A. Purpose

On April 26, 2017, the Commission approved a proposed rule change by OCC that, among other things, amended OCC's By-Laws and Rules to: (1) remove all references to OCC's President to reflect the fact that the President would no longer be a recognized officer within OCC's management and (2) reallocate the authority and responsibilities previously granted to the President between the COO and a newly appointed Chief Administrative Officer ("CAO").<sup>2</sup> OCC is now proposing to amend Article IV, Section 1 of the By-Laws to provide that the Board may, in its discretion, designate that the COO also serve as President of OCC. The purpose of the proposed rule change is to provide further clarity and transparency around OCC's management structure and the roles and titles of its senior management.

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<sup>2</sup> See Securities Exchange Act Release No. 80531 (April 26, 2017), 82 FR 20502 (May 2, 2017) (SR-OCC-2017-002).

Prior to the approval of SR-OCC-2017-002,<sup>3</sup> OCC's By-Laws stipulated that its President would also serve as COO, with the authority and responsibilities of the COO and President primarily being addressed throughout the By-Laws and Rules in terms of this officer's capacity as President. As a result of SR-OCC-2017-002,<sup>4</sup> OCC's By-Laws and Rules were amended to eliminate all references to the President; however, the position of COO was retained, and OCC's senior management was reorganized within an Office of the Executive Chairman comprised of the Executive Chairman and Chief Executive Officer, the COO and the CAO. Pursuant to Article IV, Section 8 of the By-Laws, the COO and CAO are responsible for the aspects of OCC's business that do not report directly to the Executive Chairman, with such responsibilities being determined by the Board to promote the efficient and effective management and operation of OCC. The By-Laws and Rules also address various other authorities and responsibilities of the COO and CAO.<sup>5</sup>

The proposed rule change would provide that the Board may, in its discretion, designate that the COO also serve as President. The two roles would not, however, be tied together by operation of the By-Laws as it was prior to the approval of SR-OCC-2017-002 and would instead provide the Board with the discretionary authority to make this determination as it deems appropriate. The proposed rule change is not intended to modify OCC's current management

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<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> For example, OCC's Rules provide the Executive Chairman, COO and CAO with the authority to, among other things, impose certain restrictions on a Clearing Member's transactions, positions and activities based on the financial or operational condition of the Clearing Member (Rule 305); extend settlement times in emergency conditions; (Rule 505); waive the required margin deposit of a Clearing Member in the interest of maintaining fair and orderly markets (Rule 609A); and make a determination as to whether the immediate liquidation of some or all of a suspended Clearing Member's margin deposits and/or contributions to the Clearing Fund would not be in the best interests of the OCC, other Clearing Members, or the general public (Rule 1104).



structure or the allocation of duties and responsibilities currently associated with the roles of COO or CAO as set forth in By-Laws and Rules. If the Board determines to designate that the COO also serve as President, the authority and responsibilities of the COO and President would continue to be governed by the allocation of authority and responsibilities of the COO as currently set forth in OCC's By-Laws and Rules. The proposed rule change would take a similar approach to the previous construction of OCC's By-Laws and Rules regarding the role of COO and President; however, the proposed approach would now articulate the authority and responsibilities of the President and COO throughout the By-Laws and Rules in terms of this officer's capacity as COO (as opposed to President).

OCC notes that, under Article IV, Section 1 of the By-Laws, the Board may, but need not, elect such other officers (*i.e.*, officers in addition to the Executive Chairman, Member Vice Chairman, COO, CAO, Secretary, and Treasurer) as it may from time to time determine are required for the efficient management and operation of OCC. While this provision of Article IV, Section 1 of the By-Laws currently provides the Board with discretionary authority to elect or otherwise designate an officer of OCC to serve as President, OCC believes that the proposed rule change would provide additional clarity and transparency around the Board's authority to elect a President, particularly in light of recent OCC filing SR-OCC-2017-002.

#### B. Statutory Basis

Section 17A(b)(3)(F) of the Securities Exchange Act of 1934, as amended ("Act"),<sup>6</sup> requires that the rules of a clearing agency be designed, in general, to protect investors and the public interest. OCC believes that the proposed rule change is consistent with the protection of

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<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

investors and the public interest because it would provide OCC's users and the general public with further clarity and transparency around OCC's management structure and the roles and titles of its senior management by clarifying in OCC's By-Laws that the Board has the discretion to designate that OCC's COO also serve as President of the corporation. As a result, OCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.<sup>7</sup>

In addition, Rule 17Ad-22(e)(2)<sup>8</sup> requires covered clearing agencies to maintain written policies and procedures reasonably designed to, among other things, provide for governance arrangements that are clear and transparent, specify clear and direct lines of responsibility, and fulfill the public interest requirements in Section 17A of the Act.<sup>9</sup> OCC believes that the proposed amendments to its By-Laws would provide clear and transparent statements of the Board's discretionary authority to designate that the COO also serve as President of OCC. Under the proposed rule change, if the Board would designate that the COO also serve as President, the authority and responsibilities of the COO and President would continue to be governed by the clear allocation of authority and responsibilities provided to the COO as currently set forth in OCC's By-Laws and Rules. As a result, OCC believes the proposed rule change would provide for governance arrangements that are clear and transparent, specify clear and direct lines of responsibility, and fulfill the public interest requirements in Section 17A of the Act<sup>10</sup> in a manner consistent with Rule 17Ad-22(e)(2).<sup>11</sup>

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<sup>7</sup> Id.

<sup>8</sup> 17 CFR 240.17Ad-22(e)(2).

<sup>9</sup> 15 U.S.C. 78q-1.

<sup>10</sup> 15 U.S.C. 78q-1.

<sup>11</sup> 17 CFR 240.17Ad-22(e)(2).

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

**Item 4. Self-Regulatory Organization’s Statement on Burden on Competition**

Section 17A(b)(3)(I) of the Act<sup>12</sup> 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 Act. OCC does not believe the proposed rule change would have any impact or impose any burden on competition. As discussed in more detail above, OCC believes that the proposed rule change would provide more clarity and transparency to users (and potential users) of OCC regarding OCC’s governance and management arrangements. The proposed rule change would not affect Clearing Members’ access to OCC’s services or disadvantage or favor any particular user in relationship to another user. As such, OCC believes that the proposed changes would not have any impact or impose any burden on competition.

**Item 5. Self-Regulatory Organization’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.

**Item 6. Extension of Time Period for Commission Action**

OCC does not consent to an extension of the time period for Commission action on the proposed rule change.

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<sup>12</sup> 15 U.S.C. 78q-1(b)(3)(I).

**Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

Pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6)<sup>14</sup> thereunder, the proposed rule change is filed for immediate effectiveness because it does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms would not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate. Additionally, OCC provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission.

As noted above, Article IV, Section 1 of the By-Laws currently provides the Board with discretionary authority to elect such officers as it may from time to time determine are required for the efficient management and operation of OCC, which would include the election or designation of an officer of OCC to serve as President. The proposed rule change is designed to provide more clarity and transparency regarding OCC's management structure, particularly in light of recently approved OCC filing SR-OCC-2017-002,<sup>15</sup> by incorporating a provision into OCC's By-Laws to clarify that the Board of Directors may, in its discretion, designate that OCC's COO also serve as President of OCC. Under the proposed rule change, if the Board would designate that the COO also serve as President, the authority and responsibilities of the COO and President would continue to be governed by the clear allocation of authority and

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> See supra note 2.

responsibilities provided to the COO as currently set forth in OCC's By-Laws and Rules. As a result, OCC does not believe that the proposed rule change would significantly affect the protection of investors or the public interest. Moreover, as noted in Item 4 above, the proposed rule change would not affect Clearing Members' access to OCC's services or disadvantage or favor any particular user in relationship to another user. Accordingly, OCC believes that the proposed rule change would not impose any significant burden on competition.

OCC requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii)<sup>16</sup> so that the proposal may become operative immediately upon filing. OCC believes that a waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it will enable OCC to implement the proposed rule change in a more timely manner and thereby reinforce the Board's authority to elect officers, and more specifically, a President, as it deems necessary for the efficient management and operation of OCC.<sup>17</sup>

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.

**Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

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<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation §40.6.

**Item 9.        Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**Item 10.       Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**Item 11.       Exhibits**

Exhibit 1A.    Completed Notice of Proposed Rule Change for publication in the Federal Register.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, The Options Clearing Corporation has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

**THE OPTIONS CLEARING CORPORATION**

**By:** \_\_\_\_\_

**Justin W. Byrne**  
**Vice President, Regulatory Filings**

## EXHIBIT 1A

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-[\_\_\_\_\_]; File No. SR-OCC-2017-012)

May 5, 2017

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Concerning The Options Clearing Corporation's Management Structure

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> notice is hereby given that on May 5, 2017, 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)(iii)<sup>3</sup> of the Act and Rule 19b-4(f)(6)<sup>4</sup> thereunder so that the proposal was effective upon filing with the Commission. 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 by OCC concerns the amendment of OCC's By-Laws to provide that the Board of Directors ("Board") may, in its discretion, designate the Chief Operating Officer ("COO") to act as President of OCC.

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(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. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.<sup>5</sup>

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

1. Purpose

On April 26, 2017, the Commission approved a proposed rule change by OCC that, among other things, amended OCC's By-Laws and Rules to: (1) remove all references to OCC's President to reflect the fact that the President would no longer be a recognized officer within OCC's management and (2) reallocate the authority and responsibilities previously granted to the President between the COO and a newly appointed Chief Administrative Officer ("CAO").<sup>6</sup> OCC is now proposing to amend Article IV, Section 1 of the By-Laws to provide that the Board may, in its discretion, designate that the COO also serve as President of OCC. The purpose of the proposed

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<sup>5</sup> OCC's By-Laws and Rules can be found on OCC's public website: <http://optionsclearing.com/about/publications/bylaws.jsp>.

<sup>6</sup> See Securities Exchange Act Release No. 80531 (April 26, 2017), 82 FR 20502 (May 2, 2017) (SR-OCC-2017-002).

rule change is to provide further clarity and transparency around OCC's management structure and the roles and titles of its senior management.

Prior to the approval of SR-OCC-2017-002,<sup>7</sup> OCC's By-Laws stipulated that its President would also serve as COO, with the authority and responsibilities of the COO and President primarily being addressed throughout the By-Laws and Rules in terms of this officer's capacity as President. As a result of SR-OCC-2017-002,<sup>8</sup> OCC's By-Laws and Rules were amended to eliminate all references to the President; however, the position of COO was retained, and OCC's senior management was reorganized within an Office of the Executive Chairman comprised of the Executive Chairman and Chief Executive Officer, the COO and the CAO. Pursuant to Article IV, Section 8 of the By-Laws, the COO and CAO are responsible for the aspects of OCC's business that do not report directly to the Executive Chairman, with such responsibilities being determined by the Board to promote the efficient and effective management and operation of OCC. The By-Laws and Rules also address various other authorities and responsibilities of the COO and CAO.<sup>9</sup>

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<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> For example, OCC's Rules provide the Executive Chairman, COO and CAO with the authority to, among other things, impose certain restrictions on a Clearing Member's transactions, positions and activities based on the financial or operational condition of the Clearing Member (Rule 305); extend settlement times in emergency conditions; (Rule 505); waive the required margin deposit of a Clearing Member in the interest of maintaining fair and orderly markets (Rule 609A); and make a determination as to whether the immediate liquidation of some or all of a suspended Clearing Member's margin deposits and/or contributions to the Clearing Fund would not be in the best interests of the OCC, other Clearing Members, or the general public (Rule 1104).

The proposed rule change would provide that the Board may, in its discretion, designate that the COO also serve as President. The two roles would not, however, be tied together by operation of the By-Laws as it was prior to the approval of SR-OCC-2017-002 and would instead provide the Board with the discretionary authority to make this determination as it deems appropriate. The proposed rule change is not intended to modify OCC's current management structure or the allocation of duties and responsibilities currently associated with the roles of COO or CAO as set forth in By-Laws and Rules. If the Board determines to designate that the COO also serve as President, the authority and responsibilities of the COO and President would continue to be governed by the allocation of authority and responsibilities of the COO as currently set forth in OCC's By-Laws and Rules. The proposed rule change would take a similar approach to the previous construction of OCC's By-Laws and Rules regarding the role of COO and President; however, the proposed approach would now describe the authority and responsibilities of the President and COO throughout the By-Laws and Rules in terms of this officer's capacity as COO (as opposed to President).

OCC notes that, under Article IV, Section 1 of the By-Laws, the Board may, but need not, elect such other officers (*i.e.*, officers in addition to the Executive Chairman, Member Vice Chairman, COO, CAO, Secretary, and Treasurer) as it may from time to time determine are required for the efficient management and operation of OCC. While this provision of Article IV, Section 1 of the By-Laws currently provides the Board with discretionary authority to elect or otherwise designate an officer of OCC to serve as President, OCC believes that the proposed rule change would provide additional clarity

and transparency around the Board's authority to elect a President, particularly in light of recent OCC filing SR-OCC-2017-002.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act,<sup>10</sup> requires that the rules of a clearing agency be designed, in general, to protect investors and the public interest. OCC believes that the proposed rule change is consistent with the protection of investors and the public interest because it would provide OCC's users and the general public with further clarity and transparency around OCC's management structure and the roles and titles of its senior management by clarifying in OCC's By-Laws that the Board has the discretion to designate that OCC's COO also serve as President of the corporation. As a result, OCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.<sup>11</sup>

In addition, Rule 17Ad-22(e)(2)<sup>12</sup> requires covered clearing agencies to maintain written policies and procedures reasonably designed to, among other things, provide for governance arrangements that are clear and transparent, specify clear and direct lines of responsibility, and fulfill the public interest requirements in Section 17A of the Act.<sup>13</sup> OCC believes that the proposed amendments to its By-Laws would provide clear and transparent statements of the Board's discretionary authority to designate that the COO also serve as President of OCC. Under the proposed rule change, if the Board would designate that the COO also serve as President, the authority and responsibilities of the

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<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>11</sup> Id.

<sup>12</sup> 17 CFR 240.17Ad-22(e)(2).

<sup>13</sup> 15 U.S.C. 78q-1.

COO and President would continue to be governed by the clear allocation of authority and responsibilities provided to the COO as currently set forth in OCC's By-Laws and Rules. As a result, OCC believes the proposed rule change would provide for governance arrangements that are clear and transparent, specify clear and direct lines of responsibility, and fulfill the public interest requirements in Section 17A of the Act<sup>14</sup> in a manner consistent with Rule 17Ad-22(e)(2).<sup>15</sup>

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

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

Section 17A(b)(3)(I) of the Act<sup>16</sup> 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 Act. OCC does not believe the proposed rule change would have any impact or impose any burden on competition. As discussed in more detail above, OCC believes that the proposed rule change would provide more clarity and transparency to users (and potential users) of OCC regarding OCC's governance and management arrangements. The proposed rule change would not affect Clearing Members' access to OCC's services or disadvantage or favor any particular user in relationship to another user. As such, OCC believes that the proposed changes would not have any impact or impose any burden on competition.

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<sup>14</sup> 15 U.S.C. 78q-1.

<sup>15</sup> 17 CFR 240.17Ad-22(e)(2).

<sup>16</sup> 15 U.S.C. 78q-1(b)(3)(I).

(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

Pursuant to Section 19(b)(3)(A) of the Act,<sup>17</sup> and Rule 19b-4(f)(6)<sup>18</sup> thereunder, the proposed rule change is filed for immediate effectiveness because it does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms would not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate.<sup>19</sup> Additionally, OCC provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission.

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

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

<sup>19</sup> OCC has requested that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that the proposal may become operative immediately upon filing. OCC believes that a waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it will enable OCC to implement the proposed rule change in a more timely manner and thereby reinforce the Board's authority to elect officers, and more specifically, a President, as it deems necessary for the efficient management and operation of OCC.

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.<sup>20</sup>

#### IV. Solicitation of Comments

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

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2017-012 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-2017-012. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule

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<sup>20</sup> Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation §40.6.

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, N.E., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 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

[http://www.theocc.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_17\\_012.pdf](http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_17_012.pdf)

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.



All submissions should refer to File Number SR-OCC-2017-012 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

Robert W. Errett  
Deputy Secretary

Action as set forth recommended herein  
APPROVED pursuant to authority delegated  
by the Commission under Public Law 87-  
592.

For: Division of Trading and Markets

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

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<sup>21</sup> 17 CFR 200.30-3(a)(12).