



July 16, 2018

**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-2018-010 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 (“Exchange Act”).

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

Explanation and Analysis

The proposed change by OCC would amend the definition of the term “flexibly structured option” as provided in Article I, Section 1.F.(8) of OCC’s By-Laws to conform the definition to a recent rule change by Cboe Exchange, Inc. (“Cboe Options” or “CBOE”). The proposed changes to OCC’s By-Laws are attached hereto as Exhibit 5. Material proposed to be added to OCC’s By-Laws as currently in effect is marked by underlining and material proposed to be deleted is marked with strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the By-Laws and Rules.<sup>1</sup>

Flexibly structured options are options that give investors the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. OCC currently defines a “flexibly structured option” as an option having variable terms that are negotiated between the parties to a confirmed trade pursuant to Exchange Rules and that do not correspond to

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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>.

the variable terms<sup>2</sup> of any series of non-flexibly structured options previously opened for trading on the Exchange (other than a series of quarterly options or short term options).<sup>3</sup> In addition, OCC's By-Laws currently provide that once a series of non-flexibly structured options (other than a series of quarterly options or short term options) is opened for trading on an options exchange, any existing flexibly structured option contracts that have identical variable terms shall be fully fungible with options in such series, and shall cease to be flexibly structured options.<sup>4</sup> In other words, with the exception of quarterly options and short term options series, once an exchange opens a non-flexibly structured option series having identical terms to a flexibly structured option, the flexibly structured option would become fungible with the non-flexibly structured option series.

Pursuant to a recent rule change, Cboe Options has made all flexibly structured options fungible with subsequently-introduced non-flexibly structured options series having identical variable terms.<sup>5</sup> This includes non-flexibly structured quarterly options and short term options series.<sup>6</sup> As a result, for instance, under Cboe Options' rules, a flexibly structured option that has the same terms as a subsequently-introduced quarterly or short term option series would now be fungible with that non-flexibly structured quarterly or short term option series.

Cboe Options has requested that OCC amend its By-Laws to allow Cboe Options' rule change to become effective. Cboe Options noted in its rule change that the change "will have the

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<sup>2</sup> OCC By-Laws, Article I., Section 1.V.(1), which defines "variable terms" in respect of a series of option contracts other than OTC options to mean "the name of the underlying interest, the exercise price (or, in respect of a series of delayed start options that does not yet have a set exercise price, the exercise price setting formula and exercise price setting date), the index value determinant and the index multiplier (in the case of a flexibly structured index option), the cap interval (in the case of a capped option) and the expiration date of such option contract."

<sup>3</sup> OCC By-Laws, Article I. Non-flexibly structured weekly options are called "short term options" in OCC's By-Laws and Rules. Under Article I of OCC By-Laws, the term "quarterly option" means "an option of a series of stock options or index options that expires on the last business day of a calendar quarter," and the term "short term option" means "an option of a series of options that expires one week after it is opened for trading."

<sup>4</sup> OCC By-Laws, Article I., Section 1.F.(8).

<sup>5</sup> See Securities Exchange Act Release No. 83205 (May 9, 2018), 83 FR 22550 (May 15, 2018) (SR-CBOE-2018-008) (Order Approving a Proposed Rule Change Relating to Flexibly Structured Options) ("Cboe Options has proposed to amend the rule to make all FLEX Options fungible with Non-FLEX Options that have identical terms.")

<sup>6</sup> This also includes weekly expirations and End of Month ("EOM") expirations. Cboe Options stated in its proposal that flexibly structured options with these expirations were not originally intended to be fungible. See Securities Exchange Act No. 82622 (February 2, 2018), 83 FR 5668 (February 8, 2018) (SR-CBOE-2018-008) (Notice of Filing of a Proposed Rule Change Relating to Flexibly Structured Options).

effect of more FLEX Options becoming fungible with Non-Flex Options, which will potentially increase the liquidity available to traders of FLEX Options.”<sup>7</sup>

To clear and settle flexibly structured options traded on Cboe Options in a manner that is consistent with Cboe Options’ rules, OCC proposes to amend its definition of “flexibly structured option” in Article I of its By-Laws by deleting “(other than a series of quarterly options or short term options)” in the two instances in which it appears in the definition.<sup>8</sup> OCC added this text to its definition of a flexibly structured option in 2009 to ensure consistency with Cboe Options rules, which were amended at that time to, among other things, allow for flexibly structured options to become fungible with subsequently introduced non-flexibly structured options series that have the same terms (other than a series of quarterly options or short term options).<sup>9</sup> Consistent with Cboe Options’ rule change at that time, OCC amended its definition of flexibly structured options in 2009 to provide that a flexibly structured option cannot have the same terms as any series of non-flexibly structured options previously opened for trading on the exchange other than a series of quarterly options or short term options.<sup>10</sup> OCC intended the 2009 amended definition to clarify that a flexibly structured option could share the same terms as a non-flexibly structured quarterly or short term option series and still be considered a flexibly structured option. Consistent with Cboe Options’ most recent rule change, OCC proposes to eliminate from the language of its definition of a flexibly structured option the first instance of “(other than a series of quarterly options or short term options)” to provide that a flexibly structured option cannot share the same terms as a non-flexibly structured option series that has been previously opened for trading on the exchange, including a currently-trading quarterly options or short term options series. Consistent with Cboe Options’ rules, OCC believes that this change would amend the definition in a manner to make it clear that flexibly structured options cannot share the same terms as non-flexibly structured option series that have been previously opened for trading on the exchange.

The second instance of “(other than a series of quarterly options or short term options)” in the flexibly structured option definition was adopted in 2009 to provide, consistent with Cboe Options rules then in effect and as an exception to general fungibility, that a quarterly options or short term options series with the same terms as a flexibly structured option would not become

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<sup>7</sup> See Securities Exchange Act Release No. 82622 (February 2, 2018), 83 FR 5668 (February 8, 2018) (SR-CBOE-2018-008) (Notice of Filing of a Proposed Rule Change Relating to Flexibly Structured Options).

<sup>8</sup> OCC By-Laws, Article I., Section 1.F.(8).

<sup>9</sup> See Securities Exchange Act Release No. 59675 (April 1, 2009), 74 FR 15794 (April 7, 2009) (SR-OCC-2009-05); Securities Exchange Act Release No. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (order approving SR-CBOE-2008-115).

<sup>10</sup> See Securities Exchange Act Release No. 59060 (December 5, 2008), 73 FR 76075 (December 15, 2008) (SR-CBOE-2008-115) (“subject to certain aggregation requirements for cash settled options, the current FLEX Rules do permit the expiration of FLEX Options on the same day that Non-FLEX quarterly index options (“QIX”) and Non-FLEX Weeklys Options expire.”).

fungible with that flexibly structured option. As noted above, Cboe Options has recently adopted a rule change to eliminate this restriction and allow all flexibly structured options to become fungible with non-flexibly structured options series having identical variable terms that are later opened for trading on the exchange.<sup>11</sup> Accordingly, OCC proposes to eliminate the second instance of this text from the language of the definition of a flexibly structured option in OCC's By-Laws to make it consistent with Cboe Options' rules. As amended, OCC's definition of a flexibly structured option would provide that once a series of non-flexibly structured options is opened for trading on an exchange, any existing flexibly structured option contracts that have identical variable terms shall be fully fungible with options in such series, and shall cease to be flexibly structured options. OCC believes that this change would allow OCC clear and settle flexibly structured options traded on Cboe Options in a manner that is consistent with Cboe Options' rules and would have the effect of making more flexibly structured options fungible with identical non-flexibly structured options series.

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

Participant and product eligibility. OCC believes that implementing the proposed rule change will be consistent with the Core Principle C<sup>12</sup> concerning participant and product eligibility. CFTC Regulation 39.12(b)(5)<sup>13</sup> provides in part that a DCO shall select product unit sizes and other terms and conditions that maximize liquidity, facilitate transparency in pricing, promote open access, and allow for effective risk management. As noted above, Cboe Options has noted that its rule change will potentially increase the liquidity available to traders of flexibly structured options. Cboe Options indicated that this is because there are more market participants in the standardized options market and thus there is potentially more liquidity available to market participants with flexibly structured options to be able to exit their positions in the standardized options market once the flexibly structured options become fungible with standardized options with the same terms.

In this regard, the proposed changes would further OCC's compliance with Core Principle C.

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<sup>11</sup> See supra note 5.

<sup>12</sup> 7 U.S.C. 7a-1(c)(2)(C).

<sup>13</sup> 17 CFR 39.12(b)(5).

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 be 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.

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,



Joe Corcoran  
Vice President, Government Relations

Enclosure

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 28	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2018 - * 010 Amendment No. (req. for Amendments *)
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Filing by Options Clearing Corporation  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>			Date Expires * <input type="text"/>		
			<input type="checkbox"/> 19b-4(f)(1)	<input checked="" type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposed rule change to amend the definition of Flexibly Structured Options.

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Justin Last Name \* Byrne  
 Title \* Vice President, Regulatory Filings  
 E-mail \* jbyrne@theocc.com  
 Telephone \* (202) 971-7238 Fax (312) 322-6280

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)  
 Date 07/16/2018 Vice President, Regulatory Filings  
 By Justin W. Byrne  
 (Name \*) Justin Byrne, jbyrne@theocc.com

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**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**

The Options Clearing Corporation (“OCC”) proposes to amend the definition of the term “flexibly structured option” as provided in Article I, Section 1.F.(8) of OCC’s By-Laws to conform the definition to a recent rule change by Cboe Exchange, Inc. (“Cboe Options” or “CBOE”). The proposed changes to OCC’s By-Laws are attached hereto as Exhibit 5. Material proposed to be added to OCC’s By-Laws as currently in effect is marked by underlining and material proposed to be deleted is marked with strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the By-Laws and Rules.<sup>1</sup>

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

The proposed rule change was approved for filing with the Commission by OCC’s Board of Directors (“Board”) at a meeting held on October 3, 2017.

Questions should be addressed to Joe Corcoran, Vice President, Government Relations, at (202) 971-7231.

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

A. Purpose

Flexibly structured options are options that give investors the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. OCC

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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>.

currently defines a “flexibly structured option” as an option having variable terms that are negotiated between the parties to a confirmed trade pursuant to Exchange Rules and that do not correspond to the variable terms<sup>2</sup> of any series of non-flexibly structured options previously opened for trading on the Exchange (other than a series of quarterly options or short term options).<sup>3</sup> In addition, OCC’s By-Laws currently provide that once a series of non-flexibly structured options (other than a series of quarterly options or short term options) is opened for trading on an options exchange, any existing flexibly structured option contracts that have identical variable terms shall be fully fungible with options in such series, and shall cease to be flexibly structured options.<sup>4</sup> In other words, with the exception of quarterly options and short term options series, once an exchange opens a non-flexibly structured option series having identical terms to a flexibly structured option, the flexibly structured option would become fungible with the non-flexibly structured option series.

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<sup>2</sup> OCC By-Laws, Article I., Section 1.V.(1), which defines “variable terms” in respect of a series of option contracts other than OTC options to mean “the name of the underlying interest, the exercise price (or, in respect of a series of delayed start options that does not yet have a set exercise price, the exercise price setting formula and exercise price setting date), the index value determinant and the index multiplier (in the case of a flexibly structured index option), the cap interval (in the case of a capped option) and the expiration date of such option contract.”

<sup>3</sup> OCC By-Laws, Article I. Non-flexibly structured weekly options are called “short term options” in OCC’s By-Laws and Rules. Under Article I of OCC By-Laws, the term “quarterly option” means “an option of a series of stock options or index options that expires on the last business day of a calendar quarter,” and the term “short term option” means “an option of a series of options that expires one week after it is opened for trading.”

<sup>4</sup> OCC By-Laws, Article I., Section 1.F.(8).

Pursuant to a recent rule change, Cboe Options has made all flexibly structured options fungible with subsequently-introduced non-flexibly structured options series having identical variable terms.<sup>5</sup> This includes non-flexibly structured quarterly options and short term options series.<sup>6</sup> As a result, for instance, under Cboe Options' rules, a flexibly structured option that has the same terms as a subsequently-introduced quarterly or short term option series would now be fungible with that non-flexibly structured quarterly or short term option series.

Cboe Options has requested that OCC amend its By-Laws to allow Cboe Options' rule change to become effective. Cboe Options noted in its rule change that the change "will have the effect of more FLEX Options becoming fungible with Non-Flex Options, which will potentially increase the liquidity available to traders of FLEX Options."<sup>7</sup>

To clear and settle flexibly structured options traded on Cboe Options in a manner that is consistent with Cboe Options' rules, OCC proposes to amend its definition of "flexibly structured option" in Article I of its By-Laws by deleting "(other than a series of quarterly

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<sup>5</sup> See Securities Exchange Act Release No. 83205 (May 9, 2018), 83 FR 22550 (May 15, 2018) (SR-CBOE-2018-008) (Order Approving a Proposed Rule Change Relating to Flexibly Structured Options) ("Cboe Options has proposed to amend the rule to make all FLEX Options fungible with Non-FLEX Options that have identical terms.")

<sup>6</sup> This also includes weekly expirations and End of Month ("EOM") expirations. Cboe Options stated in its proposal that flexibly structured options with these expirations were not originally intended to be fungible. See Securities Exchange Release Act No. 82622 (February 2, 2018), 83 FR 5668 (February 8, 2018) (SR-CBOE-2018-008) (Notice of Filing of a Proposed Rule Change Relating to Flexibly Structured Options).

<sup>7</sup> See Securities Exchange Act Release No. 82622 (February 2, 2018), 83 FR 5668 (February 8, 2018) (SR-CBOE-2018-008) (Notice of Filing of a Proposed Rule Change Relating to Flexibly Structured Options).

options or short term options)” in the two instances in which it appears in the definition.<sup>8</sup> OCC added this text to its definition of a flexibly structured option in 2009 to ensure consistency with Cboe Options rules, which were amended at that time to, among other things, allow for flexibly structured options to become fungible with subsequently introduced non-flexibly structured options series that have the same terms (other than a series of quarterly options or short term options).<sup>9</sup> Consistent with Cboe Options’ rule change at that time, OCC amended its definition of flexibly structured options in 2009 to provide that a flexibly structured option cannot have the same terms as any series of non-flexibly structured options previously opened for trading on the exchange other than a series of quarterly options or short term options.<sup>10</sup> OCC intended the 2009 amended definition to clarify that a flexibly structured option could share the same terms as a non-flexibly structured quarterly or short term option series and still be considered a flexibly structured option. Consistent with Cboe Options’ most recent rule change, OCC proposes to eliminate from the language of its definition of a flexibly structured option the first instance of “(other than a series of quarterly options or short term options)” to provide that a flexibly structured option cannot share the same terms as a non-flexibly structured option series that has

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<sup>8</sup> OCC By-Laws, Article I., Section 1.F.(8).

<sup>9</sup> See Securities Exchange Act Release No. 59675 (April 1, 2009), 74 FR 15794 (April 7, 2009) (SR-OCC-2009-05); Securities Exchange Act Release No. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (order approving SR-CBOE-2008-115).

<sup>10</sup> See Securities Exchange Act Release No. 59060 (December 5, 2008), 73 FR 76075 (December 15, 2008) (SR-CBOE-2008-115) (“subject to certain aggregation requirements for cash settled options, the current FLEX Rules do permit the expiration of FLEX Options on the same day that Non-FLEX quarterly index options (“QIX”) and Non-FLEX Weeklys Options expire.”).

been previously opened for trading on the exchange, including a currently-trading quarterly options or short term options series. Consistent with Cboe Options' rules, OCC believes that this change would amend the definition in a manner to make it clear that flexibly structured options cannot share the same terms as non-flexibly structured option series that have been previously opened for trading on the exchange.

The second instance of “(other than a series of quarterly options or short term options)” in the flexibly structured option definition was adopted in 2009 to provide, consistent with Cboe Options rules then in effect and as an exception to general fungibility, that a quarterly options or short term options series with the same terms as a flexibly structured option would not become fungible with that flexibly structured option. As noted above, Cboe Options has recently adopted a rule change to eliminate this restriction and allow all flexibly structured options to become fungible with non-flexibly structured options series having identical variable terms that are later opened for trading on the exchange.<sup>11</sup> Accordingly, OCC proposes to eliminate the second instance of this text from the language of the definition of a flexibly structured option in OCC's By-Laws to make it consistent with Cboe Options' rules. As amended, OCC's definition of a flexibly structured option would provide that once a series of non-flexibly structured options is opened for trading on an exchange, any existing flexibly structured option contracts that have identical variable terms shall be fully fungible with options in such series, and shall cease to be flexibly structured options. OCC believes that this change would allow OCC clear and settle

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<sup>11</sup> See supra note 5.

flexibly structured options traded on Cboe Options in a manner that is consistent with Cboe Options' rules and would have the effect of making more flexibly structured options fungible with identical non-flexibly structured options series.

B. Statutory Basis

Section 17A(b)(3)(F) of the Securities Exchange Act of 1934, as amended ("Act")<sup>12</sup> requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions, to foster cooperation and coordination with persons engaged in clearance and settlement, and, in general, to protect investors and the public interest. OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of Act<sup>13</sup> because it is designed to promote the prompt and accurate clearance and settlement of securities transactions in flexibly structured options. The proposed rule change accomplishes this by maintaining consistency between OCC's By-Laws and Rules and Cboe Options' rules as applied to the clearance and settlement of flexibly structured options. OCC further believes that the proposed rule change accomplishes this by providing that all flexibly structured options are subject to the same requirements. The proposed rule change would make all flexibly structured options fungible with subsequently introduced non-flexibly structured options with identical terms, thereby increasing operational efficiency by eliminating the need for OCC to monitor and treat a certain group of flexibly structured options

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

<sup>13</sup> 15 U.S.C. 78q-1(b)(3)(F).

(i.e. ones with the same terms as quarterly options and short term options series) differently than other flexibly structured options. In addition, Cboe Options has noted that its rule change will potentially increase the liquidity available to traders of flexibly structured options.<sup>14</sup> Moreover, the Commission has previously noted that it would be concerned if flexibly structured options were to act as a surrogate for trading in standardized options (i.e., non-flexibly structured exchange-traded options) and that allowing for flexibly structured options to become fungible with standardized options would help alleviate this concern.<sup>15</sup> In this respect, the Commission noted the following when it initially approved Cboe Options' rules to provide for fungibility between flexibly structured options and standardized options series with the same terms:

However, the rules, as proposed by the CBOE, help to ensure that FLEX market participants cannot avoid the protections provided to retail investors in the standardized options market simply by trading FLEX Options. In this regard, once a series is open for trading, new FLEX Options are not permitted in that series. In addition, once a Non-FLEX Options series is open, all outstanding FLEX Options in the same series become fungible with the standardized market, are traded pursuant to standardized market trading rules, and are aggregated for position and exercise limit purposes. These rules help to alleviate these surrogate concerns and should help to ensure that FLEX Options market continues to operate as intended.<sup>16</sup>

The proposed rule change would help to further address this concern by allowing all flexibly structured options to become fungible with non-flexibly structured options series with the same terms that are later opened for trading on the exchange.

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<sup>14</sup> See supra note 6.

<sup>15</sup> See Securities Exchange Act Release No. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (order approving SR-CBOE-2008-115). See also supra note 5.

<sup>16</sup> See Securities Exchange Act Release No. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (order approving SR-CBOE-2008-115).

In addition, the proposed rule change is not inconsistent with the existing By-Laws and Rules of OCC, including any 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>17</sup> requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the Act. OCC does not believe that the proposed rule change would impact or impose any burden on competition.<sup>18</sup> The proposed rule change would not affect the competitive dynamics between clearing members, but rather would solely affect the treatment of flexibly structured options with the same terms as quarterly options and short term options series. In this respect, it would facilitate consistent treatment of such flexibly structured options with all other flexibly structured options, providing that all flexibly structured options will become fungible with subsequently-introduced standardized options with the same terms. The proposed rule change also would not inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another. The proposed rule change would treat equally all holders of flexibly structured options with the same terms as subsequently introduced quarterly options and short term options series, providing that such flexibly structured options held by them would become fungible with such standardized options series. For the foregoing reasons, OCC believes the proposed rule change is in the public

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<sup>17</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>18</sup> 15 U.S.C. 78q-1(b)(3)(I).



interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impact or impose a 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**

Not applicable.

**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)<sup>19</sup> and Rule 19b-4(f)(4)(ii)<sup>20</sup> thereunder, the proposed rule change is filed for immediate effectiveness because it effects a change in an existing service that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. The proposed rule change would expand the service that OCC provides to exchanges to make flexibly structured options fungible with subsequently-introduced standardized options with the same terms to now cover flexibly structured options with the same terms as subsequently-introduced quarterly options and short term options series. The proposed rule change does not adversely affect the safeguarding of securities or funds in OCC’s custody or control. Rather, it would

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(4)(ii).

provide that all flexibly structured options are fungible with subsequently introduced non-flexibly structured options series having the same terms. OCC further believes that the proposed rule change would not significantly affect the respective rights or obligations of the clearing agency or persons using the service. In this respect, the rule change would impose the same fungibility requirement on a certain subset of flexibility structured options (i.e., ones with the same terms as quarterly options and short term options series) that currently exists with respect to all other flexibly structured options, and as noted, would treat holders such flexibility structured options equally. Further, by providing that all flexibly structured options would become fungible with subsequently-introduced standardized options with the same terms, the proposed rule change would help address a previously-expressed concern by the Commission (noted above) about flexibly structured options potentially being used as surrogate for trading in standardized options.

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.<sup>21</sup>

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

Not applicable.

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<sup>21</sup> Notwithstanding the foregoing, implementation of this rule change will be delayed until this rule 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.

Exhibit 5. OCC By-Laws

**SIGNATURES**

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

**THE OPTIONS CLEARING CORPORATION**

**By:** \_\_\_\_\_  
**Joe Corcoran**  
**Vice President, Government Relations**

## EXHIBIT 1A

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-[\_\_\_\_\_]; File No. SR-OCC-2018-010)

July \_\_, 2018

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Definition of Flexibly Structured Options

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 July 16, 2018, 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)<sup>3</sup> of the Act and Rule 19b-4(f)(4)(ii)<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

OCC proposes to amend the definition of the term “flexibly structured option” as provided in Article I, Section 1.F.(8) of OCC’s By-Laws to conform the definition to a recent rule change by Cboe Exchange, Inc. (“Cboe Options” or “CBOE”). The proposed changes to OCC’s By-Laws can be found in Exhibit 5 to the filing. All terms with initial

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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).

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

capitalization that are not otherwise defined herein have the same meaning as set forth in the By-Laws and Rules.<sup>5</sup>

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

(1) Purpose

Flexibly structured options are options that give investors the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. OCC currently defines a “flexibly structured option” as an option having variable terms that are negotiated between the parties to a confirmed trade pursuant to Exchange Rules and that do not correspond to the variable terms<sup>6</sup> of any series of non-flexibly structured options previously opened for trading on the Exchange (other than a series of

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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> OCC By-Laws, Article I., Section 1.V.(1), which defines “variable terms” in respect of a series of option contracts other than OTC options to mean “the name of the underlying interest, the exercise price (or, in respect of a series of delayed start options that does not yet have a set exercise price, the exercise price setting formula and exercise price setting date), the index value determinant and the index multiplier (in the case of a flexibly structured index option), the cap interval (in the case of a capped option) and the expiration date of such option contract.”

quarterly options or short term options).<sup>7</sup> In addition, OCC's By-Laws currently provide that once a series of non-flexibly structured options (other than a series of quarterly options or short term options) is opened for trading on an options exchange, any existing flexibly structured option contracts that have identical variable terms shall be fully fungible with options in such series, and shall cease to be flexibly structured options.<sup>8</sup> In other words, with the exception of quarterly options and short term options series, once an exchange opens a non-flexibly structured option series having identical terms to a flexibly structured option, the flexibly structured option would become fungible with the non-flexibly structured option series.

Pursuant to a recent rule change, Cboe Options has made all flexibly structured options fungible with subsequently-introduced non-flexibly structured options series having identical variable terms.<sup>9</sup> This includes non-flexibly structured quarterly options and short term options series.<sup>10</sup> As a result, for instance, under Cboe Options' rules, a

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<sup>7</sup> OCC By-Laws, Article I. Non-flexibly structured weekly options are called "short term options" in OCC's By-Laws and Rules. Under Article I of OCC By-Laws, the term "quarterly option" means "an option of a series of stock options or index options that expires on the last business day of a calendar quarter," and the term "short term option" means "an option of a series of options that expires one week after it is opened for trading."

<sup>8</sup> OCC By-Laws, Article I., Section 1.F.(8).

<sup>9</sup> See Securities Exchange Act Release No. 83205 (May 9, 2018), 83 FR 22550 (May 15, 2018) (SR-CBOE-2018-008) (Order Approving a Proposed Rule Change Relating to Flexibly Structured Options) ("Cboe Options has proposed to amend the rule to make all FLEX Options fungible with Non-FLEX Options that have identical terms.")

<sup>10</sup> This also includes weekly expirations and End of Month ("EOM") expirations. Cboe Options stated in its proposal that flexibly structured options with these expirations were not originally intended to be fungible. See Securities Exchange Act Release No. 82622 (February 2, 2018), 83 FR 5668 (February 8, 2018) (SR-CBOE-2018-008) (Notice of Filing of a Proposed Rule Change Relating to Flexibly Structured Options).

flexibly structured option that has the same terms as a subsequently-introduced quarterly or short term option series would now be fungible with that non-flexibly structured quarterly or short term option series.

Cboe Options has requested that OCC amend its By-Laws to allow Cboe Options' rule change to become effective. Cboe Options noted in its rule change that the change "will have the effect of more FLEX Options becoming fungible with Non-Flex Options, which will potentially increase the liquidity available to traders of FLEX Options."<sup>11</sup>

To clear and settle flexibly structured options traded on Cboe Options in a manner that is consistent with Cboe Options' rules, OCC proposes to amend its definition of "flexibly structured option" in Article I of its By-Laws by deleting "(other than a series of quarterly options or short term options)" in the two instances in which it appears in the definition.<sup>12</sup> OCC added this text to its definition of a flexibly structured option in 2009 to ensure consistency with Cboe Options rules, which were amended at that time to, among other things, allow for flexibly structured options to become fungible with subsequently introduced non-flexibly structured options series that have the same terms (other than a series of quarterly options or short term options).<sup>13</sup> Consistent with Cboe Options' rule change at that time, OCC amended its definition of flexibly structured options in 2009 to provide that a flexibly structured option cannot have the same terms as

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<sup>11</sup> See Securities Exchange Act Release No. 82622 (February 2, 2018), 83 FR 5668 (February 8, 2018) (SR-CBOE-2018-008) (Notice of Filing of a Proposed Rule Change Relating to Flexibly Structured Options).

<sup>12</sup> OCC By-Laws, Article I., Section 1.F.(8).

<sup>13</sup> See Securities Exchange Act Release No. 59675 (April 1, 2009), 74 FR 15794 (April 7, 2009) (SR-OCC-2009-05); Securities Exchange Act Release No. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (order approving SR-CBOE-2008-115).



any series of non-flexibly structured options previously opened for trading on the exchange other than a series of quarterly options or short term options.<sup>14</sup> OCC intended the 2009 amended definition to clarify that a flexibly structured option could share the same terms as a non-flexibly structured quarterly or short term option series and still be considered a flexibly structured option. Consistent with Cboe Options' most recent rule change, OCC proposes to eliminate from the language of its definition of a flexibly structured option the first instance of "(other than a series of quarterly options or short term options)" to provide that a flexibly structured option cannot share the same terms as a non-flexibly structured option series that has been previously opened for trading on the exchange, including a currently-trading quarterly options or short term options series. Consistent with Cboe Options' rules, OCC believes that this change would amend the definition in a manner to make it clear that flexibly structured options cannot share the same terms as non-flexibly structured option series that have been previously opened for trading on the exchange.

The second instance of "(other than a series of quarterly options or short term options)" in the flexibly structured option definition was adopted in 2009 to provide, consistent with Cboe Options rules then in effect and as an exception to general fungibility, that a quarterly options or short term options series with the same terms as a flexibly structured option would not become fungible with that flexibly structured option. As noted above, Cboe Options has recently adopted a rule change to eliminate this

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<sup>14</sup> See Securities Exchange Act Release No. 59060 (December 5, 2008), 73 FR 76075 (December 15, 2008) (SR-CBOE-2008-115) ("subject to certain aggregation requirements for cash settled options, the current FLEX Rules do permit the expiration of FLEX Options on the same day that Non-FLEX quarterly index options ("QIX") and Non-FLEX Weekly Options expire.").

restriction and allow all flexibly structured options to become fungible with non-flexibly structured options series having identical variable terms that are later opened for trading on the exchange.<sup>15</sup> Accordingly, OCC proposes to eliminate the second instance of this text from the language of the definition of a flexibly structured option in OCC's By-Laws to make it consistent with Cboe Options' rules. As amended, OCC's definition of a flexibly structured option would provide that once a series of non-flexibly structured options is opened for trading on an exchange, any existing flexibly structured option contracts that have identical variable terms shall be fully fungible with options in such series, and shall cease to be flexibly structured options. OCC believes that this change would allow OCC clear and settle flexibly structured options traded on Cboe Options in a manner that is consistent with Cboe Options' rules and would have the effect of making more flexibly structured options fungible with identical non-flexibly structured options series.

(2) Statutory Basis

Section 17A(b)(3)(F) of the Securities Exchange Act of 1934, as amended ("Act")<sup>16</sup> requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions, to foster cooperation and coordination with persons engaged in clearance and settlement, and, in general, to protect investors and the public interest. OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of Act<sup>17</sup> because it

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<sup>15</sup> See supra note 9.

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

<sup>17</sup> 15 U.S.C. 78q-1(b)(3)(F).

is designed to promote the prompt and accurate clearance and settlement of securities transactions in flexibly structured options. The proposed rule change accomplishes this by maintaining consistency between OCC's By-Laws and Rules and Cboe Options' rules as applied to the clearance and settlement of flexibly structured options. OCC further believes that the proposed rule change accomplishes this by providing that all flexibly structured options are subject to the same requirements. The proposed rule change would make all flexibly structured options fungible with subsequently introduced non-flexibly structured options with identical terms, thereby increasing operational efficiency by eliminating the need for OCC to monitor and treat a certain group of flexibly structured options (i.e. ones with the same terms as quarterly options and short term options series) differently than other flexibly structured options. In addition, Cboe Options has noted that its rule change will potentially increase the liquidity available to traders of flexibly structured options.<sup>18</sup> Moreover, the Commission has previously noted that it would be concerned if flexibly structured options were to act as a surrogate for trading in standardized options (i.e., non-flexibly structured exchange-traded options) and that allowing for flexibly structured options to become fungible with standardized options would help alleviate this concern.<sup>19</sup> In this respect, the Commission noted the following when it initially approved Cboe Options' rules to provide for fungibility between flexibly structured options and standardized options series with the same terms:

However, the rules, as proposed by the CBOE, help to ensure that FLEX market participants cannot avoid the protections provided to retail investors in the

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<sup>18</sup> See supra note 10.

<sup>19</sup> See Securities Exchange Act Release No. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (order approving SR-CBOE-2008-115). See also supra note 9.

standardized options market simply by trading FLEX Options. In this regard, once a series is open for trading, new FLEX Options are not permitted in that series. In addition, once a Non-FLEX Options series is open, all outstanding FLEX Options in the same series become fungible with the standardized market, are traded pursuant to standardized market trading rules, and are aggregated for position and exercise limit purposes. These rules help to alleviate these surrogate concerns and should help to ensure that FLEX Options market continues to operate as intended.<sup>20</sup>

The proposed rule change would help to further address this concern by allowing all flexibly structured options to become fungible with non-flexibly structured options series with the same terms that are later opened for trading on the exchange.

In addition, the proposed rule change is not inconsistent with the existing By-Laws and Rules of OCC, including any rules proposed to be amended.

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

Section 17A(b)(3)(I) of the Act<sup>21</sup> requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the Act. OCC does not believe that the proposed rule change would impact or impose any burden on competition.<sup>22</sup> The proposed rule change would not affect the competitive dynamics between clearing members, but rather would solely affect the treatment of flexibly structured options with the same terms as quarterly options and short term options series. In this respect, it would facilitate consistent treatment of such flexibly structured options with all other flexibly structured options, providing that all flexibly structured options will become fungible with subsequently-introduced standardized options with the same

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<sup>20</sup> See Securities Exchange Act Release No. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (order approving SR-CBOE-2008-115).

<sup>21</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>22</sup> 15 U.S.C. 78q-1(b)(3)(I).

terms. The proposed rule change also would not inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another. The proposed rule change would treat equally all holders of flexibly structured options with the same terms as subsequently introduced quarterly options and short term options series, providing that such flexibly structured options held by them would become fungible with such standardized options series. For the foregoing reasons, OCC believes the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impact or impose a burden on competition.

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

Written comments on the proposed rule change 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>23</sup> and Rule 19b-4(f)(4)(ii)<sup>24</sup> thereunder because it effects a change in an existing service that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service.

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>23</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>24</sup> 17 CFR 240.19b-4(f)(4)(ii).

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>25</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-2018-010 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-OCC-2018-010. 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 change between the Commission and any person, other than those that may be withheld

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<sup>25</sup> Notwithstanding the foregoing, implementation of this rule change will be delayed until this rule change is deemed certified under CFTC Regulation §40.6.

from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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/about/publications/bylaws.jsp>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-OCC-2018-010 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>26</sup>

Secretary

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<sup>26</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**



**By-Laws**

Underlined text indicates new text

~~Strikethrough~~ text indicates deleted text



**THE OPTIONS CLEARING CORPORATION**

**BY-LAWS**

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**ARTICLE I**

**Definitions**

SECTION 1. Unless the context requires otherwise (or except as otherwise specified in the By-Laws or Rules), the terms defined herein shall, for all purposes of these By-Laws and the Rules of the Corporation, have the meanings herein specified.

F.

(1) – (7) [No change]

**Flexibly Structured Option**

(8) The term “flexibly structured option” means an option having variable terms that are negotiated between the parties to a confirmed trade pursuant to Exchange Rules and that do not correspond to the variable terms of any series of non-flexibly structured options previously opened for trading on the Exchange ~~(other than a series of quarterly options or short term options)~~. Once a series of non-flexibly structured options ~~(other than a series of quarterly options or short term options)~~ is opened for trading on an Exchange, any existing flexibly structured option contracts that have identical variable terms shall be fully fungible with options in such series, and shall cease to be flexibly structured options.

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