



October 10, 2016

VIA CFTC PORTAL

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

Re: Weekly Notification of Rule Amendments Pursuant to CFTC Regulation 40.6(d)(2)(i) -- OCC Rule Filing SR-OCC-2016-010

Dear Secretary Kirkpatrick:

Pursuant to Commodity Futures Trading Commission (“CFTC”) Regulation 40.6(d)(2)(i), The Options Clearing Corporation (“OCC”) submits this Weekly Notification of the following rule amendments made effective during the week of October 3, 2016.

- Amendments to OCC’s Certificate of Incorporation to provide more clarity, transparency, and consistency regarding OCC’s Director requirements, which were filed in the form of an Amended and Restated Certificate of Incorporation – Effective 10/05/2016.

The purpose of this rule change was to amend and restate OCC’s Certificate of Incorporation to provide more clarity, transparency, and consistency regarding OCC’s Management Director,¹ Exchange Director, Public Director, and Member Director requirements, which were filed in the form of an Amended and Restated Certificate of Incorporation.² The rule

¹ On July 27, 2016, OCC submitted a rule filing to the CFTC for self-certification under CFTC Regulation 40.6 concerning modifications and enhancements to OCC’s governance arrangements (SR-OCC-2016-002). As part of the proposed rule change, OCC proposed amendments to its Certificate of Incorporation to remove an explicit requirement that OCC’s Board of Directors (“Board”) have two Management Directors and instead provide that the number of Management Directors shall be such number as shall be fixed by or pursuant to the By-Laws (which the Board has authorized to be amended to state that the Board shall have one (1) Management Director). The rule change was certified on August 10, 2016.

² Under Section 245 of the General Corporation Law of the State of Delaware, a corporation may integrate into a single instrument all of the provisions of its certificate of incorporation which are then in effect and operative and may at the same time also further amend its certificate of incorporation by adopting a restated certificate of

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change was intended to provide more clarity and consistency in the descriptions of OCC's Director requirements and enhance the readability of OCC's Certificate of Incorporation but did not alter the substantive requirements of OCC's governance arrangements.

OCC made clarifying amendments to Article V of the Certificate of Incorporation to state that an individual who serves as an Exchange Director for more than one Equity Exchange pursuant to the By-Laws shall be entitled to such number of votes on each proposition submitted to the Board for a vote thereon or for written consent thereto as shall correspond to the number of Equity Exchanges represented by him or her. Article III, Section 6 of the By-Laws currently provides that an individual may be nominated by, elected by, and serve as an Exchange Director for more than one Equity Exchange and that each such individual shall be counted, for all purposes under the By-Laws (including, without limitation, for the purpose of determining whether a quorum is present or whether a resolution has been passed by the requisite number of directors), as a separate Exchange Director for each Equity Exchange that elected him or her. OCC believes it is appropriate under Delaware General Corporation Law to include these voting rights in its Certificate of Incorporation (in addition to the By-Laws) in order to clarify and reinforce the voting powers of its Exchange Directors.

OCC also amended Article V of its Certificate of Incorporation to conform the language regarding Public Directors to existing language in the Certificate of Incorporation used for Member Directors. Specifically, the Certificate of Incorporation was amended to state that the number of Public Directors shall be such number as shall be fixed by or pursuant to the By-Laws, divided into three classes, as provided therein. OCC believes that it is appropriate from a corporate governance perspective to specifically state in the Certificate of Incorporation that OCC's Public Directors are divided into three classes. OCC also clarified requirements for Public Director terms by stating that each class of Public Directors shall be elected for a term which expires at the third annual meeting of stockholders following their election and upon the election and qualification of their successors, subject to their earlier death, disqualification, resignation, or removal. The amendments more closely align the language for Public Director requirements with that currently used to describe Member Directors and is consistent with the current requirements for Public Directors in Article III, Section 6A of OCC's By-Laws. As a result, OCC believes the amendments provide more clarity and consistency in the description of OCC's Director requirements in the Certificate of Incorporation.

In addition, OCC amended Article V of the Certificate of Incorporation to eliminate an explicit statement that there be "not less than nine" Member Directors in order to provide more clarity and consistency in the description of OCC's Director requirements across OCC's governing documents. The amendment was intended only to be a technical drafting change to

incorporation. *See* 8 Del. C. 1953, § 245. The Amended and Restated Certificate of Incorporation superseded OCC's current Restated Certificate of Incorporation (which was filed with the Secretary of the State of Delaware on November 3, 1987) and the subsequent amendments thereto.

the Certificate of Incorporation and did not substantively change OCC's current requirements regarding the number of Member Directors required to serve on OCC's Board. While the Certificate of Incorporation previously stated that there be "not less than nine" Member Directors, the actual number of Member Directors serving on OCC's Board is fixed by Article III, Section 1 of the By-Laws (which is currently fixed at nine Member Directors). OCC believes it is appropriate from a corporate governance perspective that the number of various categories of Directors be fixed within one governing document of OCC. OCC notes that it did not make any changes to the By-Laws in connection with its Member Director requirements. The number of Member Directors would continue to be fixed at nine pursuant to Article III, Section 1 of the By-Laws.³

Finally, the amendments and restatement were filed in the form of an Amended and Restated Certificate of Incorporation, as reflected in the enclosed Exhibit 5 to the rule change. OCC's Certificate of Incorporation had not been restated since November 3, 1987. Since the 1987 restatement, the Certificate of Incorporation had been amended six times.⁴ Given the scope and number of amendments to the Certificate of Incorporation since the last restatement, OCC believes it was appropriate to integrate into a single instrument all of the provisions of OCC's Certificate of Incorporation that are currently in effect (pending all necessary regulatory filings and approvals of the proposed amendments described herein) in order to provide more clarity and transparency regarding OCC's governance arrangements. OCC notes that, in addition to the changes described above, the amendments also included technical, non-substantive drafting changes to correct typographical errors in Articles IV and V of the Certificate of Incorporation.

³ Furthermore, under Article XI of OCC's By-Laws, any change in the number of Member Directors required under Article III would require an amendment approved by two-thirds of the Directors then in office as well as the approval of the holders of all of the outstanding Common Stock of OCC entitled to vote thereon.

⁴ The last restatement of OCC's Certificate of Incorporation was dated November 3, 1987, and was subsequently amended on June 1, 1992, August 12, 1997, October 28, 1999, March 16, 2012, December 30, 2013, and March 6, 2015.

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As noted above, the rule change was intended to provide more clarity and consistency in the descriptions of OCC's Director requirements and enhance the readability of OCC's Certificate of Incorporation but did not alter the substantive requirements of OCC's governance arrangements.

A filing has also been submitted to the Securities and Exchange Commission.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Scott M. Kalish". The signature is fluid and cursive, with the first name "Scott" being the most prominent.

Scott M. Kalish
Assistant Secretary

Enclosure