

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

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 and restatement of 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 across OCC’s governing documents. The proposed amendments and restatement would be filed with the Secretary of the State of Delaware in the form of an Amended and Restated Certificate of Incorporation, which is attached as hereto as Exhibit 5.² All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.³

¹ On July 15, 2016, OCC filed a proposed rule change with the Commission concerning modifications and enhancements to OCC’s governance arrangements. *See* Securities Exchange Act Release No. 78438 (July 28, 2016), 81 FR 51220 (August 3, 2016) (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 Commission approved the proposed rule change on September 16, 2016. *See* Securities Exchange Act Release No. 78862 (September 16, 2016), 81 FR 65415 (September 22, 2016) (SR-OCC-2016-002).

² Pending all necessary regulatory approvals for the proposed rule change, OCC will file the proposed amendments described herein along with the amendments to OCC’s Certificate of Incorporation contained in SR-OCC-2016-002 in the form of an Amended and Restated Certificate of Incorporation. The Amended and Restated Certificate of Incorporation must also be filed with the Secretary of the State of Delaware before becoming effective.

³ OCC’s By-Laws and Rules can be found on OCC’s public website: <http://optionsclearing.com/about/publications/bylaws.jsp>.

Item 2. Procedures of the Self-Regulatory Organization

At a meeting held on July 20, 2016, OCC's Board of Directors approved the proposed amendments to and restatement of OCC's Certificate of Incorporation in the form of an Amended and Restated Certificate of Incorporation. The holders of all of the outstanding common stock of OCC also unanimously consented to the proposed amendments to and restatement of OCC's Certificate of Incorporation.

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**

The purpose of this proposed rule change is to amend and restate OCC's Certificate of Incorporation to provide more clarity, transparency, and consistency regarding OCC's Management Director,⁴ Exchange Director, Public Director, and Member Director requirements, which are being filed in the form of an Amended and Restated Certificate of Incorporation.⁵ The proposed amendments to the Certificate of Incorporation are described in more detail below.

⁴ See *supra* note 1.

⁵ 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 incorporation. See 8 Del. C. 1953, § 245. The proposed Amended and Restated Certificate of Incorporation would supersede 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.

OCC proposes 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 proposes amendments to 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 would be 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 proposes that the requirements for Public Director terms be clarified to state 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 proposed amendments would 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 proposed amendments would provide more clarity and consistency in the description of OCC's Director requirements in the Certificate of Incorporation.

In addition, OCC proposes to amend 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 proposed amendment is intended only to be a technical drafting change to the Certificate of Incorporation and would 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 currently states 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. Currently, the Certificate of Incorporation only contains references to specific numbers for Management Directors and Member Directors; however, as discussed above, the Commission recently approved a proposed rule change by OCC to amend the Certificate of Incorporation to remove specific requirements regarding the number of Management Directors, with such number being

fixed by the By-Laws.⁶ OCC notes that it is not proposing 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.⁷

Finally, OCC proposes that these amendments and restatement be filed in the form of an Amended and Restated Certificate of Incorporation, as reflected in Exhibit 5 to this proposed rule change. OCC's Certificate of Incorporation has not been restated since November 3, 1987. Since the 1987 restatement, the Certificate of Incorporation has been amended six times.⁸ Given the scope and number of amendments to the Certificate of Incorporation since the last restatement, OCC believes it would be appropriate to integrate into a single instrument all of the provisions of OCC's Certificate of Incorporation that are currently in effect (pending regulatory approval 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 proposed amendments also include technical, non-substantive drafting changes to correct typographical errors in Articles IV and V of the Certificate of Incorporation.

⁶ See *supra* note 1.

⁷ 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.

⁸ The latest 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.

B. Statutory Basis

Section 17A(b)(3)(F) of the Securities Exchange Act of 1934, as amended (“Act”),⁹ 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 Section 17A(b)(3)(F) of the Act¹⁰ and the rules thereunder applicable to OCC because the proposed rule change would provide more clarity and transparency regarding OCC’s governance arrangements to Clearing Members, other users of OCC, and the general public. Specifically, the proposed rule change would enhance the clarity, consistency, and transparency of OCC’s governance arrangements by: (i) clarifying and reinforcing the voting powers of OCC’s Exchange Directors in OCC’s Certificate of Incorporation; (ii) providing more clarity and certainty regarding the number of Directors in each specific category of Directors required to serve on OCC’s Board by consolidating those requirements into OCC’s By-Laws; and (iii) specifying in the Certificate of Incorporation that OCC’s Public Directors are divided into three classes and describing the length of the terms of OCC’s Public Directors in a manner that more closely aligns with the language currently used to describe such requirements for Member Directors. Moreover, the proposed rule change would integrate into a single instrument all of the provisions of OCC’s Certificate of Incorporation that are currently in effect as well as changes proposed herein. OCC believes that the proposed changes would provide more clarity and consistency in the descriptions of OCC’s Director requirements and would enhance the readability of one of OCC’s primary governing documents, its Certificate of Incorporation, for Clearing Members, other users

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ *Id.*

of OCC, and the general public. As a result, OCC believes that the proposed rule change is designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act¹¹ and is reasonably designed to ensure that OCC has clear and transparent governance arrangements consistent with Rule 17Ad-22(d)(8)¹² thereunder. 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 Act¹³ 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. 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 Management Director, Exchange Director, Public Director, and Member Director requirements and does not alter the substantive requirements of OCC's governing documents. As such, OCC believes that the proposed changes would not have any impact or impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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.

¹¹ *Id.*

¹² 17 CFR 240.17Ad-22(d)(8).

¹³ 15 U.S.C. 78q-1(b)(3)(I).

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.

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 Act¹⁴ and Rule 19b-4(f)(6)¹⁵ 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.

The proposed rule change is designed to provide more clarity and transparency regarding OCC's governance arrangements by: (i) clarifying and reinforcing the voting powers of OCC's Exchange Directors in OCC's Certificate of Incorporation; (ii) providing more clarity and certainty regarding the number of Directors in each specific category of Directors required to serve on OCC's Board by consolidating those requirements into OCC's By-Laws; (iii) specifying in the Certificate of Incorporation that OCC's Public Directors are divided into three classes and describing the length of the terms of OCC's Public Directors in a manner that more closely

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

aligns with the language currently used to describe such requirements for Member Directors; and (iv) integrating into a single instrument all of the provisions of OCC's Certificate of Incorporation that are currently in effect as well as changes proposed herein. The proposed rule change would provide more clarity and consistency in the descriptions of OCC's Director requirements and would enhance the readability of OCC's Certificate of Incorporation but would not alter the substantive requirements of OCC's governance arrangements. As a result, OCC believes that the proposed rule change would not significantly affect the protection of investors or the public interest or 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)¹⁶ so that the proposal may become operative immediately upon filing. As noted above, the proposed rule change is not intended to substantively alter OCC's governance arrangements but is designed to provide additional clarity regarding OCC's governance arrangements and improve the overall readability of OCC's Certificate of Incorporation. OCC believes that the prompt implementation of these changes would be consistent with the public interest and the protection of investors.

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.¹⁷

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified or otherwise appropriately filed as a Weekly Notification of Rule Amendments under CFTC Regulation §40.6.

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

Not applicable.

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. Amended and Restated Certificate of Incorporation.

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 Byrne
Vice President, Regulatory Filings

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-[_____]; File No. SR-OCC-2016-010)

September 27, 2016

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Amendments to and the Restatement of OCC's Certificate of Incorporation

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 27, 2016, 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)³ of the Act and Rule 19b-4(f)(6)⁴ 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

The proposed rule change by OCC concerns the amendment and restatement of OCC's Certificate of Incorporation to provide more clarity, transparency, and consistency regarding OCC's Management Director,⁵ Exchange Director, Public Director, and Member Director

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ On July 15, 2016, OCC filed a proposed rule change with the Commission concerning modifications and enhancements to OCC's governance arrangements. *See* Securities Exchange Act Release No. 78438 (July 28, 2016), 81 FR 51220 (August 3, 2016) (SR-OCC-2016-002). As part of the proposed rule change, OCC proposed amendments to its

requirements across OCC's governing documents. The proposed amendments and restatement would be filed with the Secretary of the State of Delaware in the form of an Amended and Restated Certificate of Incorporation, which is included in Exhibit 5 to the proposed rule change.⁶ All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.⁷

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.

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 Commission approved the proposed rule change on September 16, 2016. *See* Securities Exchange Act Release No. 78862 (September 16, 2016), 81 FR 65415 (September 22, 2016) (SR-OCC-2016-002).

⁶ Pending all necessary regulatory filings and approvals for the proposed rule change, OCC will file the proposed amendments described herein along with the amendments to OCC's Certificate of Incorporation contained in SR-OCC-2016-002 in the form of an Amended and Restated Certificate of Incorporation. The Amended and Restated Certificate of Incorporation must also be filed with the Secretary of the State of Delaware before becoming effective.

⁷ OCC's By-Laws and Rules can be found on OCC's public website: <http://optionsclearing.com/about/publications/bylaws.jsp>.

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

(1) Purpose

The purpose of this proposed rule change is to amend and restate OCC's Certificate of Incorporation to provide more clarity, transparency, and consistency regarding OCC's Management Director,⁸ Exchange Director, Public Director, and Member Director requirements, which are being filed in the form of an Amended and Restated Certificate of Incorporation.⁹ The proposed amendments to the Certificate of Incorporation are described in more detail below.

OCC proposes 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.

⁸ See *supra* note 5.

⁹ 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 incorporation. See 8 Del. C. 1953, § 245. The proposed Amended and Restated Certificate of Incorporation would supersede 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.

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 proposes amendments to 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 would be 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 proposes that the requirements for Public Director terms be clarified to state 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 proposed amendments would 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 proposed amendments would provide more clarity and consistency in the description of OCC's Director requirements in the Certificate of Incorporation.

In addition, OCC proposes to amend 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 proposed amendment is intended only to be a technical

drafting change to the Certificate of Incorporation and would 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 currently states 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. Currently, the Certificate of Incorporation only contains references to specific numbers for Management Directors and Member Directors; however, as discussed above, the Commission recently approved a proposed rule change by OCC to amend the Certificate of Incorporation to remove specific requirements regarding the number of Management Directors, with such number being fixed by the By-Laws.¹⁰ OCC notes that it is not proposing 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.¹¹

Finally, OCC proposes that these amendments and restatement be filed in the form of an Amended and Restated Certificate of Incorporation, as reflected in Exhibit 5 to this proposed rule change. OCC's Certificate of Incorporation has not been restated since November 3, 1987. Since the 1987 restatement, the Certificate of Incorporation has been amended six times.¹²

¹⁰ See *supra* note 5.

¹¹ 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.

¹² The latest 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.

Given the scope and number of amendments to the Certificate of Incorporation since the last restatement, OCC believes it would be appropriate to integrate into a single instrument all of the provisions of OCC's Certificate of Incorporation that are currently in effect (pending regulatory approval 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 proposed amendments also include technical, non-substantive drafting changes to correct typographical errors in Articles IV and V of the Certificate of Incorporation.

(2) Statutory Basis

Section 17A(b)(3)(F) of the Act¹³ 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 Section 17A(b)(3)(F) of the Act¹⁴ and the rules thereunder applicable to OCC because the proposed rule change would provide more clarity and transparency regarding OCC's governance arrangements to Clearing Members, other users of OCC, and the general public. Specifically, the proposed rule change would enhance the clarity, consistency, and transparency of OCC's governance arrangements by: (i) clarifying and reinforcing the voting powers of OCC's Exchange Directors in OCC's Certificate of Incorporation; (ii) providing more clarity and certainty regarding the number of Directors in each specific category of Directors required to serve on OCC's Board by consolidating those requirements into OCC's By-Laws; and (iii) specifying in the Certificate of Incorporation that OCC's Public Directors are divided into three classes and describing the length of the terms of OCC's Public Directors in a manner

¹³ 15 U.S.C. 78q-1(b)(3)(F).

¹⁴ *Id.*

that more closely aligns with the language currently used to describe such requirements for Member Directors. Moreover, the proposed rule change would integrate into a single instrument all of the provisions of OCC's Certificate of Incorporation that are currently in effect as well as changes proposed herein. OCC believes that the proposed changes would provide more clarity and consistency in the descriptions of OCC's Director requirements and would enhance the readability of one of OCC's primary governing documents, its Certificate of Incorporation, for Clearing Members, other users of OCC, and the general public. As a result, OCC believes that the proposed rule change is designed, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act¹⁵ and is reasonably designed to ensure that OCC has clear and transparent governance arrangements consistent with Rule 17Ad-22(d)(8)¹⁶ thereunder. 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 Act¹⁷ 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. 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 Management Director, Exchange Director, Public Director, and Member Director requirements and does not alter the substantive requirements of OCC's governing documents. As such, OCC

¹⁵ *Id.*

¹⁶ 17 CFR 240.17Ad-22(d)(8).

¹⁷ 15 U.S.C. 78q-1(b)(3)(I).

believes that the proposed changes would not have any impact or impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(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

Pursuant to Section 19(b)(3)(A) of the Act,¹⁸ and Rule 19b-4(f)(6)¹⁹ 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.²⁰ 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 Commission that such

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 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. As noted herein, the proposed rule change is not intended to substantively alter OCC's governance arrangements but is designed to provide additional clarity regarding OCC's governance arrangements and improve the overall readability of OCC's Certificate of Incorporation. OCC believes that the prompt implementation of these changes would be consistent with the public interest and the protection of investors.

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.²¹

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. Please include File Number SR-OCC-2016-010 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-2016-010. 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 from the public in accordance with the provisions of 5 U.S.C. 552, will be available for

²¹ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified or otherwise appropriately filed as a Weekly Notification of Rule Amendments under CFTC Regulation §40.6.

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

http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_16_010.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-2016-010 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.²²

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: _____

²² 17 CFR 200.30-3(a)(12).

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

THE OPTIONS CLEARING CORPORATION

THE OPTIONS CLEARING CORPORATION, a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the corporation is THE OPTIONS CLEARING CORPORATION. The name under which the corporation was originally incorporated was CHICAGO BOARD OPTIONS EXCHANGE CLEARING CORPORATION and the date of filing of the corporation's original Certificate of Incorporation with the Secretary of State of the State of Delaware was August 28, 1972.
2. The Amended and Restated Certificate of Incorporation of the corporation in the form attached hereto as Exhibit A has been duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware by the board of directors and stockholders of the corporation.
3. Pursuant to Section 228(a) of the General Corporation Law of the State of Delaware, the holders of all of the outstanding shares of the corporation consented to the adoption of the Amended and Restated Certificate of Incorporation of the corporation in the form attached hereto as Exhibit A without a meeting, without a vote and without prior notice and that written notice of the taking of such actions is being given in accordance with Section 228(e) of the General Corporation Law of the State of Delaware.
4. The Amended and Restated Certificate of Incorporation so adopted reads in full as set forth in Exhibit A attached hereto and is incorporated herein by this reference.

IN WITNESS WHEREOF, the corporation has caused the Amended and Restated Certificate of Incorporation to be signed by its duly authorized officer.

Dated: __, 2016

THE OPTIONS CLEARING CORPORATION

By: _____
Name:
Title:

EXHIBIT A
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
THE OPTIONS CLEARING CORPORATION

ARTICLE I. NAME.

The name of the corporation (the "Corporation") is THE OPTIONS CLEARING CORPORATION.

ARTICLE II. REGISTERED OFFICE.

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, Wilmington, New Castle County, Delaware 19801, and the name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III. NATURE OF BUSINESS.

The nature of the business or purposes to be conducted or promoted by the Corporation is:

To issue and otherwise deal in standardized options and other securities traded or intended to be traded on securities exchanges and in other securities markets.

To provide members and other participants of the Corporation and those for whom they may act with facilities and procedures for the clearance and settlement of transactions in, and the performance of, the option and other contracts issued or dealt in by the Corporation, and to regulate such facilities and procedures.

To provide those services customarily provided by clearing houses of national securities exchanges.

To engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

ARTICLE IV. CAPITAL STOCK.

The capital stock of the Corporation shall consist of 350,000 shares of Common Stock, comprised as follows: 25,000 shares shall be Class A Common Stock, par value of \$10.00 per share; 25,000 shares shall be Class B Common Stock, par value of \$10.00 per share; and 300,000 shares shall be Class C Common Stock, par value of \$1,000.00 per share. The Class B Common Stock shall be divided into five series, each consisting of 5,000 shares, designated as Series 1 through 5, respectively. Except as hereinafter provided in this Article IV, each share of Class A Common Stock and each share of Class B Common Stock of the Corporation shall entitle the holder thereof to one vote, in person or by proxy, on each

proposition submitted to the stockholders for their vote thereon or their written consent thereto. Except as otherwise provided by applicable law, shares of Class C Common Stock shall have no voting rights.

The holders of the issued and outstanding shares of Class A Common Stock, voting separately as a class, shall have the right, by the vote of the majority in number of said shares, to elect the Member Directors of the Corporation. The holders of the issued and outstanding shares of Class B Common Stock, voting separately as a class, shall have the right, by the vote of a majority in number of said shares, to elect the Public Directors and the Management Director(s) of the Corporation. The holders of the issued and outstanding shares of each series of Class B Common Stock, voting separately as a series, shall have the right, by the vote of a majority in number of the shares of said series, to elect one Exchange Director of the Corporation; provided, however, that the holders of any series of Class B Common Stock issued after six such series shall be issued and outstanding shall not be entitled to elect an Exchange Director until the first annual meeting following the date on which the shares of such series shall have been issued and outstanding for sixty days.

The vote of a majority of the issued and outstanding shares of each series of Class B Common Stock, voting separately as a series, shall be required to amend Articles I, IV, V, and VI of the Certificate of Incorporation of the Corporation, or to adopt an agreement of merger or consolidation of the Corporation with or into any other corporation, or to authorize or consent to the sale, lease, or exchange of all or substantially all of the property and assets of the Corporation, or to authorize or consent to the dissolution of the Corporation; provided, however, that such series vote shall not be required to approve an amendment to this Article IV which is limited to increasing the number of authorized shares of Class C Common Stock.

Upon partial or final liquidation or dissolution of the Corporation, the assets available for distribution to stockholders shall be distributed as follows. First, there shall be distributed pro rata to the holders of Class A Common Stock, Class B Common Stock and Class C Common Stock, *pari passu*, an amount equal to the aggregate par value of their shares. Second, there shall be distributed pro rata to the holders of Class B Common Stock an amount equal to \$1,000,000 multiplied by the number of series of Class B Common Stock outstanding. Third, there shall be distributed pro rata to the holders of those outstanding series of Class B Common Stock that were first issued prior to December 31, 1998, an amount equal to the Corporation's stockholders' equity at December 31, 1998, as set forth in the Corporation's audited financial statements, minus the aggregate amount distributed to holders of Class A Common Stock and Class B Common Stock pursuant to the two preceding sentences. Any remaining assets shall be distributed pro rata to the holders of Class B Common Stock.

Subject to the foregoing limitations, the holders of the shares of each series of Class B Common Stock shall be entitled to all the rights and privileges pertaining to common stock under the laws of the State of Delaware; and except as otherwise expressly provided herein, the shares of each series of Class B Common Stock, and the rights and privileges of the holders thereof, shall be identical in each and every respect, including, without limitation, the right to dividends. Subject to the same limitations, the holders of Class A Common Stock and Class C Common Stock shall be entitled to all of the rights and privileges pertaining to common

stock under the laws of the State of Delaware with the exception of the right to receive dividends.

Shares of Class A Common Stock and Class B Common Stock of the Corporation shall be issued and transferred only in units, each unit to consist of an equal number of shares of Class A and Class B Common Stock.

The Corporation shall not have the authority to create or issue any rights or options entitling the holders thereof to purchase from the Corporation any shares of its capital stock; provided, however, that the foregoing limitation shall not restrict the authority of the Corporation to enter into any agreement in connection with the issuance, or future issuance, of Class C Common Stock.

ARTICLE V. DIRECTORS.

The Board of Directors shall be composed of Member Directors, Exchange Directors, Public Directors and Management Directors. Each director shall be entitled to one vote on each proposition submitted to the Board of Directors for a vote thereon or for written consent thereto; provided, however, 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 of Directors for a vote thereon or for written consent thereto as shall correspond to the number of Equity Exchanges represented by him or her. The number of Member Directors shall be such number as shall be fixed by or pursuant to the By-Laws, divided into three classes, as provided therein. Each class of Member 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 number of Exchange Directors shall be such number as shall be fixed by or pursuant to the By-Laws, consistent with the provisions of the second paragraph of Article IV hereof. The number of Management Directors shall be such number as shall be fixed by or pursuant to the By-Laws. Each Management Director and each Exchange Director shall serve until the annual meeting of stockholders following their election or appointment and until the election or appointment and qualification of their respective successors, or until their earlier death, disqualification, resignation or removal. 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. 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. Election of directors need not be by written ballot. Any director of the Corporation may be removed at any time, with or without cause, by the vote of a majority in number of the shares of the class or series of Common Stock which elected such director; provided, however, that Member Directors and Public Directors may be removed only for cause. Vacancies shall be filled in the manner provided in the By-Laws. The management of the business and affairs of the Corporation shall be vested in the Board of Directors except to the extent such management may be delegated by or pursuant to the By-Laws to a Committee of the Corporation and except as otherwise provided in this Certificate of Incorporation or in the By-Laws.

ARTICLE VI. BY-LAWS.

The stockholders may make, alter or repeal the By-Laws only upon the affirmative vote of the holders of all of the issued and outstanding shares of Class A and Class B Common Stock. The Board of Directors shall have the power to make, alter or repeal the By-Laws to the extent and subject to the conditions provided in the By-Laws.

ARTICLE VII. MEMBERS.

The Corporation is authorized to accept applications for membership therein as provided in the By-Laws. Members shall not be deemed to be stockholders of the Corporation. Candidates for election as Member Directors shall be selected by the members in the manner indicated in the By-Laws.

ARTICLE VIII. NON-LIABILITY OF DIRECTORS.

To the fullest extent permitted by the General Corporation Law of Delaware, after giving effect to amendments made thereto from time to time, a director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.