



October 24, 2022

**VIA CFTC PORTAL**

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 Certification Concerning Corrections to OCC's By-Laws**

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, The Options Clearing Corporation ("OCC") hereby certifies a proposed rule change to make certain corrections to OCC's By-Laws. The date of implementation of the rule is at least 10 business days following receipt of the certification by the CFTC. The proposal has also been submitted to the Securities and Exchange Commission ("SEC") under Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 19b-4 thereunder.

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

Explanation and Analysis

The purpose of this rule certification is to amend OCC's By-Laws to (i) correct an inadvertent omission and typographical error in a prior rule filing and (ii) correct an erroneous cross-reference and make other conforming changes consistent with a reorganization effected by another prior proposed rule change. Amendments to OCC's By-Laws are included in Exhibit A. Material proposed to be added 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>

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<sup>1</sup> OCC's By-Laws and Rules can be found on OCC's public website:  
<https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

As a self-regulatory organization (“SRO”) that is registered as a covered clearing agency under the Securities Exchange Act of 1934 (“Exchange Act”), as amended,<sup>2</sup> and a derivatives clearing organization (“DCO”) under the Act,<sup>3</sup> OCC files proposed changes to its rules with the SEC and the CFTC, including changes to OCC’s By-Laws and Rules.<sup>4</sup> SEC and CFTC regulations require that SROs maintain clear and transparent governance arrangements.<sup>5</sup> In order to enhance the clarity and transparency of its By-Laws, OCC is proposing amendments that would (1) correct an inadvertent omission and typographical error introduced by a prior rule filing and (2) correct an erroneous cross-reference and make other conforming changes consistent with a reorganization effected by another prior proposed rule change.

### **1. Typographical Error Correction**

First, OCC has identified an inadvertent omission and typographical error in the text of a prior proposed rule change:

- The reference to “Treasurer” in Article IV, Section 2 would be replaced with “Chief Financial Officer,” consistent with the intent of the proposed rule change (SR-OCC-2021-010) that amended Section 11 of that Article to address the appointment and responsibilities of a Chief Financial Officer, rather than a Treasurer.<sup>6</sup>
- OCC would also amend Section 11 of Article IV (Chief Financial Officer), to correct an inadvertent reference to “Chief Compliance Officer,” rather than the Chief Financial Officer, also consistent with the intent of that proposed rule change.<sup>7</sup>

### **2. Correcting An Erroneous Cross-Reference**

OCC has also identified an erroneous cross-reference to provisions that had been relocated by a prior rule change. Specifically, in a proposed rule change filing concerning the Board’s ability to appoint a non-executive Chairman (SR-OCC-2021-007), OCC also revised the provision of the By-Laws concerning the Member Vice Chairman of the Board by relocating the second and third sentence of Article IV, Section 1 (concerning the appointment of the Vice Chairman) to Article IV,

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<sup>2</sup> 15 U.S.C. § 78s.

<sup>3</sup> 7 U.S.C. § 7a-1.

<sup>4</sup> See 17 CFR 240.19b-4 (SRO proposed rule changes filed with the SEC); 17 CFR 40.6 (DCO self-certifications filed with the CFTC).

<sup>5</sup> See 17 CFR 240.17Ad-22(e)(2)(i) (with respect to governance arrangements of covered clearing agencies); 17 CFR 39.24(a)(1)(iii) (with respect to DCO governance arrangements).

<sup>6</sup> See Exchange Act Release No. 93436 (Oct. 27, 2021), 86 FR 60499, 60500 (Nov. 2, 2021) (SR-OCC-2021-010).

<sup>7</sup> Id.

Section 7 (concerning the responsibilities of the Vice Chairman).<sup>8</sup> By relocating the second sentence of Section 1, the change orphaned a cross-reference to that sentence in Article XI, Section 1, which concerns those By-Laws that require stockholder approval to amend.

To correct the erroneous cross reference in Article XI, OCC proposes to move current Article IV, Section 7 in its entirety to Article III, which is the Article that concerns the make-up of the Board and the responsibilities of directors. Article IV, Section 7 would be re-titled “Member Vice Chairman of the Board”<sup>9</sup> and become Article III, Section 9A, consistent with the establishment of Article III, Section 9 (Chairman of the Board) by File No. SR-OCC-2021-007.<sup>10</sup> Accordingly, the proposed change would consolidate provisions concerning the appointment and responsibilities of the Chairman and Member Vice Chairman of the Board into a single By-Law Article. In turn, OCC would amend Article XI, Section 1 by deleting the current cross-reference to the second sentence of Article IV, Section 1. No additional cross-reference to the relocated provisions would be necessary because Article XI, Section 1 already applies to Article III in its entirety.

### **Consistency with DCO Core Principles**

OCC reviewed the DCO core principles (“Core Principles”) as set forth in the Act, the regulations thereunder, and the provisions applicable to a DCO that elects to be subject to the provisions of 17 CFR Subpart C (“Subpart C DCO”). During this review, OCC identified the following as potentially being impacted:

**Governance Arrangements.** OCC believes that implementing the proposed changes are consistent with Core Principle O,<sup>11</sup> and CFTC Regulation 39.24 thereunder,<sup>12</sup> which require each DCO to have governance arrangements that, among other things, are clear and transparent. In addition, a DCO’s governance arrangement must include clear and direct lines of responsibility and accountability and clearly specify the roles and responsibilities of directors and management.<sup>13</sup> By correcting errors and applying conforming changes, the changes discussed above are intended to support the maintenance of OCC’s By-Laws and improve the clarity and transparency of the governance arrangements addressed therein, including with respect to the By-Law provisions that address the responsibilities of the Chief Financial Officer and the Member Vice Chairman.

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<sup>8</sup> See Exchange Act Release No. 93102 (Sept. 22, 2021), 86 FR 53718, 53720 (Sept. 28, 2021) (SR-OCC-2021-007).

<sup>9</sup> As provided by current Article IV, Section 7, the Vice Chairman of the Board is selected from the Member Directors and is referred to as the “Member Vice Chairman.”

<sup>10</sup> Id. at 53719.

<sup>11</sup> 7 USC 7a-1(c)(2)(O).

<sup>12</sup> 17 CFR 39.24.

<sup>13</sup> See 17 CFR 39.24(b)(4) – (6).

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Opposing Views

No substantive opposing views were expressed related to the rule amendments by OCC's Board members, Clearing Members or market participants.

Notice of Pending Rule Certification

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

Certification

OCC hereby certifies that the rule set forth at Exhibit A 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,

/s/ Mark C. Brown  
Mark C. Brown  
Associate General Counsel

Enclosure: Exhibit A