

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94583; File No. SR-OCC-2022-005)

April 1, 2022

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning Revisions to OCC's Partial Tear-Up Rules

Pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 22, 2022, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. 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 would: (i) amend OCC Rule 1111(e) to clarify the nature of the claim issued to Clearing Members that receive a pro rata payment as a result of a Partial Tear-Up; and (ii) amend OCC Rule 1111(g) to impose a limit on the amount of the special charge that can be levied on Clearing Members to re-allocate losses, costs and fees among resulting from a Partial Tear-Up among all non-defaulting Clearing Members. The proposed changes to OCC Rules are included in Exhibit 5 of File No. SR-OCC-2022-005. Material proposed to be added to OCC’s Rules as currently in effect is underlined and material proposed to be deleted is marked in strikethrough text. All

¹ 15 U.S.C. 78s(b).

² 17 CFR 240.19b-4.

capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.³

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

In 2018, OCC adopted enhanced and new tools for recovery scenarios, including a Partial Tear-Up process designed to return OCC to a matched book by extinguishing positions that remain open after OCC has attempted one or more auctions.⁴ The process for determining and terminating Partial Tear-Up Positions is set forth in OCC Rule 1111(e). In adopting Rule 1111(e), OCC noted that its Partial Tear-Up process would be initiated if OCC determined that potential losses from remaining positions of the defaulting member would exceed OCC's financial resources and that the process was designed to be initiated in advance of the exhaustion of OCC's financial resources in

³ 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>.

⁴ See Exchange Act Release No. 34-83916 (August 23, 2018); 83 Fed. Reg. 44076 (August 29, 2018) (File No. SR-OCC-2017-020).

order to maintain its ability to meet obligations to non-defaulting members.⁵ OCC also acknowledged that the process may be used to allocate losses in the event OCC's resources are insufficient to pay the Partial Tear-Up Price.⁶ When the Partial Tear-Up process is used to allocate losses, Rule 1111(e)(iii) currently provides that each Clearing Member will receive a pro rata payment based on OCC's remaining resources and an unsecured claim against OCC for the difference between the pro rata amount received and the Partial Tear-Up Price.

An unsecured claim issued pursuant to Rule 1111(e) provides a mechanism for OCC to compensate Clearing Members that receive a pro rata payment when warranted by particular circumstances (e.g., when funds are subsequently recovered from a defaulted Clearing Member or the estate of the defaulted Clearing Member). However, OCC Rules do not specify a specific payment obligation for these claims. The purpose of the proposed amendment to Rule 1111(e) is to provide clarity regarding the nature of the claim issued following a Partial Tear-Up. More specifically, the revisions to Rule 1111(e) would clarify that: (i) a Clearing Member receiving a pro rata payment following a partial tear-up will have a claim for the value of the difference between the pro rata amount received and the Partial Tear-Up Price; and (ii) such a claim shall be an unsecured claim on any recovery from a suspended or defaulted Clearing Member (or from the estate of a suspended or defaulted Clearing Member). Clarification of the nature of the claim arising out of Rule 1111(e) would, in turn, clarify that such claims would not provide a basis for triggering close-out netting under Article VI, Section 27 of OCC's

⁵ 83 Fed. Reg. at 44078.

⁶ Id.

By-Laws.⁷

As part of its Partial Tear-Up process, OCC also adopted Rule 1111(g), which provides the Board with discretionary authority to levy a special charge against remaining non-defaulting Clearing Members for the purpose of re-allocating the losses, costs and fees imposed on holders of torn-up positions. Following the adoption of OCC Rule 1111, OCC received a letter from the Futures Industry Association (“FIA”) requesting that OCC limit the amount of the special charge that could be levied by the Board pursuant to Rule 1111(g) to the amount of a Clearing Member’s required contribution to the Clearing Fund.⁸ OCC has considered this request and proposes to amend Rule 1111(g) to cap the amount of the special charge levied under the rule to the amount of the Clearing Members required contribution to the Clearing Fund at the time of the special charge. The purpose of this change is to improve Clearing Members’ ability to measure, monitor and manage their potential exposure to OCC.

(2) Statutory Basis

Section 17A(b)(3)(F)⁹ of the Exchange Act requires, among other things, 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

⁷ OCC By-Laws Art. VI, Section 27(a)(i), regarding default or insolvency of OCC, requires OCC to notify various stakeholders if OCC fails to comply with an undisputed obligation to pay money or deliver property to a Clearing Member under the By-Laws or Rules for a period of thirty days from the date that OCC receives notice from the Clearing Member of the past due obligation.

⁸ The letter OCC received from the FIA has been provided as Exhibit 3A to File No. SR-OCC-2022-005.

⁹ 15 U.S.C. 78q-1(b)(3)(F).

17A(b)(3)(F) of the Act.¹⁰ As noted above, the proposed revisions to OCC Rule 1111(e) protect investors and the public interest by more clearly describing the nature of the claim issued to Clearing Members that receive a pro rata payment following a Partial Tear-Up. The clarity provided by these amendments would protect investors and the public interest by eliminating the potential for ambiguity or uncertainty regarding the nature of a claim issued under Rule 1111(e), which could undermine OCC's resiliency. The proposal to limit the amount of the special charge levied under Rule 1111(g) would also improve Clearing Members' ability to measure and monitor their potential exposure to OCC allowing Clearing Members to more effectively manage their risk. Accordingly, OCC believes the proposed revisions to Rule 1111(g) would protect investors and the public interest by enhancing Clearing Members' ability to measure, monitor and manage their risk. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

In addition, SEC Rule 17Ad-22(e)(23)(ii)¹¹ provides that a clearing agency must establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency. The proposed revisions to both Rule 1111(e) and Rule 1111(g) would provide additional clarity that would help Clearing Members identify and evaluate the risks, fees and other costs that they may incur as a result of the participation in OCC's services. The proposed revisions to Rule 1111(e) clarify the nature of the claim that would be issued to

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

¹¹ 17 CFR. 240.17AD-22(e)(23)(ii).

Clearing Members if a Partial Tear-Up was used to allocate losses, and the change to Rule 1111(g) would implement a cap on the charge that could be levied under this provision. Both of these changes should improve Clearing Members' ability to assess the potential risks, fees and costs that they may incur by participating in OCC. Accordingly, OCC believes that the proposed rule change is reasonably designed to provide participants sufficient information to identify and evaluate the risks, fees, and other material costs of participating in OCC's services, in accordance with SEC Rule 17Ad22(e)(23)(ii).¹²

(B) Clearing Agency's Statement on Burden of 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. OCC does not believe that the proposal to clarify the nature of the claim issued to a Clearing Member that received a pro rata payment following a Partial Tear-Up would impose any burden on competition because it would merely confirm the current meaning of OCC's rules as opposed to changing it. The proposed clarification would not inhibit access to OCC's services in any way, applies to all Clearing Members and does not disadvantage or favor any particular user in relationship to another user. OCC does not believe that the proposed limit to the amount of the special charge that can be levied under Rule 1111(g) would impose any burden on competition. All Clearing Members would benefit from the improved clarity provided by the proposed limit, which would in no way inhibit access to OCC's services and does not disadvantage or favor any

¹² 17 CFR. 240.17AD-22(e)(23)(ii).

¹³ 15 U.S.C. 78q-1(b)(3)(I).

particular user in relationship to another user. Accordingly, OCC does not believe that the proposed rule change would have any 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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-2022-005 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2022-005. 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 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/Company-Information/Documents-and-Archives/By-Laws-and-Rules#rule-filings>.

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-2022-005 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.¹⁴

J. Matthew DeLesDernier
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).