

Nasdaq Market changes a rule that the Exchanges have incorporated by reference.

Accordingly, it is ordered, pursuant to Section 36 of the Exchange Act,<sup>17</sup> that the Exchanges are exempt from the rule filing requirements of Section 19(b) of the Exchange Act solely with respect to changes to the rules identified in its request that incorporate by reference certain Nasdaq Market rules that are the result of changes to such Nasdaq Market rules, provided that the Exchanges promptly provide written notice to their members whenever the Nasdaq Market proposes to change a rule that the Exchanges have incorporated by reference.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Brent J. Fields,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83762; File No. SR-OCC-2017-810]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Partial Amendments No. 1, 2, and 3 to Advance Notice Concerning Updates to and Formalization of OCC's Recovery and Orderly Wind-Down Plan

August 1, 2018.

#### I. Introduction

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act")<sup>1</sup> and Rule

19b-4(n)(1)(i)<sup>2</sup> under the Securities Exchange Act of 1934 ("Act"),<sup>3</sup> The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") an advance notice pursuant to which OCC would formalize and update its Recovery and Orderly Wind-Down Plan ("RWD Plan" or "Plan"), consistent with the applicable requirement in Rule 17Ad-22(e)(3)(ii)<sup>4</sup> ("Advance Notice"). The Advance Notice was published for public comment in the **Federal Register** on January 23, 2018.<sup>5</sup> On January 23, 2018, the Commission requested OCC provide it with additional information regarding the Advance Notice.<sup>6</sup> OCC responded to this request for information, and the information was received on July 13, 2018.<sup>7</sup> On July 11 and 12, 2018, OCC filed Partial Amendment No. 1 and Partial Amendment No. 2 to the Initial Filing. On July 12, 2018, OCC also filed a partial amendment ("Partial Amendment No. 3") to the Initial Filing. This Partial Amendment No. 3 is intended to supersede and replace Amendments No. 1 and 2 in their entirety.<sup>8</sup> Therefore, the Initial Filing

<sup>2</sup> 17 CFR 240.19b-4(n)(1)(i).

<sup>3</sup> 15 U.S.C. 78a *et seq.*

<sup>4</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

<sup>5</sup> See Securities Exchange Act Release No. 82514 (January 17, 2018), 83 FR 3224 (January 23, 2018) (SR-OCC-2017-810) (hereinafter referred to as the "Initial Filing"). Initial Filing, 83 FR 3224.

<sup>6</sup> See Memorandum from Office of Clearance and Settlement, Division of Trading and Markets, dated January 23, 2018, available at <https://www.sec.gov/comments/sr-occ-2017-810/occ2017810-2948228-161854.pdf>.

<sup>7</sup> See Memorandum from Office of Clearance and Settlement, Division of Trading and Markets, dated July 17, 2018, available at <https://www.sec.gov/comments/sr-occ-2017-810/occ2017810-4062513-169149.pdf>.

<sup>8</sup> This Partial Amendment No. 3 is substantially the same as Partial Amendments No. 1 and 2 but would correct certain technical errors in the previous amendments (e.g., update a cross-reference to OCC filing SR-OCC-2017-809, as now amended by Amendment No. 2, and correct a pagination error in Exhibits 4 and 5). Substantive changes to the

together with Partial Amendment No. 3 reflects the changes being proposed.

The Advance Notice, as amended by Partial Amendment No. 3 is described in Item II below, which Item has been prepared by OCC. The Commission is publishing this notice to solicit comments on the Advance Notice, as amended by Partial Amendments No. 1, 2 and 3, from interested persons.

#### II. Clearing Agency's Statement of the Terms of Substance of Partial Amendment No. 3 to the Advance Notice

This Partial Amendment No. 3 would make the following three amendments to the Initial Filing: (1) Removal of sections of the RWD Plan concerning OCC's proposed authority to require cash settlement of certain physically delivered options and single stock futures; (2) updating the list of OCC's Critical Support Functions;<sup>9</sup> and (3) making three changes to Chapter 5 of the RWD Plan in order to conform to a change contemporaneously proposed in Amendment No. 2 to OCC advance notice filing SR-OCC-2017-809 concerning enhanced and new tools for recovery scenarios.<sup>10</sup>

With regard to the removal of sections of the RWD Plan concerning OCC's proposed authority to require cash settlement of certain physically delivered options and single stock futures, OCC proposes to amend the following text on pages 16-17 and 55 of the Initial Filing (new text is underlined and proposed deletions are marked in strikethrough text).

Initial Filing, as reflected in Partial Amendment No. 3, are described in Item II below.

<sup>9</sup> The amendment to the list of Critical Support Functions would be made to the confidential and redacted portions of the RWD Plan.

<sup>10</sup> See Amendment No. 2 to SR-OCC-2017-809. The three amendments to Chapter 5 also would be made to the confidential and redacted portions of the RWD Plan.

<sup>17</sup> 15 U.S.C. 78mm.

<sup>18</sup> 17 CFR 200.30-3(a)(76).

<sup>1</sup> 12 U.S.C. 5465(e)(1).

Proposed Chapter 5 would explain that OCC's Enhanced Risk Management Tools are designed to supplement OCC's existing processes and other existing tools in scenarios where OCC faces heightened stresses. Contrary to the Recovery Tools (which are described in greater detail below), the use of OCC's Enhanced Risk Management Tools would not be intended to be limited strictly to situations in which a Recovery Trigger Event has occurred. Rather, OCC's Enhanced Risk Management Tools have been designed such that they could be used prior to the occurrence of a Recovery Trigger Event (and preferably, the Enhanced Risk Management Tools would be used prophylactically in an effort to prevent the occurrence of a Recovery Trigger Event). As proposed, OCC would not anticipate there being a rigid order or timing for the deployment of its Enhanced Risk Management Tools, ~~subject to one caveat—"Cash Settlement of Physically Delivered Options and Single Stock Futures" would only be deployed in very narrow circumstances where a correspondent clearing organization has rejected the settlement obligations of an OCC Clearing Member and OCC does not believe it has sufficient liquid resources immediately available to facilitate settlement through a substitute broker.~~

OCC also proposes to amend the following text on pages 22–23 and 61–

62 of the Initial Filing (including associated footnotes).

~~Cash Settlement of Physically Delivered Options and Single Stock Futures. OCC is in the process of proposing a new Rule 913, which would provide OCC the ability to require cash settlement of otherwise physically settled delivery obligations arising from exercised or assigned stock options and/or physically settled matured stock futures in the event that a correspondent clearing corporation rejects the settlement obligations for such stock options and/or stock futures (such rejected stock options and/or stock futures hereinafter, "Rejected Cleared Securities") and either of the two following necessary conditions exists: (i) the liquidity demand on OCC to fund an alternative form of settlement for such Rejected Cleared Securities (i.e., settlement through the use of a "substitute broker") would exceed the amount of liquid resources immediately available to OCC, or (ii) no agent is available to serve as substitute broker to facilitate alternative settlement for OCC. In these extremely limited circumstances, fixing cash settlement amounts pursuant to proposed Rule 913 would provide OCC with the ability to substantially reduce the liquidity demands that it might otherwise face if required to fund an alternative form of settlement to effect physical delivery. The Recovery Plan would include cash settlement of otherwise physically delivered options and single stock futures pursuant to proposed Rule 913 among OCC's Enhanced Risk Management Tools.~~

~~The Recovery Plan would acknowledge that, assuming one of the two necessary conditions exists, the process for initiating cash settlement would be driven by the preparation of a "Close Out Action Plan," which would recommend impacted options and single stock futures be cash settled in lieu of physical delivery. The Recovery Plan would also acknowledge that execution of cash settlement would occur in accordance with OCC's "Alternative Cash Settlement of Cleared Contracts Procedure." The Recovery Plan recognizes that a key risk of this particular tool would be the potentially detrimental impacts on Clearing Members and their customers, who would receive a cash settlement amount when they had anticipated receiving physical securities.~~

OCC plans to resubmit the proposed cash settlement tool previously filed in

SR-OCC-2017-018 and SR-OCC-2017-007 on a separate timeline from the rest

of its enhanced and new tools for recovery scenarios and would submit a

subsequent filing to the Commission to amend the RWD Plan at that time.

In addition, OCC proposes to make the following amendments on pages 32 and 71 of the Initial Filing.

- *Tools to address liquidity shortfalls:* minimum Clearing Fund cash contribution, borrowing against Clearing Fund, OCC's credit facility, and OCC's non-bank facility ~~and cash settlement of physically delivered options and single stock futures.~~

With regard to updating the list of OCC's Critical Support Functions, the amendment would revise OCC's RWD Plan to consistently identify one of OCC's internal functions as a Critical Support Function.

Finally, OCC proposes to make two changes to Chapter 5 of the RWD Plan, which would align an exhibit, a related list and a related paragraph with the certain changes OCC is contemporaneously proposing in Amendment No. 2 to OCC advance notice filing SR-OCC-2017-809 concerning enhanced and new tools for recovery scenarios.<sup>11</sup> Specifically, OCC would change the aforementioned exhibit, list and paragraph in Chapter 5 to recognize that while OCC does not intend, in the first instance for its tear-up process to serve as a means of loss allocation, circumstances may arise such that, despite best efforts, OCC has inadequate remaining financial resources to extinguish torn-up positions at their assigned Tear-Up Price without forcing a reduction in the amount of unpaid value of such positions (e.g., despite best efforts, market movements not accounted for by monitoring, additional Clearing Member defaults occur immediately preceding a tear-up). In such circumstances, despite best efforts, OCC would use its partial tear-up process as a means of loss allocation.

OCC has included an updated Exhibit 5 containing its RWD Plan as well as an Exhibit 4 showing the changes proposed in this Partial Amendment No. 3 to the proposed rule text in the Initial Filing, with the proposed changes in the Initial Filing marked in underlined and strikethrough text. Exhibits 4 and 5 have been redacted and filed separately with the Commission and confidential treatment for Exhibits 4 and 5 is requested pursuant to 17 CFR 240.24b-2.

The Partial Amendments No. 1, 2 and 3 would not change the purpose or basis for the proposed changes. All other representations in the Initial Filing remain as stated therein and no other changes are being made.

### III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date the proposed change was filed with the Commission or (ii) the date any additional information requested by the Commission is received. OCC shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

OCC shall post notice on its website of proposed changes that are implemented. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commissions internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2017-810 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-OCC-2017-810. This file number should be included on the subject line if email 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice 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 <http://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 or 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-2017-810 and should be submitted on or before August 22, 2018.

By the Commission.

**Brent J. Fields,**  
Secretary.

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<sup>11</sup> See Amendment No. 2 to SR-OCC-2017-809.