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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85924; File No. SR-OCC-2019-803]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice Concerning The Options Clearing Corporation's Proposal to Enter Into a New Credit Facility Agreement

May 23, 2019

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")¹ and Rule 19b-4(n)(1)(i)² under the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),³ notice is hereby given that on April 26, 2019, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") an advance notice ("Advance Notice") as described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is submitted in connection with a proposed change to OCC's operations in the form of the replacement of a revolving credit facility that OCC maintains for a 364-day term and that it may use: (i) in anticipation of a potential default by or suspension of a Clearing Member; (ii) to meet obligations arising out of the default or suspension of a Clearing Member; (iii) to meet reasonably anticipated liquidity needs for same-day settlement as a result of the failure of any bank or securities or commodities

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b-4(n)(1)(i).

³ 15 U.S.C. 78a et seq.

clearing organization to achieve daily settlement; or (iv) to meet obligations arising out of the failure of a bank or securities or commodities clearing organization to perform its obligations due to its bankruptcy, insolvency, receivership or suspension of operations. OCC has provided a summary of the terms and conditions of the proposed renewal in confidential Exhibit 3. The proposed change is described in additional detail in Item 10 below.

The advance notice is available on OCC's website at <https://www.theocc.com/about/publications/bylaws.jsp>. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.⁴

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. 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 and B below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the advance notice and none have been received. OCC will notify the Commission of any written comments received by OCC.

⁴ OCC's By-Laws and Rules can be found on OCC's public website: <http://optionsclearing.com/about/publications/bylaws.jsp>.

(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act

Description of Proposed Change

Background

This advance notice is being filed in connection with a proposed change in the form of the replacement of a revolving credit facility that OCC maintains for a 364-day term and that it may use: (i) in anticipation of a potential default by or suspension of a Clearing Member; (ii) to meet obligations arising out of the default or suspension of a Clearing Member; (iii) to meet reasonably anticipated liquidity needs for same-day settlement as a result of the failure of any bank or securities or commodities clearing organization to achieve daily settlement; or (iv) to meet obligations arising out of the failure of a bank or securities or commodities clearing organization to perform its obligations due to its bankruptcy, insolvency, receivership or suspension of operations (“Permitted Use Circumstances”). In any such Permitted Use Circumstance, OCC has certain conditional authority under its By-Laws and Rules to borrow or otherwise obtain funds from third parties using Clearing Member margin deposits and/or Clearing Fund contributions.⁵

OCC’s existing credit facility (“Existing Facility”) was implemented as of June 28, 2018, through the execution of a credit agreement among OCC, the administrative agent, collateral agent and the lenders that are parties to the agreement from time to time. The Existing Facility provides short-term secured borrowings in an aggregate principal amount of \$2 billion but may be increased to \$3 billion if OCC so requests and sufficient

⁵ See generally Article VIII of OCC’s By-Laws and OCC Rules 1006(f), 1102 and 1104(b).

commitments from lenders are received and accepted. To obtain a loan under the Existing Facility, OCC must pledge as collateral U.S. dollars, securities issued or guaranteed by the U.S. Government or the Government of Canada, S&P 500 Market Index equities, Exchange-Traded Funds (“ETFs”), American Depositary Receipts (“ADRs”) or certain government-sponsored enterprise (“GSE”) debt securities. Certain mandatory prepayments or deposits of additional collateral are required depending on changes in the collateral’s market value. In connection with OCC’s past implementation of the Existing Facility, OCC filed an advance notice with the Commission on May 25, 2018, and the Commission published a Notice of No-Objection on June 27, 2018.⁶

Description of the Proposal

Renewal. The Existing Facility is set to expire on June 27, 2019. OCC is currently negotiating the terms of a new credit facility (“New Facility”) on substantially similar terms as the Existing Facility, and the definitive documentation concerning the New Facility is expected to be substantially similar to the definitive documentation concerning the Existing Facility. The proposed terms and conditions that are expected to be applicable to the New Facility, subject to agreement by the lenders, are set forth in the Summary of Terms and Conditions, which is not a public document.⁷

The conditions regarding the availability of the New Facility, which OCC anticipates will be satisfied on or about June 26, 2019, include the execution and delivery of: (i) a credit agreement between OCC and the administrative agent, collateral agent and

⁶ See Securities Exchange Act Release No. 83529 (June 27, 2018), 83 FR 31237 (July 3, 2018) (SR-OCC-2018-802).

⁷ OCC has separately submitted a request for confidential treatment to the Commission regarding the Summary of Terms and Conditions, which is included in this filing as Exhibit 3.

various lenders under the New Facility; (ii) a pledge agreement between OCC and the administrative agent or collateral agent; and (iii) such other documents as may be required by the parties. The definitive documentation concerning the New Facility is expected to be consistent with the Summary of Terms and Conditions that is provided in confidential Exhibit 3, although it may include certain changes to business terms as may be necessary to obtain the agreement of lenders with sufficient funding commitments and certain changes as may be necessary regarding administrative and operational terms being finalized between the parties.

Certain changes are presently expected in connection with the New Facility regarding the securities collateral that OCC would be permitted to pledge to obtain a loan. Specifically, as described below, OCC would be permitted to pledge securities that are issued or guaranteed by certain foreign governments.

Expansion of Permitted Collateral. As noted above, OCC proposes to expand the types of permitted collateral under the New Facility. As proposed, OCC would be permitted to pledge a wider range of collateral under the New Facility to the extent that Clearing Members are permitted to use such collateral to make margin deposits and/or Clearing Fund contributions.

As described above, to obtain a loan under the Existing Facility OCC must pledge as collateral certain cash or securities that Clearing Members have contributed to the Clearing Fund or deposited as margin. Under OCC's By-Laws and Rules, Government Securities presently may be deposited by Clearing Members as margin assets⁸ and

⁸ See OCC Rule 604(b)(1).

Clearing Fund contributions.⁹ The term Government Securities is defined in relevant part in OCC's By-Laws to mean "securities issued or guaranteed by the United States or Canadian Government, or by any other foreign government acceptable to OCC . . ."¹⁰ The Summary of Terms and Conditions for the New Facility contemplates that it would expand the scope of such collateral that OCC may pledge to include other categories of Government Securities that OCC may accept in the future. Specifically, the expanded Government Securities collateral regarding Clearing Member margin assets and Clearing Fund contributions would be debt securities that are issued by the Federal Republic of Germany, the Republic of France, Japan or the United Kingdom ("Additional G7 Governments").¹¹ Under the proposed terms of the New Facility, debt securities of Additional G7 Governments would only be able to be used as collateral if they have minimum ratings of A (by Standard & Poor's) and A2 (by Moody's).¹²

Although OCC has not yet decided to accept as Clearing Member collateral any debt securities issued by the Additional G7 Governments, it may do so prior to the expiration of the New Facility because OCC believes that it would benefit some Clearing Members that have such securities and that would like to use them as collateral. Before OCC may accept a particular foreign sovereign's debt securities as margin assets or

⁹ See OCC Rule 1002(a).

¹⁰ See OCC By-Laws, Art. I, Section 1.G.(5).

¹¹ These four countries, like the U.S. and Canada, are also members of what is referred to as the Group of Seven, or simply the G7, that meets annually to confer regarding economic policies.

¹² Like other Government Securities that may be pledged as collateral under the Existing Facility, debt securities of the Additional G7 Governments would be subject to certain haircuts based on their remaining time to maturity.

Clearing Fund contributions, the Collateral Risk Management Policy¹³ provides that the Credit and Liquidity Risk Working Group within OCC must perform an analysis of the sovereign credit, market, and liquidity risks associated therewith, and it must also consider operational aspects of maintaining custody of the collateral and the manner in which OCC can perfect a security interest in the collateral given applicable bankruptcy and insolvency laws. Upon requisite approvals, including regarding any necessary rule filings with the Commission, OCC would accept the relevant debt securities of the Additional G7 Governments as Government Securities, and, in turn, it would be able to pledge such Government Securities in Permitted Use Circumstances to support the New Facility.¹⁴

Adding debt securities of Additional G7 Governments as permitted Government Securities collateral to the New Facility serves the purpose of aligning the scope of permitted collateral for the New Facility with the scope of Clearing Member collateral that may become available to OCC for borrowing purposes. Should OCC draw upon the New Facility in connection with a Permitted Use Circumstance at a time when the proposed debt securities of the Additional G7 Governments are permitted as margin

¹³ See Securities Exchange Act Release No. 82311 (December 13, 2017), 82 FR 60252 (December 19, 2017) (SR-OCC-2017-008).

¹⁴ The Summary of Terms and Conditions explicitly provides that the securities of Additional G7 Governments may constitute collateral under the New Facility only after they are permitted to be pledged by Clearing Members into the Clearing Fund or deposited as margin deposits by Clearing Members. In 2017, the Commission issued a notice of no objection in connection with a similar change in the renewal of the credit facility where the terms were amended to permit OCC to pledge certain securities as collateral that OCC had not yet approved as acceptable collateral for margin deposits. See Securities Exchange Act Release No. 81058 (June 30, 2017), 82 FR 31371, 31373 (July 6, 2017) (SR-OCC-2017-803).

assets and/or Clearing Fund contributions, OCC believes that it would be appropriate for it to be able to pledge those debt securities of the Additional G7 Governments.

Anticipated Effect on and Management of Risk

Completing timely settlement is a key aspect of OCC's role as a clearing agency performing central counterparty services. Overall, the New Facility would continue to promote the reduction of risks to OCC, its Clearing Members and the markets OCC serves in general because it would allow OCC to obtain short-term funds in the Permitted Use Circumstances. The existence of the New Facility would therefore help OCC minimize losses in the event of a Permitted Use Circumstance, by allowing it to obtain funds on extremely short notice to ensure clearance and settlement of transactions in options and other contracts without interruption. OCC believes that the reduced settlement risk presented by OCC resulting from the New Facility would correspondingly reduce systemic risk and promote the safety and soundness of the clearing system. By drawing on the New Facility, OCC would also be able to avoid liquidating margin deposits or Clearing Fund contributions in what would likely be volatile market conditions, which would preserve funds available to cover any losses resulting from the failure of a Clearing Member, bank or other clearing organization. Expanding the scope of collateral that OCC is permitted to pledge to the New Facility to include the debt securities of the Additional G7 Governments would further this purpose by giving OCC greater flexibility to pledge a broader range of collateral that it determines is appropriate under the circumstances.

OCC otherwise believes that the proposed change would not otherwise affect or alter the management of risk at OCC because the New Facility would generally preserve

the same terms and conditions as the Existing Facility.

Consistency with the Payment, Clearing and Settlement Supervision Act

The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.¹⁵

Section 805(a)(2) of the Clearing Supervision Act¹⁶ also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like OCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act¹⁷ states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and the Exchange Act in furtherance of these objectives and principles.¹⁸ Rule 17Ad-22 requires registered clearing agencies, like OCC, to

¹⁵ 12 U.S.C. 5461(b).

¹⁶ 12 U.S.C. 5464(a)(2).

¹⁷ 12 U.S.C. 5464(b).

¹⁸ 17 CFR 240.17Ad-22. See Securities Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7-08-11) (“Clearing Agency Standards”); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14) (“Standards for Covered Clearing Agencies”).

establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.¹⁹ Therefore, the Commission has stated²⁰ that it believes it is appropriate to review changes proposed in advance notices against Rule 17Ad-22 and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act.²¹

OCC believes that the proposed changes are consistent with Section 805(b)(1) of the Clearing Supervision Act²² because the New Facility would provide OCC with continued access to a stable and reliable source of committed liquidity that can be accessed in a timely manner to meet its settlement obligations, contain losses and liquidity pressures and mitigate OCC's liquidity risk. Accordingly, OCC believes that the proposed changes: (i) are designed to promote robust risk management; (ii) are consistent with promoting safety and soundness; and (iii) are consistent with reducing systemic risks and promoting the stability of the broader financial system.

OCC believes that the New Facility is also consistent with the requirements of Rule 17Ad-22(e)(7) under the Act.²³ Rule 17Ad-22(e)(7) requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage liquidity risk that arises in or is borne by OCC, including measuring, monitoring, and managing its settlement and funding flows on an

¹⁹ 17 CFR 240.17Ad-22.

²⁰ See supra note 6.

²¹ 12 U.S.C. 5464(b).

²² 12 U.S.C. 5464(b)(1).

²³ 17 CFR 240.17Ad-22(e)(7).

ongoing and timely basis, and its use of intraday liquidity, as specified in the rule.²⁴ In particular, Rule 17Ad-22(e)(7)(i) under the Act²⁵ directs that OCC meet this obligation by, among other things, “[m]aintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day . . . settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for [OCC] in extreme but plausible market conditions.”

As described above, the New Facility would provide OCC with a readily available liquidity resource that would enable it to, among other things, continue to meet its obligations in a timely fashion in a Permitted Use Circumstance and as an alternative to selling Clearing Member collateral under what may be stressed and volatile market conditions. The expansion of permitted collateral under the New Facility to include the debt securities of Additional G7 Governments would better enable OCC to manage liquidity risk associated with its settlement obligations in the event that OCC in the future accepts such debt securities as Government Securities by giving OCC the ability to pledge that broader range of Clearing Member collateral to the New Facility in Permitted Use Circumstances. For these reasons, OCC believes that the proposal is consistent with Rule 17Ad-22(e)(7)(i).²⁶

Rule 17Ad-22(e)(7)(ii) under the Act requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to hold

²⁴ Id.

²⁵ 17 CFR 240.17Ad-22(e)(7)(i).

²⁶ Id.

qualifying liquid resources sufficient to satisfy payment obligations owed to Clearing Members.²⁷ Rule 17Ad-22(a)(14) of the Act defines “qualifying liquid resources” to include, among other things, lines of credit without material adverse change provisions, that are readily available and convertible into cash.²⁸ As with the Existing Facility, the New Facility would not be subject to any material adverse change provision and would continue to be designed to permit OCC to, among other things, help ensure that OCC has sufficient, readily-available qualifying liquid resources to meet the cash settlement obligations of its largest Clearing Member Group. Therefore, OCC believes that the proposal is consistent with Rule 17Ad-22(e)(7)(ii).²⁹

For the foregoing reasons, OCC believes that the proposed changes are consistent with Section 805(b)(1) of the Clearing Supervision Act³⁰ and Rule 17Ad-22(e)(7)³¹ under the Act.

Accelerated Commission Action Requested

Pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,³² OCC requests that the Commission notify OCC that it has no objection to the New Facility not later than Monday, June 24, 2019, which shall be two business days prior to the expected June 26, 2019 availability of the New Facility. OCC requests Commission action by this date to ensure that there is no period that OCC operates without this essential liquidity

²⁷ 17 CFR 240.17Ad-22(e)(7)(ii).

²⁸ 17 CFR 240.17Ad-22(a)(14).

²⁹ 17 CFR 240.17Ad-22(e)(7)(ii).

³⁰ 12 U.S.C. 5464(b)(1).

³¹ 17 CFR 240.17Ad-22(e)(7).

³² 12 U.S.C. 5465(e)(1)(I).

resource, given its importance to OCC's borrowing capacity in connection with its management of liquidity and settlement risk and timely completion of clearance and settlement.

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 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-2019-803 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2019-803. 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 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 the filing also will be available for inspection and copying at the principal office of the self-regulatory organization and on OCC's website at

<https://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 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-2019-803 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

By the Commission.

Eduardo A. Aleman,
Deputy Secretary.

[FR Doc. 2019-11219 Filed: 5/29/2019 8:45 am; Publication Date: 5/30/2019]