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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99701; File No. SR-OCC-2024-002]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Proposed Rule Change Concerning Amendments to The Options Clearing Corporation’s Rules, By-Laws, and Certain Clearing Member Documents

March 8, 2024

I. INTRODUCTION

On January 10, 2024, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-OCC-2024-002 pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4² thereunder. The proposed rule change would amend the OCC Rules, By-Laws, and certain Clearing Member documents³ in connection with the recent amendments adopted by the Commission to Rule 15c6-1(a)⁴ under the Exchange Act. The proposed rule change was published for public comment in the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Clearing Member documents consist of contracts and forms, that in conjunction with OCC’s By-Laws and Rules, establish and govern the relationship between OCC and each Clearing Member. *See* Exchange Act Release No. 73577 (Nov. 12, 2014), 79 FR 68733 (Nov. 18, 2014) (File No. SR-OCC-2014-020).

⁴ 17 CFR 240.15c6-1(a).

Federal Register on January 25, 2024.⁵ The Commission has received no comments regarding the proposed rule change. This order approves the proposed rule change (hereinafter defined as “Proposed Rule Change”).

II. BACKGROUND

OCC is the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission, including options that contemplate the physical delivery of equities cleared by the National Securities Clearing Corporation (“NSCC”) in exchange for cash (“physically settled” options).⁶ The standard settlement cycle for most such equities is two business days after the trade date (T+2). On February 15, 2023, the Commission adopted amendments to Rule 15c6-1(a) to shorten the standard settlement cycle for most broker-dealer transactions to one business day after the trade date (T+1).⁷ OCC proposes three categories of changes in connection with the shortening of the settlement cycle, all of which OCC intends to implement on May 28, 2024, which is the compliance date regarding the amendments to Rule 15c6-1(a). First, OCC is proposing timing changes to certain internal processes to ensure those processes are completed in a timeframe that will accommodate a T+1 standard settlement cycle. Where necessary, OCC also is making conforming changes to its internal documentation for these and other processes to ensure that they too reflect and are consistent with a T+1

⁵ Securities Exchange Act Release No. 34-99392 (January 25, 2024), 89 FR 5069 (Jan. 19, 2024) (File No. SR-OCC-2024-002) (“Notice of Filing”).

⁶ The term “physically-settled” as used throughout the OCC Rulebook refers to cleared contracts that settle into their underlying interest (i.e., options or futures contracts that are not cash-settled). When a contract settles into its underlying interest, shares of stock are sent (i.e., delivered) to contract holders who have the right to receive the shares from contract holders who are obligated to deliver the shares at the time of exercise/assignment in the case of an option and maturity in the case of a future.

⁷ See Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 (Mar. 6, 2023) (File No. S7-05-22).

standard settlement cycle. Second, OCC is proposing to amend its rules to eliminate the possibility of late exercise. This is because the relevant processing and other timelines necessary to accommodate a T+1 standard settlement cycle are too compressed to allow OCC to accommodate late exercise.

A. *Timeframe Changes*

OCC proposes changes regarding settlement timing both through NSCC and on a broker-to-broker basis as well as in OCC's stock loan programs. Regarding transactions settling through NSCC, for example, OCC proposes to limit the authority of its officers to extend or postpone settlement to no more than *one* business day (as opposed to *two* business days) under OCC's Rule 901. For transaction settling on a broker-to-broker basis, OCC proposes changing the delivery date for physically-settled options under OCC Rule 903 from the "second" to the "first" business day following exercise.⁸ OCC also proposes similar changes to the rules governing its stock loan programs.⁹

Separately, OCC proposes changes regarding Clearing Member appointments, escrow deposits, and Treasuries. OCC proposes to change the timing of appointments that must occur following execution, but prior to settlement, such as when a Canadian Clearing Member appointments CDS Clearing and Depository Services Inc. to act on the member's behalf with respect to the settlement of exercised or matured cleared securities in its accounts through NSCC.¹⁰ OCC also proposes streamlining changes, such as

⁸ OCC proposes similar changes related to the timing of settlement for other relevant contracts, such as futures contracts and stock loan transactions.

⁹ Such changes would update the timing termination (under Article XXI, Section 2(c) of OCC's By-Laws as well as OCC Rule 2209A(d)) and the failure of a recall transaction (under OCC Rule 2209A(a)(3)).

¹⁰ Such changes include changes both to OCC's public rulebook (e.g., OCC Rule 901(f)) as well as related documents, such as OCC's "Appointment of CDS — Stock Settlement Form."

replacing references to the specific business day for release of certain escrows deposits with a reference to OCC's Operations Manual.¹¹ Finally, OCC proposes to revise Rule 1302 concerning the delivery of underlying securities and Rule 1302B concerning the delivery of underlying Treasury securities. Specifically, in these two rules, OCC proposes to update references from the "second" business day to the "first" business day with respect to applicable deadlines specified.

To align the rest of OCC's Rules, By-Laws, and Clearing Member documents to the T+1 settlement cycle, OCC is proposing to change the timeframes in its documents that are related to the current T+2 standard settlement cycle by changing all references to "T+2" to "T+1." As noted in the Notice of Filing, OCC proposes to change various sections of its rule book that relate to the current T+2 settlement cycle.¹²

B. *Provisions Related to Late Exercise*

The underlying equity securities for physically-settled options and futures cleared by OCC are cleared and settled by the National Securities Clearing Corporation ("NSCC"). As a result, the exercise and assignment of such physically-settled options and futures cleared by OCC effectively results in stock settlement obligations to be cleared by NSCC ("E&A Activity"). NSCC and OCC maintain a legal agreement, generally referred to by the parties as the "Accord," that governs the processing of E&A Activity.¹³

¹¹ The Operations Manual would state that this release of collateral would occur on the next business day following the expiration date.

¹² See Notice of Filing, 89 FR at 5071 (listing the following rules to be revised OCC Rule 901, OCC Rule 903, OCC Rule 1302, OCC Rule 1302B, OCC Rule 1503, OCC Rule 2201, OCC Rule 2208, OCC Rule 2209A, OCC Rule 2502 as well as Article XXI of OCC's By-Laws).

¹³ See Notice of Filing, 89 FR at 5071.

OCC's current rules require Clearing Members to submit exercise notices,¹⁴ but also provide a process for late exercise notices.¹⁵ The late exercise notice process does not support routine operations, but instead is intended for extenuating circumstances.¹⁶ Such rules set out deadlines by which late exercises must be received by OCC and subject Clearing Members to, among other things, potential disciplinary actions and liabilities for late filing fee.¹⁷

As indicated by OCC in the Notice, reducing the standard settlement time to T+1 will reduce the time available to OCC and NSCC to transmit information and perform operational and risk management steps associated with the processing of E&A Activity under the Accord.¹⁸ Further, although OCC's current rules contemplate the possibility that a Clearing Member could submit a late exercise notice, the transition to a T+1 settlement cycle would require settlement activity from a late exercise to be sent to NSCC for same-day settlement, which would be inconsistent with the Accord.¹⁹ As a result of these operational challenges, OCC is proposing to no longer accommodate late exercises after the move to T+1.²⁰

¹⁴ See OCC Rules 801 and 805.

¹⁵ *Id.*

¹⁶ See Notice of Filing, 89 FR at 5071.

¹⁷ *Id.*

¹⁸ See Notice of Filing, 89 FR at 5071.

¹⁹ However, OCC would continue to maintain deadlines for receiving exercise notices. See Notice of Filing, 89 FR at 5069.

²⁰ More specifically, the timing of late-exercise activity would not allow for the transfer of the settlement guaranty between OCC and NSCC. Settlement activity resulting from a late exercise would need to be sent to NSCC for same-day settlement; however, same-day settlement is not supported by the Accord, which would result in late-exercise activity not being guaranteed by NSCC. Further changes to the Accord would be necessary to allow for same-day settlement, which are not currently contemplated between OCC and NSCC. See Securities Exchange Act

In connection with this change, OCC is proposing to remove language in Rule 801 that requires a Clearing Member to prepare and preserve a memorandum describing the error that gave rise to a late filing. Similarly, in Rule 805, OCC is proposing to remove language that allows Clearing Members to file late exercise notices subject to a final deadline for submission. OCC would continue to allow members to correct bona fide errors; however, under the proposed rules, such corrections must be made prior to daily processing timelines.²¹

III. DISCUSSION AND COMMISSION FINDINGS

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.²² Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization [‘SRO’] that proposed the rule change.”²³

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,²⁴ and any

Release No. 99426 (January 30, 2024), 89 FR 5974 (January 24, 2024) (File No. SR-OCC-2023-007).

²¹ See Notice of Filing, 89 FR at 5071 n.24.

²² 15 U.S.C. 78s(b)(2)(C).

²³ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

²⁴ *Id.*

failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.²⁵ Moreover, “unquestioning reliance” on an SRO’s representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.²⁶

After carefully considering the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act,²⁷ and Rule 17Ad-22(e)(1)²⁸ thereunder as described in detail below.

A. *Consistency with Section 17A(b)(3)(F) of the Exchange Act*

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that a clearing agency’s rules are designed to promote the prompt and accurate clearance and settlement of securities transactions and to foster cooperation and coordination between persons engaged in the clearance and settlement of securities transactions.²⁹ Based on its review of the record, and for the reasons described below, the changes described above are consistent with fostering cooperation and coordination between with persons engaged in the clearance and settlement of securities transactions.

²⁵ *Id.*

²⁶ *Susquehanna Int’l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 447 (D.C. Cir. 2017) (“Susquehanna”).

²⁷ 15 U.S.C. 78q-1(b)(3)(F).

²⁸ 17 CFR 240.17Ad-22(e)(1).

²⁹ 15 U.S.C. 78q-1(b)(3)(F).

OCC clears both securities options listed on Commission-registered national securities exchanges as well as futures for which such securities are the underliers. Such listed options and futures may result in the physical delivery of equities. OCC's rules describe the timing and process for effecting such settlement either through facilities of NSCC or on a broker-to-broker basis. Similarly, OCC's rules contemplate the clearance and settlement of stock loan transactions, also involving the physical delivery of equities. As described above, OCC proposes changes to its rules governing such processes to align with the shortening of the settlement cycle for most broker-dealer transactions. Further, as described in the Notice of Filing, OCC proposes to implement such changes by May 28, 2024, which is the compliance date regarding the amendments to Rule 15c6-1(a).³⁰ Such changes would support coordination with industry participants engaged in the clearance and settlement of securities transactions both in terms of substance and timing of implementation.

As described above, OCC has asserted that the processes required to effect settlement on a T+1 basis would also impact OCC's current late exercise processes. Unlike the other changes, however, a T+1 settlement cycle would provide insufficient time to accommodate OCC's late exercise processes. To avoid operational challenges and inconsistencies with the Accord, OCC proposes to remove the late exercise process entirely from its rules while continuing to allow members to correct bona fide errors within daily processing deadlines. Additionally, as noted in the Notice of Filing, OCC's current late exercise processing does not support routine operations, but rather, is

³⁰ See Notice of Filing, 89 FR at 5073.

intended only for extenuating circumstances and may carry with it a fine.³¹ Removal of the process for late exercise, therefore, would not disrupt OCC's routine clearance and settlement processes. OCC's proposed removal of its late exercise processes, as part of the move to a shortened settlement cycle, would, therefore, promote the prompt and accurate clearance and settlement of securities transactions by avoiding the potential delays that would be caused by allowing late exercises.

Accordingly, the changes proposed to accommodate a shortened settlement cycle are consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.³²

B. *Consistency with Rule 17Ad-22(e)(1) under the Exchange Act*

Rule 17Ad-22(e)(1) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.³³ In adopting Rule 17Ad-22(e)(1), the Commission provided guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address legal risk.³⁴ The Commission stated that a covered clearing agency should consider, *inter alia*, whether its contracts are consistent with relevant laws and regulations.³⁵

On February 15, 2023, the Commission adopted a final rule to shorten the

³¹ See Notice of Filing, 89 FR at 5071.

³² 15 U.S.C. 78q-1(b)(3)(F).

³³ 17 CFR 240.17Ad-22(e)(1).

³⁴ See Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70802 (Oct. 13, 2016) (S7-03-14).

³⁵ See *id.*

standard settlement cycle for most broker-dealer transactions from two business days after the trade date to one business day after the trade date.³⁶ As described above, the proposed changes are designed to ensure that OCC's processes and Rules and other documentation are both consistent with and accommodate a T+1 standard settlement cycle. The proposed changes are, therefore, consistent with the rules and regulations applicable to OCC, and, as a result, will provide a well-founded legal basis for OCC's continued operations after the transition to a T+1 standard settlement cycle. The proposed changes are, accordingly, consistent with the requirements of Rule 17Ad-22(e)(1) under the Exchange Act.³⁷

IV. CONCLUSION

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act³⁸ and the rules and regulations thereunder.

³⁶ See Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 (Mar. 6, 2023) (File No. S7-05-22).

³⁷ 17 CFR 240.17Ad-22(e)(1).

³⁸ In approving this proposed rule change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,³⁹ that the proposed rule change (SR-OCC-2024-002), hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁰

J. Matthew DeLesDernier,

Deputy Secretary.

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³⁹ 15 U.S.C. 78s(b)(2).

⁴⁰ 17 CFR 200.30-3(a)(12).