

to the Fund of Funds Adviser, trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund, in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

7. The Board of a Fund, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that

purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limit in section 12(d)(1)(A), a Fund of Funds and the Trust will execute a FOF Participation Agreement stating without limitation that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be

fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent the Fund acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund to acquire securities of one or more investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, August 8, 2013 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551-5400.

Dated: August 1, 2013.

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70076; File No. SR-OCC-2013-09]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, To Separate the Powers and Duties Currently Combined in the Office of OCC's Chairman Into Two Offices, Chairman and President, and Create an Additional Directorship To Be Occupied by the President

July 30, 2013.

#### I. Introduction

On June 4, 2013 The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2013-09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> On June 10, 2013, OCC filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on June 21, 2013.<sup>4</sup> The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

The purpose of this rule change is to provide for separation of the powers and duties currently combined in the office of OCC's Chairman of the Board of Directors into two offices, Chairman<sup>5</sup> and President, and create an additional

directorship to be occupied by the President.

#### Proposal Overview

In the course of OCC's review of the structure of the Board of Directors, OCC determined that dividing the powers and duties of the Chairman of the Board into two positions, Chairman and President, would enhance oversight of OCC management by making the Chairman independent of most management functions. Pursuant to the rule change, the Chairman will be responsible for oversight of: (i) The control functions of OCC, including enterprise risk management, internal audit and compliance; (ii) external affairs; and (iii) presiding at all meetings of OCC's Board of Directors and OCC's stockholders. The President will report to the Chairman and be responsible for all aspects of OCC's business that do not report directly to the Chairman. Under OCC's rule change, OCC's President, who will also serve as Chief Executive Officer, will focus on the effectiveness of OCC's day-to-day operations, as well as strategic initiatives for the future.

OCC expects that the Chairman's direct oversight of control functions will increase independence by limiting management's influence over such functions. In addition, OCC notes that the significance of these control functions for a clearing agency warrants full-time oversight, which can only be provided by an executive of OCC.

To reflect the above changes in its governance structure, OCC will revise Section 7 of Article III of its By-Laws to include OCC's President as a Management Director, along with OCC's Chairman.<sup>6</sup> OCC will also revise Article IV of its By-Laws to include references to the President in certain provisions governing OCC's officers.<sup>7</sup> OCC will also

<sup>6</sup> Sections 1, 7 and 12 of Article III will also be amended to reflect the existence of an additional Management Director. Furthermore, OCC will amend Section 15 of Article III to grant the President the same authority to act in the case of an emergency as the Chairman and, consequently, OCC will remove the President as one of the "Designated Officers" to whom such authority would devolve if certain enumerated officers are unavailable.

<sup>7</sup> The amended Section 1 of Article IV will include the President, along with the Chairman, as an officer required to be elected by the Board of Directors. Section 8 of Article IV, as amended, will no longer give the Board the option of electing a President, but will make such office required. Sections 6 and 8 of Article IV will be amended to specify the duties of the Chairman and President, respectively. Sections 2, 3, and 13 of Article IV will be amended to give the President power, like the Chairman, to appoint and remove certain officers and agents to carry out the functions assigned to him and may determine the salaries of these appointees and agents. Sections 7 and 9 will be amended to add references to the President, in

amend Articles IV and V of its Certificate of Incorporation to reflect the existence of an additional Management Director. Finally, OCC will also amend Sections 2 and 3 of the Stockholders Agreement to provide for the election of the President, in addition to the Chairman, as a Management Director.

#### Implementation Timeframe

OCC will notify members of the date on which it intends to implement the rule change through the posting of an information memo on the OCC Web site. The change will not take effect until such date OCC designates as the date of implementation. OCC expects to implement the rule change no later than December 31, 2013.

#### III. Discussion

Section 19(b)(2)(C) of the Act<sup>8</sup> 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 Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(A) of the Act<sup>9</sup> requires that a clearing agency that is registered with the Commission be organized and have the capacity to be able to, among other things, facilitate the prompt and accurate clearance and settlement of securities transactions.

The Commission finds that the rule change is consistent with Section 17A(b)(3)(A) of the Act<sup>10</sup> because by separating the powers and duties currently combined in the office of OCC's Chairman into two offices, the rule change should enhance oversight of management by ensuring that the Chairman is independent of most management functions and that the separation of powers and duties over OCC operations is not overly concentrated in the hands of a single individual, thereby promoting greater accountability of management to the Board of Directors. In so doing, OCC's rule change should improve its corporate governance structure and provide for an appropriate checks and balance between oversight by OCC's Board of Directors and OCC management of day-to-day operations, which in turn, should facilitate the prompt and accurate clearance and settlement of securities transactions.

addition to the Chairman, when referencing the highest-ranking officers of OCC.

<sup>8</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(A).

<sup>10</sup> *Id.*

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 corrects an administrative oversight related to a sentence reference in OCC's Certificate of Incorporation.

<sup>4</sup> Release No. 34-69771 (June 17, 2013), 78 FR 37640 (June 21, 2013).

<sup>5</sup> Pursuant to Article IV, Section 6, of OCC's By-Laws, the Chairman of the Board is also the Executive Chairman.