

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86871 / September 4, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19416

In the Matter of

THE OPTIONS
CLEARING CORPORATION,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 19(h) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND
A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against The Options Clearing Corporation (“OCC” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

A. Summary

1. This matter concerns the failure by OCC to comply with certain provisions of the statutes and rules applicable to registered clearing agencies. Registered clearing agencies, such as OCC, are an essential part of the infrastructure of the U.S. securities markets and as such, they are required to be structured to manage and reduce risk. In instances where registered clearing agencies are not structured and operated appropriately, they can pose substantial risk to the financial system as a whole.

2. OCC serves as the sole registered clearing agency for exchange listed option contracts in the United States and has been designated as a systemically important financial market utility ("SIFMU") under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"). Disruption to OCC's operations, or failure by OCC to manage risk, could result in significant costs not only to OCC itself and its members, but also to other market participants or the broader U.S. financial system.

3. As a registered clearing agency, OCC is a self-regulatory organization under the Exchange Act. Self-regulatory organizations are charged with an important public trust to carry out their self-regulatory responsibilities effectively and fairly, while fostering free and open markets, protecting investors, and promoting the public trust.

4. The U.S. Congress and the Commission have established a legal framework to facilitate the prompt and accurate clearance and settlement of securities transactions, having due regard for, among other things, the public interest, the protection of investors, and the safeguarding of securities and funds. Four groups of statutes, rules, and regulations are at issue in this matter.

5. In October 2012, the Commission adopted Rules 17Ad-22(b) and (d) under the Exchange Act to "strengthen the substantive regulation of registered clearing agencies, promote the safe and reliable operation of registered clearing agencies, and improve efficiency, transparency and access to registered clearing agencies."² Rules 17Ad-22(b) and (d) were first proposed in March 2011. OCC was not required to comply until January 2, 2013.

6. In November 2014, the Commission adopted Regulation Systems, Compliance, and Integrity under the Exchange Act ("Reg. SCI") to "strengthen the technology infrastructure of U.S. securities markets" and "reduce the occurrence of systems issues, improve resiliency when

¹ The findings herein are made pursuant to OCC's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² Standards for Covered Clearing Agencies, 81 Fed. Reg. 70786, 70788 (October 13, 2016) (footnote omitted).

systems problems do occur, and enhance the Commission’s oversight and enforcement of securities market technology infrastructure.”³ Reg. SCI, which applies to registered clearing agencies, was first proposed in June 2012. OCC was not required to comply until November 3, 2015.

7. In October 2016, the Commission adopted Rule 17Ad-22(e) under the Exchange Act, which established enhanced standards for registered clearing agencies that meet the definition of a “covered clearing agency.” OCC is a covered clearing agency for purposes of Rule 17Ad-22(e). The Commission adopted Rule 17Ad-22(e) to “impos[e] consistent, higher minimum risk management standards across all covered clearing agencies” and “further mitigate the potential for moral hazard associated with risk management at a covered clearing agency.”⁴ Rule 17Ad-22(e) was first proposed in March 2014. OCC was not required to comply until April 11, 2017.

8. And finally, the rule filing and Commission approval requirements embodied in Section 19(b) of the Exchange Act and Rule 19b-4(c) thereunder, which apply to all self-regulatory organizations including registered clearing agencies, serve an important function in keeping the public and a clearing agency’s members informed and involved in the operations of the clearing agency and ensuring that the clearing agency’s rules are consistent with the Exchange Act and the rules and regulations thereunder.

9. In connection with examinations of OCC before it was required to comply with the Rule 17Ad-22(e) and Reg. SCI, the Commission staff notified OCC of material weaknesses with its policies and procedures that, if not corrected before the required compliance dates, could result in violations of Rule 17Ad-22(e) and Reg. SCI.

10. Nonetheless, despite the Commission staff’s advance warnings and ample time to comply, OCC failed to come into compliance with Rules 17Ad-22(b), (d) and (e) and Reg. SCI by the required compliance dates. Specifically, OCC failed to establish, implement, maintain and enforce policies and procedures reasonably designed to:

- a. review its risk-based margin models and the parameters for those models on a monthly basis;
- b. consider and produce margin levels commensurate with the risks and particular attributes of each relevant product cleared by OCC;
- c. effectively measure, monitor, and manage its credit exposure and liquidity risk;
- d. maintain a comprehensive risk management framework;

³ 81 Fed. Reg. 70786, 70789.

⁴ 81 Fed. Reg. 70786, 70850.

- e. protect the security of certain of its information systems; and
- f. provide for a well-founded, clear, transparent and enforceable legal framework for every aspect of its activities.

OCC also failed to comply with Section 19(b) of the Exchange Act and Rule 19b-4(c) thereunder by adopting and changing certain policies prior to obtaining Commission approval.

11. As a result of its conduct, OCC violated Section 17A(d)(1) of the Exchange Act⁵ and Rules 17Ad-22(b)(2), 17Ad-22(d)(1), 17Ad-22(e)(1), 17Ad-22(e)(3)(i), 17Ad-22(e)(4)(iii) and (vi), 17Ad-22(e)(6)(i), and 17Ad-22(e)(7)(i) and (vi) thereunder; Rules 1001(a)(1) and (2) of Reg. SCI under the Exchange Act; and Section 19(b) of the Exchange Act and Rule 19b-4 thereunder.

B. Respondent

12. OCC is a Delaware corporation with its principal place of business in Chicago, Illinois. OCC is the sole central counterparty for exchange listed option contracts in the United States. The Commission granted full registration as a clearing agency to OCC pursuant to the Exchange Act on September 23, 1983.⁶ As a registered clearing agency, OCC is a self-regulatory organization under the Exchange Act.

13. On July 18, 2012, the Financial Stability Oversight Council approved the designation of OCC as a SIFMU pursuant to Section 804 of the Dodd-Frank Act. A financial market utility is deemed to be systemically important if “the failure of or a disruption to the functioning of such [financial market utility] could create or increase the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability” of the U.S. financial system.⁷ For purposes of the Dodd-Frank Act, the Commission is OCC’s supervisory agency. As such, the Commission is required by Section 807(a) of the Dodd-Frank Act to examine OCC at least once annually. In addition, because it is a SIFMU, OCC is a “covered clearing agency” subject to the Commission’s enhanced clearing agency standards set forth in Exchange Act Rule 17Ad-22(e).

⁵ Section 17A(d)(1) of the Exchange Act prohibits registered clearing agencies from engaging in any activity as a clearing agency in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

⁶ Unless exempted, a clearing agency must register with the Commission pursuant to Exchange Act Section 17A. 15 U.S.C. 78q-1(b)(1). Such registration requires Commission determinations regarding the clearing agency and its rules. 15 U.S.C. 78q-1(b)(3).

⁷ 12 U.S.C. 5462(9).

C. Facts

OCC Failed to Establish, Implement, Maintain, and Enforce Policies and Procedures Reasonably Designed to Review Its Risk-Based Margin Models and the Parameters for Those Models on a Monthly Basis

14. Exchange Act Rule 17Ad-22(b)(2) requires that a registered clearing agency performing central counterparty services establish, implement, maintain, and enforce written policies and procedures reasonably designed to “[u]se risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly.”

15. When proposing this rule, the Commission explained that “[m]arket conditions and risks are constantly changing and therefore the models and parameters used by a clearing agency providing [central counterparty] services to set margin may not accurately reflect the needs of a clearing agency if they are permitted to remain static.” The Commission further noted that the one month review period for risk-based margin models and parameters “would limit the potential that such parameters or models will become stale.”⁸

16. OCC was required to comply with Exchange Act Rule 17Ad-22(b)(2) by January 2, 2013. However, through at least April 2017, OCC failed to establish, implement, maintain, and enforce policies and procedures reasonably designed to review its risk-based margin models and all of the parameters for those models at least monthly.

OCC Failed to Establish, Implement, Maintain, and Enforce Policies and Procedures Reasonably Designed to Consider and Produce Margin Levels Commensurate with the Risks and Particular Attributes of Each Relevant Product Cleared by OCC

17. Exchange Act Rule 17Ad-22(e)(6)(i) requires that a covered clearing agency performing central counterparty services establish, implement, maintain, and enforce policies and procedures that are reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, among other things, “[c]onsiders, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio and market.”

18. Collection of margin is a critical component of a clearing agency’s risk management in ensuring that it has sufficient financial resources in the case of a clearing member default.

19. OCC was required to comply with Exchange Act Rule 17Ad-22(e)(6)(i) by April 11, 2017. However, to date, OCC has not established, implemented, maintained, or enforced policies and procedures reasonably designed to consider and produce margin levels commensurate

⁸ Clearing Agency Standards for Operation and Governance, 76 Fed. Reg. 14471, 14478 (proposed March 16, 2011).

with the risks and particular attributes of each relevant product cleared by OCC. Specifically, OCC's margin model fails to consider the impact of market liquidation costs, including bid-ask spreads and other transaction-based costs, as well as the potential market impact of liquidation activity. OCC's margin model also fails to consider specific wrong way risk⁹ associated with cleared securities which are related to clearing members.

OCC Failed to Establish, Implement, Maintain, and Enforce Policies and Procedures Reasonably Designed to Cover Its Credit Exposure

20. Exchange Act Rule 17Ad-22(e)(4)(iii) requires that a covered clearing agency not subject to Exchange Act Rule 17Ad-22(e)(4)(ii) establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain "additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios."

21. Exchange Act Rules 17Ad-22(e)(4)(vi)(A)-(D) further require that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to test the sufficiency of its total financial resources available to meet the minimum requirements in Exchange Act Rule 17Ad-22(e)(4)(i) through (iii) by:

- a. stress testing its total financial resources once each day using standard predetermined parameters and assumptions;
- b. comprehensively analyzing its stress testing scenarios, models, and underlying parameters and assumptions on at least a monthly basis;
- c. comprehensively analyzing its stress testing scenarios, models, parameters, and assumptions more frequently than monthly during periods of stress and/or volatility; and
- d. reporting the results of its stress testing analyses to appropriate decision makers.

22. The Commission adopted these rules to ensure that covered clearing agencies could "rapidly identify any gaps in resources required to ensure [financial] stability."¹⁰

23. OCC was required to comply with Exchange Act Rules 17Ad-22(e)(4)(iii) and 17Ad-22(e)(4)(vi)(A)-(D) by April 11, 2017. Nonetheless, through at least September 4, 2018, OCC failed to establish, implement, maintain, and enforce policies and procedures mandating that OCC consider a wide range of foreseeable stress scenarios when determining the sufficiency of its

⁹ "Specific wrong-way risk arises at a [central counterparty] when an exposure to a participant is highly likely to increase when the creditworthiness of that participant is deteriorating." 81 Fed. Reg. 70786, 70789n.317.

¹⁰ 81 Fed. Reg. at 70869.

financial resources. Instead, OCC implemented policies and procedures that determine the monthly sizing of its clearing fund based on a daily calculation of its stress testing exposures utilizing only a limited number of scenarios.

24. In addition, through at least September 4, 2018, OCC failed to establish, implement, maintain, and enforce policies and procedures reasonably designed to stress test its total financial resources using a wide range of foreseeable stress scenarios once each day; analyze its stress testing scenarios, models, parameters, and assumptions at least monthly; analyze its stress testing scenarios, models, parameters, and assumptions more frequently than monthly during periods of stress and/or volatility; and report the results of its stress testing analyses to appropriate decision makers.

OCC Failed to Establish, Implement, Maintain, and Enforce Policies and Procedures Reasonably Designed to Maintain Sufficient Liquid Resources

25. Exchange Act Rule 17Ad-22(e)(7)(i) requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain “sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios.”

26. Exchange Act Rules 17Ad-22(e)(7)(vi)(A)-(D) further require that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to determine the amount and regularly test the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement under Exchange Act Rule 17Ad-22(e)(7)(i) by, at a minimum:

- a. stress testing its liquidity resources once each day using standard predetermined parameters and assumptions;
- b. comprehensively analyzing its stress testing scenarios, models, and underlying parameters and assumptions on at least a monthly basis;
- c. comprehensively analyzing its stress testing scenarios, models, parameters, and assumptions more frequently than monthly during periods of stress and/or volatility; and
- d. reporting the results of its stress testing analyses to appropriate decision makers.

27. When adopting these rules, the Commission explained that “[m]arket participants in centrally cleared and settled markets are often linked to one another through intermediation chains in which one party may rely on proceeds from sales of cleared products to meet payment obligations to another party. . . . Therefore, the benefits related to liquidity risk management

generally flow from the reduced risk of systemic risk transmission by covered clearing agencies as a result of liquidity shortfalls.”¹¹

28. OCC was required to comply with Exchange Act Rules 17Ad-22(e)(7)(i) and 17Ad-22(e)(7)(vi)(A)-(D) by April 11, 2017. However, to date, OCC has failed to establish, implement, maintain, and enforce policies and procedures reasonably designed to consider a wide range of foreseeable stress scenarios when determining the sufficiency of its liquid resources. Instead, OCC has implemented policies and procedures which determine the size of its liquid resources using scaled normal market conditions.

29. In addition, OCC has failed to establish, implement, maintain, and enforce policies and procedures reasonably designed to stress test its total liquid resources using a wide range of foreseeable stress scenarios once each day; analyze its stress testing scenarios, models, parameters, and assumptions at least monthly; analyze its stress testing scenarios, models, parameters, and assumptions more frequently than monthly during periods of stress and/or volatility; and report the results of its stress testing analyses to appropriate decision makers.

30. Moreover, OCC has failed to establish, implement, maintain, and enforce policies and procedures reasonably designed to include all known sources of possible liquidity obligations in determining the liquidity required in the event of a clearing member default, such as certain possible liquidity, payment, and delivery obligations relating to default auctions.

OCC Failed to Establish, Implement, Maintain, and Enforce Policies and Procedures Reasonably Designed to Maintain a Comprehensive Risk Management Framework

31. Exchange Act Rule 17Ad-22(e)(3) requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to “maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency.”

32. Exchange Act Rule 17Ad-22(e)(3)(i) further requires that a covered clearing agency’s risk management framework include “risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency, that are subject to review on a specified periodic basis and approved by the board of directors annually.”

33. OCC was required to comply with Exchange Act Rule 17Ad-22(e)(3)(i) by April 11, 2017. However, OCC failed to establish, implement, maintain, and enforce policies and procedures reasonably designed to manage the credit and liquidity risk that arises in or is borne by OCC. Specifically, as described above, OCC, among other things, lacked policies and procedures which provided for comprehensive stress testing of its financial and liquid resources under a wide range of foreseeable stress scenarios.

¹¹ 81 Fed. Reg. at 70870.

34. OCC also failed to establish, implement, maintain, and enforce policies and procedures reasonably designed to manage the operational risk that arises in or is borne by OCC. Specifically, as described below, OCC's policies and procedures were not reasonably designed to ensure that its SCI systems and, for purposes of security standards, indirect SCI systems had adequate levels of capacity, integrity, resiliency, availability, and security.

35. In addition, OCC failed to establish, implement, maintain, and enforce policies and procedures reasonably designed to manage the legal risk that arises in or is borne by OCC. Specifically, as described below, OCC's policies and procedures were not reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions because OCC failed to file proposed rules before adopting certain policies and implemented certain policies prior to approval of the Commission.

OCC Failed to Obtain Commission Approval for Proposed Rule Changes

36. Section 19(b)(1) of the Exchange Act requires that self-regulatory organizations, such as registered clearing agencies, file with the Commission proposed rule changes accompanied by a concise general statement of the basis and purpose of such proposed rule change. Section 19(b)(1) further requires the Commission to publish notice of the proposed rule change and provide interested persons an opportunity to submit written comments. Section 19(b)(1) prohibits a proposed rule change from taking effect unless approved by the Commission or otherwise permitted in accordance with the provisions of Section 19(b).

37. Section 19(b)(1) defines "proposed rule change" as "any proposed rule or any proposed change in, addition to, or deletion from the rules of the self-regulatory organization." Exchange Act Rule 19b-4(c) provides that "a stated policy, practice, or interpretation of the self-regulatory organization shall be deemed to be a proposed rule change unless: (1) it is reasonably and fairly implied by an existing rule; or (2) it is concerned solely with the administration of the self-regulatory organization and is not a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization." Exchange Act Rule 19b-4(a)(6) defines "stated policy, practice, or interpretation" to include "any material aspect of the operation of the facilities of the self-regulatory organization."

38. In October 2012, the Commission adopted Exchange Act Rule 17Ad-22(d)(1), which requires that a registered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to "provide for a well-founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions."

39. When adopting this rule, the Commission indicated that in order to provide a transparent legal framework, written policies and procedures must, at a minimum, be clear, internally consistent, readily accessible by the public, and address the significant aspects of the

clearing agency's operations and risk management.¹²

40. OCC failed to file with the Commission proposed rule changes before adopting numerous policies. By December 2015, OCC had implemented at least eighteen policies that addressed core risk management issues without filing proposed rule changes with the Commission, including:

- a. Legal Risk Policy;
- b. Model Risk Management Policy;
- c. Financial Resources Policy;
- d. Risk Appetite Framework;
- e. Enterprise Risk Management Framework;
- f. Risk Universe;
- g. Operational Risk Management;
- h. Clearing Fund Policy;
- i. Margin Policy;
- j. Credit Risk Management Policy;
- k. Liquidity Risk Management Policy;
- l. Systems Incident Escalation Policy;
- m. Default Management Policy;
- n. Collateral Risk Management Policy;
- o. Business Continuity Planning Policy;
- p. Information Technology Risk Management Policy;
- q. Vendor Risk Management Policy; and
- r. Capital Requirements Policy.

41. In October 2016, the Commission adopted Exchange Act Rule 17Ad-22(e)(1), which 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. OCC was required to comply with this rule by April 11, 2017.

42. OCC also implemented policies before obtaining Commission approval on various other occasions. For example, in May 2017, OCC implemented revisions to the following policies without prior approval of the Commission:

- a. Counterparty Credit Risk Management Policy;
- b. Default Management Policy;
- c. Margin Policy;
- d. Risk Management Framework Policy;
- e. Collateral Risk Management Policy; and
- f. Revised charter for OCC's Board of Directors as well as charters for the Board's Audit Committee, Risk Committee, Compensation and Payment

¹² Standards for Clearing Agencies, 77 Fed. Reg. 66220, 66246 (Nov. 2, 2012).

Committee, Governance and Nominating Committee, Risk Committee, and Technology Committee.¹³

OCC Failed to Establish, Maintain and Enforce Policies and Procedures Reasonably Designed to Protect the Security of Certain OCC Information Systems

43. Rule 1001(a)(1) of Reg. SCI requires that an SCI entity such as a registered clearing agency “establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems and, for purposes of security standards, indirect SCI systems, have levels of capacity, integrity, resiliency, availability, and security, adequate to maintain the SCI entity’s operational capability and promote the maintenance of fair and orderly markets.”

44. Rule 1001(a)(2)(iv) of Reg. SCI requires that policies and procedures established to comply with Rule 1001(a)(1) include, at a minimum, “[r]egular reviews and testing, as applicable, of such systems, including backup systems, to identify vulnerabilities pertaining to internal and external threats, physical hazards, and natural or manmade disasters.”

45. Rule 1000 of Reg. SCI defines “SCI systems” as “all computer, network, electronic, technical, automated or similar systems operated by or on behalf of [the entity] that, with respect to securities, directly support trading, clearance and settlement, order routing, market data, market regulation, or market surveillance.” Rule 1000 defines “indirect SCI systems” as “any systems of, or operated by or on behalf of, [the entity] that if breached, would be reasonably likely to pose a security threat to SCI systems.”

46. OCC failed to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems and, for purposes of security standards, indirect SCI systems had adequate levels of capacity, integrity, resiliency, availability, and security by November 3, 2015, when OCC was required to comply with Reg. SCI. Certain of its policies and procedures remain deficient through the present.

47. As of November 3, 2015 and continuing through various time periods thereafter, OCC failed to establish, maintain, and enforce written policies and procedures that were reasonably designed to:

- a. consistently identify, prioritize, test, and implement vendor-issued patches;
- b. secure certain data within cloud environments;
- c. ensure that all network devices, including unused and test network devices, were inventoried; and
- d. ensure security threats would be promptly detected.

¹³ The Commission subsequently approved proposed rules relating to these policies and charters.

D. Violations

48. As a result of the conduct described above, OCC violated Exchange Act Rule 17Ad-22(b)(2), which requires that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly.

49. As a result of the conduct described above, OCC violated Exchange Act Rule 17Ad-22(d)(1), which requires that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions.

50. As a result of the conduct described above, OCC violated Exchange Act Rule 17Ad-22(e)(1), which requires that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions.

51. As a result of the conduct described above, OCC violated Exchange Act Rule 17Ad-22(e)(3)(i), which requires that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to:

- a. maintain a sound risk management framework for comprehensively managing, among other things, legal, credit, liquidity, and operational risks that arise or are borne by OCC; and
- b. include as part of that framework risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by OCC, that are subject to review on a specified periodic basis and approved by the board of directors annually.

52. As a result of the conduct described above, OCC violated Exchange Act Rule 17Ad-22(e)(4)(iii), which requires that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios.

53. As a result of the conduct described above, OCC violated Exchange Act Rules 17Ad-22(e)(4)(vi)(A)-(D), which require that OCC establish, implement, maintain, and enforce policies and procedures reasonably designed to test the sufficiency of its total financial resources to meet the minimum requirements under Exchange Act Rules 17Ad-22(e)(4)(i) and (iii) by:

- a. stress testing its total financial resources once each day using standard predetermined parameters and assumptions;
- b. comprehensively analyzing its stress testing scenarios, models, and

underlying parameters and assumptions on at least a monthly basis;

- c. comprehensively analyzing its stress testing scenarios, models, parameters, and assumptions more frequently than monthly during periods of stress and/or volatility; and
- d. reporting the results of its stress testing analyses to appropriate decision makers.

54. As a result of the conduct described above, OCC violated Exchange Act Rule 17Ad-22(e)(6)(i), which requires that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.

55. As a result of the conduct described above, OCC violated Exchange Act Rule 17Ad-22(e)(7)(i), which requires that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain sufficient liquid resources at the minimum in all relevant currencies to effect same-day, and where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios.

56. As a result of the conduct described above, OCC violated Exchange Act Rules 17Ad-22(e)(7)(vi)(A)-(D), which require that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to determine the amount and regularly test the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirements in Exchange Act Rule 17Ad-22(e)(7)(i) by:

- a. stress testing its liquidity resources once each day using standard predetermined parameters and assumptions;
- b. comprehensively analyzing its stress testing scenarios, models, and underlying parameters and assumptions on at least a monthly basis;
- c. comprehensively analyzing its stress testing scenarios, models, parameters, and assumptions more frequently than monthly during periods of stress and/or volatility; and
- d. reporting the results of its stress testing analyses to appropriate decision makers.

57. As a result of the conduct described above, OCC violated Section 17A(d)(1) of the Exchange Act, which prohibits OCC from engaging in any activity in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

58. As a result of the conduct described above, OCC violated Rule 1001(a)(1) of Reg. SCI, which requires that OCC establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems and, for purposes of security standards, indirect SCI systems, have levels of capacity, integrity, resiliency, availability, and security, adequate to maintain the its operational capability and promote the maintenance of fair and orderly markets.

59. As a result of the conduct described above, OCC violated Rule 1001(a)(2)(iv) of Reg. SCI, which requires that OCC's policies and procedures under Rule 1001(a)(1) of Reg. SCI include regular reviews and testing, as applicable, of such systems, including backup systems, to identify vulnerabilities pertaining to internal and external threats, physical hazards, and natural or manmade disasters.

60. As a result of the conduct described above, OCC violated Section 19(b)(1) of the Exchange Act and Rule 19b-4(c) thereunder, which require a self-regulatory organization to file with the Commission stated policies, practices and interpretations that meet the definition of a proposed rule change, and prohibit a proposed rule change from taking effect unless approved by the Commission or otherwise permitted in accordance with Section 19(b)(1) of the Exchange Act.

E. Cooperation and Remediation

61. In determining to accept the Offer, the Commission has considered OCC's cooperation and remedial efforts, which include the following:

a. In October 2017, OCC's Board of Directors ("the Board") created the Ad Hoc Regulatory Oversight Working Group (the "ROWG") that includes all of OCC's public directors and meets at least monthly to assist OCC's Board in overseeing OCC's efforts to comply with its ongoing regulatory obligations and to supervise OCC's remediation and compliance efforts.

b. At the direction of its Executive Chairman and Board of Directors, OCC has replaced many of its senior executives – including hiring a new Chief Executive Officer, Chief Operating Officer, Head of Financial Risk Management, Chief Information Officer, Chief Security Officer, and heads of control functions – and increased its expenditures and headcount in the areas of risk management, compliance, legal, and information technology.

c. OCC developed remediation plans that have been provided to the staff of the Commission. In addition, OCC filed proposed rule changes under Section 19(b) of the Exchange Act, which were subsequently approved by the Commission, designed to:

- i. enhance its Margin Policy (approved February 7, 2018);
- ii. change its Daily Univariate methodology (approved May 24, 2018);
- iii. incorporate stress testing into its clearing fund methodology (approved July 27, 2018);

- iv. enhance its implied volatility model (approved December 20, 2018);
- v. change its margin methodology for Volatility Indexes and Volatility Index Futures (approved May 6, 2019); and
- vi. incorporate liquidation costs in its margin methodology (approved June 17, 2019).

F. Undertakings

62. Within one (1) month of the date of this Order, OCC shall engage an independent compliance auditor (“Auditor”), not unacceptable to the Commission staff. The Auditor shall be recommended by the ROWG and shall be approved by the Board. OCC shall provide a copy of the engagement letter detailing the scope of the Auditor’s responsibilities to the staff of the Commission within three (3) business days of its execution.

63. As part of the engagement, OCC shall require the Auditor to:

- a. assess OCC’s remediation of deficiencies identified in OCC’s July 23, 2018 Remediation Plan and deficiencies identified in the August 12, 2019 addendum to that plan (collectively “Deficiencies”);
- b. audit OCC’s compliance with Exchange Act Rule 17Ad-22(b)(2) and (e)(1-10, 12-13, 15-21, and 23) and Reg. SCI Rules 1001 and 1005; and
- c. assess the hiring, qualifications, and training of OCC personnel responsible for compliance with Exchange Act Rule 17Ad-22(b)(2) and (e)(1-10, 12-13, 15-21, and 23) and Reg. SCI Rules 1001 and 1005, including OCC’s compliance, internal audit, technology, and project management personnel.

64. OCC shall require the Auditor to conduct two reviews, one audit, one assessment, and prepare four reports, as described below.

65. OCC shall require the Auditor to commence an initial review of OCC’s remediation of Deficiencies (the “Initial Review”) no later than sixty (60) calendar days from the date of the engagement of the Auditor (unless otherwise agreed by OCC, the Auditor, and the Commission staff). OCC shall require the Auditor to issue a written report (the “Initial Report”) within one hundred eighty (180) calendar days of commencing the Initial Review setting forth the Auditor’s findings and if necessary, making recommendations reasonably designed to improve OCC’s remediation of Deficiencies. OCC shall require the Auditor to provide the report to the Board and contemporaneously transmit a copy to Commission staff.

66. OCC shall adopt and implement all recommendations made by the Auditor in the Initial Report, subject to Paragraph 67 below.

67. If OCC reasonably and in good faith determines that any of the Auditor's recommendations set forth in the Initial Report are unduly burdensome or impractical, or if OCC determines that the objectives of the recommendations can be more effectively achieved through another means, OCC may propose to the Auditor that a recommendation not be implemented or propose an alternative reasonably designed to accomplish the same objectives, and shall notify the Auditor of any such proposals within fourteen (14) calendar days of receipt of the report. If, upon evaluating OCC's proposal(s), the Auditor determines that any of the Auditor's recommendations should not be implemented or that a suggested alternative is reasonably designed to accomplish, and is likely to result in, the same objectives as the recommendation in question within the same timeframe, then the Auditor may withdraw the recommendation and/or accept the proposed alternative and notify in writing the staff of the Commission within two (2) business days of any such withdrawn recommendations and/or accepted alternatives, and OCC shall adopt and implement the accepted alternative(s). If, upon evaluating OCC's proposals, the Auditor concludes that the Auditor's recommendation should be implemented, the Auditor shall notify OCC within fourteen (14) calendar days of receipt of the alternative proposal, and OCC and the Auditor shall, within seven (7) business days of the Auditor's notification, jointly confer with the staff of the Commission to resolve the matter. In the event that, after conferring with the Commission staff, OCC and the Auditor are unable to agree on an alternative proposal, OCC shall adopt and implement the Auditor's recommendation.

68. At the conclusion of the one-hundred twenty (120) calendar day period after the issuance of the Initial Report, OCC shall require the Auditor to commence an interim review of OCC's implementation of the Auditor's recommendations, if any, in the Initial Report ("Interim Review"). Within sixty (60) calendar days of commencing the Interim Review, OCC shall require the Auditor to submit to the Commission staff and OCC's Board an interim report (the "Interim Report") setting forth the Auditor's findings.

69. At the conclusion of the three-hundred sixty-five (365) calendar day period after the issuance of the Initial Report (unless otherwise agreed by OCC, the Auditor and the Commission staff), OCC shall require the Auditor to commence an audit of OCC's compliance with Exchange Act Rule 17Ad-22(b)(2) and (e)(1-10, 12-13, 15-21, and 23) and Reg. SCI Rules 1001 and 1005 (the "Audit"). At this time, OCC shall also require the Auditor to commence an assessment of the hiring, qualifications, and training of OCC personnel responsible for compliance with Exchange Act Rule 17Ad-22(b)(2) and (e)(1-10, 12-13, 15-21, and 23) and Reg. SCI Rules 1001 and 1005, including OCC's compliance, internal audit, technology, and project management personnel (the "Assessment").

70. OCC shall require the Auditor in performing the Audit to develop a written plan of sufficient scope and detail to achieve the audit objectives and to identify areas in need of special consideration. OCC shall require the Auditor and other qualified persons retained by the Auditor to exercise due professional care and independence. OCC shall require the Auditor to formulate conclusions based on sufficient, competent evidential matter and consistent with professional judgment.

71. OCC shall require the Auditor to issue a report ("the Audit Report") regarding

OCC's compliance with Exchange Act Rule 17Ad-22(b)(2) and (e)(1-10, 12-13, 15-21, and 23) and Reg. SCI Rules 1001 and 1005 within one hundred-eighty (180) calendar days of commencing the Audit. The Audit Report shall describe the purpose, scope, and nature of the audit and identify any deficiencies or weaknesses detected during the audit. OCC shall require the Auditor to provide the Audit Report to the Board and contemporaneously transmit a copy to Commission staff.

72. Within forty-five (45) calendar days of receipt of the Audit Report, OCC shall provide to the Auditor, the Board and the staff of the Commission a response (the "Response") that includes: (i) a statement of whether OCC reasonably and in good faith disagrees with any identified deficiency and weakness and an explanation of the reasons for OCC's disagreement; (ii) a plan including deadlines for remediating within a reasonable time frame any deficiency and weakness with which OCC does not disagree; and (iii) a description of the cause of any deficiency and weakness with which OCC does not disagree.

73. For each deficiency and weakness with which OCC disagrees, OCC and the Auditor, within forty-five (45) calendar days of the Auditor's receipt of OCC's Response, shall jointly confer with the staff of the Commission to resolve the matter.

74. In the event that, after conferring with the Commission staff, OCC and the Auditor are unable to reach an agreement within ten (10) calendar days, OCC shall, within ten (10) calendar days of failing to reach such an agreement, prepare a plan including deadlines for remediating within a reasonable time frame the deficiency and weakness as identified by the Auditor and provide the plan to the Auditor and the staff of the Commission.

75. At the conclusion of the one-hundred fifty (150) calendar day period after the issuance of the Audit Report, OCC shall require the Auditor to submit to the Commission staff and OCC's Board a final report (the "Final Report") that provides:

- a. a description of OCC's remediation of the deficiencies and weaknesses identified in the Audit Report for which OCC was required to prepare a remediation plan under Paragraphs 72 and 74; and
- b. its findings with regard to the Assessment.

76. When OCC has implemented all of the Auditor's recommendations in the Initial Report, remediated all Deficiencies, remediated all deficiencies and weaknesses identified in the Audit Report for which OCC was required to prepare a remediation plan under Paragraphs 72 and 74, and is in compliance with Exchange Act Rule 17Ad-22(b)(2) and (e)(1-10, 12-13, 15-21, and 23) and Rules 1001 and 1005 of Reg. SCI, OCC shall require its principal executive officer to certify as such in writing based on his or her knowledge after reasonable inquiry ("the First Certification"). OCC shall provide the First Certification to the Board and the staff of the Commission within (7) business days of its execution.

77. OCC shall cooperate fully with the Auditor, including:

- a. providing the Auditor with prompt and full access to all files, books, records, and personnel of OCC as reasonably requested for the above-mentioned reviews, reports, and audits; and
- b. obtaining the cooperation of OCC employees, agents, representatives, or other persons under OCC's control.

Nothing in the foregoing shall be deemed to require OCC to waive attorney-client privilege or any other privileges with respect to privileged documents.

78. OCC shall require the Auditor to directly report to Commission staff on the Auditor's activities and promptly respond to any reasonable requests by the Commission staff, including promptly responding to Commission staff questions and requests for relevant documents.

79. To help ensure the independence of the Auditor, OCC shall not have the authority to terminate the Auditor before the Auditor provides the Commission Staff and OCC's Board with the Final Report unless OCC obtains the prior written approval of Commission staff and shall compensate the Auditor and persons engaged to assist the Auditor for services rendered pursuant to this Order at their reasonable and customary rates.

80. OCC shall expend sufficient funds to permit the Auditor to discharge all of their duties. OCC shall permit the Auditor to engage such assistance, including clerical, legal or expert assistance, as reasonably necessary and at a reasonable cost, to carry out their activities, and the cost, if any, of such assistance shall be borne exclusively by OCC.

81. OCC shall bear the full expense of carrying out these Undertakings, including the costs of retaining the Auditor.

82. OCC shall require the Auditor to enter into agreements that provide that for the period of engagement and for a period of two (2) years from completion of the Final Report, the Auditor shall not, without the prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with OCC, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such (excluding exchanges and clearing members to the extent those entities could be deemed affiliates or agents of OCC). The agreements will also provide that the Auditor will require that any firm with which they are affiliated or of which they are a member, and any person engaged to assist the Auditor in performance of their duties under this Order shall not, without prior written consent of Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with OCC, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two (2) years after the engagement (excluding exchanges and clearing members to the extent those entities could be deemed affiliates or agents of OCC). The agreements will also provide that the Auditor shall maintain the confidentiality of any confidential information received in the course of their engagement.

83. Beginning one (1) year after the date of this Order, and continuing each year thereafter for two (2) years (for a total of three (3) years), OCC shall require its principal executive officer to certify, in writing that, based on his or her knowledge after reasonable inquiry, the Respondent has taken reasonable steps to achieve compliance with Section 19(b) of the Exchange Act. Each certification shall provide written evidence of compliance with this Undertaking in the form of a narrative, and be supported by exhibits sufficient to demonstrate the basis for the certification. Each certification, including any supporting documentation, shall be provided promptly to the Board and Commission staff. Commission staff may make reasonable requests for further evidence of compliance, and OCC agrees to provide evidence in response to such requests.

84. Within one year of the date of this Order and continuing each year thereafter for two (2) years (for a total of three (3) years), OCC shall provide annual compliance training to all OCC officers and all non-clerical and non-administrative employees on the federal securities laws and Commission rules and regulations applicable to OCC.

85. Within one year of the date of this Order and continuing each year thereafter for two (2) years (for a total of three (3) years), OCC shall provide an annual regulatory compliance report to the Board and to either the ROWG or the Board-level Regulatory Committee. OCC shall also provide a copy of such report to the staff of the Commission within seven (7) business days of providing it to the Board.

86. No later than six (6) months after the date of the Initial Report, OCC shall file a proposed rule change for Commission review pursuant to Section 19(b) of the Exchange Act and the rules and regulations thereunder reasonably designed to establish a Board-level Regulatory Committee that:

- a. operates separately from the current Audit Committee;
- b. complements the work done by independent consultants on regulatory compliance matters;
- c. takes over and continues the work done by the current ROWG, including but not limited to OCC's efforts to demonstrate compliance with applicable laws and regulations; and
- d. is solely comprised of OCC's Public Directors, as that term is defined in the Board of Directors Charter and Corporate Governance Principles.

In the event that the proposed rule change is approved by the Commission, OCC shall not file another proposed rule change that would eliminate or otherwise diminish the duties and obligations of the Board-level Regulatory Committee for at least three (3) years from the date of any such Commission approval.

87. Beginning with the date of this Order and continuing through the later of the date of the First Certification or December 31, 2022, OCC shall provide to the Board and either the

ROWG or the Board-level Regulatory Committee:

- a. copies of any deficiency letter received from the staff of the Commission's Office of Compliance, Inspections and Examinations ("Deficiency Letter") and a briefing on the Deficiency Letter within ten (10) business days of receipt of a Deficiency Letter;
- b. copies of any OCC response to a Deficiency Letter ("Response") and a briefing on the Response within ten (10) business days of sending a Response; and
- c. a briefing on OCC's action plans, if any, in response to any deficiencies identified in a Deficiency Letter within thirty (30) calendar days of sending a Response.

For purposes of this paragraph, the required briefings can be provided in person, telephonically or in writing, at the discretion of the Board-level Regulatory Committee, Board or ROWG.

88. OCC shall require its Chief Compliance Officer, or one of his or her deputies if the Chief Compliance Officer is unable to attend, to attend all meetings of the ROWG and Board-level Regulatory Committee.

89. Within fourteen (14) calendar days of the date of this Order and on the last business day of each calendar quarter until the First Certification, OCC shall provide to the staff of the Commission notices ("New Product Notices") which identify all securities financial products: (a) that are not option contracts based on the same underlying asset (excluding cases in which the underlying asset changed due to a corporate action) and of the same type and style as securities financial products for which OCC offers clearance and settlement services as of the date of the New Product Notice; and (b) for which OCC has reason to believe will be listed for trading on a participant exchange and for which, if so listed, OCC intends to offer clearance and settlement services within the six (6) month period following the date of the New Product Notice.

90. OCC shall provide additional information related to the products listed in a New Product Notice as the staff of the Commission may reasonably request.

91. OCC has established a prioritized, three-tiered list of planned filings under Section 19(b) of the Exchange Act and Section 806(e) of the Dodd-Frank Act, which is titled OCC Prioritization of Advance Notice and Proposed Rule Change Filings dated August 14, 2019 ("Filing Priority Chart"). For sixteen (16) months from the date of this Order, OCC shall use its best efforts to submit to the Commission filings included in Tiers 1 through 3 of the Filing Priority Chart prior to any other filings. Further, OCC will prioritize the filings included in Tiers 1 through 3 of the Filing Priority Chart in the order set forth in the Filing Priority Chart, which order shall be established and updated as appropriate in consultation with the staff of the Division of Trading and Markets ("Division staff"). Nothing in this paragraph or Paragraph 92 alters OCC's legal obligations, including OCC's ongoing obligation to respond to examination findings of the staff of the Commission.

92. OCC may modify the Filing Priority Chart, including moving the order of filings, moving filings among tiers, and adding or removing filings, with the agreement of Division Staff. Such agreement shall not be unreasonably withheld. Notwithstanding the foregoing, if OCC reasonably and in good faith determines that it is necessary to revise the Filing Priority Chart to resolve the Deficiencies, comply with applicable law, or protect the public interest, then OCC may make such a revision; provided however, that OCC shall use its best efforts to provide the Division Staff with notice at least fourteen (14) days in advance of making such a revision and consult with Division Staff regarding the appropriateness and timing of any such revision.

93. Within sixty (60) calendar days of completing all of the undertakings set forth in Section III(F) of this Order, OCC shall certify in writing compliance with such undertakings (“Second Certification”). The Second Certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits reasonably sufficient to demonstrate compliance. Within one (1) business day of the execution of the Second Certification, OCC shall provide it to Charles J. Kerstetter, Assistant Regional Director, Chicago Regional Office with a copy to the Office of the Chief Counsel of the Enforcement Division. The Commission staff may make reasonable requests for further evidence of compliance, and OCC agrees to provide such evidence.

94. To the extent that OCC must file a proposed rule change with the Commission to comply with any undertaking in this Order, such proposed rule change will be subject to all relevant legal and regulatory requirements and processes, including, but not limited to Exchange Act Section 19(b).

95. OCC agrees that the ROWG shall continue to exist until, at a minimum, the earlier of either the establishment of the Board-level Regulatory Committee or five (5) years from the date of this Order, and that the ROWG shall:

- a. be comprised of only Public Directors as that term is defined in the Board of Directors Charter and Corporate Governance Principles; and
- b. not delegate its authority for the recommendations, approvals and actions required in Section III(F) of this Order to any other entity or person.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest, and for the protection of investors to impose the sanctions agreed to in OCC’s Offer.

Accordingly, pursuant to Sections 19(h) and 21C of the Exchange Act, it is hereby ORDERED that:

A. OCC cease and desist from committing or causing any violations and any future violations of Section 17A(d)(1) of the Exchange Act and Rules 17Ad-22(b)(2), 17Ad-22(d)(1), 17Ad-22(e)(1), 17Ad-22(e)(3)(i), 17Ad-22(e)(4)(iii) and (vi), 17Ad-22(e)(6)(i), and 17Ad-

22(e)(7)(i) and (vi) thereunder; Rules 1001(a)(1) and (2) of Reg. SCI; and Section 19(b) of the Exchange Act and Rule 19b-4 thereunder.

B. OCC is censured.

C. OCC shall, by December 31, 2019, pay a civil money penalty in the amount of \$15 million to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made as specified above, additional interest shall accrue pursuant to 31 U.S.C. 3717.

D. Payment(s) referenced in Paragraph C of this section must be made in one of the following ways:

1. OCC may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
2. OCC may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
3. OCC may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying OCC as a respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Kathryn A. Pyszka, Associate Regional Director, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Boulevard, Suite 1450, Chicago, IL 60604.

E. OCC shall comply with the undertakings enumerated in Section III(F) above.

By the Commission.

Vanessa A. Countryman
Secretary