

proposal and should help the Exchange and the Commission in assessing any potential market impacts, including on price volatility, from the trading of the cash-settled FLEX ETF Options under the proposal. In addition, Amendment No. 1 clarifies and provides additional explanation relating to the proposed rule change. The changes and additional information in Amendment No. 1 have also assisted the Commission in evaluating the proposal and finding that the proposal is consistent with the Act.

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁵¹ to approve the proposed rule change, SR-NYSEAMER-2019-38, as modified by Amendment No. 1, on an accelerated basis.

V. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the 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 email to rule-comments@sec.gov. Please include File Number SR-NYSEAMER-2019-38 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEAMER-2019-38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change 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 Exchange. 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-NYSEAMER-2019-38 and should be submitted on or before March 3, 2020.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁵² that the proposed rule change (SR-NYSEAMER-2019-38), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵³

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Securities Act of 1933, Release No. 10753/February 6, 2020; Securities Exchange Act of 1934, Release No. 88137/February 6, 2020; Order Regarding Review of FASB Accounting Support Fee for 2020 Under Section 109 of The Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act of 2002 (the "Act") provides that the Securities and Exchange Commission (the "Commission") may recognize, as generally accepted for purposes of the securities laws, any accounting principles established by a standard setting body that meets certain criteria. Consequently, Section 109 of the Act provides that all of the budget of such a standard setting body shall be payable from an annual accounting support fee assessed and collected against each issuer, as may be necessary or appropriate to pay for the budget and provide for the expenses of the standard setting body, and to provide for an independent, stable source of funding, subject to review by the Commission.

Under Section 109(f) of the Act, the amount of fees collected for a fiscal year shall not exceed the "recoverable budget expenses" of the standard setting body. Section 109(h) amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act.

On April 25, 2003, the Commission issued a policy statement concluding that the Financial Accounting Standards Board ("FASB") and its parent organization, the Financial Accounting Foundation ("FAF"), satisfied the criteria for an accounting standard-setting body under the Act, and recognizing the FASB's financial accounting and reporting standards as "generally accepted" under Section 109 of the Act.¹ As a consequence of that recognition, the Commission undertook a review of the FASB's accounting support fee for calendar year 2020.² In connection with its review, the Commission also reviewed the budget for the FAF and the FASB for calendar year 2020.

Section 109 of the Act also provides that the standard setting body can have additional sources of revenue for its activities, such as earnings from sales of publications, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual or perceived independence of the standard setter. In this regard, the Commission also considered the interrelation of the operating budgets of the FAF, the FASB, and the Governmental Accounting Standards Board ("GASB"), the FASB's sister organization, which sets accounting standards used by state and local government entities. The Commission has been advised by the FAF that neither the FAF, the FASB, nor the GASB accept contributions from the accounting profession.

The Commission understands that the Office of Management and Budget ("OMB") has determined the FASB's spending of the 2020 accounting support fee is sequestrable under the Budget Control Act of 2011.³ So long as sequestration is applicable, we anticipate that the FAF will work with the Commission and Commission staff

¹ Financial Reporting Release No. 70.

² The Financial Accounting Foundation's Board of Trustees approved the FASB's budget on November 19, 2019. The FAF submitted the approved budget to the Commission on November 20, 2019.

³ See "OMB Report Pursuant to the Sequestration Transparency Act of 2012" (P.L. 112-155), page 222 of 224 at: http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/stareport.pdf.

⁵¹ 15 U.S.C. 78s(b)(2).

⁵² 15 U.S.C. 78s(b)(2).

⁵³ 17 CFR 200.30-3(a)(12).

as appropriate regarding its implementation of sequestration.

After its review, the Commission determined that the 2020 annual accounting support fee for the FASB is consistent with Section 109 of the Act. Accordingly,

It Is Ordered, pursuant to Section 109 of the Act, that the FASB may act in accordance with this determination of the Commission.

By the Commission.

Vanessa A. Countryman,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88120; File No. SR-OCC-2020-801]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice Concerning a Master Repurchase Agreement as Part of OCC's Overall Liquidity Plan

February 5, 2020.

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 January 10, 2020, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") an 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 filed by OCC this advance notice is filed by OCC [sic] in connection with a proposed change to its operations in the form of enter into a committed master repurchase agreement with a bank counterparty as part of OCC's overall liquidity plan. 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 proposed change and none have been received.

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

Description of Change

This advance notice is being filed in connection with a proposed change to OCC's operations through which OCC would enter into a committed master repurchase agreement with a bank counterparty (the "Repo Liquidity Facility") to access an additional committed source of liquidity to meet its settlement obligations.

Background

OCC's current liquidity plan provides it with access to a diverse set of funding sources, including OCC's syndicated credit facility,⁵ a committed master repurchase program with institutional investors such as pension funds (the "Non-Bank Liquidity Facility")⁶ and Clearing Member minimum Cash Clearing Fund Requirement.⁷ The Repo Liquidity Facility would provide OCC with an additional source of liquidity resources. The facility would take the form of OCC executing a committed master repurchase agreement ("MRA") with a commercial bank counterparty. OCC would perform a review and ongoing monitoring of the counterparty to obtain reasonable assurance that the

counterparty has the financial and operational ability to satisfy its obligations under the agreement. This review would include the counterparty's standing on OCC's watch list including key metrics and ratios from the financial statements, the proposed level of activity including a comparison to the counterparty's regulatory capital levels, proposed operational processes associated with the agreement, past relevant operational incidents, and research of adverse counterparty news.

Although the MRA would be based on the standard form of master repurchase agreement,⁸ OCC would require the MRA, or an annex thereto, to contain certain additional provisions tailored to help ensure certainty of funding and operational effectiveness, as described in more detail below. OCC believes that these provisions are necessary and appropriate to integrate the program into its operations and in order to promote safety and soundness consistent with OCC's systemic responsibilities. A summary of the additional terms and conditions applicable to the MRA are set forth in the Summary of Terms attached [sic] to this filing as confidential Exhibit 3a.⁹

The Proposed Program: Standard Repurchase Agreement Terms

The MRA would be structured like a typical repurchase arrangement in which the buyer (*i.e.*, the bank counterparty) would purchase from OCC, from time to time, United States government securities ("Eligible Securities").¹⁰ OCC, as the seller, would transfer Eligible Securities to the buyer in exchange for a payment by the buyer to OCC in immediately available funds ("Purchase Price"). The buyer would simultaneously agree to transfer the purchased securities back to OCC at a specified later date ("Repurchase Date") or on OCC's demand against the transfer

⁸ The standard form master repurchase agreement is published by the Securities Industry and Financial Markets Association ("SIFMA") and is commonly used in the repurchase market by institutional investors.

⁹ In addition, OCC is attaching to this filing as Exhibit 3b responses to certain information requests from staff of the Division of Trading and Markets ("Staff") concerning the additional provisions summarized in confidential Exhibit 3a as reflected in a draft of this advance notice provided to Staff.

¹⁰ OCC would use U.S. government securities that are included in Clearing Fund contributions by Clearing Members and margin deposits of any Clearing Member that has been suspended by OCC for the repurchase arrangements. OCC Rule 1006(f) and OCC Rule 1104(b) authorize OCC to obtain funds from third parties through securities repurchases using these sources. The officers who may exercise this authority include the Executive Chairman, Chief Executive Officer, and Chief Operating Officer.

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.*

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

⁵ See Securities Exchange Act Release No. 85924 (May 23, 2019), 84 FR 25089 (May 30, 2019) (SR-OCC-2019-803).

⁶ See Securities Exchange Act Release No. 76821 (Jan. 4, 2016), 81 FR 3208 (Jan. 20, 2016) (SR-OCC-2015-805).

⁷ See OCC Rule 1002.