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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2024 - * 003

Amendment No. (req. for Amendments *)

Filing by Options Clearing Corporation

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input checked="" type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed Rule Change by The Options Clearing Corporation Concerning Interpretative Guidance on Contract Adjustments for Cash Dividends and Distributions

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Last Name *

Title *

E-mail *

Telephone * Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Options Clearing Corporation has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date

(Title *)

By

(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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SR-OCC-2024-003 19b-4 (2.20.2024)

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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SR-OCC-2024-003 Exhibit 1A (2.20.2

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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SR-OCC-2024-003 Exhibit 3 (2.20.202

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

SR-OCC-2024-003 Exhibit 5 (2.20.202

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item 1 and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 19b-4

Proposed Rule Change

by

THE OPTIONS CLEARING CORPORATION

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

Item 1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),¹ and Rule 19b-4 thereunder,² The Options Clearing Corporation (“OCC”) has filed with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to re-issue interpretative guidance relating to the adjustment of stock options for cash dividends and distributions on underlying securities with certain amendments, including (1) to reflect previously approved changes in the process for making such adjustment determinations; and (2) to address OCC’s general approach to certain additional scenarios. Amendments to the interpretative guidance, are included in Exhibit 5 of File No. SR-OCC-2024-003. Material proposed to be added is marked by underlining, and material proposed to be deleted is marked with strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the By-Laws and Rules.³

Item 2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved for filing with the Commission upon authority delegated to the General Counsel by OCC’s Board of Directors. As of October 10, 2023, OCC’s Securities Committee had reviewed and approved the amendments to the interpretative guidance.

Item 3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC is the issuer of and sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission. In accordance with OCC’s By-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ OCC’s By-Laws and Rules can be found on OCC’s public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

Laws, adjustments may be made to some of the standardized terms of outstanding options upon the occurrence of certain events related to the underlying security, such as a stock dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, reclassification in respect of an underlying security, or a merger, consolidation, dissolution or liquidation of the issuer of the underlying security.⁴ The determination whether to adjust outstanding options in response to a particular event, and, if so, what the adjustment should be, is made by OCC, taking into consideration policies and interpretations established in OCC's By-Laws and any policies and interpretations having general application to specific types of events or specified kinds of cleared contracts established by a committee (the "Securities Committee") consisting of representatives of each of the U.S. options markets and a representative of OCC.⁵

OCC previously filed with the Commission and issued interpretative guidance concerning the application of OCC's adjustment policies and procedures and other adjustment rules for cash dividends.⁶ In the interest of promoting clarity and transparency for market participants, OCC is proposing to re-issue that interpretative guidance subject to proposed amendments that would (1) update the interpretative guidance's discussion of how adjustment determinations are made to reflect subsequent changes to the determination process since the interpretative guidance was last

⁴ Adjustments for listed options are discussed at length in the Characteristics and Risks of Standardized Options ("Options Disclosure Document" or "ODD"), which broker-dealers are required to provide to a customer prior to accepting an order to purchase or sell a listed option. See 17 CFR 240.9b-1. The Options Disclosure Document is also available on OCC's website: <https://www.theocc.com/company-information/documents-and-archives/options-disclosure-document>.

⁵ See OCC By-Laws, Art. VI § 11.

⁶ See, e.g., Exchange Act Release No. 68531 (Dec. 21, 2012), 77 FR 77157 (Dec. 31, 2012) (SR-OCC-2012-26).

issued, and (2) provide additional guidance on certain underlying events.⁷ OCC does not propose to change its policies or practices with respect to such contract adjustments. OCC merely proposes to publish guidance reflecting its current policies and practices. Accordingly, OCC does not believe that this proposed change would have any impact on market participants other than to provide them with additional information.

A. Purpose

Background

OCC's By-Laws and Rules authorize OCC to make adjustments to listed options when certain events occur related to the underlying security, such as a stock dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or reclassification with respect to the underlying security or the merger, consolidation, dissolution or liquidation of the issuer of the underlying security. The By-Laws provide policies and procedures for making such determinations, including that OCC determines whether to adjust a contract, taking into account such factors as fairness to holders and writers (or purchasers and sellers) of the affected contracts, the maintenance of a fair and orderly market in the affected contracts, consistency of interpretation and practice, efficiency of exercise settlement procedures, and the coordination with other clearing agencies of the clearance and

⁷ Consistent with prior practice, the interpretative guidance would be issued as an OCC Information Memorandum that would supersede the previously published Information Memoranda related to this interpretative guidance. The Information Memorandum would contain prefatory material intended to provide context for its issuance, remind readers of its relationship to the prior Information Memoranda and this proposed rule change, and summarize the relevant OCC By-Laws that are the subject of the interpretation. OCC does not believe this prefatory material is a rule within the meaning of Section 19(b) of the Exchange Act, 15 U.S.C. 78s(b), and the regulations thereunder because unlike the interpretative guidance promulgated through this proposed rule change, the prefatory material it is not a stated policy, practice or interpretation that establishes or changes any standard, limit, or guideline with respect to the rights, obligations or privileges of specified persons or the meaning, administration, or enforcement of an existing rule. See 17 CFR 240.19b-4(a)(6)(ii). Nor does the prefatory material constitute a material aspect of the operation of OCC. See 17 CFR 240.19b-4(a)(6)(i). OCC is providing a copy of the Information Memorandum it intends to issue upon implementation of the new guidance as Exhibit 3 to File No. SR-OCC-2024-003.

settlement of transactions in the underlying interest.⁸ OCC applies these factors to a particular corporate action on a case-by-case basis, considering the circumstances known to it at the time the determination is made, subject to OCC's discretion to depart from policy and precedent when the Corporation determines that unusual circumstances make such a departure appropriate.⁹

OCC's By-Laws also provide general rules applicable to specific types of corporate actions, including with respect to cash dividends or distributions made by the issuer of an underlying security. For example, the By-Laws establish a general rule that OCC does not adjust listed options to reflect "ordinary cash dividends or distributions," which the By-Laws define to mean "[c]ash dividends or distributions (regardless of size) by the issuer of the underlying security which [OCC] believes to have been declared pursuant to a policy or practice of paying such dividends or distributions on a quarterly or other regular basis or which [OCC] believes represents an acceleration or deferral of such payments."¹⁰ OCC established this general rule because when an issuer's policy or practice of paying such dividends is public, such ordinary dividends can be priced into options premiums.¹¹ OCC's By-Laws also provide that for cash dividends not declared pursuant to an issuer's policy or practice of paying such distributions at regular intervals (i.e., "special" cash dividends and distributions), OCC will not adjust if the amount distributed is less than \$0.125 per share (or \$12.50 per contract for listed options with a

⁸ See OCC By-Laws, Art. VI § 11(a).

⁹ Id.

¹⁰ See OCC By-Laws, Art. VI § 11A, Interpretation and Policy .01.

¹¹ See Exchange Act Release No. 55258 (Feb 8, 2007), 72 FR 7701, 7703 (Feb. 16, 2007) (SR-OCC-2006-01).

unit of trading larger than 100 shares). OCC established this de minimis threshold in part to avoid the proliferation of outstanding option symbols and series.¹²

In connection with the adoption of the general rules against adjustments for cash dividends and distributions that are ordinary or below the de minimis threshold, OCC previously filed and published interpretative guidance promulgated by its Securities Committee to address questions about how those rules would be administered and applied.¹³ Presented in question and answer (“Q&A”) format, the interpretative guidance provided an overview of OCC’s adjustment policies with respect to cash dividends and guidance on the application of those policies in a variety of scenarios. OCC has since updated and re-issued that interpretative guidance, the last time in 2012.¹⁴ Based on its continued relevance to market participants seeking to understand how OCC applies its adjustment policies, OCC proposes to re-issue the interpretative guidance with certain updates discussed below.

(1) Conforming Changes to Reflect the Current Determination Process

The proposed changes would remove references to the adjustment panel of the Securities Committee in the interpretative guidance’s discussion of how options adjustments are made. Since the interpretative guidance was last issued in 2012, the Commission approved a proposed rule change that affected the determination process.¹⁵ Previously, an adjustment panel of the Securities Committee, consisting of representatives from the exchanges on which an option was

¹² Symbols can proliferate when a dividend amount is added to the deliverable, yielding a non-standard option. *Id.*, at note 14 and accompanying text. The resulting non-standard options may be illiquid and difficult to trade. Following an adjustment, exchanges typically introduce standard options with the same strikes.

¹³ See Exchange Act Release No. 58059 (June 30, 2008), 73 FR 39367 (July 9, 2008) (SR-OCC-2008-10).

¹⁴ See Exchange Act Release No. 68531, *supra* note 6. See also Exchange Act Release No. 66742 (Apr. 5, 2012), 77 FR 21819 (Apr. 11, 2012) (SR-OCC-2012-05); Exchange Act Release No. 59442 (Feb. 24, 2009), 74 FR 9654 (Mar. 5, 2009) (SR-OCC-2009-01).

¹⁵ See Exchange Act Release No. 69977 (July 11, 2013), 78 FR 42815 (July 17, 2013) (SR-OCC-2013-05).

listed and OCC's Chairman, would make determinations about whether that option should be adjusted in response to a corporate action. Currently, adjustment determinations are made by OCC rather than adjustment panels of the Securities Committee.¹⁶ However, the Securities Committee still maintains a role in promulgating statements of policy and interpretations having general application to specified types of corporate actions or specified kinds of cleared contracts.¹⁷ In making adjustment determinations, OCC must consider such policy statements and interpretations in addition to the factors and general rules set forth in the By-Laws in light of the circumstances known to OCC at the time such determination is made, subject to OCC's discretion to depart from policy or precedent when the OCC determines that unusual circumstances make such a departure appropriate.¹⁸ OCC assumed sole responsibility for making adjustment determinations after corresponding updates to the Options Disclosure Document were approved by the Commission in 2018.¹⁹ Accordingly, when OCC re-issues the interpretative guidance on cash dividends and distributions, OCC proposes to replace references to determinations made by an adjustment panel of the Securities Committee with references to OCC and make other non-substantive, textual edits to the interpretative guidance consistent with that change. These changes are intended to reflect the current, Commission-approved process for adjustment determinations made by OCC.

¹⁶ This change in governance arose from a request by the options exchanges promoted by a desire to consider ways to lessen investor confusion and enhance consistency in making option contract adjustments. See Exchange Act Release No. 69642 (May 28, 2013), 78 FR 33138, 33139 (June 3, 2013) (SR-OCC-2013-05).

¹⁷ See OCC By-Laws, Art. VI § 11(a).

¹⁸ Id.

¹⁹ See Exchange Act Release No. 84565 (Nov. 9, 2018), 83 FR 57778, 57779 (Nov. 16, 2018) (SR-ODD-2018-01).

(2) Additional Interpretative Guidance

OCC also proposes to add additional Q&As that would provide guidance for several situations OCC has observed since the interpretative guidance was last issued, including (a) specific guidance with respect to variable dividends, and (b) additional guidance with respect to dividends issued by real estate investment trusts (“REITs”).

a. Variable Dividends

OCC has seen an increase in the number of issuers that have established policies or practices of distributing “variable dividends.” Typically, such variable dividends are paid at regular intervals if issuer-defined thresholds for paying the dividends are met. The amount of the variable dividend may increase or decrease (sometimes significantly) from dividend to dividend based on issuer-established thresholds and, on occasion, may not be paid at all if the issuer-established thresholds are not met. These variable dividends may also be in addition to regular dividends paid pursuant to the issuer’s policy or practice.

For example, on May 19, 2022, Arch Resources, Inc. (ARCH) announced an \$8.11 quarterly dividend, which included a fixed component of \$0.25 and a variable component of \$7.86 per share. In making its adjustment determination, OCC considered an ARCH press release, issued on February 15, 2022, communicating that ARCH was launching a capital return program pursuant to which it planned to “return to stockholders approximately 50 percent of the prior quarter’s discretionary cash flow . . . via a variable quarterly cash dividend in conjunction with its existing fixed quarterly cash dividend.”²⁰ OCC determined that the quarterly variable dividend was an “ordinary dividend” as defined in Interpretation and Policy .01 to Article VI, Section 11A of OCC’s By-Laws, and therefore not subject to adjustment, because the dividend

²⁰ See Arch Resources Reports Fourth Quarter 2021 Results (Feb. 15, 2022), <https://investor.archrsc.com/2022-02-15-Arch-Resources-Reports-Fourth-Quarter-2021-Results>.

had been declared pursuant to a policy or practice of paying such dividend on a quarterly or other regular basis.²¹

As another example, on March 9, 2022, Zim Integrated Shipping Services Ltd. (ZIM) announced a cash dividend of \$17.00 per share, representing 50% of ZIM's 2021 net income, taking into account the quarterly dividends paid during the first three fiscal quarters of the year.²² Pursuant to the issuer's stated policy, ZIM intended to "distribute a dividend to shareholders on a quarterly basis at a rate of approximately 20% of the net income derived during such fiscal quarter with respect to the first three fiscal quarters of the year" and that the "cumulative annual dividend amount to be distributed by [ZIM] (including the interim dividends paid during the first three fiscal quarters of the year) [would] total 30-50% of the annual net income."²³ OCC determined that the \$17 dividend was an "ordinary dividend" declared pursuant to a policy or practice of paying such dividend on a quarterly or other regular basis, and therefore not subject to adjustment.²⁴

OCC proposes to add a Q&A to the interpretative guidance reflecting that if OCC determines such variable dividends are paid pursuant to an issuer's policy or practice of paying such variable dividends at regular intervals, OCC generally considers them to be ordinary dividends and not adjustable, even if, on occasion, no variable dividend is paid or if the amount of the dividend increases or decreases based on the issuer-established thresholds. OCC believes

²¹ See Info Memo #50473 (May 20, 2022). OCC does not issue Info Memos notifying market participants that OCC has determined not to adjust options (a "No-Adjustment" Info Memo) each time an issuer announces a dividend OCC determines to be ordinary and therefore not subject to adjustment. In general, OCC considers whether a No-Adjustment Info Memo may be warranted based on inquiries made by Clearing Members or others with respect to a particular corporate action.

²² See ZIM Reports Record Financial Results for the Fourth Quarter and Full Year 2021 (March 9, 2022), <https://investors.zim.com/news/news-details/2022/ZIM-Reports-Record-Financial-Results-for-the-Fourth-Quarter-and-Full-Year-2021/default.aspx>.

²³ Id.

²⁴ See Info Memo #50158 (March 9, 2022).

this guidance would align with the precedent described above and provide market participants with greater clarity about how OCC applies the adjustment policies outlined in the By-Laws to variable dividends.

b. REITs

OCC proposes to add further guidance about situations in which an issuer may pay a dividend outside of its normal schedule of dividend payments that the issuer describes as necessary to maintain its tax status as a particular type of organization, such as a REIT. The existing interpretative guidance answered several questions concerning dividends paid by REITs and similar companies. For example, the existing interpretative guidance addressed that while REITs may pay dividends at irregular intervals, these companies often have regular dividend policies, but will actually pay dividends only when certain conditions are met, or in response to market conditions. Similar to the variable dividend situation, in which, on occasion, no variable dividend is paid if issuer-established thresholds are not met, the prior interpretative guidance provided that such REIT distributions generally would be considered ordinary distributions when they occur pursuant to the policy of the company.

However, OCC has observed at least one case in which an issuer has declared a dividend outside of its normal schedule of dividend payments to maintain its tax status as a particular type of organization, such as a REIT. Specifically, On July 22, 2022, Public Storage (“PSA”) announced a “special,” “one-time” dividend of \$13.15 per common share.²⁵ As explained in the issuer’s press release, PSA was distributing a projected tax gain in connection with its investment in another company that had been acquired “in order to meet the distribution

²⁵ See Public Storage Announces \$2.3 Billion Special Dividend Related to PS Business Parks Merger Consideration (July 22, 2022), <https://investors.publicstorage.com/news-events/press-releases/news-details/2022/Public-Storage-Announces-2.3-Billion-Special-Dividend-Related-to-PS-Business-Parks-Merger-Consideration/default.aspx>.

requirements as a [REIT].”²⁶ Nevertheless, OCC determined that the dividend was non-ordinary under its By-Laws and issued an Info Memo concerning an adjustment to options on PSA.²⁷

As OCC would clarify in the further guidance, such a dividend would most likely be considered non-ordinary and warrant an adjustment if OCC determines that the dividend is not being made pursuant to the issuer’s established dividend policies and practices based on the company’s departure from its regular dividend schedule and any characterization the company may make about the pay-out as “special” or “one time.” In other words, an issuer’s characterization of a dividend as necessary to maintain its tax status as a particular type of organization is not determinative of whether a dividend is “ordinary” under OCC’s By-Laws. Rather, the question is whether the dividend is paid pursuant to an issuer’s policy of paying such a dividend at regular intervals to maintain its tax status. If such an issuer announces a special dividend outside of its regular dividend policies and practices, such dividend will most likely be considered non-ordinary and warrant an adjustment even if the issuer is paying the dividend to maintain its tax status. OCC proposes to add a Q&A to the interpretative guidance to reflect OCC’s practices in this situation.

B. Statutory Basis

OCC believes the proposed rule changes are consistent with Section 17A of the Exchange Act and the rules and regulations thereunder. Section 17A(b)(3)(F) of the Exchange Act²⁸ requires, among other things, that the rules of a clearing agency be designed to protect investors and the public interest. OCC believes that by allowing it to amend and re-issue the interpretative guidance, the proposed changes would protect investors and the public interest by providing

²⁶ Id.

²⁷ See Info Memo #50775 (July 25, 2022).

²⁸ 15 U.S.C. 78q-1(b)(3)(F).

market participants with up-to-date information about OCC's current process for making adjustment determinations. In addition, OCC believes the additional interpretative guidance would provide investors and the general public further clarity about the application of OCC's adjustment policies and procedures to scenarios not specifically addressed in the existing guidance. Providing this information will help investors make more informed decisions in connection with their participation in the listed options market. Accordingly, OCC believes the proposed changes are consistent with Section 17A(b)(3)(F) of the Exchange Act.²⁹

In addition, Exchange Act Rule 17Ad-22(e)(23) requires OCC to maintain written policies and procedures reasonably designed to, among other things, publicly disclose all relevant rules and material procedures and provide sufficient information to enable participants to identify and evaluate the risks they incur by participating in OCC.³⁰ The proposed changes would allow OCC to update interpretative guidance concerning its adjustment policies and procedures previously filed as a rule with the Commission, thereby facilitating the re-issuance of guidance about material procedures that remain relevant. OCC believes that by updating the guidance to reflect current precedent, the proposed changes will help participants in the listed options market to better understand the risks related to contract adjustments in the scenarios addressed, consistent with the requirements of Rule 17Ad-22(e)(23).³¹

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Exchange Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of

²⁹ Id.

³⁰ 17 CFR 240.17Ad-22(e)(23)(i), (ii).

³¹ 17 CFR 240.17Ad-22(e)(23).

the Exchange Act.³² The proposed changes would amend interpretative guidance applicable to the adjustment of all listed options issued for a particular underlying security. These proposed changes would not impact the rights or obligations of Clearing Members or other participants in a way that would benefit or disadvantage any participant versus another participant. To the contrary, this proposed change would provide all market participants with information relevant to understanding the risks of participation. Accordingly, OCC does not believe that the proposed changes have any impact, or impose any burden, on competition.

Item 5. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

Item 6. Extension of Time Period for Commission Action

Not applicable.

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Pursuant to Section 19(b)(3)(A)(i)³³ of the Exchange Act, and Rule 19b-4(f)(1),³⁴ the proposed rule change is filed for immediate effectiveness. Rule 19b-4(f)(1) provides that proposed rule changes may take effect upon filing if the change is a “stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.”³⁵ As discussed above, the proposed rule change concerns amendments to an existing interpretation of OCC’s existing By-Laws governing the adjustment of listed options.

³² 15 U.S.C. 78q-1(b)(3)(I).

³³ 15 U.S.C. 78s(b)(3)(A)(i).

³⁴ 17 CFR 240.19b-4(f)(1).

³⁵ Id.

At any time within 60 days of the filing of the proposed rule change, the SEC summarily may temporarily suspend such rule change if it appears to the SEC that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. Notwithstanding its immediate effectiveness, implementation of the proposed rule changes will be delayed until they are deemed certified under Commodity Futures Trading Commission Regulation § 40.6.³⁶

Item 8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission

Not applicable.

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

Item 11. Exhibits

- Exhibit 1A. Completed Notice of Proposed Rule Change for publication in the Federal Register.
- Exhibit 3. Draft Information Memorandum, including prefatory material intended to provide context for its issuance, remind readers of its relationship to prior Information Memoranda and this proposed rule change, and summarize the relevant OCC By-Laws that are the subject of interpretation.
- Exhibit 5. Changes to Cash Dividend Adjustment Policies Guidelines.

³⁶ 17 CFR 40.6.

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-[_____]; File No. SR-OCC-2024-003)

[February __, 2024]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Options Clearing Corporation Concerning Interpretative Guidance on Contract Adjustments for Cash Dividends and Distributions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 20, 2024, The Options Clearing Corporation (“OCC” or “Corporation”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change would re-issue interpretative guidance relating to the adjustment of stock options for cash dividends and distributions on underlying securities with certain amendments, including (1) to reflect previously approved changes in the process for making such adjustment determinations; and (2) to address OCC’s general approach to certain additional scenarios. Amendments to the interpretative guidance, are included in Exhibit 5 of File No. SR-OCC-2024-003. Material proposed to be added is marked by underlining, and material proposed to be deleted is marked with strikethrough

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the By-Laws and Rules.³

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. 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), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC is the issuer of and sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission. In accordance with OCC's By-Laws, adjustments may be made to some of the standardized terms of outstanding options upon the occurrence of certain events related to the underlying security, such as a stock dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, reclassification in respect of an underlying security, or a merger, consolidation, dissolution or liquidation of the issuer of the underlying security.⁴ The determination whether to adjust outstanding options in response to a particular event, and, if so, what the adjustment should be, is made by OCC,

³ OCC's By-Laws and Rules can be found on OCC's public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

⁴ Adjustments for listed options are discussed at length in the Characteristics and Risks of Standardized Options ("Options Disclosure Document" or "ODD"), which broker-dealers are required to provide to a customer prior to accepting an order to purchase or sell a listed option. See 17 CFR 240.9b-1. The Options Disclosure Document is also available on OCC's website: <https://www.theocc.com/company-information/documents-and-archives/options-disclosure-document>.

taking into consideration policies and interpretations established in OCC's By-Laws and any policies and interpretations having general application to specific types of events or specified kinds of cleared contracts established by a committee (the "Securities Committee") consisting of representatives of each of the U.S. options markets and a representative of OCC.⁵

OCC previously filed with the Commission and issued interpretative guidance concerning the application of OCC's adjustment policies and procedures and other adjustment rules for cash dividends.⁶ In the interest of promoting clarity and transparency for market participants, OCC is proposing to re-issue that interpretative guidance subject to proposed amendments that would (1) update the interpretative guidance's discussion of how adjustment determinations are made to reflect subsequent changes to the determination process since the interpretative guidance was last issued, and (2) provide additional guidance on certain underlying events.⁷ OCC does not propose to change its policies or practices with respect to such contract adjustments. OCC merely proposes to publish guidance reflecting its current policies and practices.

⁵ See OCC By-Laws, Art. VI § 11.

⁶ See, e.g., Exchange Act Release No. 68531 (Dec. 21, 2012), 77 FR 77157 (Dec. 31, 2012) (SR-OCC-2012-26).

⁷ Consistent with prior practice, the interpretative guidance would be issued as an OCC Information Memorandum that would supersede the previously published Information Memoranda related to this interpretative guidance. The Information Memorandum would contain prefatory material intended to provide context for its issuance, remind readers of its relationship to the prior Information Memoranda and this proposed rule change, and summarize the relevant OCC By-Laws that are the subject of the interpretation. OCC does not believe this prefatory material is a rule within the meaning of Section 19(b) of the Exchange Act, 15 U.S.C. 78s(b), and the regulations thereunder because unlike the interpretative guidance promulgated through this proposed rule change, the prefatory material it is not a stated policy, practice or interpretation that establishes or changes any standard, limit, or guideline with respect to the rights, obligations or privileges of specified persons or the meaning, administration, or enforcement of an existing rule. See 17 CFR 240.19b-4(a)(6)(ii). Nor does the prefatory material constitute a material aspect of the operation of OCC. See 17 CFR 240.19b-4(a)(6)(i). OCC is providing a copy of the Information Memorandum it intends to issue upon implementation of the new guidance as Exhibit 3 to File No. SR-OCC-2024-003.

Accordingly, OCC does not believe that this proposed change would have any impact on market participants other than to provide them with additional information.

(1) Purpose

Background

OCC's By-Laws and Rules authorize OCC to make adjustments to listed options when certain events occur related to the underlying security, such as a stock dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or reclassification with respect to the underlying security or the merger, consolidation, dissolution or liquidation of the issuer of the underlying security. The By-Laws provide policies and procedures for making such determinations, including that OCC determines whether to adjust a contract, taking into account such factors as fairness to holders and writers (or purchasers and sellers) of the affected contracts, the maintenance of a fair and orderly market in the affected contracts, consistency of interpretation and practice, efficiency of exercise settlement procedures, and the coordination with other clearing agencies of the clearance and settlement of transactions in the underlying interest.⁸ OCC applies these factors to a particular corporate action on a case-by-case basis, considering the circumstances known to it at the time the determination is made, subject to OCC's discretion to depart from policy and precedent when the Corporation determines that unusual circumstances make such a departure appropriate.⁹

OCC's By-Laws also provide general rules applicable to specific types of corporate actions, including with respect to cash dividends or distributions made by the

⁸ See OCC By-Laws, Art. VI § 11(a).

⁹ Id.

issuer of an underlying security. For example, the By-Laws establish a general rule that OCC does not adjust listed options to reflect “ordinary cash dividends or distributions,” which the By-Laws define to mean “[c]ash dividends or distributions (regardless of size) by the issuer of the underlying security which [OCC] believes to have been declared pursuant to a policy or practice of paying such dividends or distributions on a quarterly or other regular basis or which [OCC] believes represents an acceleration or deferral of such payments.”¹⁰ OCC established this general rule because when an issuer’s policy or practice of paying such dividends is public, such ordinary dividends can be priced into options premiums.¹¹ OCC’s By-Laws also provide that for cash dividends not declared pursuant to an issuer’s policy or practice of paying such distributions at regular intervals (i.e., “special” cash dividends and distributions), OCC will not adjust if the amount distributed is less than \$0.125 per share (or \$12.50 per contract for listed options with a unit of trading larger than 100 shares). OCC established this de minimis threshold in part to avoid the proliferation of outstanding option symbols and series.¹²

In connection with the adoption of the general rules against adjustments for cash dividends and distributions that are ordinary or below the de minimis threshold, OCC previously filed and published interpretative guidance promulgated by its Securities Committee to address questions about how those rules would be administered and

¹⁰ See OCC By-Laws, Art. VI § 11A, Interpretation and Policy .01.

¹¹ See Exchange Act Release No. 55258 (Feb 8, 2007), 72 FR 7701, 7703 (Feb. 16, 2007) (SR-OCC-2006-01).

¹² Symbols can proliferate when a dividend amount is added to the deliverable, yielding a non-standard option. Id., at note 14 and accompanying text. The resulting non-standard options may be illiquid and difficult to trade. Following an adjustment, exchanges typically introduce standard options with the same strikes.

applied.¹³ Presented in question and answer (“Q&A”) format, the interpretative guidance provided an overview of OCC’s adjustment policies with respect to cash dividends and guidance on the application of those policies in a variety of scenarios. OCC has since updated and re-issued that interpretative guidance, the last time in 2012.¹⁴ Based on its continued relevance to market participants seeking to understand how OCC applies its adjustment policies, OCC proposes to re-issue the interpretative guidance with certain updates discussed below.

(1) Conforming Changes to Reflect the Current Determination Process

The proposed changes would remove references to the adjustment panel of the Securities Committee in the interpretative guidance’s discussion of how options adjustments are made. Since the interpretative guidance was last issued in 2012, the Commission approved a proposed rule change that affected the determination process.¹⁵ Previously, an adjustment panel of the Securities Committee, consisting of representatives from the exchanges on which an option was listed and OCC’s Chairman, would make determinations about whether that option should be adjusted in response to a corporate action. Currently, adjustment determinations are made by OCC rather than adjustment panels of the Securities Committee.¹⁶ However, the Securities Committee

¹³ See Exchange Act Release No. 58059 (June 30, 2008), 73 FR 39367 (July 9, 2008) (SR-OCC-2008-10).

¹⁴ See Exchange Act Release No. 68531, *supra* note 6. See also Exchange Act Release No. 66742 (Apr. 5, 2012), 77 FR 21819 (Apr. 11, 2012) (SR-OCC-2012-05); Exchange Act Release No. 59442 (Feb. 24, 2009), 74 FR 9654 (Mar. 5, 2009) (SR-OCC-2009-01).

¹⁵ See Exchange Act Release No. 69977 (July 11, 2013), 78 FR 42815 (July 17, 2013) (SR-OCC-2013-05).

¹⁶ This change in governance arose from a request by the options exchanges promoted by a desire to consider ways to lessen investor confusion and enhance consistency in making option contract adjustments. See Exchange Act Release No. 69642 (May 28, 2013), 78 FR 33138, 33139 (June 3, 2013) (SR-OCC-2013-05).

still maintains a role in promulgating statements of policy and interpretations having general application to specified types of corporate actions or specified kinds of cleared contracts.¹⁷ In making adjustment determinations, OCC must consider such policy statements and interpretations in addition to the factors and general rules set forth in the By-Laws in light of the circumstances known to OCC at the time such determination is made, subject to OCC's discretion to depart from policy or precedent when the OCC determines that unusual circumstances make such a departure appropriate.¹⁸ OCC assumed sole responsibility for making adjustment determinations after corresponding updates to the Options Disclosure Document were approved by the Commission in 2018.¹⁹ Accordingly, when OCC re-issues the interpretative guidance on cash dividends and distributions, OCC proposes to replace references to determinations made by an adjustment panel of the Securities Committee with references to OCC and make other non-substantive, textual edits to the interpretative guidance consistent with that change. These changes are intended to reflect the current, Commission-approved process for adjustment determinations made by OCC.

(2) Additional Interpretative Guidance

OCC also proposes to add additional Q&As that would provide guidance for several situations OCC has observed since the interpretative guidance was last issued, including (a) specific guidance with respect to variable dividends, and (b) additional guidance with respect to dividends issued by real estate investment trusts ("REITs").

¹⁷ See OCC By-Laws, Art. VI § 11(a).

¹⁸ Id.

¹⁹ See Exchange Act Release No. 84565 (Nov. 9, 2018), 83 FR 57778, 57779 (Nov. 16, 2018) (SR-ODD-2018-01).

a. Variable Dividends

OCC has seen an increase in the number of issuers that have established policies or practices of distributing “variable dividends.” Typically, such variable dividends are paid at regular intervals if issuer-defined thresholds for paying the dividends are met. The amount of the variable dividend may increase or decrease (sometimes significantly) from dividend to dividend based on issuer-established thresholds and, on occasion, may not be paid at all if the issuer-established thresholds are not met. These variable dividends may also be in addition to regular dividends paid pursuant to the issuer’s policy or practice.

For example, on May 19, 2022, Arch Resources, Inc. (ARCH) announced an \$8.11 quarterly dividend, which included a fixed component of \$0.25 and a variable component of \$7.86 per share. In making its adjustment determination, OCC considered an ARCH press release, issued on February 15, 2022, communicating that ARCH was launching a capital return program pursuant to which it planned to “return to stockholders approximately 50 percent of the prior quarter’s discretionary cash flow . . . via a variable quarterly cash dividend in conjunction with its existing fixed quarterly cash dividend.”²⁰ OCC determined that the quarterly variable dividend was an “ordinary dividend” as defined in Interpretation and Policy .01 to Article VI, Section 11A of OCC’s By-Laws, and therefore not subject to adjustment, because the dividend had been declared pursuant to a policy or practice of paying such dividend on a quarterly or other regular basis.²¹

²⁰ See Arch Resources Reports Fourth Quarter 2021 Results (Feb. 15, 2022), <https://investor.archrsc.com/2022-02-15-Arch-Resources-Reports-Fourth-Quarter-2021-Results>.

²¹ See Info Memo #50473 (May 20, 2022). OCC does not issue Info Memos notifying market participants that OCC has determined not to adjust options (a “No-Adjustment” Info Memo) each time an issuer announces a dividend OCC determines to be ordinary and therefore not subject to adjustment. In general, OCC considers whether a No-Adjustment Info Memo may be warranted

As another example, on March 9, 2022, Zim Integrated Shipping Services Ltd. (ZIM) announced a cash dividend of \$17.00 per share, representing 50% of ZIM's 2021 net income, taking into account the quarterly dividends paid during the first three fiscal quarters of the year.²² Pursuant to the issuer's stated policy, ZIM intended to "distribute a dividend to shareholders on a quarterly basis at a rate of approximately 20% of the net income derived during such fiscal quarter with respect to the first three fiscal quarters of the year" and that the "cumulative annual dividend amount to be distributed by [ZIM] (including the interim dividends paid during the first three fiscal quarters of the year) [would] total 30-50% of the annual net income."²³ OCC determined that the \$17 dividend was an "ordinary dividend" declared pursuant to a policy or practice of paying such dividend on a quarterly or other regular basis, and therefore not subject to adjustment.²⁴

OCC proposes to add a Q&A to the interpretative guidance reflecting that if OCC determines such variable dividends are paid pursuant to an issuer's policy or practice of paying such variable dividends at regular intervals, OCC generally considers them to be ordinary dividends and not adjustable, even if, on occasion, no variable dividend is paid or if the amount of the dividend increases or decreases based on the issuer-established thresholds. OCC believes this guidance would align with the precedent described above

based on inquiries made by Clearing Members or others with respect to a particular corporate action.

²² See ZIM Reports Record Financial Results for the Fourth Quarter and Full Year 2021 (March 9, 2022), <https://investors.zim.com/news/news-details/2022/ZIM-Reports-Record-Financial-Results-for-the-Fourth-Quarter-and-Full-Year-2021/default.aspx>.

²³ Id.

²⁴ See Info Memo #50158 (March 9, 2022).

and provide market participants with greater clarity about how OCC applies the adjustment policies outlined in the By-Laws to variable dividends.

b. REITs

OCC proposes to add further guidance about situations in which an issuer may pay a dividend outside of its normal schedule of dividend payments that the issuer describes as necessary to maintain its tax status as a particular type of organization, such as a REIT. The existing interpretative guidance answered several questions concerning dividends paid by REITs and similar companies. For example, the existing interpretative guidance addressed that while REITs may pay dividends at irregular intervals, these companies often have regular dividend policies, but will actually pay dividends only when certain conditions are met, or in response to market conditions. Similar to the variable dividend situation, in which, on occasion, no variable dividend is paid if issuer-established thresholds are not met, the prior interpretative guidance provided that such REIT distributions generally would be considered ordinary distributions when they occur pursuant to the policy of the company.

However, OCC has observed at least one case in which an issuer has declared a dividend outside of its normal schedule of dividend payments to maintain its tax status as a particular type of organization, such as a REIT. Specifically, On July 22, 2022, Public Storage (“PSA”) announced a “special,” “one-time” dividend of \$13.15 per common share.²⁵ As explained in the issuer’s press release, PSA was distributing a projected tax gain in connection with its investment in another company that had been acquired “in

²⁵ See Public Storage Announces \$2.3 Billion Special Dividend Related to PS Business Parks Merger Consideration (July 22, 2022), <https://investors.publicstorage.com/news-events/press-releases/news-details/2022/Public-Storage-Announces-2.3-Billion-Special-Dividend-Related-to-PS-Business-Parks-Merger-Consideration/default.aspx>.

order to meet the distribution requirements as a [REIT].”²⁶ Nevertheless, OCC determined that the dividend was non-ordinary under its By-Laws and issued an Info Memo concerning an adjustment to options on PSA.²⁷

As OCC would clarify in the further guidance, such a dividend would most likely be considered non-ordinary and warrant an adjustment if OCC determines that the dividend is not being made pursuant to the issuer’s established dividend policies and practices based on the company’s departure from its regular dividend schedule and any characterization the company may make about the pay-out as “special” or “one time.” In other words, an issuer’s characterization of a dividend as necessary to maintain its tax status as a particular type of organization is not determinative of whether a dividend is “ordinary” under OCC’s By-Laws. Rather, the question is whether the dividend is paid pursuant to an issuer’s policy of paying such a dividend at regular intervals to maintain its tax status. If such an issuer announces a special dividend outside of its regular dividend policies and practices, such dividend will most likely be considered non-ordinary and warrant an adjustment even if the issuer is paying the dividend to maintain its tax status. OCC proposes to add a Q&A to the interpretative guidance to reflect OCC’s practices in this situation.

(2) Statutory Basis

OCC believes the proposed rule changes are consistent with Section 17A of the Exchange Act and the rules and regulations thereunder. Section 17A(b)(3)(F) of the Exchange Act²⁸ requires, among other things, that the rules of a clearing agency be

²⁶ Id.

²⁷ See Info Memo #50775 (July 25, 2022).

²⁸ 15 U.S.C. 78q-1(b)(3)(F).

designed to protect investors and the public interest. OCC believes that by allowing it to amend and re-issue the interpretative guidance, the proposed changes would protect investors and the public interest by providing market participants with up-to-date information about OCC's current process for making adjustment determinations. In addition, OCC believes the additional interpretative guidance would provide investors and the general public further clarity about the application of OCC's adjustment policies and procedures to scenarios not specifically addressed in the existing guidance. Providing this information will help investors make more informed decisions in connection with their participation in the listed options market. Accordingly, OCC believes the proposed changes are consistent with Section 17A(b)(3)(F) of the Exchange Act.²⁹

In addition, Exchange Act Rule 17Ad-22(e)(23) requires OCC to maintain written policies and procedures reasonably designed to, among other things, publicly disclose all relevant rules and material procedures and provide sufficient information to enable participants to identify and evaluate the risks they incur by participating in OCC.³⁰ The proposed changes would allow OCC to update interpretative guidance concerning its adjustment policies and procedures previously filed as a rule with the Commission, thereby facilitating the re-issuance of guidance about material procedures that remain relevant. OCC believes that by updating the guidance to reflect current precedent, the proposed changes will help participants in the listed options market to better understand

²⁹ Id.

³⁰ 17 CFR 240.17Ad-22(e)(23)(i), (ii).

the risks related to contract adjustments in the scenarios addressed, consistent with the requirements of Rule 17Ad-22(e)(23).³¹

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Exchange Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.³² The proposed changes would amend interpretative guidance applicable to the adjustment of all listed options issued for a particular underlying security. These proposed changes would not impact the rights or obligations of Clearing Members or other participants in a way that would benefit or disadvantage any participant versus another participant. To the contrary, this proposed change would provide all market participants with information relevant to understanding the risks of participation. Accordingly, OCC does not believe that the proposed changes have any impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act³³ and paragraph (f) of Rule 19b-4³⁴ thereunder. At any time within 60 days of

³¹ 17 CFR 240.17Ad-22(e)(23).

³² 15 U.S.C. 78q-1(b)(3)(I).

³³ 15 U.S.C. 78s(b)(3)(A).

³⁴ 17 CFR 240.19b-4(f).

the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.³⁵

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether 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 e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2024-003 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2024-003. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website

³⁵ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

(<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 such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to File Number SR-OCC-2024-003 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

Secretary

³⁶ 17 CFR 200.30-3(a)(12).

Exhibit 3

#XXXXX

Date: #AAAAA

Subject: **CHANGES TO CASH DIVIDEND ADJUSTMENT POLICIES,
GUIDELINES**

OCC originally published Information Memo #24424 on May 24, 2008, to provide guidelines and FAQs on changes made to cash dividend adjustment policies and subsequently posted numerous updates to Memo #24424 with the most recent updates published in 2012¹ (collectively “Guidelines Information Memos”). This memo incorporates the policies outlined in the Guidelines Information Memos, provides additional guidance on variable dividends, clarifies that adjustment determinations are made by OCC, and removes references to the adjustment panels of the Securities Committee. The Frequently Asked Questions (“FAQs”) below have been filed as Interpretative Guidance with the Securities and Exchange Commission on February 20, 2024 (SR-OCC-2024-003).

The information contained in the Guidelines Information Memos is reprinted below and includes the aforementioned updates and revisions.

NOTE: The following version of this Information Memo supersedes all previously published versions of the Guidelines Information Memos.

OCC has received questions about how the adjustment policy for cash dividends or distributions is administered and to provide examples of how the policy might be applied to actual or hypothetical situations. The purpose of this Memo is to respond to some of these questions. A review of the adjustment policy is presented below, followed by a number of FAQs.

The Definition of “Ordinary” Cash Dividends

Under the changes to the OCC By-Laws which became effective in February 2009, a cash dividend or distribution will be considered ordinary (regardless of size) if it is declared pursuant to a policy or practice of paying such dividends on a quarterly or other regular basis. Dividends paid outside such a policy or practice will be considered non-ordinary. OCC will normally adjust for non-ordinary dividends unless the amount is less than \$12.50 per contract. The determination of whether a given cash dividend is “ordinary” according to this definition will be made by OCC on a case-by-case basis.

¹ . OCC published Information Memo #31714 on December 7, 2012, announcing a policy determination made by the OCC Securities Committee pertaining to accelerated dividends. Information Memo #31917 was published on December 18, 2012, providing a summary of guidelines for cash dividend adjustment policies, including the definition of “Ordinary” Cash Dividends. Information Memo #31806 was published on November 30, 2012, announcing a policy determination pertaining to the application of the \$.125 per share adjustment threshold to fund share cash distributions.

II. Frequently Asked Questions

Disclaimer: This Information Memo is intended to provide useful guidelines for how the contract adjustment policy has been and will be applied in practice. However, as indicated several times below, all adjustments are individually determined by OCC on a case-by-case basis, and exceptions may be made to general rules, interpretations, and policies in cases where OCC determines such exceptions to be appropriate. In no instance are the examples provided below meant to determine in advance the decisions that OCC will make in the future.

Overview of the Adjustment Policy

- Q. Who decides if an option adjustment shall be made?
- A. All adjustments are determined on a case-by-case basis by OCC.
- Q. What cash dividends call for an adjustment?
- A. “Ordinary” cash dividends do not call for adjustments. An “ordinary” cash dividend is defined as one paid “pursuant to a policy or practice of paying such dividend on a quarterly or other regular basis.” A cash dividend which is considered to be *outside* this regular policy or practice is non-ordinary. Assuming a given dividend is non-ordinary according to this definition, a size test is also imposed: the value of the dividend must be at least \$12.50 per option contract. Thus, if the dividend is non-ordinary and yields at least \$12.50 per option contract, then an adjustment will be made.
- Q. What’s the rationale for this approach?
- A. In general, dividends declared pursuant to a policy or practice of a company can be anticipated and priced into option premiums according to standard models. Non-ordinary dividends declared outside the normal policy of the company cannot be anticipated and integrated into pricing with the same degree of assurance. Thus, when such dividends are announced, if no adjustment is made, the only way a call holder can capture the dividend is through exercise prior to the ex-dividend date. When this happens, significant option time value can be lost and financial losses due to operational error in submitting exercises may occur. The intention is to allow such dividends to accrue to the benefit of call holders without requiring them to exercise their options.
- Q. So any dividend that can’t be *anticipated* will be deemed a non-ordinary dividend?
- A. No. Although such dividends may be unanticipated, the important criterion is whether a dividend is paid pursuant to a program or policy of paying dividends on a quarterly or other regular basis. In some cases, the dividends of a company paid according to such a policy may be highly variable and subject to increases or decreases that some may consider “unanticipated.” Nevertheless, these dividends would not normally be deemed non-ordinary.

Examples: What if...?

Q. Can you give an example of how the \$12.50 adjustment threshold will work in practice?

A. In order for an option to be adjusted, the value of the dividend must be at least \$12.50 per option contract. However, if the security on which the dividend is paid underlies option contracts with more than one contract size – e.g., as a result of adjustments for previous splits – then the nonstandard contracts would be adjusted only if the value of the dividend on the nonstandard contract is at least \$12.50 *and* the standard-size contract (normally 100 shares) would also be adjusted.

For example, suppose an option covers 100 shares of stock and a \$0.10 special cash dividend is declared. This dividend, although non-ordinary, would yield only \$10.00 in value for this option contract. Therefore, no adjustment would be made.

A second example: Suppose an option covers 100 shares of stock and another option covers 150 shares of the same stock (as the result of a previous adjustment for a 3 for 2 split). A \$0.10 special dividend is declared. The dividend would yield \$10.00 in value for the 100 share option and \$15.00 for the other. However, in this case, since the standard-size (100 share) contract would not be adjusted (the \$12.50 threshold not being met), the 150 share option would also *not* be adjusted.

A third: Suppose an option covers 100 shares of stock and another option covers 50 shares of the same stock (as a result of a previous adjustment for a 1 for 2 reverse split). A \$0.15 special dividend is declared. The dividend would yield \$15.00 in value for the 100 share option and \$7.50 for the 50 share option. In this case, the standard-size (100 shares) option would be adjusted, but the 50 share option would *not* be adjusted because the value of the dividend per contract would be only \$7.50, and a nonstandard option is not adjusted if the value of the dividend per contract is less than \$12.50 even if the standard-size option is adjusted.

These examples also illustrate that, in general, the \$12.50 threshold is applied at the *option contract* level– *not* per share.¹

Occasionally only nonstandard options exist. In these cases, since there is no standard-size option to refer back to, the application of the \$12.50 per contract threshold will determine whether an adjustment is made.

Q. Who determines if a cash dividend is “non-ordinary”?

A. OCC will make this determination. In doing so, OCC may consider the company’s characterization of the dividend but the company’s characterization is not binding. OCC may take into account other factors deemed appropriate including, but not limited to, the company’s stated dividend policy and payment history, prior option adjustments, and factors bearing on the maintenance of a fair and orderly market.

Q. If a company accelerates the payment of its regular dividends, would such dividends be deemed non-ordinary and occasion an adjustment to options?

¹ A threshold of .125 **per share** is used in determining contract adjustments for capital gains and other distributions for fund shares, as described in Interpretation .08 to Article VI, Section 11A of the OCC By-Laws.

- A. No. If OCC determines such accelerated dividends are paid pursuant to the company's regular dividend payment program, they would generally be classified as ordinary, irrespective of the company's characterization of such dividends as "special" or similar designations. The same would be true regardless of whether a single regular dividend or multiple regular dividends are accelerated.
- Q. What if a company that previously paid no dividends initiates a regular dividend program – would the initial dividend be considered "non-ordinary" and therefore adjustable?
- A. No. The initial dividend would be paid pursuant to a policy under which the company intends to pay dividends on a regular basis. Therefore, it would not be deemed "non-ordinary" and adjustable.
- Q. What if a company announced a dramatic increase in a regular dividend? For example, what if a company's last quarterly dividend was \$.20 and the current quarterly dividend was bumped to \$1.00 – wouldn't that be a "non-ordinary", one-time event that would call for an adjustment?
- A. No – most likely not. As mentioned earlier, we would start with the company's description of its dividend. If the company has a quarterly dividend program and the company says this quarter's dividend is \$1.00, then we anticipate the dividend would be deemed to be ordinary and not adjustable. However, as mentioned, the decisions of OCC are always made on a case-by-case basis, in light of the circumstances and facts as understood at the time.
- Q. What if a company declares a "variable dividend"? Does it matter if the dividend is paid in addition to a regular dividend? Since the value of the dividend changes from dividend to dividend would it be considered a "non-ordinary" dividend?
- A. If a company has a policy or practice of paying a "variable dividend" on a regular interval, the variable dividend generally would be considered an ordinary dividend and not adjustable, even if on occasion no variable dividend is paid because a company-established threshold for paying the variable dividend is not met and even if the amount of the dividend may drastically increase or decrease based on such company-established thresholds.
- Q. What about REITs, natural resource trusts, and similar companies that pay very irregular dividends? Such companies could pay no dividends for many months and then suddenly pay a dividend. Would that be considered a "non-ordinary", adjustable dividend?
- A. No – most likely not. The kinds of companies mentioned in the question often have very regular dividend *policies* but will *actually* pay dividends only when certain conditions are met, or in response to market conditions. REITs, for example, are generally required to pay out profits to shareholders when and if profits are realized. They may determine dividends monthly, although the cash amount available for distribution may actually be zero in any given month. Thus, although the dividend payouts of such companies may be irregular, insofar as they occur *pursuant to the policy of the company*, they would be considered ordinary and not adjustable.
- Q. What if a company is reorganizing itself into a REIT and is required to pay out accumulated profits in a large dividend as it commences a dividend program. You said before that *initial* dividends would not normally call for adjustment. Would you adjust in this case?

A. In our experience, companies reorganizing themselves into REITS or income trusts often designate this initial required pay-out as a “special” dividend. Precedent exists for adjusting for such dividends under OCC’s adjustment rules. Even if the company did not specifically characterize such a dividend as “special,” OCC may decide to deem them non-ordinary and adjust.

Q. What if a company pays a dividend that is outside of its normal schedule of dividend payments but is required to maintain its tax status as a particular type of organization, such as a REIT?

A. If a company pays a dividend to maintain its tax status that is *not* paid pursuant to the policy of the company, or if the distribution is paid in addition to an ordinary dividend, it will most likely be considered non-ordinary and warrant an adjustment, particularly if the company characterizes the pay-out as a “special” or “one-time.”

Q. Fund share or ETF options have previously been adjusted in response to special dividends declared with respect to component securities of the fund. A notable instance was the Microsoft \$3.00 special dividend in 2004. How will these kinds of distributions be handled?

A. If a fund (ETF, HOLDR, etc.) is making a cash distribution which is identified (in whole or part) by the fund as attributable to a special dividend on a component security, then the appropriate amount of the cash distribution will also be considered a non-ordinary, adjustable distribution. For example, if an ETF is making a \$1.00 quarterly cash distribution, \$.25 of which is attributable to a special dividend on a component security, the OCC will normally consider \$0.25 of the aggregate distribution as a non-ordinary dividend and adjust for \$.25 (\$25.00 per 100 share option).

Q. How will the \$.125 per share adjustment threshold be applied to fund shares (e.g., ETFs)?

A. Pursuant to Interpretation .08 to Article VI, Section 11A of the OCC By-Laws, fund shares can be adjusted for capital gains distributions. OCC may also determine that fund distributions attributable to non-ordinary dividends on component securities of a fund should be considered non-ordinary and call for adjustment. These distributions, considered individually, may be less than \$.125 per share but greater than \$.125 when considered in aggregate. The \$.125 per share adjustment threshold will generally be applied to the aggregate of capital gains and other non-ordinary fund share distributions which have the same ex-date. For example, if a fund identifies a capital gains distribution of \$.05 per share and a distribution of \$.10 attributable to non-ordinary distributions on component securities (itemized singly or in aggregate), OCC will ordinarily make an adjustment of \$.15 (\$15 per 100 share option) to the terms of the option.

Investors are nevertheless reminded that all adjustment decisions are made on a case-by-case basis by OCC, including determinations of distributions as ordinary or non-ordinary.

Q. What if a company declares a non-ordinary dividend which is ex-distribution on the same date that a regular dividend is “ex”? Would these be considered one event or two separate events?

A. Two separate events.

Q. What if a company’s regular quarterly dividend is a “return of capital”? Would that make it a non-ordinary, adjustable dividend?

A. No. Insofar as the dividend is still a regular quarterly dividend, it would not call for an adjustment. Ordinarily, the source of cash to be paid will not be determinative of the adjustment decision. In the

past, however, determinations have been made to adjust for any dividends paid pursuant to a plan of liquidation – even regular dividends of the company included in the plan. OCC may follow this precedent in the future as well for companies undergoing liquidation.

Operational Matters

Q. Will we have to wait until the official declaration date of a dividend before a decision is made about option adjustment?

A. Not necessarily. OCC intends to make adjustment decisions as soon as practicable. OCC may decide it is appropriate to base a decision on the company's press release or similar announcement, in advance of the formal declaration date. Of course, if this is done, the adjustment decision would be appropriately conditional. For example, "if declared and paid as described in the press release, then...."

For example, suppose a company announces its intention in a press release to pay a special dividend, but this dividend is contingent on shareholder approval or other conditions. Until the conditions are met, it will not be officially declared. Under the policy, it will be easy to see if the dividend meets the size criterion: would it yield \$12.50 per contract? If "yes", then OCC may determine and announce it is a non-ordinary dividend if the dividend is approved by shareholders, and investors will immediately know an adjustment will occur if the dividend is actually declared.

Q. If an adjustment is called for, *how* will it be done?

A. There are two methods of adjustment: 1) simply reduce the strike prices by the amount of the dividend. This is the preferred method and will normally be used if the exact dividend amount is known in advance of the ex-date. 2) If the exact dividend amount is not known or if strike reduction would result in a strike of zero or less, then the amount of the dividend will be added as a cash component to the option deliverable. When this is done, an option symbol change normally occurs.

Adjustments will continue to be made on the ex-date for the cash dividend as determined by the appropriate market.

ALL CLEARING MEMBERS ARE REQUESTED TO IMMEDIATELY ADVISE ALL BRANCH OFFICES AND CORRESPONDENTS ON THE ABOVE.

For questions regarding this memo, please email the Investor Education team at options@theocc.com. Clearing Member Firms of OCC may contact Member Services at 1-800-544-6091 or, within Canada, at 1-800-424-7320, or email memberservices@theocc.com.

Exhibit 5

INTERPRETATIVE GUIDANCE ON THE ~~NEW~~ ADJUSTMENT POLICY FOR CASH DIVIDENDS AND DISTRIBUTIONS

Frequently Asked Questions

Disclaimer: ~~The OCC Securities Committee has reviewed the questions and answers presented below and believes they~~ [This Information Memo is intended to](#) provide useful guidelines for how the ~~Securities Committee's~~ [contract](#) adjustment policy has been and will be applied in practice. However, as indicated several times below, all adjustments are individually determined by ~~an adjustment panel of the Securities Committee~~ [OCC](#) on a case-by-case basis, and ~~adjustment panels may make~~ [exceptions may be made](#) to general rules, interpretations, and policies in cases where ~~they determine~~ [OCC determines](#) such exceptions to be appropriate. In no instance are the examples provided below meant to determine in advance the decisions that ~~any adjustment panel~~ [OCC](#) will make in the future.

Overview of the Adjustment Policy

- Q. Who decides if an option adjustment shall be made?
- A. All adjustments are determined on a case-by-case basis by ~~an adjustment panel of the OCC Securities Committee. Each adjustment panel is comprised of two representatives from each exchange that trades the option in question, plus an OCC representative. The OCC member only casts a vote to break a tie. The adjustment panel decides whether an adjustment is called for and how it should be done.~~ [OCC](#).
- Q. What cash dividends call for an adjustment?
- A. “Ordinary” cash dividends do not call for adjustments. An “ordinary” cash dividend is defined as one paid “pursuant to a policy or practice of paying such dividend on a quarterly or other regular basis.” [”](#) A cash dividend which is considered to be *outside* this regular policy [or practice](#) is non-ordinary. Assuming a given dividend is non-ordinary according to this definition, a size test is also imposed: the value of the dividend must be at least \$12.50 per option contract. Thus, if the dividend is non-ordinary and yields at least \$12.50 per option contract, then an adjustment will be made.
- Q. What’s the rationale for this approach?
- A. In general, dividends declared pursuant to a policy or practice of a company can be anticipated and priced into option premiums according to standard models. Non-ordinary dividends declared outside the normal policy of the company cannot be anticipated and integrated into pricing with the same degree of assurance. Thus, when such dividends are announced, if no adjustment is made, the only way a call holder can capture the dividend is through exercise prior to the ex-dividend date. When this happens, significant option time value can be lost and financial losses due to operational error in submitting exercises may occur. The intention is to allow such dividends to accrue to the benefit of call holders without requiring them to exercise their options.
- Q. So any dividend that can’t be *anticipated* will be deemed a non-ordinary dividend?

- A. No. Although such dividends may be unanticipated, the important criterion is whether a dividend is paid pursuant to a program or policy of paying dividends on a quarterly or other regular basis. In some cases, the dividends of a company paid according to such a policy may be highly variable and subject to increases or decreases that some may consider “unanticipated.”¹ Nevertheless, these dividends would not normally be deemed non-ordinary.

Examples: What if...?

- Q. Can you give an example of how the \$12.50 adjustment threshold will work in practice?

- A. In order for an option to be adjusted, the value of the dividend must be at least \$12.50 per option contract. However, if the security on which the dividend is paid underlies option contracts with more than one contract size – e.g., as a result of adjustments for previous splits – then the nonstandard contracts would be adjusted only if the value of the dividend on the nonstandard contract is at least \$12.50 *and* the standard-size contract (normally 100 shares) would also be adjusted.

For example, suppose an option covers 100 shares of stock and a \$0.10 special cash dividend is declared. This dividend, although non-ordinary, would yield only \$10.00 in value for this option contract. Therefore, no adjustment would be made.

A second example: Suppose an option covers 100 shares of stock and another option covers 150 shares of the same stock (as the result of a previous adjustment for a 3 for 2 split). A \$0.10 special dividend is declared. The dividend would yield \$10.00 in value for the 100 share option and \$15.00 for the other. However, in this case, since the standard-size (100 share) contract would not be adjusted (the \$12.50 threshold not being met), the 150 share option would also **not** be adjusted.

A third: Suppose an option covers 100 shares of stock and another option covers 50 shares of the same stock (as a result of a previous adjustment for a 1 for 2 reverse split). A \$0.15 special dividend is declared. The dividend would yield \$15.00 in value for the 100 share option and \$7.50 for the 50 share option. In this case, the standard-size (100 shares) option would be adjusted, but the 50 share option would **not** be adjusted because the value of the dividend per contract would be only \$7.50, and a nonstandard option is not adjusted if the value of the dividend per contract is less than \$12.50 even if the standard-size option is adjusted.

These examples also illustrate that, in general, the \$12.50 threshold is applied at the **option contract** level– **not** per share.¹

Occasionally only nonstandard options exist. In these cases, since there is no standard-size option to refer back to, the application of the \$12.50 per contract threshold will determine whether an adjustment is made.

- Q. Who determines if a cash dividend is “non-ordinary”?

¹ A threshold of .125 **per share** is used in determining contract adjustments for capital gains and other distributions for fund shares, as described in Interpretation .08 to Article VI, Section 11A of the OCC By-Laws.

- A. ~~The adjustment panels of the OCC Securities Committee~~ will make this determination. In doing so, ~~adjustment panels~~OCC may consider the company's characterization of the dividend but the company's characterization is not binding ~~on adjustment panels.~~ Adjustment panels. OCC may take into account other factors deemed appropriate including, but not limited to, the company's stated dividend policy and payment history, prior option adjustments, and factors bearing on the maintenance of a fair and orderly market.
- Q. If a company accelerates the payment of its regular dividends, would such dividends be deemed non-ordinary and occasion an adjustment to options?
- A. No. If ~~the adjustment panel~~OCC determines such accelerated dividends are paid pursuant to the company's regular dividend payment program, they would generally be classified as ordinary, irrespective of the company's characterization of such dividends as "special" or similar designations. The same would be true regardless of whether a single regular dividend or multiple regular dividends are accelerated.
- Q. What if a company that previously paid no dividends initiates a regular dividend program – would the initial dividend be considered "non-ordinary" and therefore adjustable?
- A. No. The initial dividend would be paid pursuant to a policy under which the company intends to pay dividends on a regular basis. Therefore, it would not be deemed "non-ordinary" and adjustable.
- Q. What if a company announced a dramatic increase in a regular dividend? For example, what if a company's last quarterly dividend was \$.20 and the current quarterly dividend was bumped to \$1.00 – wouldn't that be a "non-ordinary", one-time event that would call for an adjustment?
- A. No – most likely not. As mentioned earlier, we would start with the company's description of its dividend. If the company has a quarterly dividend program and the company says this quarter's dividend is \$1.00, then we anticipate the ~~adjustment panel would deem the~~ dividend would be deemed to be ordinary and not adjustable. However, as mentioned, the decisions of ~~the adjustment panels~~OCC are always made on a case-by-case basis, in light of the circumstances and facts as understood at the time.
- Q. What if a company declares a "variable dividend"? Does it matter if the dividend is paid in addition to a regular dividend? Since the value of the dividend changes from dividend to dividend would it be considered a "non-ordinary" dividend?
- A. If a company has a policy or practice of paying a "variable dividend" on a regular interval, the variable dividend generally would be considered an ordinary dividend and not adjustable, even if on occasion no variable dividend is paid because a company-established threshold for paying the variable dividend is not met and even if the amount of the dividend may drastically increase or decrease based on such company-established thresholds.
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Operational Matters

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