

Required fields are shown with yellow backgrounds and asterisks.

Filing by Options Clearing Corporation
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="checkbox"/> Date Expires * <input type="text"/>			Rule		
			<input 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) * <input type="checkbox"/> Section 806(e)(2) * <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed Rule Change Concerning a Proposed Capital Management Policy That Would Support The Options Clearing Corporation's Function as a Systemically Important Financial Market Utility

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 * Mark Last Name * Brown
 Title * Director, Senior Counsel
 E-mail * mcbrown@theocc.com
 Telephone * (312) 322-1801 Fax (312) 322-6280

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

(Title *)
Vice President, Regulatory Filings

Date 08/09/2019
By Justin W. Byrne
(Name *)

Justin Byrne, jbyrne@theocc.com

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

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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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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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 Advance 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, security-based swap submission, or advance notice 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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Exhibit Sent As Paper Document

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 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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 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

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I 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

This proposed rule change by The Options Clearing Corporation (“OCC”) would adopt a Capital Management Policy, which includes OCC’s plan to replenish its capital in the event it falls close to or below its target capital (as defined below, “Replenishment Plan”). The Capital Management Policy is included in confidential Exhibit 5a of the filing. In order to implement aspects of the new Capital Management Policy, the proposed rule change would also amend the following governing documents: OCC’s Rules, which can be found in Exhibit 5b, and OCC’s schedule of fees, which can be found in Exhibit 5c. Material proposed to be added to OCC’s Rules and schedule of fees, as currently in effect, 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 OCC By-Laws and Rules.¹

Item 2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved for filing with the Securities and Exchange Commission (“SEC”) by OCC’s Board of Directors (“Board”) at meetings held on May 13, 2019 and July 17, 2019.

Questions should be addressed to Mark C. Brown, Director & Senior Counsel, at (312) 322-1801.

¹ OCC’s By-Laws and Rules can be found on OCC’s public website: <http://optionsclearing.com/about/publications/bylaws.jsp>.

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

A. Purpose

OCC is proposing to adopt a new Capital Management Policy and to make amendments to OCC’s Rules and schedule of fees necessary to implement the new Capital Management Policy. The main features of the Capital Management Policy and the related changes are: (a) to determine the amount of Equity sufficient for OCC to meet its regulatory obligations and to serve market participants and the public interest (as defined below, “Target Capital Requirement”), (b) to monitor Equity² and liquid net assets funded by equity (“LNAFBE”)³ levels to help ensure adequate financial resources are available to meet general business obligations; and (c) to manage Equity levels, including by (i) adjusting OCC’s fee schedule (as appropriate) and (ii) establishing a plan for accessing additional capital should OCC’s Equity fall below certain thresholds (“Replenishment Plan”).

The Replenishment Plan would: (i) provide that should OCC’s Equity fall below 110% of the Target Capital Requirement (as defined by the Capital Management Policy, “Early Warning”), Management would recommend to the Board whether to implement a fee increase in an amount the Board determines necessary and appropriate to raise additional Equity; (ii) provide that should OCC’s Equity fall below 90% of the Target Capital Requirement or fall

² The Capital Management Policy would define “Equity” as shareholders’ equity as shown on OCC’s Statement of Financial Condition.

³ The Capital Management Policy would define “LNAFBE” as the level of cash and cash equivalents, no greater than Equity, less any approved adjustments (i.e., agency-related liabilities such as Section 31 fees held by OCC).

below the Target Capital Requirement for a period of 90 consecutive days (as defined in the Capital Management Policy, “Trigger Event”), OCC would contribute the funds held under The Options Clearing Corporation Executive Deferred Compensation Plan Trust to the extent that such funds are (x) deposited on or after January 1, 2020 in respect of its Executive Deferred Compensation Plan (“EDCP”) and (y) in excess of amounts necessary to pay for benefits accrued and vested under the EDCP at such time (such funds are defined in Chapter 1 of the proposed changes to OCC’s Rules as the “EDCP Unvested Balance”); and (iii) provide that should contribution of the EDCP Unvested Balance fail to cure the Trigger Event, or if a further Trigger Event occurs, OCC will charge an Operational Loss Fee (as defined below) in equal shares to the Clearing Members.

OCC is also hereby proposing to create a layer of skin-in-the-game resources in the event of default losses. Specifically, OCC is amending Rule 1006 to state that: first, any current or retained earnings above 110% of the Target Capital Requirement will be used to offset default losses after applying a defaulting Clearing Member’s margin and Clearing Fund contributions, and next, any remaining loss will be charged pro rata to (a) non-defaulting Clearing Members’ Clearing Fund contributions, and (b) the aggregate value of the EDCP Unvested Balance.

Proposed Changes

OCC proposes to adopt a Capital Management Policy and make conforming changes to OCC’s Rules and schedule of fees necessary to implement the Capital Management Policy, as described below, to formalize its policy to identify, monitor, and manage OCC’s capital needs to

promote compliance SEC Rule 17Ad-22(e)(15).⁴ In formulating the Capital Management Policy, OCC also has considered the Commodity Futures Trading Commission's ("CFTC") regulatory capital requirements for OCC as a DCO, as set forth in CFTC Rule 39.11(a)(2).⁵

Target Capital Requirement

The proposed Capital Management Policy would explain how OCC would annually determine the Target Capital Requirement. The proposed amendment to Chapter 1 of OCC's Rules would define OCC's Target Capital Requirement as the minimum level of Equity recommended by Management and approved by the Board to ensure compliance with applicable regulatory requirements and to keep such additional amount the Board may approve for capital expenditures. Resources held to meet OCC's Target Capital Requirement would be in addition to OCC's resources to cover participant defaults. OCC considers the LNAFBE it holds, limited to cash and cash equivalents, to be high quality and sufficiently liquid to allow OCC to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions. The Capital Management Policy would also explain that, on an annual basis, OCC's Chief Financial Officer ("CFO") would recommend a Target Capital Requirement for the coming year. Management would review the CFO's report and, as appropriate, recommend the Target Capital Requirement to the Compensation and Performance Committee ("CPC"). The CPC would review, and as appropriate, recommend the proposal to the Board of Directors, which would review, and as appropriate, approve the Target Capital Requirement.

⁴ 17 CFR 240.17Ad-22(e)(15).

⁵ 17 CFR 39.11(a)(2).

SEC Rule 17Ad-22(e)(15)

OCC would set its Target Capital Requirement at a level sufficient to maintain LNAFBE at least equal to the greatest of three amounts: (x) six-months' current operating expenses; (y) the amount determined by the Board to be sufficient to ensure a recovery or orderly wind-down of critical operations and services (the "RWD Amount"); and (z) the amount determined by the Board to be sufficient for OCC to continue operations and services as a going concern if general business losses materialize (the "Potential Loss Amount").

The RWD Amount would be the amount recommended by Management on an annual basis in accordance with OCC's Capital Management Procedure⁶ and, as appropriate, approved by the Board. OCC's Recovery and Orderly Wind-Down Plan ("RWD Plan") identifies critical services and the length of time the Board has determined it would take to recover or wind-down.⁷ Pursuant to the Capital Management Procedure, Management would use the assumptions in the RWD Plan to determine the RWD Amount, which is the cost to maintain those critical services over the prescribed recovery or wind-down period, assuming costs remain at historical levels. The calculation of the Potential Loss Amount would be based on Management's annual

⁶ The Capital Management Procedure would be a cross-department internal procedure that provides direction on how those departments shall execute their responsibilities under the proposed Capital Management Policy. OCC has included a draft of the Capital Management Procedure OCC intends to implement if the Commission approves the proposed Capital Management Policy in confidential Exhibit 3a, for reference. The documents in Exhibit 3 are being provided as supplemental information to the filing and would not constitute part of OCC's rules, which have been provided in Exhibit 5.

⁷ Securities Exchange Act Release No. 83918 (Aug. 23, 2018), 83 FR 44091 (Aug. 29, 2018) (SR-OCC-2017-021).

determination, pursuant to the Capital Management Procedure, of the amount of capital required to address OCC's operational risks. OCC quantifies the amount of capital to be held against OCC's operational risks by analyzing and aggregating potential losses from individual operational risk scenarios, aggregating the loss events, and conducting loss modeling at or above the 99% confidence level.⁸

CFTC Rule 39.11(a)(2)

The Capital Management Policy would also specify that when setting the Target Capital Requirement the Board will consider OCC's projected rolling twelve-months' operating expenses as required by CFTC Rule 39.11(a)(2).⁹ For the avoidance of doubt, the Board is not required to set the Target Capital Requirement at the level of twelve-months' operating expenses.¹⁰ Factors that OCC would consider when considering twelve-months' operating expenses include, but are not limited to: (i) OCC's obligations and responsibilities as a systemically important financial utility ("SIFMU"), (ii) OCC's obligations as a derivative clearing organization under CFTC Rule 39.11(a)(2), (iii) the types of financial resources the

⁸ Pursuant to the Capital Management Procedure, OCC's Enterprise Risk Management department ("ERM") would quantify the Potential Loss Amount on an annual basis and provide that information to OCC's Chief Financial Officer ("CFO") as an input to the CFO's recommendation to Management for the Target Capital Requirement. OCC has included ERM's process and methodology for quantifying the Potential Loss Amount from 2015 through present in confidential Exhibit 3b.

⁹ 17 CFR 39.11(a)(2).

¹⁰ Financial resources available to meet CFTC Rule 39.11(a)(2) are not limited to LNAFBE, and include OCC's own capital or any other form of financial resources deemed acceptable by the CFTC. See 17 CFR 39.11(b)(2).

CFTC allows OCC to count towards the twelve-month requirement, and (iv) any conditions on the use of those resources the CFTC has imposed.

Excess Equity for Capital Expenditures

In addition, the Capital Management Policy would provide that OCC may increase its Target Capital Requirement by an amount to be retained for capital expenditures following a recommendation by Management and Board approval. From time to time Management may identify necessary capital investments in OCC's technology, facilities or other business tangible or intangible assets to enhance its effectiveness, efficiency or compliance posture. The Board would (a) determine if the capital needs are necessary and appropriate and, if so, (b) determine whether to increase the Target Capital Requirement or whether the amount can be accumulated as an amount in excess of the Target Capital Requirement. In case of the latter, capital in excess of 110% of the Target Capital Requirement would be available as skin in the game.¹¹ Factors the Board would consider in making this determination include, but are not limited to, the amount of funding required, how much Equity is proposed to be retained, the potential impact of the investment on OCC's operation, and the duration of time over which funds would be accumulated.

Monitoring Equity

The proposed Capital Management Policy would describe how Management reviews periodic analyses of LNAFBE, including projecting future volume, expenses, cash flows, capital needs and other factors to help ensure adequate financial resources are available to meet general

¹¹ See OCC Rule 1006(e), as proposed in the changes attached as Exhibit 5b hereto.

business obligations. Those other factors would include, but not be limited to: (i) the level of existing prefunded corporate resources, (ii) the ability to borrow under an existing OCC line of credit; (iii) the ability to make a claim under certain insurance policies; (iv) OCC's tax rates and liabilities; and (v) unfunded obligations. The Capital Management Policy would further provide that Management would review and analysis of Equity at least monthly to identify whether an Early Warning or Trigger Event had occurred since the last review or was likely to occur before the next review. The Capital Management Policy would provide that the Board of Directors is notified promptly if those triggers are breached. To the extent OCC suffers a catastrophic or sizable loss intra-month, and such loss amount is known or can reasonably be estimated, Management would review a forecast of the impact on Equity and, should that forecast demonstrate that Equity has fallen below the Early Warning or Trigger Event, Management shall promptly notify the Board.

Managing Equity

The Capital Management Policy would describe the actions OCC may take to manage its current or future levels of Equity. As described below, the primary forms of capital management actions would include: (i) changes to OCC's fees or other tools to change costs for market participants; (ii) the Replenishment Plan; and (iii) use of current and retained earnings greater than 100% of the Target Capital Requirement to cover losses caused by the default of a Clearing Member.

Fee Schedule

The Capital Management Policy would provide that clearing fees will be based on the sum of OCC's annual budgeted/forecasted operating expenses, a defined operating margin and OCC's capital needs, divided by forecasted contract sides. On an annual basis, Management would review the operating margin level considering historical volume variance and other relevant factors, including but not limited to variance in interest rates and OCC's operating expenses. Management would recommend to the CPC, to which the Board has delegated authority for review and approval of changes to OCC's fees pursuant to the CPC's charter, whether changes to OCC's defined operating margin should be made.

The Capital Management Policy would provide that on a quarterly basis, Management would review its fee schedule and, considering factors including, but not limited to projected operating expenses, projected volumes, anticipated cash flows, and capital needs, recommend to the Board, or a Committee to which the Board delegated authority, whether a fee increase, decrease or waiver should be made in accordance with Article IX, Section 9 of OCC's By-Laws.¹²

The Capital Management Policy would provide that if OCC's Equity is above, in the aggregate, 110% of the Target Capital Requirement and any amount of excess Equity the Board approves for capital expenditures, the Board of Directors, or a Committee the Board has delegated, may use such tools as it considers appropriate to lower costs for Clearing Members, providing the Board believes doing so would likely not lower OCC's Equity below the Early

¹² OCC By-Law Art. IX, § 9.

Warning. Such tools would include lowering fees, a fee holiday or a refund. The Capital Management Policy would further provide that if OCC charges the Operational Loss Fee, as described below, and its Equity thereafter returns to a level at which the Board approves use of such tools, OCC would first employ tools to lower the cost of Clearing Member participation in equal share up to the amount of the Operational Loss Fee charged. This provision would help ensure that in the event OCC must charge an Operational Loss Fee to Clearing Members in equal shares, Clearing Members will recover the amount charged in equal shares up to the amount charged.

Replenishment Plan

Early Warning

The Capital Management Policy would provide that in the event OCC's Equity breaches the Early Warning threshold, or 110% of the Target Capital Requirement, Management would recommend to the Board whether to implement a fee increase in an amount the Board determines necessary and appropriate to raise additional Equity.¹³ The recommendation whether to implement a fee increase would be informed by several factors including, but not limited to, (i) the facts, circumstances and root cause of a decrease in Equity below the Early Warning threshold; (ii) the time it would take to implement a fee increase, inclusive of securing Board and

¹³ Pursuant to the Capital Management Procedure, Management's recommendation would be informed by the clearing fee amount calculated pursuant to the Fee Schedule Calculation Procedure, which provides direction to OCC's Finance department on how to calculate the necessary fee level pursuant to the requirements of the Capital Management Policy. OCC has included a draft of the Fee Schedule Calculation Procedure it intends to implement if the Commission approves the proposed Capital Management Policy in confidential Exhibit 3c, for reference.

SEC approval as required for those actions; (iii) the anticipated time a fee increase would take to accumulate the needed revenue based on projected contract volume, operational expenses and interest income over that time period; and (iv) the potential of a Trigger Event.

The Early Warning is intended to signal to OCC that its Equity is “close to” the Target Capital Requirement, as directed by Rule 17Ad22(e)(15)(iii). The Early Warning threshold is set at 110% because based on an analysis of OCC’s projected revenue and expenses,¹⁴ a 10% premium of the Target Capital Requirement represents approximately two months earnings based on current and projected data,¹⁵ which OCC believes would provide sufficient time for Management and the Board to respond. The Capital Management Policy would provide that to the extent Management determines, during its annual review of the Capital Management Policy, that there is a change in the estimated length of time to accumulate approximately 10% of the Target Capital Requirement, Management will consider whether to recommend changes to the Early Warning and Trigger Event thresholds.

Trigger Event

The Capital Management Policy would also define a Trigger Event to be when OCC’s Equity falls below 90% of the Target Capital Requirement or remains below the Target Capital Requirement for ninety consecutive calendar days. OCC is proposing the 90% threshold based on its analysis showing that two-months’ earnings represents approximately a 10% percent

¹⁴ OCC has included the analysis in confidential Exhibit 3d.

¹⁵ OCC defines earnings for purposes of this analysis as Operating Income, or revenue less expenses before taxes. Earnings does not include interest pass through earned on the cash deposits.

premium of the Target Capital Requirement, discussed above. OCC believes, based on that analysis, that Equity below the 90% threshold would be a sign that corrective action more significant and with a more immediate impact than increasing fees should be taken to increase OCC's Equity Capital. OCC also set another Trigger Event at a threshold of Equity above 90% but below the Target Capital Requirement for a period of 90 consecutive days based on the time necessary for a clearing fee change to have an impact and to exhaust remedies prior to charging the Operational Loss Fee. This timeframe takes into account 30-day advance notice to Clearing Members to implement the fee change, implementation on the first of the month to accommodate changes to Clearing Members' systems, and, as discussed above, the approximately two-month period required to accumulate approximately 10% of the Target Capital Requirement. Based on the above-referenced analysis, OCC believes that, in the event a fee increase resulting from an Early Warning could not increase OCC's Equity above the Target Capital Requirement within 90 days, it would likewise indicate that corrective action in the form of a fee increase would be insufficient.

If a Trigger Event occurs, OCC would first contribute the EDCP Unvested Balance to cure the loss. OCC believes that contributing the EDCP Unvested Balance to cover operational losses would align Management's interests with OCC's interest in maintaining required regulatory capital and operating OCC in a prudent manner. If application of the EDCP Unvested Balance brings OCC's Equity to within the Early Warning threshold (between 90% and 110% of the Target Capital Requirement), OCC would act to raise fees, in accordance with the Capital

Management Policy's direction for OCC action in the event of an Early Warning, as discussed above.

If, however, OCC Equity remains below 90% of the Target Capital Requirement after applying the EDCP Unvested Balance, or if a subsequent Trigger Event occurs after applying all of the available EDCP Unvested Balance, OCC would charge an "Operational Loss Fee," up to the maximum Operational Loss Fee identified in OCC's schedule of fees as described below, in equal shares to each Clearing Member, payable on five business days' notice, to raise additional capital. A further Trigger Event based on Equity falling below the Target Capital Requirement for a period of 90 consecutive calendar days would be measured beginning on the date OCC applies the EDCP Unvested Balance. OCC chose five business days to allow Clearing Members subject to the fee to assess its impact on their liquidity and take appropriate actions. OCC did not select a shorter period, such as the two-day period in which Clearing Members must fund Clearing Fund contributions,¹⁶ because that shorter period is necessary for settlement obligations, which is not the case for the Operational Loss Fee.

OCC would calculate the maximum aggregate Operational Loss Fee based on the RWD Amount, which would ensure that OCC would have sufficient capital to facilitate a recovery or an orderly wind-down in the event of an operational loss. In order to account for OCC's tax liability for retaining the Operational Loss Fee as earnings, OCC may apply a tax gross-up to the RWD Amount ("Adjusted RWD Amount") depending on whether the operational loss that caused Equity to fall below the Trigger Event threshold is tax deductible. The Capital

¹⁶ See, e.g., OCC Rule 1006(h)(A).

Management Policy would provide that, in the event less than the full amount of the maximum Operational Loss Fee is needed to bring OCC's Equity to 110% of the Target Capital Requirement, only that amount will be charged. If OCC charges less than the maximum Operational Loss Fee, any remaining amount up to the maximum Operational Loss Fee will remain available for subsequent Trigger Events, provided that the sum of all Operational Loss Fees that have not been refunded shall not exceed the maximum Operational Loss Fee.

In the event that OCC employs a refund to Clearing Members in equal shares up to the amount of Operational Loss Fees previously charged, the amount of the maximum Operational Loss Fee available for subsequent Trigger Events would include the amount refunded. By allowing OCC to charge up to the maximum Operational Loss Fee – less any amounts previously charged and not refunded – should subsequent Trigger Events arise, the proposed Capital Management Policy would help maintain the continued ability of OCC to access replenishment capital should multiple Trigger Events occur in quick succession before OCC could implement a new or modified replenishment plan. In the unlikely event that the sum of all Operational Loss Fees charged exhausts the maximum Operational Loss Fee, the Board would need to convene to develop a new replenishment plan, subject to regulatory approval.

In formulating the Capital Management Policy OCC considered other means of allocating the Operational Loss Fee among OCC's Clearing Members, including allocating the cost to Clearing Members proportionally based on measures such as contract volume or risk profile, as evidenced by a Clearing Member's margin or clearing fund contributions. As part of its analysis for determining the Potential Loss Amount, OCC has identified individual operational risk

scenarios that could result in an operational loss, including such risks as internal fraud, a cyber-attack on OCC's systems, employee lawsuits and damage to its facilities. The operational risks OCC identified are separate and distinct from the credit risk that Clearing Members present to OCC, which OCC manages through margin and Clearing Fund contributions and OCC's Default Management Procedures. OCC has not observed any correlation between the annual quantification of these risks and contract volume or Clearing Member credit risk. OCC has included a comparison of its quantification of these risks to contract volume and the amount of Clearing Fund deposits in confidential Exhibit 3e. OCC believes that charging the Operational Loss Fee in equal shares is preferable because it equally mutualizes risk of operational loss amongst the firms that use OCC's services. OCC believes that such mutualization is preferable because all Clearing Members benefit from equal access to the clearance and settlement services provided by OCC, irrespective of how much they choose to use it. Such access provides the benefit of credit and liquidity risk intermediation and associated regulatory capital benefits.

To implement the Operational Loss Fee, OCC is proposing an amendment to its schedule of fees that would provide a formula for calculating the maximum Operational Loss Fee OCC could charge, attached to this rule filing as Exhibit 5c. The amendment to OCC's fee schedule would express the Operational Loss Fee as a fraction, the numerator of which would be the Adjusted RWD Amount less the aggregate amount of Operational Loss Fees that OCC has previously charged that are not refunded at the time of calculation, and the denominator of which would be the number of Clearing Members at the time OCC charges the Operational Loss Fee. OCC would also include in the schedule of fees the conditions that would trigger the Operational

Loss Fee to be charged. OCC proposes to amend its schedule of fees now: (1) to increase transparency about Clearing Members' maximum contingent obligations under the Capital Management Policy in the unlikely event OCC's Equity falls below the Trigger Event thresholds, (2) to promote operational efficiency so that OCC can access replenishment capital expeditiously if a Trigger Event occurs, and (3) to reduce the likelihood that OCC would be required to file an advance notice or proposed rule change prior to charging the Operational Loss Fee, thereby accelerating the time frame in which OCC could access replenishment capital if losses materialize that threaten OCC's ability to continue operations and services as a going concern.

To effectuate the Capital Management Policy, OCC also proposes to amend OCC Rule 209 so that the Operational Loss Fee would be payable within five business days. OCC Rule 209 currently provides that all charges and fees owed by a Clearing Member to OCC shall be due and payable within five business days following the end of each calendar month. The proposed amendment would add an exception for payment of the Operational Loss Fee, which would be due and payable within five business days following OCC's notice to the Clearing Member that OCC had charged the Operational Loss Fee. The amendment to OCC Rule 209 would ensure that OCC can timely respond to operational losses that threaten OCC's ability to continue operations and services as a going concern. OCC would also amend Rule 101 to define "Operational Loss Fee" to mean the fee that would be charged to Clearing Members in equal shares, up to the maximum amount identified in OCC's schedule of fees less the aggregate amount of all such Operational Loss Fees previously charged and not yet refunded at the time of

calculation, if, after contributing the entire EDCP Unvested Balance, Equity remains below the levels identified in OCC's schedule of fees.

Use of Current and Retained Earnings for Default Losses

The Capital Management Policy would provide that in the event of a clearing member default, OCC would use Equity above 110% of the Target Capital Requirement to offset any loss after applying the margin assets and Clearing Fund contribution of the defaulting Clearing Member. In addition, the Capital Management Policy would provide that OCC would contribute the EDCP Unvested Balance on a pro rata basis with non-defaulting Clearing Member contributions to the Clearing Fund to satisfy any remaining balance after applying the margin assets and Clearing Fund contribution of the defaulting Clearing Member and any OCC Equity above 110% of the Target Capital Requirement.

To implement this aspect of the Capital Management Policy, OCC would also amend OCC Rule 1006 to adjust the default waterfall and the allocation of Clearing Fund losses accordingly. Rule 1006(e), which currently governs use of retained earnings to cover certain losses prior to charging those losses to the Clearing Fund under Rule 1006(b) (i.e., losses caused by Clearing Member defaults) and Rule 1006(c) (i.e., losses caused by bank and clearing organization failures to perform obligations to OCC not recoverable under Rule 1006(b)), would be divided into subsections numbered Rule 1006(e)(i) through (e)(iii). OCC would add Rule 1006(e)(i) to require OCC to charge a loss or deficiency associated with a Clearing Member default to OCC's current and retained earnings that are greater than 110% of its Target Capital Requirement (which would be defined as above in Rule 101) prior to charging the Clearing Fund

and the EDCP Unvested Balance under Rule 1006(b), as discussed below. Rule 1006(e)(ii) would contain the current text of the first two sentences of the current Rule 1006(e), updating the cross-reference therein to limit the scope to the use of earnings to cover losses caused by bank or clearing organization failures before charging the Clearing Fund under Rule 1006(c). Thus, OCC would retain the option, but not the obligation, to use current or retained earnings to cover such bank or clearing organization losses, for which the Rules currently provide. Rule 1006(e)(iii) would contain the last two sentences of Rule 1006(e) currently in effect, which concern (1) the meaning of “current earnings” and (2) provide for a Clearing Member’s continuing liability for any deficiencies in that member’s Clearing Fund contribution that OCC covers with OCC’s current and retained earnings. With respect to the latter, OCC would amend Rule 1006(e)(iii) to remove reference to OCC’s “elect[ion]” to charge the deficiency to current or retained earnings so that such liability for Clearing Fund contribution deficiencies remains if OCC is obligated to charge current and retained earnings over 110% of the Target Capital Requirement under proposed Rule 1006(e)(i).

OCC also proposes to amend Rule 1006(b) to provide that OCC would apply the EDCP Unvested Balance (which would be defined as above in Rule 101) on a pro rata basis with the Clearing Fund contributions of non-defaulting Clearing Members to satisfy any remaining balance after applying the defaulting Clearing Member’s margin and Clearing Fund contribution and OCC’s current and retained earnings greater than 110% of its Target Capital Requirement. By amendment to Rule 1006(b)(iii), the EDCP Unvested Balance’s proportion of the loss would be calculated by a fraction, the numerator of which would be EDCP Unvested Balance and the

denominator of which would be the sum of the EDCP Unvested Balance and the balance of all non-defaulting Clearing Members' Clearing Fund contributions.¹⁷ Pursuant to proposed amendments to Rule 1006(b) and (e), such contribution of current and retained earnings would be made after applying the defaulting Clearing Member's margin and Clearing Fund contribution, but before charging that loss or deficiency proportionately to the Clearing Fund.

In addition, a proposed amendment to Rule 1006(g), concerning, among other things, the allocation of funds received under the Limited Cross-Guaranty Agreement between OCC and certain other clearing agencies in the event of the default of a common member, would provide that any funds received under that agreement by OCC with respect to losses incurred by OCC would be credited in accordance with Rule 1010. Rule 1010 concerns recovery of losses charged to non-defaulting Clearing Members and provides that any recovery of a loss charged proportionately against the contributions of those Clearing Members shall be paid to each Clearing Member charged in proportion to the amounts charged. The amendment to Rule 1006(g) would establish that the non-defaulting Clearing Members whose Clearing Fund contributions were charged would recover proportional to the amount their contributions were charged up to the amount their Clearing Fund contributions were charged. The recovery

¹⁷ Because Rule 1006 has separate provisions addressing use of the Clearing Fund to cover losses arising from a Clearing Member default (Rule 1006(b)) and losses arising from bank or clearing organization failures (Rule 1006(c)), certain changes would be made to the rules to limit the changes for purposes of effecting the Capital Management Policy to the use of current and retained earnings and the EDCP Unvested Balance in the event of a Clearing Member default. Specifically, the proposed changes to OCC's rules would eliminate Interpretations and Policies .01 and establishes the respective allocation provisions in Rule 1006(b)(iii) and (c)(iii). No substantive changes to Rule 1006(c) are intended.

proportional to the amount charged to the EDCP Unvested Balance would be available for return to the EDCP.

Market Participant Outreach

In developing the proposed plan for replenishment capital OCC also sought input from market participants. On May 1, 2019, OCC Management presented to the SIFMA options committee and the Securities Traders Association on the following topics: (1) how OCC will set fees, (2) how OCC determines its operating margin, (3) OCC's proposal to add a working capital line of credit, (4) the triggers and thresholds for action, and (5) the amount that a replenishment plan would need to raise. A discussion ensued with participants from the SIFMA options committee concerning how OCC would set the Target Capital Requirement.

On May 28, 2019, OCC provided Clearing Members with a notice concerning the details of the Capital Management Policy.¹⁸ OCC has included a copy of the letter in Exhibit 3f. OCC sent the same letter to the participant exchanges (including the non-shareholder exchanges). Either calls or meetings were held with non-shareholder exchanges to discuss the proposed Capital Management Policy and allow them to raise questions or concerns. No such concerns were expressed.

¹⁸ The letter references a "one-time" Operational Loss Fee, consistent with the proposed Capital Management Policy as approved by the Board at its May 13, 2019 meeting. As discussed below, the Board approved a revision to the proposal at its July 17, 2019 meeting to allow OCC to retain the ability to charge the Operational Loss Fee for subsequent Trigger Events up to the maximum Operational Loss Fee, less any Operational Loss Fees previously charged and not yet refunded.

OCC conducted calls open to all Clearing Members on May 31, 2019 to discuss the proposal. The calls were attended by approximately 140 participants representing 40 organizations. No concerns with the proposed Capital Management Policy were expressed. Discussion ensued about the mechanics of the Operational Loss Fee, alternatives to equal allocation of the Operational Loss Fee among Clearing Members that OCC considered and the likelihood that OCC would need to charge the Operational Loss Fee. Management has also met with individual Clearing Members and other market participants to discuss the proposed Capital Management Policy.

After the Board meeting on July 17, 2019, OCC conducted a call with the SIFMA options committee to discuss certain features of the Capital Management Policy proposal approved at that meeting, including: (a) if OCC charges the Operational Loss Fee and its Equity thereafter returns to a level at which the Board approves use of tools to lower the cost of participation for Clearing Members, OCC would first employ tools to lower the Clearing Members' costs in equal share up to the amount of the Operational Loss Fee charged; and (b) if OCC charges the Operational Loss Fee, OCC would retain the ability to charge Operational Loss Fees for subsequent Trigger Events up to the maximum Operational Loss Fee, less any Operational Loss Fees previously charged and not yet refunded.

OCC has included a summary of the questions raised and Management's responses during the above referenced calls and meetings in Exhibit 3g.

B. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934 (“Exchange Act”) and the rules and regulations thereunder. In particular, OCC believes that the Capital Management Policy is consistent with Section 17A(b)(3)(F) of the Exchange Act¹⁹ and Rule 17Ad-22(e)(15)²⁰ thereunder for the reasons described below. In addition, OCC believes adding the Operational Loss Fee to its schedule of fees is consistent with Section 17A(b)(3)(D) of the Exchange Act,²¹ and that the changes to OCC’s Rules to effectuate the use of current and retained earnings in excess of 110% of the Target Capital Requirement and the EDCP Unvested Balance to cover default losses is consistent with Rule 17Ad-22(e)(4).²²

Section 17A(b)(3)(F) of the Exchange Act requires, in part, that the rules of OCC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest. The Capital Management Policy is designed to ensure that OCC holds sufficient LNAFBE such that it could continue to promptly and accurately clear and settle securities transactions even if it suffered significant operational losses. In other words, holding sufficient LNAFBE would help OCC to absorb such operational losses and avoid a disruption that could negatively impact OCC’s prompt and accurate clearing and settlement of transactions. By limiting the financial resources OCC counts toward its

¹⁹ 15 U.S.C. 78q-1(b)(3)(F).

²⁰ 17 CFR 240.17Ad-22(e)(15).

²¹ 15 U.S.C. 78q-1(b)(3)(D).

²² 17 CFR 240.17Ad-22(e)(4).

LNAFBE to cash and cash equivalents, the Capital Management Policy ensures those resources would be high quality and sufficiently liquid to allow OCC to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions. OCC would protect the interests of investors and the general public by establishing the Capital Management Policy, which is designed to ensure that such losses would not result in a failure or disruption of a SIFMU, as OCC is designated by the Financial Stability Oversight Council (“FSOC”) pursuant to the Payment, Clearing and Settlement Supervision Act.²³ FSOC has concluded that a failure or disruption at OCC would negatively affect significant dollar value and volume transactions in the options and futures markets, impose material losses on OCC counterparties and create liquidity and credit problems for financial institutions and others that rely on the markets OCC serves, and that such credit and liquidity problems would spread quickly and broadly among financial institutions and other markets.²⁴ Accordingly, FSOC determined that a failure or disruption at OCC could threaten the stability of the U.S. financial system.²⁵ Therefore, OCC believes that the Capital Management Policy, which is reasonably designed to ensure that OCC has sufficient LNAFBE to continue operations in the event of an

²³ 12 U.S.C. 5463.

²⁴ FSOC Annual Report, Appendix A, at 187 (2012), available at <https://www.treasury.gov/initiatives/fsoc/Documents/2012%20Appendix%20A%20Designation%20of%20Systemically%20Important%20Market%20Utilities.pdf>

²⁵ Id.

operational loss, is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act by protecting investors and the public interest.²⁶

Rule 17Ad-22(e)(15) under the Exchange Act requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor and manage OCC's general business risk and hold sufficient LNAFBE to cover potential general business losses so that OCC can continue operations and services as a going concern if those losses materialize.²⁷ The Capital Management Policy and amendments to OCC's Rules and Fee Schedule are designed for consistency with the requirements of Rule 17Ad-22(e)(15) for the reasons described below.

Rule 17Ad-22(e)(15)(i) requires, in part, that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage OCC's general business risk, including by determining the amount of LNAFBE based upon OCC's general business risk profile and the length of time required to achieve recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken.²⁸ Pursuant to the Capital Management Policy, OCC would set its Target Capital Requirement at a level sufficient to maintain LNAFBE at least equal to the greater of (x) six months' of OCC's current operating expenses; (y) the amount determined by the Board to be sufficient to ensure a recovery or orderly wind-down of critical operations and services, plus any excess Equity

²⁶ 15 U.S.C. 78q-1(b)(3)(F).

²⁷ 17 CFR 240.17Ad-22(e)(15).

²⁸ 17 CFR 240.17Ad-22(e)(15)(i).

Management recommends, and the Board approves, to be retained for capital expenditures; and (z) the amount determined by the Board to be sufficient for OCC to continue operations and services as a going concern if general business losses materialize. By providing that OCC would set its Target Capital Requirement no less than the greatest of these three amounts, OCC believes the Capital Management Policy is consistent with Rule 17Ad-22(e)(15)(i).

The Capital Management Policy is also designed to identify, monitor and manage OCC's general business risk, consistent with Rule 17Ad-22(e)(15), by providing that OCC's Board would review and approve the Target Capital Requirement annually. The Capital Management Policy is also designed to monitor OCC's general business risk by providing that OCC would perform an analysis of its Equity on at least a monthly basis to ensure that OCC's Equity has not fallen below the Early Warning or Trigger Event thresholds and is not likely to fall below those thresholds prior to the next review. The Capital Management Policy's requirement that Management report on the firm's LNAFBE relative to the Early Warning and Trigger Event thresholds at each regularly scheduled Board meeting is also designed to identify, monitor, and manage OCC's general business risk. The Capital Management Policy's requirement that the Board be promptly notified in the event of an Early Warning or Trigger Event is also reasonably designed to ensure that OCC can act quickly to ensure OCC's compliance with the LNAFBE-holding requirements of Rule 17Ad-22(e)(15).

Rule 17Ad-22(e)(15) further requires, in part, that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to hold sufficient LNAFBE to cover potential general business losses so that OCC can continue operations and services as a

going concern if those losses materialize, including by holding LNAFBE equal to the greater of either (x) six months of OCC's current operating expenses, or (y) the amount determined by the Board to be sufficient to ensure a recovery or orderly wind-down of critical operations and services.²⁹ As described above, the Capital Management Policy would provide that OCC sets its Target Capital Requirement at a level sufficient to maintain LNAFBE in an amount that is the greatest of three amounts, which include six months' operating expenses, an amount determined by the Board to be sufficient to ensure recovery or orderly wind-down, and an amount determined by the Board to be sufficient for OCC to continue operations and services as a going concern if general business losses materialize. Therefore, the Capital Management Policy is designed to ensure that OCC maintains, at a minimum, LNAFBE equal to the greater of the two amounts required by Rule 17Ad-22(e)(15)(ii). By also including an amount determined by the Board to be sufficient to meet general business losses should they materialize, the Capital Management Policy is designed to ensure OCC maintains LNAFBE at an amount necessary to satisfy Rule 17Ad-22(e)(15)'s broader requirement that OCC hold sufficient LNAFBE to cover potential general business losses so that OCC can continue operations and services as a going concern if those losses materialize.

Rule 17Ad-22(e)(15)(ii) further requires, in part, that LNAFBE held by OCC pursuant to Rule 17Ad-22(e)(15)(ii) shall be (A) in addition to resources held to cover participant defaults or other credit or liquidity risks,³⁰ and (B) of high quality and sufficiently liquid to allow OCC to

²⁹ 17 CFR 240.17Ad-22(e)(15)(ii).

³⁰ 17 CFR 240.17Ad-22(e)(15)(ii)(A).

meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions.³¹ The Capital Management Policy is designed to satisfy Rule 17Ad-22(e)(15)(ii)(A) by providing that the resources held to meet OCC's Target Capital Requirement are in addition to OCC's resources to cover participant defaults and liquidity shortfalls. While the Capital Management Policy and proposed changes to OCC's Rules provide for the use of capital to cover credit losses in the event of a Clearing Member default, the proposed changes limit the amount of current and retained earnings available to cover such losses to the amount above 110% of the Target Capital Requirement. The Capital Management Policy is also designed to satisfy Rule 17Ad-22(e)(15)(ii)(B) by providing that the resources held to meet OCC's Target Capital Requirement be high quality and sufficiently liquid. As a result, OCC believes the Capital Management Policy is designed to comply with Rule 17Ad-22(e)(15)(ii)(A) and (B).

Rule 17Ad-22(e)(15)(iii) requires that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage OCC's general business risk, including by maintaining a viable plan, approved by the Board and updated at least annually, for raising additional equity should its equity fall close to or below the amount required under Rule 17Ad-22(e)(15)(ii). The Capital Management Policy and amendments to OCC's Rules and schedule of fees are reasonably designed to establish a viable plan to raise additional capital in an amount up to the amount the Board determines annually to be sufficient to ensure recovery or orderly wind-down should OCC's Equity fall close to or below its Target

³¹ 17 CFR 240.17Ad-22(e)(15)(ii)(B).

Capital Requirement. By setting the threshold triggers by reference to the Target Capital Requirement, OCC's plan for replenishment capital is designed to require OCC to act to raise capital should its LNAFBE fall close to or below the amounts required under Rule 17Ad-22(e)(15)(ii). In addition, by providing that the Target Capital Requirement must be the greater of those amounts or the amount determined by the Board to be sufficient to cover potential general business losses so that OCC can continue operations and services as a going concern if those losses materialize, the Capital Management Policy is also reasonably designed to ensure that OCC has a viable plan to raise the capital necessary to comply with Rule 17Ad-22(e)(15) as a whole. Furthermore, the Capital Management Policy provides that Management shall on an annual basis recommend the Board approve or, as appropriate, modify the Replenishment Plan. The Board would review and, as appropriate, approve Management's recommendation. Should OCC charge the full amount of the Operational Loss Fee, Management would recommend a new or modified replenishment plan, subject to regulatory approval. The Board would review and, as appropriate, approve Management's recommendation.

OCC's proposed addition of an Operational Loss Fee as part of its Replenishment Plan is also reasonably designed to establish a viable plan to raise additional capital. OCC's By-Laws and Rules serve as a contract between OCC and its Clearing Members. Thus, OCC believes the Operational Loss Fee is no less reliable than any other potential replenishment plan that does not involve accumulating replenishment capital in advance of any operational loss. Failure of a Clearing Member to pay the Operational Loss Fee if charged will have the same impact as failure to meet a margin call or clearing fund assessment, and thus may have significant consequences.

Any Clearing Member in default of its obligations to OCC is subject to suspension and liquidation of the defaulting member's positions, from which OCC may collect all unpaid obligations to OCC.³² Should the assets of the defaulting member be insufficient to cover its obligations, OCC may recover the unpaid amount from the Clearing Fund.³³

While Rule 17Ad-22(e)(15)(iii) does not by its terms specify the amount of additional equity a clearing agency's plan for replenishment capital must be designed to raise, the SEC's adopting release states that "a viable plan generally should enable the covered clearing agency to hold sufficient liquid net assets to achieve recovery or orderly wind-down."³⁴ OCC believes that the Capital Management Policy and Operational Loss Fee is consistent with the SEC's adopting release for Rule 17Ad-22(e)(15)(iii) because OCC sets the maximum Operational Loss Fee at an amount sufficient to raise, on a post-tax basis, the amount determined annually by the Board to be sufficient to ensure recovery or orderly wind-down pursuant to the Board's annual approval of the RWD Plan.

In its adopting release, the SEC also states that in developing its policies and procedures, a covered clearing agency "generally should consider and account for circumstances that may require a certain length of time before any plan can be implemented."³⁵ In the case of an Early

³² OCC Rule 1108.

³³ OCC Rule 1006(a), clause (vi) (failure of any Clearing Member to make any other required payment or render any other required performance).

³⁴ Standards for Covered Clearing Agencies, Exchange Act Release No. 78961, 81 FR 70786 (Sept. 28, 2016), 70836 (Oct. 13, 2016) (File No. S7-03-14).

³⁵ Id.

Warning, a fee increase would require Board approval, which could be obtained in a special meeting of the Board on an expedited basis. OCC would file the fee increase with the SEC for immediate effectiveness, thereby minimizing the amount of time needed to implement the new fee. In the case of a Trigger Event, the Operational Loss Fee added to the fee schedule would not require further Board approval to implement, and would likely not require further regulatory approval to implement because this proposed rule change would add the fee to OCC's schedule of fees. By allowing OCC to charge up to the maximum Operational Loss Fee, less any Operational Loss Fees previously charged and not yet refunded, the Capital Management Policy would help OCC maintain its ability to access replenishment capital during the time it would take to implement a new or revised Replenishment Plan. The Operational Loss Fee and amendment to Rule 209(a) further account for the length of time to implement OCC's plan for replenishment capital by requiring payment within five business days. Therefore, OCC believes the proposed Capital Management Policy, Operational Loss Fee, and amendments to OCC's Rules are consistent with the SEC's adopting release for Rule 17Ad-22(e)(15)(iii).

OCC also believes the Operational Loss Fee is consistent with Section 17A(b)(3)(D) of the Exchange Act, which requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants. OCC believes the proposed Operational Loss Fee is reasonable because it is designed to accumulate additional capital to ensure that OCC can continue to meet its obligations as a SIFMU to Clearing Members and the general public. OCC believes that the proposed Operational Loss Fee is reasonable also because it is designed as a viable plan for replenishing OCC's LNAFBE in the event OCC's

Equity falls below certain thresholds that are themselves designed to ensure that OCC act to raise additional capital before OCC's Equity reaches the amounts required by Rule 17Ad-22(e)(15)(ii). And as discussed above, by providing that the Replenishment Amount be sufficient to ensure OCC has sufficient capital to cover the amount the Board determines sufficient to ensure a recovery or orderly wind-down, OCC believes the Operational Loss Fee is consistent with Rule 17Ad-22(e)(15)(iii). OCC also believes that the proposed Operational Loss Fee would result in an equitable allocation of fees among its participants because it would equally mutualize risk of operational loss amongst the firms that use OCC's services. The Clearing Members' equal access to the clearance and settlement services provided by OCC, which provide the benefit of credit and liquidity risk intermediation and associated regulatory capital benefits, is of equal benefit to all Clearing Members irrespective of how much they choose to use it. In addition, the Capital Management Policy provides that if OCC charges the Operational Loss Fee and its Equity thereafter returns to a level at which the Board approves use of tools to lower the cost of Clearing Member participation to return Equity in excess of 110% of its Target Capital Requirement, such as a refund, OCC will employ such tools to lower costs for Clearing Members in equal shares, up to the amount of the Operational Loss Fee charged. Thus, Clearing Members will share both the cost and recovery of the Operational Loss Fee equally. As a result, OCC believes that the proposed Operational Loss Fee provides for the equitable allocation of reasonable fees in accordance with Section 17A(b)(3)(D) of the Exchange Act.³⁶

³⁶ 15 U.S.C. 78q-1(b)(3)(D).

OCC also believes the amendments to its Rules for use of current and retained earnings and the EDCP Unvested Balance to cover default losses are consistent with Rule 17Ad-22(e)(4), which provides, in part, that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor and manage its credit exposures to participants and those arising from its payment, clearing and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.³⁷ By providing that OCC shall use current and retained earnings in excess of 110% of its Target Capital Requirement, as well as contributing the EDCP Unvested Balance on a pro rata basis with Clearing Member's Clearing Fund contributions, OCC is providing for additional financial resources available to cover losses in the event of a Clearing Member default, and reducing the amount OCC would charge the Clearing Fund contributions of non-defaulting Clearing Members. Therefore, OCC believes the amendments to its Rules are consistent with Rule 17Ad-22(e)(4).

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

Section 17A(b)(3)(I) of the Exchange Act³⁸ 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 Act. OCC believes that the Capital Management Policy and amendments to OCC's Rules and schedule of fees would not have any impact, or impose any burden, on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange

³⁷ 17 CFR 240.17Ad-22(e)(4)(i).

³⁸ 15 U.S.C. 78q-1(b)(3)(I).

Act. As discussed above, the Capital Management Policy describes how OCC would measure, monitor and manage its capital needs to ensure appropriate financial resiliency for a SIFMU and comply with applicable financial regulations, including requirements about the amount of LNAFBE it must hold. The Capital Management Policy is designed for OCC to maintain Equity at a level necessary to meet the requirements of Rule 17Ad-22(e)(15) and serve its Clearing Members and the public interest.

While the proposed Operational Loss Fee, in the unlikely event it is charged, would have an effect on the amount of fees that Clearing Members pay for OCC's services, the proposed rule change is designed to allocate those fees on an equal basis to all Clearing Members. OCC's Rules currently require Clearing Members to maintain net capital of at least \$2 million.³⁹ Based on the most recent financial information reported by Clearing Members, which OCC has included in confidential Exhibit 3h, OCC believes that 98% of Clearing Members could absorb the maximum amount of the Operational Loss Fee without breaching their minimum net capital requirements or the SEC's "early warning" threshold.⁴⁰ OCC is comfortable with Clearing Members' ability to pay the Operational Loss Fee because the amount of the maximum Operational Loss Fee that would be charged per Clearing Member is approximately the same as the contingent obligations under the OCC clearing fund assessment requirements for a Clearing Member operating at the minimum clearing fund deposit—\$1 million. Consequently, OCC does not believe the Operational Loss Fee obligation poses a significant barrier to entry for smaller

³⁹ OCC Rule 302.

⁴⁰ 17 CFR 240.15c3-1.

Clearing Members. By adding the Operational Loss Fee to OCC's schedule of fees, the fee would be a transparent obligation of membership based upon which Clearing Members can independently assess their rights and obligations.

In addition, the Capital Management Policy would help address the relative impact that charging the Operational Loss Fee in equal shares would have on smaller Clearing Members by providing that should OCC charge the fee and thereafter return to a position where the Board may approve tools to lower costs for Clearing Members, such as refunds, OCC would employ such tools to lower costs for Clearing Members on an equal basis, up to the amount of the Operational Loss Fee charged. Thus, all Clearing Members shall share equally in the cost and recovery of the Operational Loss Fee amounts charged.

Moreover, any barrier to entry that the Operational Loss Fee may impose is not unnecessary in furtherance of the Exchange Act, and the rules the SEC has promulgated thereunder. Pursuant to those rules, OCC must hold minimum LNAFBE and have a viable plan to replenish equity should OCC's equity fall close to or below those minimums. It is entirely appropriate that the Clearing Members that benefit equally from OCC's services share the burden equally should OCC experience an operational loss that threatens its ability to continue providing those services and comply with its regulatory obligations.

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)

Not applicable.

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 3a. Confidential draft Capital Management Procedure
- Exhibit 3b. Confidential draft Operational Loss Estimation – Process and Methodology Document.
- Exhibit 3c. Confidential Fee Schedule Calculation Procedure
- Exhibit 3d. Confidential analysis of OCC’s average monthly operating margin;
- Exhibit 3e. Confidential analysis comparing OCC’s quantification of operational risk to contract volume;
- Exhibit 3f. May 28, 2019 Letter from John Davidson and Scot Warren sent to Clearing Members and Exchanges;

- Exhibit 3g. Summary of communications with market participants concerning the proposed Capital Management Policy;
- Exhibit 3h. Confidential analysis of Clearing Member net capital;
- Exhibit 5a. Confidential Capital Management Policy;
- Exhibit 5b. OCC Rules;
- Exhibit 5c. OCC's Schedule of Fees.

**CONFIDENTIAL TREATMENT IS REQUESTED FOR EXHIBITS
3a, 3b, 3c, 3d, 3e, 3h, and 5a PURSUANT TO SEC RULE 24b-2**

SIGNATURES

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

THE OPTIONS CLEARING CORPORATION

By: _____
Mark C. Brown
Director, Senior Counsel

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-[_____]; File No. SR-OCC-2019-007)

August __, 2019

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning a Proposed Capital Management Policy That Would Support The Options Clearing Corporation's Function as a Systemically Important Financial Market Utility

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")¹ and Rule 19b-4 thereunder² notice is hereby given that on August 9, 2019, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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 by OCC would adopt a Capital Management Policy, which includes OCC's plan to replenish its capital in the event it falls close to or below its target capital (as defined below, "Replenishment Plan"). The Capital Management Policy is included in confidential Exhibit 5a of the filing. In order to implement aspects of the new Capital Management Policy, the proposed rule change would also amend the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

following governing documents: OCC's Rules, which can be found in Exhibit 5b, and OCC's schedule of fees, which can be found in Exhibit 5c. Material proposed to be added to OCC's Rules and schedule of fees, as currently in effect, 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 OCC 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

1. Purpose

OCC is proposing to adopt a new Capital Management Policy and to make amendments to OCC's Rules and schedule of fees necessary to implement the new Capital Management Policy. The main features of the Capital Management Policy and the related changes are: (a) to determine the amount of Equity sufficient for OCC to meet its regulatory obligations and to serve market participants and the public interest (as

³ OCC's By-Laws and Rules can be found on OCC's public website: <http://optionsclearing.com/about/publications/bylaws.jsp>.

defined below, “Target Capital Requirement”), (b) to monitor Equity⁴ and liquid net assets funded by equity (“LNAFBE”)⁵ levels to help ensure adequate financial resources are available to meet general business obligations; and (c) to manage Equity levels, including by (i) adjusting OCC’s fee schedule (as appropriate) and (ii) establishing a plan for accessing additional capital should OCC’s Equity fall below certain thresholds (“Replenishment Plan”).

The Replenishment Plan would: (i) provide that should OCC’s Equity fall below 110% of the Target Capital Requirement (as defined by the Capital Management Policy, “Early Warning”), Management would recommend to the Board whether to implement a fee increase in an amount the Board determines necessary and appropriate to raise additional Equity; (ii) provide that should OCC’s Equity fall below 90% of the Target Capital Requirement or fall below the Target Capital Requirement for a period of 90 consecutive days (as defined in the Capital Management Policy, “Trigger Event”), OCC would contribute the funds held under The Options Clearing Corporation Executive Deferred Compensation Plan Trust to the extent that such funds are (x) deposited on or after January 1, 2020 in respect of its Executive Deferred Compensation Plan (“EDCP”) and (y) in excess of amounts necessary to pay for benefits accrued and vested under the

⁴ The Capital Management Policy would define “Equity” as shareholders’ equity as shown on OCC’s Statement of Financial Condition.

⁵ The Capital Management Policy would define “LNAFBE” as the level of cash and cash equivalents, no greater than Equity, less any approved adjustments (i.e., agency-related liabilities such as Section 31 fees held by OCC).

EDCP at such time (such funds are defined in Chapter 1 of the proposed changes to OCC's Rules as the "EDCP Unvested Balance"); and (iii) provide that should contribution of the EDCP Unvested Balance fail to cure the Trigger Event, or if a further Trigger Event occurs, OCC will charge an Operational Loss Fee (as defined below) in equal shares to the Clearing Members.

OCC is also hereby proposing to create a layer of skin-in-the-game resources in the event of default losses. Specifically, OCC is amending Rule 1006 to state that: first, any current or retained earnings above 110% of the Target Capital Requirement will be used to offset default losses after applying a defaulting Clearing Member's margin and Clearing Fund contributions, and next, any remaining loss will be charged pro rata to (a) non-defaulting Clearing Members' Clearing Fund contributions, and (b) the aggregate value of the EDCP Unvested Balance.

Proposed Changes

OCC proposes to adopt a Capital Management Policy and make conforming changes to OCC's Rules and schedule of fees necessary to implement the Capital Management Policy, as described below, to formalize its policy to identify, monitor, and manage OCC's capital needs to promote compliance SEC Rule 17Ad-22(e)(15).⁶ In formulating the Capital Management Policy, OCC also has considered the Commodity

⁶ 17 CFR 240.17Ad-22(e)(15).

Futures Trading Commission's ("CFTC") regulatory capital requirements for OCC as a DCO, as set forth in CFTC Rule 39.11(a)(2).⁷

Target Capital Requirement

The proposed Capital Management Policy would explain how OCC would annually determine the Target Capital Requirement. The proposed amendment to Chapter 1 of OCC's Rules would define OCC's Target Capital Requirement as the minimum level of Equity recommended by Management and approved by the Board to ensure compliance with applicable regulatory requirements and to keep such additional amount the Board may approve for capital expenditures. Resources held to meet OCC's Target Capital Requirement would be in addition to OCC's resources to cover participant defaults. OCC considers the LNAFBE it holds, limited to cash and cash equivalents, to be high quality and sufficiently liquid to allow OCC to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions. The Capital Management Policy would also explain that, on an annual basis, OCC's Chief Financial Officer ("CFO") would recommend a Target Capital Requirement for the coming year. Management would review the CFO's report and, as appropriate, recommend the Target Capital Requirement to the Compensation and Performance Committee ("CPC"). The CPC would review, and as appropriate, recommend the proposal to the Board of Directors, which would review, and as appropriate, approve the Target Capital Requirement.

⁷ 17 CFR 39.11(a)(2).

SEC Rule 17Ad-22(e)(15)

OCC would set its Target Capital Requirement at a level sufficient to maintain LNAFBE at least equal to the greatest of three amounts: (x) six-months' current operating expenses; (y) the amount determined by the Board to be sufficient to ensure a recovery or orderly wind-down of critical operations and services (the "RWD Amount"); and (z) the amount determined by the Board to be sufficient for OCC to continue operations and services as a going concern if general business losses materialize (the "Potential Loss Amount").

The RWD Amount would be the amount recommended by Management on an annual basis in accordance with OCC's Capital Management Procedure⁸ and, as appropriate, approved by the Board. OCC's Recovery and Orderly Wind-Down Plan ("RWD Plan") identifies critical services and the length of time the Board has determined it would take to recover or wind-down.⁹ Pursuant to the Capital Management Procedure, Management would use the assumptions in the RWD Plan to determine the RWD Amount, which is the cost to maintain those critical services over the prescribed recovery

⁸ The Capital Management Procedure would be a cross-department internal procedure that provides direction on how those departments shall execute their responsibilities under the proposed Capital Management Policy. OCC has included a draft of the Capital Management Procedure OCC intends to implement if the Commission approves the proposed Capital Management Policy in confidential Exhibit 3a, for reference. The documents in Exhibit 3 are being provided as supplemental information to the filing and would not constitute part of OCC's rules, which have been provided in Exhibit 5.

⁹ Securities Exchange Act Release No. 83918 (Aug. 23, 2018), 83 FR 44091 (Aug. 29, 2018) (SR-OCC-2017-021).

or wind-down period, assuming costs remain at historical levels. The calculation of the Potential Loss Amount would be based on Management's annual determination, pursuant to the Capital Management Procedure, of the amount of capital required to address OCC's operational risks. OCC quantifies the amount of capital to be held against OCC's operational risks by analyzing and aggregating potential losses from individual operational risk scenarios, aggregating the loss events, and conducting loss modeling at or above the 99% confidence level.¹⁰

CFTC Rule 39.11(a)(2)

The Capital Management Policy would also specify that when setting the Target Capital Requirement the Board will consider OCC's projected rolling twelve-months' operating expenses as required by CFTC Rule 39.11(a)(2).¹¹ For the avoidance of doubt, the Board is not required to set the Target Capital Requirement at the level of twelve-months' operating expenses.¹² Factors that OCC would consider when considering twelve-months' operating expenses include, but are not limited to: (i) OCC's obligations

¹⁰ Pursuant to the Capital Management Procedure, OCC's Enterprise Risk Management department ("ERM") would quantify the Potential Loss Amount on an annual basis and provide that information to OCC's Chief Financial Officer ("CFO") as an input to the CFO's recommendation to Management for the Target Capital Requirement. OCC has included ERM's process and methodology for quantifying the Potential Loss Amount from 2015 through present in confidential Exhibit 3b.

¹¹ 17 CFR 39.11(a)(2).

¹² Financial resources available to meet CFTC Rule 39.11(a)(2) are not limited to LNAFBE, and include OCC's own capital or any other form of financial resources deemed acceptable by the CFTC. See 17 CFR 39.11(b)(2).

and responsibilities as a systemically important financial utility (“SIFMU”), (ii) OCC’s obligations as a derivative clearing organization under CFTC Rule 39.11(a)(2), (iii) the types of financial resources the CFTC allows OCC to count towards the twelve-month requirement, and (iv) any conditions on the use of those resources the CFTC has imposed.

Excess Equity for Capital Expenditures

In addition, the Capital Management Policy would provide that OCC may increase its Target Capital Requirement by an amount to be retained for capital expenditures following a recommendation by Management and Board approval. From time to time Management may identify necessary capital investments in OCC’s technology, facilities or other business tangible or intangible assets to enhance its effectiveness, efficiency or compliance posture. The Board would (a) determine if the capital needs are necessary and appropriate and, if so, (b) determine whether to increase the Target Capital Requirement or whether the amount can be accumulated as an amount in excess of the Target Capital Requirement. In case of the latter, capital in excess of 110% of the Target Capital Requirement would be available as skin in the game.¹³ Factors the Board would consider in making this determination include, but are not limited to, the amount of funding required, how much Equity is proposed to be retained, the potential impact of the investment on OCC’s operation, and the duration of time over which funds would be accumulated.

¹³ See OCC Rule 1006(e), as proposed in the changes attached as Exhibit 5b hereto.

Monitoring Equity

The proposed Capital Management Policy would describe how Management reviews periodic analyses of LNAFBE, including projecting future volume, expenses, cash flows, capital needs and other factors to help ensure adequate financial resources are available to meet general business obligations. Those other factors would include, but not be limited to: (i) the level of existing prefunded corporate resources, (ii) the ability to borrow under an existing OCC line of credit; (iii) the ability to make a claim under certain insurance policies; (iv) OCC's tax rates and liabilities; and (v) unfunded obligations. The Capital Management Policy would further provide that Management would review an analysis of Equity at least monthly to identify whether an Early Warning or Trigger Event had occurred since the last review or was likely to occur before the next review. The Capital Management Policy would provide that the Board of Directors is notified promptly if those triggers are breached. To the extent OCC suffers a catastrophic or sizable loss intra-month, and such loss amount is known or can reasonably be estimated, Management would review a forecast of the impact on Equity and, should that forecast demonstrate that Equity has fallen below the Early Warning or Trigger Event, Management shall promptly notify the Board.

Managing Equity

The Capital Management Policy would describe the actions OCC may take to manage its current or future levels of Equity. As described below, the primary forms of capital management actions would include: (i) changes to OCC's fees or other tools to change costs for market participants; (ii) the Replenishment Plan; and (iii) use of current

and retained earnings greater than 100% of the Target Capital Requirement to cover losses caused by the default of a Clearing Member.

Fee Schedule

The Capital Management Policy would provide that clearing fees will be based on the sum of OCC's annual budgeted/forecasted operating expenses, a defined operating margin and OCC's capital needs, divided by forecasted contract sides. On an annual basis, Management would review the operating margin level considering historical volume variance and other relevant factors, including but not limited to variance in interest rates and OCC's operating expenses. Management would recommend to the CPC, to which the Board has delegated authority for review and approval of changes to OCC's fees pursuant to the CPC's charter, whether changes to OCC's defined operating margin should be made.

The Capital Management Policy would provide that on a quarterly basis, Management would review its fee schedule and, considering factors including, but not limited to projected operating expenses, projected volumes, anticipated cash flows, and capital needs, recommend to the Board, or a Committee to which the Board delegated authority, whether a fee increase, decrease or waiver should be made in accordance with Article IX, Section 9 of OCC's By-Laws.¹⁴

The Capital Management Policy would provide that if OCC's Equity is above, in the aggregate, 110% of the Target Capital Requirement and any amount of excess Equity

¹⁴ OCC By-Law Art. IX, § 9.

the Board approves for capital expenditures, the Board of Directors, or a Committee the Board has delegated, may use such tools as it considers appropriate to lower costs for Clearing Members, providing the Board believes doing so would likely not lower OCC's Equity below the Early Warning. Such tools would include lowering fees, a fee holiday or a refund. The Capital Management Policy would further provide that if OCC charges the Operational Loss Fee, as described below, and its Equity thereafter returns to a level at which the Board approves use of such tools, OCC would first employ tools to lower the cost of Clearing Member participation in equal share up to the amount of the Operational Loss Fee charged. This provision would help ensure that in the event OCC must charge an Operational Loss Fee to Clearing Members in equal shares, Clearing Members will recover the amount charged in equal shares up to the amount charged.

Replenishment Plan

Early Warning

The Capital Management Policy would provide that in the event OCC's Equity breaches the Early Warning threshold, or 110% of the Target Capital Requirement, Management would recommend to the Board whether to implement a fee increase in an amount the Board determines necessary and appropriate to raise additional Equity.¹⁵ The

¹⁵ Pursuant to the Capital Management Procedure, Management's recommendation would be informed by the clearing fee amount calculated pursuant to the Fee Schedule Calculation Procedure, which provides direction to OCC's Finance department on how to calculate the necessary fee level pursuant to the requirements of the Capital Management Policy. OCC has included a draft of the Fee Schedule Calculation Procedure it intends to implement if the Commission approves the proposed Capital Management Policy in confidential Exhibit 3c, for reference.

recommendation whether to implement a fee increase would be informed by several factors including, but not limited to, (i) the facts, circumstances and root cause of a decrease in Equity below the Early Warning threshold; (ii) the time it would take to implement a fee increase, inclusive of securing Board and SEC approval as required for those actions; (iii) the anticipated time a fee increase would take to accumulate the needed revenue based on projected contract volume, operational expenses and interest income over that time period; and (iv) the potential of a Trigger Event.

The Early Warning is intended to signal to OCC that its Equity is “close to” the Target Capital Requirement, as directed by Rule 17Ad22(e)(15)(iii). The Early Warning threshold is set at 110% because based on an analysis of OCC’s projected revenue and expenses,¹⁶ a 10% premium of the Target Capital Requirement represents approximately two months earnings based on current and projected data,¹⁷ which OCC believes would provide sufficient time for Management and the Board to respond. The Capital Management Policy would provide that to the extent Management determines, during its annual review of the Capital Management Policy, that there is a change in the estimated length of time to accumulate approximately 10% of the Target Capital Requirement, Management will consider whether to recommend changes to the Early Warning and Trigger Event thresholds.

¹⁶ OCC has included the analysis in confidential Exhibit 3d.

¹⁷ OCC defines earnings for purposes of this analysis as Operating Income, or revenue less expenses before taxes. Earnings does not include interest pass through earned on the cash deposits.

Trigger Event

The Capital Management Policy would also define a Trigger Event to be when OCC's Equity falls below 90% of the Target Capital Requirement or remains below the Target Capital Requirement for ninety consecutive calendar days. OCC is proposing the 90% threshold based on its analysis showing that two-months' earnings represents approximately a 10% percent premium of the Target Capital Requirement, discussed above. OCC believes, based on that analysis, that Equity below the 90% threshold would be a sign that corrective action more significant and with a more immediate impact than increasing fees should be taken to increase OCC's Equity Capital. OCC also set another Trigger Event at a threshold of Equity above 90% but below the Target Capital Requirement for a period of 90 consecutive days based on the time necessary for a clearing fee change to have an impact and to exhaust remedies prior to charging the Operational Loss Fee. This timeframe takes into account 30-day advance notice to Clearing Members to implement the fee change, implementation on the first of the month to accommodate changes to Clearing Members' systems, and, as discussed above, the approximately two-month period required to accumulate approximately 10% of the Target Capital Requirement. Based on the above-referenced analysis, OCC believes that, in the event a fee increase resulting from an Early Warning could not increase OCC's Equity above the Target Capital Requirement within 90 days, it would likewise indicate that corrective action in the form of a fee increase would be insufficient.

If a Trigger Event occurs, OCC would first contribute the EDCP Unvested Balance to cure the loss. OCC believes that contributing the EDCP Unvested Balance to

cover operational losses would align Management's interests with OCC's interest in maintaining required regulatory capital and operating OCC in a prudent manner. If application of the EDCP Unvested Balance brings OCC's Equity to within the Early Warning threshold (between 90% and 110% of the Target Capital Requirement), OCC would act to raise fees, in accordance with the Capital Management Policy's direction for OCC action in the event of an Early Warning, as discussed above.

If, however, OCC Equity remains below 90% of the Target Capital Requirement after applying the EDCP Unvested Balance, or if a subsequent Trigger Event occurs after applying all of the available EDCP Unvested Balance, OCC would charge an "Operational Loss Fee," up to the maximum Operational Loss Fee identified in OCC's schedule of fees as described below, in equal shares to each Clearing Member, payable on five business days' notice, to raise additional capital. A further Trigger Event based on Equity falling below the Target Capital Requirement for a period of 90 consecutive calendar days would be measured beginning on the date OCC applies the EDCP Unvested Balance. OCC chose five business days to allow Clearing Members subject to the fee to assess its impact on their liquidity and take appropriate actions. OCC did not select a shorter period, such as the two-day period in which Clearing Members must fund Clearing Fund contributions,¹⁸ because that shorter period is necessary for settlement obligations, which is not the case for the Operational Loss Fee.

¹⁸ See, e.g., OCC Rule 1006(h)(A).

OCC would calculate the maximum aggregate Operational Loss Fee based on the RWD Amount, which would ensure that OCC would have sufficient capital to facilitate a recovery or an orderly wind-down in the event of an operational loss. In order to account for OCC's tax liability for retaining the Operational Loss Fee as earnings, OCC may apply a tax gross-up to the RWD Amount ("Adjusted RWD Amount") depending on whether the operational loss that caused Equity to fall below the Trigger Event threshold is tax deductible. The Capital Management Policy would provide that, in the event less than the full amount of the maximum Operational Loss Fee is needed to bring OCC's Equity to 110% of the Target Capital Requirement, only that amount will be charged. If OCC charges less than the maximum Operational Loss Fee, any remaining amount up to the maximum Operational Loss Fee will remain available for subsequent Trigger Events, provided that the sum of all Operational Loss Fees that have not been refunded shall not exceed the maximum Operational Loss Fee.

In the event that OCC employs a refund to Clearing Members in equal shares up to the amount of Operational Loss Fees previously charged, the amount of the maximum Operational Loss Fee available for subsequent Trigger Events would include the amount refunded. By allowing OCC to charge up to the maximum Operational Loss Fee – less any amounts previously charged and not refunded – should subsequent Trigger Events arise, the proposed Capital Management Policy would help maintain the continued ability of OCC to access replenishment capital should multiple Trigger Events occur in quick succession before OCC could implement a new or modified replenishment plan. In the unlikely event that the sum of all Operational Loss Fees charged exhausts the maximum

Operational Loss Fee, the Board would need to convene to develop a new replenishment plan, subject to regulatory approval.

In formulating the Capital Management Policy OCC considered other means of allocating the Operational Loss Fee among OCC's Clearing Members, including allocating the cost to Clearing Members proportionally based on measures such as contract volume or risk profile, as evidenced by a Clearing Member's margin or clearing fund contributions. As part of its analysis for determining the Potential Loss Amount, OCC has identified individual operational risk scenarios that could result in an operational loss, including such risks as internal fraud, a cyber-attack on OCC's systems, employee lawsuits and damage to its facilities. The operational risks OCC identified are separate and distinct from the credit risk that Clearing Members present to OCC, which OCC manages through margin and Clearing Fund contributions and OCC's Default Management Procedures. OCC has not observed any correlation between the annual quantification of these risks and contract volume or Clearing Member credit risk. OCC has included a comparison of its quantification of these risks to contract volume and the amount of Clearing Fund deposits in confidential Exhibit 3e. OCC believes that charging the Operational Loss Fee in equal shares is preferable because it equally mutualizes risk of operational loss amongst the firms that use OCC's services. OCC believes that such mutualization is preferable because all Clearing Members benefit from equal access to the clearance and settlement services provided by OCC, irrespective of how much they choose to use it. Such access provides the benefit of credit and liquidity risk intermediation and associated regulatory capital benefits.

To implement the Operational Loss Fee, OCC is proposing an amendment to its schedule of fees that would provide a formula for calculating the maximum Operational Loss Fee OCC could charge, attached to this rule filing as Exhibit 5c. The amendment to OCC's fee schedule would express the Operational Loss Fee as a fraction, the numerator of which would be the Adjusted RWD Amount less the aggregate amount of Operational Loss Fees that OCC has previously charged that are not refunded at the time of calculation, and the denominator of which would be the number of Clearing Members at the time OCC charges the Operational Loss Fee. OCC would also include in the schedule of fees the conditions that would trigger the Operational Loss Fee to be charged. OCC proposes to amend its schedule of fees now: (1) to increase transparency about Clearing Members' maximum contingent obligations under the Capital Management Policy in the unlikely event OCC's Equity falls below the Trigger Event thresholds, (2) to promote operational efficiency so that OCC can access replenishment capital expeditiously if a Trigger Event occurs, and (3) to reduce the likelihood that OCC would be required to file an advance notice or proposed rule change prior to charging the Operational Loss Fee, thereby accelerating the time frame in which OCC could access replenishment capital if losses materialize that threaten OCC's ability to continue operations and services as a going concern.

To effectuate the Capital Management Policy, OCC also proposes to amend OCC Rule 209 so that the Operational Loss Fee would be payable within five business days. OCC Rule 209 currently provides that all charges and fees owed by a Clearing Member to OCC shall be due and payable within five business days following the end of each

calendar month. The proposed amendment would add an exception for payment of the Operational Loss Fee, which would be due and payable within five business days following OCC's notice to the Clearing Member that OCC had charged the Operational Loss Fee. The amendment to OCC Rule 209 would ensure that OCC can timely respond to operational losses that threaten OCC's ability to continue operations and services as a going concern. OCC would also amend Rule 101 to define "Operational Loss Fee" to mean the fee that would be charged to Clearing Members in equal shares, up to the maximum amount identified in OCC's schedule of fees less the aggregate amount of all such Operational Loss Fees previously charged and not yet refunded at the time of calculation, if, after contributing the entire EDCP Unvested Balance, Equity remains below the levels identified in OCC's schedule of fees.

Use of Current and Retained Earnings for Default Losses

The Capital Management Policy would provide that in the event of a clearing member default, OCC would use Equity above 110% of the Target Capital Requirement to offset any loss after applying the margin assets and Clearing Fund contribution of the defaulting Clearing Member. In addition, the Capital Management Policy would provide that OCC would contribute the EDCP Unvested Balance on a pro rata basis with non-defaulting Clearing Member contributions to the Clearing Fund to satisfy any remaining balance after applying the margin assets and Clearing Fund contribution of the defaulting Clearing Member and any OCC Equity above 110% of the Target Capital Requirement.

To implement this aspect of the Capital Management Policy, OCC would also amend OCC Rule 1006 to adjust the default waterfall and the allocation of Clearing Fund

losses accordingly. Rule 1006(e), which currently governs use of retained earnings to cover certain losses prior to charging those losses to the Clearing Fund under Rule 1006(b) (i.e., losses caused by Clearing Member defaults) and Rule 1006(c) (i.e., losses caused by bank and clearing organization failures to perform obligations to OCC not recoverable under Rule 1006(b)), would be divided into subsections numbered Rule 1006(e)(i) through (e)(iii). OCC would add Rule 1006(e)(i) to require OCC to charge a loss or deficiency associated with a Clearing Member default to OCC's current and retained earnings that are greater than 110% of its Target Capital Requirement (which would be defined as above in Rule 101) prior to charging the Clearing Fund and the EDCP Unvested Balance under Rule 1006(b), as discussed below. Rule 1006(e)(ii) would contain the current text of the first two sentences of the current Rule 1006(e), updating the cross-reference therein to limit the scope to the use of earnings to cover losses caused by bank or clearing organization failures before charging the Clearing Fund under Rule 1006(c). Thus, OCC would retain the option, but not the obligation, to use current or retained earnings to cover such bank or clearing organization losses, for which the Rules currently provide. Rule 1006(e)(iii) would contain the last two sentences of Rule 1006(e) currently in effect, which concern (1) the meaning of "current earnings" and (2) provide for a Clearing Member's continuing liability for any deficiencies in that member's Clearing Fund contribution that OCC covers with OCC's current and retained earnings. With respect to the latter, OCC would amend Rule 1006(e)(iii) to remove reference to OCC's "elect[ion]" to charge the deficiency to current or retained earnings so that such liability for Clearing Fund contribution deficiencies remains if OCC is

obligated to charge current and retained earnings over 110% of the Target Capital Requirement under proposed Rule 1006(e)(i).

OCC also proposes to amend Rule 1006(b) to provide that OCC would apply the EDCP Unvested Balance (which would be defined as above in Rule 101) on a pro rata basis with the Clearing Fund contributions of non-defaulting Clearing Members to satisfy any remaining balance after applying the defaulting Clearing Member's margin and Clearing Fund contribution and OCC's current and retained earnings greater than 110% of its Target Capital Requirement. By amendment to Rule 1006(b)(iii), the EDCP Unvested Balance's proportion of the loss would be calculated by a fraction, the numerator of which would be EDCP Unvested Balance and the denominator of which would be the sum of the EDCP Unvested Balance and the balance of all non-defaulting Clearing Members' Clearing Fund contributions.¹⁹ Pursuant to proposed amendments to Rule 1006(b) and (e), such contribution of current and retained earnings would be made after applying the defaulting Clearing Member's margin and Clearing Fund contribution, but before charging that loss or deficiency proportionately to the Clearing Fund.

¹⁹ Because Rule 1006 has separate provisions addressing use of the Clearing Fund to cover losses arising from a Clearing Member default (Rule 1006(b)) and losses arising from bank or clearing organization failures (Rule 1006(c)), certain changes would be made to the rules to limit the changes for purposes of effecting the Capital Management Policy to the use of current and retained earnings and the EDCP Unvested Balance in the event of a Clearing Member default. Specifically, the proposed changes to OCC's rules would eliminate Interpretations and Policies .01 and establishes the respective allocation provisions in Rule 1006(b)(iii) and (c)(iii). No substantive changes to Rule 1006(c) are intended.

In addition, a proposed amendment to Rule 1006(g), concerning, among other things, the allocation of funds received under the Limited Cross-Guaranty Agreement between OCC and certain other clearing agencies in the event of the default of a common member, would provide that any funds received under that agreement by OCC with respect to losses incurred by OCC would be credited in accordance with Rule 1010. Rule 1010 concerns recovery of losses charged to non-defaulting Clearing Members and provides that any recovery of a loss charged proportionately against the contributions of those Clearing Members shall be paid to each Clearing Member charged in proportion to the amounts charged. The amendment to Rule 1006(g) would establish that the non-defaulting Clearing Members whose Clearing Fund contributions were charged would recover proportional to the amount their contributions were charged up to the amount their Clearing Fund contributions were charged. The recovery proportional to the amount charged to the EDCP Unvested Balance would be available for return to the EDCP.

Market Participant Outreach

In developing the proposed plan for replenishment capital OCC also sought input from market participants. On May 1, 2019, OCC Management presented to the SIFMA options committee and the Securities Traders Association on the following topics: (1) how OCC will set fees, (2) how OCC determines its operating margin, (3) OCC's proposal to add a working capital line of credit, (4) the triggers and thresholds for action, and (5) the amount that a replenishment plan would need to raise. A discussion ensued with participants from the SIFMA options committee concerning how OCC would set the Target Capital Requirement.

On May 28, 2019, OCC provided Clearing Members with a notice concerning the details of the Capital Management Policy.²⁰ OCC has included a copy of the letter in Exhibit 3f. OCC sent the same letter to the participant exchanges (including the non-shareholder exchanges). Either calls or meetings were held with non-shareholder exchanges to discuss the proposed Capital Management Policy and allow them to raise questions or concerns. No such concerns were expressed.

OCC conducted calls open to all Clearing Members on May 31, 2019 to discuss the proposal. The calls were attended by approximately 140 participants representing 40 organizations. No concerns with the proposed Capital Management Policy were expressed. Discussion ensued about the mechanics of the Operational Loss Fee, alternatives to equal allocation of the Operational Loss Fee among Clearing Members that OCC considered and the likelihood that OCC would need to charge the Operational Loss Fee. Management has also met with individual Clearing Members and other market participants to discuss the proposed Capital Management Policy.

After the Board meeting on July 17, 2019, OCC conducted a call with the SIFMA options committee to discuss certain features of the Capital Management Policy proposal approved at that meeting, including: (a) if OCC charges the Operational Loss Fee and its

²⁰ The letter references a “one-time” Operational Loss Fee, consistent with the proposed Capital Management Policy as approved by the Board at its May 13, 2019 meeting. As discussed below, the Board approved a revision to the proposal at its July 17, 2019 meeting to allow OCC to retain the ability to charge the Operational Loss Fee for subsequent Trigger Events up to the maximum Operational Loss Fee, less any Operational Loss Fees previously charged and not yet refunded.

Equity thereafter returns to a level at which the Board approves use of tools to lower the cost of participation for Clearing Members, OCC would first employ tools to lower the Clearing Members' costs in equal share up to the amount of the Operational Loss Fee charged; and (b) if OCC charges the Operational Loss Fee, OCC would retain the ability to charge Operational Loss Fees for subsequent Trigger Events up to the maximum Operational Loss Fee, less any Operational Loss Fees previously charged and not yet refunded.

OCC has included a summary of the questions raised and Management's responses during the above referenced calls and meetings in Exhibit 3g.

2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934 ("Exchange Act") and the rules and regulations thereunder. In particular, OCC believes that the Capital Management Policy is consistent with Section 17A(b)(3)(F) of the Exchange Act²¹ and Rule 17Ad-22(e)(15)²² thereunder for the reasons described below. In addition, OCC believes adding the Operational Loss Fee to its schedule of fees is consistent with Section 17A(b)(3)(D) of the Exchange Act,²³ and that the changes to OCC's Rules to effectuate the use of current and retained earnings

²¹ 15 U.S.C. 78q-1(b)(3)(F).

²² 17 CFR 240.17Ad-22(e)(15).

²³ 15 U.S.C. 78q-1(b)(3)(D).

in excess of 110% of the Target Capital Requirement and the EDCP Unvested Balance to cover default losses is consistent with Rule 17Ad-22(e)(4).²⁴

Section 17A(b)(3)(F) of the Exchange Act requires, in part, that the rules of OCC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest. The Capital Management Policy is designed to ensure that OCC holds sufficient LNAFBE such that it could continue to promptly and accurately clear and settle securities transactions even if it suffered significant operational losses. In other words, holding sufficient LNAFBE would help OCC to absorb such operational losses and avoid a disruption that could negatively impact OCC's prompt and accurate clearing and settlement of transactions. By limiting the financial resources OCC counts toward its LNAFBE to cash and cash equivalents, the Capital Management Policy ensures those resources would be high quality and sufficiently liquid to allow OCC to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions. OCC would protect the interests of investors and the general public by establishing the Capital Management Policy, which is designed to ensure that such losses would not result in a failure or disruption of a SIFMU, as OCC is designated by the Financial Stability Oversight Council ("FSOC") pursuant to the Payment, Clearing and Settlement

²⁴ 17 CFR 240.17Ad-22(e)(4).

Supervision Act.²⁵ FSOC has concluded that a failure or disruption at OCC would negatively affect significant dollar value and volume transactions in the options and futures markets, impose material losses on OCC counterparties and create liquidity and credit problems for financial institutions and others that rely on the markets OCC serves, and that such credit and liquidity problems would spread quickly and broadly among financial institutions and other markets.²⁶ Accordingly, FSOC determined that a failure or disruption at OCC could threaten the stability of the U.S. financial system.²⁷ Therefore, OCC believes that the Capital Management Policy, which is reasonably designed to ensure that OCC has sufficient LNAFBE to continue operations in the event of an operational loss, is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act by protecting investors and the public interest.²⁸

Rule 17Ad-22(e)(15) under the Exchange Act requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor and manage OCC's general business risk and hold sufficient LNAFBE to cover potential general business losses so that OCC can continue operations and

²⁵ 12 U.S.C. 5463.

²⁶ FSOC Annual Report, Appendix A, at 187 (2012), available at <https://www.treasury.gov/initiatives/fsoc/Documents/2012%20Appendix%20A%20Designation%20of%20Systemically%20Important%20Market%20Utilities.pdf>

²⁷ Id.

²⁸ 15 U.S.C. 78q-1(b)(3)(F).

services as a going concern if those losses materialize.²⁹ The Capital Management Policy and amendments to OCC's Rules and Fee Schedule are designed for consistency with the requirements of Rule 17Ad-22(e)(15) for the reasons described below.

Rule 17Ad-22(e)(15)(i) requires, in part, that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage OCC's general business risk, including by determining the amount of LNAFBE based upon OCC's general business risk profile and the length of time required to achieve recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken.³⁰ Pursuant to the Capital Management Policy, OCC would set its Target Capital Requirement at a level sufficient to maintain LNAFBE at least equal to the greater of (x) six months' of OCC's current operating expenses; (y) the amount determined by the Board to be sufficient to ensure a recovery or orderly wind-down of critical operations and services, plus any excess Equity Management recommends, and the Board approves, to be retained for capital expenditures; and (z) the amount determined by the Board to be sufficient for OCC to continue operations and services as a going concern if general business losses materialize. By providing that OCC would set its Target Capital Requirement no less than the greatest of these three amounts, OCC believes the Capital Management Policy is consistent with Rule 17Ad-22(e)(15)(i).

²⁹ 17 CFR 240.17Ad-22(e)(15).

³⁰ 17 CFR 240.17Ad-22(e)(15)(i).

The Capital Management Policy is also designed to identify, monitor and manage OCC's general business risk, consistent with Rule 17Ad-22(e)(15), by providing that OCC's Board would review and approve the Target Capital Requirement annually. The Capital Management Policy is also designed to monitor OCC's general business risk by providing that OCC would perform an analysis of its Equity on at least a monthly basis to ensure that OCC's Equity has not fallen below the Early Warning or Trigger Event thresholds and is not likely to fall below those thresholds prior to the next review. The Capital Management Policy's requirement that Management report on the firm's LNAFBE relative to the Early Warning and Trigger Event thresholds at each regularly scheduled Board meeting is also designed to identify, monitor, and manage OCC's general business risk. The Capital Management Policy's requirement that the Board be promptly notified in the event of an Early Warning or Trigger Event is also reasonably designed to ensure that OCC can act quickly to ensure OCC's compliance with the LNAFBE-holding requirements of Rule 17Ad-22(e)(15).

Rule 17Ad-22(e)(15) further requires, in part, that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to hold sufficient LNAFBE to cover potential general business losses so that OCC can continue operations and services as a going concern if those losses materialize, including by holding LNAFBE equal to the greater of either (x) six months of OCC's current operating expenses, or (y) the amount determined by the Board to be sufficient to ensure a recovery

or orderly wind-down of critical operations and services.³¹ As described above, the Capital Management Policy would provide that OCC sets its Target Capital Requirement at a level sufficient to maintain LNAFBE in an amount that is the greatest of three amounts, which include six months' operating expenses, an amount determined by the Board to be sufficient to ensure recovery or orderly wind-down, and an amount determined by the Board to be sufficient for OCC to continue operations and services as a going concern if general business losses materialize. Therefore, the Capital Management Policy is designed to ensure that OCC maintains, at a minimum, LNAFBE equal to the greater of the two amounts required by Rule 17Ad-22(e)(15)(ii). By also including an amount determined by the Board to be sufficient to meet general business losses should they materialize, the Capital Management Policy is designed to ensure OCC maintains LNAFBE at an amount necessary to satisfy Rule 17Ad-22(e)(15)'s broader requirement that OCC hold sufficient LNAFBE to cover potential general business losses so that OCC can continue operations and services as a going concern if those losses materialize.

Rule 17Ad-22(e)(15)(ii) further requires, in part, that LNAFBE held by OCC pursuant to Rule 17Ad-22(e)(15)(ii) shall be (A) in addition to resources held to cover participant defaults or other credit or liquidity risks,³² and (B) of high quality and sufficiently liquid to allow OCC to meet its current and projected operating expenses

³¹ 17 CFR 240.17Ad-22(e)(15)(ii).

³² 17 CFR 240.17Ad-22(e)(15)(ii)(A).

under a range of scenarios, including in adverse market conditions.³³ The Capital Management Policy is designed to satisfy Rule 17Ad-22(e)(15)(ii)(A) by providing that the resources held to meet OCC's Target Capital Requirement are in addition to OCC's resources to cover participant defaults and liquidity shortfalls. While the Capital Management Policy and proposed changes to OCC's Rules provide for the use of capital to cover credit losses in the event of a Clearing Member default, the proposed changes limit the amount of current and retained earnings available to cover such losses to the amount above 110% of the Target Capital Requirement. The Capital Management Policy is also designed to satisfy Rule 17Ad-22(e)(15)(ii)(B) by providing that the resources held to meet OCC's Target Capital Requirement be high quality and sufficiently liquid. As a result, OCC believes the Capital Management Policy is designed to comply with Rule 17Ad-22(e)(15)(ii)(A) and (B).

Rule 17Ad-22(e)(15)(iii) requires that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage OCC's general business risk, including by maintaining a viable plan, approved by the Board and updated at least annually, for raising additional equity should its equity fall close to or below the amount required under Rule 17Ad-22(e)(15)(ii). The Capital Management Policy and amendments to OCC's Rules and schedule of fees are reasonably designed to establish a viable plan to raise additional capital in an amount up to the amount the Board determines annually to be sufficient to ensure recovery or

³³ 17 CFR 240.17Ad-22(e)(15)(ii)(B).

orderly wind-down should OCC's Equity fall close to or below its Target Capital Requirement. By setting the threshold triggers by reference to the Target Capital Requirement, OCC's plan for replenishment capital is designed to require OCC to act to raise capital should its LNAFBE fall close to or below the amounts required under Rule 17Ad-22(e)(15)(ii). In addition, by providing that the Target Capital Requirement must be the greater of those amounts or the amount determined by the Board to be sufficient to cover potential general business losses so that OCC can continue operations and services as a going concern if those losses materialize, the Capital Management Policy is also reasonably designed to ensure that OCC has a viable plan to raise the capital necessary to comply with Rule 17Ad-22(e)(15) as a whole. Furthermore, the Capital Management Policy provides that Management shall on an annual basis recommend the Board approve or, as appropriate, modify the Replenishment Plan. The Board would review and, as appropriate, approve Management's recommendation. Should OCC charge the full amount of the Operational Loss Fee, Management would recommend a new or modified replenishment plan, subject to regulatory approval. The Board would review and, as appropriate, approve Management's recommendation.

OCC's proposed addition of an Operational Loss Fee as part of its Replenishment Plan is also reasonably designed to establish a viable plan to raise additional capital.

OCC's By-Laws and Rules serve as a contract between OCC and its Clearing Members. Thus, OCC believes the Operational Loss Fee is no less reliable than any other potential replenishment plan that does not involve accumulating replenishment capital in advance of any operational loss. Failure of a Clearing Member to pay the Operational Loss Fee if

charged will have the same impact as failure to meet a margin call or clearing fund assessment, and thus may have significant consequences. Any Clearing Member in default of its obligations to OCC is subject to suspension and liquidation of the defaulting member's positions, from which OCC may collect all unpaid obligations to OCC.³⁴ Should the assets of the defaulting member be insufficient to cover its obligations, OCC may recover the unpaid amount from the Clearing Fund.³⁵

While Rule 17Ad-22(e)(15)(iii) does not by its terms specify the amount of additional equity a clearing agency's plan for replenishment capital must be designed to raise, the SEC's adopting release states that "a viable plan generally should enable the covered clearing agency to hold sufficient liquid net assets to achieve recovery or orderly wind-down."³⁶ OCC believes that the Capital Management Policy and Operational Loss Fee is consistent with the SEC's adopting release for Rule 17Ad-22(e)(15)(iii) because OCC sets the maximum Operational Loss Fee at an amount sufficient to raise, on a post-tax basis, the amount determined annually by the Board to be sufficient to ensure recovery or orderly wind-down pursuant to the Board's annual approval of the RWD Plan.

³⁴ OCC Rule 1108.

³⁵ OCC Rule 1006(a), clause (vi) (failure of any Clearing Member to make any other required payment or render any other required performance).

³⁶ Standards for Covered Clearing Agencies, Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70836 (Oct. 13, 2016).

In its adopting release, the SEC also states that in developing its policies and procedures, a covered clearing agency “generally should consider and account for circumstances that may require a certain length of time before any plan can be implemented.”³⁷ In the case of an Early Warning, a fee increase would require Board approval, which could be obtained in a special meeting of the Board on an expedited basis. OCC would file the fee increase with the SEC for immediate effectiveness, thereby minimizing the amount of time needed to implement the new fee. In the case of a Trigger Event, the Operational Loss Fee added to the fee schedule would not require further Board approval to implement, and would likely not require further regulatory approval to implement because this proposed rule change would add the fee to OCC’s schedule of fees. By allowing OCC to charge up to the maximum Operational Loss Fee, less any Operational Loss Fees previously charged and not yet refunded, the Capital Management Policy would help OCC maintain its ability to access replenishment capital during the time it would take to implement a new or revised Replenishment Plan. The Operational Loss Fee and amendment to Rule 209(a) further account for the length of time to implement OCC’s plan for replenishment capital by requiring payment within five business days. Therefore, OCC believes the proposed Capital Management Policy, Operational Loss Fee, and amendments to OCC’s Rules are consistent with the SEC’s adopting release for Rule 17Ad-22(e)(15)(iii).

³⁷ Id.

OCC also believes the Operational Loss Fee is consistent with Section 17A(b)(3)(D) of the Exchange Act, which requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants. OCC believes the proposed Operational Loss Fee is reasonable because it is designed to accumulate additional capital to ensure that OCC can continue to meet its obligations as a SIFMU to Clearing Members and the general public. OCC believes that the proposed Operational Loss Fee is reasonable also because it is designed as a viable plan for replenishing OCC's LNAFBE in the event OCC's Equity falls below certain thresholds that are themselves designed to ensure that OCC act to raise additional capital before OCC's Equity reaches the amounts required by Rule 17Ad-22(e)(15)(ii). And as discussed above, by providing that the Replenishment Amount be sufficient to ensure OCC has sufficient capital to cover the amount the Board determines sufficient to ensure a recovery or orderly wind-down, OCC believes the Operational Loss Fee is consistent with Rule 17Ad-22(e)(15)(iii). OCC also believes that the proposed Operational Loss Fee would result in an equitable allocation of fees among its participants because it would equally mutualize risk of operational loss amongst the firms that use OCC's services. The Clearing Members' equal access to the clearance and settlement services provided by OCC, which provide the benefit of credit and liquidity risk intermediation and associated regulatory capital benefits, is of equal benefit to all Clearing Members irrespective of how much they choose to use it. In addition, the Capital Management Policy provides that if OCC charges the Operational Loss Fee and its Equity thereafter returns to a level at which the Board approves use of tools to lower the cost of Clearing Member

participation to return Equity in excess of 110% of its Target Capital Requirement, such as a refund, OCC will employ such tools to lower costs for Clearing Members in equal shares, up to the amount of the Operational Loss Fee charged. Thus, Clearing Members will share both the cost and recovery of the Operational Loss Fee equally. As a result, OCC believes that the proposed Operational Loss Fee provides for the equitable allocation of reasonable fees in accordance with Section 17A(b)(3)(D) of the Exchange Act.³⁸

OCC also believes the amendments to its Rules for use of current and retained earnings and the EDCP Unvested Balance to cover default losses are consistent with Rule 17Ad-22(e)(4), which provides, in part, that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor and manage its credit exposures to participants and those arising from its payment, clearing and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.³⁹ By providing that OCC shall use current and retained earnings in excess of 110% of its Target Capital Requirement, as well as contributing the EDCP Unvested Balance on a pro rata basis with Clearing Member's Clearing Fund contributions, OCC is providing for additional financial resources available to cover losses in the event of a Clearing Member default, and reducing the amount OCC would

³⁸ 15 U.S.C. 78q-1(b)(3)(D).

³⁹ 17 CFR 240.17Ad-22(e)(4)(i).

charge the Clearing Fund contributions of non-defaulting Clearing Members. Therefore, OCC believes the amendments to its Rules are consistent with Rule 17Ad-22(e)(4).

B. Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Exchange Act⁴⁰ 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 Act. OCC believes that the Capital Management Policy and amendments to OCC's Rules and schedule of fees would not have any impact, or impose any burden, on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. As discussed above, the Capital Management Policy describes how OCC would measure, monitor and manage its capital needs to ensure appropriate financial resiliency for a SIFMU and comply with applicable financial regulations, including requirements about the amount of LNAFBE it must hold. The Capital Management Policy is designed for OCC to maintain Equity at a level necessary to meet the requirements of Rule 17Ad-22(e)(15) and serve its Clearing Members and the public interest.

While the proposed Operational Loss Fee, in the unlikely event it is charged, would have an effect on the amount of fees that Clearing Members pay for OCC's services, the proposed rule change is designed to allocate those fees on an equal basis to all Clearing Members. OCC's Rules currently require Clearing Members to maintain net

⁴⁰ 15 U.S.C. 78q-1(b)(3)(I).

capital of at least \$2 million.⁴¹ Based on the most recent financial information reported by Clearing Members, which OCC has included in confidential Exhibit 3h, OCC believes that 98% of Clearing Members could absorb the maximum amount of the Operational Loss Fee without breaching their minimum net capital requirements or the SEC’s “early warning” threshold.⁴² OCC is comfortable with Clearing Members’ ability to pay the Operational Loss Fee because the amount of the maximum Operational Loss Fee that would be charged per Clearing Member is approximately the same as the contingent obligations under the OCC clearing fund assessment requirements for a Clearing Member operating at the minimum clearing fund deposit—\$1 million. Consequently, OCC does not believe the Operational Loss Fee obligation poses a significant barrier to entry for smaller Clearing Members. By adding the Operational Loss Fee to OCC’s schedule of fees, the fee would be a transparent obligation of membership based upon which Clearing Members can independently assess their rights and obligations.

In addition, the Capital Management Policy would help address the relative impact that charging the Operational Loss Fee in equal shares would have on smaller Clearing Members by providing that should OCC charge the fee and thereafter return to a position where the Board may approve tools to lower costs for Clearing Members, such as refunds, OCC would employ such tools to lower costs for Clearing Members on an equal basis, up to the amount of the Operational Loss Fee charged. Thus, all Clearing

⁴¹ OCC Rule 302.

⁴² 17 CFR 240.15c3-1.

Members shall share equally in the cost and recovery of the Operational Loss Fee amounts charged.

Moreover, any barrier to entry that the Operational Loss Fee may impose is not unnecessary in furtherance of the Exchange Act, and the rules the SEC has promulgated thereunder. Pursuant to those rules, OCC must hold minimum LNAFBE and have a viable plan to replenish equity should OCC's equity fall close to or below those minimums. It is entirely appropriate that the Clearing Members that benefit equally from OCC's services share the burden equally should OCC experience an operational loss that threatens its ability to continue providing those services and comply with its regulatory obligations.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self- regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 Exchange 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-2019-007 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2019-007. 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 (<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/about/publications/bylaws.jsp>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal or 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-OCC-2019-007 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.⁴³

Secretary

⁴³ 17 CFR 200.30-3(a)(12).

EXHIBIT 3a

[Redacted Pursuant to Rule 24b-2]

EXHIBIT 3b

[Redacted Pursuant to Rule 24b-2]

EXHIBIT 3c

[Redacted Pursuant to Rule 24b-2]

EXHIBIT 3d

[Redacted Pursuant to Rule 24b-2]

EXHIBIT 3e

[Redacted Pursuant to Rule 24b-2]

[Redacted Pursuant to Rule 24b-2]



EXHIBIT 3f

May 28, 2019

Re: OCC Capital Management Strategy

Dear colleagues,

As the world's largest equity derivatives clearing organization, The Options Clearing Corporation ("OCC") issues and clears U.S. exchange-listed options and futures on a number of underlying assets, including common stocks and stock indexes. Operating under the jurisdiction of the U.S. Securities and Exchange Commission ("SEC" or the "Commission") and the U.S. Commodity Futures Trading Commission ("CFTC"), we are committed to servicing the needs of our participating exchanges, clearing members and their customers. At the end of 2018, OCC held approximately \$112 billion in margin on behalf of our customers, and \$9.5 billion in our clearing fund.

On February 13, 2019, the SEC disapproved OCC's Capital Plan, which was implemented in 2015 to maintain financial resources sufficient for OCC to continue providing critical services in the event of general business losses. That disapproval does not affect OCC's financial resources available to protect against a clearing member default, which are sized to cover the simultaneous default of OCC's two largest clearing members in extreme but plausible conditions. Clearly, capitalization sufficient to withstand general business losses is a critical component of OCC's role as a Systemically Important Financial Market Utility ("SIFMU") to reduce systemic risk, increase market transparency, and provide capital and operational efficiencies for the users of the U.S. exchange-listed options and futures industries.

The purpose of this communication is to provide you with an update on our progress thus far and anticipated next steps as we continue to work with the Commission to implement the new approach to capital management that was recently approved by OCC's Board of Directors ("Board"), including a proposed Capital Management Policy.

As an immediate outcome of the Capital Plan's disapproval, OCC took several responsive actions, including the following:

Retained Refunds and Dividends: OCC retained amounts that otherwise would have been issued as refunds and dividends for 2018 in order to maintain OCC's target capital level. As previously reported, these amounts had been estimated to be a refund in the aggregate amount of \$59 million to clearing members and dividends to stockholders in the aggregate amount of \$44 million.

Raised Clearing Fees: The Board approved a fee increase in the amount of one half of one cent, or from \$0.05 to \$0.055, which became effective April 1, 2019. As of that date, OCC's clearing fees are: 1-999 contracts, \$0.055; 1,000 + contracts, \$55.

Returned Investment: OCC returned \$110 million of capital previously invested by OCC's stockholders at the end of February. While OCC currently has sufficient capital to meet its target capital level, the Stockholder Exchanges agreed to allow OCC to retain



\$40 million of their initial capital contribution to help OCC address short-term cash flow needs. The \$40 million will be repaid at a later date provided that such repayment does not cause OCC's liquid net assets funded by equity ("LNAFBE") to fall below our \$247 million target capital level.

Requested Exemptive Relief: In disapproving the Capital Plan, the SEC expressed its willingness to consider requests for exemptive or other relief, with specified conditions, that OCC might seek while establishing a new capital plan. OCC's request for exemptive relief is the subject of ongoing discussion with the SEC staff.

Placed on Credit Watch: As a result of the SEC's disapproval of the Capital Plan, on February 21, 2019, S&P placed OCC on CreditWatch Negative and indicated that it will review progress toward the development of a plan to help ensure that OCC remains adequately capitalized and in compliance with all applicable regulations. The initial three-month credit watch period ended at the end of May at which point S&P evaluated OCC's progress. On May 23, 2019 S&P extended the CreditWatch Negative for another three months pending the submission of the Capital Management Policy to the SEC. The action by S&P serves as a reminder of OCC's need to take prompt action on this important matter. OCC is communicating frequently with S&P to keep them apprised of the progress being made in this regard.

As you have seen, OCC's operating expenses have increased significantly over the last few years, which has been due to several factors. OCC's designation as a SIFMU increased the regulatory mandates OCC is required to meet and, in our commitment to meet those mandates, OCC has made both material investments and significant progress in strengthening our compliance posture under new executive leadership. An example of that progress is the new clearing fund methodology operationalized in September 2018, which expanded OCC's clearing fund from a "Cover 1" to a "Cover 2" standard and appropriately balanced OCC's margin and clearing fund resources. We continue to work with the SEC to make the enhancements necessary to demonstrate regulatory excellence in all aspects of our operations. Additionally, the age and increasing complexity of OCC's technology have contributed to expense growth. Looking forward, our Renaissance Initiative to replace OCC's clearing, data and risk management technology infrastructure will provide enhanced capabilities and agility and should allow us to lower our run-rate operating costs.

In sum, OCC is committed to delivering effective and efficient services with the high level of resiliency expected of a SIFMU. Our new approach to capital management, including adding a working line of capital and establishing a proposed Capital Management Policy, are important pieces of that effort.

New Approach to Capital Management

Approved by the Board on May 13, 2019, the Capital Management Policy ("Policy") details the principles used to identify, monitor and manage OCC's necessary capital level. A draft filing describing the Policy was provided to the SEC on May 20, 2019. As required by regulation, OCC maintains high quality and sufficiently liquid net assets funded by equity to cover potential general business losses and to provide for continued operations and services as a going concern if losses materialize under a range of scenarios, including adverse market conditions.



The purpose of the proposed Policy is to govern the maintenance of capital at the level necessary for OCC to meet its regulatory obligations and to serve its clearing members and the public interest. In drafting the proposed Policy, we sought to address the concerns raised in the disapproval order: the dividend and the associated rate of return are not part of the Policy and no further stockholder dividend is contemplated.

With the return of stockholder-invested capital, the approach under the proposed Policy will allow OCC to be funded through its usership. The new approach to capital management also addresses these core elements:

- Provides OCC's approach to determining clearing fees, inclusive of an operating margin based on the variance in average daily volume;
- Adds a working capital line of credit;
- Identifies the considerations made in determining OCC's level of target capital on an annual basis;
- Describes how OCC will periodically monitor its capital levels to identify whether OCC's capital has fallen or is in danger of falling below defined thresholds triggering further action; and
- Establishes a Replenishment Plan for accessing additional capital should OCC's equity capital fall below those defined thresholds.

Approach to Determining Clearing Fees, Inclusive of Operating Margin: Clearing fees will be based on the sum of OCC's annual budgeted/forecasted operating expenses, a defined operating margin, and OCC's capital needs. That total will be divided by forecasted contract sides to establish our clearing fees. With approximately 90% of OCC's revenues derived through clearing fees, our revenues are highly sensitive to volume and, as a result, we believe that an operating margin based on historical volume variance is the appropriate approach. Management has recommended that the Board set the operating margin at 13%, which reflects the variance of average daily volume over the last ten years.

Under prior practices, OCC collected and refunded over \$2.1 billion in cumulative clearing fees since 1999. Collecting fees only to refund them is not an efficient way to manage the direct cost of participating in OCC's clearing services. Accordingly, we believe OCC's most prudent course of action is to have an appropriate "base" clearing fee rate established in the manner described above to lower the cost of participation retroactively based upon actual volumes and expenses incurred, thereby reducing reliance on techniques such as refunds or fee holidays.

Working Capital Line of Credit

OCC will be seeking SEC approval to implement a revolving line of credit to provide liquidity for working capital needs and other general corporate purposes. This would expand access to liquidity beyond clearing fee revenues and provide OCC with another mechanism to manage our short-term corporate funding needs.



Identifying the considerations made in determining OCC's level of target capital: On an ongoing annual basis, OCC will determine the amount of equity capital required in accordance with regulatory obligations to ensure OCC continues to hold sufficient LNAFBE to cover potential general business losses if those losses materialize. The proposed Policy would provide that OCC maintains sufficient LNAFBE equal to the greater of:

1. six months of OCC's current operating expenses;
2. the amount determined by the Board to be sufficient to ensure a recovery or orderly wind-down of critical operations and services; or
3. the amount determined by the Board to be necessary for OCC to continue operations and services as a going concern if general business losses materialize.

In setting its target capital level, OCC also considers whether its total financial resources are sufficient to cover 12 months of operating expenses as required by CFTC Rule 39.11(a)(2). In addition, the Policy would provide that OCC may increase its Target Capital Requirement by an amount of surplus capital to be retained for capital expenditures following a recommendation by Management and Board approval.

Our assessment of operational risk from general business losses is updated each year using a methodology consistent with our prior practices. It is important to note that OCC's risk of loss has been decreasing due to actions taken by OCC to freeze and fund its pension liability, increase the breadth and quality of our insurance program, and enhance our security and control environment. Currently, the amount needed for OCC to continue operations and services in the event general business losses materialize and CFTC capital requirements are the predominate drivers of our target capital requirement. To support our determination, OCC has compared its ratio of cash and cash equivalents to operating expenses at other central counterparties. Our observation, on a comparative basis, is that OCC is not holding an excessive amount of cash against its annual operating expenses.

Based upon this review, in December 2018 Management recommended, and the Board approved, maintaining the target capital level at \$247 million. This result was reaffirmed by the Board at its meeting in February this year.

Thresholds for Action: We perform periodic analyses of our equity capital and LNAFBE, including projecting future revenue, expenses, cashflows, capital needs and other factors to help ensure adequate financial resources are available to meet general business obligations. Other factors considered include, but are not limited to:

- Level of existing prefunded corporate resources;
- Ability to borrow under an existing OCC line of credit;
- Ability to make a claim under certain insurance policies;
- OCC's tax rates and liabilities; and
- Unfunded obligations.



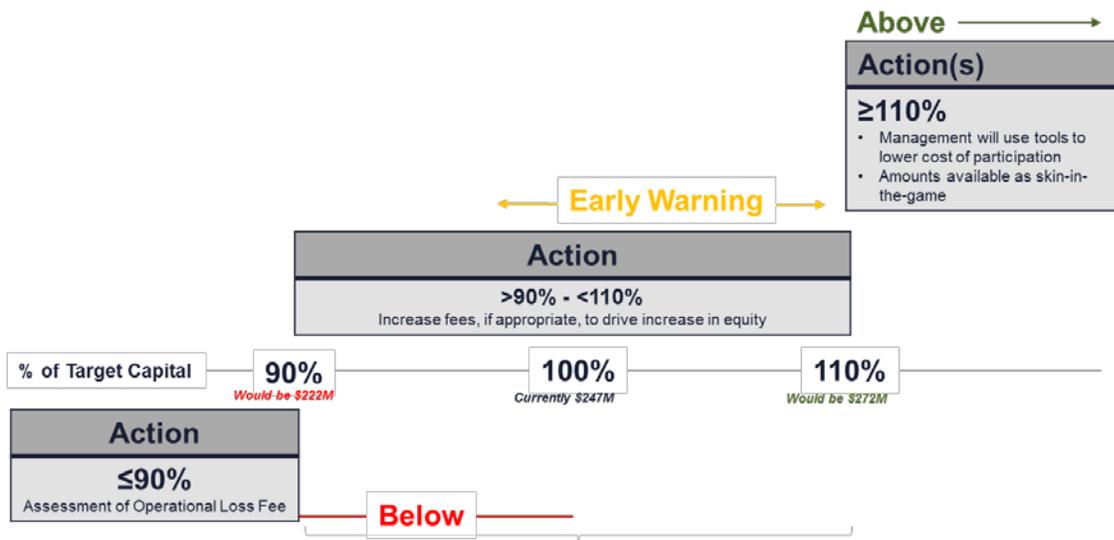
With our periodic review, the Policy sets forth several thresholds for action:

Excess Capital: If OCC’s capital is above 110% of its target plus approved capital for infrastructure needs, tools would be used to lower or waive clearing fees to return to the 110% level plus approved capital needs. In the event of a clearing member default, the amount of Equity Capital above 110% of the Target Capital Requirement will be available to offset the loss after utilizing the margin and clearing fund contributions of the defaulting clearing member, i.e., provide “skin-in-the-game.” In addition, OCC will contribute the funds held under its Executive Deferred Compensation Plan, to the extent such funds are deposited on or after January 1, 2020 and in excess of amounts necessary to pay for benefits accrued and vested under the Executive Deferred Compensation Plan (the “EDCP funds”) at such time, on a pro rata basis with clearing member clearing fund contributions. We believe the inclusion of the EDCP funds is appropriate to strengthen the alignment between Management and clearing members to maintain the necessary level of pre-funded financial resources.

Early Warning: If OCC’s capital fell below 110% of the target level, OCC would recommend to the Board, as necessary and if appropriate, a fee increase to raise additional capital. A 10% premium of OCC’s target capital is approximately two months of net income and provides both a sufficient period of time and level of capital so that appropriate actions can be taken to avoid triggering replenishment thresholds.

Trigger Event: In the unlikely event OCC’s capital falls below its target level for 90 days or breaches 90% of its target capital level, OCC would first contribute the EDCP funds to cure such loss. If after contributing the EDCP funds, a further Trigger Event occurs, OCC would charge an Operational Loss Fee in equal share to each clearing member, as described below.

The illustration below reflects these thresholds:





Replenishment Plan: OCC is required to maintain a viable plan, approved by the Board and reviewed at least annually, for raising additional equity should OCC’s equity fall close to or below the amount required. The SEC specifies that the amount of replenishment “should enable the covered clearing agency to hold sufficient liquid net assets to achieve recovery or orderly wind-down.” Based on our annual review of the Recovery and Orderly Wind-down Plan approved by the Commission, should the replenishment plan be triggered, the amount OCC would need to raise for 2019 would be up to \$116 million if the replenishment threshold was triggered.

In working to recommend a replenishment plan, Management has considered both public interest and OCC’s existing Rules and By-laws in addition to potential financial impacts in our evaluation of a wide range of alternatives.

Public interest considerations:

OCC, as a SIFMU, needs to comply with applicable regulatory standards, including Rule 17Ad-22(e)(15);

- OCC must have sufficient capital to maintain critical services and execute its Recovery and Orderly Wind-down Plan in the event of a material operational disruption;
- OCC must be effective and efficient while operating within its rules and by-laws, as required by Exchange Act Section 19(g), in the delivery of its services.

Rules and By-laws:

- OCC cannot compel its stockholders to vacate the rights provided to them under OCC’s Certificate of Incorporation, By-laws and Rules, including protection against dilution or subordination of their equity interest.

Together with the foregoing, and in consideration of (i) the remote possibility of a severe operational loss; (ii) existing stockholder rights; and (iii) the goal to be funded through market participants, the Policy proposes to modify OCC’s fee schedule to add a one-time operational loss fee assessed on clearing members, in equal share, payable on five business days’ notice only in the event of an operational loss that depletes OCC’s capital to the levels discussed above and contribution of the EDCP funds is not sufficient to cure that loss.

Approach	Description	Advantages
Add a one-time operational loss fee charged only in the event of an operational loss which depletes OCC’s capital to defined levels	OCC adds an operational loss fee to its fee schedule to charge a fee to each clearing member firm, in equal share, to increase capital in the event OCC experiences an operating loss which causes OCC equity capital to fall below 90% of target or less than 100% for 90 days. Prior to invoking the operational loss fee OCC will contribute the balance of its Executive Deferred Compensation Plan accumulated on or after January 1, 2020. In that manner OCC Management and clearing member firms will be aligned to prevent operational losses.	<ul style="list-style-type: none"> • No pre-funding • Tax inefficiency avoided unless assessment is made • Does not require a further clearing fee increase



The maximum amount of the operational loss fee, which would be discounted if less than the maximum is needed to replenish OCC’s capital to 110% of target capital, would be determined by the Board annually based on the amount the Board determines is necessary to ensure recovery and orderly wind-down plus an amount needed to account for taxes to cover that amount. The maximum amount, divided by the number of clearing members at the determination date, will be listed on OCC’s schedule of fees. Presently, based on OCC’s 105 clearing members, OCC would charge each clearing member up to \$1,473,016 if a Trigger Event occurred, after applying EDCP funds.

In developing the Replenishment Plan, OCC considered the alternative of pre-funding replenishment capital through clearing fees. The applicable regulations do not require that replenishment be pre-funded; rather, the regulation requires a viable plan to replenish should OCC’s equity fall close to or below the established target capital level as reflected in the illustration above. A disadvantage of pre-funding via clearing fees is tax leakage given that OCC’s clearing fee revenue is subject to federal and state corporate income tax rates. Because of that inefficiency, to retain \$116 million, OCC would need to generate \$155 million in revenue which would result in a tax expense of \$38 million. Under OCC’s Replenishment Plan proposal, such tax leakage would occur only if the Operational Loss Fee is charged. Further, pre-funding would require a significant period of time to achieve. With a half-cent increase in clearing fees at current volume levels, it would take over four years to accumulate the level of funds necessary under the plan. Because pre-funding the replenishment amount is not required and would be more inefficient, time-consuming and onerous, we have recommended limiting the pre-funding of replenishment capital, unless the Policy, which includes this viable Replenishment Plan, does not receive regulatory approval on a timely basis.

The table below provides a summary of the differences between the prior Capital Plan and the proposed Policy.

Summary of Changes under the Capital Plan vs. Capital Management Policy

Policy Element	Capital Plan	Proposed Capital Management Policy
Margin / Business Risk Buffer	25%	13%
Clearing Member Refund / tools	50% of the business risk buffer	OCC will manage to 110% of the target capital using tools which include fee reductions, fee waivers or clearing member refunds to lower the direct costs of participation
Dividend	50% of the business risk buffer less taxes	ELIMINATED
Skin-in-the-game	At the election of the Board	EDCP funds, on a go-forward basis, plus any amount above 110% of target capital
Replenishment Plan	Ability to call OCC shareholders for the lessor of (i) \$200M or (ii) the greater of six months’ operating expenses or the cost to OCC of winding down operations.	A one-time operational loss fee charged only in the event of an operational loss which depletes OCC’s capital to defined levels



Ensuring that OCC has the necessary capital and LNAFBE to serve market participants is critical to all of us. This is a complex topic with many elements. OCC Management believes the proposed Policy is the approach that will allow OCC to meet its regulatory requirements while providing the appropriate level of capital and LNAFBE on an effective and efficient basis.

Please feel free to reach out to your regular OCC contacts or either of us if you have further questions on this matter. Please also feel free to circulate this letter to other interested parties at your firm. OCC will host clearing member conference calls on this matter in the near future to answer your questions and to receive your feedback.

Two handwritten signatures in black ink. The first signature is "John P. Davidson III" and the second is "Scot E. Warren".

John P. Davidson
Chief Executive Officer

Scot E. Warren
Chief Operating Officer

EXHIBIT 3g**Summary of Communications with Market Participants
Concerning the Proposed Capital Management Policy**

- **Did OCC consider alternative means of allocating the Operational Loss Fee among clearing members (e.g., by trade volume)?**
 - Charging the Operational Loss Fee in equal shares mutualizes risk of operational loss amongst the firms that use OCC's services, reflecting that each Clearing Member derives value from OCC's critical services. OCC considered allocation proportional to contract volume or risk profile based on a Clearing Member's margin and Clearing Fund contributions. However, there is no evidence of correlation between these measures and the risk of an operational loss that would trigger the Operational Loss Fee.
- **What is the likelihood that OCC will charge the Operational Loss Fee?**
 - OCC believes that the likelihood is extremely low, as OCC has never experienced such an operational loss in OCC's history. The Replenishment Plan does not concern the resources available in the event of a Clearing Member default.
- **Would the Operational Loss Fee be charged as a fee or would it become part of the guarantee fund?**
 - The Operational Loss Fee would be charged as a fee because it is intended to raise additional Equity in the event OCC's Equity falls below defined thresholds. The funds collected through the fee would become part of OCC's retained earnings.
- **In what event is the Operational Loss Fee returned?**
 - The Operational Loss Fee is a fee, and the funds are not returned. OCC considered a proposal that would have required Clearing Members to purchase preferred shares that OCC would repurchase once its Equity had stabilized, but could not obtain the stockholder consent required to authorize preferred shares.
 - Notwithstanding that the Operational Loss Fee is not returned, if, after charging the fee, OCC's Equity returns to above 110% of the Target Capital Requirement and the Board approves tools to lower Clearing Members' costs of participation, OCC would first use such tools to lower costs for Clearing Members in equal shares up to the amount of the Operational Loss Fee charged.
- **Would the funds collected through the Operational Loss Fee be subject to taxes?**
 - Whether OCC would need to account for taxes would depend on the nature of the operational loss that causes OCC's equity to fall below defined thresholds. For example, a loss might be tax deductible which would offset taxes owed on earnings retained through the Operational Loss Fee necessary to raise Equity to 110% of the Target Capital Requirement, up to the amount determined by the Board to be sufficient to ensure orderly recovery or wind-down.

- **When would the Operational Loss Fee be payable?**
 - OCC would notify Clearing Members if a Trigger Event occurred that required OCC to charge the Operational Loss Fee. The fee would be payable within five (5) business days.
- **What is the timing of submission of the proposal to the SEC?**
 - OCC submitted a draft to SEC staff and has received comments. The intent of these calls is to allow Clearing Members to provide feedback prior to OCC submitting the proposal in final form to the SEC.
- **Will there be another call with Clearing Members following the May 31, 2019 calls?**
 - Clearing Members with questions or concerns should feel free to reach out to their representatives. OCC management is available for one-on-one calls with Clearing Members and a broader call may be scheduled if Clearing Members express a desire for one.
- **One market participant raised concerns that if OCC was sold, it would have a more commercial orientation monetized with much higher fees.**
 - OCC believes that this view is well outside the scope of the Capital Management Policy, but will continue to engage with Clearing Members and other market participants throughout the regulatory approval process to address concerns. In any event, the current By-Laws contemplate that only registered national securities exchanges or national securities associations may be stockholders of OCC. Any change to amend the By-Laws to allow for other types of stockholders would require stockholder and SEC approval.
- **OCC pays interest on the cash in the Clearing Fund held at the Federal Reserve. Was there any consideration to keep the interest earned at the Fed with OCC to build up equity?**
 - Currently, OCC retains five basis points on money on deposit in OCC's Federal Reserve account. While OCC could increase that amount and work to-prefund replenishment capital, that approach was not recommended for at least three reasons. First, there is no regulatory requirement that replenishment be pre-funded. Second, the approach is tax inefficient because the interest income is subject to income tax. Third, the duration of time it would take to fund via increased retention of interest income would not ensure OCC would have a viable replenishment plan as quickly as possible.
- **How did the change in the SEC approval relate to the maturity of OCC?**
 - OCC continues its efforts to strengthen its control environment. OCC is seeing the results of these efforts when looking at its potential risk of general business losses when determining the Target Capital Requirement. OCC does not see the Capital Plan's disapproval affecting OCC's ability to continue to mature.
- **If OCC were to merge with another clearinghouse, how would that impact the needs driving the proposed Capital Management Policy?**
 - As noted above, OCC's current By-Laws do not support merging with another covered clearing agency; rather, stockholders of OCC must be registered

national securities exchanges or a national securities association. OCC's goal is to secure approval of a policy that is reasonably designed to ensure that OCC maintains capital and has a viable replenishment plan to meet regulatory requirements, consistent with OCC's By-Laws, Rules and stockholders' rights.

- **How long has OCC been undercapitalized?**

- OCC has always maintained sufficient capital to run its operations. The SEC's disapproval of the Capital Plan meant that OCC no longer had policies and procedures designed to replenish OCC's capital in the event of an operational loss. The proposed Capital Management Policy is designed to address this gap.

- **What is the process going forward?**

- OCC management has shared a draft of the Capital Management Policy with SEC staff. We are targeting a formal filing by the end of July. The filing will then be put out for public comment. We are hoping that by the time we get file formally with the SEC, OCC management will have addressed any concerns raised by the industry.

EXHIBIT 3h

[Redacted Pursuant to Rule 24b-2]

[Redacted Pursuant to Rule 24b-2]

EXHIBIT 5a

[Redacted Pursuant to Rule 24b-2]

EXHIBIT 5b



OCC RULES

Underlined text indicates new text
~~Strikethrough~~ text indicates deleted text

THE OPTIONS CLEARING CORPORATION

RULES

* * *

CHAPTER I Definitions

RULE 101 – Definitions

Unless the context otherwise requires, for all purposes of these rules, the terms herein shall have the meanings given them in Article I of the By-Laws of the Corporation or as set forth below.

* * *

E.

EDCP Unvested Balance

(1) The term “EDCP Unvested Balance” shall mean, as of any date, the funds held under The Options Clearing Corporation Executive Deferred Compensation Plan Trust which are (a) deposited on and after January 1, 2020 in respect of the Corporation’s Executive Deferred Compensation Plan (the “EDCP”) and (b) in excess of amounts necessary to pay for the benefits accrued and vested under the EDCP as of such date.

Electronic Data Entry

~~(2)~~ The term “electronic data entry” shall mean the transmission by a Clearing Member to the Corporation via electronic means of reports, notices, instructions, data or other items.

Electronic Data Retrieval

~~(2)~~ The term “electronic data retrieval” shall mean the retrieval by a Clearing Member via electronic means of reports, notices, instructions, data and other items made available by the Corporation.

Exercise Position

~~(3)~~ The term "exercise position" shall mean the position of a Clearing Member in any account in respect of option contracts which have been exercised by such Clearing Member, or for which such Clearing Member is the Assigned Clearing Member, in such account.

Exercise Settlement Amount

~~(4)~~ The term "exercise settlement amount" as used in respect of stock options shall mean the amount payable to the Delivering Clearing Member upon delivery of the underlying security or securities in respect of the exercise of an option contract.

Exercise Settlement Date

~~(5)~~ The term "exercise settlement date" shall mean the date specified in Rule 903 or any Rule that replaces that Rule.

* * *

O.

* * *

Operational Loss Fee

(2) The term “Operational Loss Fee” shall mean the fee that would be charged to Clearing Members in equal shares, up to the maximum amount identified in the Corporation’s schedule of fees less the aggregate amount of Operational Loss Fees previously charged and not yet refunded at the time of calculation, if, after contributing the entire EDCP Unvested Balance, shareholders’ equity remains below the levels identified in the Corporation’s schedule of fees.

* * *

T.

Reserved: Target Capital Requirement

(1) The term “Target Capital Requirement” shall mean the amount of shareholders’ equity recommended by Management and approved by the Board to ensure compliance under both the SEC and CFTC rules and to keep such additional amount the Board may approve for capital expenditures.

* * *

**CHAPTER II
Miscellaneous Requirements**

* * *

Rule 209 - Payment of Fees and Charges

(a) Fees and charges owing by a Clearing Member to the Corporation shall be due and payable within five business days following the end of each calendar month. Notwithstanding the foregoing, the Operational Loss Fee owing by a Clearing Member to the Corporation shall be due and payable within five business days following the Corporation’s notice to the Clearing Member that the Operational Loss Fee is due.

(b) The Corporation shall be authorized to withdraw from each Clearing Member’s bank account established with respect to its firm account, on or after the fifth business day following the end of each calendar month or, in the case of an Operational Loss Fee, on or after the fifth business day following the Corporation’s notice to the Clearing Member that the Operational Loss Fee is due,

(i) an amount equal to the amount of any fees and charges owing to the Corporation, (ii) an amount equal to the amount of any fees due to an Exchange for whom the Corporation has agreed to collect such fees, (iii) if the Clearing Member is a Market Loan Clearing Member, an amount equal to the amount of any fees and charges owing to any Loan Market for which the Corporation has agreed to collect such fees and charges, (iv) the amount of any fine levied by the

Corporation for a minor rule violation that the Clearing Member has not timely contested, as described in Rule 1201(b), and (v) the amount of any other fine levied by the Corporation pursuant to Chapter XII.

* * *

CHAPTER X Clearing Fund Contributions

* * *

RULE 1006 - Purpose and Use of Clearing Fund

(a) *Conditions for Clearing Fund Use.* The Clearing Fund may be used to make good losses or expenses suffered by the Corporation, or losses suffered by the Clearing Fund resulting from borrowings pursuant to the authority in Rule 1006(f), (i) as a result of the failure of any Clearing Member to discharge duly any obligation on or arising from any confirmed trade accepted by the Corporation, (ii) as a result of the failure of any Clearing Member (including any Appointed Clearing Member) or of CDS to perform its obligations (including its obligations to the correspondent clearing corporation) under or arising from any exercised or assigned option contract or matured future or any other contract or obligation issued, undertaken, or guaranteed by the Corporation or in respect of which the Corporation is otherwise liable, (iii) as a result of the failure of any Clearing Member to perform any of its obligations to the Corporation in respect of the stock loan and borrow positions of such Clearing Member, (iv) in connection with any liquidation of a Clearing Member's open positions, (v) in connection with protective transactions effected for the account of the Corporation pursuant to Chapter XI of the Rules, (vi) as a result of the failure of any Clearing Member to make any other required payment or render any other required performance, (vii) as a result of the failure of any bank or securities or commodities clearing organization to perform its obligations to the Corporation for reasons specified in paragraph (c) of this Rule 1006, or (viii) as a result of a borrowing by the Corporation for liquidity needs for same day settlement pursuant to the authority in Rule 1006(f). Notwithstanding the foregoing, in the event that the Corporation performs a Voluntary Tear-Up or a Partial Tear-Up pursuant to Rule 1111, the Clearing Fund may be used to provide compensation to non-defaulting Clearing Members and their customers as a means of re-allocating the losses, costs and fees imposed upon them as a result of such Voluntary Tear-Up or Partial Tear-Up, but only to the extent that such losses, costs and fees can be reasonably determined by the Corporation.

(b) *Clearing Member Failures.*

(i) Upon occurrence of any of the events described in clauses (i) through (vi) of paragraph (a) of this Rule, the Corporation shall (after appropriate application of other funds in the accounts of the Clearing Member) apply the Clearing Member's Clearing Fund contribution to the discharge of the obligation, the reimbursement of such loss or expense, or the making of such payment or the funding of the performance, as applicable. If the sum of all such obligations, losses or expenses, and payments exceeds the sum of the amount of the Clearing Member's total Clearing Fund contribution and the amount of the other funds of the Clearing Member available to the Corporation, and if the Clearing Member fails to pay the Corporation the amount of any such

deficiency on demand, the amount of the deficiency shall be first, funded by the Corporation's retained earnings in accordance with paragraph (e) of this rule; and next, paid out of the Clearing Fund and the EDCP Unvested Balance and charged on a proportionate basis against the sum of the EDCP Unvested Balance and all other Clearing Members' required contributions as calculated at the time ~~and charged on a proportionate basis against all other Clearing Members' required contributions as calculated at the time~~, but the Clearing Member who failed to pay the deficiency shall remain liable to the Corporation for the full amount of such deficiency until repayment thereof by such Clearing Member.

(ii) If the Corporation performs a Voluntary Tear-Up or a Partial Tear-Up pursuant to Rule 1111, then, the Corporation may elect to proportionately charge the Clearing Fund and EDCP Unvested Balance in the amount(s) the Corporation reasonably determines necessary to compensate non-defaulting Clearing Members and their customers for the losses, costs or fees imposed upon them as a ~~directly~~ result of such Voluntary Tear-Up or Partial Tear-Up, but only to the extent that such losses, costs and fees can be reasonably determined by the Corporation.

(iii) For purposes of this Rule 1006(b), the share of any Clearing Fund loss or deficiency shall be borne pro rata by each Clearing Member (other than the suspended Clearing Member(s)) and the EDCP Unvested Balance. The percentage attributed to each shall be a fraction, the numerator of which shall be the sum of the fixed amount and variable amount calculated pursuant to Rule 1003 for such Clearing Member (or its initial contribution if applicable) or the EDCP Unvested Balance amount, as applicable, and the denominator of which shall be the sum of the EDCP Unvested Balance and fixed amounts, variable amounts and any initial contributions across all Clearing Members (other than suspended Clearing Member(s)) ~~a Clearing Member's proportionate share of any loss to be charged against such Clearing Member's contribution to the Clearing Fund shall be determined in accordance with the formula prescribed in Interpretation and Policy .01 below.~~

(c) *Bank or Clearing Organization Failures.*

(i) If any bank or securities or commodities clearing organization shall fail to perform any obligation to the Corporation when due because of its bankruptcy, insolvency, receivership, suspension of operations, or any similar event, and the Corporation shall sustain a loss (whether directly or as a trustee, custodian, or secured party) by reason thereof that is not recoverable out of the Clearing Fund pursuant to paragraph (b), the Corporation may, in its discretion, reimburse itself for such loss out of the Clearing Fund pursuant to this paragraph (c), and the amount of any such reimbursement shall be charged proportionately against all Clearing Members' required contributions to the Clearing Fund as calculated at the time.

(ii) With respect to any borrowing by the Corporation for liquidity needs for same day settlement pursuant to the authority in paragraph (e) of this Rule, if such borrowing remains outstanding for a period of less than thirty days, the Corporation may, in its discretion, consider such amount an actual loss to the Clearing Fund and the amount of any such loss shall be charged proportionately against all Clearing Members' required contributions to the Clearing Fund as calculated at the time, provided however, that if such borrowing remains outstanding on the thirtieth day, the Corporation shall consider such amount an actual loss to the Clearing Fund and the amount of

any such loss shall be charged proportionately against all Clearing Members' required contributions to the Clearing Fund as calculated at the time.

(iii) For purposes of this Rule 1006(c), the share of any deficiency to be borne by each Clearing Member (other than the suspended Clearing Member(s)) shall be a fraction, the numerator of which shall be the sum of the fixed amount and variable amount calculated pursuant to Rule 1003 for such Clearing Member (or its initial contribution if applicable) and the denominator of which shall be the sum of the fixed amounts, variable amounts and any initial contributions across all Clearing Members (other than the suspended Clearing Member(s))~~a Clearing Member's proportionate share of any loss to be charged against such Clearing Member's contribution to the Clearing Fund shall be determined in accordance with the formula prescribed in Interpretation and Policy .01 below.~~ To the extent that a loss resulting from any of the events referred to in this paragraph is recoverable out of the Clearing Fund pursuant to paragraph (b), the provisions of paragraph (b) shall control, and this paragraph (c) shall be inapplicable.

(d) *Notice of Charges.* Whenever any proportionate charge is made against Clearing Members' contributions to the Clearing Fund, the Corporation shall promptly notify all Clearing Members of the amount of the charge and the reasons therefor. For the purposes of paragraphs (b) through (d), the amount of any loss sustained by the Corporation shall be determined without reference to the possibility of any subsequent recovery in respect thereof, through insolvency proceedings or otherwise, but the net amount of any such recovery shall be applied in accordance with paragraph (h).

(e) *Retained Use of Earnings.*

(i) In advance of charging a loss or deficiency proportionately to the Clearing Fund required contributions of non-defaulting Clearing Members and the EDCP Unvested Balance pursuant to paragraph (b) of this Rule 1006, the Corporation will charge such loss or deficiency against the Corporation's current and retained earnings that are greater than 110% of its Target Capital Requirement.

(ii) Notwithstanding the provisions of ~~paragraphs (b) through (d)~~ paragraph (c), in lieu of charging a loss or deficiency proportionately to the Clearing Fund required contributions of non-defaulting Clearing Members pursuant thereto, the Corporation may, in its discretion, elect to charge such loss or deficiency in whole or in part against the Corporation's current earnings or retained earnings. If such charge is made against current earnings, such charge shall be deemed a refund of clearing fees to the non-defaulting Clearing Members to whose Clearing Fund contributions the loss or deficiency would otherwise have been charged, and in that case the Corporation shall notify each such Clearing Member of the aggregate amount of the charge against current earnings, the reasons therefor, and the amount deemed to have been refunded to such Clearing Member.

(iii) As used herein, the term "current earnings" shall mean the Corporation's net income before taxes for the period from the beginning of the fiscal year in which a loss or deficiency occurs to the close of the calendar month immediately preceding the occurrence of such loss or deficiency, less an amount equal to the aggregate of all refunds of clearing fees made or authorized to be made or deemed to have been made for such fiscal year. If the Corporation ~~elects to charge~~ a

deficiency in a Clearing Member's Clearing Fund contribution against the Corporation's current earnings or retained earnings, the Clearing Member shall remain liable to the Corporation for the full amount of such deficiency until repayment thereof by such Clearing Member.

(f) *Borrowings.* If (i) the Corporation deems it necessary or advisable to borrow or otherwise obtain funds from third parties in order to meet obligations arising out of the default or suspension, or in anticipation of the potential default or suspension, of a Clearing Member or any action taken by the Corporation in connection therewith pursuant to Chapter XI of the Rules or otherwise; or (ii) the Corporation sustains a loss reimbursable out of the Clearing Fund pursuant to paragraph (c) but elects to borrow or otherwise obtain funds from third parties in lieu of immediately charging such loss to the Clearing Fund; or (iii) the Corporation reasonably believes it necessary to borrow to meet its liquidity needs for same-day settlement as a result of the failure of any bank or securities or commodities clearing organization to achieve daily settlement, and in any case the Corporation determines that it will be unable to borrow or otherwise obtain such funds on acceptable terms on an unsecured basis; then the Corporation may take possession of cash or securities deposited by Clearing Members as contributions to the Clearing Fund and securities in which cash contributions to the Clearing Fund have been invested by the Corporation and use such assets to borrow or otherwise obtain funds through any means determined to be reasonable by the Executive Chairman, Chief Executive Officer, or Chief Operating Officer of the Corporation in his discretion (including, without limitation, pledging such assets as security for loans and/or using such assets to effect repurchase, securities lending or other transactions); provided, in the case of any transaction effected under the circumstances specified in clause (i) or clause (iii) above, that the funds obtained through such transaction will be used solely for the purposes described in clause (i) or clause (iii), as applicable. The funds obtained by the Corporation pursuant to this paragraph (f)), irrespective of how such funds are applied, shall not be deemed to be charges against the Clearing Fund for a period not to exceed thirty days, and, during said period, shall not affect the amount or timing of any charges otherwise required to be made against the Clearing Fund pursuant to this Chapter X. If all or a part of any transaction effected by the Corporation pursuant to this paragraph (f) remains outstanding after thirty days, the Corporation, at the close of business of the thirtieth day (or on the first Business Day thereafter), shall consider the amount of Clearing Fund assets used to support the Corporation's obligations under the outstanding transaction as an actual loss to the Clearing Fund and immediately allocate such loss in accordance with this Chapter X.

(g) *Cross Guaranty Parties.* If the Corporation is obligated to make a payment to a Cross-Guaranty Party pursuant to a Limited Cross-Guaranty Agreement in respect of a suspended Clearing Member, the Corporation shall (after appropriate application of other funds in the accounts of the Clearing Member) apply the Clearing Member's Clearing Fund contribution to make such payment, or to reimburse itself for such payment. If the Corporation receives any funds in respect of a suspended Clearing Member from a Cross-Guaranty Party pursuant to a Limited Cross-Guaranty Agreement in circumstances in which the Corporation must still make a charge on a proportionate basis against other Clearing Members' required contributions to the Clearing Fund even after application of such funds, or in circumstances in which the Corporation has already made a charge on a proportionate basis against other Clearing Members' required contributions to the Clearing Fund, such funds shall be credited [in accordance with the provisions of Rule 1010](#)~~to the Clearing Fund.~~

(h) *Making Good of Charges to the Clearing Fund.*

(A) *Replenishment.* Whenever an amount is paid out of the Clearing Fund contribution of a Clearing Member, whether by proportionate charge or otherwise, such Clearing Member shall be liable to promptly make good the deficiency in its required contribution resulting from such payment by replenishment of the Clearing Fund. Each Clearing Member shall have and shall at all times maintain the ability to replenish any deficiency described in this Rule 1006(h) by 9:00 A.M. Central Time (10:00 A.M. Eastern Time) on the first business day following the day on which the Corporation notifies the Clearing Member of such deficiency.

(B) *Cooling-Off Period; Assessments.* Notwithstanding anything in this Rule 1006(h) and except as provided for below, if an amount is paid out of the Clearing Fund as a result of a proportionate charge under Rule 1006(b) resulting from any of the events described in clauses (i) through (iv) of Rule 1006(a), then starting on the date of such proportionate charge there shall automatically commence a cooling-off period during which a Clearing Member will not be liable to make good more than an additional 200% of the amount of its then required contribution (for definitional purposes, amounts in excess of a Clearing Member's then required contribution shall be "assessments"). The cooling-off period shall be fifteen consecutive calendar days from the date of such proportionate charge; provided however, that if one or more subsequent events described in clauses (i) through (iv) of Rule 1006(a) occur during the fifteen-day period and result in one or more proportionate charges against the Clearing Fund, the cooling-off period shall be extended through (i) the fifteenth calendar day from the date of the most recent proportionate charge resulting from the subsequent event, or (ii) the twentieth calendar day from the date of the initial proportionate charge, whichever is sooner. After the cooling-off period ends, Clearing Members shall not be liable for any deficiency arising from losses or expenses suffered by the Corporation as a result of any event described in clauses (i) through (iv) of Rule 1006(a) that occurred during the cooling-off period. Each Clearing Member shall have and at all times maintain the ability to make good any deficiency described in this Rule 1006(h) by 9:00 A.M. Central Time (10:00 A.M. Eastern Time) on the first business day following the day on which the Corporation notifies the Clearing Member of such deficiency.

(C) *Termination During Cooling-Off Period.* After the expiration of the cooling-off period, a Clearing Member will not be liable for replenishment of the Clearing Fund as required by paragraph (A) of this Rule 1006(h) or assessments as contemplated by paragraph (B) of this Rule 1006(h), if (i) not later than the last day of the cooling-off period the Clearing Member notifies the Secretary of the Corporation in writing that it is terminating its status as a Clearing Member, (ii) after giving such notice no opening purchase transaction or opening writing transaction is submitted for clearance through any of the Clearing Member's accounts and (if the Clearing Member is a Market Loan Clearing Member or a Hedge Clearing Member) no Stock Loan is initiated through any of the Clearing Member's accounts after the giving of such notice, and (iii) the Clearing Member closes out or transfers all of its open positions with the Corporation, in each case not later than the last day of the cooling off period. A Clearing Member that so terminates its status as a Clearing Member shall be ineligible to be readmitted to such membership unless the Clearing Member agrees to such reimbursement of the persons who were Clearing Members at the time of such termination as the Board of Directors deems fair and equitable in the circumstances. In the event a Clearing Member notifies the Corporation of its

intent to terminate its status as a Clearing Member in accordance with paragraph (C) of this Rule 1006(h), and such Clearing Member's computed contribution is less than its minimum required contribution, then the Clearing Member shall also make good 100% of the amount equal to its minimum required contribution less its computed contribution to the Clearing Fund.

(i) *General Lien.* Without limiting any other rights granted herein, each Clearing Member grants to the Corporation a general lien on all cash, Government securities and other property of the Clearing Member contributed to the Clearing Fund (and any proceeds thereof) as security for any obligation of the Clearing Member to the Corporation including, without limitation, any obligation to satisfy a proportionate charge pursuant to this Rule 1006.

(j) *Securities Intermediary.* Securities deposited in an account of the Corporation in an approved custodian in the name of the Corporation shall be credited to the Clearing Member's "clearing fund account," which shall be a securities account maintained on the records of the Corporation in the name of such Clearing Member, and the Corporation shall be the Clearing Member's securities intermediary with respect to such securities for purposes of Articles 8 and 9 of the Uniform Commercial Code. So long as any such securities and any proceeds thereof are so credited to the Clearing Member's clearing fund account, the Corporation shall have a general lien on and perfected security interest in and "control" over such securities and proceeds for purposes of Articles 8 and 9 of the Uniform Commercial Code.

. . . Interpretations & Policies:

~~.01 For purposes of paragraphs (b) and (c) of this Rule 1006, the share of any deficiency to be borne by each Clearing Member (other than the suspended Clearing Member(s)) shall be a fraction, the numerator of which shall be the sum of the fixed amount and variable amount calculated pursuant to Rule 1003 for such Clearing Member (or its initial contribution if applicable) and the denominator of which shall be the sum of the fixed amounts, variable amounts and any initial contributions across all Clearing Members (other than the suspended Clearing Member(s)).~~ Reserved.

.02 If the Corporation has a deficiency after the application of all of the funds of a suspended Clearing Member that are available to the Corporation (including the Clearing Fund contributions of the Clearing Member), and the Clearing Member is a Common Member but the Corporation cannot, in its discretion, determine whether or in what amount it will be entitled to receive funds from a Cross-Guaranty Party pursuant to a Limited Cross-Guaranty Agreement in respect of the Clearing Member, or when it will receive such funds, the Corporation may, in its discretion, make a charge against other Clearing Members' contributions to the Clearing Fund in accordance with the provisions of paragraph (b). If the Corporation receives funds from a Cross-Guaranty Party in respect of the Clearing Member after making such a charge, the Corporation will credit such funds to the Clearing Fund in accordance with the provisions of Rule 1010.

.03 If the Corporation has a deficiency after the application of all of the funds of a suspended Clearing Member that are available to the Corporation (including the Clearing Fund contribution of the Clearing Member), and the Clearing Member is a Common Member and the Corporation determines in its discretion that it is likely to receive funds from a Cross-Guaranty Party pursuant to a Limited Cross-Guaranty Agreement in respect of the Clearing Member, the Corporation

may, in its discretion and in anticipation of receipt of such funds from the Cross-Guaranty Party, forego making a charge, or make a reduced charge, against other Clearing Members' contributions to the Clearing Fund in accordance with the provisions of paragraph (b). If the Corporation thereafter does not receive or determines that it is not likely to receive the anticipated funds from the Cross-Guaranty Party, or receives funds in a smaller amount than anticipated, the Corporation may, in its discretion, make a charge, or an additional charge, against other Clearing Members' contributions to the Clearing Fund in accordance with the provisions of paragraph (b).

.04 If the Corporation receives funds from a Cross-Guaranty Party pursuant to a Limited Cross-Guaranty Agreement in respect of a suspended Clearing Member, and is thereafter required for any reason whatsoever to refund such funds to the Cross-Guaranty Party, the Corporation may, in its discretion, make a charge, or an additional charge, against other Clearing Members' contributions to the Clearing Fund in accordance with the provisions of paragraph (a) (based on the other Clearing Members' contributions as fixed at the time of the refund), to make itself whole for the funds refunded to the Cross-Guaranty Party.

EXHIBIT 5c

Underlined text indicates new text
~~Strikethrough~~ text indicates deleted text

**THE OPTIONS CLEARING CORPORATION
SCHEDULE OF FEES –[MONTH] 2019**

**CLEARING MEMBER
CLEARING**

Clearing Fees			
Trades with contracts of:		MEMBERSHIP	
0 –999	\$. 055	New Clearing Member	
Greater than 999	\$ 55.00/trade	Qualification Fee	\$ 4,000.00
New Products			
Unless otherwise agreed to by OCC and the applicable exchange, from the first day of listing through the end of the following calendar month:	\$ 0.00	Stock and Market Loan Program Transaction Fees	
Linkage per side*	\$ 0.02	Per transaction assessed against each lender and borrower	\$ 1.00
Minimum Monthly Clearing Fee	\$ 200.00	Stock and Market Loan Program Borrower Fees	
Exercise Fee – per line item on exercise notice	\$ 1.00	Monthly annualized charge on average daily notional outstanding balance	0.4 basis point
		STAMPS	
		Clearing Member Authorization Stamp	\$ 23.00 per stamp

* A Linkage transaction that includes more than 2,750 contracts will be charged a flat fee of \$55.00 per trade per side.

ANCILLARY SERVICES

TIER I

- ENCORE Access
- MyOCC Access
- Data Service – proprietary position and trade data (includes transmission to service bureau)
- Report Bundle
- Series File
- Special Settlement File
- Open Interest File
- Prices File
- Stock Loan File
- Theoretical Profit and Loss Values
- Leased line charges are additional
 \$ 1,500.00 per month

Additional Clearing Member:
 No Charge

TIER II

- ENCORE Access
- MyOCC Access
- Data Service – proprietary position and trade data (includes transmission to service bureau)
- Report Bundle
- Leased line charges are additional
 \$ 1,000.00 per month

TIER III

- ENCORE Access
- MyOCC Access
 \$ 650.00 per month

TIER IV (Stock Loan Only)

- ENCORE Access
- MyOCC Access
 \$ 300.00 per month

LEASED LINE SERVICES

T1 line to a Midwest Destination	\$1,000.00 per month, per line
T1 line to an East Coast Destination	\$1,500.00 per month, per line
T1 line to a West Coast Destination	\$2,000.00 per month, per line

CASH MANAGEMENT FEE

Monthly annualized charge on Clearing Member's average daily cash balance in OCC's Federal Reserve bank account. **5 basis points**

OPERATIONAL LOSS FEE

Maximum Operational Loss Fee**	\$154,666,667.00 less the <u>aggregate amount of Operational Loss Fees previously charged and not refunded as of the date calculated, divided by the number of Clearing Members at the time charged</u>
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** OCC would charge the Operational Loss Fee if OCC's shareholders' equity falls below \$222,000,000.00 at any time or falls below \$247,000,000.00 for a period of 90 consecutive calendar days. If less than the maximum Operational Loss Fee is needed to return OCC's shareholders' equity to \$272,000,000.00, OCC will charge only that amount.

CLEARING MEMBER/NON-CLEARING MEMBER

PUBLICATIONS/BROCHURES

Disclosure Documents	\$.45
OCC/ICC By-Laws and Rules	\$	47.00

(Updates can be obtained on a subscription basis for \$47.00 per year.)

NON-CLEARING MEMBER

SERIES INFORMATION

Non-Clearing Member

Non-Distribution	\$1,750.00 per month
Distribution	\$3,000.00 per month
Real Time Data	\$250.00 per month (in addition to fees listed above)

PRICES INFORMATION

Non-Clearing Member	\$3,000.00 per month
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THEORETICAL PROFIT AND LOSS VALUES*

Non-Clearing Member \$1,000.00 per month

ESCROW BANKS

ESCROW PROGRAM FEES

Escrow Bank Monthly Program Fee \$200.00

ALL FEES ARE SUBJECT TO CHANGE

For further information, contact Member Services at 1-800-621-6072.