

Required fields are shown with yellow backgrounds and asterisks.

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

File No. \* SR 2022 - \* 803

Amendment No. (req. for Amendments \*)

Filing by Options Clearing Corporation

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

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

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
Section 806(e)(1) \*

Section 806(e)(2) \*

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

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

### Description

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

Advance Notice Related to an Expansion of The Options Clearing Corporation's Non-Bank Liquidity Facility Program as Part of Its Overall Liquidity Plan

### 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 \* Associate General Counsel

E-mail \* mcbrown@theocc.com

Telephone \* (312) 322-1801 Fax

### Signature

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

Date 07/07/2022

(Title \*)

By Mark C. Brown

Associate General Counsel

(Name \*)

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

Mark C. Brown  
Digitally signed by Mark C. Brown  
Date: 2022.07.07 14:45:46 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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SR-OCC-2022-803 - 19b-4 - Non-Ban

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 Advanced Notice by Clearing Agencies \***

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SR-OCC-2022-803 - Exhibit 1A (7.7.20

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

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

Add Remove View

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

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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SR-OCC-2022-803 - Exhibit 3\_Redact

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

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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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**

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Form 19b-4

Advance Notice  
by

**THE OPTIONS CLEARING CORPORATION**

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

**Item 1. Text of the Advance Notice**

In accordance with Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (“Payment, Clearing and Settlement Supervision Act”)<sup>1</sup> and Rule 19b-4(n)(i)<sup>2</sup> of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>3</sup> this advance notice is filed by The Options Clearing Corporation (“OCC”) in connection with a proposed change to its operations to expand capacity under OCC’s program for accessing additional committed sources of liquidity that do not increase the concentration of OCC’s counterparty exposure (“Non-Bank Liquidity Facility”) as part of OCC’s overall liquidity plan. The proposed change is described in detail in Item 10 below. 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.<sup>4</sup>

**Item 2. Procedures of the Self-Regulatory Organization**

The proposed change was approved for filing with the Commission by the Board of Directors (“Board”) of OCC at a March 25, 2022 meeting.

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

**Item 3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Advance Notice**

Not applicable.

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<sup>1</sup> 12 U.S.C. 5465(e)(1).

<sup>2</sup> 17 CFR 240.19b-4(n)(1)(i).

<sup>3</sup> 15 U.S.C. 78a *et seq.*

<sup>4</sup> OCC’s By-Laws and Rules can be found on OCC’s public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

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

Not applicable.

**Item 5. Self-Regulatory Organization’s Statement on Comments on the Advance Notice Received from Members, Participants or Others**

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

**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. Advance Notice 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 Exchange Act**

Not applicable.

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

As the sole clearing agency for standardized U.S. securities options listed on national securities exchanges registered with the Commission (“listed options”), OCC is obligated to make certain payments. In the event of a Clearing Member default, OCC would be obligated to make payments, on time, related to that member’s clear transactions. To meet such payment obligations, OCC maintains access to cash from a variety of sources, including, a requirement for members to pledge cash collateral to OCC and various agreements with banks and other

counterparties (“liquidity facilities”) to provide OCC with cash in exchange for collateral, such as U.S. Government securities. OCC routinely considers potential market stress scenarios that could affect such payment obligations. Based on such considerations, OCC now believes that it should seek to expand its liquidity facility to increase OCC’s access to cash to manage a member default.

OCC is proposing to expand the size of its liquidity facilities by increasing the size of one of its liquidity facilities. Specifically, this advance notice concerns a change to OCC’s operations to expand capacity under OCC’s Non-Bank Liquidity Facility as part of OCC’s overall liquidity plan, which includes OCC’s arrangements to access cash in exchange for Government securities deposited by Clearing Members in respect of their Clearing Fund requirements to meet OCC’s settlement obligations. OCC is not, as part of this advance notice, proposing to require its members or other market participants provide additional or different collateral to OCC. Rather, the purpose of the proposal is to provide OCC with another vehicle for accessing cash to meet its payment obligations, including in the event that one of its members fails to meet its payment obligations to OCC.<sup>5</sup>

## Background

OCC’s current liquidity plan provides it with access to a diverse set of funding sources, including banks (i.e., OCC’s syndicated credit facility),<sup>6</sup> the Non-Bank Liquidity Facility

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<sup>5</sup> OCC may also use the Clearing Fund to address liquidity shortfalls arising from the failure of any bank, securities or commodities clearing organization, or investment counterparty to perform any obligation to OCC when due. See OCC Rule 1006(f)(1)(C); Exchange Act Release No. 94304 (Feb. 24, 2022), 87 FR 11776 (Mar. 2, 2022) (SR-OCC-2021-014).

<sup>6</sup> See Exchange Act Release No. 88971 (May 28, 2020), 85 FR 34257 (June 3, 2020) (SR-OCC-2020-804).

program,<sup>7</sup> and Clearing Members' Cash Clearing Fund Requirement.<sup>8</sup> The Non-Bank Liquidity Facility program reduces the concentration of OCC's counterparty exposure with respect to its overall liquidity plan by diversifying its base of liquidity providers among banks and non-bank, non-Clearing Member institutional investors, such as pension funds or insurance companies.

The currently approved Non-Bank Liquidity Facility program is comprised of two parts: a Master Repurchase Agreement ("MRA") and confirmations with one or more institutional investors, which contain certain individualized terms and conditions of transactions executed between OCC, the institutional investors and their agents. The MRA is structured like a typical repurchase arrangement in which the buyer (i.e., the institutional investor) would purchase from OCC, from time to time, Government securities ("Eligible Securities").<sup>9</sup> OCC, as the seller, would transfer Eligible Securities to the buyer in exchange for a payment by the buyer to OCC in immediately available funds ("Purchase Price"). The buyer would simultaneously agree to transfer the purchased securities back to OCC at a specified later date ("Repurchase Date") or on OCC's demand against the transfer of funds by OCC to the buyer in an amount equal to the outstanding Purchase Price plus the accrued and unpaid price differential (together, "Repurchase Price"), which is the interest component of the Repurchase Price.

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<sup>7</sup> See Exchange Act Release No. 89039 (June 10, 2020), 85 FR 36444 (June 16, 2020) (SR-OCC-2020-803) ("Notice of No Objection to 2020 Advance Notice"); Exchange Act Release No. 76821 (Jan. 4, 2016), 81 FR 3208 (Jan. 20, 2016) (SR-OCC-2015-805) ("Notice of No Objection to 2015 Advance Notice"); Exchange Act Release No. 73979 (Jan. 2, 2015), 80 FR 1062 (Jan. 8, 2015) (SR-OCC-2014-809) ("Notice of No Objection to 2014 Advance Notice").

<sup>8</sup> See OCC Rule 1002.

<sup>9</sup> OCC would use U.S. government securities that are included in Clearing Fund contributions by Clearing Members and margin deposits of any Clearing Member that has been suspended by OCC for the repurchase arrangements. OCC Rule 1006(f) and OCC Rule 1104(b) authorize OCC to obtain funds from third parties through securities repurchases using these sources. The officers who may exercise this authority include the Executive Chairman, Chief Executive Officer, and Chief Operating Officer.

The confirmations establish tailored provisions of repurchase transactions permitted under the Non-Bank Liquidity Facility that are designed to reduce concentration risk and to promote certainty of funding and operational effectiveness based on the specific needs of a party. For example, OCC would only enter into confirmations with an institutional investor that is not a Clearing Member or affiliated bank, such as pension funds or insurance companies, in order to allow OCC to access stable and reliable sources of funding without increasing the concentration of its exposure to counterparties that are affiliated banks, broker/dealers, or futures commission merchants. In addition, any such institutional investor is obligated to enter repurchase transactions even if OCC experiences a material adverse change,<sup>10</sup> funds must be made available to OCC within 60 minutes of OCC's delivering eligible securities, and the institutional investor is not permitted to rehypothecate purchased securities.<sup>11</sup> Additionally, the confirmations set forth the term and maximum dollar amounts of the transaction permitted under the MRA.

In 2020, OCC set the aggregate amount it may seek through the Non-Bank Liquidity Facility program to an amount up to \$1 billion.<sup>12</sup> OCC has since secured from multiple pension funds commitments in an aggregate amount of \$1 billion. Since setting and securing commitments up to that aggregate commitment limit, OCC has experienced an increase in its stressed liquidity demands. Under OCC's Liquidity Risk Management Framework ("LRMF"),

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<sup>10</sup> When included in a contract, a "material adverse change" is typically defined as a change that would have a materially adverse effect on the business or financial condition of a company.

<sup>11</sup> See Notice of No Objection to 2014 Advance Notice, 80 FR at 1064.

<sup>12</sup> See Notice of No Objection to 2020 Advance Notice, 85 FR at 36446. \$1 billion is the same as the aggregate value established at the inception of the Non-Bank Liquidity Facility program. See Notice of No Objection to 2014 Advance Notice, 80 FR at 1064 & n.11. In 2015, OCC filed an advance notice that set an aggregate value of at least \$1 billion and up to \$1.5 billion. See Notice of No Objection to 2015 Advance Notice, 81 FR at 3208.

OCC performs daily liquidity stress testing to assess its Base Liquidity Resources<sup>13</sup> and Available Liquidity Resources<sup>14</sup> against OCC's liquidity risk tolerance ("Adequacy Scenarios"). Based in part on the results of this stress testing, OCC's Rules provide authority for OCC to periodically adjust Clearing Member's Cash Clearing Fund Requirement to ensure that OCC maintains sufficient liquidity resources to cover its liquidity risk exposures at all times. In response to increased stressed liquidity demands in 2021, OCC exercised authority under OCC Rule 1002(a) to increase the Cash Clearing Fund Requirement from \$3.5 billion to \$4 billion in July 2021, and from \$4 billion to \$5 billion in October 2021. This advance notice concerns a change to OCC's Non-Bank Liquidity Facility program to give OCC greater capacity to source liquidity from its non-bank liquidity providers as needed. OCC provided a summary of OCC management's recommendation to expand OCC's external liquidity sources as well as a discussion of the analysis underlying that recommendation as presented to the Board in confidential Exhibit 3 to File No. SR-OCC-2022-803.

### **Proposed Change**

In order to give OCC greater capacity to source liquidity from external liquidity providers as needed, OCC would modify the Non-Bank Liquidity Facility program to remove the

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<sup>13</sup> The LRMF defines "Base Liquidity Resources" to mean the amount of committed liquidity resources maintained at all times by OCC to meet its Cover 1 liquidity resource requirements under the applicable regulations. Base Liquidity Resources are comprised of qualifying liquid resources in the form of Clearing Fund cash deposited in respect of the Cash Clearing Fund Requirement and assets that are readily available and convertible into cash (i.e., Government securities) through prearranged funding arrangements, such as the Non-Bank Liquidity Facility.

<sup>14</sup> The LRMF defines "Available Liquidity Resources" to include Base Liquidity Resources plus allowable Clearing Fund cash deposited in excess of the Cash Clearing Fund Requirement. Any Clearing Member request to substitute Government securities for cash deposits in excess of such Clearing Member's propitiate share of the Clearing Fund Cash Requirement is subject to a two-day notice period. See OCC Rule 1002(a)(iv).

aggregate commitment limit identified in prior advance notices concerning the program. Instead, OCC's Board of Directors by resolution would set the level of aggregate commitments under the program from time to time to ensure that OCC maintains sufficient liquidity resources to cover its liquidity risk exposures at all times considering such factors including, but not limited to: (1) the size and make-up of the Clearing Fund; (2) the aggregate amount of OCC's other liquidity sources; and (3) changing market and business conditions. OCC would establish a target across all external liquidity resources of at least \$3 billion, which is the current aggregate amount of external liquidity. OCC would continue to manage the allocation between external liquidity sources to maintain a diverse set of liquidity providers, including sources like the Non-Bank Liquidity Facility that reduce concentration of OCC's counterparty exposures.

Considering these factors, the Board of Directors has authorized OCC to seek up to an additional \$2.5 billion in external liquidity, including through the Non-Bank Liquidity Facility program. Specifically, the Board considered that:

- (1) OCC's current total Clearing Fund requirement, as of January 31, 2022, was approximately \$15.8 billion, of which Clearing Members had deposited approximately \$5.5 billion in Government securities.
- (2) OCC's Base Liquidity Resources are currently \$8 billion, consisting of \$5 billion in cash from the Clearing Fund Cash Requirement, \$2 billion from the syndicated credit facility, and \$1 billion from OCC's current commitments under the Non-Bank Liquidity Facility.

(3) The agent for the liquidity providers under Non-Bank Liquidity Facility has indicated that several pension funds and other institutional investors have expressed interest in establishing or expanding commitments under the facility.<sup>15</sup>

OCC expects that it will source up to \$500 million of this liquidity through an expansion of the syndicated credit facility as part of its annual renewal in June.<sup>16</sup> In addition, OCC concurrently has filed an advance notice to source liquidity through a bank counterparty by executing another master repurchase agreement for up to \$1 billion (the “Bank Repo Facility”), similar to the repurchase agreement OCC executed with a bank counterparty in 2020,<sup>17</sup> this time with a bank counterparty to which OCC has more limited counterparty credit exposure. Accordingly, OCC expects to source approximately \$1 billion in additional liquidity under the Non-Bank Liquidity Facility. As such, the proportion of bank versus non-bank sources of liquidity would remain roughly equal to the current proportions, consistent with OCC’s objective to maintain access to a diverse set of funding sources. However, to the extent that commitments under the syndicated credit facility or master repurchase agreement with a bank counterparty are less than anticipated, the Board has authorized OCC to seek additional commitments under the Non-Bank Liquidity Facility program to make up any difference. In the unlikely event that OCC is not able to onboard any of the additional bank liquidity and sources the full \$2.5 billion under the Non-Bank Liquidity Facility program, OCC believes that the change in proportions between

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<sup>15</sup> See Confidential Exhibit 3 to SR-OCC-2022-803 (Confidential data and analysis that informed the Board’s decision).

<sup>16</sup> See Exchange Act Release No. 88971, 85 FR at 34259 (providing conditions for future renewals of the syndicated credit facility without an additional advance notice, including an increase of up to \$500 million in total).

<sup>17</sup> See Exchange Act Release No. 88317 (Mar. 4, 2020), 85 FR 13681 (Mar. 9, 2020) (SR-OCC-2020-801) (concerning the establishment of a “Bank Repo Facility” with a bank counterparty in an amount of \$500 million).

bank and non-bank liquidity would still be consistent with OCC's objective to maintain access to a diverse set of funding sources. Based on current interest received from potential counterparties, OCC believes that the risk that OCC would not be able to obtain \$2.5 billion in additional external liquidity through one of more of these sources of liquidity to be low.

Removing the present \$1 billion dollar cap to the Non-Bank Liquidity Facility program will also have the effect of removing one of the events in which OCC would file an advance notice for entering into individual commitments that OCC identified in a prior advance notice.<sup>18</sup> Consistent with the proposal to establish a target for external liquidity and drawing from applicable conditions for filing advance notices with respect to renewals of OCC's syndicated credit facility and proposed Bank Repo Facility, OCC would submit another advance notice with respect to the execution of individual commitments under the Non-Bank Liquidity Facility only if: (i) OCC should seek to execute a commitment at a level that would have the effect of reducing external liquidity below the target of \$3 billion; (ii) OCC should seek to change the terms and conditions of the MRA or commitments thereunder in a manner that materially affects the nature or level of risk presented by OCC;<sup>19</sup> or (iii) OCC should seek to execute a commitment with a

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<sup>18</sup> See Exchange Act Release No. 76821, 81 FR at 3209 (describing OCC's proposal to submit an advance notice in connection with a renewal of commitments under the Non-Bank Liquidity Facility if: (i) OCC determined that its liquidity needs merited commitments above or below certain levels; (ii) OCC should seek to change the terms and conditions of the Non-Bank Liquidity Facility; and (iii) the commitment counterparty experienced a negative change to its credit profile or a material adverse change since entering the commitment or the latest renewal of the commitment). OCC subsequently submitted an advance notice pursuant to that commitment to support its ability to onboard multiple liquidity providers below the identified commitment levels and with different term lengths to replace expiring commitments. See Exchange Act Release No. 89039, 85 FR at 36445-46.

<sup>19</sup> For the purposes of clarity, OCC would not consider changes to pricing or changes in representations, covenants, and terms of events of default, to be changes to a term or condition that would require the filing of a subsequent advance notice provided that pricing is at the then prevailing market rate and changes to such other provisions are

counterparty that has experienced a negative change to its credit profile or a material adverse change since OCC last executed a commitment with that counterparty. Consistent with another prior advance notice, OCC may consider changes to (i) liquidity providers provided that any new counterparty is subject to a credit review under OCC's Third-Party Risk Management Framework<sup>20</sup> and (ii) term lengths consistent with those approved by OCC's Board considering factors including, but not limited to, the initial committed length of the term, market conditions, and OCC's liquidity needs.<sup>21</sup> OCC would not consider additional counterparties or different commitment terms within these specified parameters as materially altering the terms and conditions of MRAs or commitments under the Non-Bank Liquidity Facility program.

Provided that none of the conditions under which OCC would file a subsequent advance notice are present, OCC would consider a new or renewed commitment as being on substantially the same terms and conditions as existing commitments under the Non-Bank Liquidity Facility program such that executing such commitments would not be subject to the requirement to file an advance notice filing pursuant to Section 806(e)(1) of the Clearing Supervision Act.<sup>22</sup> If OCC determines to modify the conditions for a new or renewed commitment under the Non-Bank Liquidity Facility in a subsequent filing, it would include in that filing the proposed conditions to

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immaterial to OCC as the seller and do not impair materially OCC's ability to draw against the facility.

<sup>20</sup> See Third-Party Risk Management Framework, available at Documents & Archives, <https://www.theocc.com/Company-Information/Documents-and-Archives>. While credit monitoring of insurance companies that may become liquidity providers would necessarily be different than credit monitoring of existing pension fund counterparties, any new liquidity would be subject to the same credit review for counterparties of the same type.

<sup>21</sup> See Exchange Act Release No. 89039, 85 FR at 36445-46.

<sup>22</sup> 12 U.S.C. 5465(e)(1).

the terms of any subsequent commitments or renewals that could be done without an additional advance notice.

### **Anticipated Effect On and Management of Risk**

Completing timely settlement is a key aspect of OCC's role as the clearing agency performing central counterparty services for all listed options. Expanding the Non-Bank Liquidity Facility program would continue to promote the reduction of risks to OCC, its Clearing Members and the options market in general because it would allow OCC to obtain short-term funds from the Non-Bank Liquidity Facility to address liquidity demands arising out of the default or suspension of a Clearing Member, in anticipation of a potential default or suspension of Clearing Members, the insolvency of a bank, another securities or commodities clearing organization, or a counterparty with which OCC has invested Clearing Member funds, or the failure of such a bank clearing organization, or investment counterparty to meet an obligation to OCC when due.

The Non-Bank Liquidity Facility helps OCC minimize losses in the event of a default, suspension, insolvency, or failure to achieve daily settlement, by allowing it to obtain funds from sources not connected to OCC's Clearing Members on extremely short notice to ensure clearance and settlement of transactions in options and other contracts without interruption. OCC believes that the reduced settlement risk presented by OCC resulting from the proposed change would correspondingly reduce systemic risk and promote the safety and soundness of the clearing system. The ability to borrow funds from the Non-Bank Liquidity Facility would allow OCC to avoid liquidating margin or clearing fund assets in what would likely be volatile market conditions, which would preserve funds available to cover any losses resulting from the failure of a Clearing Member, bank, other clearing organization, or investment counterparty.

The proposed change to the Non-Bank Liquidity Facility program to allow OCC to seek an aggregate commitment amount for up to the amount determined by the Board of the Directors from time to time would help OCC ensure the continued availability of its liquidity resources by providing OCC with the capacity to seek additional funding amounts on substantially the same terms, conditions, operations, and mechanics. In addition, the proposed change to the program would ensure that the approved amount would not be less than the currently approved amount of up to \$1 billion. Because the proposed change preserves substantially the same terms and conditions as the MRA and the existing conformations, OCC believes that the proposed change would not otherwise affect or alter the management of risk at OCC.

#### **Consistency with the Payment, Clearing and Settlement Supervision Act**

The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.<sup>23</sup> Section 805(a)(2) of the Clearing Supervision Act<sup>24</sup> also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like OCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act<sup>25</sup> states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;

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<sup>23</sup> 12 U.S.C. 5461(b).

<sup>24</sup> 12 U.S.C. 5464(a)(2).

<sup>25</sup> 12 U.S.C. 5464(b).

- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and the Exchange Act in furtherance of these objectives and principles.<sup>26</sup> Rule 17Ad-22 requires registered clearing agencies, like OCC, to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.<sup>27</sup> Therefore, the Commission has stated<sup>28</sup> that it believes it is appropriate to review changes proposed in advance notices against Rule 17Ad-22 and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act.<sup>29</sup>

OCC believes that the Non-Bank Liquidity Facility program, as modified, is consistent with Section 805(b)(1) of the Clearing Supervision Act<sup>30</sup> because the proposed confirmations would provide OCC with an additional source of committed liquidity to meet its settlement obligations while at the same time being structured to mitigate certain operational risks, as described above, that arise in connection with this committed liquidity source. In this way, the

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<sup>26</sup> 17 CFR 240.17Ad-22. See Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7-08-11) (“Clearing Agency Standards”); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14) (“Standards for Covered Clearing Agencies”).

<sup>27</sup> 17 CFR 240.17Ad-22.

<sup>28</sup> See, e.g., Exchange Act Release No. 86182 (June 24, 2019), 84 FR 31128, 31129 (June 28, 2019) (SR-OCC-2019-803).

<sup>29</sup> 12 U.S.C. 5464(b).

<sup>30</sup> 12 U.S.C. 5464(b)(1).

proposed changes are designed to promote robust risk management; promote safety and soundness; reduce systemic risks; and support the stability of the broader financial system.

OCC believes that the Non-Bank Liquidity Facility program, as modified, is also consistent with the requirements of Rule 17Ad-22(e)(7) under the Exchange Act.<sup>31</sup> Rule 17Ad-22(e)(7) requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage liquidity risk that arises in or is borne by OCC, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity, as specified in the rule.<sup>32</sup> In particular, Rule 17Ad-22(e)(7)(i) under the Exchange Act<sup>33</sup> directs that OCC meet this obligation by, among other things, “[m]aintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day . . . settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for [OCC] in extreme but plausible market conditions.”

As described above, the proposed change would allow OCC to seek a readily available liquidity resource that would enable it to, among other things, continue to meet its obligations in a timely fashion and as an alternative to selling Clearing Member collateral under what may be stressed and volatile market conditions. For these reasons, OCC believes that the proposal is consistent with Rule 17Ad-22(e)(7)(i).<sup>34</sup>

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<sup>31</sup> 17 CFR 240.17Ad-22(e)(7).

<sup>32</sup> Id.

<sup>33</sup> 17 CFR 240.17Ad-22(e)(7)(i).

<sup>34</sup> Id.

Rule 17Ad-22(e)(7)(ii) under the Exchange Act requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to hold qualifying liquid resources sufficient to satisfy payment obligations owed to Clearing Members.<sup>35</sup> Rule 17Ad-22(a)(14) of the Exchange Act defines “qualifying liquid resources” to include, among other things, lines of credit without material adverse change provisions, that are readily available and convertible into cash.<sup>36</sup> The MRA under the Non-Bank Liquidity Facility would not be subject to any material adverse change provision and would continue to be designed to permit OCC to, among other things, help ensure that OCC has sufficient, readily-available qualifying liquid resources to meet the cash settlement obligations of its largest Clearing Member Group. Therefore, OCC believes that the proposal is consistent with Rule 17Ad-22(e)(7)(ii).<sup>37</sup>

For the foregoing reasons, OCC believes that the proposed changes are consistent with Section 805(b)(1) of the Clearing Supervision Act<sup>38</sup> and Rule 17Ad-22(e)(7)<sup>39</sup> under the Exchange Act.

**Item 11. Exhibits**

Exhibit 1A. Completed Notice of Advance Notice for publication in the Federal Register.

Exhibit 3. Confidential Data and Analysis.

**Exhibit 3 is omitted and filed separately with the Commission in connection with a request for confidential treatment pursuant to 17 CFR 240.24b-2.**

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<sup>35</sup> 17 CFR 240.17Ad-22(e)(7)(ii).

<sup>36</sup> 17 CFR 240.17Ad-22(a)(14).

<sup>37</sup> 17 CFR 240.17Ad-22(e)(7)(ii).

<sup>38</sup> 12 U.S.C. 5464(b)(1).

<sup>39</sup> 17 CFR 240.17Ad-22(e)(7).

**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**  
**Associate General Counsel**

## EXHIBIT 1A

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-[\_\_\_\_\_]; File No. SR-OCC-2022-803)

[July \_\_ ], 2022

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice Related to an Expansion of The Options Clearing Corporation's Non-Bank Liquidity Facility Program as Part of Its Overall Liquidity Plan

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 ("Clearing Supervision Act")<sup>1</sup> and Rule 19b-4(n)(1)(i)<sup>2</sup> of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),<sup>3</sup> notice is hereby given that on July 7, 2022, The Options Clearing Corporation ("OCC" or "Corporation") filed with the Securities and Exchange Commission ("SEC" or "Commission") an advance notice 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 advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is submitted in connection with a proposed change to its operations to expand capacity under OCC's program for accessing additional committed sources of liquidity that do not increase the concentration of OCC's counterparty exposure ("Non-Bank Liquidity Facility") as part of OCC's overall liquidity plan. The proposed changes do not require any changes to the text of OCC's By-Laws or Rules.

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<sup>1</sup> 12 U.S.C. 5465(e)(1).

<sup>2</sup> 17 CFR 240.19b-4(n)(1)(i).

<sup>3</sup> 15 U.S.C. 78a et seq.

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.<sup>4</sup>

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A) and (B) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the advance notice and none have been received. OCC will notify the Commission of any written comments received by OCC.

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

**Description of Change**

As the sole clearing agency for standardized U.S. securities options listed on national securities exchanges registered with the Commission ("listed options"), OCC is obligated to make certain payments. In the event of a Clearing Member default, OCC would be obligated to make payments, on time, related to that member's clear transactions. To meet such payment obligations, OCC maintains access to cash from a

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<sup>4</sup> OCC's By-Laws and Rules can be found on OCC's public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

variety of sources, including, a requirement for members to pledge cash collateral to OCC and various agreements with banks and other counterparties (“liquidity facilities”) to provide OCC with cash in exchange for collateral, such as U.S. Government securities. OCC routinely considers potential market stress scenarios that could affect such payment obligations. Based on such considerations, OCC now believes that it should seek to expand its liquidity facility to increase OCC’s access to cash to manage a member default.

OCC is proposing to expand the size of its liquidity facilities by increasing the size of one of its liquidity facilities. Specifically, this advance notice concerns a change to OCC’s operations to expand capacity under OCC’s Non-Bank Liquidity Facility as part of OCC’s overall liquidity plan, which includes OCC’s arrangements to access cash in exchange for Government securities deposited by Clearing Members in respect of their Clearing Fund requirements to meet OCC’s settlement obligations. OCC is not, as part of this advance notice, proposing to require its members or other market participants provide additional or different collateral to OCC. Rather, the purpose of the proposal is to provide OCC with another vehicle for accessing cash to meet its payment obligations, including in the event that one of its members fails to meet its payment obligations to OCC.<sup>5</sup>

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<sup>5</sup> OCC may use the Clearing Fund to address liquidity shortfalls arising from the failure of any bank, securities or commodities clearing organization, or investment counterparty to perform any obligation to OCC when due. See OCC Rule 1006(f)(1)(C); Exchange Act Release No. 94304 (Feb. 24, 2022), 87 FR 11776 (Mar. 2, 2022) (SR-OCC-2021-014).

## Background

OCC's current liquidity plan provides it with access to a diverse set of funding sources, including banks (i.e., OCC's syndicated credit facility),<sup>6</sup> the Non-Bank Liquidity Facility program,<sup>7</sup> and Clearing Members' Cash Clearing Fund Requirement.<sup>8</sup> The Non-Bank Liquidity Facility program reduces the concentration of OCC's counterparty exposure with respect to its overall liquidity plan by diversifying its base of liquidity providers among banks and non-bank, non-Clearing Member institutional investors, such as pension funds or insurance companies.

The currently approved Non-Bank Liquidity Facility program is comprised of two parts: a Master Repurchase Agreement ("MRA") and confirmations with one or more institutional investors, which contain certain individualized terms and conditions of transactions executed between OCC, the institutional investors and their agents. The MRA is structured like a typical repurchase arrangement in which the buyer (i.e., the institutional investor) would purchase from OCC, from time to time, Government securities ("Eligible Securities").<sup>9</sup> OCC, as the seller, would transfer Eligible Securities

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<sup>6</sup> See Exchange Act Release No. 88971 (May 28, 2020), 85 FR 34257 (June 3, 2020) (SR-OCC-2020-804).

<sup>7</sup> See Exchange Act Release No. 89039 (June 10, 2020), 85 FR 36444 (June 16, 2020) (SR-OCC-2020-803) ("Notice of No Objection to 2020 Advance Notice"); Exchange Act Release No. 76821 (Jan. 4, 2016), 81 FR 3208 (Jan. 20, 2016) (SR-OCC-2015-805) ("Notice of No Objection to 2015 Advance Notice"); Exchange Act Release No. 73979 (Jan. 2, 2015), 80 FR 1062 (Jan. 8, 2015) (SR-OCC-2014-809) ("Notice of No Objection to 2014 Advance Notice").

<sup>8</sup> See OCC Rule 1002.

<sup>9</sup> OCC would use U.S. government securities that are included in Clearing Fund contributions by Clearing Members and margin deposits of any Clearing Member that has been suspended by OCC for the repurchase arrangements. OCC Rule 1006(f) and OCC Rule 1104(b) authorize OCC to obtain funds from third parties

to the buyer in exchange for a payment by the buyer to OCC in immediately available funds (“Purchase Price”). The buyer would simultaneously agree to transfer the purchased securities back to OCC at a specified later date (“Repurchase Date”) or on OCC’s demand against the transfer of funds by OCC to the buyer in an amount equal to the outstanding Purchase Price plus the accrued and unpaid price differential (together, “Repurchase Price”), which is the interest component of the Repurchase Price.

The confirmations establish tailored provisions of repurchase transactions permitted under the Non-Bank Liquidity Facility that are designed to reduce concentration risk and to promote certainty of funding and operational effectiveness based on the specific needs of a party. For example, OCC would only enter into confirmations with an institutional investor that is not a Clearing Member or affiliated bank, such as pension funds or insurance companies, in order to allow OCC to access stable and reliable sources of funding without increasing the concentration of its exposure to counterparties that are affiliated banks, broker/dealers, or futures commission merchants. In addition, any such institutional investor is obligated to enter repurchase transactions even if OCC experiences a material adverse change,<sup>10</sup> funds must be made available to OCC within 60 minutes of OCC’s delivering eligible securities, and the institutional investor is not permitted to rehypothecate purchased securities.<sup>11</sup>

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through securities repurchases using these sources. The officers who may exercise this authority include the Executive Chairman, Chief Executive Officer, and Chief Operating Officer.

<sup>10</sup> When included in a contract, a “material adverse change” is typically defined as a change that would have a materially adverse effect on the business or financial condition of a company.

<sup>11</sup> See Notice of No Objection to 2014 Advance Notice, 80 FR at 1064.

Additionally, the confirmations set forth the term and maximum dollar amounts of the transaction permitted under the MRA.

In 2020, OCC set the aggregate amount it may seek through the Non-Bank Liquidity Facility program to an amount up to \$1 billion.<sup>12</sup> OCC has since secured from multiple pension funds commitments in an aggregate amount of \$1 billion. Since setting and securing commitments up to that aggregate commitment limit, OCC has experienced an increase in its stressed liquidity demands. Under OCC's Liquidity Risk Management Framework ("LRMF"), OCC performs daily liquidity stress testing to assess its Base Liquidity Resources<sup>13</sup> and Available Liquidity Resources<sup>14</sup> against OCC's liquidity risk tolerance ("Adequacy Scenarios"). Based in part on the results of this stress testing, OCC's Rules provide authority for OCC to periodically adjust Clearing Member's Cash Clearing Fund Requirement to ensure that OCC maintains sufficient liquidity resources to

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<sup>12</sup> See Notice of No Objection to 2020 Advance Notice, 85 FR at 36446. \$1 billion is the same as the aggregate value established at the inception of the Non-Bank Liquidity Facility program. See Notice of No Objection to 2014 Advance Notice, 80 FR at 1064 & n.11. In 2015, OCC filed an advance notice that set an aggregate value of at least \$1 billion and up to \$1.5 billion. See Notice of No Objection to 2015 Advance Notice, 81 FR at 3208.

<sup>13</sup> The LRMF defines "Base Liquidity Resources" to mean the amount of committed liquidity resources maintained at all times by OCC to meet its Cover 1 liquidity resource requirements under the applicable regulations. Base Liquidity Resources are comprised of qualifying liquid resources in the form of Clearing Fund cash deposited in respect of the Cash Clearing Fund Requirement and assets that are readily available and convertible into cash (i.e., Government securities) through prearranged funding arrangements, such as the Non-Bank Liquidity Facility.

<sup>14</sup> The LRMF defines "Available Liquidity Resources" to include Base Liquidity Resources plus allowable Clearing Fund cash deposited in excess of the Cash Clearing Fund Requirement. Any Clearing Member request to substitute Government securities for cash deposits in excess of such Clearing Member's propitiate share of the Clearing Fund Cash Requirement is subject to a two-day notice period. See OCC Rule 1002(a)(iv).

cover its liquidity risk exposures at all times. In response to increased stressed liquidity demands in 2021, OCC exercised authority under OCC Rule 1002(a) to increase the Cash Clearing Fund Requirement from \$3.5 billion to \$4 billion in July 2021, and from \$4 billion to \$5 billion in October 2021. This advance notice concerns a change to OCC's Non-Bank Liquidity Facility program to give OCC greater capacity to source liquidity from its non-bank liquidity providers as needed. OCC provided a summary of OCC management's recommendation to expand OCC's external liquidity sources as well as a discussion of the analysis underlying that recommendation as presented to the Board in confidential Exhibit 3 to File No. SR-OCC-2022-803.

**Proposed Change**

In order to give OCC greater capacity to source liquidity from external liquidity providers as needed, OCC would modify the Non-Bank Liquidity Facility program to remove the aggregate commitment limit identified in prior advance notices concerning the program. Instead, OCC's Board of Directors by resolution would set the level of aggregate commitments under the program from time to time to ensure that OCC maintains sufficient liquidity resources to cover its liquidity risk exposures at all times considering such factors including, but not limited to: (1) the size and make-up of the Clearing Fund; (2) the aggregate amount of OCC's other liquidity sources; and (3) changing market and business conditions. OCC would establish a target across all external liquidity resources of at least \$3 billion, which is the current aggregate amount of external liquidity. OCC would continue to manage the allocation between external liquidity sources to maintain a diverse set of liquidity providers, including sources like

the Non-Bank Liquidity Facility that reduce concentration of OCC's counterparty exposures.

Considering these factors, the Board of Directors has authorized OCC to seek up to an additional \$2.5 billion in external liquidity, including through the Non-Bank Liquidity Facility program. Specifically, the Board considered that:

- (1) OCC's current total Clearing Fund requirement, as of January 31, 2022, was approximately \$15.8 billion, of which Clearing Members had deposited approximately \$5.5 billion in Government securities.
- (2) OCC's Base Liquidity Resources are currently \$8 billion, consisting of \$5 billion in cash from the Clearing Fund Cash Requirement, \$2 billion from the syndicated credit facility, and \$1 billion from OCC's current commitments under the Non-Bank Liquidity Facility.
- (3) The agent for the liquidity providers under Non-Bank Liquidity Facility has indicated that several pension funds and other institutional investors have expressed interest in establishing or expanding commitments under the facility.<sup>15</sup>

OCC expects that it will source up to \$500 million of this liquidity through an expansion of the syndicated credit facility as part of its annual renewal in June.<sup>16</sup> In addition, OCC concurrently has filed an advance notice to source liquidity through a bank counterparty by executing another master repurchase agreement for up to \$1 billion (the "Bank Repo Facility"), similar to the repurchase agreement OCC executed with a bank

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<sup>15</sup> See Confidential Exhibit 3 to SR-OCC-2022-803 (Confidential data and analysis that informed the Board's decision).

<sup>16</sup> See Exchange Act Release No. 88971, 85 FR at 34259 (providing conditions for future renewals of the syndicated credit facility without an additional advance notice, including an increase of up to \$500 million in total).

counterparty in 2020,<sup>17</sup> this time with a bank counterparty to which OCC has more limited counterparty credit exposure. Accordingly, OCC expects to source approximately \$1 billion in additional liquidity under the Non-Bank Liquidity Facility. As such, the proportion of bank versus non-bank sources of liquidity would remain roughly equal to the current proportions, consistent with OCC's objective to maintain access to a diverse set of funding sources. However, to the extent that commitments under the syndicated credit facility or master repurchase agreement with a bank counterparty are less than anticipated, the Board has authorized OCC to seek additional commitments under the Non-Bank Liquidity Facility program to make up any difference. In the unlikely event that OCC is not able to onboard any of the additional bank liquidity and sources the full \$2.5 billion under the Non-Bank Liquidity Facility program, OCC believes that the change in proportions between bank and non-bank liquidity would still be consistent with OCC's objective to maintain access to a diverse set of funding sources. Based on current interest received from potential counterparties, OCC believes that the risk that OCC would not be able to obtain \$2.5 billion in additional external liquidity through one of more of these sources of liquidity to be low.

Removing the present \$1 billion dollar cap to the Non-Bank Liquidity Facility program will also have the effect of removing one of the events in which OCC would file an advance notice for entering into individual commitments that OCC identified in a prior

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<sup>17</sup> See Exchange Act Release No. 88317 (Mar. 4, 2020), 85 FR 13681 (Mar. 9, 2020) (SR-OCC-2020-801) (concerning the establishment of a "Bank Repo Facility" with a bank counterparty in an amount of \$500 million).

advance notice.<sup>18</sup> Consistent with the proposal to establish a target for external liquidity and drawing from applicable conditions for filing advance notices with respect to renewals of OCC's syndicated credit facility and proposed Bank Repo Facility, OCC would submit another advance notice with respect to the execution of individual commitments under the Non-Bank Liquidity Facility only if: (i) OCC should seek to execute a commitment at a level that would have the effect of reducing external liquidity below the target of \$3 billion; (ii) OCC should seek to change the terms and conditions of the MRA or commitments thereunder in a manner that materially affects the nature or level of risk presented by OCC;<sup>19</sup> or (iii) OCC should seek to execute a commitment with a counterparty that has experienced a negative change to its credit profile or a material adverse change since OCC last executed a commitment with that counterparty. Consistent with another prior advance notice, OCC may consider changes to (i) liquidity providers provided that any new counterparty is subject to a credit review under OCC's

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<sup>18</sup> See Exchange Act Release No. 76821, 81 FR at 3209 (describing OCC's proposal to submit an advance notice in connection with a renewal of commitments under the Non-Bank Liquidity Facility if: (i) OCC determined that its liquidity needs merited commitments above or below certain levels; (ii) OCC should seek to change the terms and conditions of the Non-Bank Liquidity Facility; and (iii) the commitment counterparty experienced a negative change to its credit profile or a material adverse change since entering the commitment or the latest renewal of the commitment). OCC subsequently submitted an advance notice pursuant to that commitment to support its ability to onboard multiple liquidity providers below the identified commitment levels and with different term lengths to replace expiring commitments. See Exchange Act Release No. 89039, 85 FR at 36445-46.

<sup>19</sup> For the purposes of clarity, OCC would not consider changes to pricing or changes in representations, covenants, and terms of events of default, to be changes to a term or condition that would require the filing of a subsequent advance notice provided that pricing is at the then prevailing market rate and changes to such other provisions are immaterial to OCC as the seller and do not impair materially OCC's ability to draw against the facility.

Third-Party Risk Management Framework<sup>20</sup> and (ii) term lengths consistent with those approved by OCC's Board considering factors including, but not limited to, the initial committed length of the term, market conditions, and OCC's liquidity needs.<sup>21</sup> OCC would not consider additional counterparties or different commitment terms within these specified parameters as materially altering the terms and conditions of MRAs or commitments under the Non-Bank Liquidity Facility program.

Provided that none of the conditions under which OCC would file a subsequent advance notice are present, OCC would consider a new or renewed commitment as being on substantially the same terms and conditions as existing commitments under the Non-Bank Liquidity Facility program such that executing such commitments would not be subject to the requirement to file an advance notice filing pursuant to Section 806(e)(1) of the Clearing Supervision Act.<sup>22</sup> If OCC determines to modify the conditions for a new or renewed commitment under the Non-Bank Liquidity Facility in a subsequent filing, it would include in that filing the proposed conditions to the terms of any subsequent commitments or renewals that could be done without an additional advance notice.

### **Anticipated Effect On and Management of Risk**

Completing timely settlement is a key aspect of OCC's role as the clearing agency performing central counterparty services for all listed options. Expanding the Non-Bank

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<sup>20</sup> See Third-Party Risk Management Framework, available at Documents & Archives, <https://www.theocc.com/Company-Information/Documents-and-Archives>. While credit monitoring of insurance companies that may become liquidity providers would necessarily be different than credit monitoring of existing pension fund counterparties, any new liquidity would be subject to the same credit review for counterparties of the same type.

<sup>21</sup> See Exchange Act Release No. 89039, 85 FR at 36445-46.

<sup>22</sup> 12 U.S.C. 5465(e)(1).

Liquidity Facility program would continue to promote the reduction of risks to OCC, its Clearing Members and the options market in general because it would allow OCC to obtain short-term funds from the Non-Bank Liquidity Facility to address liquidity demands arising out of the default or suspension of a Clearing Member, in anticipation of a potential default or suspension of Clearing Members, the insolvency of a bank, another securities or commodities clearing organization, or a counterparty with which OCC has invested Clearing Member funds, or the failure of such a bank clearing organization, or investment counterparty to meet an obligation to OCC when due.

The Non-Bank Liquidity Facility helps OCC minimize losses in the event of a default, suspension, insolvency, or failure to achieve daily settlement, by allowing it to obtain funds from sources not connected to OCC's Clearing Members on extremely short notice to ensure clearance and settlement of transactions in options and other contracts without interruption. OCC believes that the reduced settlement risk presented by OCC resulting from the proposed change would correspondingly reduce systemic risk and promote the safety and soundness of the clearing system. The ability to borrow funds from the Non-Bank Liquidity Facility would allow OCC to avoid liquidating margin or clearing fund assets in what would likely be volatile market conditions, which would preserve funds available to cover any losses resulting from the failure of a Clearing Member, bank, other clearing organization, or investment counterparty.

The proposed change to the Non-Bank Liquidity Facility program to allow OCC to seek an aggregate commitment amount for up to the amount determined by the Board of the Directors from time to time would help OCC ensure the continued availability of its liquidity resources by providing OCC with the capacity to seek additional funding

amounts on substantially the same terms, conditions, operations, and mechanics. In addition, the proposed change to the program would ensure that the approved amount would not be less than the currently approved amount of up to \$1 billion. Because the proposed change preserves substantially the same terms and conditions as the MRA and the existing conformations, OCC believes that the proposed change would not otherwise affect or alter the management of risk at OCC.

### **Consistency with the Payment, Clearing and Settlement Supervision Act**

The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.<sup>23</sup>

Section 805(a)(2) of the Clearing Supervision Act<sup>24</sup> also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like OCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act<sup>25</sup> states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

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<sup>23</sup> 12 U.S.C. 5461(b).

<sup>24</sup> 12 U.S.C. 5464(a)(2).

<sup>25</sup> 12 U.S.C. 5464(b).

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and the Exchange Act in furtherance of these objectives and principles.<sup>26</sup> Rule 17Ad-22 requires registered clearing agencies, like OCC, to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.<sup>27</sup> Therefore, the Commission has stated<sup>28</sup> that it believes it is appropriate to review changes proposed in advance notices against Rule 17Ad-22 and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act.<sup>29</sup>

OCC believes that the Non-Bank Liquidity Facility program, as modified, is consistent with Section 805(b)(1) of the Clearing Supervision Act<sup>30</sup> because the proposed confirmations would provide OCC with an additional source of committed liquidity to meet its settlement obligations while at the same time being structured to mitigate certain operational risks, as described above, that arise in connection with this committed liquidity source. In this way, the proposed changes are designed to promote robust risk management; promote safety and soundness; reduce systemic risks; and support the stability of the broader financial system.

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<sup>26</sup> 17 CFR 240.17Ad-22. See Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7-08-11) (“Clearing Agency Standards”); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14) (“Standards for Covered Clearing Agencies”).

<sup>27</sup> 17 CFR 240.17Ad-22.

<sup>28</sup> See, e.g., Exchange Act Release No. 86182 (June 24, 2019), 84 FR 31128, 31129 (June 28, 2019) (SR-OCC-2019-803).

<sup>29</sup> 12 U.S.C. 5464(b).

<sup>30</sup> 12 U.S.C. 5464(b)(1).

OCC believes that the Non-Bank Liquidity Facility program, as modified, is also consistent with the requirements of Rule 17Ad-22(e)(7) under the Exchange Act.<sup>31</sup> Rule 17Ad-22(e)(7) requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage liquidity risk that arises in or is borne by OCC, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity, as specified in the rule.<sup>32</sup> In particular, Rule 17Ad-22(e)(7)(i) under the Exchange Act<sup>33</sup> directs that OCC meet this obligation by, among other things, “[m]aintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day . . . settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for [OCC] in extreme but plausible market conditions.”

As described above, the proposed change would allow OCC to seek a readily available liquidity resource that would enable it to, among other things, continue to meet its obligations in a timely fashion and as an alternative to selling Clearing Member collateral under what may be stressed and volatile market conditions. For these reasons, OCC believes that the proposal is consistent with Rule 17Ad-22(e)(7)(i).<sup>34</sup>

Rule 17Ad-22(e)(7)(ii) under the Exchange Act requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to

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<sup>31</sup> 17 CFR 240.17Ad-22(e)(7).

<sup>32</sup> Id.

<sup>33</sup> 17 CFR 240.17Ad-22(e)(7)(i).

<sup>34</sup> Id.

hold qualifying liquid resources sufficient to satisfy payment obligations owed to Clearing Members.<sup>35</sup> Rule 17Ad-22(a)(14) of the Exchange Act defines “qualifying liquid resources” to include, among other things, lines of credit without material adverse change provisions, that are readily available and convertible into cash.<sup>36</sup> The MRA under the Non-Bank Liquidity Facility would not be subject to any material adverse change provision and would continue to be designed to permit OCC to, among other things, help ensure that OCC has sufficient, readily-available qualifying liquid resources to meet the cash settlement obligations of its largest Clearing Member Group. Therefore, OCC believes that the proposal is consistent with Rule 17Ad-22(e)(7)(ii).<sup>37</sup>

For the foregoing reasons, OCC believes that the proposed changes are consistent with Section 805(b)(1) of the Clearing Supervision Act<sup>38</sup> and Rule 17Ad-22(e)(7)<sup>39</sup> under the Exchange Act.

### III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date the proposed change was filed with the Commission or (ii) the date any additional information requested by the Commission is received. OCC shall not implement the proposed change if the Commission has any objection to the proposed change.

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<sup>35</sup> 17 CFR 240.17Ad-22(e)(7)(ii).

<sup>36</sup> 17 CFR 240.17Ad-22(a)(14).

<sup>37</sup> 17 CFR 240.17Ad-22(e)(7)(ii).

<sup>38</sup> 12 U.S.C. 5464(b)(1).

<sup>39</sup> 17 CFR 240.17Ad-22(e)(7).

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

OCC shall post notice on its website of proposed changes that are implemented. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the advance notice is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2022-803 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-OCC-2022-803. 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-OCC-2022-803 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.<sup>40</sup>

Secretary

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<sup>40</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 3**

**[Redacted Pursuant to Rule 24b-2 and Filed Separately with the Commission]**

**[Redacted Pursuant to Rule 24b-2 and Filed Separately with the Commission]**

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