

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 49	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2021 - * 001	Amendment No. (req. for Amendments *)
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Filing by Options Clearing Corporation
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" 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	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

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 to update The Options Clearing Corporation's Operational Loss Fee pursuant to its Capital Management Policy

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 * Assistant General Counsel

E-mail * mcbrown@theocc.com

Telephone * (312) 322-1801 Fax

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 *)

Date 01/08/2021 Assistant General Counsel

By Mark C. Brown

(Name *)

Mark C. Brown, mcbrown@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 EFFF 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 *

Add Remove View

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

Add Remove View

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

Add Remove View

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

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),¹ and Rule 19b-4 thereunder,² The Options Clearing Corporation (“OCC” or “Corporation”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to implement a change in the maximum contingent Operational Loss Fee listed in OCC’s schedule of fees in accordance with OCC’s Capital Management Policy. Proposed changes to OCC’s schedule of fees are included as Exhibit 5 to File Number SR-OCC-2021-001. Material proposed to be added to OCC’s schedule of fees as currently in effect is underlined and material proposed to be deleted is marked in strikethrough text. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.³

Item 2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved for filing with the Commission by the Compensation and Performance Committee of OCC’s Board of Directors on December 10, 2020.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

A. Purpose

The purpose of this proposed rule change is to revise OCC’s schedule of fees, effective January 21, 2021, to update the maximum aggregate Operational Loss Fee that OCC would charge Clearing Members in equal shares in the unlikely event that OCC’s shareholders’ equity (“Equity”) falls below certain thresholds defined in OCC’s Capital Management Policy. The proposed fee change is designed to enable OCC to replenish capital to comply with Rule 17Ad-22(e)(15) under the Exchange Act, which requires OCC, in pertinent part, to “hold[] liquid net assets funded by equity to the greater of either (x) six months . . . current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and service”⁴ and “[m]aintain[] a viable plan, approved by the board of directors and updated at least annually, for raising additional equity should its equity fall close to or below the amount required [to be held].”⁵

In January 2020, the SEC approved OCC’s Capital Management Policy, which includes OCC’s replenishment plan.⁶ Pursuant to the Capital Management Policy, OCC would charge an Operational Loss Fee in equal shares to Clearing Members to raise additional capital should OCC’s Equity fall below certain defined thresholds relative to OCC’s Target Capital Requirement (i.e., a “Trigger Event”), after first applying the unvested balance held in respect of OCC’s Executive Deferred Compensation Program.⁷ Based on the current Board-approved Target

⁴ See 17 CFR 240.17Ad-22(e)(15)(ii).

⁵ See 17 CFR 240.17Ad-22(e)(15)(iii).

⁶ See Exchange Act Release No. 88029 (Jan. 24, 2020), 85 FR 5500 (Jan. 30, 2020) (File No. SR-OCC-2019-007) (“Order Approving OCC’s Capital Management Policy”).

⁷ Id. at 5503.

Capital Requirement of \$250 million, a Trigger Event would occur if OCC's Equity falls below \$225 million at any time or below \$250 million for a period of 90 consecutive calendar days.⁸

In the unlikely event those thresholds are breached, OCC would charge an Operational Loss Fee in an amount to raise Equity to 110% of OCC's Target Capital Requirement, up to the maximum Operational Loss Fee identified in OCC's schedule of fees less the amount of any Operational Loss Fees previously charged and not refunded.⁹ OCC calculates the maximum aggregate Operational Loss Fee based on the amount determined by the Board of Directors to be sufficient for a recovery or orderly wind-down of critical operations and services ("RWD Amount"),¹⁰ which is determined based on the assumptions in OCC's Recovery and Orderly Wind-Down Plan ("RWD Plan").¹¹ 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 OCC's Equity to fall below the Trigger Event thresholds is tax deductible.¹²

The RWD Amount and, in turn, the Adjusted RWD Amount are determined annually based on OCC's corporate budget, the assumptions articulated in the RWD Plan,¹³ and OCC's

⁸ OCC's Capital Management Policy defines a "Trigger Event" as when OCC's Equity falls below 90% of OCC's Target Capital Requirement (i.e., the amount of Equity determined by OCC's Board to be sufficient for OCC to meet its regulatory obligations and to serve market participants and the public interest) or remains below the Target Capital Requirement for ninety consecutive calendar days. See id. at 5510.

⁹ Id. at 5503.

¹⁰ Id.

¹¹ See Exchange Act Release No. 83918 (Aug. 23, 2018), 83 FR 44091, 44094 (Aug. 29, 2018) (File No. SR-OCC-2017-021) ("Order Approving OCC's RWD Plan").

¹² Order Approving OCC's Capital Management Policy, 85 FR at 5503.

¹³ The RWD Plan states OCC's basic assumptions concerning the resolution process, including assumptions about the duration of the resolution process, the cost of the resolution process, OCC's capitalization through the resolution process, the maintenance

projected effective tax rate.¹⁴ The current Operational Loss Fee listed in OCC’s schedule of fees is the Adjusted RWD Amount calculated based on OCC’s 2020 corporate budget. Budgeted operating expenses in 2021 are slightly higher than the 2020 budgeted operating expenses. This proposed rule change would revise the maximum Operational Loss Fee to reflect the Adjusted RWD Amount based on OCC’s 2021 budget,¹⁵ as follows:

Current Fee Schedule	Proposed Fee Schedule
\$141,866,667.00 less the 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 charge.	\$143,066,667.00 less the 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 charge.

Since the allocation of the Operational Loss Fee is a function of the number of Clearing Members at the time of the charge, the maximum Operational Loss Fee per Clearing Member is subject to fluctuation during the course of the year. However, if the proposed Operational Loss Fee were charged to 107 Clearing Members, the number of Clearing Members as of December 31, 2020 for example, the maximum Operational Loss Fee per Clearing Member would be \$1,337,072.

OCC would also update the schedule of fees to reflect the levels of Equity at which OCC would charge the Operational Loss Fee according to the thresholds defined in the Capital

of Critical Services and Critical Support Functions, as defined by the RWD Plan, and the retention of personnel and contractual relationships. See Order Approving OCC’s RWD Plan, 83 FR at 44094.

¹⁴ See Order Approving OCC’s Capital Management Policy, 85 FR at 5501 n.20, 5503.

¹⁵ Confidential data and analysis evidencing the calculation of the Adjusted RWD Amount based on OCC’s 2021 corporate budget is included in Exhibit 3 to File Number SR-OCC-2021-001.

Management Policy, as well as the level of Equity at which OCC would limit the Operational Loss Fee charged, based on OCC's current Target Capital Requirement.¹⁶

B. Statutory Basis

OCC believes the proposed rule change is consistent with the Act¹⁷ and the rules and regulations thereunder. In particular, OCC believes that the proposed fee change is also consistent with Section 17A(b)(3)(D) of the Act,¹⁸ 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 that the proposed fee change is reasonable because it is designed to replenish OCC's Equity in the form of liquid net assets in the event that OCC's Equity falls close to or below its Target Capital Requirement so that OCC can continue to meet its obligations as a systemically important financial market utility ("SIFMU") to Clearing Members and the general public should an operational losses materialize (including through a recovery or orderly wind-down of critical operations and services) and thereby facilitate compliance with Rule 17Ad-22(e)(15)(iii).¹⁹ The maximum Operational Loss Fee is sized to ensure that OCC maintains sufficient liquid net assets to support its RWD Plan and imposes a contingent obligation on Clearing Members that is approximately the same amount as a Clearing Member's contingent obligation for Clearing Fund assessments for a Clearing Member operating at the minimum

¹⁶ OCC does not propose any change to the thresholds and limits defined in the Capital Management Policy. This proposed change merely conforms the disclosure in OCC's schedule of fees to the current amounts based on the Board-approved Target Capital Requirement of \$250 million.

¹⁷ 15 U.S.C. 78a *et seq.*

¹⁸ 15 U.S.C. 78q-1(b)(3)(D).

¹⁹ 17 CFR 240.17Ad-22(e)(15)(iii).

Clearing Fund deposit.²⁰ Therefore, OCC believes the proposed maximum Operational Loss Fee sized to OCC's Adjusted RWD Amount is reasonable.

OCC also believes that the proposed Operational Loss Fee would result in an equitable allocation of fees among its participants because it would be equally applicable to all Clearing Members. As the Commission has recognized, OCC's designation as a SIFMU and its role as the sole covered clearing agency for all listed options contracts in the U.S. makes it an integral part of the national system for clearance and settlement, through which "Clearing Members, their customers, investors, and the markets as a whole derive significant benefit . . . regardless of their specific utilization of that system."²¹ Neither the SEC nor OCC has observed any correlation between measures of Clearing Member utilization or OCC's benefit to Clearing Members²² and its risk of operational loss.²³ As a result, OCC believes that the proposed change to OCC's fee schedule provides for the equitable allocation of reasonable fees in accordance with Section 17A(b)(3)(D) of the Act.²⁴

In addition, OCC believes that the proposed rule change is consistent with Rule 17Ad-22(e)(15)(iii), which requires that OCC establish, implement, maintain and enforce written

²⁰ A Clearing Member operating at the minimum Clearing Fund deposit (\$500,000) could be assessed up to an additional \$1 million (the minimum deposit, assessed up to two times), for a total contingent obligation of \$1.5 million. See OCC Rule 1006(h).

²¹ See Order Approving OCC's Capital Management Policy, 85 FR at 5506.

²² Id. ("The Commission is not aware of evidence demonstrating that those benefits are tied directly or positively correlated to an individual Clearing Member's rate of utilization of OCC's clearance and settlement services.")

²³ Id. (rejecting an objection to the equal allocation of the proposed Operational Loss Fee based on the SEC's regulatory experience and OCC's analyses of Clearing Member utilization (e.g., contract volume) or credit risk (e.g., Clearing Fund size) and the various operational and general business risks that could trigger an Operational Loss Fee). To date, OCC has observed no correlation between Clearing Member utilization or credit risk and OCC's potential risk of operational loss. See Confidential Exhibit 3.

²⁴ 15 U.S.C. 78q-1(b)(3)(D).

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).²⁵ 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."²⁶ 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 RWD Plan.²⁷ Therefore, OCC believes the proposed change to OCC's schedule of fees is consistent with Rule 17Ad-22(e)(15)(iii) and the guidance provided by the SEC in the adopting release.

OCC also believes that the proposed fee change is consistent with Section 19(g)(1) of the Act,²⁸ which, among other things, requires every self-regulatory organization to comply with its own rules. OCC filed its Capital Management Policy as a "proposed rule change" within the meaning of Section 19(b) of the Act,²⁹ and Rule 19b-4 under the Act.³⁰ The Capital Management Policy specifies that the maximum Operational Loss Fee shall be the Adjusted

²⁵ 17 CFR 240.17Ad-22(e)(15)(iii).

²⁶ Standards for Covered Clearing Agencies, Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70836 (Oct. 13, 2016) (File No. S7-03-14).

²⁷ See Order Approving OCC's Capital Management Policy, 85 FR at 5510 ("The Operational Loss Fee would be sized to the Adjusted RWD Amount, and therefore would be designed to provide OCC with at least enough capital either to continue as a going concern or to wind-down in an orderly fashion.")

²⁸ 15 U.S.C. 78s(g)(1).

²⁹ 15 U.S.C. 78s(b).

³⁰ 17 CFR 240.19b-4.

RWD Amount.³¹ Because the Adjusted RWD Amount will change annually based, in part, on OCC's corporate budget, fee filings are necessary to ensure that the maximum Operational Loss Fee in OCC's schedule of fees remains consistent with the amount identified in the Capital Management Policy. In addition, the amounts associated with the thresholds at which OCC would charge the Operational Loss Fee and the limit to the amount would change in accordance with the Capital Management Policy are determined based upon the level at which the Board sets OCC's Target Capital Requirement. Consequently, OCC seeks to amend the amounts identified in the schedule of fees to reflect OCC's current Target Capital Requirement. Therefore, OCC believes that the proposed change to OCC's fee schedule is consistent with Section 19(g)(1) of the Act.

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

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

Section 17A(b)(3)(I) of the Act³² 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 does not believe that the proposed rule change would have any impact or impose a burden on competition. Although the proposed Operational Loss Fee affects Clearing Members, their customers, and the markets that OCC serves, OCC believes that the proposed increase in the Operational Loss Fee would not disadvantage or favor any particular user of OCC's services in relationship to another user because the proposed Operational Loss Fee would apply equally to all Clearing Members. In addition, OCC does not believe that the proposed Operational Loss Fee imposes a significant burden on smaller firms because the maximum Operational Loss Fee

³¹ Order Approving OCC's Capital Management Policy, 85 FR at 5503.

³² 15 U.S.C. 78q-1(b)(3)(I).

imposes a contingent obligation on Clearing Members that is approximately the same amount as a Clearing Member's contingent obligation for Clearing Fund assessments for a Clearing Member operating at the minimum Clearing Fund deposit.³³ Accordingly, OCC does not believe that the proposed rule change would have any impact or impose a burden on competition.

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

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

Item 6. Extension of Time Period for Commission Action

OCC does not consent to an extension of the time period specified in Section 19(b)(2) of the Act.³⁴

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,³⁵ and Rule 19b-4(f)(2) thereunder,³⁶ the proposed rule change is filed for immediate effectiveness as it constitutes a change in fees charged to OCC Clearing Members. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. The proposal

³³ See note 20, *supra*.

³⁴ 15 U.S.C. 78s(b)(2).

³⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁶ 17 CFR 240.19b-4(f)(2).

shall not take effect until all regulatory actions required with respect to the proposal are completed.³⁷

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

Not applicable.

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

Not applicable.

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

Not applicable.

Item 11. Exhibits

Exhibit 1A. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 3. Confidential Data and Analysis.

Exhibit 5. Proposed changes to OCC's schedule of fees.

CONFIDENTIAL TREATMENT IS REQUESTED FOR EXHIBIT 3

PURSUANT TO SEC RULE 24b-2

³⁷ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under Commodity Futures Exchange Commission Regulation 40.6.

SIGNATURES

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

THE OPTIONS CLEARING CORPORATION

By:

Mark C. Brown
Assistant General Counsel

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-[_____]; File No. SR-OCC-2021-001)

January [__], 2021

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Update The Options Clearing Corporation's Operational Loss Fee Pursuant to Its Capital Management Policy

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 8, 2021, The Options Clearing Corporation ("OCC" or "Corporation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii)³ of the Act and Rule 19b-4(f)(2)⁴ thereunder so that the proposal was effective upon filing with the Commission. 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

The proposed rule change by OCC would revise OCC's schedule of fees, effective January 21, 2021, to implement a change in the maximum contingent Operational Loss Fee in accordance with OCC's Capital Management Policy. Proposed changes to OCC's schedule of fees are attached as Exhibit 5 to File Number SR-OCC-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

2021-001. Material proposed to be added to OCC's schedule of fees as currently in effect is underlined and material proposed to be deleted is marked in strikethrough text. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.⁵

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

The purpose of this proposed rule change is to revise OCC's schedule of fees, effective January 21, 2021, to update the maximum aggregate Operational Loss Fee that OCC would charge Clearing Members in equal shares in the unlikely event that OCC's shareholders' equity ("Equity") falls below certain thresholds defined in OCC's Capital Management Policy. The proposed fee change is designed to enable OCC to replenish capital to comply with Rule 17Ad-22(e)(15) under the Exchange Act, which requires OCC, in pertinent part, to "hold[] liquid net assets funded by equity to the greater of either (x) six months . . . current operating expenses, or (y) the amount determined by the

⁵ 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>.

board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and service”⁶ and “[m]aintain[] a viable plan, approved by the board of directors and updated at least annually, for raising additional equity should its equity fall close to or below the amount required [to be held].”⁷

In January 2020, the SEC approved OCC’s Capital Management Policy, which includes OCC’s replenishment plan.⁸ Pursuant to the Capital Management Policy, OCC would charge an Operational Loss Fee in equal shares to Clearing Members to raise additional capital should OCC’s Equity fall below certain defined thresholds relative to OCC’s Target Capital Requirement (i.e., a “Trigger Event”), after first applying the unvested balance held in respect of OCC’s Executive Deferred Compensation Program.⁹ Based on the current Board-approved Target Capital Requirement of \$250 million, a Trigger Event would occur if OCC’s Equity falls below \$225 million at any time or below \$250 million for a period of 90 consecutive calendar days.¹⁰

In the unlikely event those thresholds are breached, OCC would charge an Operational Loss Fee in an amount to raise Equity to 110% of OCC’s Target Capital Requirement, up to the maximum Operational Loss Fee identified in OCC’s schedule of

⁶ See 17 CFR 240.17Ad-22(e)(15)(ii).

⁷ See 17 CFR 240.17Ad-22(e)(15)(iii).

⁸ See Exchange Act Release No. 88029 (Jan. 24, 2020), 85 FR 5500 (Jan. 30, 2020) (File No. SR-OCC-2019-007) (“Order Approving OCC’s Capital Management Policy”).

⁹ Id. at 5503.

¹⁰ OCC’s Capital Management Policy defines a “Trigger Event” as when OCC’s Equity falls below 90% of OCC’s Target Capital Requirement (i.e., the amount of Equity determined by OCC’s Board to be sufficient for OCC to meet its regulatory obligations and to serve market participants and the public interest) or remains below the Target Capital Requirement for ninety consecutive calendar days. See id. at 5510.

fees less the amount of any Operational Loss Fees previously charged and not refunded.¹¹ OCC calculates the maximum aggregate Operational Loss Fee based on the amount determined by the Board of Directors to be sufficient for a recovery or orderly wind-down of critical operations and services (“RWD Amount”),¹² which is determined based on the assumptions in OCC’s Recovery and Orderly Wind-Down Plan (“RWD Plan”).¹³ 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 OCC’s Equity to fall below the Trigger Event thresholds is tax deductible.¹⁴

The RWD Amount and, in turn, the Adjusted RWD Amount are determined annually based on OCC’s corporate budget, the assumptions articulated in the RWD Plan,¹⁵ and OCC’s projected effective tax rate.¹⁶ The current Operational Loss Fee listed in OCC’s schedule of fees is the Adjusted RWD Amount calculated based on OCC’s 2020 corporate budget. Budgeted operating expenses in 2021 are slightly higher than the 2020 budgeted operating expenses. This proposed rule change would revise the

¹¹ Id. at 5503.

¹² Id.

¹³ See Exchange Act Release No. 83918 (Aug. 23, 2018), 83 FR 44091, 44094 (Aug. 29, 2018) (SR-OCC-2017-021) (“Order Approving OCC’s RWD Plan”).

¹⁴ Order Approving OCC’s Capital Management Policy, 85 FR at 5503.

¹⁵ The RWD Plan states OCC’s basic assumptions concerning the resolution process, including assumptions about the duration of the resolution process, the cost of the resolution process, OCC’s capitalization through the resolution process, the maintenance of Critical Services and Critical Support Functions, as defined by the RWD Plan, and the retention of personnel and contractual relationships. See Order Approving OCC’s RWD Plan, 83 FR at 44094.

¹⁶ See Order Approving OCC’s Capital Management Policy, 85 FR at 5501 n.20, 5503.

maximum Operational Loss Fee to reflect the Adjusted RWD Amount based on OCC’s 2021 budget,¹⁷ as follows:

Current Fee Schedule	Proposed Fee Schedule
\$141,866,667.00 less the 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 charge.	\$143,066,667.00 less the 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 charge.

Since the allocation of the Operational Loss Fee is a function of the number of Clearing Members at the time of the charge, the maximum Operational Loss Fee per Clearing Member is subject to fluctuation during the course of the year. However, if the proposed Operational Loss Fee were charged to 107 Clearing Members, the number of Clearing Members as of December 31, 2020 for example, the maximum Operational Loss Fee per Clearing Member would be \$1,337,072.

OCC would also update the schedule of fees to reflect the levels of Equity at which OCC would charge the Operational Loss Fee according to the thresholds defined in the Capital Management Policy, as well as the level of Equity at which OCC would limit the Operational Loss Fee charged, based on OCC’s current Target Capital Requirement.¹⁸

Statutory Basis

¹⁷ Confidential data and analysis evidencing the calculation of the Adjusted RWD Amount based on OCC’s 2021 corporate budget is included in Exhibit 3 to File Number SR-OCC-2021-001.

¹⁸ OCC does not propose any change to the thresholds and limits defined in the Capital Management Policy. This proposed change merely conforms the disclosure in OCC’s schedule of fees to the current amounts based on the Board-approved Target Capital Requirement of \$250 million.

OCC believes the proposed rule change is consistent with the Act¹⁹ and the rules and regulations thereunder. In particular, OCC believes that the proposed fee change is also consistent with Section 17A(b)(3)(D) of the Act,²⁰ 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 that the proposed fee change is reasonable because it is designed to replenish OCC's Equity in the form of liquid net assets in the event that OCC's Equity falls close to or below its Target Capital Requirement so that OCC can continue to meet its obligations as a systemically important financial market utility ("SIFMU") to Clearing Members and the general public should an operational losses materialize (including through a recovery or orderly wind-down of critical operations and services) and thereby facilitate compliance with Rule 17Ad-22(e)(15)(iii).²¹ The maximum Operational Loss Fee is sized to ensure that OCC maintains sufficient liquid net assets to support its RWD Plan and imposes a contingent obligation on Clearing Members that is approximately the same amount as a Clearing Member's contingent obligation for Clearing Fund assessments for a Clearing Member operating at the minimum Clearing Fund deposit.²² Therefore, OCC believes the proposed maximum Operational Loss Fee sized to OCC's Adjusted RWD Amount is reasonable.

¹⁹ 15 U.S.C. 78a *et seq.*

²⁰ 15 U.S.C. 78q-1(b)(3)(D).

²¹ 17 CFR 240.17Ad-22(e)(15)(iii).

²² A Clearing Member operating at the minimum Clearing Fund deposit (\$500,000) could be assessed up to an additional \$1 million (the minimum deposit, assessed up to two times), for a total contingent obligation of \$1.5 million. See OCC Rule 1006(h).

OCC also believes that the proposed Operational Loss Fee would result in an equitable allocation of fees among its participants because it would be equally applicable to all Clearing Members. As the Commission has recognized, OCC's designation as a SIFMU and its role as the sole covered clearing agency for all listed options contracts in the U.S. makes it an integral part of the national system for clearance and settlement, through which "Clearing Members, their customers, investors, and the markets as a whole derive significant benefit . . . regardless of their specific utilization of that system."²³ Neither the SEC nor OCC has observed any correlation between measures of Clearing Member utilization or OCC's benefit to Clearing Members²⁴ and its risk of operational loss.²⁵ As a result, OCC believes that the proposed change to OCC's fee schedule provides for the equitable allocation of reasonable fees in accordance with Section 17A(b)(3)(D) of the Act.²⁶

In addition, OCC believes that the proposed rule change is consistent with Rule 17Ad-22(e)(15)(iii), which 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

²³ See Order Approving OCC's Capital Management Policy, 85 FR at 5506.

²⁴ Id. ("The Commission is not aware of evidence demonstrating that those benefits are tied directly or positively correlated to an individual Clearing Member's rate of utilization of OCC's clearance and settlement services.")

²⁵ Id. (rejecting an objection to the equal allocation of the proposed Operational Loss Fee based on the SEC's regulatory experience and OCC's analyses of Clearing Member utilization (e.g., contract volume) or credit risk (e.g., Clearing Fund size) and the various operational and general business risks that could trigger an Operational Loss Fee). To date, OCC has observed no correlation between Clearing Member utilization or credit risk and OCC's potential risk of operational loss. See Confidential Exhibit 3.

²⁶ 15 U.S.C. 78q-1(b)(3)(D).

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).²⁷ 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."²⁸ 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 RWD Plan.²⁹ Therefore, OCC believes the proposed change to OCC's schedule of fees is consistent with Rule 17Ad-22(e)(15)(iii) and the guidance provided by the SEC in the adopting release.

OCC also believes that the proposed fee change is consistent with Section 19(g)(1) of the Act,³⁰ which, among other things, requires every self-regulatory organization to comply with its own rules. OCC filed its Capital Management Policy as a "proposed rule change" within the meaning of Section 19(b) of the Act,³¹ and Rule 19b-4 under the Act.³² The Capital Management Policy specifies that the maximum

²⁷ 17 CFR 240.17Ad-22(e)(15)(iii).

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

²⁹ See Order Approving OCC's Capital Management Policy, 85 FR at 5510 ("The Operational Loss Fee would be sized to the Adjusted RWD Amount, and therefore would be designed to provide OCC with at least enough capital either to continue as a going concern or to wind-down in an orderly fashion.")

³⁰ 15 U.S.C. 78s(g)(1).

³¹ 15 U.S.C. 78s(b).

³² 17 CFR 240.19b-4.

Operational Loss Fee shall be the Adjusted RWD Amount.³³ Because the Adjusted RWD Amount will change annually based, in part, on OCC's corporate budget, fee filings are necessary to ensure that the maximum Operational Loss Fee in OCC's schedule of fees remains consistent with the amount identified in the Capital Management Policy. In addition, the amounts associated with the thresholds at which OCC would charge the Operational Loss Fee and the limit to the amount would change in accordance with the Capital Management Policy are determined based upon the level at which the Board sets OCC's Target Capital Requirement. Consequently, OCC seeks to amend the amounts identified in the schedule of fees to reflect OCC's current Target Capital Requirement. Therefore, OCC believes that the proposed change to OCC's fee schedule is consistent with Section 19(g)(1) of the Act.

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

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

Section 17A(b)(3)(I) of the Act³⁴ 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 does not believe that the proposed rule change would have any impact or impose a burden on competition. Although the proposed Operational Loss Fee affects Clearing Members, their customers, and the markets that OCC serves, OCC believes that the proposed increase in the Operational Loss Fee would not disadvantage or favor any particular user of OCC's services in relationship to another user because the proposed Operational Loss Fee would apply equally to all Clearing Members. In

³³ Order Approving OCC's Capital Management Policy, 85 FR at 5503.

³⁴ 15 U.S.C. 78q-1(b)(3)(I).

addition, OCC does not believe that the proposed Operational Loss Fee imposes a significant burden on smaller firms because the maximum Operational Loss Fee imposes a contingent obligation on Clearing Members that is approximately the same amount as a Clearing Member's contingent obligation for Clearing Fund assessments for a Clearing Member operating at the minimum Clearing Fund deposit.³⁵ Accordingly, OCC does not believe that the proposed rule change would have any impact or impose a burden on competition.

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

Written comments on the proposed rule change 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

Pursuant to Section 19(b)(3)(A)(ii)³⁶ of the Act, and Rule 19b-4(f)(2) thereunder,³⁷ the proposed rule change is filed for immediate effectiveness as it constitutes a change in fees charged to OCC Clearing Members. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or

³⁵ See note 22, *supra*.

³⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁷ 17 CFR 240.19b-4(f)(2).

otherwise in furtherance of the purposes of the Act. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.³⁸

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2021-001 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-2021-001. 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

³⁸ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

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 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-2021-001 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.³⁹

Secretary

³⁹ 17 CFR 200.30-3(a)(12).

Exhibit 3

[Redacted Pursuant to Rule 24b-2]

[Redacted Pursuant to Rule 24b-2]

EXHIBIT 5

Underlined text indicates new text

~~Strikethrough~~ text indicates deleted text

The Options Clearing Corporation

Schedule of Fees

Clearing Member

Clearing	
Clearing Fees	
Trades with contracts of 0 –1222	\$0.045
Trades with contracts of more than 1222	\$55.00/trade
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
Linkage per side	\$0.02
<i>*A Linkage transaction that includes more than 2,750 contracts will be charged a flat fee of \$55.00 per trade per side.</i>	
Minimum Monthly Clearing Fee	\$200.00
Exercise Fee — per line item on exercise notice	\$1.00
Membership	
New Clearing Member Qualification Fee	\$4,000.00
Stock and Market Loan Program Transaction Fees	
Per transaction assessed against each lender and borrower	\$1.00
Stock and Market Loan Program Borrower Fees	
Monthly annualized charge on average daily notional outstanding balance	0.4 basis point

Stamps	
Clearing Member Authorization Stamp	\$23.00/stamp
Ancillary Services	
	Per Month
TIER I	
	\$1,500.00
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	
TIER II	
	\$1,000.00
ENCORE Access • MyOCC Access • Data Service - proprietary position and trade data (includes transmission to service bureau) • Report Bundle • Leased line charges are additional	
TIER III	
	\$650.00
ENCORE Access • MyOCC Access	
TIER IV (Stock Loan only)	
	\$300.00
ENCORE Access • MyOCC Access	
Additional Clearing Member	
	No Charge
Leased Line Service Destinations	
	Per month, per line
Midwest	\$1,000.00
East Coast	\$1,500.00
West Coast	\$2,000.00

Cash Management Fee

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

Maximum Operational Loss Fee**	\$141,866,667.00 <u>\$143,066,667.00</u> less the 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.
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** OCC would charge the Operational Loss Fee if OCC's shareholders' equity falls below ~~\$22,000,000.00~~ \$225,000,000.00 at any time or falls below ~~\$247,000,000.00~~ \$250,000,000.00

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~~\$275,000,000.00, OCC will charge only that amount.

Clearing Member & Non-Clearing Member

Publications

Disclosure Documents **\$0.45**

OCC/ICC By-Laws and Rules **Updates can be obtained on a subscription basis for \$47.00 per year.**

Non-Clearing Member

Series Information	Per Month
Non-Distribution	\$1,750.00
Distribution	\$3,000.00
Real Time Data (in addition to fees listed above)	\$250.00
Prices Information	\$3,000.00
Theoretical Profit and Loss Values	\$1,000.00

Escrow Banks

Escrow Program Fees **\$200.00 per month**

As of ~~September 2020~~January 2021. ALL FEES ARE SUBJECT TO CHANGE.

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