

September 17, 2019

**VIA EMAIL AND FEDERAL EXPRESS**

Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: The Options Clearing Corporation (“OCC”) Notice of Filing of Proposed Rule Change Concerning a Proposed Capital Management Policy that Would Support the OCC’s Function as a Systemically Important Financial Market Utility (the “Proposal”)

Rel. No. 34-86725; File No. SR-OCC-2019-007

Dear Mr. Fields:

LPL Financial LLC (“LPL”) is an SEC-registered broker-dealer and a member of the Options Clearing Corporation (the “OCC”).

LPL is pleased to provide this comment letter in response to the request of the Securities and Exchange Commission (the “Commission”) for comment regarding the Proposal. We appreciate the opportunity to address the Commission’s request for comments on the Proposal and hope that our comments will assist the Commission in its review of the Proposal, including the question of whether the Proposal is consistent with the Securities Exchange Act of 1934, as amended (the “Exchange Act”).

**Background**

Under the Proposal, the OCC would adopt a Capital Management Policy, which includes a plan for the OCC to access additional capital to replenish its capital base in the event the OCC’s capital falls close to or below its target capital (the “Replenishment Plan”). The Replenishment Plan provides, in part, that, should contribution of other amounts prescribed by the Replenishment Plan fail to cure a shortfall in the OCC’s target capital, the OCC will charge a fee (an “Operational Loss Fee”) in equal shares to its members (the “Clearing Members”).

LPL opposes the OCC’s proposal to allocate the Operational Loss Fee in equal shares among its Clearing Members and respectfully submits that the Proposal would result in an inequitable allocation of the Operational Loss Fee in contravention of Exchange Act Section 17A(b)(3)(D). LPL urges the OCC to adopt a different methodology for allocating the Operational Loss Fee

among the Clearing Members and, in this regard, respectfully submits that an allocation methodology that recognizes that an operational loss would affect different Clearing Members to different extents, and therefore allocates the Operational Loss Fee in a manner that corresponds to the extent to which each Clearing Member utilizes (and therefore benefits from) the OCC's operations, would result in a more equitable allocation of the Operational Loss Fee. Such an allocation would also correctly acknowledge that the extent to which a Clearing Member makes use of the OCC's clearing and settlement systems does, in some cases, directly correspond to the risk that the OCC will incur certain operational losses.

### **Legal Analysis**

#### *The Proposal Would Result in an Inequitable Allocation of Fees In Contravention of Section 17A(b)(3)(D) of the Exchange Act*

Section 17A of the Exchange Act sets forth the framework for the regulation of the clearance and settlement of securities transactions and directs the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. Section 17A(b)(3)(D) of the Exchange Act requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

The OCC posits that the Operational Loss Fee should be allocated among Clearing Members in equal shares, thereby mutualizing the risk of operational loss, because "all Clearing Members benefit from equal access to the clearance and settlement services provided by the OCC, irrespective of how much they choose to use [those services]." However, for the reasons set forth below, allocating the Operational Loss Fee in such a manner is inherently inequitable and thus is contrary to the requirements of Section 17A(b)(3)(D) Exchange Act.

The Proposal indicates that the OCC considered allocating the Operational Loss Fee among Clearing Members proportionally based on a measure such as contract volume or risk profile. However, the OCC concluded that there is no correlation between operational risks such as internal fraud, a cyber-attack on the OCC's systems, employee lawsuits and damage to the OCC's facilities, on the one hand, and Clearing Member contract volume or Clearing Member credit risk, on the other hand. On this basis, the OCC rejected a fee allocation methodology based on contract value or risk profile, and instead proposed a rule that would impose an Operational Loss Fee that would be shared equally among Clearing Members.

While it may be the case that all Clearing Members have equal access to the clearance and settlement services provided by the OCC, allocating the Operational Loss Fee to the Clearing Members in equal shares because they have equal access to the OCC's services, would not necessarily result in an equitable allocation of such fees. Instead, Clearing Members' actual use of, and therefore actual benefit derived from, the operational availability of the OCC's services vary

widely. As such, in the event of an operational loss, not every Clearing Member would suffer to the same degree. Likewise, when an operational loss is repaired, not every Clearing Member would benefit to the same degree. In this regard, LPL believes that it would be inequitable for a Clearing Member that does not conduct a substantial amount of business through the OCC, and therefore does not rely substantially on the OCC's operations, to bear the same risk of an OCC operational loss as a Clearing Member that conducts a substantial amount of business through the OCC and therefore relies substantially on the OCC's operations.

Moreover, the OCC's statement in the Proposal that there is no correlation between operational risks, on the one hand, and contract volume, on the other hand, is flawed inasmuch as it ignores the fact that a Clearing Member that makes greater use of the OCC's clearing and settlement system places greater strain on that system and thus exposes the system to greater operational risk. For example, each contract introduced to the OCC's system brings with it a new opportunity for internal fraud and cyber-attack. In other words, a Clearing Member's contract volume directly correlates to the OCC's level of operational risk and, thus, a Clearing Member's contract volume should impact the proportion of the Operational Loss Fee allocated to that Clearing Member.

### **Conclusion**

Based on the foregoing, we respectfully submit that the Operational Loss Fee should be charged to each Clearing Member based on the value of contracts such Clearing Member clears through the OCC relative to the value cleared by all Clearing Members. This would align Clearing Members' interest in the operations of the OCC with their share of the Operational Loss Fee.

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Thank you for considering our comments and suggestions. Please do not hesitate to contact me should you wish to discuss any of the matters discussed in this letter.

Sincerely,



Steven Morrison  
SVP, Associate General Counsel