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March 3, 2025

VIA E-Mail to: rule-comments@sec.gov

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

RE: Notice of Filing of Amendment No. 3 to Proposed Rule Change by The Options Clearing Corporation To Establish a Margin Add-On Charge That Would Be Applied to All Clearing Member Accounts To Help Mitigate the Risks Arising From Intraday and Overnight Trading Activity; File No. SR-OCC-2024-010

Dear Ms. Countryman,

Wolverine Execution Services, LLC ("WEX" or the "Firm") appreciates the opportunity to comment on the Securities and Exchange Commission (the "Commission") proceedings to determine whether to approve or disapprove the above referenced Options Clearing Corporation ("OCC") rule filing.[1] This letter is intended to supplement the comment letter we submitted on September 3, 2024, and also to address OCC's January 2025 Amended Filing.

WEX is an agency-only broker-dealer that executes client orders on all U.S. options exchanges and is also an OCC clearing member. WEX does not hold or custody funds, accounts or positions on behalf of its clients. Transactions that WEX executes on options exchanges are first cleared to the Firm's OCC account and then allocated to the accounts of the given client's OCC clearing member firm ("Custody OCC Member") on an intraday or end-of-day basis.

WEX urges the Commission to disapprove OCC's Proposal. The Proposal will have negative consequences for the competitive landscape and the securities market more broadly, and it is inconsistent with relevant statutory requirements governing SEC-registered clearing agencies in several independent ways. In summary, and as described below:

1. OCC's proposal to apply an Intraday Risk Charge to agency-only executing broker-dealer OCC clearing members ("Executing Brokers") would impose unnecessary burdens on competition and would impose inequitable charges on OCC's Participants in violation of Exchange Act standards applicable to clearing agencies, and

[1] OCC originally filed the proposed rule change with the Commission on July 25, 2024. 89 FR 65695 (Aug. 12, 2024) (OCC's "July 2024 Filing"). The Commission instituted proceedings to determine whether to approve or disapprove OCC's proposal on November 7, 2024, 89 FR 90155 (Nov. 11, 2024). On January 8, 2025, OCC filed Amendment No. 2. Then, on January 14, 2025, OCC filed Amendment No. 3 (OCC's "January 2025 Amended Filing"), which is identical in substance to Amendment No. 2 but includes certain changes to facilitate publication in the Federal Register. 90 FR 7722 (Jan. 22, 2025). In this letter, we use the general term "Proposal" to refer broadly to OCC's proposal, including as amended by OCC's January 2025 Amended Filing.

2. OCC has failed to satisfy its specific burden under the Exchange Act of demonstrating that its Proposal is consistent with the requirements of the Exchange Act and SEC rules.

Given these statutory failings, the Commission should disapprove OCC's Proposal.

Discussion

1. **OCC's Proposed Intraday Risk Charge Would Impose Unnecessary Burdens on Competition and Impose Inequitable Charges on OCC's Participants.**

As a foundational matter, it is illogical, inappropriate and unfair for OCC to apply the proposed Intraday Risk Charge to Executing Brokers. Executing Brokers do not create the risks that the proposed Intraday Risk Charge is designed to mitigate. The relevant risks that are the focus of the Proposal are created by the trading strategies and decisions of customers. Accordingly, the costs of mitigating those risks should be assigned to the custodians that carry accounts on behalf of the customers who generate the risks—not firms like WEX, which neither hold nor custody funds, accounts or positions on behalf of clients.

If implemented, OCC's proposed Intraday Risk Charge would foreseeably have deleterious effects on competition and the securities markets and investor outcomes more broadly. The Proposal would have the practical effect of imposing costs on Executing Brokers that are fundamentally inconsistent and incompatible with the cost structures and baseline regulatory cost assumptions that firms operating in the Executing Broker space have made.[2] Executing Brokers are typically smaller and less capitalized than Custody OCC Member firms, in recognition of their business models—i.e., not holding funds, accounts or positions on behalf of clients.

The imposition of the proposed Intraday Risk Charge on Executing Brokers would disrupt these strategic cost and business model assumptions—and could foreseeably cause firms to reduce their capacity and/or exit the business, in either case narrowing choices for clients and diminishing competition in the market.

OCC has failed to grapple with these implications seriously and credibly (and therefore has also failed to meet a separate statutory burden, as we discuss in Section 2 below). Rather than providing sufficient analysis concerning the impact of the Proposal on Executing Brokers and an assessment of the relevant implications on competition, OCC has suggested that Executing Brokers could avoid the proposed Intraday Risk Charges by allocating client positions in real-time or near real-time.[3] But numerous commenters have made clear that this is an unrealistic suggestion. The Security Traders Association, for example, stated in its comment letter that, given current allocation

[2] *See e.g.*, Securities Industry and Financial Markets Association Letter, dated Oct. 15, 2024 at 8–10 ("SIFMA Letter").

[3] *See* Options Clearing Corporation Letter, dated Sept. 18, 2024 at 3–4 ("OCC Letter"). *See also* SIFMA Letter at 9.

practices of options market participants and existing behavior realities in the marketplace, OCC is "suggesting the impossible."[4]

OCC's Proposal also suffers from other problems, including that the proposed Intraday Risk Charge could result in the double margining of a single position: once at the Executing Broker level, and then again, once the position is transferred and held at the client's prime broker, at the Custody OCC Member level. The Proposal could result in OCC collecting and holding margin from multiple Clearing Members on the same position.

In its January 2025 Amended Filing, OCC proposes to narrow the look-back timeframe upon which the proposed Intraday Risk Charge would be calculated based on 20-minute snapshots.[5] This change does not address the core problems discussed above, and in fact would introduce a new problem: creating an incentive for option market customers and their Executing Brokers to alter their respective trading and market facilitation activities, thus distorting efficient market behavior and operations.

For these reasons, the proposed Intraday Risk Charge is inconsistent with Exchange Act Section 17A(b)(3)(I), which requires that the rules of an SEC-registered clearing agency "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Exchange Act]." If implemented, the Proposal would unjustifiably harm the Executing Broker space, burden competition and be a net negative for the securities markets.[6]

OCC's Proposal is also inconsistent with Exchange Act Section 17A(b)(3)(D), which requires that the rules of an SEC-registered clearing agency "provide for the equitable allocation of reasonable dues, fees, and other charges among its participants." OCC's Proposal would illogically, unjustifiably and inequitably impose an Intraday Risk Charge on Executing Brokers, which do not create the risks that the charge is designed to mitigate. The Proposal could also result in the imposition of double margining charges on multiple clearing members on the same positions—which is also an inequitable allocation of charges imposed on OCC's participants.

2. OCC Has Failed to Satisfy Its Burden of Demonstrating That the Proposal Is Consistent with the Exchange Act.

Section 19(b)(2)(C)(i) of the Exchange Act states that the Commission shall approve a proposed rule change of a clearing agency if the Commission finds that such proposed rule change is consistent with the requirements of the Exchange Act and SEC rules thereunder. Section 19(b)(2)(C)(ii) of the Exchange Act instructs that if the Commission does not make such a finding, then the Commission must disapprove the proposed rule change.

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[4] Security Traders Association Letter, dated Nov. 6, 2024 at 4. *See also* SIFMA Letter at 9; DASH Financial Technologies Letter, dated Sept. 3, 2024 at 2–3.

[5] January 2025 Amended Filing at 7725.

[6] The application of the Intraday Risk Charge to Executing Brokers is not necessary—OCC has other reasonable alternatives available to achieve its stated goals.

Rule 700(b)(3) of the Commission's Rules of Practice states that the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [self-regulatory organization] that proposed the rule change." The rule explains that the "mere assertion that the proposed rule change is consistent with those requirements . . . is not sufficient." Rule 700(b)(3) also states that the self-regulatory organization's description of the proposed rule change, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding. OCC has failed to meet this burden. Therefore, and on this basis alone, the Commission should disapprove the Proposal.

As discussed above and in comment letters submitted by other parties, OCC's proposed application of the Intraday Risk Charge to Executing Brokers raises important questions and concerns regarding the Proposal's impact on competition and effects on the securities markets more generally. But OCC has not provided sufficient analysis to support a conclusion that, notwithstanding these effects and concerns, OCC has come to a reasoned conclusion that the burdens on competition and other effects of the Proposal are justified and necessary—and therefore that the Proposal is consistent with Exchange Act Section 17A(b)(3)(I), which prohibits the rules of an SEC-registered clearing agency from imposing a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. OCC's filings also lack sufficient analysis or information so as to enable the Commission to perform an independent analysis of the Proposal or to critically evaluate any OCC analysis of the Proposal against relevant statutory standards.

OCC's discussions concerning the Proposal's burden under Exchange Act Section 17A(b)(3)(I) are high-level and circular. OCC's filings state repeatedly that OCC does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. For example, OCC's July 2024 Filing states, in part:

> While the proposed rule change may impact different accounts to a greater or lesser degree depending on each Clearing Member's trading activity, including portfolios containing a greater volume of 0DTE option positions, OCC does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[7]

OCC's July 2024 Filing goes on to state, in part:

> Overall, the impact analysis from the proposed baseline approach indicates there would be on average a small add-on included across all Clearing Member margin requirements, with the more significant add-on charges attributed to Clearing Members in a manner that ties with their overnight and intraday trading activities and the increased risk they present to OCC.[8]

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[7] July 2024 Filing at 65699.
[8] *Id.*

However, nowhere in its July 2024 Filing does OCC provide analysis to demonstrate that it has come to a reasonable determination that the proposed rule change satisfies the standards of Section 17A(b)(3)(I), nor does it provide sufficient information for the Commission to determine whether the Proposal satisfies statutory standards.

OCC's September 18, 2024 letter to the Commission in support of the Proposal similarly lacks sufficient analysis. In that letter, OCC acknowledges that commenters have raised concerns about the Proposal's effects on Executing Brokers.[9] But the letter does not sufficiently attempt to explain how any such burden on competition is necessary or appropriate in furtherance of the purposes of the Exchange Act.

OCC's January 2025 Amended Filing is similarly devoid of analysis in this regard. It repeats verbatim the general statement from OCC's July 2024 Filing:

> While the proposed rule change may impact different accounts to a greater or lesser degree depending on each Clearing Member's trading activity, including portfolios containing a greater volume of 0DTE option positions, OCC does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[10]

These are broad and vague conclusory statements. Rule 700(b)(3) of the Commission's Rules of Practice states, in part, "[a] mere assertion that the proposed rule change is consistent with those requirements, or that another self-regulatory organization has a similar rule in place, is not sufficient" and "the description of the proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding." OCC has not met this standard.

More generally, in designing the Proposal, OCC has made numerous design choices—and corresponding cost allocations—e.g., its selection of the window for calculating the Intraday Risk Charge. But here again, OCC has failed to articulate a reasoned analysis or support for these choices, their effects on competition and consistency with Exchange Act standards, and OCC's submissions do not provide specific enough information to support an affirmative Commission finding.

In many ways, OCC's Proposal, and its lack of analysis and justification, is eerily reminiscent of OCC's proposed capital plan, which the Commission ultimately disapproved in 2019. In that disapproval order, the Commission explained that its disapproval was driven in large part by the fact that it lacked "sufficient information to make the necessary findings regarding [the proposal's] consistency with this provision of the Exchange Act,"[11] and, as a result, the Commission found that "OCC . . . failed to meet its burden of demonstrating that [OCC's proposal] is consistent with

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[9] OCC Letter at 3.
[10] January 2025 Amended Filing at 7730.
[11] 84 FR 5157 (Feb. 20, 2019) at 5167.

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Section 17A(b)(3)(I) of the Exchange Act."[12] In the litigation leading up to the Commission's 2019 disapproval, the D.C. Circuit Court stated that the "Commission was required under the Exchange Act either to perform an independent analysis of [OCC's proposal] or to critically evaluate OCC's analysis of [its proposal]."[13]

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As we have explained above, OCC's Proposal is statutorily deficient on several different independent grounds. We thus strongly urge the Commission to disapprove the Proposal.

We appreciate the opportunity to comment on the Proposal, and we would welcome the opportunity to discuss this matter further with the Commission or Commission staff.

Sincerely yours,

DocuSigned by:
David Cavicke
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David L. Cavicke
Chief Legal Officer

[12] *Id.* at 5170–71.
[13] *Susquehanna Int'l Grp., LLP v. SEC*, 866 F.3d 442, 446–7 (D.C. Cir. 2017).