

February 4, 2025

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

Re: File No. SR-OCC-2024-017; Rel. No. 34-102013 – Proposed OCC Fee Changes

Dear Ms. Countryman,

Susquehanna International Group, LLP (“SIG” or the “Firm”) appreciates the opportunity to comment to the Securities and Exchange Commission (the “Commission” or “SEC”) on the above-referenced Options Clearing Corporation’s (“OCC”) fee proposal (“Fee Proposal”). For the reasons noted below, SIG strongly opposes said proposal, which seeks to increase OCC’s per-contract clearing fee from \$0.02 to \$0.025 and to remove the \$55 fee cap on transactions exceeding 2,750 contracts.

Section 17A(b)(3)(D) of the Securities Exchange Act of 1934 (the “Exchange Act” or the “Act”) requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. While OCC asserts its belief that the proposed fee change is reasonable, it provides no meritorious basis, as discussed below.

The OCC Proposal Does Not Satisfy Pertinent Commission Staff Guidance

On May 21, 2019, the Commission published its “Staff Guidance on SRO Rule Filings Relating to Fees” (“Staff Guidance”). While the Staff Guidance is offered to assist national securities exchanges and FINRA in the preparation of Fee Filings, its application to clearing agencies is no less pertinent and appropriate.

In assessing the reasonableness of proposed fees, the Staff Guidance explains that the Commission first looks to a market-based approach seeking to determine whether the subject SRO is subject to significant competitive forces.¹ It later sets out that “Where an SRO cannot demonstrate, or does not assert, that significant competitive forces constrain the fee at issue, a cost-based discussion may be an alternative basis upon which to show consistency with the Exchange Act”.²

¹ *Staff Guidance*, Section III.B.2.

² *Id.*, Relevance of Cost Data.

The Staff Guidance continues:

If an SRO seeks to support its claims that a proposed fee is fair and reasonable because it will permit recovery of the SRO's costs, or will not result in excessive pricing or supracompetitive profit, specific information, including quantitative information, should be provided to support that argument.

- *A qualitative and general description of the categories of costs "offset" by the proposed fee is not sufficient, nor is an unsupported representation that increased fees are "revenue neutral."*
 - *Rather, the SRO should provide an analysis of the SRO's baseline revenues, costs, and profitability (before the proposed fee change) and the SRO's expected revenues, costs, and profitability (following the proposed fee change) for the product or service in question. As part of its analysis, the SRO should describe, among other things, its methodology for determining the baseline costs and revenues for the product or service, as well as its methodology for estimating the expected costs and revenues for the product or service.³*

OCC is a monopoly and is not subject to competitive market forces, nor does it claim to be as a basis for the reasonability of its Fee Proposal. Rather, OCC asserts two bases for its belief that the Fee Proposal is reasonable:

1. The Fee Proposal "...is intended to better align OCC's clearing fees with the costs of providing its clearing and settlement services to Clearing Members by ensuring that OCC continues to maintain sufficient reserves to cover OCC's cash flows and address potential business or operational losses so that OCC can continue to meet its obligations as a systemically important financial market utility to Clearing Members and the general public if such losses were to materialize.
2. Increased expenses associated with OCC's technology infrastructure, notable inflation, and the fluctuating interest rate environment.⁴

In respect of these asserted bases, OCC noted earlier in its Fee Proposal the following:

1. OCC considers factors including, but not limited to, interest rate forecasts, anticipated cashflows, projected operating expenses, projected volumes, and capital needs.
2. OCC's clearing fees are based on the sum of OCC's annual budgeted or forecasted operating expenses, a defined operating margin, cash flow needs and OCC's capital requirement.
3. The changes in the Fee Proposal are "designed to address OCC's anticipated cash flow needs based on interest rate forecasts, projected operating expenses, projected volumes, and capital needs". In connection, OCC asserted that its cash flow needs have changed due to a decline in projected revenue from interest income; an increase in projected expenses associated with the development, maintenance, and modernization of OCC's technology infrastructure, including growing technology hardware costs and additional employee time; and an increase in capital

³ *Id.*

⁴ *Fee Proposal*, p. 12.

needs, including due to inflation and increased investment in growing areas such as cybersecurity.

4. OCC considered analyses based on certain assumptions and projections, including declining interest rates contributing to a decrease in revenue.
5. OCC has increased investments in various areas, such as compliance, regulatory, legal, and cybersecurity, and headcount, since the last time it increased clearing fees.
6. The costs associated with providing OCC's clearing and settlement services, including the maintenance, development, and modernization of its technology infrastructure, are significant and have increased OCC's cash flows needs year-over-year.⁵

OCC's assertions are bountiful in verbiage, but they are bereft of meaningful disclosure. The Fee Proposal in no way provides an analysis of OCC's baseline revenues, costs, and profitability before the fee change and its expected revenues, costs, and profitability following the fee change. Likewise, OCC does not describe its methodology for determining its baseline costs and revenues, nor for its estimation of its expected costs and revenues. Rather, the Fee Proposal merely offers conclusory assertions and general descriptions of categories of factors it claims are related to its proposed fee changes.

These generic discussion points contravene the Commission's Staff Guidance, as noted above. They provide no substantive basis for the public to assess the reasonability of the Fee Proposal, and therefore stymie the protections for which the public comment process was instituted.⁶ Among SRO rule filings, this protection is even more important for fee filings, because they are effective upon filing. Moreover, they provide no basis for the Commission to find that the Fee Proposal is reasonable.⁷

OCC speaks of its anticipated cash flow needs based on interest rate forecasts, projected operating expenses, projected volumes, and capital needs. It provides no quantitative data for any of these, let alone a methodology of analysis and a justification for such methodological steps and any assumptions upon which it relied.

OCC speaks of better aligning its clearing fees with the costs of providing its clearing and settlement services to Clearing Members. It does not delineate or quantify any such costs, let alone provide an analysis for the same, complete with its methodology and justifications therefor. Nor does it provide any data on any need to "better align" its clearing fees with costs, depriving the Commission and the public from being able to make their own assessments of any alleged need, which goes to the heart of the reasonability of the proposed fee changes. Simply wanting more money is not a reasonable basis for a fee change, and the OCC has made no case beyond that mere desire.

Likewise, OCC claims that, consistent with its Capital Management Policy, OCC's clearing fees are based on the sum of its annual budgeted or forecasted operating expenses, a defined operating margin, cash flow needs and its capital requirement. Again, this broad and ambiguous language tells the Commission

⁵ *Fee Proposal*, pp. 3-8.

⁶ We note that OCC provided to the Commission a confidential Exhibit 3, which OCC purports to contain "additional detail and analysis regarding the proposed fee change". *Fee Proposal*, FN 17. Neither we, nor any other public market participant, has any way of gleaning whether the "additional detail and analysis" is adequate for supporting the alleged reasonability of the Fee Proposal, let alone any ability to comment on the same. OCC has made no case for asserting confidentiality of this "analysis", which case, if any, is not obvious in view of the fact that OCC is a monopoly and not subject to market competitors.

⁷ The Fee Proposal represents the exact type of attempt to have the Commission simply "trust the process" that was rejected by the D.C. Circuit. *Susquehanna Int'l Group v. SEC*, 866 F 3d 442, p. 6.

and the public nothing meaningful – no quantitative data, no analysis, no methodology, no justification for the same – nothing but an implicit plea to “trust the process”.

The Fee Proposal merely repeats the same conclusory talking points, deflecting from their emptiness by phrases like “discussed below” or “discussed above”, all the while failing to satisfy the most basic expectations for meaningful disclosure as set out in the Staff Guidance and as common sense dictates. These representations simply do not make the case that the Fee Proposal is reasonable.

SIG Opposes OCC’s Proposal To Remove Its \$55 Fee Cap

OCC has not demonstrated that the proposed removal of its “Per Transaction Clearing Fee” – a \$55 cap on trades greater than 2,750 contracts (the “Fee Cap”) – is reasonable. Likewise, it has not demonstrated that the removal would not impose an undue and inappropriate burden.

OCC claims that the removal of the Fee Cap is reasonable because it equitably allocates the cost of providing clearance and settlement services for a given transaction regardless of size.⁸ It claims that the removal would not create a financial burden because it ensures that Clearing Members are charged the same Per Contract Clearing Fee per transaction regardless of the size of such transaction.

These assertions fail to support OCC’s conclusions that removal of the Fee Cap is reasonable and non-burdensome. To begin, its claim that said removal equitably allocates the cost of providing clearance and settlement services for a given transaction is an empty assertion. OCC does not provide its cost for its clearance and settlement services whatsoever, let alone on a per transaction basis. It does not even establish that charging clearing fees based on contract size for a given transaction is a proper metric for covering its costs respecting such transaction.

Whatever the cost is, it is difficult to imagine that OCC’s cost of processing any given transaction is greater for a larger quantity of option contracts than for a lesser amount. It is data processing, and the OCC’s cost of processing a transaction for 2 contracts seems like it would be at or about the same as its cost for processing a transaction for 5,000 contracts.

Indeed, it seems that OCC’s cost of processing a transaction for merely 1 contract is covered by the clearing fee for such transaction. That being the case, and given that OCC costs do not seem to fluctuate notably – if at all – for the processing of transactions regardless of size, then it seems that larger sized transactions present a windfall to OCC over and above its costs.⁹ It is unreasonable to have no limits on such windfall; and so it is unreasonable to remove the Fee Cap that serves as the sole check on such

⁸ OCC previously asserted to the Commission that the use of a Fee Cap is an equitable allocation of fees among its participants. On March 14, 2019, OCC submitted a fee filing to the Commission, wherein OCC sought to increase its per contract clearing fee from \$0.050 to \$0.055 and to adjust its \$55 Fee Cap from greater than 1100 contracts to greater than 999 contracts per trade. In its filing, OCC noted its belief *“that the proposed fee change would result in an equitable allocation of fees among its participants because it would be equally applicable to all market participants transacting at a given level of contract volume. As a result, OCC believes that the proposed fee schedule provides for the equitable allocation of reasonable fees in accordance with Section 17A(b)(3)(D) of the Act.”* See, Rel. No. 34-85322; File No. SR-OCC-2019-001.

⁹ If OCC instead asserted that clearing fees for larger sized transactions subsidized the cost of processing lower sized transactions, this would be unreasonable, inequitable, inappropriate, and unduly burdensome on competition.

windfall. In fact, SIG believes the contract quantity for the Fee Cap, 2,750 contracts, was already much too high to serve as a reasonable check on OCC's undue windfall.

OCC's claim that the removal of the Fee Cap would not create a financial burden, because it ensures that Clearing Members are charged the same Per Contract Fee per transaction regardless of size, is similarly empty. OCC demonstrates no nexus between the notion that Members are charged the same Per Contract Fee per transaction and the claim that this does not create a financial burden.

Rather, as demonstrated above, the clearing fee for even a 1-contract transaction seems to result in a profit to OCC over and above its cost of processing such transaction. As transaction contract sizes increase, so does the OCC profit; and, at some point, as noted, this profit becomes an undue windfall. The financing of this windfall is primarily born by large liquidity providers; and, the further the distance between the fixed OCC cost of processing a transaction and the total clearing fee for such transaction due to contract size, the greater the inequity of the windfall accruing to OCC. The removal of the Fee Cap opens the floodgate for unlimited inequity, and is the most damaging aspect of the Fee Proposal.

The Circumstances Do Not Seem To Support The Fee Proposal

While OCC's justification for its Fee Proposal is broadly obscured behind ambiguous generalities, its reliance on projected volume seems to be undercut by its option volume history. OCC option volume has increased substantially year-over-year, as noted below.

<u>Year</u>	<u>Total Option Volume</u>	<u>% Change</u>
2020	7,467,025,538	52.4%
2021	9,870,168,340	32.2%
2022	10,320,473,266	4.6%
2023	11,051,951,440	7.1%
2024	12,224,227,606	10.6%

Moreover, OCC's total clearing fees increased from \$403,938,000 in 2022 to \$430,905,000 in 2023 while the rate of .02 per contract with the \$55 Fee Cap for transactions greater than 2,750 contracts was in effect. Additionally, OCC shareholder equity has steadily increased year-over-year for an extended period, as noted below.

<u>Year</u>	<u>Shareholder Equity</u>
2017	\$247,075,000
2018	\$267,472,000
2019	\$351,312,000
2020	\$557,606,000
2021	\$615,515,000
2022	\$722,359,000
2023	\$798,050,000

OCC has not yet released its 2024 clearing fee total and shareholder equity figures. However, given that OCC option volume increased by 10.6% in 2024 and that the fee rate remained constant, one would expect that its clearing fees likewise increased by that percentage; and, this portends yet another

substantial increase in shareholder equity.¹⁰ In the face of these prospects, it seems dubious that OCC would need to increase its revenue stream via the Fee Proposal.

Indeed, these circumstances appear to contravene, rather than support, OCC's bid to increase its clearing fee rate, and to remove the Fee Cap that stood as the only protection against the material burden on large liquidity providers and the concomitant inequitable windfall accruing to OCC. This makes it all the more important that the Commission require adequate disclosure from OCC in compliance with its Staff Guidance, and not simply accept OCC's conclusory representations.

Conclusion

OCC has failed to make its case for the Fee Proposal, and both the aforementioned circumstances and the gross inequity of the Fee Cap removal speak loudly against its approval. As the vast majority of displayed listed option liquidity is supplied by exchange market makers, the costs of the Fee Proposal will be reflected in bid-ask spreads, and so will be ultimately born by the investing public.

For these reasons, SIG respectfully urges the Commission to abrogate the OCC Fee Proposal. We thank you for your consideration.

Respectfully,



Richard J. McDonald

¹⁰ Likewise, OCC has not yet released its 2024 year-end Targe Capital requirement, but its 2023 requirement was \$303,000,000; and OCC's shareholder equity is far in excess of this threshold.