

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101151; File No. SR OCC-2024-012)

September 24, 2024

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Options Clearing Corporation Concerning Updates to OCC's 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 September 16, 2024, 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)³ of the Act and Rule 19b-4(f)(6)⁴ thereunder. 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

This proposed rule change would to: (1) revise OCC's Capital Management Policy to update its plan for raising additional capital ("Replenishment Plan") should OCC experience potential general business losses, (2) amend OCC's schedule of fees necessary to reflect the proposed change in OCC's Capital Management Plan, and (3) update OCC Rule 101 to maintain consistency with the proposed change in OCC's Capital Management Policy.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

Proposed changes to OCC’s Capital Management Policy, schedule of fees, and Rule 101 are included in Exhibits 5A, 5B, and 5C to File No. SR-OCC-2024-012, respectively. Material proposed to be added is marked by underlining 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

OCC’s Capital Management Policy was adopted in 2019, and it establishes the principles used to quantify, monitor and manage the level of OCC’s Equity⁶ such that OCC maintains liquid net assets funded by equity (“LNAFBE”)⁷ to cover potential general business losses and continue operations and services as a going concern if losses materialize under a range of scenarios, including adverse market conditions.

⁵ <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

⁶ The Capital Management Policy defines “Equity” as shareholders’ equity as shown on OCC’s Statement of Financial Condition.

⁷ The Capital Management Policy defines “LNAFBE” as the level of cash and cash equivalents, no greater than Equity, less any approved adjustments (i.e., agency-related liabilities such as Section 31 fees held by OCC and the Minimum Corporate Contribution).

A main component of the Capital Management Policy is OCC's plan to replenish its capital in the event it falls close to or below its target capital (as defined below, "Replenishment Plan"), as required by SEC Rule 17Ad-22(e)(15)(iii).⁸ This rule provides that OCC must maintain 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 under SEC Rule 17Ad-22(e)(15)(ii)."⁹ In satisfaction with SEC Rule 17Ad-22(e)(15)(iii), OCC's Replenishment Plan establishes a plan for accessing additional capital should OCC's Equity fall below certain thresholds.

OCC's existing Replenishment Plan provides that (i) should OCC's Equity less the Minimum Corporate Contribution fall below 110% of the Target Capital Requirement (as defined by the Capital Management Policy, "Early Warning"), Management would recommend to the Board whether to implement a fee increase in an amount the Board determines necessary and appropriate to raise additional Equity; (ii) should OCC's Equity less the Minimum Corporate Contribution fall below 90% of the Target Capital Requirement or fall below the Target Capital Requirement for a period of ninety consecutive days (as defined in the Capital Management Policy, "Trigger Event"), OCC would contribute the funds held under OCC's Executive Deferred Compensation Plan Trust which are (a) deposited on and after January 1, 2020 in respect of the Corporation's Executive Deferred Compensation Plan ("EDCP") and (b) in excess of amounts necessary to pay for the benefits accrued and vested under the EDCP as of such date (defined in Chapter 1 of OCC's Rules as "EDCP Unvested Balance"); and (iii) should the

⁸ 17 CFR 240.17Ad-22(e)(15)(iii).

⁹ Id. (emphasis added).

contribution of the EDCP Unvested Balance fail to cure the Trigger Event, or if a further Trigger Event occurs, OCC will charge an Operational Loss Fee in equal shares to the Clearing Members.

OCC's existing Replenishment Plan states that in the event of a Trigger Event, OCC will first contribute the funds necessary to cure such loss with the EDCP Unvested Balance. If the loss cannot be cured after applying all available EDCP Unvested Balance, OCC will then charge an Operational Loss Fee in equal share to each Clearing Member.

The purpose of this proposed rule change is to revise the Replenishment Plan in the Capital Management Policy so that the Early Warning and Trigger Event are measured against LNAFBE rather than Equity. At the time the Capital Management Policy was adopted, LNAFBE and Equity were much closer in size than they are currently. Given the growing difference between Equity and LNAFBE, it is possible that in the event of an operational loss, LNAFBE may fall below the Target Capital Requirement, but Equity would remain above the Early Warning and Trigger Event. In that instance, OCC would not be able to access the Operational Loss Fee to bring LNAFBE above the Target Capital Requirement because OCC's Equity would still be above the Trigger Event. Consequently, OCC proposes to amend the Replenishment Plan in the Capital Management Policy such that the Early Warning and Trigger Event are measured against LNAFBE, rather than Equity. As defined in the Capital Management Policy, LNAFBE will always be less than or equal to Equity. By amending the Replenishment Plan in the Capital Management Policy so that the Early Warning and Trigger Event are measured against LNAFBE, rather than Equity, OCC will have the

ability to access its Replenishment Plan, including the Operational Loss Fee, in the event its LNAFBE falls below regulatory minimums.

To implement the proposed changes in the Replenishment Plan in the Capital Management Policy, OCC also proposes to update its schedule of fees to revise the Operational Loss Fee such that OCC would charge the Operational Loss Fee if OCC's LNAFBE falls below the Trigger Event.

Proposed Changes

As described in detail below, OCC proposes to revise the Replenishment Plan under its Capital Management Policy so that the Early Warning and Trigger Event are measured against LNAFBE, rather than Equity. OCC also proposes to make conforming changes to its schedule of fees necessary to implement the proposed changes in the Replenishment Plan to promote compliance with SEC Rule 17Ad-22(e)(15)(iii).

In addition, OCC proposes to incorporate several non-substantive changes to the Capital Management Policy, including updating the header text at the beginning of the document to incorporate additional sections to promote clarity and consistency for document use and management. Specifically, OCC's proposed changes add the following sections to the header at the beginning of the document: (i) Policy Owner, (ii) Document Type, (iii) Board Approval, (iv) Rule Filed, and (iv) Version Number. To promote additional clarity, OCC's proposed changes also add the term "version" prior to the header labeled as "effective date." Finally, OCC's proposed changes eliminate the header labeled as "scope" as OCC believes this section is unnecessary for document use and management.

Replenishment Plan

i. Early Warning

OCC would revise the Replenishment Plan's Early Warning so that it is measured against LNAFBE. Specifically, the Capital Management Policy would define the Early Warning to be when LNAFBE, rather than Equity less the Minimum Corporate Contribution, falls below 110% of the Target Capital Requirement.¹⁰ OCC proposes replacing Equity with LNAFBE within the Capital Management Policy to reflect this change to the Early Warning as well as the change to the definition of Trigger Event described below. After this replacement, the Capital Management Policy would explain that in the event of an operational loss, OCC would first use LNAFBE, rather than Equity less the Minimum Corporate Contribution, above 110% of Target Capital. The proposed changes would further describe that in the event OCC's LNAFBE, rather than equity, breaches the Early Warning, Management would recommend to the Board whether to implement a fee increase in an amount the Board determines necessary and appropriate to raise additional LNAFBE, rather than Equity. The recommendation whether to implement the fee increase would be informed by several factors including, but not limited to, the facts, circumstances and root cause of a decrease in LNAFBE, rather than Equity, below the Early Warning.

ii. Trigger Event

¹⁰ OCC's Capital Management Policy explains how OCC sets its Target Capital Requirement, including how OCC may set its Target Capital Requirement to retain "additional Equity generated from revenue." To conform with the proposed changes, OCC proposes to modify those references to "additional Equity generated from revenue, in the form of LNAFBE." Specifically, OCC's proposed changes would clarify that OCC can retain additional Equity generated from revenue, in the form of LNAFBE, for capital expenditures following a recommendation by Management and Board approval. OCC's proposed changes would also clarify that the Board would (a) determine if the capital needs are necessary and appropriate and, if so, (b) determine whether to (i) increase the Target Capital Requirement or (ii) retain the additional Equity, in the form of LNAFBE, as an amount in excess of the Target Capital Requirement.

OCC would further revise the Replenishment Plan's Trigger Event so that it is measured against LNAFBE. Specifically, the Capital Management Policy would define a Trigger Event to be when OCC's LNAFBE, rather than Equity less the Minimum Corporate Contribution, falls below 90% of the Target Capital Requirement or remains below the Target Capital Requirement for ninety consecutive calendar days. If a Trigger Event occurs, OCC would first contribute the funds necessary to cure such loss with the EDCP Unvested Balance. To reflect the new definition of Trigger Event, the Capital Management Policy would be changed to explain that if OCC's LNAFBE, rather than Equity, remains below 90% of the Target Capital Requirement after applying the EDCP Unvested Balance, or if a further Trigger Event occurs after applying all available EDCP Unvested Balance, OCC would charge an Operational Loss Fee¹¹ in equal share to each Clearing Member payable on five business days' notice, to raise additional capital. The Capital Management Policy would be edited to provide that, in the event less than the full amount of the maximum Operational Loss Fee is needed to return OCC's LNAFBE, rather than Equity, to 110% of the Target Capital Requirement, OCC would charge only that amount necessary to return OCC's LNAFBE, rather than Equity, to 110% of the Target Capital Requirement. This change better ensures that OCC holds the mandated amount of LNAFBE. The proposed changes to the Capital Management Policy would also remove the term "threshold" after Early Warning and Trigger Event where the Early Warning and Trigger Event already incorporate that concept and clarify that Trigger means Trigger Event in the Replenishment Plan.

¹¹ OCC has outlined when the Operational Loss Fee can be charged in OCC's Schedule of Fees in Exhibit 5B.

Capital Monitoring

OCC proposes to update the heading of section B in Exhibit 5A from “Monitoring Equity Levels” to “Capital Monitoring” to more closely align with the other headings throughout this document, and clarify the information that is described in this section. The Capital Management Policy describes how Management reviews periodic analyses of LNAFBE, including projecting future volume, expenses, cash flows, capital needs and other factors to help ensure adequate financial resources are available to meet general business obligations. The proposed changes to the Capital Management Policy would provide that Management also reviews an analysis of LNAFBE, as opposed to Equity,¹² at least monthly to ensure: (i) an Early Warning has not occurred or is not reasonably expected to occur prior to the next review; and (ii) a Trigger Event has not occurred and is not expected to occur prior to the next review. The Capital Management Policy would explain that at each regularly scheduled Board and Compensation and Performance Committee (“CPC”) meeting, the Chief Financial Officer (“CFO”) would report on the firm’s LNAFBE, rather than Equity, relative to the Target Capital Requirements, Early Warning and Trigger Event. The Capital Management Policy would also provide that if OCC suffers a catastrophic or sizable loss during the month, and such loss amount is known or can reasonably be estimated, Management should review a forecast of the impact on LNAFBE, rather than Equity. Finally, the Capital Management Policy would state that if such forecast demonstrates that LNAFBE, rather than Equity, has fallen

¹² Separately from the Capital Management Policy’s measurement of LNAFBE against the Early Warning and Trigger Event, OCC also reviews its Equity on an at-least monthly basis for purposes of measuring its financial resources, including OCC’s own capital and any other financial resources deemed acceptable by the CFTC, to satisfy the CFTC’s requirement that OCC cover its operating costs for a period of at least one year on a rolling basis. See 17 CFR 39.11(a)(2).

below the Early Warning or Trigger Event, Management should promptly notify the Board.

Capital Management

In addition to the Replenishment Plan, the Capital Management Policy also addresses certain actions the Board may take based on, and which impact, the level of OCC's Equity or LNAFBE, including the circumstances under which the Board may consider using tools to lower Clearing Members' cost of participation such as through a fee decrease, fee hold and fee refund. Consistent with the changes to measure the aforementioned thresholds against LNAFBE, OCC would amend the Capital Management Policy to provide that the Board may only use such tools if LNAFBE, rather than Equity, is above 110% of the Target Capital Requirement. In practice, OCC would not have taken such measures if its LNAFBE was below 110% of the Target Capital Requirement. This change would clearly express that practice in the Capital Management Policy.

Proposed Changes to OCC Rule 101

Consistent with the proposed changes to the Capital Management Policy, OCC also proposes to amend the definition of "Target Capital Requirement" as defined in OCC Rule 101.¹³ The Rules use that term to provide for the variable amount of skin-in-the-game (i.e., LNAFBE in excess of 110% of the Target Capital Requirement) that OCC would contribute to cover losses or liquidity shortfalls arising from a Clearing Member default under OCC Rule 1006 in specified circumstances. As described in Exhibit 5C to File No. SR-OCC-2024-012, OCC proposes to replace the term "shareholders' equity"

¹³ <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>

with “liquid net assets funded by equity (“LNAFBE”)” within the definition of Target Capital Requirement. Revising the definition of Target Capital Requirement to refer to the level of LNAFBE, as opposed to shareholder’s equity, would maintain consistency with the above referenced changes to OCC’s Capital Management Policy.

Fee Schedule

OCC would also amend its fee schedule to reflect the conditions under which it would charge the Operational Loss Fee. As described in Exhibit 5B to File No. SR-OCC-2024-012, OCC would charge the Operational Loss Fee in equal shares to Clearing Members to raise additional capital if OCC’s LNAFBE, as opposed to Equity less the Minimum Corporate Contribution, falls below 90% of the Target Capital Requirement or below the Target Capital Requirement for a period of ninety consecutive calendar days, after first applying the unvested balance held in respect of OCC’s EDCP. Furthermore, if less than the full amount of the maximum Operational Loss Fee is needed to return OCC’s LNAFBE, as opposed to Equity, to 110% of the Target Capital Requirement, OCC would charge only that amount necessary to return OCC’s LNAFBE to 110% of the Target Capital Requirement.

2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Exchange Act¹⁴ and the rules and regulations thereunder. In particular, OCC believes

¹⁴ 15 U.S.C. 78q-1.

that the Capital Management Policy is consistent with Section 17A(b)(3)(F) of the Exchange Act¹⁵ and Rule 17Ad-22(e)(15).¹⁶

Section 17A(b)(3)(F) of the Exchange Act requires, in part, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.¹⁷

The Capital Management Policy is designed to ensure that OCC holds sufficient LNAFBE such that it could continue to promptly and accurately clear and settle securities transactions even if it suffered significant operational losses. Holding sufficient LNAFBE would help OCC to absorb such operational losses and avoid a disruption that could negatively impact OCC's prompt and accurate clearing and settlement of transactions. Furthermore, by maintaining sufficient LNAFBE, OCC will ensure adequate financial resources are available to meet general business obligations. In addition, OCC would protect the interests of investors and the general public through the Capital Management Policy, which is designed to ensure that such losses would not result in a failure or disruption of a Systemically Important Financial Market Utility ("SIFMU"), as OCC is designated by the Financial Stability Oversight Council ("FSOC") pursuant to the Payment, Clearing and Settlement Supervision Act.¹⁸ FSOC has concluded that a failure or disruption at OCC would negatively affect significant dollar value and volume transactions in the options and futures markets, impose material losses on OCC counterparties and create liquidity and credit problems for financial institutions and

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ 17 CFR 240.17Ad-22(e)(15).

¹⁷ 15 U.S.C. 78q-1(b)(3)(F).

¹⁸ 12 U.S.C. 5463.

others that rely on the markets OCC serves, and that such credit and liquidity problems would spread quickly and broadly among financial institutions and other markets.¹⁹ Accordingly, FSOC determined that a failure or disruption at OCC could threaten the stability of the U.S. financial system.²⁰ Therefore, OCC believes that the Capital Management Policy, which is reasonably designed to ensure that OCC has sufficient LNAFBE to continue operations in the event of an operational loss, is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act by protecting investors and the public interest.²¹

Rule 17Ad-22(e)(15)(iii) requires, in part, 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 Board and updated at least annually, for raising additional equity should its equity fall below the required amount under Rule 17Ad-22(e)(15)(ii).²² The amendments to the Replenishment Plan in the Capital Management Policy, OCC's schedule of fees, and OCC's Rules are reasonably designed to establish a viable plan to raise additional capital in an amount up to the amount the Board determines annually to be sufficient to ensure recovery or orderly wind-down should OCC's LNAFBE fall close to or below its Target Capital Requirements. In addition, by providing that the Early Warning and Trigger Event be measured against LNAFBE, rather than Equity, this will

¹⁹ FSOC Annual Report, Appendix A, at 187 (2012), [available at https://home.treasury.gov/system/files/261/here.pdf](https://home.treasury.gov/system/files/261/here.pdf).

²⁰ Id.

²¹ 15 U.S.C. 78q-1(b)(3)(F).

²² 17 CFR 240.17Ad-22(e)(15)(iii).

ensure that OCC has access to its Replenishment Plan, including the Operational Loss Fee, to cover potential general business losses so that OCC can continue operations and services as a going concern if those losses materialize, as required under Rule 17Ad-22(e)(15).²³ Furthermore, this proposed rule change would effectuate changes to the Replenishment Plan approved by OCC's Board during its annual review, consistent with Rule 17Ad-22(e)(15)(iii).²⁴

The Capital Management Policy is also designed to identify, monitor and manage OCC's general business risk, consistent with Rule 17Ad-22(e)(15),²⁵ by providing that OCC would perform an analysis of its LNAFBE on at least a monthly basis to ensure that OCC's LNAFBE has not fallen below the Early Warning or Trigger Event and is not likely to fall below those thresholds prior to the next review. The Capital Management Policy's requirement that Management report on the firm's LNAFBE relative to the Early Warning and Trigger Event at each regularly scheduled Board meeting is also designed to identify, monitor, and manage OCC's general business risk. The Capital Management Policy's requirement that the Board be promptly notified in the event of an Early Warning or Trigger Event is also reasonably designed to ensure that OCC can act quickly to ensure OCC's compliance with the LNAFBE-holding requirements of Rule 17Ad-22(e)(15).²⁶

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

²³ 17 CFR 240.17Ad-22(e)(15).

²⁴ 17 CFR 240.17Ad-22(e)(15)(iii).

²⁵ 17 CFR 240.17Ad-22(e)(15).

²⁶ Id.

Section 17A(b)(3)(I) of the Act²⁷ 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 believes that the proposed changes to its Capital Management Policy and its schedule of fees to measure the Early Warning and Trigger Event against LNAFBE, rather than Equity, and to its Rules, would not have any impact, or impose any burden, on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. As described above, the Replenishment Plan is designed for OCC to access additional capital should OCC's LNAFBE fall below certain thresholds so OCC can meet the requirements of SEC Rule 17Ad-22(e)(15) and serve its Clearing Members and the public interest.

Any barrier to entry that the Operational Loss Fee may impose is appropriate in furtherance of the Exchange Act, and the rules the SEC has promulgated thereunder. Pursuant to SEC Rule 17Ad-22(e)(15)(iii)²⁸, OCC must hold minimum LNAFBE and have a viable plan to replenish equity should OCC's equity fall close to or below those minimums. It is entirely appropriate that the Clearing Members that benefit equally from OCC's services share the burden equally should OCC experience an operational loss that threatens its ability to continue providing those services and comply with its regulatory obligations.

(C) Clearing Agency'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 change and none have been received. OCC will notify the Commission of any

²⁷ 15 U.S.C. 78q-1(b)(3)(I).

²⁸ 17 CFR 240.17Ad-22(e)(15)(iii).

written comments received by OCC. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such

shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁹ and Rule 19b-4(f)(6)³⁰ thereunder.

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 shall not take effect until all regulatory actions required with respect to the proposal are completed.³¹

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:

²⁹ 15 U.S.C. 78s(b)(3)(A).

³⁰ 17 CFR 240.19b-4(f)(6).

³¹ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-OCC-2024-012 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-OCC-2024-012. This file number should be included on the subject line if email 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

(<https://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 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 am and 3 pm. 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>.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part

or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-OCC-2024-012 and should be submitted on or before [INSERT DATE 21 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Vanessa A. Countryman,
Secretary.

³² 17 CFR 200.30-3(a)(12).