

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101551; File No. SR-OCC-2024-010)

November 7, 2024

Self-Regulatory Organizations; The Options Clearing Corporation; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as modified by Partial Amendment No. 1, 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

I. Introduction

On July 25, 2024, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-OCC-2024-010 pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4² thereunder to establish a margin add-on charge that would be applied to all Clearing Member accounts to assist with mitigating the risks arising from intraday and overnight trading activity, particularly activity attributable to short-dated options trading. Proposed rule change SR-OCC-2024-010 was published for public comment in the *Federal Register* on August 12, 2024.³ The Commission has received comments regarding the proposed rule change.⁴

On September 4, 2024, OCC amended the proposed rule change to include as Exhibit 2 an information memorandum OCC published on its website informing OCC’s

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 100664 (Aug. 6, 2024), 89 FR 65695 (Aug. 12, 2024) (File No. SR-OCC-2024-010) (“Notice of Filing”).

⁴ Comments on the proposed rule change are available at <https://www.sec.gov/comments/sr-occ-2024-010/srocc2024010.htm>.

membership of the details of the margin add-on charge.⁵ On September 25, 2024, pursuant to Section 19(b)(2) of the Exchange Act,⁶ the Commission issued a Notice of Filing of Partial Amendment No. 1 and designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁷ This order institutes proceedings, pursuant to Section 19(b)(2)(B) of the Exchange Act,⁸ to determine whether to approve or disapprove the proposed rule change, as modified by Partial Amendment No. 1 (hereinafter “Proposed Rule Change”).

II. Summary of the Proposed Rule Change

OCC is a central counterparty (“CCP”), which means that as part of its function as a clearing agency, it interposes itself as the buyer to every seller and the seller to every buyer for certain financial transactions. As the CCP for the listed options markets in the United States,⁹ as well as for certain futures and stock loans, OCC is exposed certain risks arising from providing clearing and settlement services to its Clearing Members.¹⁰ Because OCC is obligated to perform on the contracts it clears, even where one of its

⁵ See OCC Info Memo #55123, Intraday Risk Monitoring (dated Aug. 30, 2024), available at <https://infomemo.theocc.com/infomemos?number=55123>. The amendment did not change the purpose or basis of the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2).

⁷ Securities Exchange Act Release No. 101193 (Sept. 25, 2024), 89 FR 79977 (Oct. 1, 2024) (File No. SR-OCC-2024-010).

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ OCC describes itself as “the sole clearing agency for standardized equity options listed on a national securities exchange registered with the Commission (‘listed options’).” See Securities Exchange Act Release No. 96533 (Dec. 19, 2022), 87 FR 79015 (Dec. 23, 2022) (File No. SR-OCC-2022-012).

¹⁰ Capitalized terms have the same meaning as provided in OCC’s By-Laws and Rules, which can be found on OCC’s public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

Clearing Members defaults, one such risk to which OCC is exposed is credit risk in the form of exposure to a Clearing Member's trading activities. OCC manages such credit risk, in part, by collecting collateral from its Clearing Members in the form of margin, which may include certain add-on charges designed to address specific risks.

At the start of each business day, OCC collects the required margin for each marginable account calculated by OCC's proprietary System for Theoretical Analysis and Numerical Simulation ("STANS") based on the account's end-of-day positions from the previous business day. OCC also has broad authority to require additional margin deposits and to make intraday margin calls if, for example, the value of securities deposited as margin collateral does not accurately address changes in a Clearing Member's account during the business day,¹¹ circumstances warrant protective measures in the form of adjusting the amount or composition of margin,¹² and when unrealized losses exceed a certain threshold of an account's total risk charges¹³ during standard trading hours or extended trading hours ("ETH").¹⁴

¹¹ See OCC Rule 609(a) ("[OCC] may require the deposit of additional margin ('intra-day margin') by any Clearing Member in any account at any time during any business day to reflect changes in: . . . (3) the value of securities deposited by the Clearing Member as margin...").

¹² See OCC Rule 307C(b) (providing for protective measures in the form of requiring Clearing Members to adjust the amount or composition of margin, including but not limited to requiring the deposit of additional margin).

¹³ See Securities Exchange Act Release No. 82658 (Feb. 7, 2018), 83 FR 6646, 6648 (Feb. 14, 2018) (File No. SR-OCC-2017-007) ("Pursuant to the Margin Policy, OCC issues margin calls during standard trading hours when unrealized losses exceeding 50% of an account's total risk charges are observed for that account based on start-of-day positions."). See also Securities Exchange Act Release No. 82355 (Dec. 19, 2017), 82 FR 61060, 61064 (Dec. 26, 2017) (File No. SR-OCC-2017-007) (codifying in the Margin Policy the extended trading hour intraday margin call OCC would issue prior to 9:00 a.m. Central Time when: (1) unrealized losses observed for an account, based on new ETH positions, exceed 25% of that account's total risk charges and (2) the overall Clearing Member portfolio is also experiencing losses).

¹⁴ ETH refers to trades executed in extended and overnight trading sessions offered by exchanges for which OCC provides clearance and settlement services. See Securities Exchange Act Release No. 73343 (Oct. 14, 2014), 79 FR 62684 (Oct. 20, 2014) (File No. SR-OCC-2014-805).

Since these margin collection processes were established, OCC observed a significant increase in the volume of contracts it clears, particularly of short-dated option (“SDO”) contracts, including those traded on the day of their expiration (“zero-days-to-expiration” or “0DTE” options).¹⁵ According to OCC, the average daily cleared volume increased steadily after 2018 and doubled by 2022, reaching more than 40 million cleared contracts, of which a significant portion were SDO contracts.¹⁶ OCC conducted a study that reflects the evolution of SDOs and 0DTE options in the broader market, which evolved from weekly options in 2005 being listed on the S&P 500 Index (“SPX”) and expiring each Friday of the month, to options now expiring on every trading day of the year.¹⁷

The proliferation of SDOs and 0DTE options has increased OCC’s exposure to risks from its Clearing Members’ intraday and ETH trading activity. OCC collects margin at the start of each business day using the STANS margin calculation, which is based on end-of-day positions from the previous trading session. This margin collection does not account for overnight trading activity. Nor does it encompass intraday trading activity, including any possible increases in the clearance of SDOs or 0DTE options.

¹⁵ According to OCC, the average daily cleared volume increased steadily after 2018 and doubled by 2022, reaching more than 40 million cleared contracts, of which a significant portion were SDO contracts. *See* Notice of Filing, 89 FR at 65695-96. Additionally, OCC has provided a confidential Exhibit 3A to File No. SR-OCC-2024-010, which is a 2023 study OCC conducted of its risk exposure to short-dated options.

¹⁶ As an example, daily option trading volume transactions examined between February 2023 and July 2023 show that options with less than a one-month time-to-expiration contributed around 30 percent of daily trading volume across the days examined. *See* Notice of Filing, 89 FR at 65695-96. For 0DTE options during that time on the expiration dates (*e.g.*, Fridays or third Fridays of a month), the daily trading volume increased to 40 percent. *Id.*

¹⁷ In 2005, the Chicago Board Options Exchange (“Cboe”), one of the participant exchanges for which OCC provides clearance and settlement services, began listing weekly options on the SPX expiring each Friday of the month. *See* Notice of Filing, 89 FR at 65695-96. Then, in 2016, Cboe introduced Monday and Wednesday weekly SPX expirations, and in 2022 it added Tuesday and Thursday weekly SPX expirations. *Id.*

Although OCC's current portfolio revaluation process captures changes related to price movements, it does not capture the intraday credit risk related to position changes that exists between the point of margin collection at the beginning of each business day and the point of margin collection at the beginning of the next business day, resulting in a margin requirement that may not be sufficient to cover any additional risk arising from intraday trading activity during the trading session. Such intraday credit risk could be a result of Clearing Member(s) trading in and out of SDOs and 0DTE options, exercising these options positions, or the options expiring by the end of the day.

To help address such credit risk exposure, OCC proposes to implement 1) a margin add-on charge (the "Intraday Risk Charge"); and 2) monitoring and escalation criteria to facilitate margin calls for any Clearing Member whose intraday activity exceeds certain thresholds relative to its Intraday Risk Charge ("Intraday Risk Charge Monitoring Thresholds"). The monitoring, escalation, and calculation of the Intraday Risk Charge would be conducted through OCC's current Watch Level surveillance system, which is governed by OCC's Third-Party Risk Management Framework.¹⁸ Specifically, OCC would utilize its Watch Level surveillance to track Clearing Members' overnight trading activity and identify patterns of risk-increasing activity in SDOs and 0DTE options. Under the current monitoring system, if OCC observes that certain thresholds are breached relative to a Clearing Member's net capital, OCC will calculate, and potentially impose, protective measures in the form of additional margin. The Intraday Risk Charge would extend this monitoring and surveillance approach to all

¹⁸ See Securities Exchange Act Release No. 90797 (Dec. 23, 2020), 85 FR 86592 (Dec. 30, 2020) (File No. SR-OCC-2020-014).

products cleared by OCC and to all Clearing Members, regardless of net capital thresholds.

III. Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act¹⁹ to determine whether the Proposed Rule Change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, providing the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,²⁰ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change's consistency with Section 17A of the Exchange Act,²¹ and the rules thereunder, including the following provisions:

¹⁹ 15 U.S.C. 78s(b)(2)(B).

²⁰ *Id.*

²¹ 15 U.S.C. 78q-1.

- Section 17A(b)(3)(E) of the Exchange Act, which requires, among other things, that the rules of a clearing agency do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants;²²
- Section 17A(b)(3)(F) of the Exchange Act, which requires, among other things, that the rules of a clearing agency are designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible;²³
- Rule 17Ad-22(e)(2) of the Exchange Act, which requires, among other things, that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that specify clear and direct lines of responsibility;²⁴ and
- Rule 17Ad-22(e)(4) of the Exchange Act, which requires, among other things, that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.²⁵

²² 15 U.S.C. 78q-1(b)(3)(E).

²³ 15 U.S.C. 78q-1(b)(3)(F).

²⁴ 17 CFR 240.17Ad-22(e)(2)(v).

²⁵ 17 CFR 240.17Ad-22(e)(4)(i).

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with Sections 17A(b)(3)(E) and 17A(b)(3)(F) of the Exchange Act,²⁶ and Rules 17Ad-22(e)(2)²⁷ and 17Ad-22(e)(4)²⁸ thereunder, or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4(g) under the Exchange Act,²⁹ any request for an opportunity to make an oral presentation.³⁰

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Rule Change should be approved or disapproved by [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [INSERT DATE 29 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

²⁶ 15 U.S.C. 78q-1(b)(3)(E) and 15 U.S.C. 78q-1(b)(3)(F).

²⁷ 17 CFR 240.17Ad-22(e)(2).

²⁸ 17 CFR 240.17Ad-22(e)(4).

²⁹ 17 CFR 240.19b-4(g).

³⁰ Section 19(b)(2) of the Exchange Act grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

The Commission asks that commenters address the sufficiency of OCC's statements in support of the Proposed Rule Change, which are set forth in the Notice of Filing,³¹ in addition to any other comments they may wish to submit about the Proposed Rule Change.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form
(<https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking>);
or
- Send an e-mail to rule-comments@sec.gov. Please include file number SR-OCC-2024-010 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-2024-010. 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 (<https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking>). 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

³¹ See Notice of Filing, *supra* note 3.

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 a.m. and 3 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/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-2024-010 and should be submitted on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 29 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

Sherry R. Haywood,

Assistant Secretary.

³² 17 CFR 200.30-3(a)(31).