

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 19b-4

Proposed Rule Change
by

THE OPTIONS CLEARING CORPORATION

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

Item 1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),¹ and Rule 19b-4 thereunder,² The Options Clearing Corporation (“OCC”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to revise OCC’s schedule of fees effective February 14, 2025, to implement an increase in clearing fees.³ Specifically, OCC proposes to increase the per contract clearing fee from \$0.02 to \$0.025 and to remove the flat per transaction fee (currently \$55.00 for transactions of 2,751 or more contracts) entirely. Pursuant to OCC’s Capital Management Policy, which the Commission has approved as an OCC rule, the fee change is designed to address OCC’s anticipated cash flow needs based on interest rate forecasts, projected operating expenses, projected volumes, and capital needs. Proposed changes to OCC’s schedule of fees are included as Exhibit 5 to File Number SR-OCC-2025-002. Material proposed to be added to OCC’s schedule of fees as currently in effect is underlined 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.⁴

Item 2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved for filing with the Commission by the Compensation and Performance Committee of OCC’s Board of Directors (“Board”) on November 18, 2024.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ OCC initially filed a proposed rule change regarding the changes to its clearing fees on December 19, 2024, with an effective date of January 1, 2025 (File No. SR-OCC-2024-017). On February 14, 2025, OCC withdrew File No. SR-OCC-2024-017 and resubmitted this proposed rule change.

⁴ OCC’s By-Laws and Rules can be found on OCC’s public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

Item 3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Founded in 1973, OCC operates as a central counterparty (“CCP”) under the jurisdiction of both the SEC and the Commodity Futures Trading Commission (“CFTC”). As a registered clearing agency under the SEC’s jurisdiction, OCC is the sole clearing agency for equity options listed on national securities exchanges. As a registered Subpart C DCO under the CFTC’s jurisdiction, OCC clears and settles transactions in futures and options on futures. OCC also provides central counterparty clearing and settlement services for securities lending transactions. In its role as a CCP, OCC guarantees the performance of its Clearing Members for all transactions cleared by OCC by becoming the buyer to every seller and the seller to every buyer. Given OCC’s critical role, OCC has been designated by the Financial Stability Oversight Council as a systemically important financial market utility (“SIFMU”) under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing and Settlement Supervision Act of 2010 (“Clearing Supervision Act”).⁵

Over the past several years, OCC has incurred significant expenses due to investments in a modernized technology infrastructure tied to the development and future launch of OCC’s new clearing system, Ovation. This new system will improve efficiency both for the industry and OCC. This has come with increased costs, however, with expense growth in cloud technology, hardware, software, data centers, and disaster recovery; headcount increases and wage inflation; and increased costs related to regulatory obligations. Other factors, such as a declining interest rate environment have impacted OCC’s projected income in 2025. OCC’s retained earnings are no longer sufficient to manage these expenses, account for lower interest rates, and maintain a

⁵ 12 U.S.C. 5463.

compliant capital level. Accordingly, the purpose of this proposed rule change is to revise OCC's schedule of fees, effective February 14, 2025, to implement an increase in clearing fees, as further described below.

A. Purpose

Background

As the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission, and with respect to OCC's clearance and settlement of futures and stock loan transactions, OCC maintains policies and procedures to manage the risks borne by OCC as a central counterparty. One such risk that OCC manages is general business risk—that is, the risk of potential impairment to OCC's financial position resulting from a decline in revenues or an increase in expenses. To manage this risk and help to ensure that OCC can continue operations and services as a going concern if general business losses materialize, OCC has filed, and the Commission has approved, OCC's Capital Management Policy,⁶ which provides the framework by which OCC manages its capital. Amending OCC's schedule of fees is one action used by OCC to manage its capital.

Pursuant to OCC's rule-filed Capital Management Policy, and as required by Exchange Act rules applicable to OCC,⁷ OCC must maintain liquid net assets funded by equity

⁶ See Notice of Filing and Immediate Effectiveness of Proposed Rule Change Concerning Updates to OCC's Capital Management Policy, Exchange Act Release No. 101151 (Sep. 24, 2024), 89 FR 79668 (Sep. 30, 2024) (File No. SR-OCC-2024-012); Order Approving Proposed Rule Change to Establish OCC's Persistent Minimum Skin-In-The-Game, Exchange Act Release No. 92038 (May 27, 2021), 86 FR 29861 (June 3, 2021) (File No. SR-OCC-2021-003); Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, Concerning a Proposed Capital Management Policy That Would Support the Option Clearing Corporation's Function as a Systemically Important Financial Market Utility, Exchange Act Release No. 88029 (Jan. 24, 2020), 85 FR 5500 (Jan. 30, 2020) (File No. SR-OCC-2019-007); see also Notice of Filing of Partial Amendment No. 1 and Notice of No Objection to Advance Notice, as Modified by Partial Amendment No. 1, Concerning a Proposed Capital Management Policy That Would Support the Option Clearing Corporation's Function as a Systemically Important Financial Market Utility, Exchange Act Release No. 87257 (Oct. 8, 2019), 84 FR 55194 (Oct. 15, 2019) (File No. SR-OCC-2019-805).

⁷ See 17 C.F.R. 240.17Ad-22(e)(15)(ii)

(“LNAFBE”)⁸ sufficient to cover at least six months of operating expenses, among other measures (“Target Capital Requirement”). Because OCC is required to maintain such funds, the LNAFBE used to meet the Target Capital Requirement cannot be used to cover operational expenses and any increase in expenses must be covered by current revenue or cash held in excess of the Target Capital Requirement. In recent years OCC has used its retained earnings in excess of 110% of its Target Capital Requirement (the “Early Warning” threshold under OCC’s Capital Management Policy) to avoid having to raise fees. In addition, in response to increases in revenue attributable to increases in contract volume and interest rates, OCC has utilized tools under the Capital Management Policy to lower the cost of clearing for market participants, including lowering its fees two times since 2019 from \$0.055 to \$0.02 per contract,⁹ instituting a fee holiday from November through December of 2021,¹⁰ and issuing refunds of clearing fees in 2020 (\$156 million) and 2021 (\$76.3 million). These measures have resulted in a decline in LNAFBE between 2021 and 2025.¹¹ Based on projected 2025 costs and revenues, OCC projects

⁸ While the relevant rules under the Exchange Act do not define the term, the Commission-approved Capital Management Policy defines LNFABE as the level of cash and cash equivalents, no greater than shareholders’ equity, less any approved adjustments. These approved adjustments exclude cash that would not be available to cover general business expenses, including (1) cash collected by OCC in an agency-related capacity, including the SEC Section 31 fees that OCC collects monthly and transmits to the Commission bi-annually on behalf of the options exchanges, and (2) OCC’s Minimum Corporate Contribution, which is the minimum level of OCC funds (often referred to as “skin-in-the-game”) maintained exclusively to cover credit losses or liquidity shortfalls arising from a Clearing Member default.

⁹ See Exchange Act Release Nos. 89534 (Aug. 12, 2020), 85 FR 50858 (Aug. 18, 2020) (File No. SR-OCC-2020-009) (modifying the schedule of fees to (i) decrease the Per Contract Clearing Fee from \$0.055 to \$0.045 and (ii) adjust the quantity of contracts at which the Per Transaction Clearing Fee begins from transactions with more than 999 contracts per transaction to transactions with more than 1,222 contracts per transaction) and 91920 (May 18, 2021), 86 FR 27916 (May 24, 2021) (File No. SR-OCC-2021-006) (modifying the schedule of fees to (i) decrease the Per Contract Clearing Fee from \$0.045 to \$0.02 and (ii) adjust the quantity of contracts at which the Per Transaction Clearing Fee begins from transactions with more than 1,222 contracts per transaction to transactions with more than 2,750).

¹⁰ See Exchange Act Release Nos. 93195 (Sept. 29, 2021), 86 FR 55039 (Oct. 5, 2021) (File No. SR-OCC-2021-009) and 93612 (Nov. 18, 2021), 86 FR 67108 (Nov. 24, 2021) (File No. SR-OCC-2021-012).

¹¹ OCC’s audited financials are available at <https://www.theocc.com/company-information/documents-and-archives/annual-reports/>.

that at current fee levels, it will not have sufficient excess cash to maintain its Target Capital Requirement. Specifically, without a fee change, OCC projects that its LNAFBE would fall below OCC's Target Capital Requirement by the end of Q1 2025. OCC does not believe it would be prudent, given its designation as a systemically important financial market utility ("SIFMU") to allow its LNAFBE to decline past the Early Warning threshold prior to taking action to ensure that OCC maintains sufficient LNAFBE to satisfy its regulatory requirements and so that it may continue to operate as a going concern if it were to experience general business losses.

The proposed fee increase is based on an application of OCC's Commission-approved Capital Management Policy and takes into consideration OCC's present financials and projected costs and revenue. In accordance with the Capital Management Policy, OCC management reviews the fee schedule at regularly scheduled meetings and, considering factors including, but not limited to, interest rate forecasts, anticipated cashflows, projected operating expenses, projected volumes, and capital needs, recommends to the Board (or a committee to which the Board has delegated authority) whether a fee change should be made. OCC's Board is made up of a broad cross-section of options market participants, including public representatives, Clearing Member representatives from Clearing Members of various sizes, and options exchange representatives. In accordance with such procedures, OCC management recommended, and the Compensation and Performance Committee of OCC's Board approved, the proposed fee change.

Proposed Fee Change

OCC proposes to implement an increase in clearing fees, effective February 14, 2025, to better align its clearing fees with the costs of providing its clearing and settlement services to Clearing Members. OCC serves market participants as a financially responsible steward of

clearing services while ensuring that it meets regulatory expectations and responsibly invests in its infrastructure. OCC has in place policies and procedures, including the Capital Management Policy, to control costs and regularly review fees and operating expenses, including during its annual budgeting process. Consistent with the Capital Management Policy, 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. OCC currently has a two-tier clearing fee structure: OCC charges a \$0.02 clearing fee per contract for transactions involving 2,750 or fewer contracts (the "Per Contract Clearing Fee"); and OCC charges a flat clearing fee of \$55.00 per transaction for transactions of 2,751 or more contracts (the "Per Transaction Clearing Fee").

In evaluating its fee schedule, OCC determined that a fee increase was necessary as a result of (i) an increase in budgeted 2025 expenses, which have, in turn, caused (ii) an increase to OCC's Target Capital Requirement (and thus decreasing the excess LNAFBE that would otherwise be available to cover such expenses), and (iii) a projected decline in interest income due to lower interest rates.¹² OCC's budgeted expenses are projected to increase by \$23 million compared to 2024 forecasts.

OCC's Role

Although OCC charges clearing fees based on contracts and transactions, OCC does not only process transactions; rather, OCC also manages the risk of the billions of resulting contracts

¹² OCC has submitted as confidential Exhibit 3 to File No. SR-OCC-2025-002 a summary of the data and analysis upon which OCC based its decision, including an overview of OCC's 2025 budget, evaluation of clearing fee levels based on different scenarios and projections, the projected effect of the clearing fee levels considered on OCC's LNAFBE, and the projected effect on LNAFBE if no fee change was implemented. This information reflects analysis conducted in November 2024 and is not updated to include actuals from December 2024 to date. In addition, the final Target Capital Requirement approved by the Board for 2025 was \$286 million, not \$288 million used for purposes of the analysis prior to the Board's approval of the Target Capital Requirement.

and positions. Charging fees based on contracts cleared is the most straightforward way for OCC to earn the income necessary to fund all of its operations. OCC plays a vitally important role in the listed options market, i.e., OCC clears and guarantees the settlement of all listed options transactions in the U.S.—OCC cleared over 12.28 billion contracts in 2024. OCC managed the risk associated with all of those contracts—OCC held \$195.991 billion in margin at the end of 2024. OCC sizes and manages the Clearing Fund—sized to \$18.5 billion at the end of 2024—that serves as a backstop in the event of a very large Clearing Member default. Through these tools, OCC provides a robust settlement guarantee to the markets it serves and thereby efficiently and effectively manages counterparty credit risk that would otherwise exist between market participants. To that end, OCC sets and maintains appropriate margin requirements; collects margin at least daily and in a timely manner; maintains existing models and develops new models to manage the risk of existing and new products that are being added at an exponential pace; engages in extensive stress testing to ensure that OCC maintains sufficient and adequate resources and that the OCC Clearing Fund is sized appropriately to absorb large defaults and limit losses to other Clearing Members; sources liquidity to ensure it can meet its guaranty obligations; manages the risk associated with large expiration cycles and works with other clearing agencies to ensure exercise and assignment activity will be processed and settled, and all related payments made; onboards new exchanges and works to ensure it can clear new products; maintains the options disclosure document; provides other disclosures, including under CPMI-IOSCO’s Principles for Financial Market Infrastructures; distributes data; engages in regulatory reporting; and maintains a legal framework and control environment designed to ensure that it meets all of these obligations, among many other things. OCC does not charge separate fees for these services, rather, all of these things are funded by its clearing fees.

Ovation and Other Expense Impacts

OCC's 2025 expenses are largely driven by IT and employee costs. The IT expenses are largely driven by the Renaissance project, i.e., the implementation, including industry testing, of OCC's modernized technology infrastructure. Ovation, the new clearing, risk and data platform, is designed to offer real-time clearing capabilities, along with the resiliency of cloud-based architecture. It aims to support increased business agility, enhanced security capabilities, and more resilient technology for exchanges, Clearing Members, and market participants.

Expenses for this project include a cloud-based operating environment, as well as physical data centers and disaster recovery sites, hardware, software, and the cost of employees responsible for maintaining this infrastructure. This modernized infrastructure will improve the security and resiliency of OCC's systems and will allow OCC to continue to deliver best-in-class service from a risk management and settlement perspective well into the future. However, such investment has also required OCC to make significant capital expenditures in information technology, employee time, and other resources needed to maintain, develop, and modernize its infrastructure. Since 2020, OCC has capitalized approximately \$348.6 million in software, which has caused OCC's shareholders' equity and LNAFBE to diverge since the Capital Management Policy was first adopted.¹³ Despite this investment, OCC has not increased its fees, and in fact lowered them, as it was increasing its technology spending. Further, while testing and implementation of the new infrastructure is ongoing, OCC continues to run and pay for its existing technology infrastructure, ENCORE, which includes physical data centers and disaster recovery sites, hardware, software, and the cost of employees responsible for maintaining this

¹³ See Exchange Act Release No. 101151 (Sept. 24, 2024), 89 FR 79668, 79669 (Sept. 30, 2024) (SR-OCC-24-012).

infrastructure. Between 2022 and projections for 2025, OCC's IT headcount increased approximately 67%. Developing and maintaining dual systems has been a driver of expenses for the organization the past several years and is a major reason OCC needs to increase fees.

Moreover, OCC has increased investments in various other areas, such as compliance, regulatory, legal, and cybersecurity, which also included additional headcount, since the last time it increased clearing fees. As a SIFMU, OCC is subject to rigorous regulatory oversight which includes numerous examinations each year, the submission of proposed rule changes, and other ad hoc requests and reports, among other things. Out of necessity for the volume of this work, and to ensure OCC maintained an appropriate and compliant level of cooperation with and responsiveness to its regulators, OCC also made investments in additional headcount in legal and compliance since 2022.

In addition, since 2018, OCC has supported its participant exchanges by facilitating the launch of over fifty new products¹⁴ and the launch of four new exchanges.

Inflation, Interest Rates, and Other Financial Considerations

Between 2021 (when OCC last amended its fees) and 2024, inflation has led to a cumulative price increase of approximately 16%.¹⁵ Inflation increases the price of goods and

¹⁴ These new products include, but are not limited to, NASDAQ-100 Index PM Settled Options (NDXP), NASDAQ-100 Reduced Value Index Options (NQX), CBOE iBoxx High Yield Corporate Bond Index Futures (IBHY); CBOE Markit iBOXX USD Liquid Investment Grade Index (IG) futures (IBIG); CBOE Select Sector Index Options; CBOE Mini-Volatility Index Futures (VXM); CBOE S&P 500 ESG Index Options (SPESG); CBOE Mini Russell 2000 Index Options (MRUT); Mini NASDAQ-100 Option (XND); CBOE Micro Mini-S&P 500 Index Options (NANOS); Options on iBoxx iShares \$ Investment Grade Corporate Bond Index Futures (IBYO and IBGO); NYSE Cash Settled Equity Flex options; CBOE MSCI ACWI Index Options (MXACW); CBOE MSCI USA Index Options (MXUSA); CBOE MSCI World Index Options (MXWLD); CBOE iBoxx \$ Liquid Emerging Markets Sovereigns & Sub-Sovereign Index Futures (IEMD); CFE S&P 500 Variance Futures; VIX Options on CBOE Volatility Index Futures; Small S5C Equity Index Futures Contract (S5C); NASDAQ options on Bitcoin ETFs; CBOE Bitcoin ETF Index Options (CBTX/W); and CBOE Mini Bitcoin ETF Index Options (MBTX/W).

¹⁵ See the inflation calculator, measuring inflation as of October 16, 2024, at <https://www.officialdata.org/us/inflation/2021?amount=1>.

services over time, however, the price levels that result from those inflationary run-ups tend not to decrease even as inflation decreases, which results in costs remaining at those higher price levels.

As a result of the increase in budgeted expenses for 2025, OCC's Target Capital Requirement, which is sized to cover at least six months of OCC's operating expenses, increased by \$12 million to \$286 million. From 2020 to 2025 the Target Capital Requirement cumulatively increased by \$39 million, resulting in an increase to the Early Warning by an additional \$3.9 million. In addition, OCC establish its Minimum Corporate Contribution in 2021,¹⁶ which is \$62 million as of 2025. These developments increase the funds that OCC must maintain above funds needed to cover budgeted expenses.

In addition to rising costs and regulatory capital requirements, lower interest rates will have a negative impact on what has been a reliable source of income for OCC. The effective federal funds rate increased significantly from near zero beginning in early 2022 to peaks over 5% in the fall of 2023, generating additional income for OCC.¹⁷ However, interest rates have recently decreased.¹⁸ The general expectation in the marketplace is that rates will continue to decline into 2025, which will have a negative impact on interest and investment revenue from clearing margin cash balances, which has been a reliable source of income for OCC over the past three years. OCC estimates that lower interest rates will result in an estimated \$46 million in lost revenue in 2025.¹⁹ Despite budgeting for a 9% increase in average daily contract volume for

¹⁶ See Exchange Act Release No. 92038, supra note 6.

¹⁷ See Effective Federal Funds Rate at <https://www.newyorkfed.org/markets/reference-rates/effr>.

¹⁸ Id. As of February 12, 2025, the effective federal funds rate was 4.33%.

¹⁹ OCC forecasted interest revenue using the CME 30-Day Fed Funds futures rate and the Federal Open Market Committee ("FOMC") target federal funds rate midpoint.

2025 above OCC's 2024 projected volumes,²⁰ OCC projects an operating deficit without a fee increase. Accordingly, OCC concluded that a fee increase was necessary due to the projected loss of interest income, as well as the costs of maintaining dual systems and the impact from higher inflation and related price increases over the past several years.

Although OCC increased spending in many areas out of necessity, OCC also has considered ways it could reduce expenses. For example, OCC is working reduce professional fees and instead rely on OCC employees to perform those tasks. OCC also evaluated contract renewals in an effort to restructure payments. OCC will continue to evaluate ways that it can manage its costs.

Increase in the Per Contract Clearing Fee and Removal of the Per Transaction Clearing Fee

Considering these factors, OCC management recommended, and the Compensation and Performance Committee of OCC's Board approved, an increase to the Per Contract Clearing Fee by \$0.005 to \$0.025 and the removal of the Per Transaction Clearing Fee. The Per Transaction Clearing Fee currently limits the fee for clearing transactions with more than 2,750 contracts to \$55.00 per transaction. Removal of the Per Transaction Clearing Fee would subject all transactions, regardless of contract size, to the same Per Contract Clearing Fee of \$0.025.²¹ Without the proposed fee change, OCC projects that its LNAFBE will fall below its Target Capital Requirement in Q1 2025 and remain below the Target Capital Requirement through Q4

²⁰ OCC used average daily volume from the last 6 months and runs a Monte-Carlo simulation to produce potential results using actual day-over-day changes in volume within a defined confidence range.

²¹ OCC also evaluated an alternative of a \$0.03 clearing fee with a \$90 per-transaction fee cap, and considered the two options based on both current cashflow projections and stressed projections. While the alternative fee considered would reduce the likelihood that OCC would need to make an additional fee change in the stressed scenario, OCC chose the proposed \$0.025 clearing fee because it was effective at maintaining OCC's LNAFBE based on current cashflow projections, was less impactful to the industry, and is aligned with OCC's long-term preferred fee level and structure.

2025.²² With the proposed change, OCC projects that LNAFBE will remain above its Target Capital Requirement.

To implement the proposed changes, OCC would update its schedule of fees as set out below.

Current Fee Schedule		Proposed Fee Schedule	
Clearing Fees		Clearing Fees	
Trades with contracts of 0-2,750	\$0.02/contract	Trades <u>All Transactions</u> with contracts of 0-2,750	\$0.025/contract
Trades with contracts of greater than 2,750	\$55.00/trade	Trades with contracts of greater than 2,750	\$55.00/trade

The proposed fee change is designed to promote cost management in compliance with Rule 17Ad-22(e)(15) under the Exchange Act that, among other things, requires OCC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk,²³ which includes the risk of potential impairment to OCC's financial position resulting from a decline in revenues or an increase in expenses. As described above, the proposed fee change would better align OCC's clearing fees with the costs of providing its clearing and settlement services to Clearing Members. Despite increased expenses associated with its technology infrastructure and notable inflation, OCC has not increased clearing fees since 2019. The proposed Per Contract Clearing Fee of \$0.025 continues to be in line with, or even lower than, the Per Contract Clearing Fees OCC assessed in the past five years, which ranged from \$0.055 in 2019 to \$0.02 today. The proposed Per

²² OCC has included a projection of its LNAFBE under the prior clearing fee in confidential Exhibit 3 to File No. SR-OCC-2025-002, supra note 12.

²³ See 17 CFR 240.17Ad-22(e)(15).

Contract Clearing Fee of \$0.025 represents a 54% decrease from the Per Contract Clearing Fee charged in 2019.

Moreover, removal of the Per Transaction Clearing Fee ensures that Clearing Members are charged the same Per Contract Clearing Fee per transaction regardless of the size of the transaction. OCC believes that charging all Clearing Members the same fee, regardless of transaction size, equitably and reasonably allocates the cost of providing clearance and settlement services for a given transaction regardless of size.²⁴ In particular, OCC believes that removing the Per Transaction Clearing Fee is equitable because all transactions will be charged the same fee per contract, regardless of transaction size. In this way, OCC ensures that it will charge fees in a manner that applies to all participants and all categories of participants in the same manner without unfairly benefiting any single participant or category of participants. OCC also believes that removing the Per Transaction Clearing Fee is reasonable because all transactions will be charged the same fee of \$0.025 per contract, which continues to be in line with, or even lower than, the Per Contract Clearing Fees OCC assessed in the past five years, as noted above.²⁵ In addition, allocating costs on a per-contract basis is aligned with many of OCC's responsibilities as a clearing agency, which are based on the number and type of contracts and management of the risks related to those contracts, and not the total number of transactions effected. Moreover, OCC believes that simplifying its schedule of fees by removing the Per

²⁴ Removing the Per Transaction Clearing Fee allows OCC to limit the Per Contract Clearing Fee increase to \$0.005, which minimizes impact while equitably allocating the cost of providing clearance and settlement services for a given transaction regardless of size. See confidential Exhibit 3 to File No. SR-OCC-2025-002, supra note 12, for additional detail and analysis regarding the proposed fee change.

²⁵ Other self-regulatory organizations have filed to remove fee caps from their fee schedules. See, e.g., Exchange Act Release Nos. 93873 (Dec. 29, 2021), 87 FR 508 (Jan. 5, 2022) (File No. SR-NSCC-2021-017), and 93562 (Nov. 12, 2021), 86 FR 64554 (Nov. 18, 2021) (File No. SR-BOX-2021-026).

Transaction Clearing Fee will prevent smaller and individual investors from bearing a greater share of the fee increase.

Furthermore, OCC did not intend the Per Transaction Clearing Fee to incentivize transactions over a certain size, nor does OCC believe it is necessary for OCC to provide an incentive for such transactions. The Per Transaction Clearing Fee is based on the longstanding structure of OCC's schedule of fees, which has historically included various tiers and caps.²⁶ In 2016, OCC filed to modify the schedule of fees to adopt a flat, per contract, clearing fee subject to a fixed dollar cap, which would promote simplicity and transparency and allow users to execute trades without regard to size.²⁷ The proposed changes would allow OCC to continue to promote simplicity and transparency in its schedule of fees by moving to a single tier clearing fee structure, which removes the Per Transaction Clearing Fee. OCC believes that the Per Contract Clearing Fee is reasonable and that it would not be discriminatory or prohibitive to remove the Per Transaction Clearing Fee for those Clearing Members that currently submit transactions with more than 2,750 contracts such that Clearing Members would continue to execute transactions without regard to size.²⁸ At this time, OCC believes the proposed fee change is appropriate in order to raise fees to more closely align with its cash flow needs. Such change would ensure that OCC continues to serve market participants as a financially responsible steward of clearing services while ensuring that it meets regulatory expectations and responsibly invests in its infrastructure.

²⁶ See Exchange Act Release No. 55709 (May 4, 2007), 72 FR 26669 (May 10, 2007) (File No. SR-OCC-2007-05).

²⁷ See Exchange Act Release No. 77336 (Mar. 10, 2016), 81 FR 14153 (Mar. 16, 2016) (File No. SR-OCC-2016-005).

²⁸ OCC believes that removing the Per Transaction Clearing Fee would not unfairly disadvantage or burden smaller market participants, as larger market participants tend to benefit more from the Per Transaction Clearing Fee due to their trading activity.

OCC reviewed volume and clearing fees OCC assessed from June 2021²⁹ through November 2024 to determine the impact of the proposed change. OCC determined that the average clearing fee per contract per year, including fees generated by the Per Transaction Clearing Fee, was approximately \$0.019 per contract, which represents only a 5% decrease from the lowest per contract clearing fee charged during this time frame, i.e., \$0.02. Most recently, from January through November 2024, the average clearing fee per contract also was \$0.019, including the Per Transaction Clearing Fee. Although this is \$0.001 lower than that Per Contract Clearing Fee of \$0.020, it only represents a 5% difference and shows a limited impact to Clearing Members from the removal of the Per Transaction Clearing Fee.

B. Statutory Basis

OCC believes the proposed rule change is consistent with the Act³⁰ and the rules and regulations thereunder. In particular, OCC believes that the proposed fee change is consistent with Section 17A(b)(3)(D) of the Act,³¹ which requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

Reasonableness of the Proposed Fee

OCC believes that the proposed fee change is reasonable. Since the current clearing fees were set in 2021, the U.S. economy has experienced (i) notable inflation³² and (ii) a fluctuating interest rate environment. For instance, the dollar had an average inflation rate of 3.89% per

²⁹ Due to the fee holiday in November and December 2021, the average clearing fee per contract for 2021 was calculated using data through October 31, 2021.

³⁰ 15 U.S.C. 78a, et seq.

³¹ 15 U.S.C. 78q-1(b)(3)(D).

³² Other self-regulatory organizations have referenced such inflation when filing fee increases. See, e.g., Exchange Act Release Nos. 101017 (Sep. 12, 2024), 89 FR 76545 (Sep. 18, 2024) (File No. SR-CboeBYX-2024-032), and 100882 (Aug. 30, 2024), 89 FR 72542 (Sep. 5, 2024) (File No. SR-BOX-2024-19).

year between 2021 and 2025, producing a cumulative price increase of approximately 16%.³³

While the proposed Per Contract Clearing Fee constitutes a 25% increase from the fee adopted in 2021, OCC believes the proposed fee increase is reasonable given the increased expenses associated with its technology infrastructure and the lower interest rate environment discussed above. Notably, the costs associated with OCC's technology hardware, including upfront and maintenance costs, have outpaced the rate of inflation. Further, OCC does not believe the proposed Per Contract Clearing Fee would create a financial burden as it continues to be in line with, or even lower than, the clearing fees assessed by OCC over the past five years.

In addition, the reasonableness of the proposal is supported by oversight, transparency, and OCC's past practice, wherever circumstances allow, to utilize tools to lower the cost of clearing for participants. First, OCC's funding and operations are subject to oversight by OCC's Board and the Commission. OCC's annual budget, compensation for senior management, and capital initiatives are reviewed and approved by its Board or the Board-level Compensation and Performance ("CPC") Committee. As discussed above, OCC's Board is made up of a broad cross-section of options market participants, including public representatives, Clearing Member representatives from Clearing Members of various sizes, and options exchange representatives. At least a majority of the CPC is composed of independent directors, consistent with Commission Rule 17Ad-25(e)³⁴ and the judgment of the Board.

OCC is also supervised by the Commission throughout the year. Pursuant to Section 807(a) of the Clearing Supervision Act, the Commission's Division of Examinations conducts annual examinations of OCC to determine, among other things, (1) the nature of the operations

³³ See the inflation calculator, measuring inflation as of February 13, 2025, at <https://www.officialdata.org/us/inflation/2021?amount=1>.

³⁴ See 17 CFR 17Ad-25(e).

of, and the risks borne, by OCC; (2) the financial and operational risks presented by OCC to financial institutions, critical markets, or the broader financial system; and (3) the resources and capabilities of OCC to monitor and control such risks.³⁵ In addition, changes to OCC's rules, procedures and operations that could materially affect the nature or level of risk presented by OCC are also subject to review by the Commission, in consultation with the Federal Reserve, under Section 806(e) of the Clearing Supervision Act.³⁶ Furthermore, the SEC publishes such proposed changes for public comment.

Second, OCC's commitment to reasonable funding is further supported by the transparency it provides on an ongoing basis regarding its financial performance. Each year, OCC publishes its Annual Report, inclusive of its audited financial statements prepared in accordance with generally accepted accounting principles. OCC maintains a dedicated website that consolidates its annual reports in a readily accessible place.³⁷ On a quarterly basis, OCC also provides unaudited information concerning its total revenues, average daily contract volume and LNAFBE on its "Schedule of Fees" website to aid Clearing Members in assessing the risk associated with a potential Operation Loss Fee in accordance with OCC's capital replenishment plan under its Capital Management Policy.³⁸

Third, OCC is committed to aligning its revenues with its costs and capital needs. Consistent with OCC's past practice, if revenues exceed costs and OCC's LNAFBE is above the Early Warning threshold, OCC would consider utilizing tools to lower the cost of clearing for market participants, as provided under its Capital Management Policy. Such tools may include

³⁵ 12 U.S.C. 5466.

³⁶ 12 U.S.C. 5465(e).

³⁷ See supra note 11.

³⁸ See Exchange Act Release No. 88029, supra note 6.

fee decreases like those OCC implemented in 2020 and 2021, fee holidays like the one OCC implemented from November through December of 2021, or fee refunds like the \$156 million refund in 2020 and the \$76.3 million refund in 2021.

Finally, OCC believes the proposed fee change is equitably allocated as it would apply equally to all Clearing Members for all transactions, particularly considering the removal of the Per Transaction Clearing Fee, which OCC also believes is reasonable and equitably allocated as described below.

Removal of the Per Transaction Clearing Fee

With respect to the removal of the Per Transaction Clearing Fee, OCC believes that charging all Clearing Members a flat fee per contract is reasonable as it equitably allocates the cost of providing clearance and settlement services for the contracts that it novates, regardless of the size of the transaction by which those contracts are received. OCC also does not believe that removal of the Per Transaction Clearing Fee would create a financial burden as it ensures that Clearing Members are charged the same Per Contract Clearing Fee per transaction regardless of the size of such transaction. OCC also believes that the proposed fee change would result in an equitable allocation of fees among its participants because it would be equally applicable to all Clearing Members transacting at any given level of contract volume. Accordingly, under the proposed fee, there is no disparate treatment amongst participants because there are no volume-based tiers or tiered pricing. As discussed above, allocating costs on a per-contract basis is aligned with many of OCC's responsibilities as a clearing agency, which are based on the number and type of contracts and management of the risks related to those contracts, and not the total number of transactions effected.

As discussed above, OCC determined that the average clearing fee per contract per year from June 2021³⁹ through November 2024, including fees generated by the Per Transaction Clearing Fee, represented only a 5% decrease from the lowest Per Contract Clearing Fee charged during this time frame. From January through November 2024, the average clearing fee per contract was \$0.019, including the Per Transaction Clearing Fee, and would have been \$0.020 without the Per Transaction Clearing Fee, which represents a 5% difference and shows a limited impact to Clearing Members from the removal of the Per Transaction Clearing Fee. OCC believes that the Per Contract Clearing Fee is reasonable and would not be discriminatory without the Per Transaction Clearing Fee for those Clearing Members that currently submit transactions with more than 2,750 contracts. OCC thus believes that it does not constitute an inequitable allocation of fees and is not unfairly discriminatory to remove the Per Transaction Clearing Fee. In accordance with its current policies and procedures, OCC will continue to evaluate the fee schedule at regularly scheduled meetings to determine if additional changes, including fee decreases, are necessary or appropriate at such time, including once OCC's technology infrastructure modernization initiative is complete.

As a result, OCC believes that the proposed change to OCC's fee schedule provides for the equitable allocation of reasonable fees in accordance with Section 17A(b)(3)(D) of the Act.⁴⁰

Compliance with Rule 17Ad-22(e)(15)

In addition, OCC believes that the proposed rule change is consistent with Rule 17Ad-22(e)(15), which requires that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage OCC's general business

³⁹ See text accompanying supra note 29.

⁴⁰ 15 U.S.C. 78q-1(b)(3)(D).

risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that OCC can continue operations and services as a going concern if those losses materialize.⁴¹ The Rule also requires OCC to hold LNAFBE equal to at least six months of OCC's current operating expenses, among other measures.⁴² The proposed changes are designed to promote cost management in compliance with this Rule. As described above, the proposed fee change would better align OCC's clearing fees with the costs of providing its clearing and settlement services to Clearing Members to ensure that OCC continues to maintain sufficient reserves to cover OCC's cash flow needs 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. In addition, in the absence of the fee change, OCC projects that its LNAFBE would fall below the six months of current operating expenses that OCC's is required to maintain as part of its Target Capital Requirement. Therefore, OCC believes that the proposed changes to OCC's schedule of fees are consistent with Rule 17Ad-22(e)(15).⁴³

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act⁴⁴ 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 does not believe that the proposed rule change would have any impact or impose a burden on competition. OCC believes that the proposed rule change would not disadvantage or favor any particular user of OCC's services in relationship to another user because the proposed fee

⁴¹ 17 CFR 240.17Ad-22(e)(15).

⁴² 17 CFR 250.17Ad-22(e)(15)(ii).

⁴³ Id.

⁴⁴ 15 U.S.C. 78q-1(b)(3)(I).

change would apply equally to all Clearing Members. In addition, OCC does not believe that the proposed Per Contract Clearing Fee imposes a significant burden as the proposed fee continues to be in line with, or even lower than, the clearing fees assessed by OCC over the past five years. OCC also does not believe that the removal of the Per Transaction Clearing Fee imposes a significant burden as it ensures that Clearing Members are charged the same Per Contract Clearing Fee per transaction regardless of the size of such transaction. Accordingly, OCC does not believe that the proposed rule change would have any impact or impose a burden on competition.

Item 5. Self-Regulatory Organization'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 rule change, and none have been received.

Item 6. Extension of Time Period for Commission Action

OCC does not consent to an extension of the time period specified in Section 19(b)(2) of the Act.⁴⁵

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Pursuant to Section 19(b)(3)(A)(ii) of the Act⁴⁶ and Rule 19b-4(f)(2) thereunder,⁴⁷ the proposed rule change is filed for immediate effectiveness as it constitutes a change in fees charged only to OCC Clearing Members. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

⁴⁵ 15 U.S.C. 78s(b)(2).

⁴⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴⁷ 17 CFR 240.19b-4(f)(2).

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.

Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

Item 11. Exhibits

Exhibit 1A. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 3. Confidential data and analysis upon which OCC based its decision, including an overview of OCC's 2025 budget, evaluation of clearing fee levels based on different scenarios and projections, the projected effect of the clearing fee levels considered on OCC's LNAFBE, and the projected effect on LNAFBE if no fee change was implemented.

Exhibit 5. Proposed changes to OCC's schedule of fees.

**CONFIDENTIAL TREATMENT IS REQUESTED FOR EXHIBIT 3
PURSUANT TO SEC RULE 24b-2**