

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102768; File No. SR-OCC-2024-010]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Rule Change, as modified by Partial Amendment No. 1 and Amendments Nos. 2 and 3, 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

April 3, 2025.

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” or “Act”)¹ and Rule 19b-4² thereunder, to establish a margin add-on charge that would be applied to all Clearing Member³ 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*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms not defined herein 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>.

Register on August 12, 2024.⁴ The Commission has received comments regarding the proposed rule change.⁵

On September 4, 2024, OCC partially amended the proposed rule change to include as Exhibit 2 an information memorandum OCC published on its website informing OCC's membership of the details of the margin add-on charge.⁶ On September 25, 2024, pursuant to Section 19(b)(2) of the Exchange Act,⁷ 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.⁸ On November 7, 2024, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Partial Amendment No. 1.⁹

On January 8, 2025, OCC filed Amendment No. 2 to the proposed rule change to (1) incorporate certain modifications to address comments from industry participants, (2) conform the proposed rule change to the Commission's final rule amending the Covered Clearing Agency

⁴ Securities Exchange Act Release No. 100664 (Aug. 6, 2024), 89 FR 65695 (Aug. 12, 2024) (File No. SR-OCC-2024-010) ("Notice of Filing").

⁵ Comments on the proposed rule change are available at <https://www.sec.gov/comments/sr-occ-2024-010/srocc2024010.htm>. Commenters requested that the Commission extend the comment period for the Notice of Filing (hereinafter "Initial Filing"). *See, e.g.*, Letter from James Toes, President & CEO, Security Traders Association, dated Sept. 2, 2024 ("STA Letter") at 2. The Commission provided a new comment period exceeding the commenters request when it issued the Notice and Extension. *See infra* n. 8 (defining "Notice and Extension").

⁶ *See* OCC Info Memo #55123, Intraday Risk Monitoring (dated Aug. 30, 2024), available at <https://infomemo.theocc.com/infomemos?number=55123>. The partial amendment did not change the purpose or basis of the proposed rule change.

⁷ 15 U.S.C. 78s(b)(2).

⁸ Securities Exchange Act Release No. 101193 (Sept. 25, 2024), 89 FR 79977 (Oct. 1, 2024) (File No. SR-OCC-2024-010) ("Notice and Extension").

⁹ Securities Exchange Act Release No. 101551 (Nov. 7, 2024), 89 FR 90155 (Nov. 14, 2024) (File No. SR-OCC-2024-010).

(“CCA”) Standards regarding intraday margin calls,¹⁰ and (3) extend the implementation timeframe in response to industry concerns about the need for additional time to prepare for the proposed changes. On January 14, 2025, OCC filed Amendment No. 3 to the proposed rule change, which supersedes Amendment No. 2, to correct typographical and formatting errors. On January 15, 2025, pursuant to Section 19(b)(2) of the Exchange Act,¹¹ the Commission issued a Notice of Filing of Amendment No. 3.¹² On February 5, 2025, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Partial Amendment No. 1 and Amendments Nos. 2 and 3.¹³ This order approves the proposed rule change, as modified by Partial Amendment No. 1 and Amendments Nos. 2 and 3 (hereinafter “Proposed Rule Change”).

II. BACKGROUND

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,¹⁴ as well as for certain futures and stock loans, OCC is exposed to certain risks arising from providing clearing and settlement services to its Clearing Members. Because OCC is obligated to perform on the contracts it clears, even where one of its Clearing Members defaults, one such

¹⁰ See Exchange Act Release No. 101446 (Oct. 25, 2024), 89 FR 91000 (Nov 18, 2024) (File No. S7-10-23) (“Covered Clearing Agency Resilience and Recovery and Orderly Wind-Down Plans”).

¹¹ 15 U.S.C. 78s(b)(2).

¹² Securities Exchange Act Release No. 102202 (Jan. 15, 2025), 90 FR 7722 (Jan. 22, 2025) (File No. SR-OCC-2024-010) (“Notice of Filing of Amendment No. 3”).

¹³ Securities Exchange Act Release No. 102358 (Feb. 5, 2025), 90 FR 9352 (Feb. 11, 2025) (File No. SR-OCC-2024-010).

¹⁴ 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).

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,¹⁵ circumstances warrant protective measures in the form of adjusting the amount or composition of margin,¹⁶ and when unrealized losses exceed a certain threshold of an account's total risk charges¹⁷ during standard trading hours or extended trading hours ("ETH").¹⁸

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")

¹⁵ 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").

¹⁶ 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).

¹⁷ 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).

¹⁸ 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).

contracts, including those traded on the day of their expiration (“zero-days-to-expiration” or “0DTE” options).¹⁹ 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.²⁰ 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.²¹

Apart from the increased exposure to risks from its Clearing Members’ intraday trading activity posed by the proliferation of SDOs and 0DTE options, OCC’s current margining system does not generate margin calls based on intraday position changes across other products more generally. 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 neither accounts for overnight trading activity, nor encompasses intraday trading activity. 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

¹⁹ See Notice of Filing, 89 FR at 65695-96. Additionally, OCC has provided confidential Exhibit 3A to File No. SR-OCC-2024-010, which is a 2023 study OCC conducted of its risk exposure to SDOs.

²⁰ OCC has provided this information in a confidential Exhibit 3A to File No. SR-OCC-2024-010, which is a 2023 study that OCC conducted of its risk exposure to short-dated options. As an example provided in confidential Exhibit 3A, 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. 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. See Notice of Filing, 89 FR at 65695-96.

²¹ 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. In 2016, Cboe introduced Monday and Wednesday weekly SPX expirations, and in 2022 it added Tuesday and Thursday weekly SPX expirations. *Id.*

of margin collection at the beginning of the next business day, resulting in a margin requirement that may not be sufficient to cover additional risk resulting from intraday trading activity during the trading session.

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 (“Intraday 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.²² Specifically, OCC would utilize its Watch Level surveillance to track Clearing Members’ trading activity during a specific, limited timeframe during trading hours and identify patterns of risk-increasing activity on which to base the Intraday Risk Charge. Under the current Watch Level 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.²³ The Intraday Risk Charge would incorporate this monitoring and surveillance approach into OCC’s margin methodology and apply it to all products cleared by OCC and to all Clearing Members, regardless of net capital thresholds.

A. *Intraday Risk Charge*

OCC proposes to add OCC Rule 601(i) to its Rule Book to establish the Intraday Risk Charge. Rule 601(i)(1) would state that OCC may require a Clearing Member to deposit

²² See Securities Exchange Act Release No. 90797 (Dec. 23, 2020), 85 FR 86592 (Dec. 30, 2020) (File No. SR-OCC-2020-014).

²³ See OCC Rule 307 (authorizing OCC to impose protective measures on any Clearing Member that presents increased credit or liquidity risk to the Corporation); OCC Rule 307C (authorizing OCC to impose protective measures that include requiring Clearing Members to deposit additional margin).

additional margin assets to mitigate any increased risk exposure to OCC that may not otherwise be covered by already calculated margin requirements. Additionally, under the proposed Rule 601(i)(1), OCC would be able to assess the Intraday Risk Charge as part of the Clearing Member's daily margin requirement, as needed, to mitigate exposure and cover uncollateralized risk resulting from intraday trading activities. Rule 601(i)(2) would state that the Intraday Risk Charge will generally be the average of the daily peak intraday risk increases from portfolio position changes measured between 11:00 a.m. Central Time and 12:30 p.m. Central Time over the preceding month determined pursuant to OCC's policies and procedures.²⁴ As proposed, Rule 601(i)(3) would grant OCC the discretion to adjust²⁵ the Intraday Risk Charge if it determines that circumstances particular to a Clearing Member's clearance and settlement activity warrant a different approach to determining or applying such charge in a manner consistent with maintaining sufficient financial resources to cover OCC's credit exposure. According to the proposed Rule 601(i)(3), any adjustment under this Rule to decrease the amount of the Intraday Risk Charge calculated from the previous month's intraday risk increases would be limited to a Clearing Member's business reduction, termination of account(s), transfer of positions to different account(s), or the imposition of protective measures under OCC Rule 307B.

²⁴ As originally proposed, the Intraday Risk Charge would have captured a more extensive timeframe between 12:30 a.m. and 3:15 p.m. Central Time, and would have measured risk changes within that timeframe every 20 minutes. *See* Notice of Filing of Amendment No 3, 90 FR at 7723. The proposal was amended to address industry comments that the 20-minute snapshots during overnight and intraday trading hours were too frequent and the suggestion that OCC use fewer snapshots at predictable intervals. *See id.*

²⁵ As described below, the Proposed Rule Change would authorize OCC to increase or decrease the Intraday Risk Charge in response to specific conditions, such as a Clearing Member's business expansion or reduction.

OCC also proposes to amend its Margin Policy and internal policies and procedures to further detail the calculation and application of the Intraday Risk Charge.²⁶ The amount of a Clearing Member's Intraday Risk Charge would be based on the increased risk identified through OCC's current margin system. OCC currently recalculates the margin requirements using end-of-day portfolio position sets and intraday price movements updated every 20 minutes between 8:30 a.m. and 6:30 p.m. Central Time, and at least once every hour during ETH.²⁷

In OCC's view, a considerable limitation of its current monitoring system is that, because the STANS margin calculation is based on end-of-day positions and the current portfolio revaluation process only tracks price movements during the current trading session, the margin requirement may not account for overnight and intraday position changes, such as intraday SDOs and 0DTE options trading activity.²⁸ If a Clearing Member has closed its position by the end of the day—through trades, expiration, or exercise, for example—such activity would not be captured in the end-of-day positions.²⁹ To address this limitation, OCC proposes to incorporate intraday position changes into its current monitoring system, alongside using the outputs from the previous night's daily STANS methodology calculation. Specifically, OCC would identify

²⁶ OCC provided the full, unredacted Margin Policy, the Market Risk Monitoring Procedure, and the Portfolio Revaluation Monitoring Procedure as confidential Exhibits 5B, 3B, and 3D, respectively, to File No. SR-OCC-2024-010.

²⁷ The Proposed Rule Change would not alter the current ETH monitoring system that OCC uses, including to determine when to issue an ETH margin call. The current ETH monitoring system does and would continue to calculate a forecasted margin requirement as if the positions at that point in time were present during the previous night's margin calculation. *See* Notice of Filing, 89 FR at 65696. Results of that forecast that show an increase to the prior night's margin requirement based on STANS expected shortfall and stress test components are considered risk taking. This also would not change as a result of the Proposed Rule Change.

²⁸ *See* Notice of Filing of Amendment No. 3, 90 FR at 7724.

²⁹ *See* Notice of Filing, 89 FR at 65696. In addition, OCC stated that its portfolio revaluation process for purposes of determining intraday margin calls to address the change in value of margin collateral is based on a Clearing Member's start-of-day collateral deposits, which would not include margin for SDOs and 0DTE options positions. *Id.*

the peak intraday risk increases over a designated lookback period and use the average of those peaks as the basis for imposing the Intraday Risk Charge as a margin add-on charge.

The Intraday Risk Charge, generally, would be calculated monthly based on the average of the previous month's daily peak intraday risk increases calculated from the 20-minute snapshots between 11:00 a.m. and 12:30 p.m. Central Time over the number of business days in the previous calendar month. The Intraday Risk Charge would be calculated on the first business day of the month and would be based on data and STANS outputs generated over the lookback period of the previous month. For example, a given Clearing Member's Intraday Risk Charge for the calendar month of March 2025 would be based on the average of daily peak intraday risk increase calculated from the 20-minute snapshots between the hours of 11:00 a.m. and 12:30 p.m. Central Time ("Intraday Risk Charge Measurement Time") over the number of business days in February 2025.

The calculation of the peak intraday activity would capture all products that OCC clears, including SDOs and 0DTE options. The Intraday Risk Charge would apply to all margin accounts other than cross-margin accounts for OCC's cross-margining program with the Chicago Mercantile Exchange, which do not currently support intraday position feeds.

The Proposed Rule Change would authorize OCC to increase or decrease the amount of the Intraday Risk Charge for a particular Clearing Member under certain conditions. The Intraday Risk Charge could be increased following a member's business expansion. The Proposed Rule Change would also authorize OCC to increase the Intraday Risk Charge intramonth when OCC determines that OCC maintains insufficient margin resources to cover the pattern or distribution of risk increases over the previous lookback period. OCC's authority to decrease the amount of the charge would be limited to a Clearing Member's (i) business

reduction, (ii) termination of account(s), (iii) transfer of positions to different account(s), or (iv) imposition of protective measures under OCC Rule 307B.

The Proposed Rule Change would describe material aspects of the Intraday Risk Charge more specifically by inserting a new section on the Intraday Risk Charge in OCC's Margin Policy. The new Intraday Risk Charge section would provide that, periodically throughout each trading day and during extended trading hours, OCC's systems measure the intraday exposure to each margin account for which intraday position information is available to identify intraday risk increases above the baseline STANS risk measurement. The Margin Policy would define "risk increases" in this context as results that show an increase to a portfolio's prior night calculated risk measurement based on the STANS expected shortfall and stress test components.³⁰

The Margin Policy would be amended to provide that, on at least a monthly basis, OCC's Financial Risk Management department ("FRM") reviews and verifies the daily peak increases in the Intraday Risk Charge Measurement Time based on a referenced procedure maintained by FRM's Market Risk business unit.³¹ This verification of risk-increasing activity is intended to address certain known limitations in OCC's existing intraday system.³² For example, the system does not take into account options affected by corporate action adjustments and newly listed

³⁰ These proposed amendments to the Margin Policy would not change any existing ETH margin requirements or safeguards. *See supra*, n. 27. For example, Clearing Members trading during ETH hours will still be obligated to pay an ETH margin add-on charge equal to the lesser of \$10 million or 10% of the firm's net capital, and any ETH related risk controls will continue to operate independently from the proposed Intraday Risk Charge changes. *See Notice of Filing*, 89 FR at 65697.

³¹ OCC has provided as confidential Exhibit 3B to File No. SR-OCC-2024-010 a copy of the referenced procedure, the Market Risk Monitoring Procedure. *See supra*, n. 26.

³² *See Notice of Filing*, 89 FR at 65697, n. 21. As addressed in the Market Risk Monitoring Procedure, if a peak generated by the system is determined to represent non-trade activity, it would be excluded and the previous month's average peak would be used as that day's peak daily increase instead. For example, peaks could be excluded if they result from a Regulation SCI system disruption or if they are the result of position and collateral transfers between accounts, which the system assumes are risk increasing (*e.g.*, the transfer of positions from E*Trade to Morgan Stanley resulting from the merger of those Clearing Members).

option series or strikes, which do not receive adjusted metrics until the next overnight margin calculation process. In addition, the 20-minute snapshot generated by the system may not capture a complete trade in a single snapshot, which may result in a misalignment of the peak calculation for an account. The snapshot timing may also cause collateral movements to be recorded as risk-increasing deposits instead of risk-reducing movements. Market Risk would prevent these types of erroneous results from affecting the calculation of the Intraday Risk Charge by verifying the peak daily results using a process similar to its current process for verifying results from OCC's system for monitoring a portfolio's unrealized losses based on current prices and start-of-day positions for purposes of charging intraday margin calls.³³

The Margin Policy would be amended to describe the processes governing the imposition of the Intraday Risk Charge. The proposed language would provide that, with FRM Officer approval,³⁴ OCC may impose the Intraday Risk Charge in the amount of the average of the verified peak daily risk increases over the prior month. Under the Proposed Rule Change, OCC may adjust the charge either at the time of the monthly review or on an intramonth basis, *e.g.*, in response to the intraday monitoring thresholds, as discussed in Section II.B below. Under the Proposed Rule Change, OCC would only have authority to reduce the charge in the event of the relevant Clearing Member's business reduction, account terminations, transfer of positions to different account(s), or the imposition of protective measures under OCC Rule 307B. The proposed changes would authorize OCC to increase the charge in the event of a member business

³³ See *supra*, n. 26. OCC provided, as confidential Exhibit 3D to File No. SR-OCC-2024-010, a copy of its current Portfolio Revaluation Monitoring Procedure, which details Market Risk's process for verifying results prior to issuing intraday margin calls when an account exhibits unrealized losses exceeding 50% of that account's total risk charges based upon start-of-day positions.

³⁴ See Notice of Filing, 89 FR at 65697, n. 23. Officers are identified in OCC's By-Laws. See OCC By-Law Art IV. In this context, an FRM Officer would include any member of FRM appointed by the Chief Executive Officer or Chief Operating Officer, including a Managing Director, Executive Director, or Executive Principal.

expansion. Any adjustment to the Intraday Risk Charge—increase or decrease—would require review by OCC’s Model Risk Working Group (“MRWG”) and approval by the Office of the Chief Executive Officer.

B. *Intraday Monitoring Thresholds and Margin Calls*

OCC also proposes to establish monitoring and escalation criteria to identify and address instances in which a Clearing Member’s intraday risk increase deviates significantly from its preceding month’s average verified peak intraday risk increases, as determined between 12:30 a.m. and 3:15 p.m. Central Time over the lookback period. OCC’s amended proposal removes any reference to the Intraday Risk Charge with respect to the Intraday Monitoring Thresholds and explicitly limits the issuance of a margin call to a single intraday collection time at or around 12:00 p.m. Central Time. Aside from stating that intraday margin calls would be issued at a single intraday collection time, the amended Margin Policy would require that any margin calls outside of the collection time must be approved by the Chief Financial Risk Officer, Chief Executive Officer, Chief Operations Officer, or Chief Risk Officer. As amended by the Proposed Rule Change, the Margin Policy would charge FRM with establishing thresholds for monitoring changes in each Clearing Member’s intraday risk: the Intraday Monitoring Thresholds. FRM would review changes in each member’s intraday risk against such thresholds at least daily. If a Clearing Member’s intraday risk breached the Intraday Monitoring Threshold(s), the Proposed Rule Change would authorize an FRM Officer to issue a margin call, make a margin adjustment to lock up excess collateral, or recommend protective measures under OCC Rule 307. Such a margin call would be calculated as the difference between the Intraday Risk Charge and the reviewed intraday risk increase at the single intraday collection time at or around 12:00 p.m. Central Time.

C. *Discretion to Issue Margin Calls and Related Governance*

According to the proposed changes to OCC's Margin Policy, an FRM Officer may decide against issuing a margin call if, in the Officer's judgment, the intraday call is not necessary to effectively manage the risk posed to OCC based on the specific facts and circumstances, including, but not limited to (1) circumstances in which issuing an intraday margin call would not align with broader systemic objectives such as minimizing potential procyclical effects and potential participant defaults; (2) if the risk increase can be attributed to one or more intraday events or actions including, but not limited to, portfolio level changes resulting from positive offsetting P&L amounts or positive offsetting asset values for options and collateral, or from non-risk increasing events such as the substitution of collateral or the pledging of additional valued securities within the same account; or (3) if the risk increase in the account is the result of a corporate action or the result of position transfers between accounts, such as delayed Clearing Member Trade Assignment ("CMTAs") from execution only accounts, or when a P&L unrealized loss generates a margin call that exceeds the intraday margin call.³⁵ If the FRM Officer decides not to issue a margin call at the single intraday collection time for an account breaching the Intraday Monitoring Threshold, the FRM Officer will document such determination. OCC stated that, together, these proposed changes are intended to align with the Commission's new rule requirements on certain CCA Standards, specifically intraday margin calls,³⁶ and with the documentation requirement in new SEC Rule 17Ad-22(e)(6)(ii)(D),³⁷ which

³⁵ A CMTA is the process by which an Executing Clearing Member directs transfer of a confirmed trade to a designated account of a Carrying Clearing Member. *See* Article I, Section C.20 of OCC's By-Laws.

³⁶ *See* Exchange Act Release No. 101446, *supra*, n. 10, 89 FR at 91009-10 (discussing factors for CCAs to consider when determining whether to issue an intraday margin call).

³⁷ 17 CFR 240.17ad-22(e)(6)(ii)(D).

requires a CCA to document when it determines not to issue an intraday call pursuant to its written policies and procedures.³⁸

The Proposed Rule Change also would establish governance requirements related to the review and potential adjustment of the Intraday Monitoring Thresholds. Specifically, the Margin Policy would be revised to state that FRM coordinates a review of the Intraday Monitoring Thresholds, as well as the calculation and lookback period, on at least an annual basis, or on an *ad hoc* basis, as needed. OCC would have the authority to adjust the Intraday Monitoring Thresholds, as well as the calculation and lookback period, based on the review of intraday risk posed by a Clearing Member's portfolio changes. Any such adjustment to the Intraday Monitoring Thresholds, calculation, or lookback period may apply to particular or all Clearing Members, depending on an analysis of the activity generating peak intraday margin numbers, the number of breaches above the Intraday Monitoring Thresholds, and overall market activity and trends within the lookback period. Any such adjustment would require review by the MRWG and approval by the Office of the Chief Executive Officer. OCC's Risk Committee would be notified of all changes.

D. *Extension of Implementation Timeframe*

OCC's original implementation timeline was a minimum of 14 days and a maximum of 120 days following regulatory approval.³⁹ Some commenters stated that more time was needed for Clearing Members and their customers to make preparations to assign and allocate margins,

³⁸ See Notice of Filing of Amendment No. 3, 90 FR at 7728.

³⁹ See Notice of Filing, 89 FR at 65698 (stating that OCC would implement the change within 120 days of approval, with a minimum of two weeks' notice prior to implementation).

including the Intraday Risk Charge, more effectively.⁴⁰ Commenters also stated that the industry would not be in a position within 120 days of passage of the proposal to adopt systems changes and that, without additional preparation time, “firms would resort to simplistic and unfair margin allocations.”⁴¹ One commenter stated that “five to six months from the date of rule filing” would be insufficient time to build out technology and commit resources both in OCC’s current legacy system, ENCORE, and in its planned new system, Ovation.⁴² Another suggested that OCC should not move forward with the proposal at all “until such time as [OCC] has assurance that all major clearing firms with options market maker clients are prepared to account for it properly, including through appropriate allocation of any heightened margin requirement across their market maker client base.”⁴³

In response, OCC amended the Initial Filing to extend the implementation timeframe (subject to regulatory approval) to September 2025, with a public announcement of the specific implementation date at least four weeks prior to implementation.⁴⁴ This extends the

⁴⁰ See Letter from Kimberly Unger, CEO, the Security Traders Association of New York, Inc., dated Oct. 30, 2024 (“STANY Letter”) at 4 (“[t]he intricacies involved in recalibrating margin calculations and updating operational systems would require significant time” and the original implementation timeline would “likely lead to operational disruptions for many”); Letter from Ellen Greene, Managing Director, Equities & Options Market Structure, and Joseph Corcoran, Managing Director and Associate General Counsel, The Securities Industry and Financial Markets Association (“SIFMA”), dated Oct. 15, 2024, (“SIFMA II”) at 12 (“a 120-day period will not be long enough for industry members to adopt systems changes in response to the Proposal.”); Letter from Matthew MacKenzie, Head of US Advocacy & Regulatory Affairs, Optiver, dated Nov. 8, 2024 (“Optiver Letter”) at 4 (stating 12 months would be a reasonable timeline “for firms developing and implementing a compliance strategy for an entirely new margin regime”).

⁴¹ See, e.g., STANY Letter at 4.

⁴² Letter from James Hyde, Chair of the Board, and James Toes, President and CEO, Security Traders Association, dated Nov. 6, 2024 (“STA II”) at 5-6. Presumably this concern is obviated by the new September 2025 implementation date, which is intended to align with, but is not contingent on, OCC’s planned replacement of its legacy ENCORE system with a new system, Ovation, on or around September 2025. See Notice of Filing of Amendment No. 3, 90 FR at 7729.

⁴³ Letter from Steve Crutchfield, Head of Business Development, Chicago Trading Company, dated Aug. 30, 2024 (“CTC Letter”) at 2.

⁴⁴ See Notice of Filing of Amendment No. 3, 90 FR at 7729.

implementation timeline from a minimum of 14 days and a maximum of 120 days⁴⁵ to at least 145 days after approval.⁴⁶ In OCC's view, the revised timeline allows it both to comply with an upcoming December 2025 compliance date for the amended CCA Standards and to provide a longer implementation timeline as requested by commenters.⁴⁷

OCC's extension of the implementation timeline to September 2025 is a reasonable balance between commenters' concerns and OCC's need both to ensure that it is collecting sufficient margin to mitigate the risks arising from the significant increase in intraday and overnight trading activity it has observed (and is not presently capturing) and to meet the upcoming compliance date for the Commission's recent final rule amending the CCA Standards regarding intraday margin calls. While commenters generally stated that they needed more time to prepare for the Intraday Risk Charge, there is no indication that, from a technical or operational standpoint, the Intraday Risk Charge is any different from other updated margin requirements that Clearing Members and industry participants have accommodated in the past.⁴⁸ Clearing Members and other industry participants routinely have two to six months to update their systems, procedures, and compliance strategies to accommodate new or updated OCC

⁴⁵ See Notice of Filing, 89 FR at 65698 (stating that OCC would implement the change within 120 days of approval, with a minimum of two weeks' notice prior to implementation).

⁴⁶ There are 145 days between April 9, 2025, which is the latest date for the Commission to issue an order approving or disapproving the Proposed Rule Change, and September 1, 2025, which is the earliest date of OCC's proposed implementation.

⁴⁷ See Notice of Filing of Amendment No. 3, 90 FR at 7729; *see also* Exchange Act Release No. 101446, *supra*, n. 10, 89 FR at 91037 for additional discussion of the upcoming compliance date for the Commission's final rule amending the CCA Standards regarding intraday margin calls. Subsequently, a commenter characterized OCC's revised implementation date as minor in nature. The commenter acknowledged that OCC's amendment would provide an additional month of post-approval implementation, but stated that the extension may not be meaningful. The commenter did not explain what industry participants must do to prepare for implementation. Letter from Ellen Greene, Managing Director, Equities & Options Market Structure, and Joseph Corcoran, Managing Director and Associate General Counsel, SIFMA, dated Feb. 20, 2025, ("SIFMA III") at 4.

⁴⁸ To the extent commenters are concerned with the *market* impact of the Intraday Risk Charge or with its impact on their specific business model and general practices, these issues are discussed below. *See infra* Section III.B.

margin requirements like the Intraday Risk Charge.⁴⁹ Historically, this has been sufficient time for industry participants to make any necessary adjustments to accommodate updated margin requirements without incurring significant operational or other disruptions. Here, market participants have known about the Proposed Rule Change since late July 2024. During that time, OCC has specifically encouraged executing Clearing Members “to work with their customers to obtain all information necessary as early as possible to facilitate allocation of their trades as soon as possible,”⁵⁰ although it is within market participants’ discretion whether they choose to do so or not. While the specific approval date was not known in advance, by the time OCC implements the Intraday Risk Charge in September 2025, the industry will have been aware that OCC intends to update its margin requirements consistent with the Proposed Rule Change for well over a year, and will have had at least five months from the date of approval to make any necessary adjustments to accommodate the Intraday Risk Charge. This is on the higher end of the time provided to the industry for similar margin updates in the past⁵¹ and should be well within the industry’s capability to accommodate without substantial operational or other disruptions.

III. DISCUSSION AND COMMISSION FINDINGS

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is

⁴⁹ See, e.g., Exchange Act Release No. 85755 (Apr. 30, 2019), 84 FR 19815, 19819 (May 6, 2019) (File No. SR-OCC-2019-004) (providing between 30 and 180 days to implement a new liquidation cost add-on); Exchange Act Release No. 99426 (Jan. 24, 2024), 89 FR 5974, 5987 (Jan. 30, 2024) (File No. SR-OCC-2023-007) (providing between seven and 120 days to implement a series of changes, including changes to stress testing to allow OCC to collect additional liquidity resources); Exchange Act Release No. 100584 (July 24, 2024), 89 FR 61211, 61220 (July 30, 2024) (File No. SR-OCC-2024-009) (providing between 14 and 60 days to implement a new resource backtesting margin add-on).

⁵⁰ See letter from Megan Cohen, General Counsel and Corporate Secretary, OCC, dated Sept. 18, 2024 (“OCC I”) at 4.

⁵¹ See *supra*, n. 49.

consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.⁵² Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.”⁵³

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,⁵⁴ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.⁵⁵ Moreover, “unquestioning reliance” on an SRO’s representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.⁵⁶

After carefully considering the Proposed Rule Change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is

⁵² 15 U.S.C. 78s(b)(2)(C).

⁵³ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3). Commenters also expressed support for potential changes that, because they are outside the scope of the Proposed Rule Change, are not discussed further below. *See, e.g.*, SIFMA II at 7 (stating “OCC should consider changes to its clearing fund allocation methodology”); SIFMA III at 7 (suggesting that OCC should respond to unaddressed comments from the commenter’s prior letter, including the “concept of paying interest on OCC margin deposits” and “[t]he proposal’s potential for deterring Clearing Members from participating in default auctions”). In addition, OCC stated that some of these suggestions are not feasible to implement until Ovation is launched. *See* letter from Megan Cohen, General Counsel and Corporate Secretary, OCC, dated Mar. 21, 2025 (“OCC II”) at 9-10; *see also supra* n. 42 (discussing Ovation).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Susquehanna Int’l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 447 (D.C. Cir. 2017).

consistent with Sections 17A(b)(3)(F) and 17A(b)(3)(I) of the Exchange Act,⁵⁷ and Rules 17Ad-22(e)(2)⁵⁸, 17Ad-22(e)(4)⁵⁹, and 17Ad-22(e)(6)⁶⁰ thereunder, as described in detail below.

A. *Consistency with Section 17A(b)(3)(F) of the Exchange Act*

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that a clearing agency's rules 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.⁶¹ Based on the Commission's review of the record, and for the reasons described below, the Proposed Rule Change described above is consistent with assuring the safeguarding of securities and funds which are in OCC's custody or control or for which it is responsible.

As discussed in Section II above, since the inception of OCC's ETH and intraday monitoring system, there has been a significant uptick in the number of options contracts, including SDO and 0DTE contracts, that OCC clears. 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 for all products cleared. As such, OCC's margin monitoring system does not account for OCC's exposure to intraday trading activity in a Clearing Member's portfolio. This results in a margin requirement that may not be sufficient to cover any additional risk resulting from intraday trading activity during the trading session.

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

⁵⁸ 17 CFR 240.17ad-22(e)(2).

⁵⁹ 17 CFR 240.17ad-22(e)(4).

⁶⁰ 17 CFR 240.17ad-22(e)(6).

⁶¹ 15 U.S.C. 78q-1(b)(3)(F).

For example, if a Clearing Member buys a large number of options in the morning and sells them in the afternoon, such intraday risk is not captured by OCC's current portfolio evaluation process. As a result, OCC may not collect sufficient margin collateral to address a Clearing Member's default. The Intraday Risk Charge is designed to address OCC's potential future exposure to risk posed by such intraday position changes by imposing the Intraday Risk Charge as a margin add-on charge. As described above in Section II.A, OCC would set the Intraday Risk Charge monthly based on each Clearing Member's intraday activity from the preceding month. Under a limited set of circumstances, OCC would have the authority to adjust the Intraday Risk Charge intramonth. Further, OCC would establish a process for monitoring member activity and calling for additional margin where such activity exceeds the Intraday Monitoring Thresholds, as described above in Section II.B.

Together, the collection of the Intraday Risk Charge and authority to issue margin calls based on the Intraday Monitoring Thresholds would increase the likelihood that OCC collects sufficient margin collateral to mitigate OCC's potential future credit exposure to a Clearing Member default. Increasing the likelihood that OCC collects sufficient margin collateral to address a Clearing Member's default would, in turn, assure the safeguarding of non-defaulting Clearing Members' collateral by reducing the likelihood that OCC would be forced to charge losses to the Clearing Fund, which is mutualized among Clearing Members.

Accordingly, OCC's proposal to adopt the Intraday Risk Charge and the Intraday Monitoring Thresholds is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.

B. *Consistency with Section 17A(b)(3)(I) of the Exchange Act*

Section 17A(b)(3)(I) of the Exchange Act requires that the rules of a clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the Act.⁶² Section 17A(b)(3)(I) does not require the Commission to make a finding that OCC chose the option that imposes the least possible burden on competition; rather, the Act requires that the Commission find that the Proposed Rule Change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, which involves balancing the competitive effects of the Proposed Rule Change against all other relevant considerations under the Act.⁶³

The Commission received various comments expressing concern that the Proposed Rule Change would lead to an increased burden on competition. Some commenters stated that additional margin requirements under the proposal would negatively impact market makers, who would be subject to pass-through costs and, as a result, would be more likely to pull out of market participation altogether, thus reducing liquidity and quality across the market.⁶⁴ Many commenters echoed similar concerns about execution-only broker-dealers, stating that these firms, particularly smaller ones, would be negatively impacted if their clients would be subject to

⁶² 15 U.S.C. 78q-1(b)(3)(I).

⁶³ *See* Bradford National Clearing Corp., 590 F.2d 1085, 1105 (D.C. Cir. 1978).

⁶⁴ *See* CTC Letter at 2 (“[C]learing firms would likely resort to passing along their aggregate additional margin requirements on a pro-rata or other simplistic basis,” which “would unfairly and unreasonably burden options market makers with significant additional margin requirements,” thus leading market makers to reduce their “participation in liquidity provision”); Letter from Ellen Greene, Managing Director, Equities & Options Market Structure, SIFMA, and Joseph Corcoran, Managing Director, Associate General Counsel, SIFMA, dated Sept. 3, 2024 (“SIFMA I”) at 2 (expressing concern that the proposal “could have significant impacts on the businesses of certain SIFMA members and the overall liquidity and quality of the listed options market”); SIFMA II at 10-11 (stating that OCC did not consider whether the possibility of pass-through costs could “lead to wider spreads or potentially reduce the number of products for which market makers are willing to provide liquidity”); STANY Letter at 3 (similar); STA II at 3-4 (similar); SIFMA III at 6 (“OCC needs to fully consider how options market liquidity might be impacted by the pass-through of margin charges to [market makers] by their Clearing Members under the Amended Proposal.”).

pass-through costs on a pro rata basis and thus would reduce services and/or leave the market.⁶⁵

The primary reason behind the proposal’s potentially negative impact and increased burden on competition, according to commenters, is executing brokers’ practice of making end-of day allocations.⁶⁶

In response, OCC stated that it did not observe a disproportionate impact on smaller brokers.⁶⁷ To support this observation, OCC pointed to impact analysis data, which was provided to and reviewed by the Commission as confidential Exhibit 3C to File No. SR-OCC-2024-010. OCC stated that, based on that impact analysis data, of the 1,122 potential margin calls that OCC forecasted, 954 of them would have been “issued to Clearing Members with more than \$100M in net capital,” while the remaining calls—168 of them—would have been issued to

⁶⁵ See Letter from Timothy Miller, Chief Operating Officer, DASH Financial Technologies LLC, dated Sept. 3, 2024 (“DASH Letter”) at 2 (“it’s probable that the landscape will become less competitive” and “Agency Brokers will be forced reevaluate their ability to offer execution services”); Allen Greenberg, Chief Operating Officer, Matrix Executions, LLC, dated Sept. 3, 2024 (“Matrix Letter”) at 2 (pass-through charges would disincentivize Matrix and similar brokers from providing liquidity sourcing, price improvement, and timely execution services); David L. Cavicke, Chief Legal Officer, Wolverine Execution Services, LLC, dated Sept. 3, 2024, (“WEX I”) at 2-3 (passing through the Intraday Risk Charge to executing brokers “could distort pricing and trading behavior” and “have a disproportionate impact on such smaller industry members”); David L. Cavicke, Chief Legal Officer, Wolverine Execution Services, LLC, dated Mar. 3, 2025 (“WEX II”) at 2-3 (imposing the Intraday Risk Charge on executing brokers “could foreseeably cause firms to reduce their capacity and/or exit the business,” resulting in fewer client choices and reduced competition); Optiver Letter at 3 (similar); *see also* letter from Ellen Greene, Managing Director, Equities & Options Market Structure, SIFMA, and Joseph Corcoran, Managing Director, Associate General Counsel, SIFMA, dated Sept. 3, 2024 (“SIFMA I”) at 2; SIFMA II at 8-10; SIFMA III at 4-5; STA II at 3-4; STANY Letter at 3-4; and letter from Jackie Mesa, Chief Operating Officer and Senior Vice President of Global Policy, FIA, dated Sept. 5, 2024 (“FIA Letter”) at 2.

⁶⁶ See, e.g., letter from Joanna Mallers, Secretary, FIA Principal Traders Group (“FIA PTG”), dated Sept. 4, 2024 (“FIA PTG Letter”) at 3 (“Agency Brokers generally receive allocations from their clients post-trade and these transactions are often not allocated to the end client’s Clearing Member until the end of the trading day. As a result, these trades are initially cleared at the Agency Broker’s Clearing Member intraday before they are transferred to the end client’s Clearing Member through the OCC CMTA process at the end of the day.”); *see also* SIFMA III at 4, 6 (“executing brokers may not receive client allocations until the end of the trading day” and “market makers (and their market maker clients) [should] be provided with better data and information ... as it relates to the Intraday Risk Charge.”). The issue of market practices around end-of-day allocations is discussed in more detail in Section III.D below.

⁶⁷ See OCC I at 4.

smaller Clearing Members.⁶⁸ Based on this data, OCC concluded that “the most significant Intraday Risk Charges and potential intraday margin calls align with the Clearing Members who carry the most day-over-day margin risk, *i.e.*, OCC’s largest Clearing Members.”⁶⁹ Based on its review of the data, the Commission agrees with OCC’s conclusion that smaller Clearing Members will not be disproportionately impacted by the Intraday Risk Charge.

Relatedly, commenters recommended that OCC provide Clearing Members with tools that identify which of their clients are generating peak intraday exposures.⁷⁰ Commenters acknowledge, however, that the ability to net offsetting client positions presents challenges for identifying the positions generating risk.⁷¹ In response, OCC pointed to already existing and available tools, such as Risk Simulator in Encore, that Clearing Members can use to help them “assess their OCC margin requirements and separately devise their own approach to address this issue with their customers.”⁷²

⁶⁸ *Id.*

⁶⁹ *Id.* Additionally, OCC noted that the amended proposal would reduce the overall impact by approximately 50 percent compared to its Initial Filing. Notice of Filing of Amendment No. 3, 90 FR at 7727. Specifically, based on an impact analysis over a 13-month period, OCC observed that the proposed add-on would have generated a margin increase of less than 1.1% in the aggregate on average, representing almost \$1.099 billion across all Clearing Members out of margin requirements and that, for comparison, under the Initial Filing, the proposed add-on would have generated an average margin increase of approximately \$1.968 billion, less than a 1.9% increase. *Id.*

⁷⁰ *See* STANY Letter at 5; SIFMA II at 8. SIFMA states, however, that members already engage in real-time monitoring of customer positions and exposures. *See* SIFMA II at 3. SIFMA further requests a response to whether such monitoring could alleviate the concerns OCC faces from 0DTE trading activity. *See* SIFMA III at 7. However, the comment does not indicate how a member’s monitoring of its customers would address risks that the member chooses to present to OCC unless such monitoring leads the Clearing Member not to present risk to OCC, which would reduce the collateral OCC requires such a Clearing Member to post. Separately, the commenter requested that OCC address costs that executing brokers would incur to establish intraday allocation functionality. *See id.* However, this request that OCC somehow bear the cost of executing brokers to consider intraday allocation appears inconsistent with comments that identify the issue of allocation as one of customer behavior (as opposed to Clearing Member technology). *See, e.g.*, STA II at 5 and WEX II at 2-3.

⁷¹ *See* SIFMA II at 8.

⁷² OCC I at 5. OCC’s reference to the Risk Simulator in Encore as part of a broader toolset came in response to commenters’ suggested alternatives. *See* STANY Letter at 5; SIFMA II at 8. OCC’s reference to the

In this instance, the burden on competition stemming from a higher impact on some members than on others is necessary and appropriate in furtherance of the Act to reduce OCC's overall margin risk. Under the Proposed Rule Change, the intraday risk that is currently unaccounted for would be based on the profile of the portfolio held by certain Clearing Members during a limited 90-minute window throughout the entire trading day and extended trading hours. The Proposed Rule Change focuses on a Clearing Member's portfolio composition and trading activity, and aims to address the risk in 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, a risk that is not accounted for under OCC's current margin collection system and that OCC is therefore carrying itself.

This type of agnostic approach aims to balance the potential competitive effects of the proposal against OCC's requirement under the Exchange Act and the rules and regulations thereunder to manage its credit risk by, among other things, collecting sufficient margin to appropriately address this risk, as well as the goal of preventing the mutualization of losses among non-defaulting firms in the event of a Clearing Member default. For example, to the extent that a Clearing Member would be charged the Intraday Risk Charge or be subject to a margin call under the Intraday Monitoring Thresholds, the increased margin collection would be based on the securities held by the member and its trading activity during specific times, consistent with OCC's requirement to collect margin to appropriately address the associated risk. Specifically, as noted, OCC is required to manage its credit risk, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high

Risk Simulator is also responsive to commenters' statement that OCC should provide market makers with better data and information as it relates to the Intraday Risk Charge. *See supra* n. 70 and related text.

degree of confidence.⁷³ The Proposed Rule Change is intended to provide more robust coverage of intraday trading risk by authorizing OCC to charge a margin add-on and make margin calls. As contemplated by, and consistent with, the Act and Rule 17Ad-22,⁷⁴ each Clearing Member would be responsible to provide margin commensurate with the default risk posed to OCC by its business under the Proposed Rule Change. By helping OCC to better manage its credit exposure, the proposal's updated margin requirements would improve OCC's ability to mitigate the potential losses to OCC and its members associated with liquidating a Clearing Member's portfolio in the event of a Clearing Member default.

With respect to commenters' concern regarding potential pass-through costs, OCC responded that it "cannot direct whether or how Clearing Members assign or allocate the Intraday Risk Charge to their customers"⁷⁵ and explained that, for execution brokers that are not Clearing Members, OCC would not have insight into which transactions are currently held by a given execution broker or be in a position to determine any intraday fee charged by the broker's Clearing Member.⁷⁶ The Commission agrees. The Proposed Rule Change pertains only to the setting of margin requirements for OCC's Clearing Members; it does not prescribe whether or how these Clearing Members would pass costs associated with such margin requirements onto their clients. Indeed, Section 17A(b)(3)(E) of the Exchange Act requires 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. Consistent with that requirement, the Proposed Rule Change does not impose a schedule of fees or attempt to fix prices for the services that OCC's Clearing

⁷³ See generally Section III. D, below.

⁷⁴ 17 CFR 240.17ad-22.

⁷⁵ OCC I at 5.

⁷⁶ OCC II at 6.

Members charge to their customers. This is consistent with other of OCC's margin requirements, including other margin add-ons, that OCC imposes on its Clearing Members.⁷⁷ As with all margin requirements imposed by OCC on its Clearing Members, it is entirely within the individual Clearing Member's discretion and control—and entirely outside of OCC's knowledge or control—whether and how to pass on such requirements to the Clearing Member's customers.

Therefore, for the reasons stated above, the Proposed Rule Change is consistent with Section 17A(b)(3)(I) of the Exchange Act.

C. Consistency with Rule 17Ad-22(e)(4)(i) under the Exchange Act

Rule 17Ad-22(e)(4)(i) under the Exchange Act requires that a CCA 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.⁷⁸

OCC proposes to adopt the Intraday Risk Charge and the Intraday Monitoring Thresholds to address margin requirement gaps identified in its current intraday margining systems. As described above in Section II.A, the Intraday Risk Charge would be based on the increased risk identified during a limited timeframe through OCC's current margin monitoring system, which recalculates the STANS margin risk using portfolio position sets updated every 20 minutes between 8:30 a.m. and 6:30 p.m. Central Time, and at least every hour during ETH sessions.

⁷⁷ See, e.g., Securities Exchange Act Release No. 100998 (Sept. 11, 2024), 89 FR 76171 (Sept. 17, 2024) (File No. SR-OCC-2024-0009) (implementing a new margin add-on charge that would be applied to the accounts of Clearing Members based on breaches of a new category of resource backtesting).

⁷⁸ 17 CFR 240.17ad-22(e)(4)(i).

The Intraday Risk Charge would be set monthly, as measured by the previous month's data and STANS outputs, and would include verification procedures, governance and review arrangements, and the authority to make adjustments under certain circumstances. Likewise, as outlined in Section II.B, the Intraday Monitoring Thresholds would allow for additional margin based on risk increases and would be accompanied by detailed governance and review processes. Collecting additional margin in the form of the monthly Intraday Risk Charge based on documented margin deficiencies would reduce the likelihood of future deficiencies. Reducing the likelihood of margin deficiencies for each Clearing Member would, in turn, increase the likelihood that OCC would maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.

Several commenters opposed the Initial Filing, stating that agency-only, executing broker-dealers who do not maintain custody over any customer positions would be harmed by the Proposed Rule Change because the 20-minute snapshots would not accurately reflect the entirety of each trade, would not account for hedging or offsetting, and would not account for the common business practice of end-of-day allocation among customer accounts, thus leading to double-margining.⁷⁹ Some commenters suggested that, as such, Clearing Members who were acting solely as executing dealers should be exempt from the Proposed Rule Change.⁸⁰

⁷⁹ See generally SIFMA II; WEX I; DASH Letter; FIA PTG Letter; FIA Letter; Matrix Letter; STA II; Optiver Letter; see also STANY Letter at 3 ("Executing brokers, whose business models are based on facilitating trades and transferring positions by the end of the trading day, risk being unfairly penalized through double margining. Without adjustments to the allocation process or exclusion of 'soon-to-be allocated trades' from intraday margin snapshots, both the executing broker and the end client could be subjected to margin calls for the same position."); see also, generally, WEX II.

⁸⁰ See, e.g., SIFMA II; SIFMA III; Matrix Letter; FIA Letter.

Commenters also suggested providing relief for positions executed in one OCC account and moved to another in a reasonable period of time.⁸¹

Acknowledging the commenters' concerns, OCC filed Amendment No. 3, which shortened the period on which the Intraday Risk Charge would be based. By reducing this period to a limited series of 20-minute snapshots between 11:00 a.m. and 12:30 p.m. Central Time, the Proposed Rule Change responds to the concern that the originally proposed measurements of snapshots were too frequent and unpredictable. According to OCC, under the narrower window in the Proposed Rule Change, Execution-Only Clearing Members⁸² who are able to allocate trades prior to the shortened window may eliminate or significantly reduce their intraday risk exposure for purposes of calculating their Intraday Risk Charge.⁸³ As a result, the Proposed Rule Change would allow Clearing Members, such as executing brokers, to manage the potential impact of the changes by moving positions from one account to another at any time preceding 11 a.m. Central or within a 20-minute snapshot for those trades executed in the reduced 90-minute period on which the Intraday Risk Charge would be based.

In response to the amendments, a commenter stated that executing brokers may not be in a position to allocate trades ahead of the narrowed window because they may not receive client

⁸¹ See Matrix Letter at 5. The commenter also suggested that the Proposed Rule Change should require exchanges to modify their systems or require clients to provide specific information, presumably to their Clearing Members. *Id.* Such suggestions are outside the scope of the Proposed Rule Change. Further, even if such suggestions are viewed as a potential improvement that could have been included in the proposal, the existence of an alternative does not, in and of itself, render the proposed approach inconsistent with applicable law. Finally, Rule 17Ad-22(e) generally provides CCAs with flexibility in designing their written policies and procedures, rather than requiring them to take a strictly prescriptive approach. See, e.g., Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, at 70795-97, and 70800-01 (Oct. 13, 2016) (File No. S7-03-14).

⁸² "Execution-Only Clearing Member" means a Clearing Member approved to act only as a Clearing Member that transfers confirmed trades or allocates positions to other Clearing Members, and not to carry positions in its accounts with OCC on a routine basis. See Article I, Section E.13 of OCC's By-Laws.

⁸³ See Notice of Filing of Amendment No. 3, 90 FR at 7725.

allocations until the end of the trading day.⁸⁴ The commenter stated that executing brokers can work to change their clients practice, but that they will likely not be 100 percent successful.⁸⁵ Ultimately, the commenter calls for an exemption for executing brokers that are Clearing Members with CMTA capabilities.⁸⁶ In a subsequent comment, OCC identifies the disparate treatment of executing brokers that would arise under the commenter's suggestion based on whether or not such an executing broker is a Clearing Member.⁸⁷ As OCC states in its response comment letter, "executing brokers do bring risk to OCC, and by extension other Clearing Members, and until the trades are allocated, those risks remain the responsibility of the executing broker."⁸⁸ The purpose of the Proposed Rule Change is to mitigate such risk by collecting margin as discussed further below.

Some commenters have suggested that OCC provide an exemption for Clearing Members acting solely as executing dealers.⁸⁹ As OCC reiterated in its response to commenters, the Proposed Rule Change is specifically designed to address observed margin requirement gaps relating not only to increasing 0DTE and SDO clearing activity, but also to current margining

⁸⁴ See SIFMA III at 4.

⁸⁵ *Id.* The commenter also stated that OCC is effecting a change to market practice. *See id.* However, the comment appears to misstate the description provided in the Notice of Filing of Amendment No. 3 in which OCC estimated the reduction in impact to executing brokers arising out the amendment of more than 40 percent. *See* Notice of Filing of Amendment No. 3, 90 FR at 7727 (stating the aggregated add-on charge for executing brokers would be reduced from \$39.4 million to \$23.4 million). OCC acknowledges that the estimated impact reduction might be greater if members chose to management positions differently, but OCC did not indicate that executing brokers *must* manage their positions differently as a result of the proposal. *See id.* at n. 39.

⁸⁶ See SIFMA III at 4.

⁸⁷ See OCC II at 6 (stating that, for non-Clearing Member execution brokers, OCC would also not be in a position to determine any intraday fee charged by the broker's Clearing Member).

⁸⁸ *See id.* (referencing SIFMA III).

⁸⁹ *See, e.g.,* Matrix Letter at 2-3; FIA Letter at 2.

system shortcomings across all products cleared.⁹⁰ OCC's focus in proposing the Intraday Risk Charge is on unaddressed intraday risk being introduced to OCC through its Clearing Members, regardless of who ultimately generates or incurs that risk, and is explicitly intended to apply to all Clearing Members equally.⁹¹ Rule 17Ad-22(e)(4)(i) under the Exchange Act directs OCC to manage its credit exposures to participants.⁹² Exempting a subset of Clearing Members from collateralizing the financial risk they pose to OCC would impede OCC's ability to manage its credit exposures to participants. Further, the Commission agrees with OCC's statement in its response to commenters that an exemption for a specific subset of Clearing Members would not be equitable or fair.⁹³ As OCC noted in its response, "during any potential intraday default event, the last account associated with a trade at the time of default could likely be held responsible for making good on the resulting position. Hence, Executing Clearing Members, like any other Clearing Members that incur risk, should be assessed the Intraday Risk Charge for their intraday risk increasing activity."⁹⁴

To support its "call . . . for OCC to exempt executing brokers that are OCC Clearing members with CMTA capabilities from any Intraday Risk Charge," one commenter suggested that, if such an executing broker defaults, the trades could be passed onto another Clearing Member via CMTA, which would provide a mechanism to transfer positions to other OCC

⁹⁰ See OCC II at 2 ("OCC has observed that this intraday risk has increased in recent years, both with respect to [0DTE Options], as well as the increased daily contract volume in options of all expiries").

⁹¹ See OCC I at 3.

⁹² See 17 CFR 240.17ad-22(e)(4)(i).

⁹³ See OCC I at 3.

⁹⁴ *Id.*; see also OCC II at 5 ("Furthermore, if OCC were to exempt certain entities from the Intraday Risk Charge, it would artificially lower the cost of trading through the exempted entities compared with those subject to the Intraday Risk Charge. This has the potential to introduce even more unaccounted for risk into the system.").

Clearing Members in the event of a default scenario.⁹⁵ In response, OCC stated that it “would first need to know the intended recipient of the unallocated contracts, which is not information that is on the trade record.”⁹⁶ OCC stated further that, the “suggestion ignores the fact that a CMTA transfer may be rejected by the receiving Clearing Member, something which may be more likely following a default.”⁹⁷ OCC also stated that, while the commenters “advocate excluding execution only brokers from the Intraday Risk Charge,” they did not “provide suggestions about who should cover the risks of an execution only broker’s transactions before the trades are allocated and the identity of the ultimate Clearing Member is known.”⁹⁸ The commenters also did not explain how such an exemption, or the use of the CMTA process in the manner suggested, would comply with OCC Rule 1106, which describes OCC’s rights and obligations with respect to the open positions of a suspended Clearing Member, and calls for the closing out of positions in the most orderly manner practicable, including by private auction.

OCC also highlighted the potential knock-on effects for non-defaulting Clearing Members in the event that such intraday risk is left unaddressed. Specifically, OCC stated that it “is exposed to the risks posed by intraday price changes and any new contracts held by Clearing Members during the trading day to the extent those risks render the margin requirements that OCC sets and collects each morning insufficient to cover losses that may arise from the default of one of its Clearing Members.”⁹⁹ OCC explained further that, if the defaulting Clearing

⁹⁵ SIFMA III at 4-5. The term “Executing Clearing Member” as used by the commenter means a Clearing Member that has been authorized by a Carrying Clearing Member to direct confirmed trades to be transferred to a designated account of the Carrying Clearing Member pursuant to such Clearing Members’ CMTA arrangement. See Article I, Section E.12 of OCC’s By-Laws.

⁹⁶ OCC II at 7.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ OCC II at 1-2.

Member's margin resources are insufficient to cover such losses, OCC would rely on the defaulting Clearing Member's Clearing Fund contribution, then OCC's own contribution.¹⁰⁰ If those resources were insufficient to cover the loss, "OCC would have to use the Clearing Fund contributions of non-defaulting Clearing Members, resulting in unanticipated losses to non-defaulting Clearing Members."¹⁰¹ The Commission agrees that OCC's failure to address intraday risk could lead to non-defaulting Clearing Members incurring unanticipated losses.

Some commenters framed their concern as one of "double-margining," because positions could be counted twice – once when they are held at the executing broker, and a second time when they are transferred and held at the OCC Clearing Member serving as their prime broker.¹⁰² This is not an accurate characterization of the proposal because the Proposed Rule Change provides a mechanism requiring a member to post collateral based on past trading activity, which is distinct from OCC's process for setting a Clearing Member's daily margin requirement based on that member's end-of-day portfolio. The Intraday Risk Charge would require a Clearing Member to post margin calibrated to the risk posed by the intraday activity of that member. If a Clearing Member executes a risk-increasing trade in the morning, OCC has no way to know that the member intends to execute a hedging trade at some later point in the day. Similarly, if a Clearing Member executes a risk-increasing trade at one point in time, OCC cannot assume allocation to another Clearing Member if the trade has not yet been allocated. Further, until such time as the Clearing Member executes the hedging transaction or allocates the trade to a Carrying Clearing Member, OCC must rely on the collateral posted to the account associated with a trade. Consistent with OCC's comments, the margin posted to a Clearing

¹⁰⁰ *See id.* at 2.

¹⁰¹ *Id.*

¹⁰² *See e.g.*, SIFMA II at 9; WEX II at 3.

Member account associated with a trade at the time of an intraday suspension is the collateral relevant to covering the potential losses related to such a trade. Further, OCC amended the proposal to narrow the window on which the Intraday Risk Charge would be based in response to comments. Focusing solely on the 90-minute window between 11 a.m. and 12:30 p.m. CT would provide an opportunity for members to hedge their positions prior to the window to reduce the impact of the Intraday Risk Charge, similar to the current opportunity to hedge positions before the end of the trading day.¹⁰³

OCC also stated in its response to these comments that “mechanisms exist to reduce the likelihood of OCC assessing an Intraday Risk Charge to an Executing Clearing Member.”¹⁰⁴ For example, “OCC observed over the period between May 1, 2024, and August 15, 2024, that for approximately 43% of two-sided contract volume, the trade information for allocated trades accurately identifies the Carrying Clearing Member of the trading party. This information allows an Executing Clearing Member to route a trade directly to the clearing account of the Carrying Clearing Member for the trading party, and thereby bypass the OCC clearing account of the Executing Clearing Member. In these cases, intraday risk activity would not be reflected in the Executing Clearing Member’s account.”¹⁰⁵ OCC encouraged executing Clearing Members “to

¹⁰³ See Notice of Filing of Amendment No. 3, 90 FR at 7727, n.39 (stating that, to the extent a Clearing Member allocates trades to other Clearing Members under OCC’s CMTA Rules or otherwise reduces its intraday risk in advance of the Intraday Risk Measurement Time, the actual impact of the Intraday Risk Charge may be less).

¹⁰⁴ OCC I at 3.

¹⁰⁵ OCC I at 3-4. The term “Carrying Clearing Member” means a Clearing Member that has authorized an Executing Clearing Member to direct the transfer of a confirmed trade to a designated account of such Carrying Clearing Member pursuant to a CMTA arrangement. See Article I, Section C.3 of OCC’s By-Laws.

work with their customers to obtain all information necessary as early as possible to facilitate allocation of their trades as soon as possible.”¹⁰⁶

The Proposed Rule Change also allows OCC to account for instances where information from an individual snapshot may not capture a trade in its entirety. Specifically, the Intraday Risk Charge process would allow for a manual review of the 20-minute snapshot information, as described in Section II.A above. FRM would review and verify the daily peak increases on at least a monthly basis, taking into consideration the monitoring system’s known limitations, such as a 20-minute snapshot not capturing a complete trade in a single snapshot or the fact that snapshot timing may cause collateral movements to be recorded as risk-increasing deposits instead of risk-reducing movements. To mitigate the risk of such inaccuracies leading to double-margining, Market Risk would verify the peak daily results to prevent erroneous results from affecting the calculation of the Intraday Risk Charge.

Some commenters stated that OCC’s proposal to use a one-month lookback period to assess a monthly margin add-on is unreasonable and poorly designed.¹⁰⁷ One such commenter stated that the proposed measures should be temporary while OCC focuses on technological improvements to address the intraday risk stemming from SDOs.¹⁰⁸ Other commenters posited alternatives to the one-month lookback period. Two commenters suggested a shortened lookback period of one week, with “average of the peak” risk increases each day over the prior week coupled with capped thresholds (e.g., 25%) such that the Intraday Risk Charge could not rise or fall by more than the threshold from week to week.¹⁰⁹ Both of those commenters also

¹⁰⁶ *Id.* at 4.

¹⁰⁷ *See generally* SIFMA II; FIA Letter; FIA PTG Letter; STANY Letter.

¹⁰⁸ FIA Letter at 1.

¹⁰⁹ SIFMA II at 6; STANY Letter at 2 (agreeing with SIFMA’s suggestions).

offered other alternatives, including a tiered framework based on the size of activity of participants¹¹⁰ and snapshots that occur at periods longer than 20 minutes.¹¹¹

OCC's use of a one-month lookback period to assess the Intraday Risk Charge is reasonable and appropriately designed. As OCC stated in its response to such comments, "the use of historical lookbacks for projecting potential future exposures is a common practice in the financial industry," and OCC's "proposed approach of establishing a margin add-on using a historical lookback as a buffer to account for variability in margin requirements is not unique among clearing agencies."¹¹² As an example, OCC pointed to the National Securities Clearing Corporation's margin requirement differential ("MRD"), which was designed, essentially, as a margin add-on to members' pre-funded financial resources, calculated and charged daily, based on historical changes to certain components over a 100-day lookback period.¹¹³ As OCC pointed out, although the reasoning behind implementing the MRD was not related to addressing intraday risk stemming from SDOs and 0DTE options, the MRD is nevertheless similar to the Proposed Rule Change in that "the Intraday Risk Charge has been designed as a margin add-on to capture variability in the risk presented by a Clearing Member between OCC's daily morning margin collections."¹¹⁴ As OCC further stated, calculating the Intraday Risk Charge monthly based on a one-month lookback period "will allow OCC to capture variability in risk from all products it clears, including SDO and 0DTE options."¹¹⁵ OCC added that it believes that "the

¹¹⁰ SIFMA II at 6.

¹¹¹ STANY Letter at 5.

¹¹² See OCC I at 2.

¹¹³ *Id.* at 2-3; see also Securities Exchange Act Release No. 79245 (Nov. 4, 2016), 81 FR 79071, 79073 (Nov. 10, 2016) (File No. SR-NSCC-2016-005).

¹¹⁴ See OCC I at 2-3.

¹¹⁵ *Id.* at 3.

one-month lookback period, which includes a standard monthly expiration and multiple weekly expirations, is a conservative, yet not punitive, approach that reflects more recent changes in risk behavior, providing relevant forecasts for the next monitoring cycle.”¹¹⁶

The use of a one-month lookback period also is consistent with other OCC practices related to collateral collection for financial risk management,¹¹⁷ which the Commission has approved in prior filings.¹¹⁸ The alternatives suggested by commenters do not alter the Commission’s determination that OCC’s decision to use a one-month lookback period in this instance is reasonable and that the other characteristics of the Proposed Rule Change, as designed, are consistent with the applicable statute, rules, and regulations. Indeed, one commenter acknowledged that “a blunt approach is not, in itself, grounds for disapproval.”¹¹⁹ While there may be more than one reasonable way to address a given risk, the existence of an alternative does not, in and of itself, render the proposed approach inconsistent with applicable law.¹²⁰

One commenter suggested that OCC should (i) apply the Intraday Risk Charge in a phased approach, starting by applying it only to 0DTE and then, only if necessary, extending the Intraday Risk Charge to other cleared activity; (ii) develop new functionality to monitor in real-time the intraday risks it faces from Clearing Members; and (iii) sunset the Intraday Risk Charge

¹¹⁶ *Id.*

¹¹⁷ *See, e.g.*, OCC Rule 1003, which defines OCC’s process for determining each Clearing Member’s pro rata share of the Clearing Fund each month based on activity from the preceding month.

¹¹⁸ *See, e.g.*, Securities Exchange Act Release No. 83735 (July 27, 2018), 83 FR 37855 (Aug. 2, 2018) (File No. SR-OCC-2018-008).

¹¹⁹ *See* STA II at 2.

¹²⁰ Additionally, Rule 17ad-22(e), generally, provides CCAs with flexibility in designing their written policies and procedures, rather than to take a strictly prescriptive approach. *See, e.g.*, Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, at 70795-97, and 70800-01 (Oct. 13, 2016) (File No. S7-03-14).

within two years, once OCC has such capability.¹²¹ As discussed above, applying the Intraday Risk Charge solely to 0DTE would not be reasonably designed to allow OCC to manage its credit exposures to participants. As OCC reiterated in its response to commenters, the Proposed Rule Change is specifically designed to address observed margin requirement gaps relating not only to increasing 0DTE and SDO clearing activity, but also to current margining system shortcomings across all products cleared.¹²² Applying the Intraday Risk Charge solely to 0DTE would prevent OCC from collateralizing the financial risk posed by the increased clearing volume across *all* products cleared by OCC, including SDO clearing activity beyond just 0DTE products, which in turn would impede OCC's ability to manage its credit exposures to participants. Further, it is unclear how OCC would meet its burden of demonstrating consistency with the Exchange Act for a proposal to preemptively sunset a risk management tool such as the Intraday Risk Charge based on a potential future technological capability that has not yet been developed or implemented, as the commenter suggests. OCC is free to continue developing its technological capabilities and consider in the future whether sunseting or otherwise modifying the Intraday Risk Charge would be appropriate and consistent with the Exchange Act, but requiring that outcome, especially on a specific timeline, is outside the scope of the Proposed Rule Change.

Commenters stated that, while formulating and issuing the proposal, OCC did not engage with the industry.¹²³ OCC responded by stating that it engaged with Clearing Members and market participants about the proposal extensively over a long period of time.¹²⁴ Specifically,

¹²¹ See SIFMA III at 6-7.

¹²² See OCC II at 2 (“OCC has observed that this intraday risk has increased in recent years, both with respect to [0DTE Options], as well as the increased daily contract volume in options of all expiries”).

¹²³ See e.g., SIFMA III at 1-2, 7-8; STA II at 4.

¹²⁴ See e.g., OCC II at 3.

OCC stated that, “[b]eginning as early as April 2023, OCC engaged in extensive dialogue with industry participants regarding the changes through OCC’s established channels for obtaining feedback from market participants both prior to OCC’s submission of the Initial Filing and continuing well after it was filed.”¹²⁵ OCC further noted that, “[a]s part of its ongoing efforts to engage Clearing Members and other market participants about potential OCC rule changes, OCC presented the proposed changes to its Financial Risk Advisory Council (‘FRAC’)” over the course of six separate meetings since April 2023.¹²⁶ According to OCC, those six meetings “included discussions of intraday margin proposals, including the Initial Filing, and provided the opportunity for participants to express concerns,” with the minutes of each meeting subsequently “presented to the OCC Board-level Risk Committee.”¹²⁷ OCC further stated that it “recently established the FRAC Risk Management Committee (‘FRAC RMC’),” that “FRAC RMC feedback is socialized with OCC’s board level Risk Committee because the FRAC RMC feedback is relevant to all matters that could materially affect OCC’s risk profile,” and that the intraday risk proposals were discussed at the three FRAC RMC meetings held since October 2024.¹²⁸ Finally, OCC stated that, in addition to the FRAC, “OCC holds Operations Roundtables with operations staff of a cross-section of OCC’s Clearing Members, operations staff of the options exchanges, and representatives from industry organizations,” and that, “[s]ince April of 2023, all six Operations Roundtables that have been held have included a discussion of the Intraday Risk Change and an opportunity for participants to provide feedback to OCC.”¹²⁹

¹²⁵ OCC II at 3.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

Some commenters suggested an altogether different approach than the changes that comprise the Proposed Rule Change. Specifically, a commenter suggested that OCC rerun its margin methodology intraday as the basis for collecting intraday margin.¹³⁰ The commenter recognized, however, that OCC may not have the technology infrastructure to implement it currently.¹³¹ Another commenter suggested that, if OCC is unable implement such an alternative proposal, that it “should replace the 20 minute snapshot cycle with 1-2 intraday snapshots.”¹³²

The different approach suggested is distinct from what was proposed. The Proposed Rule Change provides for the daily application of a margin add-on as part of a member’s margin requirement each morning, similar to other add-ons within OCC’s rules.¹³³ The different approach suggested by commenters pertains to the use of intraday margin calls to manage the deterioration of a Clearing Member’s portfolio, which is a different consideration. While there may be more than one reasonable way to address a given risk, the existence of an alternative does not, in and of itself, render the proposed approach inconsistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC.¹³⁴ Further, the alternative suggested by a commenter (e.g., reliance on one or two intraday snapshots) is not

¹³⁰ See SIFMA II at 5-6; *see also* Optiver at 3 (recommending that OCC implement an intraday settlement process, using a snapshot of prices and positions held at the OCC at that time to calculate variation pays/collects).

¹³¹ See SIFMA II at 6.

¹³² See Optiver at 3; *see also* STANY Letter at 2; STA II at 2.

¹³³ See, e.g., Securities Exchange Act Release No. 86119 (June 17, 2019), 84 FR 29267 (June 21, 2019) (File No. SR-OCC-2019-004) (approving a liquidation cost charge add-on); Securities Exchange Act Release No. 100998 (Sept. 11, 2024), 89 FR 76171 (Sept. 17, 2024) (File No. SR-OCC-2024-009) (approving a margin add-on charge based on breaches of the new category of resource backtesting).

¹³⁴ Additionally, Rule 17ad-22(e), generally, provides CCAs with flexibility in designing their written policies and procedures, rather than to take a strictly prescriptive approach. See, e.g., Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, at 70795-797, 70800-801 (Oct. 13, 2016) (File No. S7-03-14).

dissimilar from OCC’s amended proposal, which narrowed the period during which intraday risk is measured.

Commenters raised concerns regarding the confidentiality of certain exhibits, stating that they are unable to measure the impact of the proposal because certain supporting exhibits are confidential.¹³⁵ In its submission of the Proposed Rule Change to the Commission, OCC stated that Exhibits 3A-3D and 5B to File No. SR-OCC-2024-010, which contain internal policies and procedures, internal statistical calculations and descriptions, and confidential regulatory findings, were entitled to confidential treatment because they contained commercial and financial information that is not customarily released to the public and is treated as the private information of OCC. Under Section 23(a)(3) of the Exchange Act, the Commission is not required to make public statements filed with the Commission in connection with a proposed rule change of a self-regulatory organization if the Commission could withhold the statements from the public in accordance with the Freedom of Information Act (“FOIA”).¹³⁶ Under FOIA, an agency shall withhold information only if the agency reasonably foresees that disclosure would harm an interest protected by certain of the exemptions available under FOIA.¹³⁷ The Commission has reviewed the documents for which OCC requests confidential treatment and concludes that they

¹³⁵ See STA Letter at 3; *see also* FIA Letter at 2 (stating that the Proposed Rule Change “lacks sufficient detail regarding the computation of the Intraday Risk Charge as well as the Intraday Risk Charge Monitoring Thresholds requirement and their potential economic effects on Clearing Members and their clients”). OCC also provided more detailed information to the Commission confidentially. See Notice of Filing, 89 FR at 65697 n.17 (stating that OCC included an assessment of the impact of the Intraday Risk Charge on OCC’s Clearing Members). Subsequently, a commenter raised this issue again in response to OCC’s amendment of the filing. WEX II at 3-6 (stating the Proposed Rule Change is inconsistent with the Exchange Act because it “lacks sufficient analysis or information” for the Commission to analyze or “critically evaluate any OCC analysis of the Proposal against relevant statutory standards”). However, OCC provided updated impact data when it amended the proposal. See Notice of Filing of Amendment No. 3, 90 FR at 7727.

¹³⁶ 5 U.S.C. 552.

¹³⁷ See 5 U.S.C. 552(a)(8)(A)(i)(I).

could be withheld from the public under FOIA. FOIA Exemption 4 protects confidential commercial or financial information.¹³⁸ Information is confidential under Exemption 4 if it “is both customarily and actually treated as private by its owner and provided to government under an assurance of privacy.”¹³⁹ In its requests for confidential treatment, OCC stated that it has not disclosed the confidential exhibits to the public, and the information is the type that would not customarily be disclosed to the public. The Commission has reviewed the confidential exhibits and confirmed that they contain trade secrets and commercial or financial information consisting of internal policies and procedures, internal statistical calculations and descriptions, and confidential regulatory findings that have not been disclosed to the public and that would not customarily be disclosed to the public. In addition, by requesting confidential treatment, OCC had an assurance of privacy because the Commission generally protects information that can be withheld under Exemption 4. After reviewing these documents, the Commission concludes that their disclosure foreseeably could cause OCC to suffer financial losses, competitive disadvantage, or reputational harm. For these reasons, the Commission has determined to afford confidential treatment to the confidential exhibits.

Another commenter stated that the Initial Filing was missing “any analysis of the estimated margin costs associated with the Proposal and the impact on OCC members and their clients.”¹⁴⁰ This is not accurate. Consistent with other filings, OCC included in the publicly available portion of its Initial Filing data regarding the potential impact to Clearing Members of the Proposed Rule Change. Specifically, OCC observed that the proposed add-on would have

¹³⁸ 5 U.S.C. 552(b)(4).

¹³⁹ *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356, 2366 (2019).

¹⁴⁰ FIA PTG Letter at 2.

generated an average margin increase of less than 5% in the aggregate,¹⁴¹ and that, for the most impacted members, the average daily margin percentage increases would range from approximately 3% to 35% based on data from October 2023.¹⁴² In addition to the publicly-available analysis in the Proposed Rule Change, OCC also analyzed the estimated margin costs associated with the Intraday Risk Charge and its impact on OCC Clearing Members and their clients and submitted the results of that analysis to the Commission as confidential exhibits, as discussed above. Further, in connection with Amendment No. 3, OCC provided additional data demonstrating that the amendments to the proposal would reduce the impact on members.¹⁴³ Specifically, where the Initial Filing would have generated an average margin increase of \$1.968 billion across all Clearing Members, the data provided by OCC demonstrates that the amended filing would generate an average margin increase of approximately \$1.099 billion across all Clearing Members, a nearly \$1 billion reduction.¹⁴⁴

Taken together, as discussed above, the Proposed Rule Change will increase the likelihood that OCC would maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. Accordingly, the Proposed Rule Change is consistent with the requirements of Rule 17Ad-22(e)(4)(i) under the Exchange Act.¹⁴⁵

D. *Consistency with Rule 17Ad-22(e)(6)(ii) under the Exchange Act*

Rule 17Ad-22(e)(6)(ii) under the Exchange Act requires, *inter alia*, that a CCA establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover

¹⁴¹ Notice of Filing, 89 FR at 65697.

¹⁴² *Id.*

¹⁴³ *See* Notice of Filing of Amendment No. 3, 90 FR at 7727.

¹⁴⁴ *Id.* OCC further broke out the impact by account type. *See id.*

¹⁴⁵ 17 CFR 240.17ad-22(e)(4)(i).

its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, among other things, monitors intraday exposures on an ongoing basis; includes the authority and operational capacity to make intraday margin calls, as frequently as circumstances warrant, including when risk thresholds specified by the CCA are breached or when the products cleared or markets served display elevated volatility; and documents when the CCA determines not to make an intraday call pursuant to its written policies and procedures.¹⁴⁶

As described in Section II.A. above, the Proposed Rule Change would establish an Intraday Risk Charge that is calculated based on the average of the daily peak intraday risk increases from portfolio position changes measured using 20-minute snapshots between 11:00 a.m. and 12:30 p.m. Central Time over the preceding month. Separately and independently from the Intraday Risk Charge, OCC would monitor verified intraday risk increases for the purpose of issuing margin calls at 20-minute intervals between the hours of 12:30 a.m. through 3:15 p.m. Central Time, as described in Section II.B., above. Thus, the Proposed Rule Change would establish a risk-based margin system that monitors intraday exposures on an ongoing basis.

In addition to the margin collection capabilities under OCC Rules 609 and 307, the Proposed Rule Change would amend the Margin Policy to define Intraday Monitoring Thresholds for monitoring intraday exposure for purposes of issuing potential margin calls. These amendments to the Margin Policy would not only allow for a single mid-day collection time, but also facilitate decisions to issue or not issue unscheduled margin calls based on certain criteria and subject to articulated governance processes. The Proposed Rule Change also would require documentation of such decision-making. As such, the Proposed Rule Change would grant OCC the authority and operational capacity to make intraday margin calls as frequently as

¹⁴⁶ 17 CFR 240.17ad-22(e)(6)(ii).

circumstances warrant, and require the necessary documentation underlying the decision to not make an intraday call. Accordingly, the Proposed Rule Change is consistent with the requirements of Rule 17Ad-22(e)(6)(ii) under the Exchange Act.¹⁴⁷

E. *Consistency with Rule 17Ad-22(e)(2)(v) under the Exchange Act*

Rule 17Ad-22(e)(2)(v) under the Exchange Act requires that a CCA establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that specify clear and direct lines of responsibility.¹⁴⁸

Along with establishing the Intraday Risk Charge and the Intraday Monitoring Thresholds, the Proposed Rule Change would modify OCC's Margin Policy and internal documents to include specific governance arrangements and evaluation criteria related to the Intraday Risk Charge and Intraday Monitoring Thresholds. For example, as stated in Section II.A above, FRM Officer approval would be necessary to impose the monthly Intraday Risk Charge. Adjustments could occur at the time of the determination of the Intraday Risk Charge amount or on an intra-month basis but would be limited to clearly defined circumstances, where reductions would be limited to business reduction, account terminations, transfer of positions to different account(s), or the imposition of protective measures under Rule 307B, and increases would be limited to business expansions. If the FRM Officer recommends any changes to an Intraday Risk Charge, the MRWG would be required to review and would be authorized to escalate the recommendation to the Office of the Chief Executive Officer, who would then review and be authorized to approve the changes.

¹⁴⁷ *Id.*

¹⁴⁸ 17 CFR 240.17ad-22(e)(2)(v).

Similarly, as described in Sections II.B and II.C above, relating to the Intraday Monitoring Thresholds, OCC's amended Margin Policy states that intraday margin calls would be issued at a single intraday collection time and requires that any margin calls outside of the collection time must be approved by the Chief Financial Risk Officer, Chief Executive Officer, Chief Operations Officer, or Chief Risk Officer. The revised Margin Policy also specifies that an FRM Officer may decide against issuing a margin call at the single intraday collection time if, in the Officer's judgment, the intraday call is not necessary to effectively manage the risk posed to OCC based on the specific facts and circumstances; and the FRM Officer must document such a determination.

Additionally, FRM will coordinate a review of the thresholds, calculation, and lookback period for the Intraday Risk Charge and Intraday Monitoring Thresholds on an at least annual basis, or more frequently as needed. Although OCC would retain the authority to adjust any of these items, such adjustments would be subject to an analysis of the activity generating peak intraday margin numbers, the number of breaches above the monitoring thresholds, and overall market activity and trends within the lookback period. The review would be presented to the MRWG, which must review and would be authorized to escalate any recommended changes to the Office of the Chief Executive Officer, which in turn must review and would be authorized to approve or disapprove the recommended changes. OCC's Risk Committee would be notified of all changes.

One commenter expressed uncertainty regarding whether the proposed monitoring and escalation criteria for Clearing Members whose intraday activity may exceed certain thresholds relative to its Intraday Risk Charge is properly designed.¹⁴⁹ The commenter stated that such

¹⁴⁹ See STA Letter at 3.

monitoring may impact participants performing similar roles differently, without explaining the basis for this concern.¹⁵⁰ As a general response, OCC stated that it “believes it reasonably designed the proposed rule using its existing tools to address the increasing risks presented by the trading of SDO and 0DTE.”¹⁵¹ OCC responded further that, given the accelerating pace of change in the options markets, “OCC believes it is imperative to address these risks now and that leveraging its existing technology to account for intraday risks is essential to support OCC’s core risk management mission.”¹⁵² As part of this approach, “OCC also intends to implement enhanced tools to measure and monitor intraday risk increases presented by Clearing Member trading activities so that it may call for additional margin when it deems necessary and appropriate.”¹⁵³

Together, the proposed discretion to issue margin calls and related governance processes relating to the Intraday Risk Charge and Intraday Monitoring Thresholds are consistent with OCC’s established internal policies and procedures.¹⁵⁴ Additionally, the Proposed Rule Change would clearly document the multi-layered decision-making process and explicitly specify parties and their responsibilities, thus helping to foster accountability and aiding OCC in fulfilling its risk management obligations.

Accordingly, the proposed changes to further detail OCC’s processes for governing its Intraday Risk Charge and the Intraday Monitoring Thresholds are consistent with the requirements of Rule 17Ad-22(e)(2)(v) under the Exchange Act.¹⁵⁵

¹⁵⁰ *Id.*

¹⁵¹ *See* OCC I at 5.

¹⁵² *Id.* at 2.

¹⁵³ *Id.*

¹⁵⁴ OCC provided its Margin Policy as a confidential Exhibit 5B to File No. SR-OCC-2024-010.

¹⁵⁵ 17 CFR 240.17ad-22(e)(2)(v).

V. CONCLUSION

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act and the rules and regulations thereunder.¹⁵⁶

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,¹⁵⁷ that the Proposed Rule Change (SR-OCC-2024-010) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵⁸

Sherry R. Haywood,

Assistant Secretary.

¹⁵⁶ In approving this Proposed Rule Change, the Commission has considered the Proposed Rule Change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f); *see also supra* Sections III.B and III.C.

¹⁵⁷ 15 U.S.C. 78s(b)(2).

¹⁵⁸ 17 CFR 200.30-3(a)(12).