

Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2024 - * 017

Amendment No. (req. for Amendments *)

Filing by Options Clearing Corporation

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed Rule Change to Update The Options Clearing Corporation Schedule of Fees

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Last Name *

Title *

E-mail * rulefilings@theocc.com

Telephone * (312) 322-6200 Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Options Clearing Corporation has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 12/19/2024

(Title *)

By

(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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SR-OCC-2024-017 (Fee Change) 19b

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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SR-OCC-2024-017 (Fee Change) Exf

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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SR-OCC-2024-017 (Fee Change) Exh

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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SR-OCC-2024-017 (Fee Change) Exh

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 19b-4

Proposed Rule Change
by

THE OPTIONS CLEARING CORPORATION

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

Item 1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),¹ and Rule 19b-4 thereunder,² The Options Clearing Corporation (“OCC”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to revise OCC’s schedule of fees effective January 1, 2025, to implement an increase in clearing fees. Specifically, OCC proposes to increase the per contract clearing fee from \$0.02 to \$0.025 and to remove the flat per transaction fee (currently \$55.00 for transactions of 2,751 or more contracts) entirely. The fee change is designed to address OCC’s anticipated cash flow needs based on interest rate forecasts, projected operating expenses, projected volumes, and capital needs. Proposed changes to OCC’s schedule of fees are included as Exhibit 5 to File Number SR-OCC-2024-017. Material proposed to be added to OCC’s schedule of fees as currently in effect is underlined and material proposed to be deleted is marked in strikethrough text. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.³

Item 2. Procedures of the Self-Regulatory Organization

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ OCC’s By-Laws and Rules can be found on OCC’s public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

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

A. Purpose

As the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission, and with respect to OCC’s clearance and settlement of futures and stock loan transactions, OCC maintains policies and procedures to manage the risks borne by OCC as a central counterparty. One such risk that OCC manages is general business risk — that is, the risk of potential impairment to OCC’s financial position resulting from a decline in revenues or an increase in expenses. To manage this risk and help to ensure that OCC can continue operations and services as a going concern if general business losses materialize, OCC has filed, and the Commission has approved, OCC’s Capital Management Policy,⁴ which provides the framework by which OCC manages its capital. Amending OCC’s schedule of fees is one action used by OCC to manage its capital.

In accordance with the Capital Management Policy, OCC management reviews the fee schedule at regularly scheduled meetings and, considering factors including, but not limited to, interest rate forecasts, anticipated cashflows, projected operating expenses, projected volumes, and capital needs, recommends to the Board (or a committee to which the Board has delegated authority) whether a fee change should be made. In accordance with such procedures, OCC

⁴ See Notice of Filing and Immediate Effectiveness of Proposed Rule Change Concerning Updates to OCC’s Capital Management Policy, Exchange Act Release No. 101151 (Sep. 24, 2024), 89 FR 79668 (Sep. 30, 2024) (SR-OCC-2024-012); Order Approving Proposed Rule Change to Establish OCC’s Persistent Minimum Skin-In-The-Game, Exchange Act Release No. 92038 (May 27, 2021), 86 FR 29861 (June 3, 2021) (SR-OCC-2021-003); Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, Concerning a Proposed Capital Management Policy That Would Support the Option Clearing Corporation’s Function as a Systemically Important Financial Market Utility, Exchange Act Release No. 88029 (Jan. 24, 2020), 85 FR 5500 (Jan. 30, 2020) (SR-OCC-2019-007); see also Notice of Filing of Partial Amendment No. 1 and Notice of No Objection to Advance Notice, as Modified by Partial Amendment No. 1, Concerning a Proposed Capital Management Policy That Would Support the Option Clearing Corporation’s Function as a Systemically Important Financial Market Utility, Exchange Act Release No. 87257 (Oct. 8, 2019), 84 FR 55194 (Oct. 15, 2019) (SR-OCC-2019-805).

management recommended, and the Compensation and Performance Committee of OCC's Board approved, the proposed fee change. The purpose of this proposed rule change is to revise OCC's schedule of fees, effective January 1, 2025, to implement an increase in clearing fees, as further described below.

Proposed Fee Change

OCC proposes to implement an increase in clearing fees, effective January 1, 2025, to better align its clearing fees with the costs of providing its clearing and settlement services to Clearing Members. OCC serves market participants as a financially responsible steward of clearing services while ensuring that it meets regulatory expectations and responsibly invests in its infrastructure. OCC has in place policies and procedures, including the Capital Management Policy, to control costs and regularly review fees and operating expenses, including during its annual budgeting process. Consistent with the Capital Management Policy, OCC's clearing fees are based on the sum of OCC's annual budgeted or forecasted operating expenses, a defined operating margin, cash flow needs and OCC's capital requirement. OCC currently has a two-tier clearing fee structure: OCC charges a \$0.02 clearing fee per contract for transactions involving 2,750 or fewer contracts (the "Per Contract Clearing Fee"); and OCC charges a flat clearing fee of \$55.00 per transaction for transactions of 2,751 or more contracts (the "Per Transaction Clearing Fee"). After an evaluation of OCC's financial position in consideration of such factors, including interest rate forecasts, anticipated cash flows, projected operating expenses, projected volumes, and capital needs, OCC determined that it should increase the Per Contract Clearing Fee from \$0.02 to \$0.025 and remove the Per Transaction Clearing Fee. Accordingly, going forward, OCC will have a single tier clearing fee structure, i.e., OCC will charge one rate for clearing every contract, regardless of the size of the transaction.

OCC has not increased clearing fees since 2019. On April 1, 2019, OCC increased the Per Contract Clearing Fee from \$0.05 to \$0.055 and adjusted the quantity of contracts at which the Per Transaction Clearing Fee applied from greater than 1,100 contracts to greater than 999 contracts per transaction.⁵ Since that time, OCC decreased clearing fees twice in accordance with the Capital Management Policy.⁶ On September 1, 2020, OCC decreased the Per Contract Clearing Fee from \$0.055 to \$0.045 and adjusted the quantity of contracts at which the Per Transaction Clearing Fee applied from transactions with more than 999 contracts to transactions with more than 1,222 contracts per transaction.⁷ On June 1, 2021, OCC decreased the Per Contract Clearing Fee from \$0.045 to its current fee of \$0.02 and adjusted the quantity of contracts at which the Per Transaction Clearing Fee applied from transactions with more than 1,222 contracts to transactions with more than 2,750 contracts.⁸ OCC also implemented a fee

⁵ See Exchange Act Release No. 85322 (Mar. 14, 2019), 84 FR 10377 (Mar. 20, 2019) (File No. SR-OCC-2019-001) (modifying the schedule of fees to (i) increase the Per Contract Clearing Fee from \$0.05 to \$0.055 and (ii) adjust the quantity of contracts at which the Per Transaction Clearing Fee begins from greater than 1,100 contracts per transaction to greater than 999 contracts per transaction).

⁶ Under the Capital Management Policy as drafted at the time of the fee decreases, if OCC's Equity is above 110% of the Target Capital Requirement and other approved capital needs, OCC's Board may use tools to lower costs for Clearing Members, including lowering fees, declaring a fee holiday, or issuing refunds. See Exchange Act Release No. 88029 (Jan. 24, 2020), 85 FR 5500, 5502 (Jan. 30, 2020) (SR-OCC-2019-007). The Commission recently approved a change to OCC's Capital Management Policy, such that OCC's Board may use such tools to lower the costs for Clearing Members if liquid net assets funded by equity, rather than Equity, is above 110% of the Target Capital Requirement. See Exchange Act Release No. 101151 (Sept. 24, 2024), 89 FR 79668, 79670 (Sept. 30, 2024) (File No. SR-OCC-2024-12).

⁷ See Exchange Act Release No. 89534 (Aug. 12, 2020), 85 FR 50858 (Aug. 18, 2020) (File No. SR-OCC-2020-009) (modifying the schedule of fees to (i) decrease the Per Contract Clearing Fee from \$0.055 to \$0.045 and (ii) adjust the quantity of contracts at which the Per Transaction Clearing Fee begins from transactions with more than 999 contracts per transaction to transactions with more than 1,222 contracts per transaction).

⁸ See Exchange Act Release No. 91920 (May 18, 2021), 86 FR 27916 (May 24, 2021) (File No. SR-OCC-2021-006) (modifying the schedule of fees to (i) decrease the Per Contract Clearing Fee from \$0.045 to \$0.02 and (ii) adjust the quantity of contracts at which the Per Transaction Clearing Fee begins from transactions with more than 1,222 contracts per transaction to transactions with more than 2,750).

holiday for the period of November 2021 to December 2021 to decrease all clearing fees to \$0 for the last two months of 2021.⁹

Since the current clearing fees were set in 2021, the U.S. economy has experienced (i) notable inflation¹⁰ and (ii) a fluctuating interest rate environment. For instance, the dollar had an average inflation rate of 5.18% per year between 2021 and 2024, producing a cumulative price increase of approximately 16%.¹¹ While the proposed Per Contract Clearing Fee constitutes a 25% increase from the fee adopted in 2021, which is higher than the cumulative price increase, OCC believes the proposed fee increase is reasonable given the increased expenses associated with its technology infrastructure and the lower interest rate environment discussed below. Notably, the costs associated with OCC's technology hardware, including upfront and maintenance costs, have outpaced the rate of inflation. In addition to rising costs associated with inflation, decreasing interest rates will have a negative impact on what has been a reliable source of income for OCC. Moreover, inflation increases the price of goods and services over time, however, the price levels that result from those inflationary run-ups tend not to decrease even as inflation decreases, which results in OCC's costs remaining at those higher price levels.

During a review of OCC's fees in 2024, and in consideration of factors including, but not limited to, interest rate forecasts, anticipated cash flows, projected operating expenses, projected volumes, and capital needs, OCC management recommended, and the Compensation and Performance Committee of OCC's Board approved, to increase the Per Contract Clearing Fee by

⁹ See Exchange Act Release Nos. 93195 (Sept. 29, 2021), 86 FR 55039 (Oct. 5, 2021) (File No. SR-OCC-2021-009) and 93612 (Nov. 18, 2021), 86 FR 67108 (Nov. 24, 2021) (File No. SR-OCC-2021-012).

¹⁰ Other self-regulatory organizations have referenced such inflation when filing fee increases. See, e.g., Exchange Act Release Nos. 101017 (Sep. 12, 2024), 89 FR 76545 (Sep. 18, 2024) (File No. SR-CboeBYX-2024-032), 100882 (Aug. 30, 2024), 89 FR 72542 (Sep. 5, 2024) (File No. SR-BOX-2024-19).

¹¹ See the inflation calculator, measuring inflation as of October 16, 2024, at <https://www.officialdata.org/us/inflation/2021?amount=1>.

\$0.005 to \$0.025 and remove the Per Transaction Clearing Fee. The Per Transaction Clearing Fee currently limits the fee for clearing transactions with more than 2,750 contracts to \$55.00 per transaction. Removal of the Per Transaction Clearing Fee would subject all transactions, regardless of contract size, to the same Per Contract Clearing Fee of \$0.025. These changes are designed to address OCC's anticipated cash flow needs based on interest rate forecasts, projected operating expenses, projected volumes, and capital needs. In particular, as more fully described herein, OCC's anticipated cash flow needs have changed due to a decline in projected revenue from interest income; an increase in projected expenses associated with the development, maintenance, and modernization of OCC's technology infrastructure, including growing technology hardware costs and additional employee time; and an increase in capital needs, including due to inflation and increased investment in growing areas such as cybersecurity.

The proposed fee change is intended to better align OCC's clearing fees with the costs of providing its clearing and settlement services to Clearing Members. In determining the fee change, OCC considered analyses based on certain assumptions and projections, including declining interest rates contributing to a decrease in revenue. The effective federal funds rate increased significantly from near zero beginning in early 2022 to peaks over 5% in the fall of 2023, generating additional income for OCC.¹² Interest rates have recently decreased.¹³ The general expectation in the marketplace is that rates will continue to decline into 2025, which will have a negative impact on interest and investment revenue from clearing margin cash balances, which has been a reliable source of income for OCC over the past three years.

¹² See Effective Federal Funds Rate at <https://www.newyorkfed.org/markets/reference-rates/effr>.

¹³ Id. As of October 7, 2024, the effective federal funds rate was 4.83%.

Moreover, OCC has increased investments in various areas, such as compliance, regulatory, legal, and cybersecurity, and headcount, since the last time it increased clearing fees. In addition, the costs associated with providing OCC’s clearing and settlement services, including the maintenance, development, and modernization of its technology infrastructure, are significant and have increased OCC’s cash flow needs year-over-year. Investment in OCC’s technology infrastructure will allow OCC to continue to deliver best-in-class service from a risk management and settlement perspective. However, such investment has also required OCC to make significant capital expenditures, including information technology, employee time, and other resources needed to maintain, develop, and modernize its infrastructure.

The proposed fee change would better align OCC’s clearing fees with the costs of providing its clearing and settlement services to Clearing Members. To implement the proposed changes, OCC would update its schedule of fees as set out below.

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

The proposed fee change is designed to promote cost management in compliance with Rule 17Ad-22(e)(15) under the Exchange Act that, among other things, requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk,¹⁴ which includes the risk of potential impairment to OCC’s financial position resulting from a decline in revenues or an increase in

¹⁴ See 17 CFR 240.17Ad-22(e)(15).

expenses. As described above, the proposed fee change would better align OCC's clearing fees with the costs of providing its clearing and settlement services to Clearing Members. Despite increased expenses associated with its technology infrastructure and notable inflation, OCC has not increased clearing fees since 2019.

The proposed Per Contract Clearing Fee of \$0.025 continues to be in line with, or even lower than, the Per Contract Clearing Fees OCC assessed in the past five years, which ranged from \$0.055 in 2019 to \$0.02 today. The proposed Per Contract Clearing Fee of \$0.025 represents a 54% decrease from the Per Contract Clearing Fee charged in 2019. Moreover, removal of the Per Transaction Clearing Fee ensures that Clearing Members are charged the same Per Contract Clearing Fee per transaction regardless of the size of such transaction. OCC believes that charging all Clearing Members the same fee, regardless of transaction size, equitably and reasonably allocates the cost of providing clearance and settlement services for a given transaction regardless of size.¹⁵ In particular, OCC believes that removing the Per Transaction Clearing Fee is equitable because all transactions will be charged the same fee regardless of size. OCC also believes that removing the Per Transaction Clearing Fee is reasonable because all transactions will be charged the same fee of \$0.025 per contract, which continues to be in line with, or even lower than, the Per Contract Clearing Fees OCC assessed in the past five years, as noted above.¹⁶

¹⁵ See confidential Exhibit 3 to SR-OCC-2024-017 for additional detail and analysis regarding the proposed fee change. Removing the Per Transaction Clearing Fee allows OCC to limit the Per Contract Clearing Fee increase to \$0.005, which minimizes impact while equitably allocating the cost of providing clearance and settlement services for a given transaction regardless of size.

¹⁶ Other self-regulatory organizations have filed to remove fee caps from their fee schedules. See, e.g., Exchange Act Release Nos. 93873 (Dec. 29, 2021), 87 FR 508 (Jan. 5, 2022) (File No. SR-NSCC-2021-017), 93562 (Nov. 12, 2021), 86 FR 64554 (Nov. 18, 2021) (File No. SR-BOX-2021-026).

OCC reviewed volume and clearing fees OCC assessed from June 2021¹⁷ through November 2024 to determine the impact of the proposed change. OCC determined that the average clearing fee per contract per year, including fees generated by the Per Transaction Clearing Fee, was approximately \$0.019 per contract, which represents only a 5% decrease from the lowest per contract clearing fee charged during this time frame, i.e., \$0.02. Most recently, from January through November 2024, the average clearing fee per contract was \$0.019, including the Per Transaction Clearing Fee, and would have been \$0.020 without the Per Transaction Clearing Fee, which represents a 5% difference and shows a limited impact to Clearing Members from the removal of the Per Transaction Clearing Fee.

Furthermore, OCC did not intend the Per Transaction Clearing Fee to incentivize transactions over a certain size, nor does OCC believe it is necessary for OCC to provide an incentive for such transactions. The Per Transaction Clearing Fee is based on the longstanding structure of OCC's schedule of fees, which has historically included various tiers and caps.¹⁸ In 2016, OCC filed to modify the schedule of fees to adopt a flat, per contract, clearing fee subject to a fixed dollar cap, which would promote simplicity and transparency and allow users to execute trades without regard to size.¹⁹ The proposed changes would allow OCC to continue to promote simplicity and transparency in its schedule of fees by moving to a single tier clearing fee structure, which removes the Per Transaction Clearing Fee. As discussed, such changes limit the Per Contract Clearing Fee increase to \$0.005 while equitably allocating the cost of providing

¹⁷ Due to the fee holiday in November and December 2021, the average clearing fee per contract for 2021 was calculated using data through October 31, 2021.

¹⁸ See Exchange Act Release No. 55709 (May 4, 2007), 72 FR 26669 (May 10, 2007) (File No. SR-OCC-2007-05).

¹⁹ See Exchange Act Release No. 77336 (Mar. 10, 2016), 81 FR 14153 (Mar. 16, 2016) (File No. SR-OCC-2016-005).

clearance and settlement services for a given transaction regardless of size.²⁰ As described above, OCC believes that the Per Contract Clearing Fee is reasonable and that it would not be discriminatory or prohibitive to remove the Per Transaction Clearing Fee for those Clearing Members that currently submit transactions with more than 2,750 contracts such that Clearing Members would continue to execute transactions without regard to size.²¹ At this time, OCC believes the proposed fee change is appropriate in order to raise fees to more closely align with its cash flow needs. Such change would ensure that OCC continues to serve market participants as a financially responsible steward of clearing services while ensuring that it meets regulatory expectations and responsibly invests in its infrastructure.

Implementation Timeframe

OCC proposes to make the fee change effective January 1, 2025. To provide Clearing Members with adequate time to make any necessary adjustments, OCC has provided notice of such changes by Information Memorandum at least 30 calendar days in advance of the effective date.²² This ensures that the industry is prepared to process the new fee without disruption. Additionally, OCC would not make the fee change operative until after the time required to self-certify the proposed change with the Commodity Futures Trading Commission (“CFTC”).

²⁰ See supra note 15.

²¹ OCC believes that removing the Per Transaction Clearing Fee would not unfairly disadvantage or burden smaller market participants, as larger market participants tend to benefit more from the Per Transaction Clearing Fee due to their trading activity.

²² The Information Memorandum can be found on OCC’s public website: <https://infomemo.theocc.com/infomemos?number=55624>.

B. Statutory Basis

OCC believes the proposed rule change is consistent with the Act²³ and the rules and regulations thereunder. In particular, OCC believes that the proposed fee change is consistent with Section 17A(b)(3)(D) of the Act,²⁴ which requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

OCC believes that the proposed fee change is reasonable. The proposed fee change is intended to better align OCC's clearing fees with the costs of providing its clearing and settlement services to Clearing Members by ensuring that OCC continues to maintain sufficient reserves to cover OCC's cash flows and address potential business or operational losses so that OCC can continue to meet its obligations as a systemically important financial market utility to Clearing Members and the general public if such losses were to materialize. OCC believes the proposed fee change is reasonable given increased expenses associated with its technology infrastructure, notable inflation, and the fluctuating interest rate environment, as discussed above. With respect to the removal of the Per Transaction Clearing Fee, OCC believes that charging all Clearing Members a flat fee per contract is reasonable as it equitably allocates the cost of providing clearance and settlement services for a given transaction regardless of size. Further, OCC does not believe the proposed Per Contract Clearing Fee would create a financial burden as it continues to be in line with, or even lower than, the clearing fees assessed by OCC over the past five years. OCC also does not believe that removal of the Per Transaction Clearing

²³ 15 U.S.C. 78a, et seq.

²⁴ 15 U.S.C. 78q-1(b)(3)(D).

Fee would create a financial burden as it ensures that Clearing Members are charged the same Per Contract Clearing Fee per transaction regardless of the size of such transaction.

As discussed above, OCC determined that the average clearing fee per contract per year from June 2021²⁵ through November 2024, including fees generated by the Per Transaction Clearing Fee, represented only a 5% decrease from the lowest Per Contract Clearing Fee charged during this time frame. From January through November 2024, the average clearing fee per contract was \$0.019, including the Per Transaction Clearing Fee, and would have been \$0.020 without the Per Transaction Clearing Fee, which represents a 5% difference and shows a limited impact to Clearing Members from the removal of the Per Transaction Clearing Fee. OCC believes that the Per Contract Clearing Fee is reasonable and would not be discriminatory without the Per Transaction Clearing Fee for those Clearing Members that currently submit transactions with more than 2,750 contracts. OCC thus believes that it does not constitute an inequitable allocation of fees and is not unfairly discriminatory to remove the Per Transaction Clearing Fee. In accordance with its current policies and procedures, OCC will continue to evaluate the fee schedule at regularly scheduled meetings to determine if additional changes, including fee decreases, are necessary or appropriate at such time, including once OCC's technology infrastructure modernization initiative is complete.

OCC also believes that the proposed fee change would result in an equitable allocation of fees among its participants because it would be equally applicable to all Clearing Members transacting at any given level of contract volume. As a result, OCC believes that the proposed

²⁵ See supra note 17.

change to OCC's fee schedule provides for the equitable allocation of reasonable fees in accordance with Section 17A(b)(3)(D) of the Act.²⁶

In addition, OCC believes that the proposed rule change is consistent with Rule 17Ad-22(e)(15), which requires that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage OCC's general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that OCC can continue operations and services as a going concern if those losses materialize.²⁷ The proposed changes are designed to promote cost management in compliance with this Rule. As described above, the proposed fee change would better align OCC's clearing fees with the costs of providing its clearing and settlement services to Clearing Members to ensure that OCC continues to maintain sufficient reserves to cover OCC's cash flow needs and address potential business or operational losses so that OCC can continue to meet its obligations as a systemically important financial market utility to Clearing Members and the general public if such losses were to materialize. Therefore, OCC believes that the proposed changes to OCC's schedule of fees are consistent with Rule 17Ad-22(e)(15).²⁸

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

Section 17A(b)(3)(I) of the Act²⁹ requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule change would have any impact or impose a burden on competition. OCC believes that the proposed rule change would not disadvantage or favor

²⁶ 15 U.S.C. 78q-1(b)(3)(D).

²⁷ 17 CFR 240.17Ad-22(e)(15).

²⁸ Id.

²⁹ 15 U.S.C. 78q-1(b)(3)(I).

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

Item 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

Item 6. Extension of Time Period for Commission Action

OCC does not consent to an extension of the time period specified in Section 19(b)(2) of the Act.³⁰

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act³¹ and Rule 19b-4(f)(2) thereunder,³² the proposed rule change is filed for immediate effectiveness as it constitutes a change in fees charged only to OCC Clearing Members. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

³⁰ 15 U.S.C. 78s(b)(2).

³¹ 15 U.S.C. 78s(b)(3)(A)(ii).

³² 17 CFR 240.19b-4(f)(2).

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.³³

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

Not applicable.

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

Not applicable.

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

Not applicable.

Item 11. Exhibits

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

Exhibit 3. Confidential Data and Analysis.

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

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

³³ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-[_____]; File No. SR-OCC-2024-017)

[December __, 2024]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Update The Options Clearing Corporation's Schedule of Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 19, 2024, The Options Clearing Corporation (“OCC” or “Corporation”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii)³ of the Act and Rule 19b-4(f)(2)⁴ thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would revise OCC's schedule of fees effective January 1, 2025, to implement an increase in clearing fees. Specifically, OCC proposes to increase the per contract clearing fee from \$0.02 to \$0.025 and to remove the flat per transaction fee (currently \$55.00 for transactions of 2,751 or more contracts) entirely.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

The fee change is designed to address OCC's anticipated cash flow needs based on interest rate forecasts, projected operating expenses, projected volumes, and capital needs. Proposed changes to OCC's schedule of fees are included as Exhibit 5 to File Number SR-OCC-2024-017. Material proposed to be added to OCC's schedule of fees as currently in effect is underlined and material proposed to be deleted is marked in strikethrough text. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.⁵

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

As the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission, and with respect to OCC's clearance and settlement of futures and stock loan transactions, OCC maintains policies and procedures to manage the risks borne by OCC as a central counterparty. One such risk that OCC manages is general business risk — that is, the risk of potential impairment to OCC's financial position resulting from a decline in revenues or an increase in

⁵ OCC's By-Laws and Rules can be found on OCC's public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

expenses. To manage this risk and help to ensure that OCC can continue operations and services as a going concern if general business losses materialize, OCC has filed, and the Commission has approved, OCC's Capital Management Policy,⁶ which provides the framework by which OCC manages its capital. Amending OCC's schedule of fees is one action used by OCC to manage its capital.

In accordance with the Capital Management Policy, OCC management reviews the fee schedule at regularly scheduled meetings and, considering factors including, but not limited to, interest rate forecasts, anticipated cashflows, projected operating expenses, projected volumes, and capital needs, recommends to the Board (or a committee to which the Board has delegated authority) whether a fee change should be made. In accordance with such procedures, OCC management recommended, and the Compensation and Performance Committee of OCC's Board approved, the proposed fee change. The purpose of this proposed rule change is to revise OCC's schedule of fees, effective January 1, 2025, to implement an increase in clearing fees, as further described below.

Proposed Fee Change

OCC proposes to implement an increase in clearing fees, effective January 1, 2025, to better align its clearing fees with the costs of providing its clearing and settlement services to Clearing Members. OCC serves market participants as a

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

financially responsible steward of clearing services while ensuring that it meets regulatory expectations and responsibly invests in its infrastructure. OCC has in place policies and procedures, including the Capital Management Policy, to control costs and regularly review fees and operating expenses, including during its annual budgeting process. Consistent with the Capital Management Policy, OCC's clearing fees are based on the sum of OCC's annual budgeted or forecasted operating expenses, a defined operating margin, cash flow needs and OCC's capital requirement. OCC currently has a two-tier clearing fee structure: OCC charges a \$0.02 clearing fee per contract for transactions involving 2,750 or fewer contracts (the "Per Contract Clearing Fee"); and OCC charges a flat clearing fee of \$55.00 per transaction for transactions of 2,751 or more contracts (the "Per Transaction Clearing Fee"). After an evaluation of OCC's financial position in consideration of such factors, including interest rate forecasts, anticipated cash flows, projected operating expenses, projected volumes, and capital needs, OCC determined that it should increase the Per Contract Clearing Fee from \$0.02 to \$0.025 and remove the Per Transaction Clearing Fee. Accordingly, going forward, OCC will have a single tier clearing fee structure, i.e., OCC will charge one rate for clearing every contract, regardless of the size of the transaction.

OCC has not increased clearing fees since 2019. On April 1, 2019, OCC increased the Per Contract Clearing Fee from \$0.05 to \$0.055 and adjusted the quantity of contracts at which the Per Transaction Clearing Fee applied from greater than 1,100 contracts to greater than 999 contracts per transaction.⁷ Since that time, OCC decreased

⁷ See Exchange Act Release No. 85322 (Mar. 14, 2019), 84 FR 10377 (Mar. 20, 2019) (File No. SR-OCC-2019-001) (modifying the schedule of fees to (i) increase the Per Contract Clearing Fee from \$0.05 to \$0.055 and (ii) adjust the quantity of contracts at which the Per Transaction

clearing fees twice in accordance with the Capital Management Policy.⁸ On September 1, 2020, OCC decreased the Per Contract Clearing Fee from \$0.055 to \$0.045 and adjusted the quantity of contracts at which the Per Transaction Clearing Fee applied from transactions with more than 999 contracts to transactions with more than 1,222 contracts per transaction.⁹ On June 1, 2021, OCC decreased the Per Contract Clearing Fee from \$0.045 to its current fee of \$0.02 and adjusted the quantity of contracts at which the Per Transaction Clearing Fee applied from transactions with more than 1,222 contracts to transactions with more than 2,750 contracts.¹⁰ OCC also implemented a fee holiday for the period of November 2021 to December 2021 to decrease all clearing fees to \$0 for the last two months of 2021.¹¹

Clearing Fee begins from greater than 1,100 contracts per transaction to greater than 999 contracts per transaction).

- ⁸ Under the Capital Management Policy as drafted at the time of the fee decreases, if OCC's Equity is above 110% of the Target Capital Requirement and other approved capital needs, OCC's Board may use tools to lower costs for Clearing Members, including lowering fees, declaring a fee holiday, or issuing refunds. See Exchange Act Release No. 88029 (Jan. 24, 2020), 85 FR 5500, 5502 (Jan. 30, 2020) (SR-OCC-2019-007). The Commission recently approved a change to OCC's Capital Management Policy, such that OCC's Board may use such tools to lower the costs for Clearing Members if liquid net assets funded by equity, rather than Equity, is above 110% of the Target Capital Requirement. See Exchange Act Release No. 101151 (Sept. 24, 2024), 89 FR 79668, 79670 (Sept. 30, 2024) (File No. SR-OCC-2024-12).
- ⁹ See Exchange Act Release No. 89534 (Aug. 12, 2020), 85 FR 50858 (Aug. 18, 2020) (File No. SR-OCC-2020-009) (modifying the schedule of fees to (i) decrease the Per Contract Clearing Fee from \$0.055 to \$0.045 and (ii) adjust the quantity of contracts at which the Per Transaction Clearing Fee begins from transactions with more than 999 contracts per transaction to transactions with more than 1,222 contracts per transaction).
- ¹⁰ See Exchange Act Release No. 91920 (May 18, 2021), 86 FR 27916 (May 24, 2021) (File No. SR-OCC-2021-006) (modifying the schedule of fees to (i) decrease the Per Contract Clearing Fee from \$0.045 to \$0.02 and (ii) adjust the quantity of contracts at which the Per Transaction Clearing Fee begins from transactions with more than 1,222 contracts per transaction to transactions with more than 2,750).
- ¹¹ See Exchange Act Release Nos. 93195 (Sept. 29, 2021), 86 FR 55039 (Oct. 5, 2021) (File No. SR-OCC-2021-009) and 93612 (Nov. 18, 2021), 86 FR 67108 (Nov. 24, 2021) (File No. SR-OCC-2021-012).

Since the current clearing fees were set in 2021, the U.S. economy has experienced (i) notable inflation¹² and (ii) a fluctuating interest rate environment. For instance, the dollar had an average inflation rate of 5.18% per year between 2021 and 2024, producing a cumulative price increase of approximately 16%.¹³ While the proposed Per Contract Clearing Fee constitutes a 25% increase from the fee adopted in 2021, which is higher than the cumulative price increase, OCC believes the proposed fee increase is reasonable given the increased expenses associated with its technology infrastructure and the lower interest rate environment discussed below. Notably, the costs associated with OCC's technology hardware, including upfront and maintenance costs, have outpaced the rate of inflation. In addition to rising costs associated with inflation, decreasing interest rates will have a negative impact on what has been a reliable source of income for OCC. Moreover, inflation increases the price of goods and services over time, however, the price levels that result from those inflationary run-ups tend not to decrease even as inflation decreases, which results in OCC's costs remaining at those higher price levels.

During a review of OCC's fees in 2024, and in consideration of factors including, but not limited to, interest rate forecasts, anticipated cash flows, projected operating expenses, projected volumes, and capital needs, OCC management recommended, and the Compensation and Performance Committee of OCC's Board approved, to increase the Per Contract Clearing Fee by \$0.005 to \$0.025 and remove the Per Transaction

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

¹³ *See* the inflation calculator, measuring inflation as of October 16, 2024, at <https://www.officialdata.org/us/inflation/2021?amount=1>.

Clearing Fee. The Per Transaction Clearing Fee currently limits the fee for clearing transactions with more than 2,750 contracts to \$55.00 per transaction. Removal of the Per Transaction Clearing Fee would subject all transactions, regardless of contract size, to the same Per Contract Clearing Fee of \$0.025. These changes are designed to address OCC's anticipated cash flow needs based on interest rate forecasts, projected operating expenses, projected volumes, and capital needs. In particular, as more fully described herein, OCC's anticipated cash flow needs have changed due to a decline in projected revenue from interest income; an increase in projected expenses associated with the development, maintenance, and modernization of OCC's technology infrastructure, including growing technology hardware costs and additional employee time; and an increase in capital needs, including due to inflation and increased investment in growing areas such as cybersecurity.

The proposed fee change is intended to better align OCC's clearing fees with the costs of providing its clearing and settlement services to Clearing Members. In determining the fee change, OCC considered analyses based on certain assumptions and projections, including declining interest rates contributing to a decrease in revenue. The effective federal funds rate increased significantly from near zero beginning in early 2022 to peaks over 5% in the fall of 2023, generating additional income for OCC.¹⁴ Interest rates have recently decreased.¹⁵ The general expectation in the marketplace is that rates will continue to decline into 2025, which will have a negative impact on interest and investment revenue from clearing margin cash balances, which has been a reliable source of income for OCC over the past three years.

¹⁴ See Effective Federal Funds Rate at <https://www.newyorkfed.org/markets/reference-rates/effr>.

¹⁵ Id. As of October 7, 2024, the effective federal funds rate was 4.83%.

Moreover, OCC has increased investments in various areas, such as compliance, regulatory, legal, and cybersecurity, and headcount, since the last time it increased clearing fees. In addition, the costs associated with providing OCC’s clearing and settlement services, including the maintenance, development, and modernization of its technology infrastructure, are significant and have increased OCC’s cash flow needs year-over-year. Investment in OCC’s technology infrastructure will allow OCC to continue to deliver best-in-class service from a risk management and settlement perspective. However, such investment has also required OCC to make significant capital expenditures, including information technology, employee time, and other resources needed to maintain, develop, and modernize its infrastructure.

The proposed fee change would better align OCC’s clearing fees with the costs of providing its clearing and settlement services to Clearing Members. To implement the proposed changes, OCC would update its schedule of fees as set out below.

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

The proposed fee change is designed to promote cost management in compliance with Rule 17Ad-22(e)(15) under the Exchange Act that, among other things, requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business

risk,¹⁶ which includes the risk of potential impairment to OCC's financial position resulting from a decline in revenues or an increase in expenses. As described above, the proposed fee change would better align OCC's clearing fees with the costs of providing its clearing and settlement services to Clearing Members. Despite increased expenses associated with its technology infrastructure and notable inflation, OCC has not increased clearing fees since 2019.

The proposed Per Contract Clearing Fee of \$0.025 continues to be in line with, or even lower than, the Per Contract Clearing Fees OCC assessed in the past five years, which ranged from \$0.055 in 2019 to \$0.02 today. The proposed Per Contract Clearing Fee of \$0.025 represents a 54% decrease from the Per Contract Clearing Fee charged in 2019. Moreover, removal of the Per Transaction Clearing Fee ensures that Clearing Members are charged the same Per Contract Clearing Fee per transaction regardless of the size of such transaction. OCC believes that charging all Clearing Members the same fee, regardless of transaction size, equitably and reasonably allocates the cost of providing clearance and settlement services for a given transaction regardless of size.¹⁷ In particular, OCC believes that removing the Per Transaction Clearing Fee is equitable because all transactions will be charged the same fee regardless of size. OCC also believes that removing the Per Transaction Clearing Fee is reasonable because all transactions will be charged the same fee of \$0.025 per contract, which continues to be in

¹⁶ See 17 CFR 240.17Ad-22(e)(15).

¹⁷ See confidential Exhibit 3 to SR-OCC-2024-017 for additional detail and analysis regarding the proposed fee change. Removing the Per Transaction Clearing Fee allows OCC to limit the Per Contract Clearing Fee increase to \$0.005, which minimizes impact while equitably allocating the cost of providing clearance and settlement services for a given transaction regardless of size.

line with, or even lower than, the Per Contract Clearing Fees OCC assessed in the past five years, as noted above.¹⁸

OCC reviewed volume and clearing fees OCC assessed from June 2021¹⁹ through November 2024 to determine the impact of the proposed change. OCC determined that the average clearing fee per contract per year, including fees generated by the Per Transaction Clearing Fee, was approximately \$0.019 per contract, which represents only a 5% decrease from the lowest per contract clearing fee charged during this time frame, i.e., \$0.02. Most recently, from January through November 2024, the average clearing fee per contract was \$0.019, including the Per Transaction Clearing Fee, and would have been \$0.020 without the Per Transaction Clearing Fee, which represents a 5% difference and shows a limited impact to Clearing Members from the removal of the Per Transaction Clearing Fee.

Furthermore, OCC did not intend the Per Transaction Clearing Fee to incentivize transactions over a certain size, nor does OCC believe it is necessary for OCC to provide an incentive for such transactions. The Per Transaction Clearing Fee is based on the longstanding structure of OCC's schedule of fees, which has historically included various tiers and caps.²⁰ In 2016, OCC filed to modify the schedule of fees to adopt a flat, per contract, clearing fee subject to a fixed dollar cap, which would promote simplicity and

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

¹⁹ Due to the fee holiday in November and December 2021, the average clearing fee per contract for 2021 was calculated using data through October 31, 2021.

²⁰ See Exchange Act Release No. 55709 (May 4, 2007), 72 FR 26669 (May 10, 2007) (File No. SR-OCC-2007-05).

transparency and allow users to execute trades without regard to size.²¹ The proposed changes would allow OCC to continue to promote simplicity and transparency in its schedule of fees by moving to a single tier clearing fee structure, which removes the Per Transaction Clearing Fee. As discussed, such changes limit the Per Contract Clearing Fee increase to \$0.005 while equitably allocating the cost of providing clearance and settlement services for a given transaction regardless of size.²² As described above, OCC believes that the Per Contract Clearing Fee is reasonable and that it would not be discriminatory or prohibitive to remove the Per Transaction Clearing Fee for those Clearing Members that currently submit transactions with more than 2,750 contracts such that Clearing Members would continue to execute transactions without regard to size.²³ At this time, OCC believes the proposed fee change is appropriate in order to raise fees to more closely align with its cash flow needs. Such change would ensure that OCC continues to serve market participants as a financially responsible steward of clearing services while ensuring that it meets regulatory expectations and responsibly invests in its infrastructure.

Implementation Timeframe

OCC proposes to make the fee change effective January 1, 2025. To provide Clearing Members with adequate time to make any necessary adjustments, OCC has provided notice of such changes by Information Memorandum at least 30 calendar days

²¹ See Exchange Act Release No. 77336 (Mar. 10, 2016), 81 FR 14153 (Mar. 16, 2016) (File No. SR-OCC-2016-005).

²² See supra note 17.

²³ OCC believes that removing the Per Transaction Clearing Fee would not unfairly disadvantage or burden smaller market participants, as larger market participants tend to benefit more from the Per Transaction Clearing Fee due to their trading activity.

in advance of the effective date.²⁴ This ensures that the industry is prepared to process the new fee without disruption. Additionally, OCC would not make the fee change operative until after the time required to self-certify the proposed change with the Commodity Futures Trading Commission (“CFTC”).

(2) Statutory Basis

OCC believes the proposed rule change is consistent with the Act²⁵ and the rules and regulations thereunder. In particular, OCC believes that the proposed fee change is consistent with Section 17A(b)(3)(D) of the Act,²⁶ which requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

OCC believes that the proposed fee change is reasonable. The proposed fee change is intended to better align OCC’s clearing fees with the costs of providing its clearing and settlement services to Clearing Members by ensuring that OCC continues to maintain sufficient reserves to cover OCC’s cash flows and address potential business or operational losses so that OCC can continue to meet its obligations as a systemically important financial market utility to Clearing Members and the general public if such losses were to materialize. OCC believes the proposed fee change is reasonable given increased expenses associated with its technology infrastructure, notable inflation, and the fluctuating interest rate environment, as discussed above. With respect to the removal of the Per Transaction Clearing Fee, OCC believes that charging all Clearing Members a flat fee per contract is reasonable as it equitably allocates the cost of providing clearance

²⁴ The Information Memorandum can be found on OCC’s public website:
<https://infomemo.theocc.com/infomemos?number=55624>.

²⁵ 15 U.S.C. 78a, *et seq.*

²⁶ 15 U.S.C. 78q-1(b)(3)(D).

and settlement services for a given transaction regardless of size. Further, OCC does not believe the proposed Per Contract Clearing Fee would create a financial burden as it continues to be in line with, or even lower than, the clearing fees assessed by OCC over the past five years. OCC also does not believe that removal of the Per Transaction Clearing Fee would create a financial burden as it ensures that Clearing Members are charged the same Per Contract Clearing Fee per transaction regardless of the size of such transaction.

As discussed above, OCC determined that the average clearing fee per contract per year from June 2021²⁷ through November 2024, including fees generated by the Per Transaction Clearing Fee, represented only a 5% decrease from the lowest Per Contract Clearing Fee charged during this time frame. From January through November 2024, the average clearing fee per contract was \$0.019, including the Per Transaction Clearing Fee, and would have been \$0.020 without the Per Transaction Clearing Fee, which represents a 5% difference and shows a limited impact to Clearing Members from the removal of the Per Transaction Clearing Fee. OCC believes that the Per Contract Clearing Fee is reasonable and would not be discriminatory without the Per Transaction Clearing Fee for those Clearing Members that currently submit transactions with more than 2,750 contracts. OCC thus believes that it does not constitute an inequitable allocation of fees and is not unfairly discriminatory to remove the Per Transaction Clearing Fee. In accordance with its current policies and procedures, OCC will continue to evaluate the fee schedule at regularly scheduled meetings to determine if additional changes, including fee decreases, are necessary or appropriate at such time, including once OCC's technology infrastructure modernization initiative is complete.

²⁷ See supra note 19.

OCC also believes that the proposed fee change would result in an equitable allocation of fees among its participants because it would be equally applicable to all Clearing Members transacting at any given level of contract volume. As a result, OCC believes that the proposed change to OCC's fee schedule provides for the equitable allocation of reasonable fees in accordance with Section 17A(b)(3)(D) of the Act.²⁸

In addition, OCC believes that the proposed rule change is consistent with Rule 17Ad-22(e)(15), which requires that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage OCC's general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that OCC can continue operations and services as a going concern if those losses materialize.²⁹ The proposed changes are designed to promote cost management in compliance with this Rule. As described above, the proposed fee change would better align OCC's clearing fees with the costs of providing its clearing and settlement services to Clearing Members to ensure that OCC continues to maintain sufficient reserves to cover OCC's cash flow needs and address potential business or operational losses so that OCC can continue to meet its obligations as a systemically important financial market utility to Clearing Members and the general public if such losses were to materialize. Therefore, OCC believes that the proposed changes to OCC's schedule of fees are consistent with Rule 17Ad-22(e)(15).³⁰

²⁸ 15 U.S.C. 78q-1(b)(3)(D).

²⁹ 17 CFR 240.17Ad-22(e)(15).

³⁰ Id.

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

Section 17A(b)(3)(I) of the Act³¹ requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule change would have any impact or impose a burden on competition. OCC believes that the proposed rule change would not disadvantage or favor any particular user of OCC's services in relationship to another user because the proposed fee change would apply equally to all Clearing Members. In addition, OCC does not believe that the proposed Per Contract Clearing Fee imposes a significant burden as the proposed fee continues to be in line with, or even lower than, the clearing fees assessed by OCC over the past five years. OCC also does not believe that the removal of the Per Transaction Clearing Fee imposes a significant burden as it ensures that Clearing Members are charged the same Per Contract Clearing Fee per transaction regardless of the size of such transaction. Accordingly, OCC does not believe that the proposed rule change would have any impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

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

Pursuant to Section 19(b)(3)(A)(ii)³² of the Act, and Rule 19b-4(f)(2) thereunder,³³ the proposed rule change is filed for immediate effectiveness as it

³¹ 15 U.S.C. 78q-1(b)(3)(I).

³² 15 U.S.C. 78s(b)(3)(A)(ii).

constitutes a change in fees charged only to OCC Clearing Members. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.³⁴

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2024-017 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2024-017. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The

³³ 17 CFR 240.19b-4(f)(2).

³⁴ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to File Number SR-OCC-2024-017 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁵

Secretary

³⁵ 17 CFR 200.30-3(a)(12).

Exhibit 3

[Redacted Pursuant to Rule 24b-2]

[Redacted Pursuant to Rule 24b-2]

[Redacted Pursuant to Rule 24b-2]

[Redacted Pursuant to Rule 24b-2]

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[Redacted Pursuant to Rule 24b-2]

EXHIBIT 5

Underlined text indicates new text

~~Strikethrough~~ text indicates deleted text

The Options Clearing Corporation

Schedule of Fees

Clearing Member

Clearing

Clearing Fees

<u>All Transactions</u>	Trades with contracts of 0-2,750	\$0.02/contract	<u>0.025/contract</u>
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Trades with contracts of greater than 2,750	\$55.00/trade
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As of ~~October 2024~~January 2025. ALL FEES ARE SUBJECT TO CHANGE.

For further information, contact Member Services at 1-800-621-6072.