



## DCO Rules

### UNITED STATES COMMODITY FUTURES TRADING COMMISSION

<b>Submitter Information</b>	
<b>Organization Name</b> Options Clearing Corporation	
<b>Organization Type</b> DCO	<b>Organization Acronym</b> OCC
<b>Submitted By</b> [REDACTED]	<b>Email Address</b> [REDACTED]
<b>Cover Sheet</b>	
<b>Submission Number</b> 2503-2716-4713-89	<b>Submission Date</b> 3/27/2025 4:47:13 PM ET
<b>Submission Type</b> 40.6(a) Rule Certification	
<b>Submission Description</b> Rule Certification by The Options Clearing Corporation Concerning a change in the maximum contingent Operational Loss Fee listed in OCC's schedule of fees in accordance with OCC's Capital Management Policy.	
<input type="checkbox"/> <b>Request Confidential Treatment</b>	
<b>Registered Entity Identifier Code</b>	
<b>Rule Numbers</b> Capital Management Policy.	
<b>Date of Intended Implementation</b> 4/10/2025	
<b>Documents</b>	
2025-03-27 CFTC Self-Certification Operational Loss Fee with Exhibit A.pdf	
<b>Request For Confidential Treatment - Detailed Written Justification</b>	
N/A	



Options Clearing Corporation  
125. S. Franklin Street, Suite 1200  
Chicago, IL 60606  
312 322 6200 | theocc.com

March 27, 2025

**VIA CFTC PORTAL**

Christopher J. Kirkpatrick  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

**Re: Rule Certification by The Options Clearing Corporation Concerning a change in the maximum contingent Operational Loss Fee listed in OCC's schedule of fees in accordance with OCC's Capital Management Policy.**

Dear Secretary Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended ("Act"), and Commodity Futures Trading Commission ("CFTC") Regulation 40.6, The Options Clearing Corporation ("OCC") hereby certifies a rule change concerning a change in the maximum contingent Operational Loss Fee listed in OCC's schedule of fees in accordance with OCC's Capital Management Policy. The date of implementation of the rule is at least 10 business days following receipt of the certification by the CFTC. The proposal has also been submitted to the Securities and Exchange Commission ("SEC") under Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 19b-4 thereunder. The change will not be implemented until OCC has obtained all necessary regulatory approvals.

In conformity with the requirements of Regulation 40.6(a)(7), OCC states the following:

**Explanation and Analysis**

OCC proposes to implement a change in the maximum contingent Operational Loss Fee listed in OCC's schedule of fees in accordance with OCC's Capital Management Policy. Amendments to OCC's schedule of fees are included in Exhibit A. 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.<sup>1</sup>

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<sup>1</sup> 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>.

The purpose of this proposed rule change is to revise OCC's schedule of fees to update the maximum aggregate Operational Loss Fee that OCC would charge Clearing Members in equal shares in the unlikely event that OCC's Liquid Net Assets Funded by Equity ("LNAFBE")<sup>2</sup> falls below certain thresholds defined in OCC's Capital Management Policy.

The proposed fee change is designed to enable OCC to replenish capital to comply with Rule 17Ad-22(e)(15) under the Exchange Act, which requires OCC, in pertinent part, to "hold[ ] [LNAFBE] to the greater of either (x) six months . . . current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and service"<sup>3</sup> and "[m]aintain[ ] a viable plan, approved by the board of directors and updated at least annually, for raising additional equity should its equity fall close to or below the amount required."<sup>4</sup> The proposed rule change would implement a change in the maximum contingent Operational Loss Fee listed in OCC's schedule of fees in accordance with OCC's Capital Management Policy.

OCC's Capital Management Policy includes OCC's replenishment plan. Pursuant to the Capital Management Policy, OCC would charge an Operational Loss Fee in equal shares to Clearing Members to raise additional capital should OCC's LNAFBE fall below certain defined thresholds relative to OCC's Target Capital Requirement (i.e., a "Trigger Event"), after first applying the unvested balance held in respect of OCC's Executive Deferred Compensation Program.<sup>5</sup> Specifically, a Trigger Event is when LNAFBE: (i) remains below the Target Capital Requirement for 90 consecutive calendar days; or (ii) falls below 90% of the Target Capital Requirement. Based on the Board-approved Target Capital Requirement for 2025 of \$286 million, a Trigger Event would occur if OCC's LNAFBE falls below \$257.4 million at any time or below \$286 million for a period of 90 consecutive calendar days.

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<sup>2</sup> While the relevant rules under the Exchange Act do not define the term, the SEC approved Capital Management Policy defines LNFABE as the level of cash and cash equivalents, no greater than shareholders' equity, less any approved adjustments. These approved adjustments exclude cash that would not be available to cover general business expenses, including (1) cash collected by OCC in an agency-related capacity, including the Section 31 fees that OCC collects monthly and transmits to the SEC bi-annually on behalf of the options exchanges, and (2) OCC's Minimum Corporate Contribution, which is the minimum level of OCC funds maintained exclusively to cover credit losses or liquidity shortfalls arising from a Clearing Member default, often referred to as "skin-in-the-game." See Exchange Act Release Nos. 92038 (May 27, 2021), 86 FR 29861, 29862 (June 3, 2021) (SR-OCC-2021-003); 88029 (Jan. 24, 2020), 85 FR 5500 (Jan. 30, 2020) (SR-OCC-2019-007) ("Order Approving OCC's Capital Management Policy").

<sup>3</sup> See 17 CFR 240.17Ad-22(e)(15)(ii).

<sup>4</sup> See 17 CFR 240.17Ad-22(e)(15)(iii).

<sup>5</sup> See Exchange Act Release No. 101151 (Sept. 24, 2024), 89 FR 79668, 79669 (Sept. 30, 2024) (SR-OCC-2024-012) (amending OCC's replenishment plan to measure the Trigger Event against OCC's LNAFBE, rather than shareholders' equity).

In the unlikely event those thresholds are breached, OCC would charge an Operational Loss Fee in an amount to raise LNAFBE to 110% of OCC's Target Capital Requirement, up to the maximum Operational Loss Fee identified in OCC's schedule of fees less the amount of any Operational Loss Fees previously charged and not refunded.<sup>6</sup> OCC calculates the maximum aggregate Operational Loss Fee based on the amount determined by the Board to be sufficient for a recovery or orderly wind-down of critical operations and services ("RWD Amount"),<sup>7</sup> which is determined based on the assumptions in OCC's Recovery and Orderly Wind-Down Plan ("RWD Plan").<sup>8</sup> In order to account for OCC's tax liability for retaining the Operational Loss Fee as earnings, OCC may apply a tax gross-up to the RWD Amount ("Adjusted RWD Amount") depending on whether the operational loss that caused OCC's LNAFBE to fall below the Trigger Event thresholds is tax deductible.<sup>9</sup>

The RWD Amount and, in turn, the Adjusted RWD Amount are determined annually based on OCC's corporate budget, the assumptions articulated in the RWD Plan, and OCC's projected effective tax rate.<sup>10</sup> The current Operational Loss Fee listed in OCC's schedule of fees is the Adjusted RWD Amount calculated based on OCC's 2024 corporate budget. Budgeted operating expenses in 2025 are higher than the 2024 budgeted operating expenses. This proposed rule change would revise the maximum Operational Loss Fee to reflect the Adjusted RWD Amount based on OCC's 2025 budget, as follows:

Current Fee Schedule	Proposed Fee Schedule
\$182,000,000.00 less the aggregate amount of Operational Loss Fees previously charged and not refunded as of the date calculated, divided by the number of Clearing Members at the time charged.	\$211,000,000.00 less the aggregate amount of Operational Loss Fees previously charged and not refunded as of the date calculated, divided by the number of Clearing Members at the time charged.

Since the allocation of the Operational Loss Fee is a function of the number of Clearing Members at the time of the charge, the maximum Operational Loss Fee per Clearing Member is subject to

<sup>6</sup> See Order Approving OCC's Capital Management Policy, 85 FR at 5503.

<sup>7</sup> Id.

<sup>8</sup> The RWD Plan states OCC's basic assumptions concerning the resolution process, including assumptions about the duration of the resolution process, the cost of the resolution process, OCC's capitalization through the resolution process, the maintenance of Critical Services and Critical Support Functions, as defined by the RWD Plan, and the retention of personnel and contractual relationships. See Exchange Act Release No. 83918 (Aug. 23, 2018), 83 FR 44091, 44094, 44096 (Aug. 29, 2018) (File No. SR-OCC-2017-021).

<sup>9</sup> See Order Approving OCC's Capital Management Policy, 85 FR at 5503.

<sup>10</sup> See Order Approving OCC's Capital Management Policy, 85 FR at 5501 n.20, 5503.

fluctuation during the course of the year. However, if the proposed Operational Loss Fee were charged to 101 Clearing Members, the number of Clearing Members as of December 31, 2024, for example, the maximum Operational Loss Fee per Clearing Member would be approximately \$2.09 million.

OCC would also update the schedule of fees to reflect the levels of LNAFBE at which OCC would charge the Operational Loss Fee according to the thresholds defined in the Capital Management Policy, as well as the level of LNAFBE at which OCC would limit the Operational Loss Fee charged, based on OCC's current Target Capital Requirement.<sup>11</sup> Consistent with OCC's approach to its persistent minimum skin-in-the-game, the threshold in the schedule of fees continues to reflect that consistent with OCC's Capital Management Policy, the Trigger Event threshold is measured against LNAFBE.

OCC proposes the fee change to be effective immediately upon filing, because the Board approved the Adjusted RWD Amount upon which the Operational Loss Fee is based for 2025. Notwithstanding the immediate effectiveness, OCC would not make the fee change operative until after the time required to self-certify the proposed change with the CFTC.

### **Consistency with DCO Core Principles**

OCC reviewed the DCO core principles ("Core Principles") as set forth in the Act, the regulations thereunder, and the provisions applicable to a DCO that elects to be subject to the provisions of 17 CFR Subpart C ("Subpart C DCO"). During this review, OCC identified the following as potentially being impacted:

**Public Information.** OCC believes that implementing the proposed rule change will be aligned with Core Principle L,<sup>12</sup> which requires, in part, that each DCO provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the costs associated with using the services of the DCO. OCC believes that by implementing the proposed changes to its schedule of fees and by publishing the modified schedule of fees to its public website it would provide Clearing Members with sufficient information to enable them to identify and evaluate their contingent obligation to pay the Operational Loss Fee in the unlikely event that OCC experiences an operational loss that necessitates it to charge the fee.

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<sup>11</sup> OCC does not propose any change to the thresholds and limits defined in the Capital Management Policy. This proposed change merely conforms the disclosure in OCC's schedule of fees to the current amounts based on the Board-approved Target Capital Requirement of \$286 million.

<sup>12</sup> 7 U.S.C. 7a-1(c)(2)(L).

For these reasons, OCC believes that the proposed changes are consistent with the requirements of the DCO Core Principles and the CFTC Regulations thereunder.

Opposing Views

No substantive opposing views were expressed related to the rule amendments by OCC's Board members, Clearing Members or market participants. Public comments on the proposed rule change filed with the SEC, if any, and any OCC response to such comments may be viewed on the SEC's public website.<sup>13</sup>

Notice of Pending Rule Certification

OCC hereby certifies that notice of this rule filing has been given to Clearing Members of OCC in compliance with Regulation 40.6(a)(2) by posting a copy of this certification on OCC's website concurrently with the filing of this submission.

Certification

OCC hereby certifies that the rule set forth at Exhibit A of the enclosed filing complies with the Act and the CFTC's regulations thereunder.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

/s/ [REDACTED]

[REDACTED]  
[REDACTED]

The Options Clearing Corporation

Enclosure: Exhibit A

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<sup>13</sup> See Options Clearing Corporation (OCC) Rulemaking, <https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/occ>.

## EXHIBIT A

Underlined text indicates new text

~~Strikethrough~~ text indicates deleted text

# The Options Clearing Corporation

## Schedule of Fees

### Clearing Member

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#### Operational Loss Fee

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<b>Maximum Operational Loss Fee**</b>	\$ <del>182</del> <u>211</u> ,000,000.00 less the aggregate amount of Operational Loss Fees previously charged and not refunded as of the date calculated, divided by the number of Clearing Members at the time charged.
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*\*\* After contributing the EDCP Unvested Balance, OCC would charge the Operational Loss Fee if OCC's Liquid Net Assets Funded by Equity ("LNAFBE") falls below \$~~246,625~~7,400,000.00 at any time or falls below \$~~274,286~~,000,000.00 for a period of 90 consecutive calendar days. If less than the maximum Operational Loss Fee is needed to return OCC's LNAFBE to \$~~301,431~~4,600,000.00, OCC will charge only that amount.*

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As of ~~April 2024~~March 2025, ALL FEES ARE SUBJECT TO CHANGE.

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