



**THE FOUNDATION
FOR SECURE
MARKETS™**

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

May 24, 2024

VIA CFTC PORTAL

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

Re: Rule Certification for Updates to OCC's Schedule of Fees

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 to the CFTC amendments to OCC’s schedule of fees. The date of implementation of the rule is at least 10 business days following receipt of the certification by the CFTC or the date the proposed rule is approved by the Securities and Exchange Commission (“SEC”) or otherwise becomes effective under the Securities Exchange Act of 1934 (“Exchange Act”).

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

Explanation and Analysis

The purpose of this rule certification is to revise OCC’s schedule of fees. Specifically, OCC proposes to update the Options Disclosure Document (“ODD”)¹ fee and make certain other changes, including allowing OCC to charge applicable taxes and removing language related to authorization stamp fees, which are no longer in use. Amendments to OCC’s schedule of fees are included in Exhibit A. Material proposed to be added is marked by underlining, and material proposed to be

¹ The ODD is written to meet the requirements of Rule 9b-1 under the Exchange Act that requires the U.S. options markets to prepare, and brokerage firms to distribute, a document that describes the characteristics of options and the risks to investors of maintaining positions in options. More specifically, such document will include information pertaining to the mechanics of exercising the options, the risks of being a holder or writer of the options, and the market or markets in which the options are traded, among other items identified in Rule 9b-1(c). See 17 CFR 240.9b-1.

deleted is marked with strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.²

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 its Capital Management Policy,³ 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, projected operating expenses, projected volumes, anticipated cashflows, 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 certain fee changes. As further described below, these proposed changes are intended to promote cost management by facilitating OCC’s ability to break even on certain costs. Additional proposed changes are intended to ensure OCC’s schedule of fees remains current and clear.

ODD Fee Changes

OCC proposes to update the fee charged for a printed version of the ODD to industry participants, including both Clearing Members and non-Clearing Members. The Characteristics and Risks of Standardized Options, also known as the ODD, explains the characteristics and risks of exchange traded options. Broker-dealers are required to distribute the ODD to customers pursuant to Rule 9b-1 under the Exchange Act.⁴ Prior to buying or selling an option, investors must be given a copy of the ODD. Investors may also obtain a printed version of the ODD from any exchange on which options are traded or by placing an order on OCC’s website. Additionally, OCC provides an

² OCC’s By-Laws and Rules can be found on OCC’s public website at <https://www.theocc.com/company-information/documents-and-archives/by-laws-and-rules>.

³ See 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).

⁴ 17 CFR 240.9b-1.

option to electronically download the full version of the ODD on its website for no charge.⁵ OCC advises broker-dealers to consult with their legal and compliance resources to determine the appropriate means of delivery of the ODD to investors.⁶ Electronic delivery of the ODD is permissible if the requirements for electronic delivery as established by the SEC are met.⁷ Additionally, OCC makes available a print-ready PDF version of the ODD to Clearing Members and non-Clearing Members so that firms who wish to print the ODD through their own printing services may do so.⁸

OCC proposes to update the fee charged for a printed copy of the ODD from \$0.45 to \$0.95. The current fee is charged when the order is placed with OCC. OCC has not increased this fee since 1994 and it is out of sync with the current environment. There has been notable inflation over the past 30 years. For instance, the dollar had an average inflation rate of 2.52% per year between 1994 and 2023, producing a cumulative price increase of approximately 106%.⁹ The proposed fee constitutes a 111% increase from the fee adopted in 1994, which deviates only slightly from the cumulative rate. OCC believes the proposed fee increase is reasonable given that the costs and expenses associated with the ODD (e.g., printing, preparation, and labor costs), as well as the form of the ODD itself,¹⁰ have changed since 1994.

ODD costs are difficult to predict. New versions of the ODD may be issued at various times as needed to address new products or industry changes, and it may be necessary to distribute multiple new versions of the ODD within a year.¹¹ OCC proposes to increase the current fee to \$0.95 per copy, which reflects the current cost to print and distribute the ODD.¹² OCC does not intend to generate a profit through this change. This proposal is designed to facilitate OCC's ability

⁵ The ODD is available electronically at <https://www.theocc.com/company-information/documents-and-archives/publications>.

⁶ See OCC's website for additional information regarding electronic delivery and print copies at <https://www.theocc.com/company-information/documents-and-archives/options-disclosure-document>.

⁷ See Exchange Act Release No. 37183 (May 9, 1996), 61 FR 24652 (May 15, 1996) (adopting technical amendments to the SEC's rules that are premised on the distribution of paper documents).

⁸ Firms may contact OCC to request the print-ready PDF version. See *supra* note 6.

⁹ See the inflation calculator at <https://www.officialdata.org/us/inflation/1994?endyear=2023>.

¹⁰ For example, in 2021, OCC integrated all prior ODD supplements into one document and eliminated the distribution of supplements. While the integration of the supplements created a more digestible document for investors, the change increased the printing costs for OCC.

¹¹ Because it is difficult to forecast the number of printed versions that OCC needs to purchase to fulfill orders, OCC may place several orders of different quantities throughout the year. OCC's printing costs generally depend on the quantity ordered.

¹² This fee is the sum of current per copy printing and distribution costs. Current per copy printing costs were derived through a weighted average based on the volume of ODD copies that OCC purchased at different price points from 2020 through 2023 from its printer. Current per copy distribution costs were derived using estimated yearly costs incurred by OCC in distributing the ODD, such as maintenance and storage, accounting, legal, waste, and growth.

to break even on the costs of printing and distributing the ODD. Additionally, as a clarification, OCC proposes to update the current reference to the ODD in the fee schedule from “Disclosure Documents” to “Options Disclosure Document.” The proposed changes to the fee schedule are set out below.

Current Fee Schedule		Proposed Fee Schedule	
Disclosure Documents	\$0.45	Options Disclosure Document	\$0.95

The proposed changes are designed to promote cost management in compliance with Rule 17Ad-22(e)(15) under the Exchange Act that, among other things, requires OCC to identify, monitor, and manage its general business risk,¹³ which includes the risk of potential impairment to OCC’s financial position resulting from a decline in revenues or an increase in expenses. The proposed increase in the ODD fee is designed to facilitate OCC’s ability to break even on the costs of printing and distributing the ODD. OCC does not intend to make a profit with this increase and as discussed above, OCC makes available additional options for ODD distribution at no charge, including an electronic version and a print-ready PDF version. Implementation of the proposed fee increase is designed to bring the ODD fee in sync with the current environment as well as the current form of the ODD.

Additional Fee Changes

Additional proposed changes allow OCC to charge applicable taxes. OCC currently does not charge sales tax. For example, in connection with the ODD, OCC pays the sales tax and absorbs the cost. OCC believes it is reasonable to allocate rather than absorb the cost of applicable taxes because it will facilitate OCC’s ability to break even on these types of required costs. Under the amended fee schedule, OCC may charge state sales or use tax when due in connection with any of its listed fees. OCC does not believe such change would create a financial burden as it is limited to the cost of applicable taxes, which OCC does not control. Moreover, OCC believes charging sales or use tax where applicable is reasonable because it is similar to a practice currently employed by another self-regulatory organization.¹⁴

Finally, OCC proposes to remove an outdated fee for authorization stamps because authorization stamps are no longer used by OCC. OCC previously used authorization stamps as a security measure for authentication. OCC removed provisions in its Rules related to such stamps in 2023.¹⁵ Such change is intended to ensure that the fee schedule remains current and accurate.

¹³ See 17 CFR 240.17Ad-22(e)(15).

¹⁴ See New York Stock Exchange (“NYSE”) Fee Schedule at https://www.nyse.com/publicdocs/nyse/markets/nyse/nyse_price_list.pdf. NYSE charges sales tax for various products where applicable.

¹⁵ See Exchange Act Release No. 97439 (May 5, 2023), 88 FR 30373 (May 11, 2023) (SR-OCC-2023-002)

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. During this review, OCC identified the following as potentially being impacted:

Public Information. OCC believes that implementing the proposed changes will be aligned with Core Principle L,¹⁶ 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 accurately the costs associated with using the services of OCC. Under the changes, OCC’s schedule of fees would continue to remain transparent and clear.

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, may be viewed on the SEC’s public website.¹⁷

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 the proposed rule change 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.

(removing provisions related to authorization stamps in then-existing Rule 212).

¹⁶ 7 U.S.C. 7a-1(c)(2)(L).

¹⁷ See Options Clearing Corporation (OCC) Rulemaking at <https://www.sec.gov/rules/sro/occ.htm>.

Christopher J. Kirkpatrick
May 24, 2024
Page 6

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

Sincerely,

/s/ Maria Alarcon
Maria Alarcon
Assistant General Counsel
The Options Clearing Corporation

Enclosure: Exhibit A