

December 12, 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

OCC proposes to revise its schedule of fees effective January 1, 2025, to implement an increase in clearing fees.¹ 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 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

¹ This rule filing will be submitted to the SEC under the Exchange Act and will not become effective until all necessary regulatory requirements to implement the proposed change have been satisfied.

² 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>.

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, 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 rule certification 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.⁴ 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,

³ 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).

⁴ To provide Clearing Members with adequate time to make any necessary adjustments, OCC has provided notice of such changes by Information Memorandum on OCC's public website: <https://infomemo.theocc.com/infomemos?number=55624>.

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 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

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). OCC recently amended its 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).

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).

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 \$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.

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 what has been a reliable source of income for OCC over the past three years.

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,

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>.

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%.

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	All Transactions with contracts of 0-2,750	\$0.025/contract
Trades with contracts of greater than 2,750	\$55.00/trade	Trades with contracts of greater than 2,750	\$55.00/trade

The proposed fee change is designed to promote cost management in compliance with Rule 17Ad-22(e)(15) under the Exchange Act that, among other things, requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk,¹⁴ 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. In particular, OCC believes that removing the Per Transaction Clearing Fee is equitable because all

¹⁴ See 17 CFR 240.17Ad-22(e)(15).

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.¹⁵

OCC reviewed volume and clearing fees OCC assessed from June 2021¹⁶ 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.¹⁷ 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.¹⁸ 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.

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

¹⁵ 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-2021-26).

¹⁶ 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.

¹⁷ See Exchange Act Release No. 77336 (Mar. 10, 2016), 81 FR 14153 (Mar. 16, 2016) (File No. SR-OCC-2016-005) (modifying the schedule of fees to adopt a flat, per contract, clearing fee subjected to a fixed dollar cap, which would promote simplicity and transparency and allow users to execute trades without regard to size).

¹⁸ 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.

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 fee change will be aligned with Core Principle L,¹⁹ 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.²⁰

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 rule filing on OCC's website concurrently with the filing of this submission.

¹⁹ 7 U.S.C. 7a-1(c)(2)(L).

²⁰ See Options Clearing Corporation (OCC) Rulemaking at <https://www.sec.gov/rules/sro/occ.htm>.

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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/ Maria Alarcon
Assistant General Counsel

Enclosure: Exhibit A