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

File No. \* SR 2023 - \* 006

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"/>	Rule		
			<input checked="" type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input 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 Concerning Amendments to The Options Clearing Corporation's Capital Management Policy and Cash and Investment Management Policy

### 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 \* [Redacted] Last Name \* [Redacted]

Title \* [Redacted]

E-mail \* rulefilings@theocc.com

Telephone \* [Redacted] Fax [Redacted]

### 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 08/03/2023 (Title \*)

By [Redacted] (Name \*)

[Redacted]

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.

Digitally signed by [Redacted]  
Date: 2023.08.03 11:58:35 -05'00'

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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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19b-4\_SR-OCC-2023-006 [8.3.2023 F

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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Exhibit 1A\_SR-OCC-2023-006 [8.3.20

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 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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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-2023-006 Exhibit 5 REDACT

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**

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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) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The Options Clearing Corporation (“OCC”) is filing a proposed rule change with the Securities and Exchange Commission (“SEC” or “Commission”) to make certain administrative and clarifying amendments to OCC’s Capital Management Policy and Cash and Investment Management Policy. Specifically, the proposed changes would: (1) provide that Management will, at a minimum, review OCC’s fee schedule at each regularly scheduled Compensation and Performance Committee (“CPC”) meeting, consistent with recent updates to the OCC’s Board of Director (“Board”) and Board-level committee (“Committee”) charters, which require each Committee meet at least four times per year, rather than quarterly as the Capital Management Policy currently provides; (2) make certain other edits and additions to the Capital Management Policy for clarity and consistency with OCC’s other policies, and (3) amend the Cash and Investment Management Policy to better align the text of that policy to OCC Rules 604(a) and 1002(c), which provide separate treatment for cash deposited by Clearing Members in respect of margin requirements and Clearing Fund deposits, respectively.

The proposed changes are included in confidential Exhibit 5 to File No. SR-OCC-2023-006. Material proposed to be added is underlined and material proposed to be deleted is marked in strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in OCC’s By-Laws and Rules.<sup>3</sup>

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<sup>1</sup> 15 U.S.C. 78s(b).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> OCC’s current 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 2. Procedures of the Self-Regulatory Organization**

Proposed changes to the Capital Management Policy were approved by OCC's Board at a meeting held on December 9, 2021, and by consent of OCC's stockholders, effective as of the same date. Proposed changes to the Cash and Investment Management Policy were approved by the CPC at a meeting held on October 20, 2022, upon authority delegated by the Board to that Committee by the CPC Charter.<sup>4</sup>

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

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. In order 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,<sup>5</sup> OCC's Capital Management

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<sup>4</sup> The CPC Charter is available on OCC's public website: <https://www.theocc.com/company-information/documents-and-archives/board-charters>.

<sup>5</sup> 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).

Policy, which provides the framework by which OCC manages its capital and plans for replenishment of capital if necessary. Other risks OCC manages include custody and investment risk. To manage risks associated with holding and investing OCC's own cash and the cash collected from Clearing Members,<sup>6</sup> OCC has filed, and the Commission has approved,<sup>7</sup> OCC's Cash and Investment Management Policy.

Regulations applicable to OCC require such risk management policies to be reviewed on a specified periodic basis and approved by the Board annually.<sup>8</sup> Through annual reviews of its Capital Management Policy in 2021 and its Cash and Investment Management Policy in 2022, OCC's management recommended, and the Board approved, certain administrative and clarifying amendments to the Capital Management Policy and Cash and Investment Management Policy. This proposed rule change primarily aims to align the Capital Management Policy to the already revised cadence of meetings reflected in the CPC charter, as well as to make administrative edits, including textual revisions to clarify meaning, a typographical correction, and a description conforming to OCC's current template<sup>9</sup> format. With respect to the Cash and

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<sup>6</sup> OCC's investment of collateral deposited by Clearing Members is limited to the investment of margin cash in overnight reverse repurchase transactions in U.S. Government securities. See Exchange Act Release No. 93916 (Jan. 6, 2022), 87 FR 1819, 1820 (Jan. 12, 2022) (SR-OCC-2021-014). OCC's management of risks related to holding non-cash collateral deposited by Clearing Members is addressed in other policies and procedures, including OCC's Collateral Risk Management Policy. See, e.g., Exchange Act Release No. 82311 (Dec. 13, 2017), 82 FR 60252 (Dec. 19, 2017) (SR-OCC-2017-008) (approving OCC's Collateral Risk Management Policy).

<sup>7</sup> See Order Granting Approval of Proposed Rule Change Concerning the Option Clearing Corporation's Cash and Investment Management, Exchange Act Release No. 94304 (Feb. 24, 2022), 87 FR 11776 (Mar. 2, 2022) (SR-OCC-2021-014); see also Notice of No Objection to Advance Notice Concerning the Option Clearing Corporation's Cash and Investment Management, Exchange Act No. 94270 (Feb. 17, 2022), 87 FR 10262 (Feb. 23, 2022) (SR-OCC-2021-803).

<sup>8</sup> See 17 CFR 240.17Ad-22(e)(3)(i).

<sup>9</sup> See infra note 11.

Investment Management Policy, this proposed rule change would better align that policy's text with OCC's Rules 604(a) and 1002(c), which provide separate treatment for cash deposited by Clearing Members in respect of margin requirements and Clearing Fund deposits, respectively. This proposed rule change would not alter other practices and procedures described in the Capital Management Policy and the Cash and Investment Management Policy and would not alter the rights or obligations of Clearing Members or other market participants. Accordingly, OCC does not believe such administrative changes to OCC's internal policies would have any effect on Clearing Members or other market participants.

A. Purpose

OCC is proposing to make certain administrative and clarifying amendments to OCC's Capital Management Policy, and Cash and Investment Management Policy identified and approved by the Board as part of the annual review of such policies. Specifically, as discussed in more detail below, the proposed changes to the Capital Management Policy would: (1) provide that Management will, at a minimum, review the fee schedule at each regularly scheduled CPC meeting, rather than quarterly, which would align the frequency of such reviews with recent updates to the Board and Committee charters that require each Committee to meet at least four times per year, not necessarily quarterly;<sup>10</sup> and (2) make certain other administrative edits and additions for clarity and consistency with OCC's other policies, including to (i) clarify the ways in which OCC may hold additional financial resources for capital needs, (ii) modify verbiage to avoid confusion with concepts addressed by other OCC rules, and (iii) conform the Capital

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<sup>10</sup> See Exchange Act Release No. 94988 (May 26, 2022), 87 FR 33535, 33537-8 (June 2, 2022) (SR-OCC-2022-002); see also CPC Charter, supra note 4 at Section II.B ("The Committee shall meet at least four times a year.").

Management Policy to OCC's current template<sup>11</sup> for its rule-filed policies. The proposed changes to the Cash and Investment Management Policy would clarify that interest earned on Clearing Fund cash, as opposed to margin cash, held at a Federal Reserve Bank would accrue to the benefit of Clearing Members, less a cash management fee, consistent with OCC Rule 1002(c) and the intended meaning of the Cash and Investment Management Policy as expressed in the rule filing that established that policy.<sup>12</sup> Interest or gain on investment of margin cash would continue to accrue to OCC in accordance with existing OCC Rule 604(a).

## **Background**

### **Capital Management Policy**

Under the Capital Management Policy, OCC determines its Target Capital Requirement, monitors its levels of shareholders' equity ("Equity") and liquid net assets funded by equity ("LNAFBE") to help ensure adequate financial resources are available for general business obligations, and manages Equity levels, including by adjusting OCC's fee schedule as appropriate and establishing a plan for accessing additional capital should OCC's Equity fall below certain thresholds (the "Replenishment Plan").<sup>13</sup> In addition, OCC's Rules<sup>14</sup> and Capital

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<sup>11</sup> "Template" here refers to the format and organizational structure for OCC's internal policies. Previous OCC filings have made similar changes across other policies to conform them to OCC's standard template. See, e.g., Exchange Act Release No. 96566 (Dec. 22, 2022), 87 FR 80207, 80210 (Dec. 29, 2022) (SR-OCC-2022-010) (approving conforming changes across risk policies to remove policy-specific sections concerning policy exceptions and violations in connection with adoption of a section in OCC's Risk Management Framework that uniformly covered those processes); Exchange Act Release No. 93436 (Oct. 27, 2021), 86 FR 60499, 60500 (Nov. 2, 2021) (SR-OCC-2021-010) (removing non-substantive items from OCC's rule-filed policies, including repeated document titles, certain introductory information, related policies and standards, related procedures, and revision history).

<sup>12</sup> See infra note 24 and accompanying text.

<sup>13</sup> See Exchange Act Release No. 88029 (Jan. 24, 2020), 85 FR 5500, 5501-03 (Jan. 30, 2020) (SR-OCC-2019-007).



Management Policy<sup>15</sup> provide for OCC's skin-in-the-game, including a Minimum Corporate Contribution<sup>16</sup> and the use of LNAFBE in excess of 110% of the Target Capital Requirement (i.e., the "Early Warning"<sup>17</sup> threshold under OCC's Replenishment Plan) to cover losses arising from a Clearing Member's default.

*Target Capital Requirement*

Pursuant to the Capital Management Policy, the Target Capital Requirement is based on two components: (1) the amount of LNAFBE determined by OCC to be necessary to ensure compliance with OCC's regulatory obligations, including Rule 17Ad-22(e)(15) under the Exchange Act<sup>18</sup> and (2) any additional amounts determined to be necessary and appropriate for capital expenditures approved by OCC's Board.<sup>19</sup> With respect to the first component, OCC

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<sup>14</sup> See OCC Rule 1006(e)(i).

<sup>15</sup> See Exchange Act Release No. 92038 (May 27, 2021), 86 FR 29861 (June 3, 2021) (SR-OCC-2021-003) (order approving changes to OCC's Capital Management Policy and OCC Rule 1006(e) to establish OCC's persistent minimum skin-in-the-game).

<sup>16</sup> OCC Rule 101(M)(1) defines the term "Minimum Corporate Contribution" to mean the minimum level of OCC funds maintained exclusively to cover credit losses or liquidity shortfalls. The Minimum Corporate Contribution is determined by the Board from time to time.

<sup>17</sup> The Capital Management Policy defines "Early Warning" as when Equity less the Minimum Corporate Contribution falls below 110% of the Target Capital Requirement. Management reviews the Early Warning threshold on an annual basis. See Exchange Act Release No. 88029, 85 FR at 5502.

<sup>18</sup> 17 CFR 240.17Ad-22(e)(15).

<sup>19</sup> In setting the Target Capital Requirement, OCC considers, but is not bound by, its projected rolling twelve-months' operating expenses pursuant to OCC's interpretation of the Commodity Futures Trading Commission ("CFTC") Regulation 39.11(a)(2). See 17 CFR 39.11(a)(2). Unlike SEC Rule 17Ad-22(e)(15) and CFTC Regulation 39.11(e)(2), which concern the liquidity of the financial resources to meet six-months' of operating expenses, the financial resources OCC may count toward the CFTC's twelve-months' requirement is not limited to LNAFBE or "unencumbered, liquid financial assets." See 17 CFR 39.11(e)(2). OCC may count its "own capital" (i.e., Equity) and "[a]ny other financial resource deemed acceptable by the [CFTC]" toward the twelve-months' requirement. See 17 CFR 39.11(b)(2). Accordingly, the Capital Management Policy

must set its Target Capital Requirement at a level sufficient to maintain LNAFBE at least equal to the greater of: (1) six months of OCC's current operating expenses, (2) the amount determined by the Board to be sufficient to ensure a recovery or orderly wind-down of critical operations and services ("RWD Amount"),<sup>20</sup> and (3) the amount determined by the Board to be sufficient for OCC to continue operations and services as a going concern if general business losses materialize. With respect to the second component, the Capital Management Policy authorizes the Board to increase the Target Capital Requirement by an amount to be retained for capital expenditures. Alternatively, the Board may determine to fund capital expenditures out of funds in excess of the Target Capital Requirement. In making such a determination, the Board would consider factors including, but not limited to, the amount of funding required, the amount of Equity proposed to be retained, the potential impact of the investment on OCC's operations, and the duration of time over which funds would be accumulated.

On an annual basis, OCC's Chief Financial Officer ("CFO") recommends a Target Capital Requirement for the coming year to OCC management.<sup>21</sup> Management reviews the CFO's recommendation and, as appropriate, recommends the Target Capital Requirement to the

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does not require OCC to set its Target Capital Requirement—the amount of LNAFBE it must maintain to meet its regulatory obligations—to equal twelve-months' operating expenses.

<sup>20</sup> Management recommends an RWD Amount calculated on an annual basis pursuant to the Capital Management Procedure based on the assumptions in OCC's Recovery and Orderly Wind-down Plan. See Exchange Act Release No. 88029, 85 FR at 5509.

<sup>21</sup> The CFO's recommendation is prepared in accordance with OCC's Capital Management Procedure, which provides additional detail supporting the Capital Management Policy. See Exchange Act Release No. 86725 (Aug. 21, 2019), 84 FR 44944, 44945 (Aug. 27, 2019) (SR-OCC-2019-007).

CPC. The CPC then reviews and, as appropriate, recommends the proposal to the Board, which reviews and, as appropriate, approves the Target Capital Requirement for the coming year.

### *Fee Schedule*

OCC's fee structure is designed by the Board in accordance with Article IX, Section 9 of OCC's By-Laws. The current Capital Management Policy provides that, on a quarterly basis, management will review OCC's fee schedule and, considering factors including, but not limited to, projected operating expenses, projected volumes, anticipated cashflows and capital needs, recommend to the Board, or a Board-level Committee to which the Board has delegated authority,<sup>22</sup> whether a fee increase, decrease or waiver should be made. If OCC's Equity is above, in the aggregate, 110% of its Target Capital Requirement and other approved capital needs, the Board may use such tools as it determines appropriate to lower costs for Clearing Members, including lowering fees, fee holidays or refunds.<sup>23</sup> On an annual basis, management reviews the operating margin level and, considering historical volume variance and other relevant factors (including, but not limited to, variance in revenue other than from clearing fees, such as interest income), recommends to the Board, or a Committee to which the Board has delegated authority, whether any changes should be made to OCC's defined operating margin.

### **Cash and Investment Management Policy**

Among other things, OCC's Cash and Investment Management Policy provides for how OCC may invest its own cash and cash deposited by Clearing Members in respect of margin

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<sup>22</sup> The Board has delegated such authority to the CPC under the CPC Charter. See supra note 4.

<sup>23</sup> When determining which, if any, tools would be appropriate, the Board considers factors including, but not limited to, projecting future volume, expenses, cashflow, capital needs and the possibility and amount of unfunded obligations. During this process, Equity must always remain above the "Early Warning" threshold. See Exchange Act Release No. 87257 (Oct. 8, 2019), 84 FR 55194, 55196 (Oct. 15, 2019) (SR-OCC-2019-805).

requirements or Clearing Fund deposits. In recent filings, OCC explained that the policy would provide that “[i]nterest earned on Clearing Fund cash deposits held at a Federal Reserve Bank would accrue to the benefit of Clearing Members, less a cash management fee.”<sup>24</sup> However, the proposed text of the policy submitted with the filing inadvertently did not qualify the scope as limited to Clearing Fund cash deposits. OCC Rule 1002(c) provides that interest on Clearing Fund cash deposits held at a Federal Reserve Bank accrue to Clearing Members less a cash management fee, consistent with the text of the policy.<sup>25</sup> In contrast, under OCC Rule 604(a), interest earned on investments of cash deposited by Clearing Members in respect of margin requirements accrues to the benefit of OCC.<sup>26</sup> No change to Rule 604(a) was intended by the proposed implementation of OCC’s Cash and Investment Management Policy.<sup>27</sup>

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<sup>24</sup> See Exchange Act Release No. 93916 (Jan. 6, 2022), 87 FR 1819, 1821 (Jan. 12, 2022) (SR-OCC-2021-014); Exchange Act Release No. 93915 (Jan. 6, 2022), 87 FR 1814, 1815 (Jan. 12, 2022) (SR-OCC-2021-803) (emphasis added).

<sup>25</sup> See OCC Rule 1002(c) (“Interest earned on cash deposits held at a Federal Reserve Bank shall accrue to the benefit of Clearing Members (calculated daily based on each Clearing Member’s pro rata share of Clearing Fund cash deposits), provided that each such Clearing Member has provided OCC with all tax documentation as OCC may from time to time require in order to effectuate such payment, and all other interest earned on investments will accrue to the benefit of [OCC].”). See also, Exchange Act Release No. 82657 (Feb. 8, 2018), 83 FR 6651 (Feb. 14, 2018) (SR-OCC-2018-005) (implementing a cash management fee to cover administrative and other operational expenses incurred by OCC in connection with passing through to Clearing Members the interest earned on Clearing Fund cash deposits held at an OCC account at a Federal Reserve Bank).

<sup>26</sup> OCC Rule 604(a) (“Clearing Members may deposit U.S. dollars in accordance with procedures acceptable to [OCC]. Funds so deposited may from time to time be partially or wholly invested by [OCC] for its account in Government securities, and any interest or gain received or accrued on the investment of such funds shall belong to [OCC].”)

<sup>27</sup> See Exchange Act Release No. 93916, 87 FR at 1820 (“OCC does not propose to amend [Rule 604(a)] by this proposed rule change.”).

## Proposed Changes

### (1) *Fee Schedule Review*

Currently, the Capital Management Policy requires management to review the fee schedule with the CPC “[o]n a quarterly basis.” The proposed changes would amend this language to instead require management to review the fee schedule “[a]t regularly scheduled CPC meetings.” This change would align the fee schedule review with the cadence of meetings prescribed in the Board and Committee Charters, which OCC recently amended.<sup>28</sup> While regular meetings generally occur on a quarterly basis, the proposed change would avoid the need to call special meetings to address the routine review of the fee schedule if a regularly scheduled meeting happens to fall at the beginning of the next quarter or the end of the last quarter. For this reason, OCC aligned other periodic reviews identified in the Committee Charters to occur at each regularly scheduled meeting, as opposed to quarterly.<sup>29</sup> OCC proposes to do the same with respect to the cadence of fee schedule reviews in the Capital Management Policy.

### (2) *Additional Textual Changes*

The proposed changes would also make other textual edits and additions to the Capital Management Policy for clarity and consistency with OCC’s other policies. For one, OCC would amend the provision concerning management of OCC’s Equity to facilitate capital expenditures to clarify OCC’s intent that either of the two options identified for doing so—(1) increasing the Target Capital Requirement or (2) retaining the additional Equity as an amount in excess of the Target Capital Requirement—is available to the Board. The textual edits would state more generally at the outset that OCC may retain additional Equity generated from revenue for capital

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<sup>28</sup> See supra note 10.

<sup>29</sup> See Exchange Act Release No. 94988, 87 FR at 33537-38 (approving amendments to the Audit Committee, Technology Committee and CPC Charters to align the cadence of periodic reviews to each regular meeting of the Committee, rather than “quarterly”).

expenditures following a recommendation by Management and Board approval. Retention of such additional Equity generated from revenue is already implicit in the Capital Management Policy's provisions for setting the fee schedule and determining whether to employ other tools to lower costs for Clearing Members (e.g., a clearing fee refund or holiday), both of which consider OCC's capital needs as a factor. The proposed changes would also more expressly provide that option (2) is available as an alternative to option (1). The principal difference between the two options is that any excess capital retained under option (2) is available as skin-in-the-game in the event of a default loss. In addition, adding that such additional Equity would be "generated from revenue" would also clarify the source of the funds OCC may retain as additional Equity, which under OCC's Capital Management Policy would be generated from fees or interest income—not from capital contributions from OCC's stockholders that were part of the Capital Plan that predated the Capital Management Policy.<sup>30</sup>

The Capital Management Policy also currently provides that in determining whether to retain additional Equity for capital expenditures, the Board will consider the potential impact of the "investment" on OCC's operations. The proposed changes would amend this language to instead provide that the Board will consider the potential impact of the "retention of additional Equity" on OCC's operations, consistent with the terminology that OCC proposes to use throughout that paragraph of the Capital Management Policy. Use of the term "investment" in reference to the retention of Equity may lead to confusion when compared to OCC's Cash and Investment Management Policy, which addresses guidelines for investing OCC's own cash and cash deposited by Clearing Members, as discussed above. "Investment" in that context is a

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<sup>30</sup> See Exchange Act Release No. 74452 (Mar. 6, 2015), 80 FR 13058 (Mar. 12, 2015) (SR-OCC-2015-02), disapproved on remand by Exchange Act Release No. 85121 (Feb. 13, 2019), 84 FR 5157 (Feb. 20, 2019) (SR-OCC-2015-02).

separate concept from OCC's determination whether to retain additional Equity to meet its capital needs, rather than, for example, determining to use tools to decrease the cost of membership through a fee decrease, fee holiday or fee refund.

OCC is also proposing formatting edits to conform the Capital Management Policy to OCC's current template format for its policies and procedures. Specifically, the proposed changes would add a new introductory paragraph at the outset of the Capital Management Policy that addresses the policy's applicability and scope. This new introductory paragraph would clarify that the policy applies to the quantification, monitoring and management of OCC's Equity, as well as identify the OCC departments that have roles in those processes, including, primarily, Accounting and Finance, as well as Member Services, Corporate Risk Management, Legal, and Financial Risk Management business units. Finally, OCC would correct a typo by deleting a duplicative word in one of the footnotes to the Capital Management Policy, and such change would have no impact on the meaning of the footnote.<sup>31</sup>

*(3) Cash and Investment Management Policy Correction*

Finally, this proposed change would conform the text of the Cash and Investment Management Policy to the intended meaning by inserting "Clearing Fund" before "cash deposits" when stating that "[i]nterest earned on cash deposits held at a Federal Reserve Bank shall accrue to the benefit of Clearing Members less a cash management fee." The term "Clearing Fund" was inadvertently omitted from the text of the policy, even though that was the intent of the change as described in the associated regulatory filings described above.<sup>32</sup> This

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<sup>31</sup> Currently, the relevant footnote states that OCC management makes a recommendation that is "based calculated on an annual basis" pursuant to an underlying procedure. OCC proposes to remove the extraneous word "based" from the footnote.

<sup>32</sup> See supra note 24 and accompanying text.

change would thereby align the policy statement with OCC Rules 604(a) and 1002(c), which provide different treatment for interest earned on margin cash and Clearing Fund cash deposited at a Federal Reserve Bank.

B. Statutory Basis

OCC believes the proposed changes are consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, OCC believes the proposed changes are consistent with Section 17A(b)(3)(F) of the Exchange Act,<sup>33</sup> and Rules 17Ad-22(e)(1),<sup>34</sup> 17Ad-22(e)(2),<sup>35</sup> and 17Ad-22(e)(3)<sup>36</sup> thereunder for the reasons described below.

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that OCC's rules must be designed to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of OCC or for which it is responsible, and protect investors and the public interest.<sup>37</sup> OCC believes the Capital Management Policy is reasonably designed to ensure that it has sufficient capital to avoid disruptions of its clearance and settlement services in the event OCC experiences a non-default loss—and the potential harm to investors and the public interest that such a disruption could cause—by, among other things, providing that the Board or the CPC periodically reviews OCC's schedule of fees. Updating the Capital Management Policy to align the cadence of those reviews to the Board-determined cadence for regular Board and CPC

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<sup>33</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>34</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>35</sup> 17 CFR 240.17Ad-22(e)(2).

<sup>36</sup> 17 CFR 240.17Ad-22(e)(3).

<sup>37</sup> 15 U.S.C. 78q-1(b)(3)(F).



meetings will enhance the efficiency and effectiveness of the Board and CPC's oversight of OCC's fee schedule by reflecting the Board's determination about the appropriate cadence of those reviews. In addition, the proposed changes to the Capital Management Policy would clarify the options available to OCC to retain additional Equity for capital expenditures, either through the Target Capital Requirement or outside of it, which would help to protect investors and the public interest by ensuring that OCC has a clear framework for retaining additional Equity for capital expenditures that promotes OCC's ability to provide prompt and accurate clearance and settlement services. Similarly, amending the Cash and Investment Management Policy to align the policy with OCC Rules 604(a) and 1002(c) would help avoid any ambiguity concerning the treatment of interest on Clearing Fund cash deposited at a Federal Reserve Bank that OCC has committed to pass through to Clearing Members, thereby ensuring that OCC has a clear and transparent framework for ensuring the safeguarding of funds in its custody or control. For these reasons, OCC believes the proposed changes promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of OCC or for which it is responsible, and protect investors and the public interest.

Rule 17Ad-22(e)(1) under the Exchange Act requires that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.<sup>38</sup> The proposed changes to OCC's Cash and Investment Management Policy are designed to conform the text of the policy with OCC's Rules,<sup>39</sup> thereby improving the clarity and transparency of OCC rules and helping to support OCC's legal basis for its cash

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<sup>38</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>39</sup> See supra notes 24 and accompanying text.

management and investment activities. Accordingly, OCC believes that the changes to the Cash and Investment Management Policy are consistent with Rule 17Ad-22(e)(1).<sup>40</sup>

Rule 17Ad-22(e)(2) under the Exchange Act requires, in part, that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility.<sup>41</sup> As noted above, the proposed changes to the Capital Management Policy would align the cadence of the fee schedule review to the CPC Charter, which provides for at least four regularly scheduled meetings each year, but does not require those meetings be scheduled in each fiscal quarter. For that reason, OCC previously amended its Committee Charters to align the cadence of other periodic reviews to occur at each “regularly scheduled” meeting, rather than quarterly.<sup>42</sup> The Commission concluded that such similar changes were consistent with Rule 17Ad-22(e)(2) by, among other things, improving the alignment of OCC’s governance documents and thereby “creat[ing] stronger clarity and transparency.”<sup>43</sup> In addition, the proposed change to conform OCC’s Capital Management Policy to the latest Board-approved format would add an Applicability and Scope section that would identify the OCC business units with responsibilities under that policy, thereby helping to delineate clear and direct lines of responsibility with respect to the processes set forth therein.

Rule 17Ad-22(e)(3)(i) under the Exchange Act requires, in part, that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing general business

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<sup>40</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>41</sup> 17 CFR 240.17Ad-22(e)(2)(i), (v).

<sup>42</sup> See supra note 29 and accompanying text.

<sup>43</sup> See Exchange Act Release No. 94988, 87 FR at 33541.

risk and investment risk, among other risks, including risk management policies designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by OCC, that are subject to review on a specified periodic basis and approved by the Board annually.<sup>44</sup> The proposed changes to the Capital Management Policy and the Cash and Investment Management Policy arose from annual reviews of policies designed to address general business risk and investment risk, respectively. OCC believes those changes are consistent with Rule 17Ad-22(e)(3)(i)<sup>45</sup> because by helping to maintain consistency across OCC's rules and conforming those policies to the versions last approved by the Board, the proposed changes support the maintenance of OCC's risk management policies consistent with regulatory expectations.

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

Section 17A(b)(3)(I) of the Exchange Act<sup>46</sup> 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 proposal would impose any burden on competition because the proposal would implement changes to the Capital Management Policy and the Cash and Investment Management Policy that would apply equally to all Clearing Member users of OCC's services. The proposed changes would not inhibit access to OCC's services in any way and would not disadvantage or favor any particular user in relation to another user. Accordingly, OCC does not believe that the proposed rule changes would have any impact or impose a burden on competition.

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<sup>44</sup> 17 CFR 240.17Ad-22(e)(3)(i).

<sup>45</sup> Id.

<sup>46</sup> 15 U.S.C. 78q-1(b)(3)(I).

**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<sup>47</sup> for Commission action.

**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)**

(a) The proposed rule change is filed for immediate effectiveness pursuant to paragraph A of Section 19(b)(3) of the Act.<sup>48</sup> The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.<sup>49</sup>

(b) The proposed rule change qualifies for immediate effectiveness pursuant to Rule 19b-4(f)(1) because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.<sup>50</sup> Specifically, the proposed rule change would amend the cadence of the fee schedule review in the Capital Management Policy, an existing rule,<sup>51</sup> to align with the cadence of CPC meetings in the CPC Charter, another existing rule.<sup>52</sup> The proposed rule change therefore concerns the administration of existing rules and would clarify OCC’s practice. The proposed rule change

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<sup>47</sup> 15 U.S.C. 78s(b)(2).

<sup>48</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>49</sup> Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

<sup>50</sup> 17 CFR 240.19b-4(f)(1).

<sup>51</sup> See supra note 5 and accompanying text.

<sup>52</sup> See supra note 10 and accompanying text.

would also amend the existing Capital Management Policy to clarify, without changing, the meaning of certain provisions, including those concerning the options available to the Board when retaining Equity for capital expenditures. Finally, the proposed changes to the Cash and Investment Management Policy, another existing rule, would conform the text of that policy to OCC Rules 604(a) and 1002(c), as evidenced by the description of the text in the proposed rule change that established that policy.<sup>53</sup>

**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 5A. Proposed Changes to OCC's Capital Management Policy

Exhibit 5B. Proposed Changes to OCC's Cash and Investment Management Policy

**CONFIDENTIAL TREATMENT IS REQUESTED FOR EXHIBIT 5A and 5B  
PURSUANT TO SEC RULE 24b-2**

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<sup>53</sup> See supra note 24 and accompanying text.

## EXHIBIT 1A

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-[\_\_\_\_\_]; File No. SR-OCC-2023-006)

[August \_\_, 2023]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Concerning Amendments to The Options Clearing Corporation's Capital Management Policy and Cash and Investment Management Policy.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 3, 2023, 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)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> such that the proposed rule change was immediately 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

This proposed rule change would make certain administrative and clarifying amendments to OCC's Capital Management Policy and Cash and Investment Management Policy. Specifically, the proposed changes would: (1) provide that

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

Management will, at a minimum, review OCC's fee schedule at each regularly scheduled Compensation and Performance Committee ("CPC") meeting, consistent with recent updates to the OCC's Board of Director ("Board") and Board-level committee ("Committee") charters, which require each Committee meet at least four times per year, rather than quarterly as the Capital Management Policy currently provides; (2) make certain other edits and additions to the Capital Management Policy for clarity and consistency with OCC's other policies, and (3) amend the Cash and Investment Management Policy to better align the text of that policy to OCC Rules 604(a) and 1002(c), which provide separate treatment for cash deposited by Clearing Members in respect of margin requirements and Clearing Fund deposits, respectively.

The proposed changes are included in confidential Exhibit 5 to File No. SR-OCC-2023-006. Material proposed to be added is underlined and material proposed to be deleted is marked in strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in OCC's By-Laws and Rules.<sup>5</sup>

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.

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<sup>5</sup> OCC's current 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>.

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

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. In order 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,<sup>6</sup> OCC's Capital Management Policy, which provides the framework by which OCC manages its capital and plans for replenishment of capital if necessary. Other risks OCC manages include custody and investment risk. To manage risks associated with holding and investing OCC's own cash and the cash

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<sup>6</sup> 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).



collected from Clearing Members,<sup>7</sup> OCC has filed, and the Commission has approved,<sup>8</sup> OCC's Cash and Investment Management Policy.

Regulations applicable to OCC require such risk management policies to be reviewed on a specified periodic basis and approved by the Board annually.<sup>9</sup> Through annual reviews of its Capital Management Policy in 2021 and its Cash and Investment Management Policy in 2022, OCC's management recommended, and the Board approved, certain administrative and clarifying amendments to the Capital Management Policy and Cash and Investment Management Policy. This proposed rule change primarily aims to align the Capital Management Policy to the already revised cadence of meetings reflected in the CPC charter, as well as to make administrative edits, including textual revisions to clarify meaning, a typographical correction, and a description conforming to OCC's current template<sup>10</sup> format. With respect to the Cash and Investment Management Policy, this proposed rule change would better align that policy's text with OCC's Rules 604(a) and 1002(c), which provide separate treatment for

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<sup>7</sup> OCC's investment of collateral deposited by Clearing Members is limited to the investment of margin cash in overnight reverse repurchase transactions in U.S. Government securities. See Exchange Act Release No. 93916 (Jan. 6, 2022), 87 FR 1819, 1820 (Jan. 12, 2022) (SR-OCC-2021-014). OCC's management of risks related to holding non-cash collateral deposited by Clearing Members is addressed in other policies and procedures, including OCC's Collateral Risk Management Policy. See, e.g., Exchange Act Release No. 82311 (Dec. 13, 2017), 82 FR 60252 (Dec. 19, 2017) (SR-OCC-2017-008) (approving OCC's Collateral Risk Management Policy).

<sup>8</sup> See Order Granting Approval of Proposed Rule Change Concerning the Option Clearing Corporation's Cash and Investment Management, Exchange Act Release No. 94304 (Feb. 24, 2022), 87 FR 11776 (Mar. 2, 2022) (SR-OCC-2021-014); see also Notice of No Objection to Advance Notice Concerning the Option Clearing Corporation's Cash and Investment Management, Exchange Act No. 94270 (Feb. 17, 2022), 87 FR 10262 (Feb. 23, 2022) (SR-OCC-2021-803).

<sup>9</sup> See 17 CFR 240.17Ad-22(e)(3)(i).

<sup>10</sup> See *infra* note 12.

cash deposited by Clearing Members in respect of margin requirements and Clearing Fund deposits, respectively. This proposed rule change would not alter other practices and procedures described in the Capital Management Policy and the Cash and Investment Management Policy and would not alter the rights or obligations of Clearing Members or other market participants. Accordingly, OCC does not believe such administrative changes to OCC's internal policies would have any effect on Clearing Members or other market participants.

(1) Purpose

OCC is proposing to make certain administrative and clarifying amendments to OCC's Capital Management Policy, and Cash and Investment Management Policy identified and approved by the Board as part of the annual review of such policies. Specifically, as discussed in more detail below, the proposed changes to the Capital Management Policy would: (1) provide that Management will, at a minimum, review the fee schedule at each regularly scheduled CPC meeting, rather than quarterly, which would align the frequency of such reviews with recent updates to the Board and Committee charters that require each Committee to meet at least four times per year, not necessarily quarterly;<sup>11</sup> and (2) make certain other administrative edits and additions for clarity and consistency with OCC's other policies, including to (i) clarify the ways in which OCC may hold additional financial resources for capital needs, (ii) modify verbiage to avoid confusion with concepts addressed by other OCC rules, and (iii)

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<sup>11</sup> See Exchange Act Release No. 94988 (May 26, 2022), 87 FR 33535, 33537-8 (June 2, 2022) (SR-OCC-2022-002); see also CPC Charter, Section II.B, available at <https://www.theocc.com/company-information/documents-and-archives/board-charters> ("The Committee shall meet at least four times a year.").

conform the Capital Management Policy to OCC's current template<sup>12</sup> for its rule-filed policies. The proposed changes to the Cash and Investment Management Policy would clarify that interest earned on Clearing Fund cash, as opposed to margin cash, held at a Federal Reserve Bank would accrue to the benefit of Clearing Members, less a cash management fee, consistent with OCC Rule 1002(c) and the intended meaning of the Cash and Investment Management Policy as expressed in the rule filing that established that policy.<sup>13</sup> Interest or gain on investment of margin cash would continue to accrue to OCC in accordance with existing OCC Rule 604(a).

## **Background**

### **Capital Management Policy**

Under the Capital Management Policy, OCC determines its Target Capital Requirement, monitors its levels of shareholders' equity ("Equity") and liquid net assets funded by equity ("LNAFBE") to help ensure adequate financial resources are available for general business obligations, and manages Equity levels, including by adjusting OCC's fee schedule as appropriate and establishing a plan for accessing additional capital

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<sup>12</sup> "Template" here refers to the format and organizational structure for OCC's internal policies. Previous OCC filings have made similar changes across other policies to conform them to OCC's standard template. See, e.g., Exchange Act Release No. 96566 (Dec. 22, 2022), 87 FR 80207, 80210 (Dec. 29, 2022) (SR-OCC-2022-010) (approving conforming changes across risk policies to remove policy-specific sections concerning policy exceptions and violations in connection with adoption of a section in OCC's Risk Management Framework that uniformly covered those processes); Exchange Act Release No. 93436 (Oct. 27, 2021), 86 FR 60499, 60500 (Nov. 2, 2021) (SR-OCC-2021-010) (removing non-substantive items from OCC's rule-filed policies, including repeated document titles, certain introductory information, related policies and standards, related procedures, and revision history).

<sup>13</sup> See infra note 25 and accompanying text.

should OCC's Equity fall below certain thresholds (the "Replenishment Plan").<sup>14</sup> In addition, OCC's Rules<sup>15</sup> and Capital Management Policy<sup>16</sup> provide for OCC's skin-in-the-game, including a Minimum Corporate Contribution<sup>17</sup> and the use of LNAFBE in excess of 110% of the Target Capital Requirement (i.e., the "Early Warning"<sup>18</sup> threshold under OCC's Replenishment Plan) to cover losses arising from a Clearing Member's default.

#### *Target Capital Requirement*

Pursuant to the Capital Management Policy, the Target Capital Requirement is based on two components: (1) the amount of LNAFBE determined by OCC to be necessary to ensure compliance with OCC's regulatory obligations, including Rule 17Ad-22(e)(15) under the Exchange Act<sup>19</sup> and (2) any additional amounts determined to be necessary and appropriate for capital expenditures approved by OCC's Board.<sup>20</sup> With

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<sup>14</sup> See Exchange Act Release No. 88029 (Jan. 24, 2020), 85 FR 5500, 5501-03 (Jan. 30, 2020) (SR-OCC-2019-007).

<sup>15</sup> See OCC Rule 1006(e)(i).

<sup>16</sup> See Exchange Act Release No. 92038 (May 27, 2021), 86 FR 29861 (June 3, 2021) (SR-OCC-2021-003) (order approving changes to OCC's Capital Management Policy and OCC Rule 1006(e) to establish OCC's persistent minimum skin-in-the-game).

<sup>17</sup> OCC Rule 101(M)(1) defines the term "Minimum Corporate Contribution" to mean the minimum level of OCC funds maintained exclusively to cover credit losses or liquidity shortfalls. The Minimum Corporate Contribution is determined by the Board from time to time.

<sup>18</sup> The Capital Management Policy defines "Early Warning" as when Equity less the Minimum Corporate Contribution falls below 110% of the Target Capital Requirement. Management reviews the Early Warning threshold on an annual basis. See Exchange Act Release No. 88029, 85 FR at 5502.

<sup>19</sup> 17 CFR 240.17Ad-22(e)(15).

<sup>20</sup> In setting the Target Capital Requirement, OCC considers, but is not bound by, its projected rolling twelve-months' operating expenses pursuant to OCC's interpretation of the Commodity Futures Trading Commission ("CFTC")

respect to the first component, OCC must set its Target Capital Requirement at a level sufficient to maintain LNAFBE at least equal to the greater of: (1) six months of OCC's current operating expenses, (2) the amount determined by the Board to be sufficient to ensure a recovery or orderly wind-down of critical operations and services ("RWD Amount"),<sup>21</sup> and (3) the amount determined by the Board to be sufficient for OCC to continue operations and services as a going concern if general business losses materialize. With respect to the second component, the Capital Management Policy authorizes the Board to increase the Target Capital Requirement by an amount to be retained for capital expenditures. Alternatively, the Board may determine to fund capital expenditures out of funds in excess of the Target Capital Requirement. In making such a determination, the Board would consider factors including, but not limited to, the amount of funding required, the amount of Equity proposed to be retained, the potential impact of the investment on OCC's operations, and the duration of time over which funds would be accumulated.

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Regulation 39.11(a)(2). See 17 CFR 39.11(a)(2). Unlike SEC Rule 17Ad-22(e)(15) and CFTC Regulation 39.11(e)(2), which concern the liquidity of the financial resources to meet six-months' of operating expenses, the financial resources OCC may count toward the CFTC's twelve-months' requirement is not limited to LNAFBE or "unencumbered, liquid financial assets." See 17 CFR 39.11(e)(2). OCC may count its "own capital" (i.e., Equity) and "[a]ny other financial resource deemed acceptable by the [CFTC]" toward the twelve-months' requirement. See 17 CFR 39.11(b)(2). Accordingly, the Capital Management Policy does not require OCC to set its Target Capital Requirement—the amount of LNAFBE it must maintain to meet its regulatory obligations—to equal twelve-months' operating expenses.

<sup>21</sup> Management recommends an RWD Amount calculated on an annual basis pursuant to the Capital Management Procedure based on the assumptions in OCC's Recovery and Orderly Wind-down Plan. See Exchange Act Release No. 88029, 85 FR at 5509.

On an annual basis, OCC's Chief Financial Officer ("CFO") recommends a Target Capital Requirement for the coming year to OCC management.<sup>22</sup> Management reviews the CFO's recommendation and, as appropriate, recommends the Target Capital Requirement to the CPC. The CPC then reviews and, as appropriate, recommends the proposal to the Board, which reviews and, as appropriate, approves the Target Capital Requirement for the coming year.

#### *Fee Schedule*

OCC's fee structure is designed by the Board in accordance with Article IX, Section 9 of OCC's By-Laws. The current Capital Management Policy provides that, on a quarterly basis, management will review OCC's fee schedule and, considering factors including, but not limited to, projected operating expenses, projected volumes, anticipated cashflows and capital needs, recommend to the Board, or a Board-level Committee to which the Board has delegated authority,<sup>23</sup> whether a fee increase, decrease or waiver should be made. If OCC's Equity is above, in the aggregate, 110% of its Target Capital Requirement and other approved capital needs, the Board may use such tools as it determines appropriate to lower costs for Clearing Members, including lowering fees, fee holidays or refunds.<sup>24</sup> On an annual basis, management reviews the

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<sup>22</sup> The CFO's recommendation is prepared in accordance with OCC's Capital Management Procedure, which provides additional detail supporting the Capital Management Policy. See Exchange Act Release No. 86725 (Aug. 21, 2019), 84 FR 44944, 44945 (Aug. 27, 2019) (SR-OCC-2019-007).

<sup>23</sup> The Board has delegated such authority to the CPC under the CPC Charter. See supra note 11.

<sup>24</sup> When determining which, if any, tools would be appropriate, the Board considers factors including, but not limited to, projecting future volume, expenses, cashflow, capital needs and the possibility and amount of unfunded obligations. During this process, Equity must always remain above the "Early Warning"

operating margin level and, considering historical volume variance and other relevant factors (including, but not limited to, variance in revenue other than from clearing fees, such as interest income), recommends to the Board, or a Committee to which the Board has delegated authority, whether any changes should be made to OCC's defined operating margin.

### **Cash and Investment Management Policy**

Among other things, OCC's Cash and Investment Management Policy provides for how OCC may invest its own cash and cash deposited by Clearing Members in respect of margin requirements or Clearing Fund deposits. In recent filings, OCC explained that the policy would provide that “[i]nterest earned on Clearing Fund cash deposits held at a Federal Reserve Bank would accrue to the benefit of Clearing Members, less a cash management fee.”<sup>25</sup> However, the proposed text of the policy submitted with the filing inadvertently did not qualify the scope as limited to Clearing Fund cash deposits. OCC Rule 1002(c) provides that interest on Clearing Fund cash deposits held at a Federal Reserve Bank accrue to Clearing Members less a cash management fee, consistent with the text of the policy.<sup>26</sup> In contrast, under OCC Rule

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threshold. See Exchange Act Release No. 87257 (Oct. 8, 2019), 84 FR 55194, 55196 (Oct. 15, 2019) (SR-OCC-2019-805).

<sup>25</sup> See Exchange Act Release No. 93916 (Jan. 6, 2022), 87 FR 1819, 1821 (Jan. 12, 2022) (SR-OCC-2021-014); Exchange Act Release No. 93915 (Jan. 6, 2022), 87 FR 1814, 1815 (Jan. 12, 2022) (SR-OCC-2021-803) (emphasis added).

<sup>26</sup> See OCC Rule 1002(c) (“Interest earned on cash deposits held at a Federal Reserve Bank shall accrue to the benefit of Clearing Members (calculated daily based on each Clearing Member’s pro rata share of Clearing Fund cash deposits), provided that each such Clearing Member has provided OCC with all tax documentation as OCC may from time to time require in order to effectuate such payment, and all other interest earned on investments will accrue to the benefit of [OCC].”). See also, Exchange Act Release No. 82657 (Feb. 8, 2018), 83 FR 6651 (Feb. 14, 2018) (SR-OCC-2018-005) (implementing a cash management fee to

604(a), interest earned on investments of cash deposited by Clearing Members in respect of margin requirements accrues to the benefit of OCC.<sup>27</sup> No change to Rule 604(a) was intended by the proposed implementation of OCC's Cash and Investment Management Policy.<sup>28</sup>

### **Proposed Changes**

#### *(1) Fee Schedule Review*

Currently, the Capital Management Policy requires management to review the fee schedule with the CPC “[o]n a quarterly basis.” The proposed changes would amend this language to instead require management to review the fee schedule “[a]t regularly scheduled CPC meetings.” This change would align the fee schedule review with the cadence of meetings prescribed in the Board and Committee Charters, which OCC recently amended.<sup>29</sup> While regular meetings generally occur on a quarterly basis, the proposed change would avoid the need to call special meetings to address the routine review of the fee schedule if a regularly scheduled meeting happens to fall at the beginning of the next quarter or the end of the last quarter. For this reason, OCC aligned other periodic reviews identified in the Committee Charters to occur at each regularly

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cover administrative and other operational expenses incurred by OCC in connection with passing through to Clearing Members the interest earned on Clearing Fund cash deposits held at an OCC account at a Federal Reserve Bank).

<sup>27</sup> OCC Rule 604(a) (“Clearing Members may deposit U.S. dollars in accordance with procedures acceptable to [OCC]. Funds so deposited may from time to time be partially or wholly invested by [OCC] for its account in Government securities, and any interest or gain received or accrued on the investment of such funds shall belong to [OCC].”)

<sup>28</sup> See Exchange Act Release No. 93916, 87 FR at 1820 (“OCC does not propose to amend [Rule 604(a)] by this proposed rule change.”).

<sup>29</sup> See supra note 11.



scheduled meeting, as opposed to quarterly.<sup>30</sup> OCC proposes to do the same with respect to the cadence of fee schedule reviews in the Capital Management Policy.

*(2) Additional Textual Changes*

The proposed changes would also make other textual edits and additions to the Capital Management Policy for clarity and consistency with OCC's other policies. For one, OCC would amend the provision concerning management of OCC's Equity to facilitate capital expenditures to clarify OCC's intent that either of the two options identified for doing so—(1) increasing the Target Capital Requirement or (2) retaining the additional Equity as an amount in excess of the Target Capital Requirement—is available to the Board. The textual edits would state more generally at the outset that OCC may retain additional Equity generated from revenue for capital expenditures following a recommendation by Management and Board approval. Retention of such additional Equity generated from revenue is already implicit in the Capital Management Policy's provisions for setting the fee schedule and determining whether to employ other tools to lower costs for Clearing Members (*e.g.*, a clearing fee refund or holiday), both of which consider OCC's capital needs as a factor. The proposed changes would also more expressly provide that option (2) is available as an alternative to option (1). The principal difference between the two options is that any excess capital retained under option (2) is available as skin-in-the-game in the event of a default loss. In addition, adding that such additional Equity would be "generated from revenue" would also clarify the source of the funds OCC may retain as additional Equity, which under OCC's Capital Management

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<sup>30</sup> See Exchange Act Release No. 94988, 87 FR at 33537-38 (approving amendments to the Audit Committee, Technology Committee and CPC Charters to align the cadence of periodic reviews to each regular meeting of the Committee, rather than "quarterly").

Policy would be generated from fees or interest income—not from capital contributions from OCC’s stockholders that were part of the Capital Plan that predated the Capital Management Policy.<sup>31</sup>

The Capital Management Policy also currently provides that in determining whether to retain additional Equity for capital expenditures, the Board will consider the potential impact of the “investment” on OCC’s operations. The proposed changes would amend this language to instead provide that the Board will consider the potential impact of the “retention of additional Equity” on OCC’s operations, consistent with the terminology that OCC proposes to use throughout that paragraph of the Capital Management Policy. Use of the term “investment” in reference to the retention of Equity may lead to confusion when compared to OCC’s Cash and Investment Management Policy, which addresses guidelines for investing OCC’s own cash and cash deposited by Clearing Members, as discussed above. “Investment” in that context is a separate concept from OCC’s determination whether to retain additional Equity to meet its capital needs, rather than, for example, determining to use tools to decrease the cost of membership through a fee decrease, fee holiday or fee refund.

OCC is also proposing formatting edits to conform the Capital Management Policy to OCC’s current template format for its policies and procedures. Specifically, the proposed changes would add a new introductory paragraph at the outset of the Capital Management Policy that addresses the policy’s applicability and scope. This new introductory paragraph would clarify that the policy applies to the quantification,

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<sup>31</sup> See Exchange Act Release No. 74452 (Mar. 6, 2015), 80 FR 13058 (Mar. 12, 2015) (SR-OCC-2015-02), disapproved on remand by Exchange Act Release No. 85121 (Feb. 13, 2019), 84 FR 5157 (Feb. 20, 2019) (SR-OCC-2015-02).

monitoring and management of OCC's Equity, as well as identify the OCC departments that have roles in those processes, including, primarily, Accounting and Finance, as well as Member Services, Corporate Risk Management, Legal, and Financial Risk Management business units. Finally, OCC would correct a typo by deleting a duplicative word in one of the footnotes to the Capital Management Policy, and such change would have no impact on the meaning of the footnote.<sup>32</sup>

(3) *Cash and Investment Management Policy Correction*

Finally, this proposed change would conform the text of the Cash and Investment Management Policy to the intended meaning by inserting "Clearing Fund" before "cash deposits" when stating that "[i]nterest earned on cash deposits held at a Federal Reserve Bank shall accrue to the benefit of Clearing Members less a cash management fee." The term "Clearing Fund" was inadvertently omitted from the text of the policy, even though that was the intent of the change as described in the associated regulatory filings described above.<sup>33</sup> This change would thereby align the policy statement with OCC Rules 604(a) and 1002(c), which provide different treatment for interest earned on margin cash and Clearing Fund cash deposited at a Federal Reserve Bank.

(2) Statutory Basis

OCC believes the proposed changes are consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, OCC believes the proposed changes are consistent with Section

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<sup>32</sup> Currently, the relevant footnote states that OCC management makes a recommendation that is "based calculated on an annual basis" pursuant to an underlying procedure. OCC proposes to remove the extraneous word "based" from the footnote.

<sup>33</sup> See supra note 25 and accompanying text.

17A(b)(3)(F) of the Exchange Act,<sup>34</sup> and Rules 17Ad-22(e)(1),<sup>35</sup> 17Ad-22(e)(2),<sup>36</sup> and 17Ad-22(e)(3)<sup>37</sup> thereunder for the reasons described below.

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that OCC's rules must be designed to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of OCC or for which it is responsible, and protect investors and the public interest.<sup>38</sup> OCC believes the Capital Management Policy is reasonably designed to ensure that it has sufficient capital to avoid disruptions of its clearance and settlement services in the event OCC experiences a non-default loss—and the potential harm to investors and the public interest that such a disruption could cause—by, among other things, providing that the Board or the CPC periodically reviews OCC's schedule of fees. Updating the Capital Management Policy to align the cadence of those reviews to the Board-determined cadence for regular Board and CPC meetings will enhance the efficiency and effectiveness of the Board and CPC's oversight of OCC's fee schedule by reflecting the Board's determination about the appropriate cadence of those reviews. In addition, the proposed changes to the Capital Management Policy would clarify the options available to OCC to retain additional Equity for capital expenditures, either through the Target Capital Requirement or outside of it, which would help to protect investors and the public interest by ensuring that OCC has a clear framework for

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<sup>34</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>35</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>36</sup> 17 CFR 240.17Ad-22(e)(2).

<sup>37</sup> 17 CFR 240.17Ad-22(e)(3).

<sup>38</sup> 15 U.S.C. 78q-1(b)(3)(F).

retaining additional Equity for capital expenditures that promotes OCC's ability to provide prompt and accurate clearance and settlement services. Similarly, amending the Cash and Investment Management Policy to align the policy with OCC Rules 604(a) and 1002(c) would help avoid any ambiguity concerning the treatment of interest on Clearing Fund cash deposited at a Federal Reserve Bank that OCC has committed to pass through to Clearing Members, thereby ensuring that OCC has a clear and transparent framework for ensuring the safeguarding of funds in its custody or control. For these reasons, OCC believes the proposed changes promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of OCC or for which it is responsible, and protect investors and the public interest.

Rule 17Ad-22(e)(1) under the Exchange Act requires that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.<sup>39</sup> The proposed changes to OCC's Cash and Investment Management Policy are designed to conform the text of the policy with OCC's Rules,<sup>40</sup> thereby improving the clarity and transparency of OCC rules and helping to support OCC's legal basis for its cash management and investment activities.

Accordingly, OCC believes that the changes to the Cash and Investment Management Policy are consistent with Rule 17Ad-22(e)(1).<sup>41</sup>

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<sup>39</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>40</sup> See supra note 25 and accompanying text.

<sup>41</sup> 17 CFR 240.17Ad-22(e)(1).

Rule 17Ad-22(e)(2) under the Exchange Act requires, in part, that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility.<sup>42</sup> As noted above, the proposed changes to the Capital Management Policy would align the cadence of the fee schedule review to the CPC Charter, which provides for at least four regularly scheduled meetings each year, but does not require those meetings be scheduled in each fiscal quarter. For that reason, OCC previously amended its Committee Charters to align the cadence of other periodic reviews to occur at each “regularly scheduled” meeting, rather than quarterly.<sup>43</sup> The Commission concluded that such similar changes were consistent with Rule 17Ad-22(e)(2) by, among other things, improving the alignment of OCC’s governance documents and thereby “creat[ing] stronger clarity and transparency.”<sup>44</sup> In addition, the proposed change to conform OCC’s Capital Management Policy to the latest Board-approved format would add an Applicability and Scope section that would identify the OCC business units with responsibilities under that policy, thereby helping to delineate clear and direct lines of responsibility with respect to the processes set forth therein.

Rule 17Ad-22(e)(3)(i) under the Exchange Act requires, in part, that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing general business risk and investment risk, among other risks, including risk management policies designed to identify, measure, monitor, and manage the range of

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<sup>42</sup> 17 CFR 240.17Ad-22(e)(2)(i), (v).

<sup>43</sup> See supra note 30 and accompanying text.

<sup>44</sup> See Exchange Act Release No. 94988, 87 FR at 33541.

risks that arise in or are borne by OCC, that are subject to review on a specified periodic basis and approved by the Board annually.<sup>45</sup> The proposed changes to the Capital Management Policy and the Cash and Investment Management Policy arose from annual reviews of policies designed to address general business risk and investment risk, respectively. OCC believes those changes are consistent with Rule 17Ad-22(e)(3)(i)<sup>46</sup> because by helping to maintain consistency across OCC's rules and conforming those policies to the versions last approved by the Board, the proposed changes support the maintenance of OCC's risk management policies consistent with regulatory expectations.

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

Section 17A(b)(3)(I) of the Exchange Act<sup>47</sup> 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 proposal would impose any burden on competition because the proposal would implement changes to the Capital Management Policy and the Cash and Investment Management Policy that would apply equally to all Clearing Member users of OCC's services. The proposed changes would not inhibit access to OCC's services in any way and would not disadvantage or favor any particular user in relation to another user. Accordingly, OCC does not believe that the proposed rule changes would have any impact or impose a burden on competition.

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<sup>45</sup> 17 CFR 240.17Ad-22(e)(3)(i).

<sup>46</sup> Id.

<sup>47</sup> 15 U.S.C. 78q-1(b)(3)(I).

(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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>48</sup> of the Act and paragraph (f) of Rule 19b-4 thereunder.<sup>49</sup> 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.<sup>50</sup>

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

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<sup>48</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>49</sup> 17 CFR 240.19b-4(f).

<sup>50</sup> Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.



- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2023-006 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-2023-006. 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 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>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-OCC-2023-006 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.<sup>51</sup>

Secretary

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<sup>51</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5A**

**[Redacted Pursuant to Rule 24b-2]**

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**[Redacted Pursuant to Rule 24b-2]**

**[Redacted Pursuant to Rule 24b-2]**

**Exhibit 5B**

**[Redacted Pursuant to Rule 24b-2]**

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