



January 8, 2021

**VIA ELECTRONIC MAIL**

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

**Re: CFTC Regulation 40.6(a) Certification. Notification of Proposed Rule Change to Revise The Options Clearing Corporation's Rules (Rule Filing No. SR-OCC-2021-002)**

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(a), The Options Clearing Corporation ("OCC") hereby certifies to the CFTC amendments to OCC's Rules. This rule filing has been submitted to Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934 ("Exchange Act"). The date of implementation of the rule is at least 10 business days following receipt of the rule filing by the CFTC or the date the proposed rule is approved by the SEC or otherwise becomes effective under the Exchange Act.

OCC has requested confidential treatment for Exhibit 3 to SR-OCC-2021-002 contained in pages 24-49 of the enclosed filing.

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

**Explanation and Analysis**

OCC proposes to amend Interpretation and Policy ("I&P") .01 to OCC Rule 602 (Customer-Level Margin Requirement), add I&P .02 to OCC Rule 602 (Customer-Level Margin Requirement) and add I&P .01 to OCC Rule 1103 (Notice of Suspension to Clearing Members). The purpose of the proposal is to achieve compliance with recent amendments to Part 39 of the CFTC Regulations<sup>1</sup> and facilitate no-action relief issued by CFTC staff.<sup>2</sup> The proposed changes to OCC Rules are

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<sup>1</sup> Derivatives Clearing Organizations General Provisions and Core Principles, 85 Fed. Reg. 4800 (January 27, 2020).

<sup>2</sup> CFTC Letter No. 19-17, Comm. Fut. L. Rep. ¶ 34,523 (July 10, 2019). See also CFTC Letter No. 20-28, Comm. Fut. L. Rep. ¶ 34,798 (September 15, 2020).

attached as Exhibit 5. Material proposed to be added to OCC's Rules as currently in effect is underlined and material proposed to be deleted is marked in strikethrough text. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.<sup>3</sup>

The purpose of revised I&P .01 to OCC Rule 602 is to achieve compliance with recent amendments to CFTC Regulation 39.13(g)(8)(ii).<sup>4</sup> Departing from the historical practice of establishing distinct minimum initial margin requirements for hedge and speculative customer accounts,<sup>5</sup> revised CFTC Regulation 39.13(g)(8)(ii) provides that a derivatives clearing organization ("DCO") shall establish a minimum initial margin requirement that clearing members must charge their customers with respect to each product and portfolio that is commensurate with the risk presented by each customer account.<sup>6</sup> The revised regulation also provides DCOs reasonable discretion in establishing a higher minimum initial margin requirement that clearing members must collect for categories of customers determined by the clearing member to have heightened risk profiles.<sup>7</sup> As amended, I&P .01 to Rule 602 will allow OCC to achieve compliance with CFTC Regulation 39.13(g)(8)(ii) by requiring Clearing Members to determine which futures customers or categories of futures customers have heightened risk profiles and to collect, at a minimum, the amount of initial margin established by OCC for such customers or categories of customers from time to time. The proposal also eliminates the existing language in I&P .01 to OCC Rule 602 contemplating distinct margin requirements for customer hedge and speculative positions.<sup>8</sup>

OCC also proposes to adopt I&P .02 to OCC Rule 602 to facilitate no-action relief granted by the CFTC. By way of background, in 2011, the CFTC adopted Regulation 39.13(g)(8)(iii) requiring each DCO to prohibit the withdrawal of funds from a customer account unless the clearing member holds a sufficient amount of the customer's assets to cover its initial margin requirements with respect to products cleared by the DCO.<sup>9</sup> In 2012, OCC adopted Rule 602(b) to satisfy this requirement.<sup>10</sup> CFTC staff has issued time-limited no-action relief pursuant to which a DCO may allow a futures commission merchant ("FCM") clearing member to treat the separate accounts of a customer as accounts of separate entities for purposes of CFTC Regulation 39.13(g)(8)(iii), provided that the clearing member satisfies several conditions set forth in the letter.<sup>11</sup> Proposed I&P .02

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<sup>3</sup> OCC's By-Laws and Rules can be found on OCC's public website at [https:// www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules](https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules).

<sup>4</sup> 85 Fed. Reg. at 4812 and 4856.

<sup>5</sup> See, e.g. 85 Fed. Reg. at 4812.

<sup>6</sup> 17 CFR 39.13(g)(8)(ii).

<sup>7</sup> Id.

<sup>8</sup> OCC plans to distribute information used to calculate the minimum initial margin requirement for futures customer accounts and futures customer accounts with heightened risk profiles through a daily theoretical pricing file that is distributed to Clearing Members. OCC currently uses a similar approach for information used to calculate the minimum initial margin requirement for hedge and speculative positions of futures customers.

<sup>9</sup> Derivatives Clearing Organization General Provisions and Core Principles, 76 Fed. Reg. 69334, 69374 (November 8, 2011).

<sup>10</sup> See File No. SR-OCC-2012-006.

<sup>11</sup> CFTC Letter No. 19-17, Comm. Fut. L. Rep. ¶ 34,523 (July 10, 2019) (granting time-limited no-action relief with respect to CFTC Regulation 39.13(g)(8)(iii) until June 30, 2021). See also CFTC Letter No. 20-28, Comm. Fut. L. Rep.

creates an exception to OCC Rule 602(b) that allows FCM Clearing Members that satisfy the conditions established by the CFTC to treat separate futures customer accounts as accounts of separate entities for purposes of OCC Rule 602(b).

Finally, the proposed rule change adds I&P .01 to OCC Rule 1103, which specifies that OCC will publish a public notice of a decision to suspend a Clearing Member on its website as soon as reasonably practical. OCC is adopting this I&P to achieve compliance with CFTC Regulation 39.16(c)(2)(ii), which requires each DCO to adopt rules describing the actions a DCO will take upon a default,<sup>12</sup> which must include posting a public notice of a declaration of default on the DCO's website.<sup>13</sup>

OCC proposes to make the revisions to the I&Ps to OCC Rules 602 and 1103 described above effective on January 27, 2021. This effective date aligns to the compliance date for the revisions to Part 39 of the CFTC regulations.<sup>14</sup>

OCC reviewed the DCO core principles ("Core Principles") as set forth in the Act. During this review, OCC identified the following Core Principles as potentially being impacted:

**Risk Management.** OCC believes that implementing the proposed rule change is consistent with Core Principle D. As amended CFTC Regulation 39.13(g)(8)(ii) allows DCOs to establish higher minimum initial margin requirements that clearing members must charge customers or categories of customers determined by a clearing member to have a heightened risk profile. I&P .01 to OCC Rule 602 is being amended to conform to this requirement. Separately, I&P .02 to Rule 602 is designed to facilitate the no-action relief described above. Both of these changes relate to risk management.

**Default Rules and Procedures.** OCC believes that implementing the proposed rule change is consistent with Core Principle G. As amended, CFTC Regulation 39.16(c)(2)(ii) requires each DCO to have rules that provide for public notice of a clearing member default on its website. I&P .01 to OCC Rule 1103 is being adopted to meet this requirement.

**Public Information.** OCC believes that implementing the proposed rule change will be aligned with Core Principle L.<sup>15</sup> The proposed amendments will be incorporated into OCC's Rules, which are publicly available on OCC's website.

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¶ 34,798 (September 15, 2020) (extending the time-limited no-action relief with respect to CFTC Regulation 39.13(g)(8)(iii) until December 31, 2021).

<sup>12</sup> CFTC Regulation 39.16(c)(2)(ii) also requires DCOs to adopt rules providing for the prompt transfer, liquidation, or hedging of the customer or house positions of the defaulting clearing member, as applicable. Chapter XI of OCC's Rules addresses this portion of CFTC Regulation 39.16(c)(2)(ii).

<sup>13</sup> 17 CFR 39.16(c)(2)(ii). See also 85 Fed. Reg. at 4815-16 and 4857

<sup>14</sup> See 85 Fed. Reg. at 4800.

<sup>15</sup> 7 U.S.C. 7a-1(c)(2)(L).

Opposing Views

No opposing views were expressed related to the rule amendments.

Notice of Pending Rule Certification

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

Certification

OCC hereby certifies that the rule set forth at Item 1 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,



Blake Brockway  
Executive Principal, Associate General Counsel

Enclosure

*Required fields are shown with yellow backgrounds and asterisks.*

Filing by Options Clearing Corporation  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

<b>Initial *</b>	<b>Amendment *</b>	<b>Withdrawal</b>	<b>Section 19(b)(2) *</b>	<b>Section 19(b)(3)(A) *</b>	<b>Section 19(b)(3)(B) *</b>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			<b>Rule</b>		
<b>Pilot</b>	<b>Extension of Time Period for Commission Action *</b>	<b>Date Expires *</b>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

<b>Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010</b>	<b>Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934</b>
<b>Section 806(e)(1) *</b>	<b>Section 806(e)(2) *</b>
<input type="checkbox"/>	<input type="checkbox"/>
	<b>Section 3C(b)(2) *</b>
	<input type="checkbox"/>

<b>Exhibit 2 Sent As Paper Document</b>	<b>Exhibit 3 Sent As Paper Document</b>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

**Description**

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

Proposed Rule Change to Relating to Revisions to Part 39 of the Commodity Futures Trading Commission Regulations

**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 \* Blake Last Name \* Brockway

Title \* Executive Principal, Associate General Counsel

E-mail \* bbrockway@theocc.com

Telephone \* (312) 322-6246 Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 01/08/2021 Assistant General Counsel

By Mark C. Brown [Signature Box]

(Name \*)

Mark C. Brown, mcbrown@theocc.com

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

Add Remove View

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 \***

Add Remove View

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 Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice 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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Exhibit Sent As Paper Document

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 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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 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**

Add Remove View

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)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The Options Clearing Corporation (“OCC” or “Corporation”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend Interpretation and Policy (“I&P”) .01 to OCC Rule 602 (Customer-Level Margin Requirement), add I&P .02 to OCC Rule 602 (Customer-Level Margin Requirement) and add I&P .01 to OCC Rule 1103 (Notice of Suspension to Clearing Members). The purpose of the proposal is to achieve compliance with recent amendments to Part 39 of the Commodity Futures Trading Commission (“CFTC”)<sup>3</sup> regulations and facilitate no-action relief issued by CFTC staff.<sup>4</sup>

The proposed changes to OCC Rules are included in Exhibit 5 of File No. SR-OCC-2021-002. Material proposed to be added to OCC’s Rules as currently in effect is underlined and material proposed to be deleted is marked in strikethrough text. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.<sup>5</sup>

**Item 2. Procedures of the Self-Regulatory Organization**

The proposed addition of I&P .02 to OCC Rule 602 was approved by OCC’s Board of Directors at a meeting held on October 15, 2020. The proposed amendment to I&P .01 to OCC Rule 602 and the addition of I&P .01 to OCC Rule 1103 were approved by OCC’s Board of

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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> Derivatives Clearing Organizations General Provisions and Core Principles, 85 Fed. Reg. 4800 (January 27, 2020).

<sup>4</sup> CFTC Letter No. 19-17, Comm. Fut. L. Rep. ¶ 34,523 (July 10, 2019). See also CFTC Letter No. 20-28, Comm. Fut. L. Rep. ¶ 34,798 (September 15, 2020).

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



Directors at a meeting held on December 10, 2020.

Questions should be addressed to Blake Brockway, Executive Principal, Associate General Counsel, at (312) 322-6246.

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

A. Purpose

The purpose of revised I&P .01 to OCC Rule 602 is to achieve compliance with recent amendments to CFTC Regulation 39.13(g)(8)(ii).<sup>6</sup> Departing from the historical practice of establishing distinct minimum initial margin requirements for hedge and speculative customer accounts,<sup>7</sup> revised CFTC Regulation 39.13(g)(8)(ii) provides that a derivatives clearing organization (“DCO”) shall establish a minimum initial margin requirement that clearing members must charge their customers with respect to each product and portfolio that is commensurate with the risk presented by each customer account.<sup>8</sup> The revised regulation also provides DCOs reasonable discretion in establishing a higher minimum initial margin requirement that clearing members must collect for categories of customers determined by the clearing member to have heightened risk profiles.<sup>9</sup> As amended, I&P .01 to Rule 602 will allow OCC to achieve compliance with CFTC Regulation 39.13(g)(8)(ii) by requiring Clearing Members to determine which futures customers or categories of futures customers have heightened risk profiles and to collect, at a minimum, the amount of initial margin established by OCC for such customers or categories of customers from time to time. The proposal also eliminates the existing language in I&P .01 to OCC Rule 602 contemplating distinct margin

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<sup>6</sup> 85 Fed. Reg. at 4812 and 4856.

<sup>7</sup> See, e.g., 85 Fed. Reg. at 4812.

<sup>8</sup> 17 CFR 39.13(g)(8)(ii).

<sup>9</sup> Id.

requirements for customer hedge and speculative positions.<sup>10</sup>

OCC also proposes to adopt I&P .02 to OCC Rule 602 to facilitate no-action relief granted by the CFTC. By way of background, in 2011, the CFTC adopted Regulation 39.13(g)(8)(iii) requiring each DCO to prohibit the withdrawal of funds from a customer account unless the clearing member holds a sufficient amount of the customer's assets to cover its initial margin requirements with respect to products cleared by the DCO.<sup>11</sup> In 2012, OCC adopted Rule 602(b) to satisfy this requirement.<sup>12</sup> CFTC staff has issued time-limited no-action relief pursuant to which a DCO may allow a futures commission merchant ("FCM") clearing member to treat the separate accounts of a customer as accounts of separate entities for purposes of CFTC Regulation 39.13(g)(8)(iii), provided that the clearing member satisfies several conditions set forth in the letter.<sup>13</sup> Proposed I&P .02 creates an exception to OCC Rule 602(b) that allows FCM Clearing Members that satisfy the conditions established by the CFTC to treat separate futures customer accounts as accounts of separate entities for purposes of OCC Rule 602(b).

Finally, the proposed rule change adds I&P .01 to OCC Rule 1103, which specifies that OCC will publish a public notice of a decision to suspend a Clearing Member on its website as

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<sup>10</sup> OCC plans to distribute information used to calculate the minimum initial margin requirement for futures customer accounts and futures customer accounts with heightened risk profiles through a daily theoretical pricing file that is distributed to Clearing Members. OCC currently uses a similar approach for information used to calculate the minimum initial margin requirement for hedge and speculative positions of futures customers.

<sup>11</sup> Derivatives Clearing Organization General Provisions and Core Principles, 76 Fed. Reg. 69334, 69374 (November 8, 2011).

<sup>12</sup> See File No. SR-OCC-2012-006.

<sup>13</sup> CFTC Letter No. 19-17, Comm. Fut. L. Rep. ¶ 34,523 (July 10, 2019) (granting time-limited no-action relief with respect to CFTC Regulation 39.13(g)(8)(iii) until June 30, 2021). See also CFTC Letter No. 20-28, Comm. Fut. L. Rep. ¶ 34,798 (September 15, 2020) (extending the time-limited no-action relief with respect to CFTC Regulation 39.13(g)(8)(iii) until December 31, 2021).

soon as reasonably practical. OCC is adopting this I&P to achieve compliance with CFTC Regulation 39.16(c)(2)(ii), which requires each DCO to adopt rules describing the actions a DCO will take upon a default,<sup>14</sup> which must include posting a public notice of a declaration of default on the DCO's website.<sup>15</sup>

OCC proposes to make the revisions to the I&Ps to OCC Rules 602 and 1103 described above effective on January 27, 2021. This effective date aligns to the compliance date for the revisions to Part 39 of the CFTC regulations.<sup>16</sup>

#### B. Statutory Basis

Section 17A(b)(3)(F)<sup>17</sup> of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions and protect investors and the public interest. OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.<sup>18</sup> As noted above, the proposed revision to I&P .01 to Rule 602 protects investors and the public interest by more clearly describing which accounts are subject to increased initial margin requirements. The addition of .02 to OCC Rule 602 will promote the prompt and accurate clearance and settlement of transactions by accommodating no-action relief that is intended to help Clearing Members and their customers realize operational efficiencies for separate accounts. The proposed addition of I&P .01 to OCC Rule 1103 promotes the public interest by specifying that OCC will publish a

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<sup>14</sup> CFTC Regulation 39.16(c)(2)(ii) also requires DCOs to adopt rules providing for the prompt transfer, liquidation, or hedging of the customer or house positions of the defaulting clearing member, as applicable. Chapter XI of OCC's Rules addresses this portion of CFTC Regulation 39.16(c)(2)(ii).

<sup>15</sup> 17 CFR 39.16(c)(2)(ii). See also 85 Fed. Reg. at 4815-16 and 4857.

<sup>16</sup> See 85 Fed. Reg. at 4800.

<sup>17</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>18</sup> 15 U.S.C. 78q-1(b)(3)(F).

public notice of a decision to suspend a Clearing Member on its website. The proposal also enables OCC to satisfy certain requirements set forth in Part 39 of the CFTC regulations and provides for a well-founded, clear, transparent and enforceable legal basis for its activities in accordance with SEC Rule 17Ad-22(e)(1).<sup>19</sup> The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

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

Section 17A(b)(3)(I) of the Act<sup>20</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 proposed rule change would have any impact or impose a burden on competition. Although this proposed rule change affects Clearing Members, their customers, and the markets that OCC serves, OCC believes that the proposed rule change would not disadvantage or favor any particular user of OCC's services in relationship to another user because the proposed amendments apply equally to all users of OCC. OCC also notes that two of the proposed revisions to OCC Rules are designed to achieve compliance with amendments to Part 39 of the CFTC Regulations, and, in adopting these amendments, the CFTC identified no anticompetitive effects.<sup>21</sup> Given that the revisions to I&P .01 to OCC Rule 602 and I&P .01 to OCC Rule 1103 are narrowly tailored to achieve compliance with regulatory requirements for which no anticompetitive effects have been identified, OCC does not believe that these amendments would have any impact or impose a burden on competition. The addition of I&P .02 to OCC Rule 602 is intended to facilitate no-action relief related to an existing market practice and is not expected to have any impact on the competitive landscape.

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<sup>19</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>20</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>21</sup> See 85 Fed. Reg. at 4849-50.

While OCC does not believe that the proposal would have any impact or impose a burden on competition, if any such impact or burden to competition were to exist, the proposed amendments would still be necessary to achieve compliance with applicable regulatory requirements and accommodate no-action relief granted by the CFTC. The amendments are appropriate, because they are narrowly tailored to achieve compliance with CFTC Regulations and facilitate no-action relief. Accordingly, OCC does not believe that the proposed rule change would have any unnecessary or inappropriate impact or burden on competition.

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

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

**Item 6. Extension of Time Period for Commission Action**

OCC does not consent to an extension of the time period specified in Section 19(b)(2) of the Act.<sup>22</sup>

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

Pursuant to Section 19(b)(3)(A)(ii)<sup>23</sup> of the Act, and Rule 19b-4(f)(6)<sup>24</sup> thereunder, the proposed rule change is filed for immediate effectiveness, because it does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Additionally, OCC provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description

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<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>24</sup> 17 CFR 240.19b-4(f)(6).

and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission.<sup>25</sup>

In adopting CFTC Regulation 39.13(g)(8)(ii), the CFTC noted that the amendment was consistent with an existing interpretation permitting DCOs to establish initial margin requirements based on the type of customer account and by applying prudential standards that result in FCMs collecting initial margin commensurate with the risk presented by each customer account.<sup>26</sup> OCC does not believe that the amendment to I&P .01 and addition of I&P .02 to Rule 602 would significantly affect the protection of investors or the public interest as these changes simply conform the language OCC's Rules to the applicable CFTC Regulation and prior interpretive guidance and facilitate no-action relief that has been granted with respect to an existing practice. Finally, the addition of I&P .01 to OCC Rule 1103 would not significantly affect the protection of investors or the public interest as it codifies OCC's longstanding practice of posting a notice of a Clearing Member default to its website. The proposed rule change would not impose any significant burden on competition because, as described above, the requirements apply to all Clearing Members, do not disadvantage or favor any particular user of OCC's services in relationship to another user and achieve compliance with applicable regulatory requirements for which the CFTC identified no anticompetitive effects.

OCC requests that the Commission waive the 30-day operative delay contained in Rule

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<sup>25</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>26</sup> See 85 Fed. Reg. at 4812 citing CFTC Letter No. 12-08 (Sept. 14, 2012). In the relevant section CFTC Letter No. 12-08 provided, "[A] DCO may continue the practice of establishing customer initial margin requirements based on the type of customer account and by applying prudential standards that result in FCMs collecting customer initial margin at levels commensurate with the risk presented by each type of customer account. This is the case even if the differentiation between accounts is not stated specifically in terms of 'hedge' and 'non-hedge' accounts." See CFTC Letter 12-08 at 8.

19b-4(f)(6)(iii)<sup>27</sup> so that the proposal may become effective on January 27, 2021. As noted above, the proposal is intended to achieve compliance with amendments to Part 39 of the CFTC Regulations, which become effective on that date. Accordingly, OCC believes that the prompt implementation of these changes would be consistent with the public interest and the protection of investors.

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.

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

Not applicable.

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

Not applicable.

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

Not applicable.

**Item 11. Exhibits**

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

Exhibit 3. Confidential Data and Analysis.

Exhibit 5. Proposed Revisions to the I&Ps to OCC Rules 602 and 1103.

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<sup>27</sup> 17 CFR 240.19b-4(f)(6)(iii).

**CONFIDENTIAL TREATMENT IS REQUESTED FOR EXHIBIT 3**

**PURSUANT TO SEC RULE 24b-2**



**SIGNATURES**

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

**THE OPTIONS CLEARING CORPORATION**

A handwritten signature in blue ink, appearing to read "Blake Brockway", with a stylized flourish at the end.

**By:**

\_\_\_\_\_  
**Blake Brockway**  
**Executive Principal, Associate General Counsel**

## EXHIBIT 1A

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-[\_\_\_\_\_]; File No. SR-OCC-2021-002)

January [\_\_], 2021

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions to Part 39 of the Commodity Futures Trading Commission Regulations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 8, 2021, The Options Clearing Corporation (“OCC” or “Corporation”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii)<sup>3</sup> of the Act and Rule 19b-4(f)(6)<sup>4</sup> thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change by OCC would amend Interpretation and Policy (“I&P”) .01 to OCC Rule 602 (Customer-Level Margin Requirement), add I&P .02 to OCC Rule 602 (Customer-Level Margin Requirement) and add I&P .01 to OCC Rule 1103 (Notice of Suspension to Clearing Members) to achieve compliance with recent

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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)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

amendments to Part 39 of the Commodity Futures Trading Commission (“CFTC”)<sup>5</sup> regulations and facilitate no-action relief issued by CFTC staff.<sup>6</sup> The proposed changes to OCC Rules are included in Exhibit 5 of File No. SR-OCC-2021-002. Material proposed to be added to OCC’s Rules as currently in effect is underlined and material proposed to be deleted is marked in strikethrough text. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.<sup>7</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.

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

(1) Purpose

The purpose of revised I&P .01 to OCC Rule 602 is to achieve compliance with recent amendments to CFTC Regulation 39.13(g)(8)(ii).<sup>8</sup> Departing from the historical

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<sup>5</sup> Derivatives Clearing Organizations General Provisions and Core Principles, 85 Fed. Reg. 4800 (January 27, 2020).

<sup>6</sup> CFTC Letter No. 19-17, Comm. Fut. L. Rep. ¶ 34,523 (July 10, 2019). See also CFTC Letter No. 20-28, Comm. Fut. L. Rep. ¶ 34,798 (September 15, 2020).

<sup>7</sup> OCC’s By-Laws and Rules can be found on OCC’s public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

<sup>8</sup> 85 Fed. Reg. at 4812 and 4856.

practice of establishing distinct minimum initial margin requirements for hedge and speculative customer accounts,<sup>9</sup> revised CFTC Regulation 39.13(g)(8)(ii) provides that a derivatives clearing organization (“DCO”) shall establish a minimum initial margin requirement that clearing members must charge their customers with respect to each product and portfolio that is commensurate with the risk presented by each customer account.<sup>10</sup> The revised regulation also provides DCOs reasonable discretion in establishing a higher minimum initial margin requirement that clearing members must collect for categories of customers determined by the clearing member to have heightened risk profiles.<sup>11</sup> As amended, I&P .01 to Rule 602 will allow OCC to achieve compliance with CFTC Regulation 39.13(g)(8)(ii) by requiring Clearing Members to determine which futures customers or categories of futures customers have heightened risk profiles and to collect, at a minimum, the amount of initial margin established by OCC for such customers or categories of customers from time to time. The proposal also eliminates the existing language in I&P .01 to OCC Rule 602 contemplating distinct margin requirements for customer hedge and speculative positions.<sup>12</sup>

OCC also proposes to adopt I&P .02 to OCC Rule 602 to facilitate no-action relief granted by the CFTC. By way of background, in 2011, the CFTC adopted

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<sup>9</sup> See, e.g. 85 Fed. Reg. at 4812.

<sup>10</sup> 17 CFR 39.13(g)(8)(ii).

<sup>11</sup> Id.

<sup>12</sup> OCC plans to distribute information used to calculate the minimum initial margin requirement for futures customer accounts and futures customer accounts with heightened risk profiles through a daily theoretical pricing file that is distributed to Clearing Members. OCC currently uses a similar approach for information used to calculate the minimum initial margin requirement for hedge and speculative positions of futures customers.

Regulation 39.13(g)(8)(iii) requiring each DCO to prohibit the withdrawal of funds from a customer account unless the clearing member holds a sufficient amount of the customer's assets to cover its initial margin requirements with respect to products cleared by the DCO.<sup>13</sup> In 2012, OCC adopted Rule 602(b) to satisfy this requirement.<sup>14</sup> CFTC staff has issued time-limited no-action relief pursuant to which a DCO may allow a futures commission merchant ("FCM") clearing member to treat the separate accounts of a customer as accounts of separate entities for purposes of CFTC Regulation 39.13(g)(8)(iii), provided that the clearing member satisfies several conditions set forth in the letter.<sup>15</sup> Proposed I&P .02 creates an exception to OCC Rule 602(b) that allows FCM Clearing Members that satisfy the conditions established by the CFTC to treat separate futures customer accounts as accounts of separate entities for purposes of OCC Rule 602(b).

Finally, the proposed rule change adds I&P .01 to OCC Rule 1103, which specifies that OCC will publish a public notice of a decision to suspend a Clearing Member on its website as soon as reasonably practical. OCC is adopting this I&P to achieve compliance with CFTC Regulation 39.16(c)(2)(ii), which requires each DCO to

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<sup>13</sup> Derivatives Clearing Organization General Provisions and Core Principles, 76 Fed. Reg. 69334, 69374 (November 8, 2011).

<sup>14</sup> See File No. SR-OCC-2012-006.

<sup>15</sup> CFTC Letter No. 19-17, Comm. Fut. L. Rep. ¶ 34,523 (July 10, 2019) (granting time-limited no-action relief with respect to CFTC Regulation 39.13(g)(8)(iii) until June 30, 2021). See also CFTC Letter No. 20-28, Comm. Fut. L. Rep. ¶ 34,798 (September 15, 2020) (extending the time-limited no-action relief with respect to CFTC Regulation 39.13(g)(8)(iii) until December 31, 2021).

adopt rules describing the actions a DCO will take upon a default,<sup>16</sup> which must include posting a public notice of a declaration of default on the DCO's website.<sup>17</sup>

OCC proposes to make the revisions to the I&Ps to OCC Rules 602 and 1103 described above effective on January 27, 2021. This effective date aligns to the compliance date for the revisions to Part 39 of the CFTC regulations.<sup>18</sup>

(2) Statutory Basis

Section 17A(b)(3)(F)<sup>19</sup> of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions and protect investors and the public interest. OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.<sup>20</sup> As noted above, the proposed revision to I&P .01 to Rule 602 protects investors and the public interest by more clearly describing which accounts are subject to increased initial margin requirements. The addition of .02 to OCC Rule 602 will promote the prompt and accurate clearance and settlement of transactions by accommodating no-action relief that is intended to help Clearing Members and their customers realize operational efficiencies for separate accounts. The proposed addition of I&P .01 to OCC Rule 1103 promotes the public interest by specifying that OCC will publish a public

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<sup>16</sup> CFTC Regulation 39.16(c)(2)(ii) also requires DCOs to adopt rules providing for the prompt transfer, liquidation, or hedging of the customer or house positions of the defaulting clearing member, as applicable. Chapter XI of OCC's Rules addresses this portion of CFTC Regulation 39.16(c)(2)(ii).

<sup>17</sup> 17 CFR 39.16(c)(2)(ii). See also 85 Fed. Reg. at 4815-16 and 4857.

<sup>18</sup> See 85 Fed. Reg. at 4800.

<sup>19</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>20</sup> 15 U.S.C. 78q-1(b)(3)(F).

notice of a decision to suspend a Clearing Member on its website. The proposal also enables OCC to satisfy certain requirements set forth in Part 39 of the CFTC regulations and provides for a well-founded, clear, transparent and enforceable legal basis for its activities in accordance with SEC Rule 17Ad-22(e)(1).<sup>21</sup> The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

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

Section 17A(b)(3)(I) of the Act<sup>22</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 proposed rule change would have any impact or impose a burden on competition. Although this proposed rule change affects Clearing Members, their customers, and the markets that OCC serves, OCC believes that the proposed rule change would not disadvantage or favor any particular user of OCC's services in relationship to another user because the proposed amendments are designed to achieve compliance with regulatory requirements, facilitate no-action relief and apply equally to all users of OCC. Accordingly, OCC does not believe that the proposed rule change would have any impact or impose a burden on competition.

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

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

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<sup>21</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>22</sup> 15 U.S.C. 78q-1(b)(3)(I).

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

Pursuant to Section 19(b)(3)(A)(ii)<sup>23</sup> of the Act, and Rule 19b-4(f)(6)<sup>24</sup>

thereunder, the proposed rule change is filed for immediate effectiveness, because it does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate.

Additionally, OCC provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission.<sup>25</sup>

In adopting CFTC Regulation 39.13(g)(8)(ii), the CFTC noted that the amendment was consistent with an existing interpretation permitting DCOs to establish initial margin requirements based on the type of customer account and by applying prudential standards that result in FCMs collecting initial margin commensurate with the risk presented by each customer account.<sup>26</sup> OCC does not believe that the amendment to

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<sup>23</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>24</sup> 17 CFR 240.19b-4(f)(6).

<sup>25</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>26</sup> See 85 Fed. Reg. at 4812 citing CFTC Letter No. 12-08 (Sept. 14, 2012). In the relevant section CFTC Letter No. 12-08 provided, “[A] DCO may continue the practice of establishing customer initial margin requirements based on the type of customer account and by applying prudential standards that result in FCMs collecting customer initial margin at levels commensurate with the risk presented by each type of customer account. This is the case even if the differentiation between accounts is not stated specifically in terms of ‘hedge’ and ‘non-hedge’ accounts.”. See CFTC Letter 12-08 at 8.



I&P .01 and addition of I&P .02 to Rule 602 would significantly affect the protection of investors or the public interest as these changes simply conform the language OCC's Rules to the applicable CFTC Regulation and prior interpretive guidance and facilitate no-action relief that has been granted with respect to an existing practice. Finally, the addition of I&P .01 to OCC Rule 1103 would not significantly affect the protection of investors or the public interest as it codifies OCC's longstanding practice of posting a notice of a Clearing Member default to its website. The proposed rule change would not impose any significant burden on competition because, as described above, the requirements apply to all Clearing Members, do not disadvantage or favor any particular user of OCC's services in relationship to another user and achieve compliance with applicable regulatory requirements for which the CFTC identified no anticompetitive effects.

OCC requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii)<sup>27</sup> so that the proposal may become effective on January 27, 2021. As noted above, the proposal is intended to achieve compliance with amendments to Part 39 of the CFTC Regulations, which become effective on that date. Accordingly, OCC believes that the prompt implementation of these changes would be consistent with the public interest and the protection of investors.

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.

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<sup>27</sup> 17 CFR 240.19b-4(f)(6)(iii).

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2021-002 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2021-002. 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-2021-002 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>28</sup>

Secretary

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<sup>28</sup> 17 CFR 200.30-3(a)(12).

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**EXHIBIT 5**



**OCC RULES**

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## THE OPTIONS CLEARING CORPORATION

## RULES

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## CHAPTER VI - Margins

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**RULE 602 – Customer-Level Margin Requirement**

(a) Each Clearing Member shall collect initial margin from its futures customers in such amount as is communicated by the Corporation from time to time.

(b) Each Clearing Member shall ensure that no futures customer of such Clearing Member withdraws funds from its customer account with such Clearing Member unless the net liquidating value plus margin deposits remaining in such account after giving effect to the withdrawal are sufficient to meet the customer initial margin requirement with respect to all confirmed trades cleared for such account.

*. . . Interpretations and Policies:*

**.01** For purposes of Rule 602, ~~“hedge positions” shall be excluded from a Clearing Member’s margin calculations for the customer’s account holding such positions. Clearing Members shall determine which positions are “hedge positions” in a manner consistent with applicable regulations of the Commodity Futures Trading Commission and will identify such positions to the Corporation.~~ Clearing Members shall determine which futures customers or categories of futures customers have heightened risk profiles and shall collect, at a minimum, initial margin in the amount established by the Corporation for such customers or categories of customers from time to time.

**.02** On July 10, 2019, CFTC staff issued Letter No. 19-17, which provides that a DCO may allow FCM clearing members that meet certain conditions to treat separate accounts of a customer as accounts of separate entities for purposes of CFTC Regulation 39.13(g)(8)(iii). Accordingly, OCC is providing an exception to Rule 602(b) and will allow FCM Clearing Members to treat separate futures accounts of the same beneficial owner as accounts of separate entities for purposes of Rule 602(b) during the ordinary course of business, provided that the FCM Clearing Member satisfies any and all applicable conditions established by the CFTC. This exception shall remain in effect until the no-action relief set forth in CFTC Letter No. 19-17 and any subsequent codification or extension of such relief expires.

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**CHAPTER XI – Suspension of a Clearing Member**

\* \* \*

**RULE 1103 – Notice of Suspension to Clearing Members**

Upon the suspension of a Clearing Member, the Corporation shall as soon as possible notify all Clearing Members of the suspension. Such notice shall state, in general terms, how pending transactions, open positions, stock loan and borrow positions, exercised option contracts, matured futures and other pending matters will be affected and what steps are to be taken in connection therewith.

**. . . Interpretations and Policies:**

**.01 The Corporation will publish a public notice of a decision to suspend a Clearing Member on its website as soon as reasonably practicable.**

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