



May 10, 2021

VIA ELECTRONIC MAIL

Christopher J. Kirkpatrick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st 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 Schedule of Fees

Dear Secretary Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended ("Act"), and Commodity Futures Trading Commission ("CFTC") Regulation 40.6(a), The Options Clearing Corporation ("OCC") hereby certifies to the CFTC amendments to OCC's schedule of fees. The date of implementation of the rule is at least 10 business days following receipt of the rule filing by the CFTC or the date the proposed rule is approved by the Securities and Exchange Commission ("SEC") or otherwise becomes effective under the Securities Exchange Act of 1934 ("Exchange Act"). This rule filing has been submitted to the SEC under the Exchange Act.

Amendments to OCC's schedule of fees are included in Exhibit A. Material proposed to be added is marked by underlining, and material proposed to be deleted is marked with strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.¹

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

Explanation and Analysis

The purpose of this certification is to revise OCC's schedule of fees effective June 1, 2021, to implement a decrease in clearing fees. OCC's Capital Management Policy ("Policy") provides that OCC reviews its fee schedule on a periodic basis in consideration of factors including, but not limited to, projected operating expenses, projected volumes, anticipated cash flows, and capital

¹ 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>.

needs.² Provided that OCC's shareholders' equity ("Equity") exceeds 110% of the Target Capital Requirement³ ("Early Warning")⁴ plus the amount approved for capital expenditures, OCC's Board, or a Committee the Board has delegated, may use tools as it considers appropriate to lower costs for Clearing Members. Such tools for reducing the cost of clearing include lowering fees, declaring a fee holiday, or issuing refunds.⁵

OCC experienced record volumes in 2020 while maintaining expenses at or around the budgeted amount. These strong financial results put OCC in a position to continue to invest resources in OCC's initiative to update and upgrade its technology infrastructure for critical clearing and settlement services, risk systems and data management,⁶ while at the same time lowering the cost of clearing for the users of the markets OCC serves. Accordingly, in August 2020, OCC announced several measures approved by OCC's Board and Compensation and Performance Committee ("CPC") to lower the cost of clearing, including lowering its clearing fee from \$0.055 per contract to \$0.045 per contract, an anticipated clearing fee refund to be announced at year-end, and the establishment of a persistent minimum level of OCC's own capital that OCC would contribute to cover default losses or liquidity shortfalls (commonly referred to as "skin-in-the-game")—which will serve as a floor to OCC's current, variable amount of skin-in-the-game funded by capital in excess of OCC's Early Warning.⁷

OCC implemented the announced clearing fee decrease on September 1, 2020,⁸ and in December, OCC announced that its Board had approved a clearing fee refund of \$156 million,⁹

² See Exchange Act Release No. 88029 (Jan. 24, 2020), 85 FR 5500, 5502 (Jan. 30, 2020) (File No. SR-OCC-2019-007) ("Order Approving Policy"); Exchange Act Release No. 87257 (Oct. 8, 2019), 84 FR 55194, 55196 (Oct. 15, 2019) (File No. SR-OCC-2019-805) ("Notice of No-Objection to Policy").

³ The Target Capital Requirement is the amount of Equity recommended by Management and approved by the Board of Directors ("Board") to ensure compliance with regulatory capital requirements and to keep such additional amount the Board may approve for capital expenditures. See OCC Rule 101.

⁴ The Early Warning is one of the thresholds under OCC's plan for replenishing capital in the event OCC's Equity falls close to or below OCC's regulatory capital requirements, as required by SEC Rule 17Ad-22(e)(15)(iii). See 17 CFR 17Ad-22(e)(15)(iii).

⁵ See Order Approving Policy, 85 FR at 5502; Notice of No-Objection to Policy, 84 FR at 55196.

⁶ See OCC Technology Changes + Enhancements Reference Guide (Jan. 28, 2021), available at <https://www.theocc.com/getmedia/2926b09d-5da5-4f00-85f2-09111bb2fcf8/OCC-Tech-Changes-Enhancements-RefGuide-012821-FNL.pdf?ext=.pdf>.

⁷ See Letter to Clearing Member Firms – OCC To Lower Costs for Users of U.S. Equity Derivatives Markets (Aug. 3, 2020), available at <https://www.theocc.com/Newsroom/Views/2020/08-03-Letter-to-Clearing-Member-Firms>.

⁸ See Exchange Act Release No. 89534 (Aug. 12, 2020), 85 FR 50858 (Aug. 18, 2020) (File No. SR-OCC-2020-009).

⁹ See Press Release, OCC to Provide Year-End Refund to Clearing Members (Dec. 17, 2020), available at <https://www.theocc.com/Newsroom/Press-Releases/2020/12-17-OCC-to-Provide-Year-End-Refund-for-Clearing>.

which OCC paid on April 19, 2021. The SEC issued a notice of no objection to the advance notice for OCC’s skin-in-the-game proposal on April 7, 2021.¹⁰ Implementation of that proposal is currently pending approval of a proposed rule change pending with the SEC.¹¹

As of December 31, 2020, OCC maintained Equity of approximately \$557.6 million, or approximately \$282.6 million more than the Early Warning.¹² OCC continues to experience record volume in 2021 while maintaining expenses at or around the budgeted amount. Based on projections of contract volume and expenses, OCC believes that it can lower fees by 2.5 cents while maintaining sufficient revenue to support OCC’s operations and capital needs, including 2021 cash needs related to OCC’s technology infrastructure transformation. Accordingly, OCC proposes to modify its fee schedule to: (i) decrease its per contract clearing fee from \$0.045 to \$0.02 per contract; and (ii) adjust the quantity of contracts at which the fixed, per trade clearing fee begins from trades with more than 1,222 contracts per trade to trades with more than 2,750 contracts per trade, as set forth in the schedule of fees depicted below.¹³

Current Fee Schedule		Proposed Fee Schedule	
Clearing Fees		Clearing Fees	
Trades with contracts of 0-1222	\$0.045/contract	Trades with contracts of 0-2750	\$0.02/contract
Trades with contracts of more than 1222	\$55/trade	Trades with contracts of more than 2750	\$55/trade

OCC proposes to make the fee change effective June 1, 2021, because OCC believes that this date is the first date that the industry could be prepared to process the new fee without disruption based on consultations with market participants.¹⁴

OCC reviewed the DCO core principles (“Core Principles”) as set forth in the Act, regulations thereunder, and the provisions applicable to a DCO that elects to be subject to the

¹⁰ See Exchange Act Release No. 91491 (Apr. 7, 2021), 86 FR 19061 (Apr. 12, 2021) (File No. SR-OCC-2021-801).

¹¹ See Exchange Act Release No. 91483 (Apr. 6, 2021), 86 FR 19066 (Apr. 12, 2021) (File No. SR-OCC-2021-003); Exchange Act Release No. 91199 (Feb. 24, 2021), 86 FR 12237 (Mar. 2, 2021) (File No. SR-OCC-2021-003).

¹² See OCC 2020 Financials, [available at https://www.theocc.com/getattachment/9f5d22ff-d810-4690-948d-f9a207df083d/attachment.aspx](https://www.theocc.com/getattachment/9f5d22ff-d810-4690-948d-f9a207df083d/attachment.aspx).

¹³ These changes are also reflected in Exhibit 5 to File No. SR-OCC-2021-006.

¹⁴ OCC notes that a mid-month change to clearing fees could introduce operational disruption to Clearing Members due to the impact on their billing processes.

provisions of 17 CFR Subpart C (“Subpart C DCO”). During this review, OCC identified the following Core Principles and regulations and provisions applicable to subpart C DCOs as potentially being impacted:

Public Information. OCC believes that implementing the proposed rule change will be aligned with Core Principle L,¹⁵ which requires, in part, that each DCO provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the costs associated with using the services of the DCO. OCC believes that by implementing the proposed changes to its schedule of fees and by publishing the modified schedule of fees to its public website it would provide Clearing Members with sufficient information to enable them to identify and evaluate the costs associated with using the services of OCC.

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 enclosed Exhibit A 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,



Mark C. Brown
Assistant General Counsel

Enclosure

¹⁵ 7 U.S.C. 7a-1(c)(2)(L).