SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–392, OMB Control No. 3235–0447]

Submission for OMB Review; Comment Request; Extension: Rule 17f–6

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17f–6 (17 CFR 270.17f–6) under the Investment Company Act of 1940 (15 U.S.C. 80a) permits registered investment companies (''funds'') to maintain assets (*i.e.,* margin) with futures commission merchants (''FCMs'') in connection with commodity transactions effected on both domestic and foreign exchanges. Before the rule was adopted, funds generally were required to maintain such assets in special accounts with a custodian bank.

The rule requires a written contract that contains certain provisions designed to ensure important safeguards and other benefits relating to the custody of fund assets by FCMs. To protect fund assets, the contract must require that FCMs comply with the segregation or secured amount requirements of the Commodity Exchange Act (''CEA'') and the rules under that statute. The contract also must contain a requirement that FCMs obtain an acknowledgment from any clearing organization that the fund's assets are held on behalf of the FCM's customers according to CEA provisions.

Because rule 17f–6 does not impose any ongoing obligations on funds or FCMs, Commission staff estimates there are only costs related to new contracts between funds and FCMs. This estimate does not include the time required by an FCM to comply with the rule's contract requirements because, to the extent that complying with the contract provisions could be considered ''collections of information,'' the burden hours for compliance are already included in other PRA submissions.[1] Commission staff estimates that approximately 1,164 series of 151 funds which report that futures commission merchants and commodity clearing organizations provide custodial services to the fund.[2] Based on these estimates, the total annual burden hours associated with rule 17f–6 is 27 hours. The estimated total annual burden hours associated with rule 17f–6 have decreased 1 hour, from 28 to 27 hours and external costs increased from $11,900 to $15,534. These changes in burden hours and external costs reflect changes in the number of affected entities and in the external cost associated with the information collection requirements. These changes reflect revised estimates.

These estimates are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collections of information requirements of the rule are necessary to obtain the benefit of relying on the rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by December 20, 2024 to (i) *www.reginfo.gov/public/do/PRAMain* or *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov,* and (ii) Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Tanya Ruttenberg, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: November 15, 2024.

Vanessa A. Countryman,

Secretary.

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[1] The rule requires a contract with the FCM to contain two provisions requiring the FCM to comply with existing requirements under the CEA and rules adopted thereunder; thus, to the extent these provisions could be considered collections of information, the hours required for compliance would be included in the collection of information burden hours submitted by the CFTC for its rules.

[2] This estimate is based on the average number of funds that reported on Form N–CEN from April 2021–March 2024, in response to sub-items C.12.6. and D.14.6; money market funds are excluded from this estimate because exchange-traded futures contracts or commodity options are not eligible securities for money market funds; the number of series and funds that reported on Form N–CEN in response these sub-items were: 1,112 series of 150 funds for the period April 2021–March 2022; 1,180 series of 152 funds for the period April 2022–March 2023; and 1,210 series of 151 funds for the period April 2023–March 2024 (for filings received through June 30, 2024).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101621; File No. SR–OCC–2024–013]

Self-Regulatory Organizations; Options Clearing Corporation; Order Approving Proposed Rule Change by The Options Clearing Corporation Concerning Modifications to Its By-Laws and Rules Primarily To Discontinue Certain Outmoded or Unused Products and Services

November 14, 2024.

I. Introduction

On September 13, 2024, The Options Clearing Corporation (''OCC''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make modifications to its By-Laws and Rules primarily to discontinue certain outmoded or unused products and services (''Proposed Rule Change''). The Proposed Rule Change was published for comment in the **Federal Register** on October 1, 2024.[3] The Commission has not received any comments on the Proposed Rule Change. For the reasons discussed below, the Commission is approving the Proposed Rule Change.

II. Description of the Proposed Rule Change

OCC is a clearing agency that clears a number of transactions including standardized equity options listed on national securities exchanges and registered with the Commission, stock loans, and futures.[4] Since 2000, for its core clearing, risk management, and data management applications, OCC has relied on a platform it calls ''ENCORE.'' ENCORE operates in on-premises data

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 101189 (Sept. 25, 2024), 89 FR 79978 (Oct. 1, 2024) (File No. SR–OCC–2024–013) (''Notice'').

[4] All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules, *available at https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

centers.[5] Among other things, ENCORE is OCC's system for receiving trade and post-trade data on a transaction by transaction basis, maintaining clearing member positions, calculating margin and clearing fund requirements, and providing reporting to OCC staff, regulators and clearing members.[6] OCC plans to discontinue ENCORE and migrate its functions to a cloud-based successor clearing system that it calls Ovation.[7]

As part of the transition to Ovation, OCC is determining which features of ENCORE will migrate to Ovation.[8] The Proposed Rule Change describes certain functions that OCC proposes discontinuing because they are outmoded, unused,[9] or no longer support OCC's ability to clear and settle transactions. In this category, under the Proposed Rule Change, OCC would (i) no longer facilitate the settlement of commissions and fees owed between Clearing Members that are party to a Clearing Member Trade Assignment (''CMTA'') arrangement; (ii) delete rule provisions related to over-the-counter (''OTC'') option products; [10] (iii) delete from its rules the ''associated Market Maker'' account subtype; and (iv) no longer require that Clearing Members maintain records of both parties to a trade.

The Proposed Rule Change also includes three sets of additional changes that OCC proposed to make in connection with the transition to Ovation. In this category, OCC proposes to (i) allow Clearing Members to ''give-up'' one or more positions in cleared contracts that are futures or futures options to another Clearing Member without designating the specific account of the Given-Up Clearing Member to which such positions must be allocated; (ii) categorize a trade as an opening transaction when an opening or closing indicator is not included on a trade; and (iii) conform rules related to the discharge of broker-to-broker settlement obligations to current practice.

A. Discontinuing Existing Functions

i. Discontinuing the Facilitation of Commissions and Fees Between CMTA Clearing Members

CMTA arrangements allow a Clearing Member that executed a securities options trade (Executing Clearing Member), to send the trade directly through OCC to another Clearing Member (Carrying Clearing Member) for clearance and settlement.[11] Clearing Members generally use CMTA arrangements when they execute transactions for correspondent brokers that custody their assets with separate Carrying Clearing Members or execute transactions for an institutional customer that has a prime brokerage arrangement with a separate Clearing Member.[12]

Currently, subject to certain conditions, Clearing Members that are parties to a CMTA arrangement may opt to have OCC facilitate the settlement of fees and commissions for transactions pursuant to the CMTA arrangement. However, no Clearing Member has used the service since 2016, nor have any expressed interest in using it in the future.[13] Accordingly, OCC proposes to eliminate it.

To effect the discontinuation of the service, OCC proposes a number of changes to its Rules. Specifically, OCC proposes deleting Rules 407(a)(2) and 504(e), as well as certain text in Rule 504(g).[14]

Rule 407(a)(2) allows Clearing Members that are parties to a CMTA arrangement to authorize OCC to settle fees and commissions owed by the Carrying Clearing Member to the Executing Clearing Member in respect of transfers effected pursuant to the CMTA arrangement. It also discusses Clearing Members' requirements [15] and restrictions [16] for electing to have OCC settle the applicable fees and commissions for transactions under the CMTA as well as guidance as to when the Clearing Members' election to have OCC settle applicable fees and commissions under the CMTA arrangement is effective.

Rule 504(e) provides that OCC, as agent, is authorized to effect non-guaranteed settlement of fees and commissions owed by a Carrying Clearing Member to an Executing Clearing Member for transfers effected pursuant to their registered CMTA arrangement, provided their CMTA registration authorizes OCC to effect such settlements.[17]

Finally, certain text in Rule 504(g) indicates that OCC has no obligation to effect settlement of fees and commissions as provided in Rule 407 if either the Executing Clearing Member or the Carrying Clearing Member has been suspended by OCC. The Proposed Rule Change would delete this text but leave the remainder of Rule 504(g) untouched.

ii. Deleting Provisions Related to Clearing and Settling OTC Options

OCC's current Rules and By-Laws are designed to support the clearing and settling of OTC options.[18] However, OCC has only ever cleared OTC options based on the S&P 500 index,[19] and has not cleared and settled an OTC option since 2014. OCC does not currently have any open interest in OTC options and OCC's Clearing Members have not expressed interest in clearing OTC options with OCC in the future.[20] As such, OCC proposes removing all provisions from its By-Laws and Rules related to clearing and settling OTC options.[21]

[5] Securities Exchange Act Release No. 96113 (October 20, 2022), 87 FR 64824, 64825 (Oct. 26, 2022) (File No. SR–OCC–2021–802).

[6] Notice, 89 FR at 79978–79.

[7] *Id.;* Notice, 89 FR at 79979.

[8] *Id.* at 79978–79.

[9] *Id.* at 79979.

[10] An OTC option is an option contract with variable terms that are negotiated bilaterally between the parties to such transaction (subject to any specific requirements applicable to such products as set forth in the By-Laws and Rules), and that is affirmed through the facilities of an OTC Trade Source and submitted to OCC for clearing as a confirmed trade. OCC By-Laws, Article I.

[11] Securities Exchange Act Release No. 88974 (May 29, 2020), 85 FR 34468, 34469 (June 4, 2020) (File No. SR–OCC–2020–005).

[12] Securities Exchange Act Release No. 49841 (June 9, 2004), 69 FR 34207, 34207 (June 18, 2004) (File No. SR–OCC–2003–011).

[13] Notice, 89 FR at 79979.

[14] OCC proposes to replace the deleted text in Rule 504(e) with the word Reserved.

[15] Specifically, OCC requires Clearing Members making such an election to specifically register that aspect of their CMTA arrangement with OCC. Clearing Members making such election authorize (1) the Executing Clearing Member to enter into OCC's systems fee and commission information with respect to transfers effected pursuant to the CMTA arrangement between the Clearing members, subject to such system checks as may be established by OCC from time to time and (2) OCC to calculate and settle, in accordance with the applicable provisions of Rule 504, the aggregate of such entered amounts on the next following business day without any further authorization or consent of the Carrying Clearing Member.

[16] Rule 407 notes that any entries of commission and fee information under Rule 407(a)(2) shall be solely fees and commissions related to transfers effected pursuant to the Clearing Members' CMTA arrangement and for no other purposes.

[17] Further, Rule 504(e) also indicates how OCC determines the aggregate amounts to be settled, warns that OCC is not obligated to validate the accuracy of information input into OCC's systems to determine settlement amounts, indicates when OCC effects settlement, and confirms that OCC settlement facilitation under the CMTA arrangement does not require the Carrying Clearing Member to give any additional authorization or consent and that OCC does not have any role in resolving disputes between the Carrying Clearing Member and the Executing Clearing Member regarding these settlements. OCC would replace the text of Rule 504(e) with the word ''Reserved.''

[18] Securities Exchange Act Release No. 68434 (Dec. 14, 2012), 77 FR 75243 (Dec. 19, 2012) (File No. SR–OCC–2012–14).

[19] Notice, 89 FR at 79980.

[20] *Id.*

[21] *Id.* OCC indicates that it would submit a proposed rule change to the Commission as necessary in the event that it decides to support the

To effect this change, OCC proposes deleting from the By-Laws the definitions for ''OTC option,'' ''OTC index option,'' ''OTC Trade Source,'' ''OTC Trade Source Rules,'' and ''Backloaded OTC Option.'' The Proposed Rule Change would also delete text in provisions of the By-Laws and Rules that reference the above terms or that are otherwise related to OCC's clearance and settlement of OTC options. As a result, the following provisions in the By-Laws would have relevant OTC-related terms deleted from them (or, where indicated, be deleted in their entirety): Article I; [22] Article VI, Section 1, Interpretation and Policies .01(a); Article VI, Section 3, Interpretations and Policies .09 (deleted in its entirety); Article VI, Sections 10(b) and (g); Article VI, Sections 27(a) and (b); Article XVII, Introduction; Article XVII, Definitions, Section 1; [23] Article XVII, Section 3(h); Article XVII, Section 3, Interpretation and Policies .01 (deleted in its entirety); Article XVII, Section 4(a)(2); Article XVII, Section 5(a); and Article XVII, Section 6 (deleted in its entirety).

Likewise, the following provisions in the Rules would have relevant OTC-related terms deleted from them (or, where indicated, be deleted in their entirety): Rule 201(b)(6) (deleted in its entirety); Rules 401(a), (a)(1)(i), (b), (d), (e), (f), and (g); Rule 405; Rule 406; Rule 407(l) (deleted in its entirety); Rule 408(a); Rules 611(a), (b), and (d) (deleted in its entirety); Rule 801(b); Rule 803 Interpretation and Policy .01; Rule 804; Rule 1003 Interpretation and Policy .02 (deleted in its entirety); Rule 1104 Interpretation and Policy .03 (deleted in its entirety); Rule 1105; Rule 1106(e)(2) (deleted in its entirety); Rule 1106 Interpretation and Policy .01; Chapter XVIII of the Rules, Introduction; Rules 1804(b) and (c); and Rule 1804 Interpretation and Policy .03 (deleted in its entirety).

iii. Eliminating the Associated Market Maker Sub-Account Type

OCC currently allows its Clearing Members to use combined market maker accounts. OCC's rules provide for three types of combined market maker accounts: a combined account limited to Market-Makers that are neither Proprietary Market-Makers [24] nor Associated Market-Makers; [25] a combined account limited to Proprietary Market-Makers; and a combined account limited to Associated Market-Makers.[26]

Currently, Clearing Members do not use the Associated Market-Maker sub-account type. Thus, OCC proposes deleting references to this sub-account type from its By-Laws.[27] To effect this change, the Proposed Rule Change would delete the definition for Associated Market-Maker from Article I of the By-Laws. It would also remove from the By-Laws language related to Associated Market-Makers and the accounts their trades may be included in from Article VI, Section 3(c), Interpretation and Policy .03, and Interpretation and Policy .06. Finally, the Proposed Rule Change would replace a reference to Section 3(i) with a reference to Section 3(c) in the first sentence of Interpretation and Policy .06. As a result of the changes, OCC's By-Laws would provide for only two combined market-maker accounts going forward—one limited to Market-Makers that are not proprietary Market-Makers and one limited to Proprietary Market-Makers.

iv. Recordkeeping Requirements

OCC's rules currently require Clearing Members to maintain a record of the Purchasing Clearing Member and the Writing Clearing Member to each confirmed trade.[28] Before electronic trading was adopted, this requirement helped OCC reconcile counterparty settlement obligations and efficiently clear and settle confirmed trades, which aided OCC in avoiding settlement delays and disputes.[29]

With the adoption of electronic trading, OCC no longer needs Clearing Members to keep a record of the Purchasing Clearing Member and the Writing Clearing Member to each transaction.[30] OCC's role as a CCP further diminishes the need for this requirement because OCC novates all confirmed trades in options contracts so that it becomes the buyer to every seller and the seller to every buyer. As such, the original counterparty information in transactions is not relevant or necessary in respect of OCC's clearance and settlement process.[31]

OCC proposes no longer requiring that Clearing Members keep records of the Purchasing Clearing Member and the Writing Clearing Member to transactions. To accomplish this, OCC proposes adding an exception to its Rule 208 so that it would require only that Clearing Members keep records showing all confirmed trade data required pursuant to OCC's By-Laws and Rules, including confirmed trade information reported to OCC under Rule 401 except for the identity of the counterparty Clearing Member.

B. Miscellaneous Changes

As noted above, OCC also proposes three miscellaneous changes to its By-Laws and Rules. First, the Proposed Rule Change would allow Clearing Members to ''give up'' one or more positions in cleared contracts that are futures or futures options to another

clearance and settlement of OTC Options in the future. *Id.*

[22] OCC proposes deleting definitions for ''OTC Index Option Clearing Member'' and ''Origination Date.'' Additionally, OCC proposes deleting text from the definitions for ''Class,'' ''Clearing Member,'' ''Confirmed Trade,'' ''Index Multiplier,'' ''Index Value Determinant,'' ''Trade Date,'' and ''Variable Terms'' that discusses the definitions in the context of OTC Options or that is related to OTC Options. As a result of the removal of provisions related to OTC Options, the Proposed Rule change would also delete text from Interpretation and Policy .01 to Section C of Article I that indicates that the term ''Exchange Transaction'' was removed from the By-Laws and Rules and replaced with the term ''Confirmed Trade'' to reflect the expansion of OCC's clearing activities into OTC options. *Id.* at 79980 n.11.

[23] OCC proposes deleting text related to OTC options in the definitions for ''Class of Options,'' ''Current Underlying Interest Value; Current Index Value,'' ''Expiration Date,'' ''Expiration Time (deleted entirely),'' ''Reporting Authority,'' and ''Series of Options.''

[24] A Proprietary Market-Maker is a Market-Maker that is (A) a non-customer of such Clearing Member or (B) a Related Person of such Clearing Member that (i) is not a customer of such Clearing Member for purposes of Rule 15c3–3 of the Securities and Exchange Commission, (ii) does not carry the accounts of persons who are customers of such Market-Maker for purposes of Rule 15c3–3, and (iii) has consented to be treated as a proprietary Market-Maker for purposes of the By-Laws and Rules. This term includes any participant, as such, in an account that is not required to be segregated under Section 4d of the Commodity Exchange Act of which 10% or more is owned by a proprietary Market-Maker.

[25] An Associated Market-Maker is a person maintaining an account with a Clearing Member as a Market-Maker, specialist, stock market-maker, stock specialist, or Registered Trader that is a Related Person of the Clearing Member and shall include any participant, as such in an account of which 10% or more is owned by an associated Market-Maker, or an aggregate of 10% or more of which is owned by one or more associated Market-Makers.

[26] OCC By-Laws, Article VI, Section 3, Interpretation and Policy .06. The Commission has previously acknowledged that Clearing Members may find these accounts attractive because positions in these accounts can offset one another in a manner that may lead to lower margin requirements. Securities Exchange Act Release No. 33492 (Jan. 19, 1994), 59 FR 3896, 3897 n.11 (Jan. 27, 1994) (File No. SR–OCC–90–11).

[27] Notice, 89 FR at 79982.

[28] Under Rule 208, Clearing Members must keep records showing all confirmed trade data required by OCC's By-Laws and Rules including confirmed trade information reported to OCC under Rule 401. OCC Rules, Rule 208. Rule 401 requires that confirmed trades include the identity of the Purchasing Clearing Member and the Writing Clearing Member to the transaction. OCC Rules, Rule 401(a)(1)(i).

[29] Notice, 89 FR at 79980.

[30] *Id.*

[31] *Id.* at 79981. Additionally, OCC asserts that configuring Ovation to maintain such records would require OCC to invest significant resources that could impact Ovation's release timeline. *Id.* at 79980.

Clearing Member without designating the specific account of the Given-Up Clearing Member to which such positions must be allocated in order to better facilitate give-up allocations to the appropriate account. Second, OCC's amendments would categorize a trade as an opening transaction when an opening or closing indicator is not included on a trade for an options or futures contract to ensure that an existing position is not inadvertently closed out. Third, OCC proposes changes related to the discharge of broker-to-broker settlement obligations to better reflect its current practice.[32]

i. Designating the Appropriate Given-Up Clearing Member Account

Similar to the CMTA arrangements described above, a second way that OCC provides flexibility with respect to which broker executes a transaction is through give-up transactions.[33] Rule 408 allows for one or more positions in cleared contracts to be allocated from a designated account of a Giving-Up Clearing Member to a designated account of a Given-Up Clearing Member. Mechanically, these transactions are initiated post-trade by the Giving-Up Clearing Member by instructing OCC to move a position in one of its accounts to the designated account of the Given-Up Clearing Member. The Giving-Up Clearing Member may designate the Given-Up Clearing Member's account to which it would like to allocate positions. Currently, this allocation process is only available for positions in futures and options on futures cleared and settled by OCC.[34]

OCC proposes changing which Clearing Member must designate the account to which OCC should allocate given-up positions from the Giving-Up Clearing Member to the Given-Up Clearing Member. OCC believes this change will help reduce the risk of positions being transferred to an incorrect account because it would provide the Given-Up Clearing Member with more control over where positions it executes ultimately are transferred.[35] To do this, OCC would delete certain references to designated accounts in Rules 408(a) and (b). Currently, Rule 408(a) provides that positions may be allocated to a designated account of a Given-Up Clearing Member. OCC proposes deleting the reference to a designated account so that Rule 408(a) provides that positions may be allocated to a Given-Up Clearing Member. Rule 408(b) contemplates instructions to allocate positions from a designated account of the Giving-Up Clearing Member to a designated account of the Given-Up Clearing Member. Under OCC's proposal, the revised rule text would instead contemplate instructions to allocate positions from a designated account of the Giving-Up Clearing Member to a Given-Up Clearing Member. OCC also proposed to add text to Rule 408(b) indicating that, if certain conditions are met, the Given-Up Clearing Member may designate an account to which the allocation will be made. Once the Given-Up Clearing Member designates an account, OCC will adjust the positions in the respective designated accounts of the Giving-Up and Given-Up Clearing Members in accordance with the allocation instruction.

In line with current practice, the Proposed Rule Change would also clarify that this allocation process is only available for futures and options on futures. OCC would amend the title of Rule 408 to be ''Allocations of Positions for Futures and Futures Options'' rather than just ''Allocations of Positions.'' Currently, Rule 408(a) provides that give up allocations are available for cleared contracts. OCC's proposal would clarify that one or more positions in cleared contracts that are futures or futures options may be allocated in a give up allocation. Similarly, in Rule 408(e), OCC proposes replacing the word ''options'' with ''futures options'' in multiple locations to clarify that give-up allocations are only available for futures and options on futures contracts.[36]

To remove duplicative text from Rule 408, OCC proposes deleting the last sentence from Rule 408(b), which currently provides that if the Giving-Up Clearing Member and the Given-Up Clearing Member are not parties to an allocation agreement registered with OCC, then OCC shall adjust the positions in the respective designated accounts of the Giving-Up and Given-Up Clearing Member in accordance with the allocation instruction only upon receipt of notice from the Given-Up Clearing Member of its affirmative acceptance of the allocation.[37] OCC believes this rule text is already covered elsewhere in Rule 408.[38]

Similarly, OCC proposes removing a reference to allocation agreements in Rule 408(b) because that reference is duplicative of Rule 408(d).[39] Rule 408(b) requires the Giving-Up Clearing Member and the Given-Up clearing Member to be parties to an allocation agreement registered with OCC before OCC is required to allocate positions pursuant to a give-up transaction. OCC Rule 408(d), however, provides that the Given-Up Clearing Member is responsible for all settlement and other obligations in respect of each position that has been allocated to one of its accounts pursuant to a its acceptance of an allocation instruction. Further, under Rule 408(c) registration of an allocation agreement functionally is notice of affirmative acceptance of an allocation.[40] In OCC's view, because of Rule 408(c), there is no need for this separate requirement in Rule 408(b).

OCC also proposes removing duplicative text from Rule 408(d) to clarify Rule 408.[41] Currently, Rule 408(d) contains references to registered allocation agreements alongside references to acceptances of allocation instructions. For instance, 408(d) indicates that the Given-Up Clearing Member shall be responsible for all settlement and other obligations in respect of each position that has been allocated to one of its accounts pursuant to a registered allocation agreement or pursuant to its acceptance of an allocation instruction. Rule 408(d) also provides that, if there is not a registered allocation agreement on file with OCC or the Given-Up Clearing Member has rejected or not timely provided OCC with notice of its affirmative acceptance of an allocation, the relevant position will remain in the account of the Giving-Up Clearing Member. As noted above, registration of an allocation agreement is functionally the same as notice of affirmative acceptance of an allocation. Thus, referring to allocation

[32] *Id.* at 79979.

[33] Securities Exchange Act Release No. 85779 (May 6, 2019), 84 FR 20689 (May 10, 2019) (File No. SR–OCC–2019–003).

[34] Notice, 89 FR at 79981.

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.* As discussed above, proposed Rule 408(b) would indicate that OCC will adjust positions in the respective designated accounts of the Giving-Up and Given-Up Clearing Members in accordance with an allocation instruction only after the Given-Up Clearing Member designates the account to which the allocation instruction will be made. Moreover, Rule 408(d) would provide that if the Given-Up Clearing Member has rejected or not provided OCC with notice of its affirmative acceptance of an allocation at or before the deadline prescribed by OCC, the position(s) that is (are) the subject of such allocation instruction shall remain in the account of the Giving-Up Clearing Member, which shall be responsible for all settlement and other obligations in respect thereof, unless the position is transferred or adjusted pursuant to other provisions of the By-Laws and Rules.

[39] Notice, 89 FR at 79981.

[40] Rule 408(c) provides that the registration of an allocation agreement constitutes notice to OCC that the Giving-Up Clearing Member has been authorized by the Given-Up clearing Member to allocate positions to an account of the Given-Up Clearing Member without further action by the Given-Up Clearing Member.

[41] Notice, 89 FR at 79981.

agreements in addition to acceptance of allocation instructions is duplicative. As such, OCC proposes removing references to allocation agreements in Rule 408(d).[42]

ii. Default Treatment for Certain Confirmed Transactions

OCC currently accepts and novates confirmed transactions in options, sent to OCC by an options exchange, irrespective of whether there is an indication that the transaction is either an opening or closing transaction. In practice, if the transaction is not identified as either an opening or closing transaction, then OCC treats it as an opening transaction.

OCC proposes to reflect this current practice in its rules.[43] Rule 401, Interpretation and Policy .01 already provides that, in the case of futures, trade information submitted by an Exchange need not identify a transaction as opening or closing. It also indicates that if trade information submitted by an Exchange for a futures trade does not identify a transaction as opening or closing, OCC will treat all purchase and sale transactions in futures in accounts other than Market Maker accounts as opening transactions. OCC proposes to broaden the application of Rule 401, Interpretation and Policy .01 to encompass options as well as futures.

OCC also proposes to broaden the scope of Rule 401, Interpretation and Policy .01 to apply to Market-Maker accounts. Currently, Rule 401, Interpretation and Policy .01 does not apply to purchase and sale transactions in futures and options in Market Maker accounts. OCC proposes removing this limitation because it believes that the practice of treating unidentified trades as opening transactions is operationally safer because it helps avoid the unintentional closure of existing positions, irrespective of whether the specific unidentified trade is in a Market Maker account or not.[44]

iii. Broker-Broker Settlement Obligations

OCC proposes two changes related to its broker-to-broker settlement obligations to align its rules with its practices. Ordinarily, settlement of exercise and assignment activity occurs through OCC's correspondent clearing corporation, the National Securities Clearing Corporation (''NSCC'') pursuant to OCC's Rule 901.[45] In certain circumstances, such as when an underlying security is not CCC-eligible,[46] OCC directs that settlement will occur on a broker-to-broker basis pursuant to Rules 903–912. Under OCC Rule 909, when settlement is not made through the correspondent clearing corporation, for example when broker-broker settlement is directed, the Delivering Clearing Member and the Receiving Clearing Member must send notices to OCC as to the number of units of the underlying security delivered and the amount received. Under OCC Rule 909(d), when a Delivering or Receiving Clearing Member submits to OCC notice of a delivery, payment, or receipt of delivery or payment, and the contra Clearing Member does not respond to such notice within two business days, the contraparty's failure to respond constitutes acknowledgement to OCC that the obligation has been settled as indicated in the submitting Clearing Member's notice, provided that the designated delivery date has occurred. However, OCC's current practice differs from this provision in Rule 909. Rather, when OCC directs broker-broker settlement it also indicates that, if it is not possible for the Delivering Clearing Member to effect delivery of the underlying shares on the designated settlement date, then the settlement obligations of both Delivering and Receiving Clearing Members will be delayed until OCC designates a new exercise settlement date, settlement method, and/or settlement value.[47]

The Proposed Rule Change would amend Rule 909 to align the Rule with current practice. Specifically, OCC would amend Rule 909(d) to provide that OCC will construe a contraparty's failure to respond to indicate that the obligation is unsettled until such time as either (i) both Delivering and Receiving Clearing Members mutually agree to settle the obligation and notify OCC; or (ii) OCC settles the obligation on behalf of both Delivering and Receiving Clearing Members pursuant to OCC's policies and procedures.

Separately, OCC Rule 909 currently requires Clearing Members to submit notices indicating the number of units of the underlying security delivered (received) and the amount received (paid) therefor for transactions not settled via NSCC. In practice, however, the amount received or paid is systematically determined at OCC rather than being specified by the Clearing Members.[48] Therefore, OCC proposes removing ''and the amount received (paid)'' from the text of Rule 909.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.[49] Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [50] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[51] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[52] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[53]

After carefully considering the Proposed Rule Change, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act [54] and Rule 17Ad–22(e)(21).[55]

A. Consistency With Section 17A(b)(3)(F) of the Act

Under Section 17A(b)(3)(F) of the Act, OCC's rules, among other things, must be ''designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements,

[42] Notice, 89 FR at 79981.

[43] *Id.*

[44] *Id.* at 79982.

[45] *See* Interpretation and Policy .02 to OCC Rule 901.

[46] *Id.* The term CCC-eligible means that securities contracts in the underlying security arising from the exercise or maturity of a cleared security are eligible for settlement through the Continuous Net Settlement Accounting Operation of NSCC. OCC By-Laws, Article I, Section C.6.

[47] Taking such action is allowed under Article VI, Section 19 of the By-Laws.

[48] OCC states that the practice of systematically calculating cash amounts helps OCC avoid processing notices entered by Clearing Members that may be inaccurate. *See* Notice, 89 FR at 79982.

[49] 15 U.S.C. 78s(b)(2)(C).

[50] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[51] *Id.*

[52] *Id.*

[53] *Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 447 (D.C. Cir. 2017) (''Susquehanna'').

[54] 15 U.S.C. 78q–1(b)(3)(F).

[55] 17 CFR 240Ad–22(e)(21).

contracts, and transactions.'' [56] Based on the Commission's review of the record, and for the reasons discussed below, OCC's proposed rule change is consistent with Section 17A(b)(3)(F).

OCC proposes amending its rules to discontinue a number of existing functions that are outmoded or unused. As described above, OCC would no longer offer services through which it facilitates the settlement of commissions and fees owed between Clearing Members that are party to a CMTA arrangement because Clearing Members have neither expressed interest in using this service nor, since 2016, have they used it.[57] OCC would cease clearing and settlement services with respect to OTC options because it has not cleared or settled an OTC option since 2014, its Clearing Members have not expressed interest in OCC doing so in the future, and it does not currently have any open interest in OTC options.[58] OCC's amendments would also discontinue the Associated Market-Maker account subtype because its Clearing Members do not use it.[59] OCC also proposes to eliminate the requirement that Clearing Members maintain records of both parties to a trade because the original counterparty information in transactions is not relevant or necessary in respect of OCC's clearance and settlement process.

Discontinuing services no longer in use, and the rules related to such services, removes unnecessary complexity from OCC's rules without impeding the clearance or settlement of securities transactions. Similarly, removing from its rules obligations on Clearing Members that are no longer necessary to support OCC's ability to clear and settle transactions, such as the obligation for Clearing Members to maintain unnecessary records, reduces complexity without impeding OCC's clearance and settlement activities. Reducing complexity would also improve the clarity of OCC's rules.

As described above, OCC also proposes changes to improve the accuracy of its clearance and settlement of transactions. Specifically, OCC proposes requiring the Given-Up Clearing Member, rather than the Giving-Up Clearing Member, to designate an account to which the allocation in a give up transaction will be made. This proposed change would provide a Given-Up Clearing Member with more control over its own account and could help reduce the risk that such a Clearing Member would receive positions it does not want.[60] Separately, OCC proposes to treat confirmed transactions in options and futures as opening transactions where the trade information provided to OCC does not indicate whether the transaction is an opening or closing transaction. This would reduce the risk of an unintentional closure of existing positions. By avoiding mistakenly closing existing positions and reducing the risk that a transaction will be transferred to the wrong account, OCC's proposed changes promote the accurate clearance and settlement of securities transactions.

Finally, OCC proposes to amend its rules to no longer construe a Clearing Member's failure to act as acknowledgement of settlement in broker-to-broker transactions. Rather, OCC would not construe such a transaction to have settled until either it receives notice from both Clearing Members of their mutual agreement to settle the obligation or OCC settles the positions pursuant to its policies and procedures. This could reduce potential inaccuracies in OCC's settlement of the contracts it clears, and would also be consistent with current practice.[61]

By removing the duplicative portions of Rule 408, OCC would improve the clarity of its Rules,[62] which in turn increases the likelihood that its participants understand the methods available to clear and settle transactions and how those methods function. Similarly, ensuring that the rules align with current practice, in the ways discussed above, helps prevent confusion by OCC's Clearing Members as to the methods available to clear and settle transactions and how those methods function. By preventing such confusion, OCC makes it more likely that participants are able to efficiently and accurately execute their transactions. As such, the Proposed Rule Change promotes the prompt and accurate clearance and settlement of securities transactions.

The Proposed Rule Change is, therefore, consistent with the requirements of Section 17A(b)(3)(F) of the Act.[63]

B. Consistency With Rule 17Ad–22(e)(21)

Rule 17Ad–22(e)(21) requires OCC to ''establish, implement, maintain, and enforce written policies and procedures reasonably designed to . . . be efficient and effective in meeting the requirements of its participants and the markets it serves . . . .'' [64] Based on its review of the record, and for the reasons discussed below, OCC's Proposed Rule Change is consistent with Rule 17Ad–22(e)(21). When clearing agencies establish policies and procedures that address Rule 17Ad–22(e)(21), the Commission has indicated that they should ask whether their policies' and procedures' design meets the needs of its participants and the markets it serves, particularly with respect to choice of a clearance and settlement arrangement, operating structure, scope of products cleared, settled, or recorded, and use of technology and procedures.[65]

OCC's policies and procedures would meet the needs of its participants and the markets it serves after its proposed discontinuation of products and services its Clearing Members no longer use. OCC proposes discontinuing its facilitation of the settlement of commissions and fees owed between Clearing Members that are party to a CMTA arrangement because Clearing Members have neither expressed interest in using this service nor, since 2016, have they used it.[66] OCC plans on no longer offering clearing and settlement services with respect to OTC options because it has not cleared and settled an OTC option since 2014, its Clearing Members have not expressed interest in OCC doing so in the future, and it does not currently have any open interest in OTC options.[67] OCC also would discontinue the Associated Market-Maker account subtype because its Clearing Members do not use it.[68] OCC is not obligated to offer these products and services. Further, its Clearing Members' lack of interest in these products and services suggests that they do not need them. As such, OCC's proposed discontinuation of these products and services is consistent with the requirements of Rule 17Ad–22(e)(21).[69]

[56] 15 U.S.C. 78q–1(b)(3)(F).

[57] Notice, 89 FR at 79979.

[58] *Id.* at 79980.

[59] *Id.* at 79982.

[60] As noted above, OCC also proposes to remove duplicative provisions in the rules governing such transactions.

[61] As discussed above, other proposed changes that align the rules with current practice include clarifying that give-up transactions are only available for futures and options on futures; removing the requirement to include certain information in notices; and defaulting to an opening transaction when certain trade information do not indicate that a transaction is either an opening or closing transaction.

[62] OCC also proposes correcting an inaccurate reference to Section 3 of its By-Laws, Paragraph I. This too increases the clarity of its rules.

[63] 15 U.S.C. 78q–1(b)(3)(F).

[64] 17 CFR 240.17Ad–22(e)(21).

[65] Securities Exchange Act Release No. 78961, 81 FR 70786, 70841 (Oct. 13, 2016) (File No. S7–03–14).

[66] Notice, 89 FR at 79979.

[67] *Id.* at 79980.

[68] *Id.* at 79982.

[69] 17 CFR 240.17Ad–22(e)(21).

The Proposed Rule Change is, therefore, consistent with the requirements of Rule 17Ad–22(e)(21).[70]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, Section 17A(b)(3)(F) of the Act[71] and Rule 17Ad–22(e)(21).[72]

It is therefore Oodered pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR–OCC–2024–013) be, and hereby is, approved.[73]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[74]

Vanessa A. Countryman,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101628; File No. SR–NYSEAMER–2024–68]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Establish Fees for the NYSE American Aggregated Lite Data Feed

November 14, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 4, 2024, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fees for the NYSE American Aggregated Lite data feed. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend the NYSE American LLC Equities Proprietary Market Data Fees Schedule (''Fee Schedule'') and establish fees for the NYSE American Aggregated Lite (''NYSE American Agg Lite'') data feed,[4] effective November 4, 2024.[5]

In summary, the NYSE American Agg Lite is a NYSE American-only frequency-based depth of book market data feed of the NYSE American's limit order book for up to ten (10) price levels on both the bid and offer sides of the order book for securities traded on the Exchange and for which the Exchange reports quotes and trades under the Consolidated Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan. The NYSE American Agg Lite is a compilation of limit order data that the Exchange provides to vendors and subscribers. The NYSE American Agg Lite includes partial depth of book order data as well as security status messages. The security status message informs subscribers of changes in the status of a specific security, such as trading halts, short sale restriction, etc. In addition, the NYSE American Agg Lite includes order imbalance information prior to the opening and closing of trading.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[6]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.''[7] Indeed, cash equity trading is currently dispersed across 16 exchanges,[8] numerous alternative trading systems,[9] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share (whether including or excluding auction volume).[10]

Proposed NYSE American Agg Lite Data Feed Fees

The Exchange proposes to establish the fees listed below for the NYSE American Agg Lite data feed. The

[70] 17 CFR 240.17Ad–22(e)(21).

[71] 15 U.S.C. 78q–1(b)(3)(F).

[72] 17 CFR 240.17Ad–22(e)(21).

[73] In approving the proposed rule change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[74] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The proposed rule change establishing the NYSE American Agg Lite data feed was immediately effective on February 27, 2024. *See* Securities Exchange Act Release No. 99690 (March 7, 2024), 89 FR 18445 (March 13, 2024) (SR–NYSEAMER–2024–14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE American Aggregated Lite Market Data Feed).

[5] The Exchange originally filed to amend the Fee Schedule on May 13, 2024 (SR–NYSEAMER–2024–31). On July 11, 2024, the Exchange withdrew SR–NYSEAMER–2024–31 and replaced it with SR–NYSEAMER–2024–44. On September 6, 2024, the Exchange withdrew SR–NYSEAMER–2024–44 and replaced it with SR–NYSEAMER–2024–55. On November 4, 2024, the Exchange withdrew SR–NYSEAMER–2024–55 and replaced it with this filing.

[6] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[7] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[8] *See* Cboe U.S. Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fastanswers/divisionsmarketregmrexchangesshtml.html.*

[9] *See* FINRA ATS Transparency Data, available at *https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

[10] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*