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Vanessa A. Countryman,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100930; File No. SR-OCC-2024-011]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Partial Amendment No. 1, by The Options Clearing Corporation Concerning Its Stock Loan Programs

September 4, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 22, 2024, The Options Clearing Corporation (“OCC” or “Corporation”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. On September 3, 2024, OCC filed a partial amendment (“Partial Amendment No. 1”) to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Partial Amendment No. 1 (hereafter “the proposed rule change”), from interested persons.

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

This proposed rule change would address limitations in the structure of OCC’s Stock Loan/Hedge (“Hedge”) Program and Market Loan Program (together, the “Stock Loan Programs”) by creating the framework for a single, enhanced program designed to support current and future needs. The proposed enhancements would, among other things, (i) combine into the Market Loan Program favorable aspects of both Stock Loan Programs, including the submission of bilaterally negotiated transactions; (ii) conform the terms of stock loans submitted under the Market Loan Program (“Market Loans”) more

closely to the provisions most commonly included in stock loan transactions executed under standard loan market documents; (iii) provide a uniform guaranty of terms across Market Loans, regardless of how those Market Loans are initiated under the enhanced program; (iv) support transactions under both Stock Loan Programs through OCC’s new clearance and settlement system; and (v) reorganize, restate, and consolidate provisions of OCC’s By-Laws and Rules governing the Stock Loan Programs.

The proposed amendments to OCC’s Rules and By-Laws can be found in Exhibit 5A and Exhibit 5B to File No. SR-OCC-2024-011, respectively. Proposed conforming changes to OCC’s internal Margin Policy and Recovery and Wind-Down (“RWD”) Plan, which can be found in confidential Exhibits 5C and 5D to File No. SR-OCC-2024-011, respectively. Material proposed to be added is marked by underlining and material proposed to be deleted is marked with strikethrough text. For ease of presentation and to distinguish between changes to rule text versus relocation of existing rule text, Exhibits 5A and 5B to File No. OCC-2024-011 contain bracketed text to indicate when existing text has been relocated from the By-Laws to the Rules with changes as marked. That bracketed text describes changes that would be performed upon implementation of File No. SR-OCC-2024-011, but it is not intended to be rule text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the By-Laws and Rules.⁴

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

In its capacity as a central counterparty registered with the Commission, OCC currently operates two programs through which it clears

stock loan transactions: the Hedge Program and the Market Loan Program. Under both Stock Loan Programs, OCC becomes the lender to the borrower and the borrower to the lender, thereby guaranteeing the return of the full value of cash collateral to the Borrowing Clearing Member and the return of the Loaned Stock (or value of that Loaned Stock) to the Lending Clearing Member. Under the Market Loan Program, OCC also offers certain additional guarantees, discussed in more detail below, with respect to other payment obligations arising from the stock loan transactions (e.g., dividend equivalent payments and rebate payments). As a result of OCC’s novation of cleared stock loan transactions, the rights and obligations of the Borrowing and Lending Clearing Members are thereafter governed by OCC’s By-Laws and Rules.⁵ OCC’s By-Laws and Rules also provide for, among other things, how Clearing Members initiate Stock Loans at OCC, how those Stock Loans are recorded in OCC’s books and records, how returns and recalls are processed, and risk management procedures specific to Stock Loans in the event that OCC suspends one of the Clearing Member counterparties.

As announced in 2022, OCC intends to replace its current clearance and settlement system (ENCORE) with a streamlined operational framework for clearance and settlement (Ovation).⁶ The move to Ovation gives OCC the opportunity to address limitations in the structure of OCC’s Stock Loan Programs and enhance OCC’s stock loan services to support current and future needs.⁷ OCC proposes a number of amendments to its By-Laws and Rules designed to,

⁵ Terms provided under a Master Stock Lending Agreement (“MSLA”) between the parties to a Stock Loan may remain in effect as between the parties to the extent they are not inconsistent with the By-Laws and Rules, but do not impose any obligation on OCC. See OCC Rule 2202(b).

⁶ See OCC Announces New Platform Name and Launches Enhanced Transformation website (May 10, 2022), <https://www.theocc.com/newsroom/views/2022/05-10-occ-announces-new-platform-name-and-launches-enhanced-transformation-website>.

⁷ As discussed in more detail below, OCC’s current programs are limited by certain inefficient legacy practices including, for example: (1) position-based recordkeeping that does not align with the contract-level accounting that is common throughout the stock loan industry, which adds complexity to the process of ensuring that all parties are in alignment on the state of their stock loans; (2) workflows that involve settlement of delivery versus payment obligations at the Depository prior to clearance or settlement at OCC, which adds further complexity to the reconciliation process and can lead to position breaks; and (3) payment flows common to stock loans that are not guaranteed under OCC’s Hedge Loan program and must currently be settled as between the parties away from OCC.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Partial Amendment No. 1, OCC corrected an error in Exhibit 5A to SR-OCC-2024-011 without changing the substance of the proposed rule change. Partial Amendment No. 1 does not materially alter the substance of the proposed rule change or raise any novel regulatory issues.

⁴ 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>.

among other things, (i) combine into the Market Loan Program favorable aspects of both Stock Loan Programs, including the submission of bilaterally negotiated transactions; (ii) conform the terms of Market Loans cleared by OCC more closely to the provisions most commonly included in stock loan transactions executed under standard loan market documents; (iii) provide a uniform guaranty of terms across Market Loans, regardless of how those Market Loans are initiated under the enhanced program; (iv) support transactions under both Stock Loan Programs through OCC's new clearance and settlement system; and (v) reorganize, restate, and consolidate provisions of OCC's By-Laws and Rules governing the Stock Loan Programs.

OCC believes these changes will address certain pain points that OCC's members have raised and enhance the overall process. In particular, the proposed changes would allow members who currently participate in the Hedge Loan Program to submit transactions through an improved workflow to the Market Loan Program, under which the counterparties will benefit from OCC's enhanced guaranty and the efficiency of allowing OCC's systems to handle certain post-trade transactions that Hedge Loan Program participants must currently address bilaterally with each of their counterparties, away from OCC. In addition, the proposed changes would align how OCC records stock loan transactions in its books and records with an industry-standard, contract-level approach, which is expected to alleviate operational burdens on members that must currently reconcile their internal records with OCC's position-based records on a daily basis.

These enhancements would also serve as a foundation for consolidating OCC's Hedge Loan and Market Loan Programs. As discussed more fully below, OCC intends to eventually decommission the Hedge Program, after which the Market Loan Program would become OCC's single Stock Loan Program. OCC would take a phased approach to decommissioning the Hedge Program and would commence its Hedge Program phase-out plan only after conferring with Clearing Members that they are prepared for the transition.

(1) Purpose

Background

Stock Loan Initiation

In the Hedge Program, OCC acts as the principal counterparty for stock loans that are executed bilaterally between Clearing Members and sent to OCC for

clearance and settlement. Prospective Lending and Borrowing Clearing Members identify each other (independent of OCC), agree to bilaterally negotiated terms of the Hedge Loan, and then send the details of the stock loan to the Depository, the Depository Trust Company ("DTC"), with a certain "reason code,"⁸ which designates the stock loan as a Hedge Loan for guaranty and clearance at OCC. The Lending Clearing Member then instructs DTC to transfer a specified number of shares of Eligible Stock to the account of the Borrowing Clearing Member versus transfer of the appropriate amount of cash collateral to the account of the Lending Clearing Member. This current process, in which settlement at DTC occurs before clearance at OCC, adds complexity to balancing and reconciliation under the current Hedge Program.

In the Market Loan Program, stock loans are initiated through the matching of bids and offers that are agreed upon by the Market Loan Clearing Members or otherwise matched through a Loan Market. A Loan Market is an electronic platform that supports securities lending and borrowing transactions in the Market Loan Program by matching lenders and borrowers based on loan terms that each party is willing to accept.⁹ In order to initiate a Market Loan, the Loan Market sends a matched transaction to OCC, which in turn sends two separate but linked settlement instructions to DTC to effect the movement of Eligible Stock and cash collateral between the accounts of the Market Loan Clearing Members through OCC's account at DTC.

Scope of OCC's Guaranty

Regardless of whether a transaction is initiated under the Hedge Program or Market Loan Program, OCC novates the transaction and becomes the lender to the Borrowing Clearing Member and the borrower to the Lending Clearing Member.¹⁰ As the principal counterparty to the Borrowing and Lending Clearing Members, OCC guarantees the return of the full value of cash collateral to a Borrowing Clearing Member and guarantees the return of the Loaned Stock (or value of that Loaned Stock) to the Lending Clearing Member. Under the Market Loan Program, OCC

⁸ Unique reason codes were created by DTC for Clearing Members to designate stock loan transactions intended to be sent to OCC for novation and guarantee.

⁹ Currently, one Loan Market operates within OCC's Market Loan Program—Automated Equity Finance Markets, Inc. ("AQS"), a subsidiary of Equilend Holdings LLC ("Equilend").

¹⁰ See OCC Rules 2202(b) and 2202A(b).

also provides a limited guaranty of substitute dividend¹¹ and rebate payments,¹² in each case limited to the amount OCC has collected in margins from the responsible Market Loan Clearing Member based upon instructions received by the Loan Market prior to the payment date. Under the Hedge Program, OCC does not currently offer a guaranty of dividends or distributions, which must be resolved bilaterally between the Borrowing and Lending Clearing Members.

Mark-to-Market Payments

After novation, as part of the guaranty, OCC processes mark-to-market payments for all cleared stock loans on a daily basis to collateralize all loans to the negotiated levels. Mark-to-market payments are based on the value of the loaned securities and made between Clearing Members using OCC's cash settlement system. In the Hedge Program, the percentage of the value of the loaned securities, either 100% or 102%, and the preferred mark-to-market rounding are dependent upon the terms of the Master Securities Loan Agreement ("MSLA") between the two Clearing Member parties to the transaction. Currently, members may select between several default rates to which the mark price would be rounded to the nearest interval (1.00, .05, 0.25, 0.10, 0.05, and 0.01). In the Market Loan Program, all Market Loans are collateralized based on the rate and rounding convention established by the Loan Market—currently 102% with rounding to the nearest dollar.

In both Stock Loan Programs, daily mark-to-market of cash collateral typically are settled in the firm lien account or combined Market-Makers' account of the Clearing Member.¹³ Settlements generally are combined and netted against other OCC settlement obligations in a Clearing Member's account, including trade premiums and margin deficits. Clearing Member open positions in the Stock Loan Programs are factored into the Clearing Member's

¹¹ The terms "substitute dividend" or "dividend equivalent payment" in respect of a stock loan transaction means a payment made by the Borrowing Clearing Member to the Lending Clearing Member to reflect any cash dividend or distribution made with respect to the Loaned Stock during the term of the stock loan.

¹² In respect of a stock loan transaction, a rebate is typically a fee payable from the Lending Clearing Member to the Borrowing Clearing Member, expressed as a rate based on the amount of cash collateral held by the Lending Clearing Member ("Positive Rebate"). However, if the rebate rate is negative ("Negative Rebate"), the fee is payable from the Borrowing Clearing Member to the Lending Clearing Member.

¹³ See OCC Rule 2201(a)(iii); Rule 2201A(a)(iii).

overall margin¹⁴ and Clearing Fund contribution requirements.¹⁵

Position Aggregation

OCC aggregates all stock loan positions and stock borrow positions of a Clearing Member relating to the same Eligible Stock for reporting and margin calculation purposes. OCC separately identifies stock loan and stock borrow positions resulting from each of the Stock Loan Programs, and such positions are not fungible with positions resulting from the other program. Position aggregation in both Stock Loan Programs is a legacy practice and does not follow industry-standard book-keeping practices. Because of position aggregation, certain industry standard post-trade activity must be performed bilaterally away from OCC, such as re-rate transactions that change the rebate rate on an individual loan.

Dividends and Distributions

Dividend equivalent payments for the Market Loan Program are ordinarily effected through DTC's Dividend Service. If a Loan Market has advised OCC that the dividend or distribution for such Market Loan is not tracked by DTC's Dividend Service, or if OCC determines, in its discretion, to remove a Market Loan from the Dividend Service, OCC Rule 2206A(a)(ii) currently provides that dividend equivalent payments are effected through OCC's cash settlement system the day following the expected dividend or distribution payment date. OCC Rule 2206A(a)(ii) further provides that the calculation of the margin in respect of dividend equivalent payments shall be solely based on calculations provided by the Loan Market, and OCC shall have no responsibility to verify the accuracy of the Loan Market's calculation. In addition, OCC Rule 2206A(a)(iii) provides that with respect to non-cash dividends and distributions, a Loan Market may determine in its discretion to fix a cash settlement value for which the Loan Market may instruct OCC to effect collection and payment. In the event of a Borrowing Clearing Member's default, OCC guarantees dividend equivalent payments to the extent that OCC has collected margin equal to such dividend equivalent according to the instructions provided by the Loan Market.

Termination of Stock Loans

Hedge Loans are typically terminated when either (i) a Borrowing Clearing Member instructs DTC to transfer a

specified quantity of the Loaned Stock to the Lending Clearing Member against payment of the settlement price by the Lending Clearing Member to the Borrowing Clearing Member, after which DTC notifies OCC of the transaction with special codes after the transaction has settled; or (ii) the Lending Clearing Member gives notice to the Borrowing Clearing Member that the Lending Clearing Member is terminating the Stock Loan, or a portion thereof and specifies the number of shares of the Loaned Stock in respect of which the Lending Clearing Member is terminating the Stock Loan.¹⁶ The current process of initiating return transactions for the Hedge Program through DTC can lead to position breaks if the return transactions are not properly coded. Market Loans are typically terminated by a Market Loan Clearing Member giving notice to the relevant Loan Market calling for the recall or return of a specified quantity of the Loaned Stock.¹⁷ The Loan Market then sends details of the matched return/recall transaction to OCC, which validates the transaction and sends a pair of delivery orders to DTC in connection with the recall/return.

However, in certain circumstances when a Clearing Member under either Stock Loan Program fails to return the specified quantity of Loaned Stock or to pay the applicable settlement price for a Loaned Stock, the counterparty Clearing Member may choose to execute a "buy-in" or "sell-out" of the Loaned Stock on its own.¹⁸ The Clearing Member executing a buy-in or sell-out is then required to provide notice to OCC and its counterparty, in the case of a Hedge Loan,¹⁹ or the Loan Market, in the case of a Market Loan,²⁰ of the buy-in or sell-out after execution is complete. Termination is not complete until the records of OCC, which are the official record of open and closed stock loan transactions, reflect the termination of the Stock Loan, and Clearing Members remain liable for all obligations related to open stock loan positions as reflected in the records of OCC.

Offset and Re-Matching of Matched-Book Positions

A portion of the activity in OCC's Hedge Program relates to what is often referred to as matched-book activity, when a Hedge Clearing Member maintains in an account a stock loan

position for a specified number of shares of an Eligible Stock reflecting a stock lending transaction with one Hedge Clearing Member (the Borrowing Clearing Member) and also maintains in that same account a stock borrow position for the same number, or lesser number, of shares of the same Eligible Stock with another Hedge Clearing Member (the Lending Clearing Member) (such positions being "Matched-Book Positions"). In the event of a Clearing Member suspension, OCC has authority to re-match Matched-Book Positions of the defaulting Clearing Member in the Hedge Loan Program.²¹ Such re-matching in suspension eliminates risk associated with price dislocation if OCC were required to instruct the surviving lender to buy-in and the surviving borrower to sell-out the same quantity of Loaned Stock in order to unwind the Matched-Book Positions.

Canadian Clearing Members

OCC expanded the Hedge Program to accommodate Canadian Hedge Clearing Members in 2013.²² To be eligible for the Hedge Program, a Canadian Clearing Member must appoint CDS Clearing and Depository Services Inc. ("CDS"), Canada's national securities depository, to act as its agent through CDS's arrangements with DTC and the National Securities Clearing Corporation ("NSCC") to provide cross-border service to clear and settle trades with U.S. counterparties.²³ Currently, Canadian Clearing Members are not eligible for the Market Loan Program.

Canadian Clearing Members are also subject to additional requirements intended to allow OCC to perform its clearance and settlement services free from tax withholding obligations with respect to payments to such members. Specifically, OCC has established rules to address the application of Section 871(m) of the Internal Revenue Code of 1986, as amended ("I.R.C.")²⁴ to listed options transactions effective on January 1, 2017.²⁵ Section 871(m) imposes a 30% withholding tax on "dividend equivalent" payments that are made or

²¹ See OCC Rule 2212.

²² See Exchange Act Release No. 69534 (May 8, 2013), 78 FR 28267 (May 14, 2013) (File No. SR-OCC-2013-03).

²³ See OCC Rule 302(e), (f)(1).

²⁴ 26 U.S.C. 871(m).

²⁵ In September 2015, the Treasury Department adopted final regulations based on a proposal issued in December 2013 expanding the types of derivatives to which Section 871(m) applies to include certain listed options transactions with an effective date of January 1, 2017. See T.D. 9734, 80 FR 56866 (Sept. 18, 2015). The Treasury Department adopted final regulations providing additional guidance on section 871(m) in January 2017. See T.D. 9815, 82 FR 8144 (Jan. 24, 2017).

¹⁶ See OCC Rule 2209(a).

¹⁷ See OCC Rule 2209A(a).

¹⁸ See OCC Rule 2209(b), (f); Rules 2209A(b), (c).

¹⁹ See OCC Rule 2209A(b), (f).

²⁰ See OCC Rule 2209A(b)(1), (c)(1).

¹⁴ See OCC Rules 601, 2203 & 2203A.

¹⁵ See OCC Rule 1001.

deemed to be made to non-U.S. persons with respect to certain derivatives that reference equity of a U.S. issuer. OCC Rule 202 provides that Clearing Members that are non-U.S. entities for U.S. federal tax purposes (“FFI Clearing Members”) must establish to the OCC’s satisfaction that the member’s conduct of transactions or activities with or through OCC will not result in the imposition of taxes or withholding or reporting obligations with respect to amounts paid or received by OCC (other than U.S. federal and State income taxes imposed on OCC’s net income).²⁶ When taxes or obligations would be imposed but for the qualification of a member for a special U.S. or foreign tax status, ongoing membership of such members is conditioned on the member to qualify for, maintain, and document such status to OCC’s satisfaction.²⁷ In addition, an FFI Clearing Member is prohibited from conducting transactions with or through OCC that would result in the imposition of taxes or withholding or reporting obligations with respect to amounts paid or received by OCC (other than U.S. federal and State income taxes imposed on OCC’s net income).²⁸ Notwithstanding these requirements, which OCC implemented to facilitate the clearance and settlement of listed options transactions, OCC has no current tax withholding or reporting obligations for Canadian Hedge Clearing Members’ transactions under the Hedge Program because substitute dividend payments are handled bilaterally between Hedge Clearing Members, away from OCC.

Proposed Changes

OCC is proposing a number of amendments to enhance the structure and operation of the Stock Loan Programs discussed above and provide

²⁶ OCC Rule 202(a).

²⁷ See OCC Rule 202. FFI Clearing Members satisfy this requirement by (1) entering into a “qualified intermediary agreement” with the Internal Revenue Service (“IRS”) under which the Clearing Member assumes primary withholding responsibility (such member being a “Qualified Intermediary Assuming Primary Withholding Responsibility”) and qualifies under IRS procedures for exemption from withholding under the Foreign Account Tax Compliance Act (“FATCA”), 26 U.S.C. 1471–1474, such that OCC is not required to withhold any amount with respect to any payment or deemed payment to such FFI Clearing Member under FATCA or Chapter 3 of subtitle A of the I.R.C. (“Chapter 3”), 26 U.S.C. 1441–1446, for transactions in the FFI Clearing Member’s customer accounts; and (2) entering into an agreement with the IRS that permits OCC to make dividend equivalent payments or deemed payments to such FFI Clearing Member free from U.S. withholding tax for transactions or activity in the FFI Clearing Member’s capacity as principal through its firm account (such member being a “Qualified Derivatives Dealer”).

²⁸ See OCC Rule 202(b)(1).

a framework for combining those programs into a single Stock Loan Program. First, OCC proposes to make several changes to the rules governing its Market Loan Program. Specifically, the proposed rule change would enhance OCC’s Market Loan Program by:

(a) expanding the Market Loan Program to include bilaterally negotiated stock loans submitted by Clearing Members directly to OCC, for which the original counterparties shall remain paired in OCC’s system for purposes of post-trade activity, including modifications, recalls, and returns;

(b) allowing for and recognizing supplementary or additional terms under an MSLA between the counterparties to such bilaterally negotiated transactions submitted under the Market Loan Program, as OCC’s Rules currently recognize under the Hedge Loan Program;

(c) fixing cash collateral delivered and returned versus a bilaterally negotiated Market Loan submitted directly to OCC at 102%, as is the current practice for Market Loans submitted through a Loan Market, and allowing Clearing Members to select a default rate at which mark-to-market payments would be rounded to the nearest level for Market Loans submitted directly to OCC, as is the current practice for Hedge Loans;

(d) allowing for Clearing Members to cancel pending transactions by sending instructions directly to OCC as opposed to through a Loan Market;

(e) establishing rules for affirmation of Market Loan transactions submitted by Clearing Members directly to OCC, as opposed to through a Loan Market;

(f) allowing OCC’s clearance and settlement system to calculate and handle cash distributions, including substitute dividends and rebates;

(g) allowing OCC’s clearance and settlement system to accept and handle contract modifications agreed to by the parties to bilaterally negotiated contracts submitted through the Market Loan Program, including modifications to rebate rate, interest rate benchmark, and loan terms;

(h) implementing additional OCC controls over the buy-in process in the case of the Borrowing Clearing Member’s failure to deliver the Loaned Stock following a recall by the Lending Clearing Member in situations other than the suspension of the Borrowing Clearing Member under Chapter XI of the Rules;

(i) supporting Canadian Clearing Members in the Market Loan Program while preventing certain transactions that could otherwise introduce tax withholding obligations; and

(j) providing that in lieu of being a participant at the Depository for purposes of delivering or receiving Eligible Stock in connection with the initiation and termination of Market Loans, an Appointing Clearing Member may appoint an Appointed Clearing Member who is a member of the Depository to deliver or receive Eligible Stock, in the same way as how the Rules currently allow for Appointed Clearing Members to deliver or receive underlying securities arising from the exercise or

maturity of an Appointing Clearing Member’s physically-settled equity options or stock futures.

As discussed in more detail below, OCC intends that with these enhancements to the Market Loan Program, OCC would eventually decommission the Hedge Program, after which the Market Loan Program would become OCC’s single stock loan program. In the interim, however, and in addition to enhancements (a) through (j) to the Market Loan Program, the proposed rule changes would apply amendments to both Stock Loan Programs for the transition to OCC’s new clearance and settlement system by:

(k) replacing OCC’s current practice of aggregating new stock loan positions and stock borrow positions for the same Clearing Member in the same Eligible Stock with contract-level accounting, consistent with industry-standard bookkeeping practices;

(l) aligning settlement of daily mark-to-market of cash collateral through the account in which the stock borrow or stock loan position sits, rather than requiring that mark-to-market settlement occur in a Clearing Member’s firm lien account or combined Market-Makers’ account;

(m) simplifying the mark-to-market calculation to focus on the change to the contract value of a Clearing Member’s Stock Loans; and

(n) allowing for re-matching of Matched-Book Positions across OCC’s Stock Loan Programs in the event of a Clearing Member default.

In conjunction with these changes to the Stock Loan Programs, OCC would also make certain other clarifying, conforming, and organizational changes to OCC’s By-Laws and Rules, and rule-filed policies that reference those By-Laws or Rules. In particular, OCC would reorganize, restate, and consolidate provisions of OCC’s By-Laws governing the Stock Loan Programs into Chapter XXII (Hedge Loan Program) and Chapter XXIIA (Market Loan Program) of OCC’s Rules, as amended by this proposed rule change. As part of these changes, OCC would preserve the governance requirements concerning amendments to the stock loan-related By-Laws migrated to the Rules by amending Article XI, Section 2 of the OCC By-Laws.

Plan To Consolidate OCC’s Stock Loan Programs

OCC plans to consolidate its Stock Loan Programs into a single, enhanced stock loan program. OCC intends to achieve this consolidation in three phases. The first phase, which is described in this proposed rule change, would enhance the Market Loan Program in a way that would allow that

program to eventually become OCC's single, enhanced stock loan program. The first phase will also involve certain enhancements to both the Hedge and Market Loan Programs in connection with the implementation of OCC's new system for clearance and settlement. After OCC implements the enhancements and the new clearance and settlement system becomes OCC's system of record, OCC will begin authorizing and encouraging Hedge Clearing Members to begin submitting bilateral transactions through the enhanced Market Loan Program. While OCC would require Hedge Clearing Members to provide the appropriate documentation and certifications required of Market Loan Clearing Members and submit to certification testing prior to utilizing the enhanced program, OCC does not plan to require business expansions for Hedge Clearing Members migrating to the Market Loan Program because they are already approved for stock loan activity.²⁹ Currently, the business expansion for Market Loan Program participation serves mainly to ensure that the Clearing Member is properly subscribed through a Loan Market, which will no longer be necessary to participate in the Market Loan Program.

During the second phase, which also is covered by this proposed rule change, OCC would encourage Clearing Members to transition to the Market Loan Program and would monitor the movement of activity from the Hedge Program to the enhanced Market Loan Program. Based on interest expressed by Clearing Members,³⁰ OCC anticipates that Clearing Members will be motivated to migrate activity to the Market Loan Program because of OCC's expanded guarantee under that program and the operational enhancements under this proposed rule change. Once transition plans for each Clearing Member are understood, OCC would announce that on a future date, OCC

will no longer accept new loans through the Hedge Program, but would continue to support existing Hedge Loans. The decision to make this announcement will be made by OCC's Chief Executive Officer or Chief Operating Officer based upon factors including, but not limited to, the number of participants that are able to conduct business under the enhanced Market Loan Program, the amount of transactions flowing through the enhanced Market Loan Program, the proportion of loan balances between the two Stock Loan Programs, and feedback from members about when they expect to be ready to migrate fully to the enhanced Market Loan Program. OCC's goal is to transition all Hedge Program participants to the enhanced Market Loan Program within a year after implementing the enhanced program. Beginning on the announced date, existing Hedge Loans will naturally terminate through return or recall instructions until none are left. OCC does not expect that this period will last more than six months from the announced date given the average term for stock loans.

This second phase would be reflected in proposed Rule 2213(e)(2), which would address the termination of the Hedge Loan Program. Section 2(c) of OCC By-Law Article XXI, which would become OCC Rule 2213(e)(1) as part of the reorganization of the Stock Loan By-Laws and Rules, already provides OCC authority, upon two business days' notice to Clearing Members, to terminate the outstanding Hedge Loans relating to one or more particular Eligible Stock at its sole discretion for certain enumerated reasons, including the impending termination of that business on the part of OCC. OCC Rule 2213(e)(2) would allow OCC to take a phased approach to terminating the Hedge Loan Program by first, upon approval by the Chief Executive Officer or Chief Operating Officer, announcing that OCC will cease to accept the initiation of new Hedge Loans. OCC Rule 2213(e)(2) also would provide that the determination to terminate the Hedge Loan Program will be made based upon factors including, but not limited to, the number of participants that are able to conduct business under the Market Loan Program, the amount of transactions flowing through the Market Loan Program, the proportion of loan balances between the two Stock Loan/Hedge Programs and the Market Loan Program, and feedback from members about when they expect to be ready to migrate fully to the Market Loan Program. During this phasing out, Clearing Members would be allowed to

maintain open positions in Hedge Loans until termination of those positions through returns and recalls initiated by the Clearing Members.

The third phase, which is not covered by this proposed rule change, would be the ultimate decommission of the Hedge Program Rules. Once all Hedge Loans terminate through return or recall, OCC intends to file another proposed rule change that would remove the Hedge Program from OCC's By-Laws and Rules. Thereafter, the Market Loan Program would then become OCC's single "Stock Loan Program." Until then, OCC is proposing to amend its Rules to avoid ambiguity by using "Hedge Loan" instead of "Stock Loan" when referring to Stock Loans under the Hedge Program unless in reference to Stock Loans under either of the Stock Loan Programs, consistent with the current definition of that term in Article I of the By-Laws.

Market Loan Program Enhancements

OCC proposes enhancements to the Market Loan Program that would (a) expand the Market Loan Program to allow for submission of Market Loans bilaterally negotiated by Clearing Members; (b) recognize MSLAs under the Market Loan Program; (c) fix the value of cash collateral delivered and returned versus the Loaned Stock at 102% of the value of the Loaned Stock, as Market Loans are currently collateralized, and allow for flexible pricing, as under the current Hedge Loan Program; (d) provide for the cancellation of pending transactions that have not yet been accepted by OCC; (e) establish rules for affirmation of Market Loan transactions submitted by Clearing Members directly to OCC; (f) facilitate the calculation and processing of cash distributions, including substitute dividends and rebate payments, by OCC's new clearance and settlement system, rather than by a Loan Market; (g) provide for modification of Market Loan terms agreed to by Market Loan Clearing Members; (h) implement additional OCC controls over the buy-in process in the case of a Borrowing Clearing Member's failure to deliver after the Lending Clearing Member initiated a recall, as well as to prepare those controls and OCC's other Market Loan and Hedge Loan Rules for the shortening of the standard settlement cycle for securities transactions; (i) support Canadian Clearing Members in the Market Loan Program while preventing certain transactions that could introduce tax withholding obligations; and (j) provide a framework for allow an Appointing Clearing Member to settle its Market Loan

²⁹ Currently, a Clearing Member that participates in the Hedge Loan Program that desires to expand its participation into the Market Loan Program is subject to a business expansion review under OCC's Third-Party Risk Management Framework. See Third-Party Risk Management Framework, available at <https://www.theocc.com/risk-management/risk-management-framework> (providing for assessments for Clearing Member onboarding, including with respect to expanded relationships).

³⁰ OCC has provided results of a survey and other informal discussions with Clearing Members concerning the enhancements to the OCC's Stock Loan Programs in confidential Exhibit 3B to SR-OCC-2024-011. Members have expressed interest in the enhancements such as having the rebate amounts calculated, settled, and guaranteed by OCC. The migration from Hedge to the Market Loan Program is necessary for such expansion to OCC's services.

activity through an Appointed Clearing Member in lieu of maintaining membership at a Depository.

(a) Bilaterally Negotiated Market Loans

OCC is proposing to expand the Market Loan Program to include bilaterally negotiated Market Loans submitted directly by Clearing Members. Under the Market Loan Program, OCC currently accepts electronic messages from the Loan Market for new loans and returns. OCC would expand the Market Loan Program to accept submissions directly from Clearing Members (or their third-party service providers). Following the affirmation of a new loan or return, OCC would instruct DTC to settle the transaction using the account of the lender, the borrower, or the Appointed Clearing Members, or using OCC's DTC account. While there would be two separate avenues for submitting loans (*i.e.*, through a Loan Market or direct submission of bilaterally negotiated Loans to OCC), the scope of OCC's guaranty and post-trade processing for all transactions would be uniform. By allowing for automated submission of transactions to OCC prior to DTC settlement and by controlling the settlement process, the enhanced program would help reduce the burden and risks associated with the balancing and reconciliation under the current Hedge Program.³¹ As under the current Hedge Program, counterparties to bilaterally negotiated contracts submitted through the Market Loan Program would remain paired in OCC's system for purposes of recalls, returns, and contract modifications.

Because certain proposed Rules would apply differently to Loans matched anonymously through a Loan Market and those that would be initiated bilaterally, whether through a Loan Market or with OCC directly, OCC would add definitions of "Anonymous Market Loan" and "Disclosed Market Loan" to OCC Rule 101. Anonymous Market Loans would be defined as those initiated through a Loan Market and for which the identities of the Lending Clearing Member and Borrowing Clearing Member are not disclosed to each other. Disclosed Market Loans would be defined to include either those Market Loans (i) initiated through a

Loan Market and for which the identities of the Lending Clearing Member and Borrowing Clearing Member are disclosed to each other, or (ii) initiated directly between the Lending Clearing Member and Borrowing Clearing Member away from a Loan Market such that the identities of the Lending Clearing Member and Borrowing Clearing Member are disclosed to each other. Paragraph (h) to proposed OCC Rule 2202A (Initiation of Market Loans) would provide that a Market Loan may be either an Anonymous Market Loan or a Disclosed Market Loan. Paragraph (a) to proposed OCC Rule 2206A (Maintaining Stock Loan and Stock Borrow Positions in Accounts) would provide that the identities of the Lending Clearing Member and Borrowing Clearing Member would be elements identified for stock loan positions and stock borrow positions resulting from Disclosed Market Loans.

To expand the Market Loan Program to bilateral transactions, OCC would amend OCC Rule 2202A. Specifically, the proposed rule change would amend current OCC Rule 2202A(a)(i), which would be renumbered to OCC Rule 2202A(a)(1) as part of the restatement of the Stock Loan Program rules, to add that, in addition to initiation through a Loan Market, a Market Loan may be initiated when a Lending Clearing Member and Borrowing Clearing Member send details of a stock loan between the two Clearing Members directly to OCC. To ensure that the original counterparties to such a Disclosed Market Loan remain paired in OCC system, notwithstanding OCC's novation, OCC would also amend current Article XXIA, Section 5 of OCC's By-Laws (Maintaining Stock Loan and Stock Borrow Positions in Accounts), which would become OCC Rule 2206A, by adding a new sentence to the beginning of that provision that introduces the concept of "matched pairs," consistent with the OCC By-Law's definition of Hedge Loans.³²

In addition to providing for the initiation of bilateral Market Loans, OCC would also amend its Rules to accommodate direct submission of other types of post-trade transactions for which the Rules currently rely on actions taken by a Loan Market. Specifically, OCC would amend the first paragraph of current OCC Rule 2209A(a) (Termination of Market Loans), which would be numbered as OCC Rule 2216A(a) as part of the broader reorganization of the Market Loan Program Rules, and new OCC Rule

2214A (Modifications) by providing that termination or modification of a Market Loan, respectively, may be initiated either through a Loan Market or OCC, depending on the way in which the Loan was initiated. Such instructions would be made through the Loan Market for Anonymous Market Loans; through OCC for Disclosed Market Loans initiated through OCC directly; and through either the Loan Market or OCC for Disclosed Market Loans initiated through a Loan Market. OCC would similarly amend the definitions of "Recall" and "Return," as migrated from the By-Laws to OCC Rule 101, to reflect the separate channels for initiating such a transaction. OCC would also make other conforming changes to the text of the Rules to reflect submission of bilaterally negotiated loans directly to OCC:

- Throughout the rules governing the Market Loan Program, OCC would also remove references to "matching" or "matched" transactions (*i.e.*, matched through a Loan Market) to reflect that Market Loan transactions could also be initiated bilaterally, either through a Loan Market or directly with OCC.³³

- The definition of "Market Loan Program," as migrated from Section 1 of Article I of the OCC By-Laws to OCC Rule 101, would be amended to recognize that Market Loans may be initiated either through a Loan Market or through direct submission of bilaterally negotiated Loans to OCC.

(b) Recognizing MSLAs

Parties to a bilaterally negotiated stock loan transaction typically execute an MSLA. Under current OCC Rule 2202(b), Hedge Clearing Members are permitted to establish and maintain additional terms under the MSLA that are not extinguished through OCC's novation provided that the additional terms are not inconsistent with anything in OCC's By-Laws or Rules. Examples of such additional or supplementary terms include a term structure or fees for buy-in transactions. The proposed rule change would add the same provision to the Market Loan Program in proposed OCC Rule 2202A(b)(2)(E). As described below, the recognition of MSLAs within the Market Loan Program would also

³¹ Surveys of stock loan industry participants indicate most firms have a significant spend for stock loan post-trade and reconciliation processing. Based on this industry feedback, OCC believes that a service that can provide operational efficiencies and further reduce manual processing and operational risk would be well received. OCC's review of this feedback is provided in confidential Exhibit 3B to SR-OCC-2024-011.

³² See By-Law Art. I, § 1.H.(2).

³³ See OCC By-Law Art. I, § 1.L.(5) (defining "Loan Market" as "an electronic platform . . . that supports securities lending and borrowing transactions by lenders and borrowers based on loan terms that each party is willing to accept"); OCC Rules 2202A(a)(i) ("If the matched transaction passes [OCC]'s validation process . . ."); 2202A(a)(ii) ("previously reported matched transaction" and "related matched transaction"); 2202A(b) ("the matched stock loan transaction submitted by the Loan Market"); 2209A(a)(1) ("matched return/recall transaction").

facilitate the re-matching of Matched Book Positions in suspension because OCC would give priority to re-matching counterparties with existing MSLAs, both when re-matching within and across the Stock Loan Programs.

(c) Collateral and Mark-to-Market Pricing

To accommodate the submission of bilaterally negotiated Market Loans directly to OCC, OCC proposes to establish rules that would fix the collateral for Market Loans at 102%—the same rate at which Market Loans submitted through a Loan Market are collateralized today. Specifically, OCC would amend current OCC Rule 2204A (Mark-to-Market Payments), which would become proposed OCC Rule 2209A per the reorganization discussed below, to provide in proposed paragraph (b) (Market-to-Market Payment Amount) that the collateralization rate for all Market Loans would be 102%, regardless of whether initiated through a Loan Market or submitted directly to OCC. Accordingly, OCC would delete the current text in Rule 2204A and the definition of the term “Collateral” in Article XXIA of the OCC By-Laws, as migrated to OCC Rule 101, that provides that the collateralization rate shall be set by the relevant Loan Market. OCC believes that fixing collateral at 102% would help to preserve the compatibility of OCC’s cleared offering with standard practices for over-the-counter (“OTC”), uncleared stock loans while minimizing complexity in OCC’s risk management processes.

OCC previously considered standardizing collateralization at 100% because in a cleared transaction, OCC’s guaranty replaces the additional collateral in protecting Lenders from market risk in the event of a counterparty default. In a survey OCC submitted to all Clearing Members who participate in OCC’s Stock Loan Programs, the vast majority of respondents objected to a proposal to standardize collateralization at 100%.³⁴ The most common reasons cited for this objection were (i) desire to align the collateral amount and mark-to-market cashflows for members who commonly have uncleared positions at the OTC-standard 102% and a matching position within clearing; and (ii) loss of the additional 2% in collateral would materially reduce what the income lenders earn by investing the cash collateral, which is one of the reasons lenders choose to lend their shares. In

³⁴ OCC has included a copy of the survey results in confidential Exhibit 3B to SR-OCC-2024-011.

response to this feedback, OCC now proposes to fix collateral at 102%, which would align OCC’s offering with standard OTC practices and with OCC’s current practice within the Market Loan Program. Fixing the collateral at a single rate—as under the current Market Loan Program—would also minimize complexity in OCC’s risk management of stock loan positions by establishing a single rate across all Market Loans.

OCC also proposes to establish rules that would allow Clearing Members submitting Market Loans directly to OCC to select the default rate at which mark-to-market payments would be rounded up to the nearest level, which is the current practice for Hedge Loans. Specifically, OCC would amend OCC Rule 2201A (Instructions to the Corporation), which would become proposed OCC Rule 2207A, to reflect that the default rate is one of the standing instructions that Market Loan Clearing Members must submit with respect to Market Loans submitted directly to OCC. Rounding rates for Market Loans submitted through a Loan Market would not change. If the default rate differs between a Borrowing Clearing Member and a Lending Clearing Member, the Lending Clearing Member’s default rate would govern the Market Loan. When surveyed, Clearing Members cited the same reasons for supporting flexibility in pricing as they did in objecting to fixing collateral at 100%.³⁵ OCC currently offers this flexibility in the Hedge Program today. OCC believes that offering the same flexibility with respect to bilaterally negotiated Market Loans submitted to OCC directly will aid Clearing Members in aligning cash flows between cleared and OTC stock loan transactions.

(d) Cancellation of Pending Transactions

To facilitate the acceptance of bilaterally negotiated contracts in the Market Loan Program, OCC is proposing to modify its Rules that concern the cancellation of pending transactions to accommodate the submission of cancellation instructions by Clearing Members, in addition to a Loan Market. Under current OCC Rule 2202A(a)(ii), a Loan Market may instruct OCC to disregard a previously reported matched transaction that is pending settlement at DTC, after which OCC instructs DTC to cancel the previously issued delivery order. Upon confirmation that DTC has processed such cancellation instructions, the related matched transaction is deemed null and void and

³⁵ OCC has included a copy of the survey results in confidential Exhibit 3B to SR-OCC-2024-011.

given no effect. OCC has no obligation to any Market Loan Clearing Member in acting pursuant to a Loan Market’s instruction to disregard a previously reported transaction. The proposed rule change would amend OCC Rule 2202A(a)(ii), which would be renumbered as proposed OCC Rule 2202A(a)(2), to recognize the ability of a Market Loan Clearing Member to submit an instruction to cancel a pending transaction directly to OCC for bilaterally negotiated transactions submitted under the Market Loan Program.

The proposed changes would also add a new OCC Rule 2215A (Cancellation of Pending Instructions) to address the cancellation of pending post-trade instructions other than cancellation of loan initiation under Rule 2202A. For example, under OCC’s current OCC Rule 2202A, Hedge Clearing Members currently have the capability to cancel return instructions or recall instructions pending with DTC. Similarly, Market Loan Clearing Members currently may cancel pending transactions by issuing a cancellation instruction to the Loan Market, which may then instruct OCC to disregard a previously reported transaction under current OCC Rule 2202A(a)(ii). This new OCC Rule 2215A would preserve that ability under the enhanced program by allowing members that submit bilaterally negotiated Market Loans to issue cancellation instructions directly to OCC, as they do now to DTC and the Loan Market.

(e) Transaction Affirmation

Currently, Market Loan Program transactions are presumed matched when sent to OCC by a Loan Market. OCC would establish a transaction affirmation process for loans submitted directly to OCC, rather than through a Loan Market:

- **New Loans:** Counterparties to a new loan would be required to affirm the transaction details prior to OCC submitting the new loan to DTC for settlement. New loans that are not affirmed by the time that OCC stops accepting instructions for the day would be rejected. This affirmation process would be reflected in proposed OCC Rule 2202A(a)(1), which would provide that a Market Loan is initiated when (i) the Loan Market sends details of a stock loan transaction to OCC or (ii) a Lending Clearing Member and Borrowing Clearing Member send details to OCC of a stock loan transaction between them and such details, as applicable, are either matched by OCC or affirmed by the Clearing Members.

- **Returns:** Provided that the Borrowing Clearing Member initiated a

return within OCC's timeframe for submitting such instruction on a stock loan business day, the Lending Clearing Member would have the opportunity to affirm or reject the initiation of a return by a cut-off time on the same business day.³⁶ Any returns pending after that cut-off time would be deemed affirmed and submitted to DTC for processing. This auto-affirmation would be reflected in proposed OCC Rule 2216A(a)(2). Based on conversations with Clearing Members, OCC believes this affirmation process balances Lending Clearing Members' desire to have the opportunity to affirm or reject return instructions, while also addressing Borrowing Clearing Members' concerns that delay in affirmation or allowing the transaction to pend indefinitely could have regulatory consequences for the Borrowing Clearing Member.³⁷

- **Recalls:** Recalls would not need to be affirmed. Per standard MSLA terms, a Borrowing Clearing Member will be deemed to have affirmed the initiation of a recall provided that the Lending Clearing Member requested the return of the specific quantity of Loaned Stock no earlier than the standard settlement date that would apply to a purchase or sale of the Loaned Stock in the principal market of such Loaned Stock.³⁸ This understanding would be added to proposed OCC Rule 2216A(a)(3).

- **Contract Modifications:** Contract modifications to the rebate rate, interest rate benchmark, or loan term submitted by either a Borrowing Clearing Member or Lending Clearing Member, the proposed Rule amendments for which are discussed below, would not become effective until affirmed by both parties. This affirmation requirement would be added to new OCC Rule 2214A(a).

³⁶ OCC anticipates that upon implementation of these proposed changes, the cut-off for rejections will be 30 minutes prior to DTC's standard settlement submission deadline.

³⁷ OCC's settlement procedures for Stock Loan termination are intended to facilitate its Clearing Member's compliance with requirements under applicable rules of the Commission and self-regulatory organizations, including the requirements imposed by Regulation SHO. See Exchange Act Release No. 59294 (Jan. 23, 2009), 74 FR 5958 (Feb. 3, 2009) (SR-OCC-2008-20). However, the ultimate responsibility for compliance with Regulation SHO rests with the Clearing Member, and OCC has no liability for any Clearing Member's failure to comply with its obligations. See, e.g., OCC Rules 2209A(g) ("[OCC] shall not be held liability for any Clearing Member's failure to comply with its responsibilities and obligations under the federal and state securities laws, including, but not limited to, Regulation SHO, or any applicable rules of the relevant Loan Market or any exchange or self-regulatory organization.").

³⁸ The standard settlement cycle currently corresponds with the one stock loan business day after submission of the recall. See OCC Rule 2209A(a)(3).

- **Buy-Ins & Sell-Outs:** For Market Loans submitted directly through the Corporation, the Borrowing Clearing Member and Lending Clearing will be given the opportunity to affirm or reject a buy-in or sell-out, respectively, by a cut-off time specified by OCC on the stock loan business day the buy-in or sell-out transaction is received by OCC. If the Clearing Member does not affirm or reject the buy-in or sell-out by that time, OCC would deem the buy-in or sell-out to be complete if OCC determines that the Buy-In or Sell-Out Costs for the Loaned Stock initiated is more than the lowest market price and less than the highest market price for the Loaned Stock on the stock loan business day the buy-in or sell-out is submitted to OCC.³⁹ Otherwise, the buy-in or sell-out would be rejected. As with buy-ins and sell-outs under the Hedge Program today,⁴⁰ any objection that the counterparty has with respect to the timeliness of the buy-in or sell-out or the reasonableness of the Buy-In or Sell-Out Costs are matters that must be resolved between the Lending Clearing Member and the Borrowing Clearing Member, away from OCC. These understandings and processes would be reflected in paragraphs (b)(2)(B) and (c)(2) of proposed OCC Rule 2216A.

To support Clearing Members in making the affirmations required under these rules, OCC's new stock loan system would support automatic affirmation based on system settings that could be selected by the Clearing Member.⁴¹ Through OCC's new clearance and settlement system, Clearing Members will be able to create and manage standing instructions for affirmation of their Market Loans based on variables including the type of transaction, the counterparty, the amount, or the rebate rate. For example, a member would be able to set instructions to: (i) affirm every transaction; (ii) limit affirmation to a certain set of counterparties; (iii) establish more granular rules, such as affirming any transaction with a rebate rate less than 250 basis points; or (iv) combine one or more of the above

³⁹ OCC would evaluate the price per share paid or received against market prices on that stock loan business day, consistent with the Clearing Member's obligation to immediately give OCC written notice of the buy-in or sell-out. In making its determination, OCC would account for transaction costs, fees or interest paid or incurred in connection with the buy-in and sell-out that may be included in the Buy-In and Sell-Out Costs provided by the Clearing Member executing the buy-in or sell-out.

⁴⁰ See OCC Rule 2209(b), (f).

⁴¹ Buy-ins and sell-outs under OCC Rule 2216A would require manual affirmation, subject to automatic affirmation following a cut-off time discussed above.

instructions. When new loans are received, the system would check whether there is a standing instruction that applies to the new loan. If no instruction is found, then the new loan would be pended for affirmation, subject to the above referenced Rules. If a standing instruction applies, then OCC would follow that instruction as satisfaction of the affirmation requirement. Authority to permit such standing instructions currently exists under current OCC Rule 2201A (Instructions to the Corporation), the applicable provision of which would be renumbered OCC Rule 2207A(a)(2).

(f) Cash Distributions

The proposed changes would allow OCC to calculate and effect cash entitlements through its new clearance and settlement system, including dividends, distributions and rebates. OCC proposes to revise paragraphs (a)(ii) and (a)(iii) of current OCC Rule 2206A (Dividends and Distributions; Rebates), renumbered as proposed OCC Rule 2211A(b) and (c), to reflect that under OCC's new clearance and settlement system, OCC shall assume responsibility for calculating the margin add-on collected with respect to dividend equivalent payments. While OCC shall continue to effect dividend equivalent payments primarily through the facilities of DTC using its dividend tracking service, OCC would effect the payments through OCC's new clearance and settlement system if OCC determines that the dividend or distribution for a Market Loan is not tracked through DTC's dividend tracking service or if OCC has determined to remove a Market Loan from the dividend tracking service, as under OCC's current Rules. In addition, OCC would continue to add non-cash dividends and distributions to the Loaned Stock if OCC determines that such dividends and distributions are legally transferable and the transfer can be effected through DTC. The determination to fix a cash value for non-cash dividends and distributions not added to the Loaned Stock would be OCC's under the proposed changes, rather than the Loan Market. Because OCC will no longer be reliant on the Loan Market for OCC's margin add-on process and settlement of dividend equivalent payments, OCC proposes to eliminate the limitations under the current Rule, including the current provision that OCC's guaranty is limited by the amount of margin OCC collected in reliance on the Loan Market's calculation. This change would not have any effect on OCC's margin methodology. OCC would continue to

collect a margin add-on for such cash distributions.

The proposed changes would also add paragraph (d) to proposed OCC Rule 2211A to address the rights of a Lending Clearing Member with respect to optional dividends (*i.e.*, a dividend the shareholder can elect to receive in cash, stock, or some combination of the two). Proposed OCC Rule 2211A(d) would provide that a Lending Clearing Member will have the right to elect an option only if it recalls the Loaned Stock in time to make such election. If the Lending Clearing Member does not recall the Loaned Stock, the Lending Clearing Member would be entitled to receive the default option set by the issuer of the Loaned Stock. OCC understands this proposed rule would match the Loan Market's current process for optional dividends. Because optional dividends on Market Loans are currently governed by the Loan Market's processes, OCC's rules do not currently address the rights of a Lending Clearing Member with respect to optional dividends.

OCC would also amend its rules to facilitate calculation, collection, and payment of rebates under the new clearance and settlement system. OCC Rule 2206A(b) currently provides that OCC generally will collect and pay rebate payments on a monthly basis as instructed by the Loan Market. As with dividend equivalent payments, the Loan Market is currently responsible for calculation of the rebate payments. OCC would amend OCC Rule 2206A(b), which would be renumbered OCC Rule 2211A(e), to reflect that OCC shall assume responsibility for calculating rebate payments under its new clearance and settlement system. OCC also proposes to amend the Rule so that OCC will be prepared if and when the stock loan industry transitions to daily, rather than monthly, collection of rebate payments. Because OCC anticipates that upon implementation of the new system, OCC will continue to calculate and collect rebate on a monthly basis, proposed OCC Rule 2211A(e) would provide that the calculation and collection of rebate payments could also be made on such other basis, not to exceed monthly.

(g) Market Loan Modifications

OCC is proposing to add a new rule to support contract modifications to the Market Loan Program made possible by the change to contract-level recordkeeping, discussed below. Modifications agreed to by the Market Loan Clearing Members over the life of a Market Loan would be accepted by OCC and handled by OCC's new

clearance and settlement system. Specifically, modifications would be permitted regarding the (a) rebate rate; (b) interest rate benchmark; and (c) loan term. Any modifications would be maintained in OCC's books and records at the contract level. OCC's new clearance and settlement system would allow, but not require, submission of these terms.⁴² The channel through which modification requests would be processed would be determined by the manner in which the loan was initiated. Clearing Members would be required to submit post-trade transactions for Anonymous Market Loans through the Loan Market on which the transaction was initiated, consistent with current practice. Clearing Members may submit post-trade transactions for Disclosed Market Loans to OCC directly or, if the Disclosed Market Loan was submitted through a Loan Market, Clearing Members would have the option of submitting the post-trade transaction through the Loan Market.

The proposed change would add a new rule, which would be numbered OCC Rule 2214A as part of the broader proposed reorganization of Chapter XXIIA. In addition to specifying the terms subject to modification, proposed OCC Rule 2214A would provide that OCC shall update the relevant terms in its books and records if, as applicable, (1) the Loan Market notifies OCC that the parties agreed to the modification, or, (2) with respect to Market Loans initiated directly through OCC, the parties provided OCC with matching or affirmed instructions, as discussed above. OCC would provide notice of the modified terms in the daily reports that OCC is required to make available to Market Loan Clearing Members under proposed OCC Rule 2210A.

(h) Buy-In Controls and Settlement Cycle

The proposed changes would also provide OCC with additional controls over the buy-in process for the recall of a Market Loan initiated by a Lending Clearing Member if the Borrowing Clearing Member fails to return the Loaned Stock in situations other than suspension of the Borrowing Clearing Member.⁴³ Under current OCC Rule 2209A, a Lending Clearing Member is entitled to initiate a buy-in if a recall transaction fails to settle by the

Settlement Time on the first stock loan business day after submitting the recall.⁴⁴ Under OCC's current rules, the Borrowing Clearing Member may return the Loaned Stock up until the time that the Lending Clearing Member that initiated the return or recall provides written notice to the Loan Market that it has executed the buy-in or sell-out. This process can lead to situations in which the Borrowing Clearing Member may return the Loaned Stock during the period between when buy-in becomes permissible, but before the Lending Clearing Member executes the transaction and provides written notice.

OCC proposes to provide for enhanced controls over the buy-in process by amending current OCC Rule 2209A(b), which would be renumbered OCC Rule 2216A(b) as part of the reorganization of Chapter XXIIA of OCC's Rules. Proposed OCC Rule 2216A(b) would be amended to provide that upon timely notice from the Lending Clearing Member that it intends to execute a buy-in after a Borrowing Clearing Member fails to return the Loan Stock following a recall transaction, OCC would prevent the Borrowing Clearing Member from returning the Loaned Stock while the Lending Clearing Member executes the buy-in. Until such time as the Lending Clearing Member provides such notice, OCC would recognize the Borrowing Clearing Member's return of the Loaned Stock. The stock loan and stock borrow positions would remain open until such time as the Lending Clearing Member provides notice that the buy-in is complete.

(i) Supporting Canadian Clearing Members

As described above, Canadian Clearing Members are currently limited to participation in OCC's Hedge Program. The proposed changes would support Canadian Clearing Members in the Market Loan Program while preventing certain transactions that could give rise to tax withholding obligations.

First, OCC would revise certain of OCC's current By-Laws and Rules to recognize Canadian Clearing Members as potential participants in the Market Loan Program and address certain unique operational capabilities that will be required to support that participation:

- OCC would revise paragraph (f) of OCC Rule 302 (Operational Capability) to include Canadian Clearing Members as among those members that qualify for participation in the Market Loan

⁴² See *infra* item (k) (Contract-Level Recordkeeping).

⁴³ As a practical matter, if the Borrowing Clearing Member initiates a return, it would have the shares in its possession to return. Accordingly, the proposed controls are limited to buy-ins following failure to deliver initiated by a recall by the Lending Clearing Member.

⁴⁴ See OCC Rule 2209A(a)(3).

Program, including by providing for such Canadian Clearing Members to settle transactions through a CDS sub-account at the Depository, as they do under the Hedge Program today.

- OCC would further revise and restate paragraph (f) to consolidate the subparagraphs specific to the operational requirements for participation in the Hedge Loan Program and the Market Loan Program. The current division can be attributed to the evolution of those programs, which led OCC to make approval for participation in the Hedge Loan Program—OCC's initial Stock Loan Program—a condition for participation in the Market Loan Program. The proposed changes would consolidate the provisions so that the present division does not serve as an impediment to the planned decommission of the Hedge Loan Program. Requirements specific to a particular program, or a particular means of initiating a Stock Loan through one of the Stock Loan Programs, would be amended to delineate the scope of applicability.

- OCC would revise OCC Rule 306A (Event-Based Reporting) to reflect that a Canadian Clearing Member's obligation to notify OCC if CDS has or likely will cease to act for that Canadian Clearing Member extends to such members that participate in both Stock Loan Programs.

- OCC would replicate OCC Rule 2201(c), which concerns a Canadian Clearing Member's appointment of CDS for purposes of settling Hedge Loan delivery-versus-payment transactions, as proposed OCC Rule 2207A(c). As such, the same requirements would apply to Canadian Clearing Members that participate in the Market Loan Program.

In making its determination to extend the Market Loan Program to Canadian Clearing Members, OCC has also considered OCC's ability to offer that program's expanded guaranty to Canadian Clearing Members without incurring tax or withholding obligations on the associated payment obligations. Under the expanded Market Loan Program, OCC would clear and settle the types of cash distributions, such as substitute dividend and rebate payments, that OCC does not guarantee under the Hedge Program and must be resolved bilaterally by Hedge Clearing Members, away from OCC. OCC believes its current Rules already provide the framework to allow Canadian Clearing Members to transact under the Market Loan Program without imposing tax withholding obligations on payments made or received by OCC. As discussed

above, OCC currently imposes obligations on Canadian Clearing Members intended to allow OCC to clear listed options transactions free from tax withholding obligations on dividend equivalent payments or deemed payments. Current OCC Rule 202 generally would also allow OCC to make substitute dividend payments to Canadian Clearing Members as Lending Clearing Members under the enhanced Market Loan Program without imposing tax or withholding obligations. While OCC understands that, subject to the conditions in OCC Rule 202, OCC's payments of substitute dividends to Canadian Clearing Members would not be subject to withholding, OCC would report substitute dividend payments to the IRS using information provided by the Canadian Clearing Members, as OCC currently does for dividend equivalent payments or deemed payments to Canadian Clearing Members in connection with listed options transactions. Pursuant to current OCC Rule 202(b)(5), the Canadian Clearing Member is required to indemnify OCC for any loss, liability or expense (including taxes and penalties) it may sustain as a result of the member's failure to comply with requirements of OCC Rule 202(b).

Current OCC Rule 202(b) also provides OCC with authority to prohibit or limit specific transactions with respect to non-U.S. members that may give rise to tax or withholding obligations. Pursuant to that authority, OCC expects to impose certain limitations on the Market Loan activity of Canadian Clearing Members to address specific situations in which tax withholding obligations might otherwise arise, including limitations on transactions involving (i) Canadian underlying securities, (ii) Positive Rebate, and (iii) Negative Rebate.

(i) Canadian Securities

Pursuant to OCC Rule 202(b), OCC would preclude Canadian Clearing Members from executing Market Loan transactions as a Borrowing Clearing Member, whether on behalf of a customer or for its own account, for which the Loaned Stock is issued by a Canadian issuer because of tax withholding obligations under Canadian law for substitute dividend payments that would be owed by the Canadian Clearing Member in its capacity as the lender. OCC understands that under Canadian law, the loan of a security issued by a Canadian company would be treated as a loan of the underlying shares for Canadian tax purposes. The substitute dividend paid by the Canadian Clearing Member as the

Borrowing Clearing Member to OCC, in its capacity as the lender, would be a payment made by the Canadian Clearing Member, as a corporation, to OCC of a dividend payable on the underlying securities under subparagraph 260(8)(a)(ii) of the Income Tax Act (Canada), and the payment would be subject to Canadian withholding tax under subsection 212(2) of that act. Accordingly, a Borrowing Clearing Member would be precluded from initiating a Market Loan in its capacity as a Borrowing Clearing Member because the Canadian Clearing Member could not fulfil its obligation under OCC's Rules to provide a substitute dividend payment free from tax and withholding obligations. OCC understands that no similar tax withholding obligation would exist for substitute dividend payments with respect to a Canadian underlying security made by OCC, in its capacity as the borrower, to a Canadian Clearing Member that was a Lending Clearing Member.⁴⁵

(ii) Positive Rebate

OCC believes that OCC Rule 202 also allows OCC to clear and settle Positive Rebate payments to Canadian Clearing Members in connection with Market Loans without introducing tax withholding obligations. While neither the I.R.C. or IRS regulations specifically provide for the treatment of rebate payments, OCC believes that Positive Rebate would be treated as interest for U.S. federal tax purposes because Positive Rebate compensates the Borrowing Clearing Member for the use of the cash collateral by the Lending Clearing Member,⁴⁶ and would therefore constitute U.S.-source "fixed or determinable annual or periodic income," or "FDAPI," under section 1442 of the I.R.C. While U.S.-source FAPI generally is subject to a 30% U.S. withholding tax when paid to a foreign

⁴⁵ OCC understands that dividends on Eligible Stock of issuers that are not Canadian residents are exempt from taxation on dividends under subsection 212(2.1) of the Income Tax Act (Canada) when paid as part of a fully collateralized stock lending arrangement pursuant to 2021 amendments thereto.

⁴⁶ The U.S. Supreme Court has characterized interest as "compensation for the use or forbearance of money." See *Deputy v. du Pont*, 308 U.S. 488, 498 (1940). Positive Rebate is a payment from the Lending Clearing Member to the Borrowing Clearing Member equal to the amount of cash collateral posted by the Borrowing Clearing Member multiplied by a positive rebate rate. The Lending Clearing Member has the right to use the cash collateral during the term of the stock loan. Accordingly, Positive Rebate represents a payment by the Lending Clearing Member to the Borrowing Clearing Member for the right to use the cash collateral and therefore is properly characterized as interest.

corporation, exemptions from withholding apply to (i) payments to a Qualified Intermediary in its capacity as an intermediary that has accepted primary withholding responsibility, and (ii) interest paid to a Canadian Clearing Member that qualifies for an exemption from withholding on interest under Article XI of the Convention Between the United States of America and Canada with Respect to Taxes on Income, October 16, 1980, as amended by subsequent Protocols (the “Canada Treaty”).

A Qualified Intermediary that has accepted primary withholding responsibility is exempt from U.S. federal withholding on payments from a withholding agent, including U.S.-source interest, received in its capacity as an intermediary.⁴⁷ Accordingly, OCC understands that rebate payments (whether Positive Rebate or Negative Rebate) to a Canadian Clearing Member in its capacity as a Qualified Intermediary, may be made by OCC free from withholding, consistent with treatment of dividend equivalent payments in connection with listed options transactions. As discussed above,⁴⁸ Canadian Clearing Members are required to be Qualified Intermediaries as a condition of membership under OCC Rule 202. As with substitute dividends, OCC would add payment of rebates for transactions in a Canadian Clearing Member’s capacity as a Qualified Intermediary to the current reporting OCC submits to the IRS for dividend equivalent payments on listed options, based on information to be received from the Canadian Clearing Member pursuant to current OCC Rule 202(b)(3).

With respect to Positive Rebate payments on Market Loans initiated by a Canadian Clearing Member in its capacity as principal, OCC would require Canadian Clearing Members to demonstrate, pursuant to OCC Rule 202, that such payments are subject to exemption from U.S. withholding obligations under the Canada Treaty. Article XI(1) of the Canada Treaty reduces the rate of withholding from 30% to zero for U.S.-source interest beneficially owned by a resident of Canada entitled to treaty benefits, provided that income is not attributable

⁴⁷ See Treas. Reg. 1.1441–1(e)(5)(iv) (“If a withholding agent makes a payment of an amount subject to withholding under chapter 3, a reportable payment (as defined in section 3406(b)), or a withholdable payment to a qualified intermediary that represents to the withholding agent that it has assumed primary withholding responsibility for the payment, the withholding agent is not required to withhold on the payment.”).

⁴⁸ See *supra* note 27.

to a permanent establishment, within the meaning of the Canada Treaty, or effectively connected with a trade or business conducted in the United States.⁴⁹ Under current OCC Rule 202(b)(2), an FFI Clearing Member must certify annually to OCC that the member satisfies the requirements of OCC Rule 202 by submitting appropriate tax documentation. A Canadian Clearing Member participating in the Market Loan Program may evidence its entitlement to the benefits of the Canada Treaty with respect to interest by providing OCC with a correct and complete IRS Form W–8 BEN–E. Under OCC’s current Rules, a FFI Clearing Member must promptly inform OCC in writing if it undergoes a change in circumstances that would affect its compliance with Rule 202(b) or otherwise knows or has reason to know that it is not, or will not be, in compliance with OCC Rule 202(b), in each case, within two days of knowledge thereof.⁵⁰

(iii) Negative Rebate

Although exemptions for withholding requirements would apply to payment of Negative Rebate to a Canadian Clearing Member acting as a Qualified Intermediary with respect to customer transactions, OCC understands that there is a risk that no exemption from U.S. tax withholding would apply to the payment of Negative Rebate to a Canadian Clearing Member outside its capacity as a Qualified Intermediary. Therefore, pursuant to OCC Rule 202(b), OCC would limit Canadian Clearing Members from initiating Market Loans with a Negative Rebate as a Lending Clearing Member other than in its capacity as a Qualified Intermediary. In addition, OCC would limit Canadian Clearing Members’ ability to modify the rebate on a Market Loan to a Negative Rebate as a Lending Clearing Member other than in its capacity as a Qualified Intermediary. OCC’s new clearance and settlement system will prevent a Canadian Clearing Member from initiating or modifying a Market Loan to a Negative Rebate in its capacity as a Lending Clearing Member for its firm account.

(j) Provide for Appointed and Appointing Clearing Members

Currently, OCC Rule 302 requires that all participants in the Market Loan Program must be members of the Depository, DTC. As discussed above, OCC would also extend the Market Loan Program to Canadian Clearing Members

by allowing for such members to settle Market Loan transactions through a CDS sub-account maintained at DTC. However, OCC recently filed and the Commission approved a proposed rule change to allow OCC to expand its membership to other types of participants who may or may not be members of the Depository, including bank members and members of jurisdictions other than the U.S. and Canada.⁵¹

In order to build a framework for accommodating such new types of members in the Market Loan Program, OCC proposes to revise OCC Rules 101, 302 and proposed OCC Rules 2202A, 2207A and 2216A to allow a Clearing Member participating in the Market Loan Program (the Appointing Clearing Member) to appoint an Appointed Clearing Member to make settlement of obligations arising from the initiation or termination of Market Loans, in a similar manner to how OCC Rule 901 currently allows for Appointed and Appointing Clearing Members with respect to delivery or receipt of underlying securities arising from the exercise of equity options and maturity of stock futures, or how OCC Rule 2201 current allows Canadian Clearing Members to appoint CDS as its agent for purposes of effective delivery orders for stock loan and stock borrow transactions. In lieu of membership at the Depository, establishing a relationship with an Appointed Clearing Member would be a means by which Clearing Members could access the Market Loan Program. Specifically, OCC would revise the current definitions in OCC Rule 101 for “Appointed Clearing Member” and “Appointing Clearing Member” to reference the initiation and termination of Market Loans. The definitions would also refer to proposed Rule 2207A (Instructions to the Corporation), which like current OCC Rule 901(f) would contain a paragraph providing the mechanism for such appointments. Proposed OCC Rules 2202A and 2216A (Termination of Market Loans) would also provide for OCC to submit delivery orders to the Depository’s account for the Appointed Clearing Member in connection with the initiation or termination of a Market Loan, respectively.

Enhancements To Facilitate OCC’s New Clearance and Settlement System

In addition to the enhancements (a) through (j) above, which are specific to the Market Loan Program, except when

⁵¹ See Exchange Act Release No. 97439 (May 5, 2023), 88 FR 30373, 30373 (May 11, 2023) (SR–OCC–2023–002).

⁴⁹ See 26 U.S.C. 894; Canada Treaty, Art. XI(1).

⁵⁰ See OCC Rule 202(b)(4).

otherwise indicated, the proposed rule change would also implement enhancements to both Stock Loan Programs to support the implementation of OCC's new clearance and settlement system. Specifically, the proposed changes would (k) replace the legacy practice of position aggregation with contract-level recordkeeping; (l) align the settlement of daily mark-to-market of cash collateral to accounts; (m) simplify the mark-to-market calculation to focus on the change to the contract value of a Clearing Member's Stock Loan; and (n) allow for re-matching of Matched-Book Positions across both Stock Loan Programs in the event of a Clearing Member default and suspension.

(k) Contract-Level Recordkeeping

OCC proposes to eliminate the legacy practice of aggregating stock loan and stock borrow positions for the same Eligible Stock in favor of contract-level accounting, consistent with industry-standard bookkeeping practices. Under the new contract-based approach, each Stock Loan (*i.e.*, a stock loan position or stock borrow position) would be a distinct contract and no aggregation would be done when positions are recorded in accounts. Every new loan that is recorded will generate a new stock borrow position and stock loan position for the number of shares lent and borrowed. Contract-level recordkeeping would allow Clearing Members to see more precisely the contracts with shares lent by lender and borrower, which aligns to industry standard recordkeeping. By maintaining stock loan positions and stock borrow positions at the contract level, OCC would also be able to record additional terms, including but not limited to: (a) rebate rate; (b) whether the rebate rate is a fixed or a floating value (and if floating the interest rate benchmark); and (c) end date if it is a term loan. Clearing Member submission of these additional terms would not be mandatory, and OCC would assume that no such terms exist unless otherwise directed by its Clearing Members.⁵²

To implement contract-level recordkeeping, the proposed rule change would amend Article XXI, Sections 2 (Hedge Program) and Article XXIA, Section 5 (Market Loan Program) of OCC's By-Laws, retained portions of which would migrate to become OCC Rules 2203 and 2206A, respectively. Specifically, OCC would amend

proposed Rule 2203(c)(1)–(2) and 2206A(b)(1)–(2) to delete the text providing for the aggregation of positions, which OCC proposes to eliminate. In addition, OCC would delete the last sentence of Article XXI, Section 2(b) and Article XXIA, Section 5(b), as relocated to proposed OCC Rules 2203(d)(2)(B) and 2006A(a)(2), which provide that OCC shall identify stock loan and stock borrow positions resulting from Hedge Loans separately from positions resulting from Market Loans. Because OCC proposes to eliminate position aggregation altogether, this prohibition against aggregating positions across programs would no longer be relevant.

The proposed changes would also allow OCC to record additional terms at the contract level. The By-Laws currently provide that upon acceptance of a Hedge Loan or Market Loan, OCC creates a stock loan position and stock borrow position in the account designated by the Lending Clearing Member and Borrowing Clearing Member, respectively, that identifies the Eligible Stock, the number of shares loaned, the amount of Collateral received, and the identities of the Lending Clearing Member or the Borrowing Clearing Member, as applicable.⁵³ OCC proposes to amend proposed OCC Rules 2203(d)(2)(A) and 2206A(a)(1) to provide that in addition to those terms, which are required for OCC's acceptance of a Hedge Loan or Market Loan, OCC would record such additional terms that the Clearing Members may provide at the contract level. Such additional terms could include, but are not limited to, rebate rate, interest rate benchmark and loan term. Pursuant to proposed additions to proposed OCC Rules 2202(b)(2)(E) and 2202A(b)(2)(E), recording additional terms that are not associated with OCC's guaranty (*i.e.*, rebate rate and interest rate benchmark with respect to Hedge Loans, and loan term with respect to both Hedge Loans and Market Loans) would not impose any additional obligations on OCC. Rather, they would be additional terms as between the parties that survive OCC's novation and would be recorded in OCC's system for the Clearing Members' convenience.

In addition to the changes related to proposed OCC Rules 2203 and 2206A above, OCC would make conforming changes to other provisions to reflect the change from position-level to contract-level record keeping:

- Current Interpretation and Policy .01 to OCC Rules 2201 and 2201A (*i.e.*,

proposed OCC Rules 2206(b) and 2206A(d) per the reorganization discussed below), which concern the transfer of stock loan positions or stock borrow positions between Clearing Member accounts, would be amended to delete the phrase "all or any portion of" as it relates to stock loan or stock borrower positions, and the text "provided, that any such transfer will result in the transfer of all shares related to the relevant stock loan position or stock borrow position" would be added. These changes reflect that stock loan positions and stock borrow positions would be recorded at the contract level and would not be aggregated. Accordingly, any transfer of a stock loan position or stock borrow position (each representing an individual contract) would be for all shares that are the subject of the contract.

- Current Interpretation and Policy .02 to OCC Rule 2201 (*i.e.*, proposed OCC Rule 2206(c)(1) per the reorganization discussed below), which concerns how OCC would apply Hedge Loan return instructions received from DTC to a Clearing Member's default account, would be modified to eliminate functionality in ENCORE for Clearing Members to designate OCC accounts in DTC delivery orders that is not currently utilized by Clearing Members participating in the Hedge Loan Program and, accordingly, is not being built for the new clearance and settlement system. To account for the shift to contract-level recordkeeping, OCC would also add OCC Rule 2206(c)(2), which would provide that returns will decrease the number of shares borrowed beginning with the oldest Hedge Loan between the Borrowing Clearing Member and the Lending Clearing Member on OCC's books and records. If the return exhausts the oldest Hedge Loan, OCC would decrement the next oldest, and so on and so forth.

- Current Interpretation and Policy .02 to OCC Rule 2201A (*i.e.*, proposed OCC Rule 2206A(e) per the reorganization discussed below), which concerns how Market Loan return instructions would be applied to a Clearing Member's accounts, would be amended to reflect that if there are insufficient shares in the account designated by the delivery order submitted to OCC, or in the default account if the delivery order did not specify an account, OCC would reject the return instruction rather than fulfill the return to the extent of the shares in the designated or default account, as applicable. If an account was designated in the delivery order, OCC would fulfill the return based only on that account and would reject the return instruction

⁵² If these additional terms are not recorded on a Market Loan submitted to OCC, OCC would not make any assumptions and the fields would be left blank in OCC's system.

⁵³ See OCC By-Law Art. XXI, § 2(b); Art. XXIA, § 5(a).

if sufficient shares were not available in that account rather than applying shares in the default account to cover the excess.

- Current OCC Rule 2209A(a)(2) (*i.e.*, proposed OCC Rule 2216A(a)(5) per the reorganization discussed below), which concerns the termination of Market Loans upon receipt of end-of-day information from DTC concerning return or recall delivery orders, would be amended to delete the phrase “and reduce the respective Clearing Members’ open stock loan and stock borrow positions accordingly.” This phrase refers to adjustments required for aggregated stock loan and stock borrow positions, which would not be relevant under the contract-level recordkeeping proposal. OCC would also remove the phrase “the end of the day” with respect to the stock loan activity files it receives from DTC because OCC receives and processes such information from DTC throughout the business day.

(l) Aligning Mark-to-Market Settlement to Accounts

Under the proposed rules designed to facilitate OCC’s new clearance and settlement system, OCC would end the practice of limiting cash settlement of daily mark-to-market of cash collateral to the Clearing Member’s firm account or combined Market-Makers’ account. Instead, cash settlement will occur in the account in which the stock loan or stock borrow position is held. OCC implemented the current structure for settlement of mark-to-market payments in 1997 and 1998.⁵⁴ At that time, OCC believed that settlement through a firm’s lien account would prevent premiums by option writers (which constitute customer funds) from being netted against stock loan mark-to-market payments from a clearing member (which do not constitute customer funds). The assumption at the time appears to have been that stock loan transactions would be limited to loans initiated by a Clearing Member in its capacity as principal. However, fully paid for lending programs have developed over the last two decades that allow customers to earn returns on their portfolios by allowing their broker to lend their shares.

The proposed change would align mark-to-market cash settlements with positions by deleting current OCC Rules 2201(a)(iii) and 2201A(a)(iii), as relocated to proposed OCC Rules 2207(a)(1)(C) and 2207A(a)(1)(C), which

require Clearing Members to provide OCC with standing instructions identifying the Clearing Member’s firm accounts or combined Market-Makers’ accounts from which mark-to-market payments are to be made. No standing instruction would be needed because OCC will simply settle the mark-to-market payments in whichever account the stock loan or stock borrow position is held. In addition, OCC would amend current OCC Rules 2204(a) and 2204A(a), the relevant portions of which would be renumbered OCC Rules 2209(a) and 2209A(a), respectively, to provide that any mark-to-market payment shall be made in the account in which the Hedge Loan or Market Loan is held.

OCC would also delete the last clause to Interpretation and Policy .04 to Rule 1104, which concerns the use of a Liquidating Settlement Account to satisfy mark-to-market obligations arising from a suspended Clearing Member’s stock loan or borrow positions in customers’ accounts. That clause provides for use of the Liquidating Settlement Account notwithstanding that such mark-to-market payments may settle in another account under current Rules 2201(a) and 2201A(a). This clarifying clause would no longer be relevant because of the alignment of settlement with the accounts in which the positions are held.

(m) Simplifying Mark-to-Market Calculations

Because OCC proposes to end the practice of aggregating stock loan and stock borrow positions, OCC also proposes to simplify the mark-to-market calculation described in proposed OCC Rules 2209 and 2209A. Currently, the mark-to-market calculation focuses on the value of the loaned shares of stock.⁵⁵ Specifically, it takes the quantity of stock that is on loan each morning and marks it to a closing price each night. Quantities of stock that correspond to new loans put on during the day are also marked to the end-of-day closing price. As such, the calculation was designed with the practice of aggregating stock loan and stock borrow positions for the same Eligible Stock in mind. The proposed mark-to-market calculation will instead focus on the change to the contract value of a Clearing Member’s stock loans. Specifically, proposed OCC Rules 2209(b) and 2209A(b) would provide that the mark-to-market payment will be the amount necessary to cause the amount of Collateral to be equal to the

Collateral requirement applicable to the Stock Loan. For Hedge Loans, the Collateral requirement is either 100% or 102% of the mark-to-market value of the Loaned Stock, depending on which percentage the parties selected when initiating the Hedge Loan. For Market Loans, as discussed above, the Collateral requirement would be fixed at 102% of the value of the Loaned Stock, which is the collateralization for all Market Loans currently. While this proposed amendment would change the way OCC makes mark-to-market calculations, the change would have no impact on the results of the calculation.

(n) Re-Matching Matched Book Positions in Suspension Across Stock Loan Programs

The proposed changes would also extend OCC’s authority to close out and re-establish the Matched-Book Positions of a suspended Clearing Member to the Market Loan Program and would allow re-matching in suspension across the Hedge and Market Loan Programs. Under the current Hedge Program, OCC has authority to terminate Matched-Book Positions by offset and re-matching with other Clearing Members.⁵⁶ OCC’s authority to re-match Matched-Book Positions in suspension facilitates the orderly and efficient termination and re-establishment of stock loans involving suspended Clearing Members, thereby mitigating operational and price dislocation risks that may arise for non-defaulting Clearing Members if OCC were required to unwind positions by recalling all borrowed securities from specific Borrowing Clearing Members and returning those securities to specific Lending Clearing Members. Extending such re-matching authority to the Market Loan Program and allowing re-matching across OCC’s two Stock Loan Programs would also align OCC’s close-out processes with how OCC already manages stock loan and borrow positions. Specifically, stock loan and borrow positions covering the same Eligible Stock in either program are treated under OCC’s margin methodology as fungible and are permitted to offset one another in calculating a Clearing Member’s margin requirement for the relevant account.

OCC would extend re-matching authority and allow for re-matching across programs by inserting a new OCC Rule 2219A to the Rules governing the Market Loan Program. The new rule would be similar in structure and content to current OCC Rule 2212, which concerns re-matching in

⁵⁴ See Exchange Act Release No. 40083 (June 11, 1998), 63 FR 33424–01 (Jun 18, 1998) (File No. SR–OCC–98–03); Exchange Act Release No. 39738 (Mar. 10, 1998), 63 FR 13082 (Mar. 17, 1998) (File No. SR–OCC–97–11).

⁵⁵ See OCC Rules 2204(a); 2204A(a).

⁵⁶ See OCC Rule 2212.

suspension for the Hedge Program. Proposed OCC Rule 2219A(a) would provide that, in the event that a suspended Clearing Member has Matched-Book Positions within the Hedge or Market Loan Programs, OCC will, upon notice to affected Clearing Members, close out the suspended Clearing Member's Matched-Book Positions to the greatest extent possible by (i) the termination by offset of stock loan and stock borrow positions that are Matched-Book Positions in the suspended Clearing Member's account(s) and (ii) OCC's re-matching in the order of priority in paragraph (c) of stock borrow positions for the same number of shares in the same Eligible Stock maintained in a designated account of a Matched-Book Borrowing Clearing Member against a stock lending position for the same number of shares in the same Eligible Stock maintained in a designated account of a Matched-Book Lending Clearing Member.

Under proposed OCC Rule 2219A(b), as under current OCC Rule 2212(b), the Matched-Book Borrowing Clearing Member and Matched-Book Lending Clearing Member would not be required to issue instructions to DTC to terminate the relevant stock loan and stock borrow positions or to initiate new stock loan transactions to reestablish such positions, as the affected positions would be re-matched without requiring the transfer of securities against the payment of settlement prices.

Proposed OCC Rule 2219A(c), as under current OCC Rule 2212(c), would provide that OCC shall make reasonable efforts to re-match Matched-Book Borrowing Clearing Members with Matched-Book Lending Clearing Members that maintain MSLAs executed between them, based upon information provided by Clearing Members to OCC on an ongoing basis. OCC would be entitled to rely on, and would have no responsibility to verify, the MSLA records provided by Clearing Members and on record as of the time of re-matching. As under current OCC Rule 2212(d), proposed Rule OCC 2219A(c)(1) through (13) would require the termination by offset and re-matching be done using a matching algorithm in which the Matched-Book Positions of the suspended Clearing Member are first terminated by offset and then affected Matched-Book Borrowing Clearing Members and Matched-Book Lending Clearing Members are re-matched in order of priority based first upon whether the re-matched Clearing Members have an existing MSLA between them or, in the case of Anonymous Market Loans, can be kept anonymous by re-matching with

a Matched-Book Position that is another Anonymous Market Loan initiated through the same Loan Market. OCC believes prioritizing the re-matching of Disclosed Market Loans between parties that have MSLAs and re-matching that results in maintaining Anonymous Market Loans will limit the number of returns that may be initiated for re-matching that results in Disclosed Market Loans between parties who have not executed an MSLA.

Specifically, under the re-matching algorithm, OCC would select the largest stock loan or stock borrow position in a given Eligible Stock from the suspended Clearing Member's Matched-Book Positions within the Hedge Program. The selected positions would then be re-matched with the largest available stock borrow or stock loan positions within the Hedge Program, as applicable, for the selected Eligible Stock for which a MSLA exists between a Matched-Book Borrowing Clearing Member and a Matched-Book Lending Clearing Member. OCC would repeat this process until all potential re-matching between Matched-Book Borrowing Clearing Members and Matched-Book Lending Clearing Members with MSLAs is completed for positions within the Hedge Program. Simultaneously, OCC would perform the same re-matching process within the Market Loan Program for (i) Matched-Book Positions that are Disclosed Market Loans for which a MSLA exists between a Matched-Book Borrowing Clearing Member and a Matched-Book Lending Clearing Member, and (ii) Matched-Book Positions that are Anonymous Market Loans initiated through the same Loan Market. After re-matching to the extent possible within the Market Loan Program based on manner of initiation and trade source, OCC would proceed to re-match Matched-Book Positions within the Market Loan Program for which an MSLA exists between a Matched-Book Borrowing Clearing Member and a Matched-Book Lending Clearing Member, without regards to whether Matched-Book Position was part of a Disclosed Market Loan or Anonymous Market Loan.

After matching Matched-Book Positions to the extent possible between borrowers and lenders with existing MSLAs within both the Hedge Program and the Market Loan Program, OCC would then select the largest remaining stock loan or stock borrow positions for a given Eligible Stock regardless of whether the position is a Hedge Loan or a Market Loan and re-match it with the largest available stock borrow or stock loan position for the selected Eligible

Stock in the other Stock Loan Program for which an MSLA exists between the lenders and borrowers in the other Stock Loan Program, regardless of whether the Market Loan selected or matched is a Disclosed Market Loan or Anonymous Market Loan. OCC would repeat this process until it has rematched all Matched-Book Positions to the extent possible between parties to existing MSLAs between the two Stock Loan Programs.

After re-matching among lenders and borrowers with existing MSLAs, the process would then be repeated for all remaining Matched-Book Positions for which MSLAs do not exist between the lenders and borrowers. OCC would first complete such re-matching to the extent possible within each program. The re-matching process would then be repeated for all remaining Matched-Book Positions across the Stock Loan Programs for which MSLAs do not exist between the lenders and borrowers. Remaining positions that are not able to be rematched either within or across programs would then be closed-out pursuant to the rules governing close-out of Hedge Loans or Market Loans, as applicable.

Under proposed OCC Rule 2219A(d), as under current OCC Rule 2212(e), in the event Borrowing and Lending Clearing Members are re-matched through this process, the re-matched positions would be governed by the pre-defined terms and instructions established by the Lending Clearing Member pursuant to renumbered OCC Rule 2207 (for Hedge Loans) or Rule 2207A (for Market Loans). For Matched-Book Positions re-matched across programs, the resulting re-matched loan would be a Hedge Loan. If the re-matched positions were Anonymous Market Loans, the resulting Loan would be an Anonymous Market Loan. However, if one of the positions was a Disclosed Market Loan or the positions were Anonymous Market Loans initiated through different Loan Markets, the resulting loan would be a Disclosed Market Loan. Going forward, such a Disclosed Market Loan would be deemed to have been initiated through OCC, which would facilitate re-matching within the Market Loan Program for parties who are not subscribers to a Loan Market. Pursuant to proposed OCC Rule 2219A(j), the re-matched Clearing Members may choose to execute an MSLA or close-out the re-matched positions in accordance with proposed OCC Rules 2213 or 2216A, as applicable.

Under proposed OCC Rule 2219A(e), which corresponds to the second sentence of current OCC Rule 2212(e),

any change in Collateral requirements arising from a change in the terms of stock loan or stock borrow positions between a Lending Clearing Member and Borrowing Clearing Member with re-matched positions would be included in the calculation of the mark-to-market payment obligations on the stock loan business day following the completion of the positions adjustments as set forth in proposed OCC Rule 2219A(f).

Under proposed OCC Rule 2219A(f), as under current OCC Rule 2212(f), the termination by offset and re-matching of positions would be complete upon OCC completing all position adjustments in the accounts of the suspended Clearing Member and the Borrowing Clearing Members and Lending Clearing Members with re-matched positions and the applicable systems reports are produced and provided to the Clearing Members reflecting the transactions.

Under proposed OCC Rules 2219A(g) through (i), from and after the time OCC has completed the position adjustments as set forth in proposed OCC Rule 2219A(f), the suspended Clearing Member would have no further obligations under the By-Laws and Rules with respect to such positions; however, a Borrowing Clearing Member with re-matched stock borrow positions would remain obligated as a Borrowing Clearing Member and a Lending Clearing Member with re-matched stock loan positions would remain obligated as a Lending Clearing Member as specified in the By-Laws and Rules applicable to the Stock Loan Programs. Furthermore, upon notification that OCC has completed the termination by offset and re-matching of stock loan and borrow positions, the suspended Clearing Member and Borrowing Clearing Members and Lending Clearing Members with re-matched positions would be required promptly to make any necessary bookkeeping entries at DTC to ensure the accuracy and efficacy of those stock loan terms not governed by OCC's By-Laws and Rules. Under proposed OCC Rule 2219A(j), as under current OCC Rule 2212(j), Borrowing Clearing Members and Lending Clearing Members that have been re-matched would be required to work in good faith to either (i) reestablish any terms, representations, warranties and covenants not covered by the By-Laws and Rules (e.g., establish an MSLA) or (ii) terminate the re-matched stock loan or borrow positions in the ordinary course pursuant to OCC Rules 2213 or 2216A, as applicable, as soon as reasonably practicable.

Because OCC has designed proposed OCC Rule 2219A to address the process for re-matching in suspension in both

Stock Loan Programs, OCC further proposes to delete current OCC Rule 2212, which concerns re-matching in suspension for the Hedge Program, and replace it, as renumbered to proposed OCC Rule 2217, with a cross-reference to proposed OCC Rule 2219A.

By-Laws and Rules Reorganization and Restatement

OCC would also make a number of other clarifying, conforming, and organizational changes to OCC's By-Laws and Rules, and rule-filed policies that reference the By-Law and Rules provisions governing the Stock Loan Programs.

(a) Reorganization

OCC proposes to reorganize the provisions of OCC's By-Laws and Rules relating to the Stock Loan Programs into newly revised Chapter XXII (Hedge Loan Program) and Chapter XXIIA (Market Loan Program). This consolidation of rules governing the Stock Loan Programs is similar to changes OCC made to migrate By-Laws governing OCC's Clearing Fund and membership standards to the Rules.⁵⁷ As part of these changes, OCC would preserve the governance requirements concerning amendments to the stock loan-related By-Laws migrated to the Rules by amending Article XI, Section 2 of the By-Laws.

The provisions governing the Stock Loan Programs are currently found in Articles XXI and XXIA of OCC's By-Laws and Chapters XXII and XXIIA of the OCC Rules. Because the proposed changes to the Stock Loan Programs would substantially amend the relevant By-Law and Rule provisions, OCC believes that this is an appropriate opportunity to consolidate the primary provisions that address the Stock Loan Programs into Chapters XXII and XXIIA of the Rules. As a result, the content of Articles XXI and XXIA of the By-Laws would be consolidated into Chapters XXII, XXIIA and, with respect to definitions, Chapter I of the OCC Rules, subject to the proposed amendments described in this rule filing. OCC would also migrate to the OCC Rules the definitions currently located in Article I of the By-Laws that are specific to the Stock Loan Programs.⁵⁸ To account for migrated definitions of terms that are

⁵⁷ See Exchange Act Release No. 97439, *supra* note 51, 88 FR at 30377 (membership standards); Exchange Act Release No. 83735 (July 27, 2018), 83 FR 37855, 36859 (File No. SR-OCC-2018-008) (Clearing Fund).

⁵⁸ See By-Law Art. I, § 1.B.(4), E.(3), H.(1), L.(2), L.(5), M.(3)-(4), M.(7)-(9), S. (19), (21)-(23). Rule 101 provides that terms in the Rules have the meanings defined in the By-Laws or as set forth in the Rules.

used elsewhere in the By-Laws, OCC would revise the By-Law definition to refer to the definition of that term in OCC Rule 101.⁵⁹ OCC believes that consolidating the provisions governing the Stock Loan Programs into one place would provide more clarity around, and enhance the readability of, OCC's rules governing the Stock Loan Programs. OCC has included a chart mapping the provisions moved from the By-Laws to the Rules, and the resulting renumbering of existing Rules, in Exhibit 3A to File No. SR-OCC-2024-011.

To preserve the governance requirements for amendments to the By-Law provisions that would be migrated to the Rules, OCC would also amend Article XI of the By-Laws. Specifically, OCC would amend Article XI, Section 2 of the By-Laws, which requires the affirmative vote of two-thirds of the directors then in office (but not less than a majority of the number of directors fixed by the By-Laws) to amend certain enumerated provisions. Specifically, OCC would add Rule 2201, Rule 2203, Rule 2204, Rule 2205, Rule 2206(a) and (d), Rule 2213(e)(1), Rule 2214(e)(1), Rule 2201A, Rule 2203A, Rule 2204A, Rule 2205A and Rule 2206A(a)-(c) and (f) to these enumerated provisions.

(b) Restatement

In addition to consolidating the By-Laws and Rules specific to the Stock Loan Programs within the Rules, OCC proposes to restate those provisions and make certain other changes for clarity and consistency. The changes would include (i) global changes across the By-Laws and Rules to add courtesy titles and standardize terms; (ii) integration of Interpretations and Policies within the Stock Loan Program rules into the body of the text of the Rules themselves; and (iii) certain other administrative or technical changes to the rule text.

(i) Global Changes

Global changes to be applied across the By-Laws and Rules concerning the Stock Loan Programs include:

- Adding courtesy titles to the beginning of paragraphs or other subdivisions, where appropriate, to aid the reader in locating provisions governing specific topics.
- Replacing references to "Stock Loan" that are specific to the Hedge Program with "Hedge Loan" in order to

⁵⁹ References to the definition of the terms "stock borrow position" and "stock loan position" in proposed Rule 101 would be retained in the By-Laws because these terms are referenced in certain other definitions in the By-Laws, as well as Article VI, Section 27 of the OCC By-Laws (Close-Out Netting).

better differentiate between Hedge Loans and Market Loans while the Hedge Program is still in place. Use of the defined term “stock loan” would be retained when referring to either a Hedge Loan or a Market Loan or both as the context requires.⁶⁰ Reference to the “Stock Loan/Hedge Program” would remain unchanged.

- Replacing references to “Hedge Clearing Member” or “Market Loan Clearing Member” with “Clearing Member,” “Borrowing Clearing Member,” or “Lending Clearing Member,” as applicable, to simplify OCC’s membership structure and reflect that Clearing Members may be authorized to transact in either program.⁶¹

(ii) Interpretations and Policies

OCC would also relocate current Interpretations and Policies (“I&P”) within Chapters XXI and XXIA of the Rules by moving those provisions within the body of the applicable Rules, subject to any further amendments discussed herein. The location of the text as reorganized within the Rules is included in Exhibit 3A to SR–OCC–2024–011 and noted in footnotes to the proposed rule text in Exhibit 5A to SR–OCC–2024–011.⁶² OCC believes that consolidating the I&Ps, which have no less legal effect than the text of the Rules themselves, would provide more clarity around, and further enhance the readability of, OCC’s Rules governing the Stock Loan Programs.

In certain instances, OCC is proposing to eliminate the existing Interpretations and Policies altogether:

- Interpretations and Policies .01 to current OCC Rules 2202 and 2202A, which concern the position information OCC provides to Clearing Members on an intraday basis, would be deleted because they concern a topic covered by and more properly addressed in proposed OCC Rules 2210 and 2210A (Daily Reports). The specific information referenced in those Interpretations and Policies—*i.e.*, new position, transfer positions, returns and

cancel—would be integrated into the proposed Rules.

- I&P .01 to current OCC Rule 2210 (Suspension of Hedge Clearing Members—Pending and Open Stock Loans) and OCC Rule 2210A (Suspension of Market Loan Clearing Members—Pending and Open Market Loans)—which refers the reader to Interpretation and Policy .02 of OCC Rule 1104 for a description of OCC’s private auction process—would be deleted. In its place, a cross-reference to that description would be added to paragraph (b) of that Rule, as renumbered to OCC Rule 2215 per the reorganization discussed above.

(iii) Administrative Changes

OCC would also improve the clarity and readability of certain Rules, including by:

- breaking certain lengthy Rule provisions into subparagraphs with additional convenience headings to aid the reader in navigating the requirements and obligations therein;
- numbering provisions with multiple paragraphs that are currently unnumbered, in whole or in part, or with lengthy provisions that can be split into multiple paragraphs, and adding convenience headings to paragraphs, where such convenience headings would be helpful to the reader.⁶³
- renumbering subdivisions in Chapters XXII and XXIII based on a consistent numbering convention for (a) paragraphs, (1) subparagraphs, and (A) items.⁶⁴
- updating cross-references found throughout the By-Laws and Rules based on the proposed reorganization and renumbering.
- improving consistency of the text between similar Hedge Program and Market Loan Program rules;⁶⁵
- deleting duplicative provisions of the Rules that merely refer the reader to substantive rights and obligations located elsewhere in the Rules;⁶⁶

OCC would also make conforming edits to OCC’s Margin Policy and the Recovery and Orderly Wind-Down Plan (“RWD Plan”). Specifically, OCC’s Margin Policy references OCC’s default management practices under current Rules 2211 and 2211A, which provide that OCC may instruct a non-defaulting Clearing Member to buy-in or sell-out of positions. The proposed rule change would renumber those references to Rules 2216 and 2218A, respectively. OCC would also amend the description of the margin add-on in the Margin Policy to capture the full range of factors that determine the margin add-on charge for stock loan activity (*i.e.*, collateral rate, mark-to-market pricing, dividends and distributions announced by an issuer, and rebate payments). Similarly, references in the RWD Plan to Section 2(c) of Article XXI of the By-Laws and Rule 2209A(d), which refer to OCC’s authority to terminate the Stock Loan Programs, would be renumbered to proposed Rules 2213(e) and 2216A(d)(2), respectively, and the excerpted text of those Rules appearing in the RWD Plan would be conformed with the text as amended by this proposed rule change.

Implementation Timeframe

OCC will implement the proposed changes at the time Ovation becomes OCC’s system of record, which is planned to launch no earlier than July of 2025.⁶⁷ OCC will announce the implementation date of the proposed change by Information Memorandum posted to its public website at least four weeks prior to implementation. OCC plans to launch Ovation and implement the proposed changes no later than December 31, 2025, and OCC will announce another intended implementation date by Information Memorandum posted to its public website if the changes will not be implemented by that date.

(2) Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Exchange Act and the rules and regulations thereunder. Section 17A(b)(3)(F) of the Exchange Act⁶⁸ requires, among other things, that the rules of a clearing agency (i) promote the prompt and accurate clearance and

duplicative Borrowing Clearing Member obligations located in proposed OCC Rules 2209 and 2211; Rule 2202A(e) (deleting duplicative Borrowing Clearing Member obligations located in proposed OCC Rules 2209A and 2211A).

⁶⁷ See <https://www.theocc.com/Participant-Resources> (linking to reference guides and timelines for the launch of Ovation).

⁶⁸ 15 U.S.C. 78q–1(b)(3)(F).

⁶⁰ See, e.g., Exhibit 5A to SR–OCC–2024–011, proposed OCC Rule 101.S.(6), (7), (9), (10); Rules 2201–2206; Rules 2209–2216.

⁶¹ See, e.g., Exhibit 5A to SR–OCC–2024–011, proposed OCC Rule 1006(h)(C); Rule 2202; Rules 2206–2210; Rules 2213–2214; Rule 2215–17; Rule 2202A; Rules 2207A–2212A; Rules 2216A–2219A.

⁶² See, e.g., Exhibit 5A to SR–OCC–2024–011, proposed OCC Rule 2206(b) (replacing Rule 2201, I&P .01); Rule 2206(c)(1) (replacing Rule 2201 I&P .02); Rule 2206(d) (replacing By-Law Art. XXI § 5, I&P .01); Rule 2214(e)(1) (replacing By-Law Art. XXI § 2, I&P.01); Rule 2206A(d) (replacing Rule 2201A, I&P .01); Rule 2206A(e) (replacing Rule 2201A, I&P .02); Rule 2206A(f) (replacing I&P By-Law Art. XXIA § 5, I&P .01).

⁶³ See, e.g., Exhibit 5A to SR–OCC–2024–011, proposed OCC Rule 2202(b)(1)–(3); Rule 2203(b)(1)–(2), (c)(1)–(2), (d)(1)–(2); Rule 2204(a)–(b); Rule 2205(a)–(b); Rule 2207(a)(1)–(3); Rule 2213(b)(1)–(2); Rule 2214(b)(1)–(6), (c)(1)–(4); Rule 2216(a)–(d); Rule 2202A(b)(1)–(3); Rule 2206A(a)(1)–(2); Rule 2207A(a)(1)–(3); Rule 2216A (d)(1)–(2); Rule 2218A(a)–(d).

⁶⁴ See, e.g., Exhibit 5A to SR–OCC–2024–011, proposed Rule 2202(b)(2)(A)–(E).

⁶⁵ See, e.g., Exhibit 5A to SR–OCC–2024–011, proposed OCC Rule 101.C.(4), L.(2), M.(1), S.(2) (conforming language in definitions specific to Hedge Loans and Market Loans); Rule 2213 (modifying title to “Termination of Hedge Loans” based on a similar title for current Market Loan Rule 2209A); Rule 2202A(b)(2)(E) (amending the Rule for initiation of Market Loans to include novation provisions governing Hedge Loans).

⁶⁶ See, e.g., Exhibit 5A to SR–OCC–2024–011, proposed OCC Rule 2202(d) & I&P .01 (deleting

settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions; (ii) assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; (iii) in general, protect investors and the public interest; and (iv) are not designed to permit unfair discrimination among participants in the use of the clearing agency. OCC believes that the proposed rule change would promote the prompt and accurate clearance and settlement of stock loan transactions, assure the safeguarding of securities and funds at OCC, protect investors and the public interest, and not unfairly discriminate among Clearing Members for the reasons below.

Enhancements To Facilitate OCC's New Clearance and Settlement System

As described above, the proposed changes would involve certain changes to accommodate OCC's new clearance and settlement system, including by transitioning away from the legacy practice of aggregating positions in the same Eligible Stock into stock loan and stock borrow positions to contract-level record keeping. Contract-level recordkeeping would allow Clearing Members to see more precisely the contracts with shares lent by lender and borrower, which aligns to the record keeping industry standard. Allowing for terms to be recorded at the contract level will allow OCC to record other terms at the contract level, including terms related to OCC's guaranty of substitute dividend and rebate payments. Eliminating position aggregation would also allow OCC to simplify the calculation for mark-to-market payments in OCC's Rules. And by aligning mark-to-market payments to the accounts in which a stock loan position is held, OCC would end the practice of requiring cash mark-to-market payments for stock loan or stock borrow positions to settle in a Clearing Member's firm lien account or combined Market-Makers' account. Aligning mark-to-market cash settlements with the accounts in which the position is held simplifies OCC's processes and reduces complexity. Accordingly, OCC believes that conforming its practices for maintaining stock loan and stock borrow positions to industry standards and simplifying its processes for marking those positions to market helps to promote the prompt and accurate clearance and settlement of stock loan transactions, and protect investors and the public interest by reducing operational complexity that

could cause delay and impose costs on market participants.

The proposed changes to allow for re-matching of Matched-Book Positions in suspension also promote the prompt and accurate clearance and settlement of securities and derivatives transactions, the safeguarding of securities and funds at OCC, and the protection of securities investors and the public interest in accordance with Section 17A(b)(3)(F) of the Exchange Act⁶⁹ and Rule 17Ad-22(e)(13)⁷⁰ and (e)(23)⁷¹ thereunder. Rule 17Ad-22(e)(13) requires covered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to, in part, ensure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations in the event of a Clearing Member default.⁷² Rule 17Ad-22(e)(23) requires covered clearing agencies to maintain written policies and procedures reasonably designed to, among other things, provide for publicly disclosing all relevant rules and material procedures, including key aspects of its default rules and procedures.⁷³

As noted above, a significant portion of the activity in OCC's Hedge Program relates to matched-book activity. Under the current Hedge Program Rules, OCC has authority to perform an orderly close out of a suspended Hedge Clearing Member's Matched-Book Positions through the termination by offset and re-matching of such positions without requiring the transfer of securities against the payment of settlement prices as currently required under OCC Rule 2211. As a result, the Hedge Program rules minimize the potential for operational and execution risks and eliminate any risk resulting from potential price dislocation between recall and return transactions. Extending this authority to the Market Loan Program would provide the same benefits. In addition, by allowing re-matching across OCC's Stock Loan Programs, the proposed rule change would more closely align OCC's close-out process with the assumptions underlying OCC's margin methodology, STANS. Specifically, STANS assumes stock loan and borrow positions covering the same Eligible Stock in OCC's Stock Loan Programs are fungible and are permitted to offset one another

in calculating a Clearing Member's margin requirement for the relevant account. Allowing for re-matching across Stock Loan Programs is consistent with this assumption. OCC believes the proposed rule change will strengthen the risk management processes in place at OCC by mitigating the risks involved in the buy-in/sell-out of Matched-Book Positions as well as provide the overall marketplace with more stability with respect to the Stock Loan Programs. OCC therefore believes the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions, the safeguarding of securities and funds in the custody or control of OCC or for which it is responsible and, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Exchange Act,⁷⁴ and would establish default procedures for the Market Loan Program that ensure that OCC can take timely action to contain losses and liquidity pressures and continue meeting its obligations in the event of a participant default in accordance with Rule 17Ad-22(e)(13).⁷⁵

In addition, OCC would use a matching algorithm to re-match stock loan and stock borrow positions in order of priority based on the largest available stock borrow or stock loan positions, as applicable, for the selected Eligible Stock for which a MSLA exists between the Borrowing and Lending Clearing Members or for which both positions are Anonymous Market Loans. In the event parties to a resulting Disclosed Market Loan do not have existing securities lending relationships, those members may choose to either work in good faith to reestablish any terms, representations, warranties and covenants not governed by the By-Laws and Rules (e.g., MSLA) or to terminate the re-matched stock loan or borrow positions in the ordinary course pursuant to renumbered OCC Rules 2213 and 2216A, as soon as reasonably practicable. The proposed rule change therefore provides for an objective process for re-matching stock loan and borrow positions and ensures that members that initiated Anonymous Market Loans or that have existing securities lending relationships are re-matched to the greatest extent possible and would still allow for Clearing Members that are re-matched but that do not have existing securities lending relationships to terminate such positions in the ordinary course pursuant to renumbered OCC Rules

⁶⁹ 15 U.S.C. 78q-1(b)(3)(F).

⁷⁰ 17 CFR 240.17Ad-22(e)(13).

⁷¹ 17 CFR 240.17Ad-22(e)(23).

⁷² 17 CFR 240.17Ad-22(e)(13).

⁷³ 17 CFR 240.17Ad-22(e)(23).

⁷⁴ 15 U.S.C. 78q-1(b)(3)(F).

⁷⁵ 17 CFR 240.17Ad-22(e)(13).

2213 and 2216A. As a result, OCC believes that the proposed rule change is designed to not permit unfair discrimination among participants in the use of the clearing agency in accordance with Section 17A(b)(3)(F) of the Exchange Act.⁷⁶ Furthermore, the proposed rule change would make key aspects of OCC's default procedures with respect to the close out of Matched-Book Positions in suspension public by amending OCC's Rules, which are posted to OCC's website, consistent with Rule 17Ad-22(e)(23).⁷⁷

Market Loan Program Enhancements

The proposed enhancements specific to the Market Loan Program would also promote the prompt and accurate clearance and settlement of stock loan transactions and, in general, protect investors and the public interest. Allowing for bilaterally negotiated Stock Loans in the Market Loan Program would allow OCC to expand its guaranty of cash distributions, such as substitute dividend and rebate payments, to such loans, limiting existing counterparty risks that remain for Hedge Loans, in which such payments must be resolved by the counterparties away from OCC. Transitioning bilaterally negotiated transactions to the Market Loan Program would also reduce operational burden associated with the reconciliation process and risk associated with errors that currently occur under the Hedge Program because settlement at DTC currently occurs prior to OCC's validation and acceptance of the transaction. Under the enhanced Market Loan Program, such bilaterally negotiated transactions would be submitted directly to OCC, which would validate the trade before sending delivery instructions to DTC, thereby helping to identify and resolve any errors prior to settlement occurring. Accordingly, OCC believes that expanding the Market Loan Program to include direct submission of bilaterally negotiated stock loans would promote the prompt and accurate clearance and settlement of stock loan transactions and protect investors and the public interest.

Allowing for the submission of bilateral transactions through the Market Loan Program would also help simplify OCC's post-trade processing of stock loan transactions. For instance, allowing Borrowing Clearing Members to send return instructions directly to OCC for bilaterally initiated Market Loans would help eliminate errors in the Hedge Program that occur when

notices of returns initiated through DTC are not received by OCC with the correct reason codes, resulting in position breaks. The proposed changes would disclose OCC's process for affirming transactions related to bilaterally negotiated Market Loans submitted directly to OCC, which would give members opportunities to affirm or reject transactions within time-frames specified by OCC, after which OCC would either reject the transaction if not affirmed (*i.e.*, new loans) or would be deemed affirmed and processed accordingly (*i.e.*, returns, buy-ins, sell-outs), thereby avoiding transactions that would pend indefinitely. The proposed changes would also accommodate modifications to certain terms, such as the rebate rate, interest rate benchmark or the loan term, without the need for those loans to be returned. The proposed changes would also improve OCC's control over the buy-in process by giving OCC the authority to prevent situations in which a Borrowing Clearing Member that failed to deliver the Loaned Stock in response to a recall instruction then attempts to deliver the Loaned Stock after the Lending Clearing Member may initiate a buy-in.

OCC's new clearance and settlement system would also assume certain processes currently performed by a Loan Market, including calculation of payments with respect to cash distributions for substitute dividend and rebate payments. Consolidating such processing at OCC will help ensure consistency across Market Loans, regardless of whether initiated through a Loan Market or directly with OCC. Assuming the responsibility to calculate such payments would also allow OCC to eliminate Rules intended to limit OCC's guaranty for such payments to the margin OCC collected in reliance on the Loan Market's determinations. OCC would also modify the Market Loan rules concerning the collateralization rate and mark-to-market pricing, which are currently set by the Loan Market. Fixing collateral at the single rate of 102%, which is the Loan Market's rate, would minimize complexity in the evaluation of a member's Stock Loan portfolio for the purposes of liquidation in the event of a default. Accordingly, OCC believes that these post-trade processing enhancements to the Market Loan Program would promote the prompt and accurate clearance and settlement of stock loan transactions and protect investors and the public interest.

Finally, the proposed enhancements to support Canadian Clearing Members in the Market Loan Program would also promote the prompt and accurate

clearance and settlement of stock loan transactions, assure the safeguarding of securities and funds at OCC, and protect investors and the public interest. The introduction of withholding responsibilities would introduce new complications and risks into OCC's clearance and settlement process and could create uncertainty around the settlement of funds at OCC, as discussed in detail in connection with OCC's proposed rule change to address the implementation of I.R.C. Section 871(m) with respect to OCC's listed options transactions.⁷⁸ The proposed rule change would implement prudent, preventive measures to protect OCC against the obligation for any withholding (and any resulting liability) by (a) applying similar conditions for the payment of substitute dividends as those for dividend equivalent payments for listed options; (b) preventing a Canadian Clearing Member from executing Market Loans in its capacity as a Borrowing Clearing Member for Canadian Securities, which may give rise to withholding obligations under Canadian law; (c) clarifying Canadian Clearing Member membership requirements such that Positive Rebate transactions would be subject to exemptions from withholding under U.S. law; and (d) preventing a Canadian Clearing Member from executing Market Loans with Negative Rebate in its capacity as a Borrowing Clearing Member for its own account, which may give rise to withholding obligations under U.S. Law. OCC believes these steps are necessary to prevent tax withholding obligations that OCC is not currently able to identify or collect. Thus, OCC believes the proposed rule change is designed to promote the prompt and accurate clearance and

⁷⁸ See Exchange Act Release No. 79435 (Nov. 30, 2016), 81 FR 87984 (Dec. 6, 2016) (File No. SR-OCC-2016-014). As the Commission recognized, application of Section 871(m) to listed options transactions would "have significant implications for OCC and its Clearing Members"—especially with respect to Non-U.S. Clearing Members, for which OCC would be required "to develop and maintain systems (i) to identify transactions that are Section 871(m) Transactions, (ii) to determine the amount of any dividend equivalents, (iii) to effectuate withholding, and (iv) to remit the withheld tax to the IRS." *Id.* at 87986. Treasury has yet to release guidance on key aspects of Section 871(m) that would be needed to build such systems. See IRS Notice 2024-44, Extension of the Phase-in Period for the Enforcement and Administration of Section 871(m), available at <https://www.irs.gov/pub/irs-drop/n-24-44.pdf>. Like the changes implemented when Section 871(m) went into effect, this proposed change would transfer the costs and liability associated with tax withholding requirements to the Non-U.S. Clearing Members, thereby eliminating the potential uncertainty and risks in the daily settlement of funds at OCC that otherwise would be imposed if those withholding obligations rested with OCC.

⁷⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷⁷ 17 CFR 240.17Ad-22(e)(23).

settlement of securities and derivatives transactions, the safeguarding of securities and funds at OCC, and the protection of securities investors and the public interest in accordance with Section 17A(b)(3)(F) of the Exchange Act.⁷⁹

Furthermore, while the proposed rule change would impose additional requirements and restrictions on Canadian Clearing Members, the proposed rules are intended to address specific issues and potential risks to OCC arising from those Canadian Clearing Members whose membership and participation in the Market Loan Program creates potential withholding obligations for OCC. Because Canadian Clearing Members are already subject to similar requirements to accommodate dividend equivalent payments or deemed payments for listed options transactions without imposing withholding obligations under Section 871(m), OCC believes that the additional conditions and requirements with respect to participation in the Market Loan Program will not impose a significant burden. In addition, the limitations on certain transactions OCC proposes because of the heightened risk of withholding obligations are narrowly tailored to address the specific risks based on the Canadian Clearing Member's role in the transaction and whether it is transacting in its capacity as principal or on behalf of a customer. Therefore, OCC believes that the proposed rule change is not unfairly discriminatory among participants in the use of the clearing agency and is therefore consistent with Section 17A(b)(3)(F) of the Exchange Act.⁸⁰

By-Laws and Rules Reorganization and Restatement

OCC believes that the proposed reorganization and restatement of OCC's By-Laws and Rules specific to OCC's Stock Loan Programs is consistent with Section 17A(b)(3)(F) of the Exchange Act⁸¹ and Rule 17Ad-22(e)(1),⁸² which requires OCC to, among other things, maintain written policies and procedures reasonably designed to ensure a well-founded, clear, transparent, and enforceable legal basis for each aspect of OCC's activities. OCC believes that the proposed reorganization improves the clarity and transparency of its By-Laws and Rules by consolidating provisions governing the clearance and settlement of stock loan transactions in the Rules, rather

than split across OCC's By-Laws and Rules. Similarly, OCC believes that integrating Interpretations and Policies into the text of the Rules helps enhance clarity and transparency by placing those provisions closer to the text they interpret. In addition, the global changes and administrative changes discussed above would apply consistent terms and numbering conventions, improve consistency of the text between similar Hedge Program and Market Loan Program rules, and remove duplicative provisions. Accordingly, OCC believes the proposed changes help ensure OCC's By-Laws and Rules, which form the legal basis for OCC's clearance and settlement of stock loan transactions, are clear and transparent.

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

Section 17A(b)(3)(I) of the Exchange Act 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 Exchange Act.⁸³ With the exception of the Rules specific to Canadian Clearing Members, addressed further below, the proposed changes are meant to enhance OCC's Stock Loan Programs, and would apply equally to all Clearing Members.

The transition to the Market Loan Program is not expected to impose a burden on competition or inhibit access for Clearing Members who currently transact exclusively through the Hedge Loan Program because the enhanced Market Loan Program would allow for the clearance of bilaterally negated transactions submitted to OCC for clearance, as the Hedge Loan Program does today. Accordingly, the changes do not require any participant in the Hedge Loan Program to transact through a Loan Market. In addition, OCC plans to authorize Clearing Members that currently participate in the Hedge Loan Program to transact through the Market Loan Program without requiring additional onboarding from a membership perspective, subject to providing the necessary authorizations required of all Market Loan Program participants, thereby reducing the administrative burden of the transition. All Clearing Members would be subject to training with respect to the new ways of submitting transactions through the Market Loan Program. In addition, the proposed changes would facilitate, rather than burden, competition with respect to Canadian Clearing Members by allowing them, for the first time, to participate in the Market Loan Program.

The proposed rule change could potentially impact or burden competition by imposing upon Canadian Clearing Members certain requirements and limitations with respect to participation in the Market Loan Program. For example, Canadian Clearing Members would be required to provide certain documentation to satisfy OCC that participation will not impose tax or withholding obligations arising from payments under the Market Loan Program, as well as to allow OCC to satisfy its own tax reporting obligations. However, OCC does not believe that conditioning Canadian Clearing Members' participation on compliance with OCC Rule 202 would impose a significant burden on competition. Canadian Clearing Members are already subject to ongoing certification and reporting provisions of Rule 202 for derivative equivalent payments made or deemed to be made to such members with respect to options. As a matter of standard practice, Clearing Members are required to inform OCC of material changes in, for example, their formal organization, ownership structure, or financial condition⁸⁴ and are subject to ongoing financial reporting requirements.⁸⁵ OCC believes the proposed rule change would impose reasonable reporting and notification requirements with respect to Canadian Clearing Members' tax compliance status similar to those rules referenced above.

The proposed restrictions on certain Market Loan transactions with Negative Rebate rates and transactions for which the Loaned Stock is a Canadian Security are also narrowly tailored. These restrictions address specific issues and potential risks to OCC arising from those firms whose membership creates potential withholding obligations for OCC. The proposed restriction on transactions with Negative Rebate for a Canadian Clearing Member's own account in its capacity as a Lending Clearing Member would eliminate the uncertainty in funds settlement that would arise if OCC were subject to withholding or tax obligations with respect to Negative Rebate payments owed to the Canadian Clearing Member. Canadian Clearing Members would not be restricted from entering into Market Loans with Negative Rebate as a Lending Clearing Member for its customer accounts, for which OCC could make Negative Rebate payments free from withholding obligations by virtue of the Canadian Clearing Member's status as a Qualified

⁷⁹ 15 U.S.C. 78q-1(b)(3)(F).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² 17 CFR 240.17Ad-22(e)(1).

⁸³ 15 U.S.C. 78q-1(b)(3)(I).

⁸⁴ See, e.g., OCC Rules 201 and 303.

⁸⁵ See OCC Rule 306.

Intermediary, or as a Borrowing Clearing Member, either for its own account or for its customer accounts.

The proposed restriction on transactions where the Loaned Stock is a Canadian Security when the Canadian Clearing Member is the Borrowing Clearing Member would similarly eliminate uncertainty in funds settlement that would arise if OCC or the Canadian Clearing Member were subject to tax withholding obligations with respect to substitute dividends on the Canadian Security. Canadian Clearing Members would not be restricted from executing Market Loan transactions on Canadian Securities as a Lending Clearing Member. As discussed further above, OCC believes that the proposed rule change is necessary to eliminate potential complications and risk to its clearance and settlement process that would be presented by OCC's potential withholding responsibilities (and which would be a direct consequence of providing its clearance and settlement services for these Canadian Clearing Members). OCC believes the proposed rule change is necessary to promote the prompt and accurate clearance and settlement of securities and derivatives transactions, to assure the safeguarding of securities and funds in the custody or control of OCC or for which it is responsible, and in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Exchange Act.⁸⁶ Accordingly, OCC believes any burden on competition that this proposed change could be regarded as imposing are necessary and appropriate to promote the prompt and accurate clearance and settlement of stock loan transactions as required by the Exchange Act. Furthermore, as stated above, all of OCC's current Canadian Clearing Members are already Qualified Intermediaries, FATCA Compliant, and Qualified Derivatives Dealers. Therefore, applying the same requirements as conditions to participate in the Market Loan Program would not impose any additional burden on those members.

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Exchange Act applicable to registered clearing agencies, and would not impose a burden on competition that is unnecessary or inappropriate in furtherance of the purposes of the Exchange Act.

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

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

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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 (<https://www.sec.gov/rules/regulations/self-regulatory-organization-rulemaking>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-OCC-2024-011 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-OCC-2024-011. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/regulations/self-regulatory-organization-rulemaking>). 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 a.m. and 3 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/CompanyInformation/Documents-and-Archives/By-Laws-and-Rules>.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR-OCC-2024-011 and should be submitted on or before October 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸⁷

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-20329 Filed 9-9-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100927; File No. SR-LTSE-2024-02]

Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Withdrawal of Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

September 4, 2024.

On January 2, 2024, Long-Term Stock Exchange, Inc. (the "Exchange") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a

⁸⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

⁸⁶ 15 U.S.C. 78q-1(b)(3)(F).