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/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MRX–2024–35 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–MRX–2024–35. 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/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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–MRX–2024–35 and should be submitted on or before October 8, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–21034 Filed 9–16–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100999; File No. SR–MEMX–2024–36]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule Concerning Transaction Pricing

September 11, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on September 6, 2024, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members [3] (the ''Fee Schedule'') pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. The text of the proposed rule change is provided in Exhibit 5.

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

In its filing with the Commission, the Exchange 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to (i) modify the required criteria under Liquidity Provision Tier 1; and (ii) reduce the fee and modify the required criteria under Liquidity Removal Tier 1, as further described below.[4]

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 15.77% of the total market share of executed volume of equities trading.[5] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 2.59% of the overall market share.[6] The Exchange in particular operates a ''Maker-Taker'' model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides

[56] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 1.5(p).

[4] The Exchange initially filed the proposed Fee Schedule changes on August 30, 2024 (SR–MEMX–2024–35). On September 6, 2024, the Exchange withdrew that filing and submitted this proposal.

[5] Market share percentage calculated as of September 6, 2024. The Exchange receives and processes data made available through consolidated data feeds (*i.e.,* CTS and UTDF).

[6] *Id.*

increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Liquidity Provision Tiers

The Exchange currently provides a standard rebate of $0.0015 per share for executions of orders in securities priced at or above $1.00 per share that add displayed liquidity to the Exchange (such orders, ''Added Displayed Volume'').[7] The Exchange also currently offers Liquidity Provision Tiers 1–6, among other volume-based tiers, under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the required criteria under Liquidity Provision Tier 1, as further described below.

The Exchange currently provides an enhanced rebate of $0.0034 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving (1) an ADAV[8] (excluding Retail Orders) that is equal to or greater than 0.50% of the TCV;[9] or (2) a Step-Up ADAV[10] from June 2024 (excluding Retail Orders) of the TCV that is equal to or greater than 0.07% of the TCV in securities priced at or above $1.00 per share and an ADAV that is equal to or greater than 0.20% of the TCV in securities priced at or above $1.00 per share. Now, the Exchange proposes to modify alternative criteria (2) of Liquidity Provision Tier 1, such that a Member may qualify for such alternative criteria by achieving both the current requirements of alternative criteria (2) and also achieving a Remove ADV[11] that is equal to or greater than 0.45% of the TCV. Thus, the Exchange now proposes to keep existing alternative criteria (1) intact while adding an additional requirement to the current alternative criteria (2), such that a Member meets alternative criteria (2) of such tier by achieving (i) a Step-Up ADAV from June 2024 (excluding Retail Orders) of the TCV that is equal to or greater than 0.07% of the TCV in securities priced at or above $1.00 per share, (ii) an ADAV that is equal to or greater than 0.20% of the TCV in securities priced at or above $1.00 per share, and (iii) a Remove ADV that is equal to or greater than 0.45% of the TCV.

The proposed change to Liquidity Provision Tier 1 is designed to encourage Members to maintain or increase their order flow, including in the form of orders that both add and remove liquidity, on the Exchange in order to qualify for the enhanced Liquidity Provision Tier 1 rebate. While the Exchange's overall pricing philosophy generally encourages adding liquidity over removing liquidity, the Exchange believes that adding a requirement to criteria (2) of Liquidity Provision Tier 1 which encourages both liquidity-adding and liquidity-removing volume may contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members.

Liquidity Removal Tiers

The Exchange currently charges a standard fee of 0.0030 per share for executions of orders in securities priced at or above $1.00 per share that remove liquidity from the Exchange (such orders, ''Removed Volume''). The Exchange also currently offers Liquidity Removal Tier 1 under which qualifying Members are charged a discounted fee by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify Liquidity Removal Tier 1 by reducing the fee charged for executions of Removed Volume and by modifying the required criteria under such tier, as further described below.

Under Liquidity Removal Tier 1, the Exchange currently charges a discounted fee of $0.00295 per share for executions of Removed Volume by achieving (1) an ADV[12] that is equal to or greater than 0.70% of the TCV and (2) a Remove ADV that is equal to or greater than 0.35% of the TCV.[13] Now, the Exchange proposes to reduce the fee charged for executions of Removed Volume under Liquidity Removal Tier 1 to $0.0029 per share, and to modify the required criteria such that a Member would now qualify for such tier by achieving 1) an ADV that is equal to or greater than 0.70% of the TCV and (2) a Remove ADV that is equal to or greater than 0.50% of the TCV. Thus, the proposed change would reduce the fee charged from $0.00295 to $0.0029 per share and increase the Remove ADV threshold by 0.15% (*i.e.,* from 0.35% to 0.50%) of the TCV.

The proposed changes to Liquidity Removal Tier 1 are designed to encourage Members to maintain or increase their order flow, including in the form of orders that remove liquidity, to the Exchange in order to qualify for the proposed reduction in the fee for executions of Removed Volume. While (as mentioned above) the Exchange's overall pricing philosophy generally encourages adding liquidity over removing liquidity, the Exchange believes that providing criteria under certain tiers that are based on different types of volume that Members may choose to achieve, such as the existing criteria that includes a Remove ADV threshold, contributes to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members. The Exchange believes that the proposed reduction in the fee for executions of Removed Volume by $0.00005 per share represents a modest reduction and remains commensurate with the proposed new required criteria. The Exchange believes that the proposed increase in the Remove ADV requirement will encourage the submission of additional Removed Volume, thereby contributing to a deeper and more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[14] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[15] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other

[7] The base rebate for executions of Added Displayed Volume is referred to by the Exchange on the Fee Schedule under the existing description ''Added displayed volume'' with a Fee Code of ''B'', ''D'' or ''J'', as applicable, on execution reports.

[8] As set forth on the Fee Schedule, ''ADAV'' means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis, and ''Displayed ADAV'' means ADAV with respect to displayed orders.

[9] As set forth on the Fee Schedule, ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[10] As set forth on the Fee Schedule, ''Step-Up ADAV'' means ADAV in the relevant baseline month subtracted from current ADAV.

[11] As set forth on the Fee Schedule, ''Remove ADV'' means ADV with respect to orders that remove liquidity.

[12] As set forth on the Fee Schedule, ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day, which is calculated on a monthly basis.

[13] The pricing for Liquidity Removal Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description ''Removed volume from MEMX Book, Liquidity Removal Tier 1'' with a Fee Code of ''R1'' to be provided by the Exchange on the monthly invoices provided to Members. The Exchange notes that because the determination of whether a Member qualifies for a certain pricing tier for a particular month will not be made until after the month-end, the Exchange will provide the Fee Codes otherwise applicable to such transactions on the execution reports provided to Members during the month and will only designate the Fee Codes applicable to the achieved pricing tier on the monthly invoices, which are provided after such determination has been made, as the Exchange does for its tier-based pricing today.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4) and (5).

charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [16]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to incentivize market participants to direct additional order flow to the Exchange, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that the proposed changes to Liquidity Provision Tier 1 and Liquidity Removal Tier 1 are reasonable, equitable and not unfairly discriminatory because, as described above, such changes are available to all Members on an equal basis, and are designed to encourage Members to maintain or increase their order flow, including in the form of displayed, liquidity-adding and/or liquidity removing orders, to the Exchange in order to qualify for an enhanced rebate for executions of Added Displayed Volume or a discounted fee for executions of Removed Volume, as applicable, thereby contributing to a deeper, more liquid and well balanced market ecosystem on the Exchange to the benefit of all Members and market participants.

The Exchange also believes that such tiers reflect a reasonable and equitable allocation of fees and rebates, as the Exchange believes that the modification to the criteria under Liquidity Provision Tier 1 and the reduced fee under Liquidity Removal Tier 1 remain commensurate with the corresponding required criteria under each such tier and are reasonably related to the market quality benefits that each such tier is designed to achieve, as described above. The proposal to modify the criteria under Liquidity Provision Tier 1, to modify the criteria under Liquidity Removal Tier 1, and to reduce the fee under Liquidity Removal Tier 1 is not unfairly discriminatory because it applies equally to all Members.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act [17] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to incentivize market participants to direct additional liquidity-adding and liquidity-removing order flow to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members and market participants. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [18]

Intramarket Competition

As discussed above, the Exchange believes that the proposal would incentivize Members to submit additional order flow in the form of liquidity adding, non-displayed orders to the Exchange, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the proposed modified Liquidity Provision Tier 1 and the proposed modified Liquidity Removal Tier 1 would be available to all Members that meet the associated volume requirements in any month. As described above, the Exchange believes that the proposed new required criteria under each such tier are commensurate with the corresponding rebate for liquidity-adding order flow and proposed reduced fee for liquidity-removing order flow, as applicable. Additionally, as noted above, the proposed changes to Liquidity Provision Tier 1 and Liquidity Removal Tier 1

[16] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[17] 15 U.S.C. 78f(b)(4) and (5).

[18] *See supra* note 16.

would apply to all Members equally. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 15.6% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to generate additional revenue with respect to its transaction pricing and to encourage the submission of additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [19] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *SEC,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[20] Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [21] and Rule 19b–4(f)(2) [22] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[19] *Id.*

[20] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSE–2006–21)).

[21] 15 U.S.C. 78s(b)(3)(A)(ii).

[22] 17 CFR 240.19b–4(f)(2).

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/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MEMX–2024–36 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–MEMX–2024–36. 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/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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–MEMX–2024–36 and should be submitted on or before October 8, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–21036 Filed 9–16–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100998; File No. SR–OCC–2024–009]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Rule Change by The Options Clearing Corporation Concerning Its Backtesting Framework and To Establish a Resource Backtesting Margin Charge

September 11, 2024.

I. Introduction

On July 11, 2024, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2024–009 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder. The Proposed Rule Change would amend the OCC rules to more comprehensively describe its approach to backtesting, including underlying assumptions; establish a new category of backtesting regarding the maintenance of sufficient margin resources; implement a new margin add-on charge based on breaches of the new category of resource backtesting; and clarify governance and escalation criteria related to the updated backtesting framework. The Proposed Rule Change was published for public comment in the **Federal Register** on July 30, 2024.[3] The Commission has received no comments regarding the Proposed Rule Change. This order approves the Proposed Rule Change.

II. Description of the Proposed Rule Change

OCC is a central counterparty (''CCP''), which means that as part of its function as a clearing agency it interposes itself as the buyer to every seller and the seller to every buyer for certain financial transactions. As the CCP for the listed options markets in the U.S.,[4] as well as for certain futures and stock loans, OCC is exposed to certain risks arising from providing settlement and clearing services to its Clearing Members.[5] Because OCC is obligated to perform on the contracts it clears even where one of its Clearing Members defaults, one such risk to which OCC is exposed is credit risk in the form of exposure to its members' trading activities. OCC manages such credit risk, in part, by collecting collateral from its members in the form of margin. OCC evaluates the margin requirements it imposes on members by periodically comparing such requirements to the potential risk of loss arising out of a member default (*i.e.,* backtesting).[6] While backtesting does not directly establish a member's margin requirements, OCC maintains authority under its rules to collect additional margin if OCC identifies—through backtesting results or otherwise—issues with its margin coverage.[7]

OCC's current backtesting framework measures its Clearing Members' losses in excess of calculated margin requirements to evaluate the adequacy of OCC's model performance, improve margin methodology and risk assessment processes, and identify trends in exceedances that may indicate broader behavioral changes by market participants. However, OCC's current backtesting framework does not provide detailed descriptions of the backtesting process, nor does it require OCC to measure whether it has collected sufficient margin resources in the event of a Clearing Member default (a process often referred to as ''resource sufficiency'' evaluation), or detail the underlying assumptions and governance process for the framework. To address these issues, the Proposed Rule Change would update OCC's current backtesting framework by:

- updating the current backtesting framework to more comprehensively describe material aspects of model backtesting;
- providing for a new category of backtesting—''Resource Backtesting''—that assesses the adequacy of OCC's margin resources to cover its credit exposure at the Clearing Member level; and
- detailing the underlying assumptions and reporting structure for the entire backtesting framework to provide for clearer governance procedures, including escalation criteria.

Additionally, OCC lacks a mechanism with which to collect additional margin resources in instances where backtesting suggests that OCC may otherwise not have sufficient resources to cover its credit exposure during a Clearing Member's default. To that end, OCC proposes to implement a new add-on charge called the ''Resource Backtesting Margin Charge.'' Although this add-on would not be part of the backtesting framework, OCC would use the proposed Resource Backtesting category of backtesting to determine if additional margin in the form of the Resource Backtesting Margin Charge is necessary and in what amount. Specifically, OCC would apply the Resource Backtesting Margin Charge to Clearing Members who experience Resource Backtesting deficiencies that bring their margin coverage rates below a 99% coverage target. OCC also proposes to include in the backtesting framework governance procedures related to the Resource Backtesting Margin Charge.[8]

A. OCC's Current Backtesting Framework

OCC conducts daily backtesting of collateral requirements generated by its margin methodology using standard predetermined parameters and assumptions. OCC uses such backtesting to update its credit risk management and margin methodology [9] or to adjust model parameters. OCC relies on backtesting to evaluate the accuracy of its margin models by comparing the calculated margin coverage for each margin account against the realized profit and loss on the margined

[23] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 100584 (July 24, 2024), 89 FR 61211 (July 30, 2024) (File No. SR–OCC–2024–009) (''Notice of Filing'').

[4] OCC describes itself as ''the sole clearing agency for standardized equity options listed on a national securities exchange registered with the Commission ('listed options').'' *See* Securities Exchange Act Release No. 96533 (Dec. 19, 2022), 87 FR 79015 (Dec. 23, 2022) (File No. SR–OCC–2022–012).

[5] Capitalized terms have the same meaning as provided in OCC's By-Laws and Rules, which can be found on OCC's public website: *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

[6] Under the rules applicable to OCC, backtesting means an ex-post comparison of actual outcomes with expected outcomes derived from the use of margin models. 17 CFR 240.17ad–22(a) (''Backtesting'').

[7] *See* Notice of Filing, 89 FR at 61212.

[8] Under the Proposed Rule Change, OCC also would make conforming changes to its rules and internal policies and procedures to reflect these amendments and facilitate implementation, including consolidating internal procedures for all backtesting into a Backtesting Procedure and associated technical document, updating references and descriptions, and inserting headings. *See* Notice of Filing, 89 FR at 61219–20. OCC provided the new Backtesting Procedure as confidential Exhibit 3B, and the updated technical document as confidential Exhibit 3C to File No. SR–OCC–2024–009.

[9] OCC's margin methodology, adopted in 2006, is titled the System for Theoretical Analysis and Numerical Simulation (''STANS''). *See* Notice of Filing, 89 FR at 61212–13.