

SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933 Release No. 11027/ February 8, 2022; Securities Exchange Act of 1934 Release No. 94187/February 8, 2022]

Order Regarding Review of FASB Accounting Support Fee for 2022 Under Section 109 of the Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act of 2002 (“SOX” or the “Act”) provides that the Securities and Exchange Commission (the “Commission”) may recognize, as generally accepted for purposes of the securities laws, any accounting principles established by a standard-setting body that meets certain criteria.¹ Section 109 of SOX provides that all of the budget of such a standard-setting body shall be payable from an annual accounting support fee assessed and collected against each issuer, as may be necessary or appropriate to pay for the budget and provide for the expenses of the standard-setting body, and to provide for an independent, stable source of funding, subject to review by the Commission. Under Section 109(f) of the Act, the amount of fees collected for a fiscal year shall not exceed the “recoverable budget expenses” of the standard-setting body. Section 109(i) of SOX amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act.

On April 25, 2003, the Commission issued a policy statement concluding that the Financial Accounting Standards Board (“FASB”) and its parent organization, the Financial Accounting Foundation (“FAF”), satisfied the criteria for an accounting standard-setting body under the Act, and recognizing the FASB’s financial accounting and reporting standards as “generally accepted” under Section 108 of the Act.² Accordingly, the Commission undertook a review of the FASB’s accounting support fee for calendar year 2022.³ In connection with its review, the Commission also reviewed the budget for the FAF and the FASB for calendar year 2022.

Section 109 of SOX provides that, in addition to the accounting support fee,

the standard-setting body can have additional sources of revenue for its activities, such as earnings from sales of publications, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual or perceived independence of the standard setter. In this regard, the Commission also considered the interrelation of the operating budgets of the FAF, the FASB, and the Governmental Accounting Standards Board (“GASB”), the FASB’s sister organization, which sets accounting standards used by state and local government entities. The Commission has been advised by the FAF that neither the FAF, the FASB, nor the GASB accept contributions from the accounting profession.

The Commission understands that the Office of Management and Budget (“OMB”) has determined the FASB’s spending of the 2022 accounting support fee is sequestrable under the Budget Control Act of 2011.⁴ So long as sequestration is applicable, we anticipate that the FAF will work with the Commission and Commission staff as appropriate regarding its implementation of sequestration.

After its review, the Commission determined that the 2022 annual accounting support fee for the FASB is consistent with Section 109 of the Act. Accordingly,

It is ordered, pursuant to Section 109 of SOX, that the FASB may act in accordance with this determination of the Commission.

By the Commission.

Vanessa A. Countryman,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94168; File No. SR-NSCC-2021-010]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Establish the Securities Financing Transaction Clearing Service and Make Other Changes

February 7, 2022.

On July 22, 2021, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-NSCC-2021-010 (“Proposed Rule Change”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) and Rule 19b-4 thereunder.² The Proposed Rule Change was published for comment in the **Federal Register** on August 12, 2021.³ The Commission received comment letters on the Proposed Rule Change.⁴

On September 2, 2021, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁶ On November 5, 2021, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act,⁷ to determine whether to approve or disapprove the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 92570 (August 5, 2021), 86 FR 44482 (August 12, 2021) (SR-NSCC-2021-010) (“Notice”). NSCC also filed the proposal contained in the Proposed Rule Change as advance notice SR-NSCC-2021-803 (“Advance Notice”) with the Commission pursuant to Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (“Clearing Supervision Act”). 12 U.S.C. 5465(e)(1); 17 CFR 240.19b-4(n)(1)(i). Notice of filing of the Advance Notice was published for comment in the **Federal Register** on August 12, 2021. Securities Exchange Act Release No. 92568 (August 5, 2021), 86 FR 44530 (August 12, 2021) (SR-NSCC-2021-803). The proposal contained in the Proposed Rule Change and the Advance Notice shall not take effect until all regulatory actions required with respect to the proposal are completed.

⁴ Comment letters are available at <https://www.sec.gov/comments/sr-nscc-2021-010/srnscc2021010.htm>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ Securities Exchange Act Release No. 92860 (September 2, 2021), 86 Fed. Reg. 50569 (September 9, 2021) (SR-NSCC-2021-010).

⁷ 15 U.S.C. 78s(b)(2)(B).

¹ See 15 U.S.C. 7201 *et seq.*

² See Commission Statement of Policy Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter, Release No. 33-8221 (April 25, 2003) [68 FR 23333 (May 1, 2003)].

³ The Financial Accounting Foundation’s Board of Trustees approved the FASB’s budget on November 16, 2021. The FAF submitted the approved budget to the Commission on November 22, 2021.

⁴ See OMB Report Pursuant to the Sequestration Transparency Act of 2012, available at https://www.whitehouse.gov/wp-content/uploads/2020/02/JC-sequestration_report_FY21_2-10-20.pdf. The sequestration percentages calculated for FY 2021 will be applied in each of the fiscal years from 2022 to 2029.

Proposed Rule Change.⁸ The Commission has received additional comment letters on the Proposed Rule Change.⁹

Section 19(b)(2) of the Act¹⁰ provides that proceedings to determine whether to approve or disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.¹¹ The 180th day after publication of the Notice in the **Federal Register** is February 8, 2022.

The Commission is extending the period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that the Commission has sufficient time to consider the issues raised by the Proposed Rule Change and to take action on the Proposed Rule Change. Accordingly, pursuant to Section 19(b)(2)(B)(ii)(II) of the Act,¹² the Commission designates April 8, 2022, as the date by which the Commission should either approve or disapprove the Proposed Rule Change SR–NSCC–2021–010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2022–02912 Filed 2–10–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94166; File No. SR–OCC–2022–801]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice Concerning the Options Clearing Corporation's Margin Methodology for Incorporating Variations in Implied Volatility

February 7, 2022.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street

Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (“Clearing Supervision Act”)¹ and Rule 19b–4(n)(1)(i)² under the Securities Exchange Act of 1934 (“Exchange Act” or “Act”),³ notice is hereby given that on January 24, 2022, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) an advance notice as described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is submitted in connection with a proposal to simplify OCC's margin methodology, the System for Theoretical Analysis and Numerical Simulations (“STANS”), control procyclicality in volatility modeling, provide natural offsets for volatility products with similar characteristics, and build the foundation for a single, consistent framework to model equity volatility products in margin and stress testing. Specifically, this proposed change would:

- (1) Implement a new model for incorporating variations in implied volatility within STANS for products based on the S&P 500 Index (such index hereinafter referred to as “S&P 500” and such proposed model being the “S&P 500 Implied Volatility Simulation Model”) to provide consistent and smooth simulated volatility scenarios;
- (2) implement a new model to calculate the theoretical values of futures on indexes designed to measure volatilities implied by prices of options on a particular underlying index (such indexes being “volatility indexes”; futures contracts on such Volatility Indexes being “volatility index futures”; and such proposed model being the “Volatility Index Futures Model”) to provide consistent and stable coverage across all maturities; and
- (3) replace OCC's model to calculate the theoretical values of exchange-traded futures contracts based on the expected realized variance of an underlying interest (such contracts being “variance futures,” and such model being the “Variance Futures Model”) with one that provides adequate margin coverage while providing offsets for hedged positions in the listed options market.

The proposed changes to OCC's STANS Methodology document are contained in confidential Exhibit 5 of filing SR–OCC–2022–801. Amendments to the existing text are marked by underlining and material proposed to be

deleted is marked by strikethrough text. The proposed changes are described in detail in Item 3 below. New sections 2.1.4 (S&P 500 Implied Volatilities Scenarios) and 2.1.8 (Volatility Index Futures), and the replacement text for section 2.1.7 (Variance Futures), specific to the proposed models, are presented without marking. Existing Section 2.1.4 through 2.1.7 have been renumbered to reflect the addition of the new sections but are otherwise unchanged. The proposed changes do not require any changes to the text of OCC's By-Laws or Rules. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.⁴

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. 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) and (B) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the advance notice and none have been received. OCC will notify the Commission of any written comments received by OCC.

(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act

Description of the Proposed Change

Background

STANS Overview

STANS is OCC's proprietary risk management system for calculating Clearing Member margin requirements.⁵ The STANS methodology utilizes large-scale Monte Carlo simulations to

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>.

⁵ See Exchange Act Release No. 91079 (Feb. 8, 2021), 86 FR 9410 (Feb. 12, 2021) (File No. SR–OCC–2020–016). OCC makes its STANS Methodology description available to Clearing Members. An overview of the STANS methodology is on OCC's public website: <https://www.theocc.com/Risk-Management/Margin-Methodology>.

⁸ Securities Exchange Act Release No. 93532 (November 5, 2021), 86 FR 62851 (November 12, 2021) (SR–NSCC–2021–010).

⁹ See *supra* note 4.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 15 U.S.C. 78s(b)(2)(B)(ii)(II).

¹² *Id.*

¹³ 17 CFR 200.30–3(a)(57).

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b–4(n)(1)(i).

³ 15 U.S.C. 78a *et seq.*