THE OPTIONS CLEARING CORPORATION, MEGAN MALONE COHEN

Proposal and Comment Information

Title: Regulatory Capital Rule: Category I and II Banking Organizations, Banking Organizations with Significant Trading Activity, and Optional Adoption for Other Banking Organizations, R-1887

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Submitter Information

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Organization Type: Company

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Please see the attached letter from The Options Clearing Corporation.

OCC THE FOUNDATION FOR SECURE MARKETS®

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June 18, 2026

Via Agency Website (*https://www.federalreserve.gov/apps/proposals/*)
Benjamin W. McDonough, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551
RIN 7100-AH20

Via Federal eRulemaking Portal (https://regulations.gov/)
Chief Counsel's Office
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E–218
Washington, D.C. 20219
Docket OCC–2026–0265

Via E-Mail (comments@fdic.gov)
Jennifer M. Jones, Deputy Executive Secretary
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RIN 3064-AF29

RE: Regulatory Capital Rule: Category I and II Banking Organizations, Banking Organizations with Significant Trading Activity, and Optional Adoption for Other Banking Organizations, 91 Fed. Reg. 14952 (Mar. 27, 2026)

Ladies and Gentlemen:

The Options Clearing Corporation ("OCC") appreciates the opportunity to comment on the rule proposal set forth in the above-referenced notice of proposed rulemaking (the "Proposal," and the resulting regulatory capital rule, if adopted, the "Rule") published jointly by the Board of Governors of the Federal Reserve System ("Board"), the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency (together, the "Agencies"). OCC generally supports the efforts by the Agencies to set appropriate capital requirements for large banking organizations. As described herein, OCC also appreciates and specifically supports aspects of the Proposal that OCC commented on in prior proposals by the Agencies. In other areas of the Proposal that are described in this letter, OCC believes that clarifications or revisions would be appropriate so as not to discourage the use of central clearing services for financial contracts that OCC clears and settles.

I. Summary of OCC Comments

This letter addresses 6 issues raised by the Proposal. OCC generally supports the approach taken by the Agencies with respect to three of these issues, subject to certain clarifications that should be adopted in connection with the promulgation of the Rule, and OCC requests that the Agencies adopt an alternative approach with respect to the other two. First, as described in Section III, OCC supports the Agencies' inclusion of language permitting banking organizations to treat client-facing settled-to-market ("STM") derivatives in a netting set with collateralized-to-market ("CTM") derivatives for certain netting purposes under the standardized approach to counterparty credit risk ("SA-CCR"), and requests certain additional clarifications regarding the scope of this provision. Second, as described in Section IV, OCC supports the proposed operational risk treatment that would calculate the noninterest component of the business indicator on a net basis and include "clearing and other investment services" within "investment services," and requests that the Agencies' clarify that all clearing-related pass-through fees fall within the scope of "clearing and other investment services." Third, as described in Section V, OCC requests that the Agencies adopt a methodology by which certain types of options that are not purely mathematically equivalent, but where the underlying financial instruments track the same underlying reference index, may be treated as part of the same equity hedging set for purposes of SA-CCR, and thus to fully offset one-another in determining the relevant exposure at default. Fourth, as described in Section VI, OCC supports the Agencies' position that the calculation of the capital charge that a banking organization must hold against its prefunded contributions to a QCCP's default fund should recognize the risk-reducing benefits of cross-margining arrangements between QCCPs, but believes that the allocation factor used in such calculation should reflect the specific terms of the relevant cross-margining arrangements, rather than a standardized split. Fifth, as described in Section VII, OCC requests that the Agencies apply a 5-business-day margin period of risk ("MPOR") to both clearing member exposures to clearing clients and the QCCP default fund capital charge calculation. Finally, as described in Section VIII, OCC requests that the Agencies permit cross-product netting of cleared open-ended stock loan contracts against cleared options and options on futures contracts.

II. About OCC and the Markets It Serves

OCC was founded in 1973 and is the world's largest equity derivatives clearing organization. In addition to serving as the only central counterparty ("CCP") for U.S. exchange-listed securities options ("Listed Options"), OCC acts as a CCP for certain stock loan contracts, futures contracts and options contracts on futures ("OCC Cleared Contracts"). CCP clearinghouses generally promote robust risk management and safety and soundness to reduce systemic risks by providing novation, netting and settlement guarantee services to their members. In OCC's case, it provides these services under the jurisdiction of both the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC"). In July 2012, the Financial Stability Oversight Council designated OCC as a systemically important financial market utility ("SIFMU") under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[1] As a SIFMU, OCC is additionally subject to oversight by the Board, and the SEC is its primary regulator.

OCC provides its clearing and settlement services directly to clearing members that primarily are broker-dealers regulated by the SEC or futures commission merchants regulated by the CFTC. These broker-dealers and futures commission merchants are also in many instances affiliates of bank holding companies. In 2023, OCC also amended its membership standards so that certain banking entities supervised by the agencies that published the Proposal are also directly eligible to participate as clearing members.[2] As a CCP, the strength of OCC's ability to reduce risks in the markets it serves is intertwined with the participation and financial strength of its clearing members. This is because clearing members access OCC's clearing and settlement services for their own transactions in OCC Cleared Contracts as well as for those of their customers. It is also because for the settlement obligations for which they are responsible to OCC, which may arise from their own transactions or those of customers, the clearing members must post required collateral to manage risks related to changes in market value and potential default.

These aspects of OCC's clearing and settlement services are relevant to the Proposal because OCC clearing members that are banks themselves or that are affiliated with U.S. bank holding companies would be required to comply with the Agencies' new regulatory capital rules. Accordingly, OCC has reviewed the Proposal with a focus on those issues which would impact clearing member banking organizations in a manner that would either (a) disadvantage such entities relative to banking organizations that are not clearing members in a manner that is material, or (b) which would more broadly disincentivize the use of central clearing, contrary to the longstanding public policy objectives of the Agencies.

III. OCC Supports Providing Banking Organizations the Option to Treat Client-Facing STM Derivative Contracts as CTM Derivative Contracts, Permitting Netting for Purposes of Potential Future Exposure ("PFE") Calculations, and Requests Confirmation that the Proposal's Approach Would Extend to Listed Options and Cleared Futures

The Proposal permits clearing member banking organizations to elect to treat client-facing STM derivative contracts as CTM derivative contracts. This would permit netting between such contracts for purposes of calculating PFE with respect thereto. The Agencies indicate that doing so would "align the netting treatment of cleared derivative exposures with the netting treatment of their related client-facing derivative exposures, as well as facilitate efficient hedging."[3] Question 45 in the Proposal asks for feedback regarding the advantages and disadvantages of this proposed approach.

OCC previously requested, in response to the regulatory capital proposal published by the Agencies in 2024 ("2024 Proposal"),[4] that the Agencies modify SA-CCR to permit clearing members to offset Listed Option positions, which are STM positions, against cleared futures

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[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).
[2] 88 Fed. Reg. 30373 (May 11, 2023).
[3] Proposal at 14985-86.
[4] Regulatory capital rule: Amendments applicable to large banking organizations and to banking organizations with significant trading activity, 88 Fed. Reg. 64028 (September 18, 2023).

positions, which are CTM positions, when calculating PFE for clearing client netting sets.[5] In OCC's view, the rationale for restricting offsets between margined and unmargined derivatives does not apply in this context because the applicable risk horizon is functionally the same: both product types are subject to daily risk discipline, daily mark-to-market processing, and clearinghouse risk controls.

OCC supports the Agencies' approach to netting of CTM and STM client-facing derivative transactions, and believes the Proposal appropriately addresses this issue. It would align the treatment of client-facing cleared derivatives with the economic reality of clearing and would reduce a capital disincentive to maintaining hedged, risk-neutral portfolios. As such, OCC requests that the Agencies finalize the language of §__.114(e)(5) substantially as proposed. However, OCC further requests that the Agencies include additional clarifying language in the preamble to the Rule, confirming that the proposed approach to netting CTM and STM client-facing derivative transactions would extend to the specific instruments and circumstances relevant to OCC and its clearing member clients. Accordingly, this language would confirm OCC's understanding that this treatment would extend to Listed Options (which are CTM) and cleared futures (which are STM) held by the same client, and which are part of the same legally enforceable netting set. Such language should also confirm OCC's understanding that this treatment would continue to be available where such instruments are subject to cross-margining, as in the cross-margining program that currently exists between OCC and CME.

IV. OCC Supports the Proposed Operational Risk Framework Providing for Netting of Fees Under the Noninterest Component of the Business Indicator, and Requests Confirmation that Clearing-Related Pass-Through Fees are Part of the Noninterest Component

The Proposal incorporates a standardized approach for operational risk, which would replace the internal models-based framework currently used under the advanced measurement approaches. This proposed framework calculates risk-weighted assets for operational risk based upon a standard multiple of a business indicator component. The business indicator component, in turn, is based upon the sum of two further components, an interest, lease, and dividend component, and a noninterest component.[6] The noninterest component is comprised of a number of subcomponents, including "investment services," which, in turn, incorporates "other investment services." This is defined parenthetically to "include clearing and other investment services." Under the Proposal, income and expenses that are part of the noninterest component are netted,[7] similar to the net treatment approach used in the interest, lease, and dividend component. Question 86 in the Proposal asks for feedback regarding the advantages and disadvantages of the proposed design of the noninterest component, including impacts on specific business models.

The Proposal's treatment of the noninterest component of the business risk indicator addresses OCC's comments in response to the 2024 Proposal. Under the 2024 Proposal, the

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[5] *See* OCC Comment Letter re Regulatory Capital Rule: Amendments Applicable to Large Banking Organizations and to Banking Organizations with Significant Trading Activity (Jan. 16, 2024). *See also* OCC Comment Letter re Standardized Approach for Calculating the Exposure Amount of Derivative Contracts (Feb. 15, 2019) ("2019 Letter").
[6] *See* §__.150(c)(1).
[7] *See* §__.150(c)(1)(ii).

services component of the business risk indicator (replaced in the Proposal by the noninterest component) was based upon the larger of the institution's revenue (fees plus commission income) or expenses, calculated on a gross basis. This did not appropriately account for the manner in which clearing member banking organizations account for clearing and exchange fees, which are often passed through to customers, and accounted for as the clearing member's own revenues and expenses under U.S. GAAP. OCC provides clearing services for client activity directly to the client's clearing members through contractual arrangements, and the related service fees are subject to regulatory filings and oversight under the Securities Exchange Act[8] and Commodity Exchange Act.[9] As a result, the 2024 Proposal would have artificially inflated clearing member banking organization gross revenue, effectively imposing a capital surcharge under the operational risk capital requirement. In turn, this could potentially create disincentives to the use of clearing, as it would require clearing member banking organizations to charge customers more, thus making clearing more expensive.

The Proposal would resolve this issue. OCC supports the proposed operational risk treatment that would calculate the noninterest component on a net basis and include "clearing and other investment services" within "investment services." Fees charged by a clearinghouse to clearing member banking organizations, which those members then charge to their clients, are expenses that should be considered a part of clearing services. As such, OCC requests that the Agencies finalize the language of § __.150(c) substantially as proposed. However, OCC further requests that the Agencies include additional clarifying language in the preamble to the Rule, incorporating examples of items that would be covered by each sub-component of the noninterest component. Specifically, this language should clarify that "other investment services" includes all fees for clearing services, passed in both directions (such as exchange, clearing, regulatory, transaction, and similar third-party fees), which would pick up clearing and exchange pass-through fees. This should ensure that clearing and exchange fees that are passed through to clients by clearing member banking organizations are treated on a net basis, and thus that clearing members are not inadvertently subjected to a capital surcharge because of the manner in which such fees are structured.

V. <u>OCC Requests that the Proposal be Amended to Permit Clearing Member Banking Organizations to Treat Certain Types of Non-linear Index Contracts as Materially Equivalent for Purposes of Calculating Exposures, and Therefore as Fully Offsetting</u>

The Proposal provides that banking organizations are permitted to decompose derivative contracts on linear indices within credit, equity, and commodity asset classes for purposes of SA-CCR, treating each component of the index as a separate single-name derivative contract for purposes of determining the exposure amount. However, the Proposal expressly rejects this same treatment with respect to derivative contracts on non-linear indices, indicating that it is not mathematically possible to calculate a supervisory delta for the underlying components of a non-linear index. This is because the supervisory delta must be calculated at the instrument level, since such contracts non-linear relationship with the underlying components of the index (e.g., the sensitivity changes based on issues like volatility, time to expiry of the option, and the level of the

[8] 15 U.S.C. § 78a *et seq*.
[9] 7 U.S.C. § 1 *et seq*.

index). As a result, such contracts cannot be decomposed and fully offset against one another within a hedging set for SA-CCR purposes.

OCC understands and acknowledges the position taken by the Agencies that, from a pure mathematical perspective, non-linear index contracts are not equivalent. However, OCC believes that pure mathematical equivalence, calculated solely at the component level, should not be the only criteria used to determine whether non-linear index contracts may be treated as equivalent. This is because SA-CCR is not trying to answer the pure mathematical question of whether two options can be decomposed into the exact same components. Instead, SA-CCR is trying to estimate counterparty credit exposures over a defined period (the margin/close-out period), using a set of standardized assumptions and formulas. Thus, even if two contracts are not mathematically equivalent, there may be circumstances in which risk profiles of such contracts are similar enough that the Agencies should recognize their functional equivalence. Accordingly, the relevant question should be whether or not two given positions will behave closely enough under close-out conditions that the Agencies should feel comfortable treating them as substantially offsetting from a risk perspective. This is the case for two reasons. First, an approach not solely based upon mathematical equivalence is consistent with the positions taken by the Agencies elsewhere within the Proposal. Second, it would also align the Agencies with the approach taken by other peer regulators under their home country implementations of the Basel III regulatory capital standards.

With respect to positions taken in the Proposal, there are other circumstances in which the Agencies have determined that, for SA-CCR purposes, two instruments that do not have identical underlying terms (and thus, have economically equivalent risk profiles, but not mathematically identical profiles) may be treated as analogous to one another. Indeed, a significant one is discussed in this letter. As described above, the Agencies have included a determination as part of the Proposal that client-facing STM derivative contracts may be treated as CTM derivative contracts for purposes of netting calculations.[10] While the total cash flows associated with such instruments are identical, the manner in which the exposures associated with such instruments are calculated are materially and significantly different. Nevertheless, even though these two types of instruments are operationally distinct from one another, the Agencies propose to permit the two to be treated the same for purposes of certain regulatory determinations.

Peer regulators have also recognized circumstances under their home country implementations of the Basel III capital requirements where two instruments which are not mathematically identical, but would behave closely enough to one another, should be treated as equivalent, and thus be able to be netted. By way of example, in the European Union ("EU"), the proposed rules for the capital treatment of crypto-asset exposures under the EU Capital Requirements Regulation, as amended by Regulation (EU) 2024/1623 ("CRR3"), allows for the possibility of netting between a crypto-asset and the traditional asset it references in certain circumstances. As brief background, CRR3 introduced a transitional regime for the calculation by an EU bank of its regulatory capital requirements for crypto-asset exposures. The transitional

[10] Similarly, we note that the SEC and CFTC have also recognized the equivalence of options on indices and options on ETFs that track indices for purposes of cross-margining programs. For example, under the OCC-CME cross-margining agreement, which is subject to review and approval by applicable regulators as described below, the economic equivalence of SPX options and SPY Options has been formally recognized since 1989.

regime under CRR3 includes the subdivision of such exposures into three broad categories, namely: (a) cryptoasset exposures to tokenised traditional assets; (b) exposures to "asset-referenced tokens" ("ARTs") - broadly, stablecoins other than those pegged to a single official currency, whose issuers comply with the EU regulation on markets in cryptoassets ("MiCA"); and (c) any other cryptoasset exposures not within categories (a) or (b). In August 2025, the European Banking Authority ("EBA") published final draft regulatory technical standards ("RTS") specifying the detailed calculation methodologies for exposures within categories (b) and (c).[11]

The RTS includes various provisions that allow for the recognition of netting between a crypto-asset and the traditional asset it references. A notable example of this is the prescribed methodology for the calculation of capital requirements related to market risk in respect of exposures within category (b) - *i.e.*, MiCA-compliant ARTs. The market risk methodology for such exposures follows broadly the same approach as the bank would apply to the traditional asset referenced by the ART. The RTS further provides that netting and hedging shall be recognised between the crypto-asset (*i.e.*, the ART) and the traditional asset it references for purposes of the bank's market risk capital requirements. Similarly, in the United Kingdom, the Prudential Regulation Authority has recently articulated a "*same risk, same regulatory outcome*" approach under which tokenized traditional assets would generally receive the same prudential treatment as non-tokenised equivalents where the legal rights conferred are identical and the underlying risks are comparable.[12] While tokenized assets of the sort described herein are themselves keyed to particular underlying real-world assets, much as with options on non-linear indices, they are not direct equivalents. This is because a tokenized asset introduces numerous other sources of risk not present in the underlying asset (e.g., operational risk associated with the tokenized asset issuer). However, even though they are not direct equivalents, foreign peer regulators of the Agencies have recognized equivalence in situations where two instruments are not mathematically identical, but are keyed to an equivalent underlying asset.

While the issue of non-mathematically identical instruments still being analogous may arise with respect to a variety of instruments, the most notable example arises where parties transact in Listed Options for which the underlying economic exposure is an equity index, but the form of the exposure differs. With respect to the S&P index, those exposures may take the form of options on shares of the SPDR S&P index exchange traded fund ("SPY Options"), as well as SPX options on the S&P index itself. Indeed, in the course of meeting market demand for one type of option (say, an SPY Option), a market maker may choose to hedge with the other kind of option (an SPX option), or with the underlying shares (SPY shares). The economic profiles of SPY Options and SPX options are functionally equivalent to the profiles of the underlying SPDR exchange traded fund shares and the S&P index itself, and the two have historically tracked one another in extremely close fashion.

[11] Draft regulatory technical standards on the calculation and aggregation of crypto exposure values under Article 501d(5) of the CRR 3 (Aug. 5, 2025), *available at* https://www.eba.europa.eu/sites/default/files/2025-08/616d6b06-cdcf-4246-a7cc-2173dfd32fa6/Draft%20RTS%20on%20crypto%20asset%20exposures%20Article%20501d-5.pdf.
[12] Prudential treatment of tokenized assets, stablecoins, and other cryptoasset exposures (May 18, 2026), *available at* https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/letter/2026/tokenised-assets-stablecoins-and-other-cryptoasset-exposures.pdf.

Accordingly, OCC requests that the Agencies adopt a framework under which equivalence determinations may be made as a part of the Rule, and formally make such an equivalence determination for SPX options and SPY Options either immediately following adoption of the Rule or as a part of the Rule itself.[13] OCC would support the adoption of regulatory criteria used to make a determination that two index products are tied to an equivalent benchmark, and thus qualify for treatment as equivalents. OCC would propose that such instruments be defined as "qualified benchmark-equivalent index products" in the Rule, and that such term be defined as an exchange-traded fund, exchange-traded product, trust, index-linked security, futures contract, option contract, option on futures contract, or other derivative contract that satisfies objective criteria demonstrating that it is designed to provide exposure to, or closely track, the same benchmark index as another derivative contract in the netting set. The criteria for confirming treatment as a qualified benchmark-equivalent index product should include the following:

- the product is designed to track, replicate, or provide exposure to the same benchmark index or to substantially the same constituents and weights as the benchmark index;
- the product and the benchmark index are denominated in the same currency or otherwise do not create material currency basis risk;
- the product is traded on a regulated market, cleared through a QCCP, or subject to transparent price dissemination and publicly available benchmark or holdings information;
- the product's returns have closely tracked the benchmark index over a recent historical period, or the product's mandate, governing documents, or publicly disclosed methodology requires it to track the benchmark index and to publish tracking performance on at least a quarterly basis; and
- the banking organization applies the treatment consistently for materially similar products and maintains documentation supporting the benchmark-equivalence determination.

Should the Agencies adopt the definition provided above, or a substantially equivalent definition for purposes of making equivalency determinations, OCC would further request that the Agencies make a determination pursuant to such definition, whether immediately following the adoption of the Rule, or as part of the Rule itself, that SPX options and SPY Options are qualified benchmark-equivalent index products.

VI. OCC Supports the Proposed Recognition of Cross-Margining Arrangements as Part of the QCCP Default Fund Contribution Calculation, and Requests that the Allocation Factor be Determined Based Upon the Actual Terms of the Relevant Cross-Margining Arrangements

The Proposal modifies the requirements relating to default fund contributions to recognize cross-margining arrangements under certain circumstances. Under the regulatory capital rules, clearing member banking organizations are required to calculate as part of their risk-weighted assets an amount representing the risk associated with their clearinghouse default fund contributions. For QCCPs, such as OCC, this amount is calculated using the hypothetical capital

[13] In the alternative, OCC respectfully requests that the Agencies indicate that they would be willing to consider use of their reservation of authority under the regulatory capital rules to make formal equivalence determinations on a case-by-case basis, and to make such a determination for SPX options and SPY Options. *See, e.g.*, § __.1(d)(3), (6).

requirement of a qualifying central counterparty ("Kccp"), which represents a clearing member banking organization's counterparty credit risk exposures to all of the QCCP's clearing members and their clients. The current capital rules do not permit clearing member banking organizations to reflect the risk offsets provided by cross-margining arrangements as part of their Kccp calculations. However, the Proposal includes a revised Kccp formula, used to calculate the exposure amount for derivatives and repo-style transactions that are subject to a valid cross-margining agreement. Under this formula, the relevant exposure amount for positions subject to a cross-margining agreement is calculated by multiplying the exposure amount for positions subject to a cross-margining agreement by an allocation factor determined by the ratio of gross notional positions held at the QCCP that is party to a cross-margining agreement to which the calculation relates, to the gross notional positions held across all QCCPs that are subject to the relevant cross-margining agreement ("Gross Notional Ratio"). Question 49 in the Proposal asks for feedback regarding potential alternatives to the allocation factor as described, and the rationale for such alternatives.

OCC supports the recognition of cross-margining agreements as part of the Kccp calculation, where such cross-margining agreements are subject to appropriate oversight by the relevant QCCP's primary regulators.[14] However, OCC believes that an allocation factor based on the Gross Notional Ratio is a poor proxy for the risk of Listed Options and futures portfolios, as well as being disconnected from the actual terms of the cross-margining agreements that the allocation factor is meant to account for. As a general matter, the notional amount of an option contract does not always provide an accurate representation of the underlying risk associated with such contract. This is because the notional value of an option does not change with market movements of the underlying security, though the value of the option is ultimately delta-dependent. In other words, the value of the option will respond differently to changes in the price of the underlying shares, depending upon how deeply the option is in-the-money (or how far it is out-of-the-money).[15] Accordingly, while the Gross Notional Ratio may be an appropriate allocation factor for cross-margining agreements covering certain kinds of instruments, it is not an appropriate allocation factor for all types of cross-margining agreements.

This concern is further amplified where a cross-margining agreement covers different types of instruments (which may be structurally incompatible), or is between QCCPs that employ different loss-allocation methodologies. An example of the former is the OCC-CME cross-margining agreement. This agreement covers both equity options and futures, and its terms are specifically crafted to allocate risk between these two QCCPs in accordance with the relative risk profiles of the types of instruments involved, as determined by the relevant QCCPs. An example of the latter is the FICC-CME cross-margining agreement. This agreement uses a proportional approach to allocating loss based upon the relative amount of margin funds held by a particular clearing member at each of these QCCPs, rather than a simple split as contemplated by the Gross Notional Ratio. Applying the standardized Gross Notional Ratio to these facts would fail to meaningfully reflect or measure relative risk associated with the exposures under a cross-margining agreement. Indeed, the Gross Notional Ratio approach would even serve as a capital penalty for clearing member banking organizations that have already received regulatory approval

[14] Proposal at 14986.
[15] *See* 2019 Letter.

to apply deductions to cross-margined exposures (and therefore already factor cross-margining into the applicable Kccp calculation).[16]

Instead, OCC requests that the Agencies replace the Gross Notional Ratio as the relevant allocation factor for a Kccp calculation with an allocation factor based upon the specific loss-sharing terms of the governing cross-margin agreement, as interpreted and implemented by the relevant QCCPs. As in the Proposal, OCC would support the Agencies adopting regulatory criteria to determine when a cross-margining agreement should benefit from this treatment. These criteria should include that the relevant cross-margining agreement is subject to oversight by the QCCP's regulators, as currently contemplated under the Proposal. It may also include other appropriate requirements as determined by the Agencies, such as requirements that the cross-margining agreement contain certain specified terms, that the agreement require QCCPs that are party thereto to provide clearing member banking organizations with all information necessary to calculate Kccp (including the allocation factor) on at least a quarterly basis, and that the clearing member banking organizations conduct a sufficient legal review (or receive sufficient information from the relevant QCCPs) to have a well-founded basis for concluding that the cross-margin agreement is legal, valid, binding, and enforceable.

Currently, QCCP cross-margining agreements generally must be approved by the relevant QCCP's primary regulators (namely, the SEC or CFTC, depending upon the instrument type). As such, the terms of any cross-margining agreement that would factor into the Kccp calculation would be subject to regulatory review, approval, and oversight. The presence of these substantive reviews and approvals (potentially coupled with other factors) means that the Agencies can be certain that the relevant cross-margin agreements are operationally feasible and appropriately auditable, as well as legally enforceable. The use of the specific terms of such agreements will also ensure that the calculation of Kccp more closely aligns with the economic reality that clearing member banks are dealing with. Accordingly, for the foregoing reasons, OCC supports recognition of cross-margining in Kccp, but requests that the Agencies relate the Gross Notional Ratio allocation factor with an agreement-specific allocation factor.

VII. OCC Requests that the Agencies Apply a Consistent 5 Day MPOR to Clearing Member Banking Organization Exposures to Clients and Under the QCCP Default Fund Calculation (Kccp)

The Proposal requires that clearing member banking organizations apply different minimum MPOR requirements to different exposures related to cleared transactions – including exposures to clearing clients – in two different contexts. First, for purposes of SA-CCR, the Proposal provides that a banking organization must use an MPOR of not less than 5 business days, "plus the periodicity of re-margining expressed in business days minus one business day," when determining the maturity factor for a derivative contract that is a client-facing derivative transaction.[17] The maturity factor, in turn, comprises part of the formula for determining the

[16] For example, OCC's existing Kccp calculation already accounts for cross-margining under the CME cross-margining program by applying a 50% reduction to cross-margined exposures, reflecting the 50/50 loss-sharing allocation in the CME loss-sharing agreement. This calculation was developed in consultation with the Federal Reserve Bank of Chicago.
[17] § __.114(i)(4)(i)(B)(2).

adjusted derivative contract amount with respect to such contract, which in turn, feeds into the calculation of the amount of the relevant hedging sets.[18] Second, with respect to determining the exposure amount of a QCCP to a clearing member, as relevant to the Kccp calculation, any guarantees that a clearing member has provided to a QCCP with respect to performance of clearing member clients on a derivative contract, the exposure amount is equal to the exposure amount calculated under § __.114, except that a value of 10 business days must be used for purposes of the MPOR calculation.[19]

The 10-business day requirement in the Proposal overstates the risk associated with the guarantee by a clearing member of its client's performance to OCC. Once a clearing member's direct exposure to its client is novated to OCC, all that remains is the exposure resulting from the guarantee under Kccp. However, the quantum of risk associated with those exposures do not fundamentally change in connection with the novation. If the risk associated with closeout with respect to a cleared derivative position of clearing clients only necessitates a 5-day MPOR pre-novation, the length of the MPOR should not materially change where it is replaced by a guarantee of performance. Moreover, exposures to margined positions of clearing clients are subject to rigorous regulatory requirements that are imposed by, for instance, derivatives exchanges and CCPs (such as OCC) and that reduce risks associated with such exposures in a manner similar to exposures directly to a CCP (i.e., exposures to "cleared transactions" as defined under the Margin Rule). All clearing-related exposures are thus effectively subject to the same minimum margining levels and the same discipline with respect to daily adjustment, and all such exposures should be viewed as having equivalent risk horizons.

OCC previously commented on similar discrepancies in the 2019 Letter. Then, as now, OCC believes that the Agencies should modify the Proposal to permit clearing member banking organizations, such as OCC clearing members, to apply a minimum 5-day MPOR when calculating exposures to clearing clients (inclusive of guarantee exposures for purposes of Kccp calculations). Doing so would better reflect the actual risk associated with, as applicable, Listed Options and cleared contracts. These products are subject to daily margining and mark-to-market practices, default-management procedures, and regulatory oversight, all of which support a shorter close-out horizon than the 10-business day assumption embedded in the proposed Kccp calculation. This approach would also facilitate the Proposal's efforts to improve the treatment of collateral and cross-margining without weakening prudential safeguards. Accordingly, OCC respectfully requests that the Agencies adjust the minimum MPOR requirement associated with guarantee exposures for purposes of Kccp calculation to 5 days.

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[18] §§ __.114(h)(1), (i)(1).
[19] § __.116(d)(6)(ii).

VIII. OCC Requests that the Agencies Permit Cross-Product Netting of OCC Cleared Contracts that are Open-End Stock Loan Contracts Against OCC Cleared Contracts that are Futures Contracts and Options Contracts on Futures

The Proposal, consistent with the existing regulatory capital rules, recognizes netting benefits for securities financing transactions with the same maturity date.[20] It does not, however, extend identical treatment to open-end or evergreen securities financing transactions. This is the case even though the economic and counterparty risk profile between one-day securities financing transactions that are expected to roll, pair off, or renew each day, and open-end securities financing transactions that are callable on demand and subject to daily mark-to-market, margining, termination, and close-out rights are substantially the same. The Rule should not produce different outcomes merely because one clearing agency's program documents the transaction as a series of one-day securities financing transactions with a stated maturity date, while another clearing agency's program documents the economically equivalent exposure as an open-end loan.

Therefore, in response to Question 180, the Agencies should permit banking organizations to treat open or evergreen stock loan transactions as having an appropriate standardized short maturity for purposes of recognizing netting, margining, or maturity-related exposure offsets (or as the equivalent to securities financing transactions that are routinely rolled or paired off), provided the transactions are callable on demand, subject to daily mark-to-market and margining requirements, and potentially subject to an appropriate maturity floor or other supervisory safeguard. Such an approach would better align the capital treatment of open stock loans with the economic substance of the transactions. It would also avoid penalizing clearing models based upon the form of loan documentation used (open-end loans versus one-day renewable loans), rather than on the economic substance of the underlying transactions.

The Agencies should also confirm that this treatment may apply in the cleared context, including for purposes of Kccp, where stock loan transactions are part of an integrated clearing framework, as with other types of OCC Cleared Contracts. In Question 43, the Proposal seeks comment on whether cross-product netting recognition should be expanded to cleared transactions, and the same risk-based rationale supports recognition of the exposure-reducing effect of stock loan positions when they are cleared, margined, and capable of close-out in a manner comparable to related cleared options contracts and options on futures contracts. Consistent with the discussion elsewhere in this letter with respect to other product types, recognition should be conditioned on robust legal enforceability, daily margining, and operational capability to measure the relevant netting set, but should not be denied solely because the stock loan is documented as open rather than as a one-day transaction with a stated maturity. Accordingly, OCC respectfully requests that the Agencies incorporate into the Rule a mechanism to permit cross-product netting of OCC Cleared Contracts that are open-end stock loan contracts against OCC Cleared Contracts that are futures contracts and options contracts on futures for purposes of relevant calculations thereunder.

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[20] *See, e.g.*, §__.10(c)(2)(v)(A) (requiring contracts to have the same explicit final settlement date to offset for purposes of supplemental leverage ratio calculation).

IX. Conclusion

OCC urges the Agencies to include the clarifications and changes described above in connection with the adoption of the Rule. These important modifications will help ensure that the Rule does not inadvertently discourage central clearing – which would be inconsistent with long stated policy objectives and related efforts that are meant to promote central clearing. Further, a failure to include these modifications could also result in even fewer firms being willing to provide client clearing services, which would exacerbate concentration in the industry and systemic risk.

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We appreciate the opportunity to submit these comments and would be pleased to discuss them in detail with the Agencies as the Proposal is further considered.

Very truly yours,

Megan Malone Cohen

Megan Malone Cohen
General Counsel