To: rule-comments@sec.gov

Subject: Comments on SR-OCC-2024-001 34-100009

As a retail investor, I appreciate the additional consideration and opportunity extended by SR-OCC-2024-001 Release No 34-100009 [1] to comment on SR-OCC-2024-001 34-99393 entitled "Proposed Rule Change by The Options Clearing Corporation Concerning Its Process for Adjusting Certain Parameters in Its Proprietary System for Calculating Margin Requirements During Periods When the Products It Clears and the Markets It Serves Experience High Volatility" (PDF, Federal Register) [2]. I **SUPPORT** the SEC's grounds for disapproval under consideration as I have several concerns about the OCC rule proposal, do not support its approval, and appreciate the opportunity to contribute to the rulemaking process to ensure *all* investors are protected in a fair, orderly, and efficient market.

I'm concerned about the lack of transparency in our financial system as evidenced by this rule proposal, amongst others. The details of this proposal in Exhibit 5 along with supporting information (see, e.g., Exhibit 3) are significantly redacted which prevents public review making it impossible for the public to meaningfully review and comment on this proposal. Without opportunity for a full public review, this proposal should be rejected on that basis alone.

Public review is of the particular importance as the OCC's Proposed Rule blames U.S. regulators for failing to require the OCC adopt prescriptive procyclicality controls ("U.S. regulators chose not to adopt the types of prescriptive procyclicality controls codified by financial regulators in other jurisdictions." [3]). As "procyclicality may be evidenced by increasing margin in times of stressed market conditions" [4], an "increase in margin requirements could stress a Clearing Member's ability to obtain liquidity to meet its obligations to OCC" [Id.] which "could expose OCC to financial risks if a Clearing Member fails to fulfil its obligations" [5] that "could threaten the stability of its members during periods of heightened volatility" [4]. With the OCC designated as a SIFMU whose failure or disruption could threaten the stability of the US financial system, everyone dependent on the US financial system is entitled to transparency. As the OCC is classified as a self-regulatory organization (SRO), the OCC blaming U.S. regulators for not requiring the SRO adopt regulations to protect itself makes it apparent that the public can not fully rely upon the SRO and/or the U.S. regulators to safeguard our financial markets.

This particular OCC rule proposal appears designed to protect Clearing Members from realizing the risk of potentially costly trades by rubber stamping reductions in margin requirements as required by Clearing Members; which would increase risks to the OCC and the stability of our financial system. Per the OCC rule proposal:

- The OCC collects margin collateral from Clearing Members to address the market risk associated with a Clearing Member's positions. [5]
- OCC uses a proprietary system, STANS ("System for Theoretical Analysis and Numerical Simulation"), to calculate each Clearing Member's margin requirements with various models. One of the margin models may produce "procyclical" results where margin requirements are correlated with volatility which "could threaten the stability of its members during periods of heightened volatility". [4]

- An increase in margin requirements could make it difficult for a Clearing Member to obtain liquidity to meet its obligations to OCC. If the Clearing Member defaults, liquidating the Clearing Member positions could result in losses chargeable to the Clearing Fund which could create liquidity issues for non-defaulting Clearing Members. [4]

Basically, a systemic risk exists because Clearing Members as a whole are insufficiently capitalized and/or over-leveraged such that a single Clearing Member failure (e.g., from insufficiently managing risks arising from high volatility) could cause a cascade of Clearing Member failures. In layman's terms, a Clearing Member who made bad bets on Wall St could trigger a systemic financial crisis because Clearing Members as a whole are all risking more than they can afford to lose.

The OCC's rule proposal attempts to avoid triggering a systemic financial crisis by reducing margin requirements using "idiosyncratic" and "global" control settings; highlighting one instance for one individual risk factor that "[a]fter implementing idiosyncratic control settings for that risk factor, aggregate margin requirements decreased $2.6 billion." [6] The OCC chose to avoid margin calling one or more Clearing Members at risk of default by implementing "idiosyncratic" control settings for a risk factor. According to footnote 35 [7], the OCC has made this "idiosyncratic" choice over 200 times in less than 4 years (from December 2019 to August 2023) of varying durations up to 190 days (with a median duration of 10 days). The OCC is choosing to waive away margin calls for Clearing Members over 50 times a year; which seems too often to be idiosyncratic. In addition to waiving away margin calls for 50 idiosyncratic risks a year, the OCC has also chosen to implement "global" control settings in connection with long tail[8] events including the onset of the COVID-19 pandemic and the so-called "meme-stock" episode on January 27, 2021. [9]

Fundamentally, these rules create an unfair marketplace for other market participants, including retail investors, who are forced to face the consequences of long-tail risks while the OCC repeatedly waives margin calls for Clearing Members by repeatedly reducing their margin requirements. For this reason, this rule proposal should be rejected and Clearing Members should be subject to strictly defined margin requirements as other investors are. SEC approval of this proposed rule would perpetuate "rules for thee, but not for me" in our financial system against the SEC's mission of maintaining fair markets.

Per the OCC, this rule proposal and these special margin reduction procedures exist because a single Clearing Member defaulting could result in a cascade of Clearing Member defaults potentially exposing the OCC to financial risk. [10] Thus, Clearing Members who fail to properly manage their portfolio risk against long tail events become de facto Too Big To Fail. For this reason, this rule proposal should be rejected and Clearing Members should face the consequences of failing to properly manage their portfolio risk, including against long tail events. Clearing Member failure is a natural disincentive against excessive leverage and insufficient capitalization as others in the market will not cover their loss.

This rule proposal codifies an inherent conflict of interest for the Financial Risk Management (FRM) Officer. While the FRM Officer's position is allegedly to protect OCC's interests, the situation outlined by the OCC proposal where a Clearing Member failure exposes the OCC to financial risk necessarily requires the FRM Officer to protect the Clearing Member from failure to protect the OCC. Thus, the FRM Officer is no more than an administrative rubber stamp to reduce margin requirements for Clearing Members at risk of failure. The OCC proposal supports this interpretation as it clearly states, "[i]n practice, FRM applies the high volatility control set to a risk factor each time the Idiosyncratic Thresholds are breached" [22] retaining the authority "to maintain regular control settings in the case of exceptional circumstances" [Id.]. Unfortunately, rubber stamping margin requirement reductions for Clearing Members at risk of failure vitiates the protection from market risks associated with Clearing Member's positions provided by the margin collateral that would have been collected by the OCC. For this reason, this rule proposal should be rejected and the OCC should enforce sufficient margin requirements to protect the OCC and minimize the size of any bailouts that may already be required.

As the OCC's Clearing Member Default Rules and Procedures [11] Loss Allocation waterfall allocates losses to "3. OCC's own pre-funded financial resources" (OCC 's "skin-in-the-game" per SR-OCC-2021-801 Release 34-91491[12]) before "4. Clearing fund deposits of non-defaulting firms", any sufficiently large Clearing Member default which exhausts both "1. The margin deposits of the suspended firm" and "2. Clearing fund deposits of the suspended firm" automatically poses a financial risk to the OCC. As this rule proposal is concerned with potential liquidity issues for non-defaulting Clearing Members as a result of charges to the Clearing Fund, it is clear that the OCC is concerned about risk which exhausts OCC's own pre-funded financial resources. With the first and foremost line of protection for the OCC being "1. The margin deposits of the suspended firm", this rule proposal to reduce margin requirements for at risk Clearing Members via idiosyncratic control settings is blatantly illogical and nonsensical. By the OCC's own admissions regarding the potential scale of financial risk posed by a defaulting Clearing Member, the OCC should be increasing the amount of margin collateral required from the at risk Clearing Member(s) to increase their protection from market risks associated with Clearing Member's positions and promote appropriate risk management of Clearing Member positions. Curiously, increasing margin requirements is exactly what the OCC admits is predicted by the allegedly "procyclical" STANS model [4] that the OCC alleges is an overestimation and seeks to mitigate [13]. If this rule proposal is approved, mitigating the allegedly procyclical margin requirements directly reduces the first line of protection for the OCC, margin collateral from at risk Clearing Member(s), so this rule proposal should be rejected and made fully available for public review.

Strangely, the OCC proposed the rule change to establish their Minimum Corporate Contribution (OCC's "skin-in-the-game") in SR-OCC-2021-003 to the SEC on February 10, 2021 [14], shortly after "the so-called 'meme-stock' episode on January 27, 2021" [9], whereby "a covered clearing agency choosing, upon the occurrence of a default or series of defaults and application of all available assets of the defaulting participant(s), to apply its own capital contribution to the relevant clearing or guaranty fund in full to satisfy any remaining losses prior to the application of any (a) contributions by non-defaulting members to the clearing or guaranty fund, or (b) assessments that the covered clearing agency require non-defaulting participants to contribute following the exhaustion of such participant's funded contributions to the relevant clearing or guaranty fund." [15] Shortly after an idiosyncratic market event, the OCC proposed the rule change to have the OCC's "skin-in-the-game" allocate losses upon one or more Clearing member default(s) to the OCC's own pre-funded financial resources prior to contributions by non-defaulting members or assessments, and the OCC now attempts to leverage their requested exposure to the financial risks as rationale for approving this proposed rule change on adjusting margin requirement calculations which vitiates existing protections as described above and within the proposal itself (see, e.g., "These clearing activities could expose OCC to financial risks if a Clearing Member fails to fulfil its obligations to OCC. ... OCC manages these financial risks through financial safeguards, including the collection of margin collateral from Clearing Members designed to, among other things, address the market risk associated with a Clearing Member's positions during the period of time OCC has determined it would take to liquidate those positions." [16]) There can be no reasonable basis for approving this rule proposal as the OCC asked to be exposed to financial risks if one or more Clearing Member(s) fail and is now asking to reduce the financial safeguards (i.e., collection of margin collateral from Clearing Members) for managing those financial risks. Especially when the OCC has already indicated a reluctance to liquidate Clearing Member positions (see, e.g., "As described above, the proposed change would allow OCC to seek a readily available liquidity resource that would enable it to, among other things, continue to meet its obligations in a timely fashion and as an alternative to selling Clearing Member collateral under what may be stressed and volatile market conditions." [23 at page 15])

Moreover, as "the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission" [16] the OCC appears to also be leveraging their position as a "single point of failure" [17] in our financial system in a blatant attempt to force the SEC to approve this proposed rule "to mitigate systemic risk in the financial system and promote financial stability by ... strengthening the liquidity of SIFMUs", again [18]. It seems the one and only clearing agency for standardized equity options is essentially holding options clearing in our financial system hostage to gain additional liquidity; and did so by putting itself at risk. Does the SIFMU designation identify a part of our financial system Too Big To Fail where our regulatory agencies and government willingly provide liquidity by any means necessary? Even if intentionally self-inflicted?

Apparently affirmative; if the recent examples of SR-OCC-2022-802 and SR-OCC-2022-803, which expand the OCC's Non-Bank Liquidity Facility (specifically including pension funds and insurance companies) to provide the OCC uncapped access to liquidity therein [19], are indicative and illustrative where the SEC did not object despite numerous comments objecting [20].

If the SEC either allows or does not object to this proposal, then the SEC effectively demonstrates a willingness to provide liquidity by any means possible [21]. The combination of this current OCC proposal with SR-OCC-2022-802 and SR-OCC-2022-803 facilitates an immense uncapped reallocation of liquidity from the OCC's Non-Bank Liquidity Facility to the OCC; under the control of the OCC.

- While the FRM Officer is an administrative rubber stamp for approving margin reductions as described above, the OCC's FRM Officer retains authority "to maintain regular control settings in the case of exceptional circumstances" [22]. In effect, under undisclosed or redacted exceptional circumstances, the OCC's FRM Officer has the authority to *not* rubber stamp a margin reduction thereby resulting in a margin call for a Clearing Member; which may lead to a potential default or suspension of the Clearing Member unable to meet their obligations to the OCC.
- With control over when a Clearing Member will not receive a rubber stamp margin reduction, the OCC can preemptively activate Master Repurchase Agreements (enhanced by SR-OCC-2022-802) to force Non-Bank Liquidity Facility Participants (including pension funds and insurance companies) to purchase Clearing Member collateral from the OCC under the

Master Repurchase Agreements in advance of a significant Clearing Member default "as an alternative to selling Clearing Member collateral under what may be stressed and volatile market conditions" [23 at 15] (i.e., conditions that may arise with a significant Clearing Member default large enough to pose a financial risk to the OCC and other Clearing Members).

- The OCC's Master Repurchase Agreements further allows the OCC to repurchase the collateral on-demand [23 at pages 5 and 24 at pages 5-6] which allows the OCC to repurchase collateral during the stressed and volatile market conditions arising from the Clearing Member default; almost certainly at a discount.

In effect, the combination of SR-OCC-2022-802, SR-OCC-2022-803, and this proposal allows the OCC to perfectly time selling collateral at a high price to non-banks (including pension funds and insurance companies) followed by buying back low after a Clearing Member default. These rules should not be codified *even if* "non-banks are voluntarily participating in the facility" [24 at page 19] as there are potentially significant consequences to others. For example, pensions and retirements may be affected even if a pension fund voluntarily participates. And, as another example, insurance companies may become insolvent requiring another bailout à la the 2008 financial crisis and AIG bailout.

As the OCC is concerned about the consequences of a Clearing Member failure exposing the OCC to financial risk and causing liquidity issues for non-defaulting Clearing Members, the previously relied upon rationale for mitigating systemic risk is simply inappropriate. Systemic risk has already been significant; embiggened by a lack of regulatory enforcement and insufficient risk management (including the repeated margin requirement reductions for at-risk Clearing Members). Instead of running larger tabs that can never be paid off, bills need to be paid by those who incurred debts (instead of by pensions, insurance companies, and/or the public) before the debts are of systemic significance.

Therefore, the SEC is correct to have identified reasonable grounds for disapproval as this Proposed Rule Change is NOT consistent with at least Section 17A(b)(3)(F), Rule 17Ad-22(e)(2), and Rule 17Ad-22(e)(6) of the Exchange Act (15 U.S.C. 78s(b)(2)).

The SEC is correct to have identified reasonable grounds for disapproval of this Proposed Rule Change with respect to Section 17A(b)(3)(F) for at least the following reasons:

(1) the Proposed Rule fails to safeguard the securities and funds which are in the custody or control of the clearing agency or for which it is responsible by improperly reducing margin requirements for Clearing Members at risk of default which exposes the OCC and other market participants to increased financial risk, as described above; and

(2) the Proposed Rule fails to protect investors and the public interest by shifting the costs of Clearing Member default(s) to the non-bank liquidity facility (including pension funds and insurance companies) and creates a moral hazard in expanding the scope of Too Big To Fail to any Clearing Member incurring losses beyond their margin deposits and clearing fund deposits, as described above.

The SEC is correct to have identified reasonable grounds for disapproval of this Proposed Rule Change with respect to Rule 17Ad-22(e)(2) for at least the following reasons:

(1) the Proposed Rule does not provide a governance arrangement that is clear and transparent as (a) the FRM Officer's role prioritizes the safety of Clearing Members rather than the clearing agency and (b) the repeated application of "idiosyncratic" and "global" control settings to reduce margin requirements is not clear and transparent, as described above;

(2) the Proposed Rule does not prioritize the safety of the clearing agency, but instead prioritizes the safety of Clearing Members by rubber stamping margin requirement reductions, as described above;

(3) the Proposed Rule does not support the public interest requirements, especially the requirement to protect of investors, by shifting the costs of Clearing Member default(s) to the non-bank liquidity facility (including pension funds and insurance companies), as described above;

(4) the Proposed Rule does not specify clear and direct lines of responsibility as, for example, the FRM Officer's role is to be an administrative rubber stamp to reduce margin requirements for Clearing Members at risk of failure, as described above; and

(5) the Proposed Rule does not consider the interests of customers and securities holders as (a) reducing margin requirements for Clearing Member(s) at risk of default increases already significant systemic risk which necessarily impacts all market participants and (b) perpetuates a "rules for thee, but not for me" environment in our financial system, as described above.

The SEC is correct to have identified reasonable grounds for disapproval of this Proposed Rule Change with respect to Rule 17Ad-22(e)(6) for at least the following reasons:

(1) the Proposed Rule fails to consider and produce margin levels commensurate with risks as reducing margin for Clearing Member(s) at risk of default is blatantly illogical and nonsensical, as described above;

(2) the Proposed Rule fails to calculate margin sufficient to cover potential future exposure as margin requirements are already insufficient as Clearing Member default(s) could result in "losses chargeable to the Clearing Fund which could create liquidity issues for non-defaulting Clearing Members" yet proposing to further reduce margin requirements, as described above;

(3) the Proposed Rule fails to provide a valid model for the margin system attempting to reduce margin requirements despite existing models predicting increased margin requirements are required while also admitting the potential scale of financial risk posed by a defaulting Clearing Member exceeds the current margin requirements such that losses will be allocated beyond suspended firm(s) to the OCC and non-defaulting members, as described above;

In addition, the SEC may consider Rule 17Ad-22(e)(3), 17Ad-22(e)(4), and 17Ad-22(e)(6) as an additional grounds for disapproval as the Proposed Rule Change does not properly manage liquidity risk and increases systemic risk, as described above. Other grounds for disapproval may be applicable, but due to the heavy redactions, the public is unable to properly and fully review the Proposed Rule.

In light of the issues outlined above, please consider the following:

1. Increase and enforce margin requirements commensurate with risks associated with Clearing Member positions instead of reducing margin requirements. Clearing Members should be encouraged to position their portfolios to account for stressed market conditions and long-tail risks. This rule proposal currently encourages Clearing Members to become Too Big To Fail in order to pressure the OCC with excessive risk and leverage into implementing idiosyncratic controls more often to privatize profits and socialize losses.
2. External auditing and supervision as a "fourth line of defense" similar to that described in The "four lines of defence model" for financial institutions [25] with enhanced public reporting to ensure that risks are identified and managed before they become systemically significant.
3. Swap "3. OCC's own pre-funded financial resources" and "4. Clearing fund deposits of non-defaulting firms" for the OCC's Loss Allocation waterfall so that Clearing fund deposits of non-defaulting firms are allocated losses before OCC's own pre-funded financial resources and the EDCP Unvested Balance. Changing the order of loss allocation would encourage Clearing Members to police each other with each Clearing Member ensuring other Clearing Members take appropriate risk management measures as their Clearing Fund deposits are at risk after the deposits of a suspended firm are exhausted. This would also increase protection to the OCC, a SIFMU, by allocating losses to the clearing corporation after Clearing Member deposits are exhausted. By extension, the public would benefit from lessening the risk of needing to bail out a systemically important clearing agency as non-defaulting Clearing Members would benefit from the suspension and liquidation of a defaulting Clearing Member prior to a risk of loss allocation to their contributions.
4. Immediately suspend and liquidate a Clearing Member as soon as their losses are projected to exceed "1. The margin deposits of the suspended firm" so that the additional resources in the loss allocation waterfall may be reserved for extraordinary circumstances. By contrast to the past approaches for reducing margin requirements which delays Clearing Member suspension and liquidation, earlier interventions minimize systemic risk by preventing problems from growing bigger and threatening the stability of the financial system.
5. Reduce "single points of failure" in our financial system by increasing redundancy (e.g., multiple Clearing Agencies in competition) and resiliency of our financial markets. TBTF must be eliminated. Failure must always be an option.

Thank you for the opportunity to comment for the protection of all investors as all investors benefit from a fair, transparent, and resilient market.

[1] https://www.sec.gov/files/rules/sro/occ/2024/34-100009.pdf

[2] PDF at https://www.sec.gov/files/rules/sro/occ/2024/34-99393.pdf and on the Federal Register at https://www.federalregister.gov/documents/2024/01/25/2024-01386/self-regulatory-organizations-the-options-clearing-corporation-notice-of-filing-of-proposed-rule

[3] https://www.federalregister.gov/d/2024-01386/p-11

[4] https://www.federalregister.gov/d/2024-01386/p-8

[5] https://www.federalregister.gov/d/2024-01386/p-7

[6] https://www.federalregister.gov/d/2024-01386/p-50

[7] https://www.federalregister.gov/d/2024-01386/p-51

[8] https://en.wikipedia.org/wiki/Long_tail

[9] https://www.federalregister.gov/d/2024-01386/p-45

[10] https://www.federalregister.gov/d/2024-01386/p-79

[11] https://www.theocc.com/getmedia/e8792e3c-8802-4f5d-bef2-ada408ed1d96/default-rules-and-procedures.pdf, which is publicly available and linked to from the OCC's web page on Default Rules & Procedures at https://www.theocc.com/risk-management/default-rules-and-procedures

[12] https://www.federalregister.gov/documents/2021/04/12/2021-07454/self-regulatory-organizations-the-options-clearing-corporation-notice-of-no-objection-to-advance

[13] https://www.federalregister.gov/d/2024-01386/p-16

[14] https://www.federalregister.gov/d/2021-11606/p-1

[15] https://www.federalregister.gov/d/2021-11606/p-9

[16] https://www.federalregister.gov/d/2024-01386/p-7

[17] https://en.wikipedia.org/wiki/Single_point_of_failure

[18] See, e.g., SR-OCC-2022-803 Release No. 34-95670 [https://www.sec.gov/files/rules/sro/occ-an/2022/34-95670.pdf] and SR-OCC-2022-802 Release No. 34-95669 [https://www.sec.gov/files/litigation/litreleases/2022/34-95669.pdf] under the section "COMMISSION FINDINGS AND NOTICE OF NO OBJECTION" in each.

[19] See, e.g., SR-OCC-2022-803 Release No. 34-95670 [https://www.sec.gov/files/rules/sro/occ-an/2022/34-95670.pdf] and SR-OCC-2022-802 Release No. 34-95669 [https://www.sec.gov/files/litigation/litreleases/2022/34-95669.pdf].

[20] See https://www.sec.gov/comments/sr-occ-2022-802/srocc2022802.htm for SR-OCC-2022-802 and https://www.sec.gov/comments/sr-occ-2022-803/srocc2022803.htm for SR-OCC-2022-803.

[21] For context, see e.g., https://www.youtube.com/watch?v=nc-EAHaHeks and https://www.newsweek.com/robin-williams-2008-financial-crisis-economy-comedy-1797289.

[22] https://www.federalregister.gov/d/2024-01386/p-74

[23] SR-OCC-2022-802 34-95327 available at https://www.sec.gov/files/litigation/litreleases/2022/34-95327.pdf

[24] SR-OCC-2022-803 34-95670 available at https://www.sec.gov/files/litigation/litreleases/2022/34-95670.pdf

[25] https://www.bis.org/fsi/fsipapers11.pdf

Sincerely,

A Concerned Retail Investor