

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54572; File No. SR-OCC-2006-12)

October 4, 2006

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to an Escrow Program Fee to Be Charged to Escrow Banks

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on July 12, 2006, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by OCC. 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 proposed rule change would amend OCC’s Schedule of Fees by adding a \$200 escrow fee to be charged to OCC-approved banks.

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

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.²

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

The purpose of the proposed rule change is to amend OCC’s Schedule of Fees by adding

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by OCC.

a \$200 escrow fee to be charged to OCC-approved banks.

As background, OCC's escrow deposit program allows a custodian bank that has entered into an escrow agreement with OCC ("escrow bank") to make deposits of eligible collateral on behalf of its customers with respect to stock option contracts and index option contracts carried in short positions and to rollover and withdraw such deposits by submitting electronic instructions to OCC through OCC's escrow deposit system.³ Escrow deposits are pledged to both the customer's clearing member and to OCC in order to satisfy the customer's obligation to deposit customer level margin at the clearing member and in order to satisfy the clearing member's obligation to deposit clearing level margin at OCC with respect to a specified short position in stock or index options.⁴ Under OCC's form of escrow agreement, an escrow bank is obligated to hold the deposited collateral subject to the lien of OCC and the clearing member until such liens are released.

In 2005, the escrow deposit system was integrated into OCC's clearing system, which enabled escrow banks to access the escrow system through the internet. Before the integration, escrow banks were required to lease or buy a personal computer that was configured by OCC to provide secure access to the escrow deposit system. Banks that elected the lease alternative are charged a \$200.00 monthly fee of which \$150.00 is an equipment leasing fee and \$50.00 is an access fee.⁵ Banks that (i) elected the purchase alternative or (ii) became escrow banks after the

³ Escrow banks also use the escrow deposit system to receive and review OCC and relevant clearing member responses and to access reports.

⁴ Escrow deposits may include: (i) the underlying securities for any stock option contract; (ii) cash, short-term U.S. Government securities, and/or common stocks for any index call option contract; and (iii) cash and/or short-term U.S Government securities for stock or index put options.

systems integration are charged only the \$50 access fee, which is intended to cover the costs associated with administering the escrow deposit program. Costs to administer the program include: (1) legal costs related to addressing the contractual aspects of the program; (2) audit costs related to ensuring compliance with the external audit reporting requirements of the program; and (3) staff costs related to servicing program users (i.e., escrow banks and clearing members).

In connection with reviewing different back-up solutions to Internet access, OCC also examined its costs to administer the escrow program and concluded that the costs greatly exceed the \$50.00 per month access fee. Accordingly, OCC has determined to charge all escrow banks a \$200.00 per month escrow program fee, which would be reflected in OCC's Schedule of Fees. The proposed program fee will allow OCC to partially offset its escrow program administration costs but will not affect the overwhelming majority of escrow banks which already pay \$200.00 per month in aggregate escrow deposit program fees.

OCC believes that the proposed change is consistent with Section 17A of the Act⁶ and the rules thereunder because it amends OCC's Schedule of Fees to include a reasonable fee to be charged to escrow banks that utilize OCC's escrow deposit system to partially offset OCC's cost to administer the escrow program. The proposed rule change is not inconsistent with the existing rules of OCC including any other rules proposed to be amended.

⁵ OCC has continued to charge current escrow banks with leased equipment the \$200.00 per month total fee as they have retained such equipment as a back-up to Internet access to the escrow system. However, a different back-up solution is being implemented for all escrow banks, which is rendering the leased equipment obsolete for purposes of accessing the escrow system.

⁶ 15 U.S.C. 78q-1.

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

OCC does not believe that the proposed rule change would impose any burden on competition.

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

OCC has not solicited or received written comments with respect to the proposed rule change.

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

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

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

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 (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-OCC-2006-

12 on the subject line.

Paper comments:

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

All submissions should refer to File No. SR-OCC-2006-12. This file number should be included on the subject line if e-mail 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 Web site (<http://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 inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at OCC's principal office and on OCC's Web site at <http://www.theocc.com/publications/rules/proposed_changes/proposed_changes.jsp>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submission should refer to File No. SR-

OCC-2006-12 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Nancy M. Morris
Secretary

⁷ 17 CFR 200.30-3(a)(12).