

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52473; File No. SR-OCC-2005-12)

September 20, 2005

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for OCC's Theoretical Profit/Loss File

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on August 16, 2005, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("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 applies existing fees for the OCC theoretical profit/loss file to OCC clearing members and broker-dealers that are not OCC clearing members that subscribe to the file for customer portfolio margining purposes.

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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified parts of these statements.

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

Pursuant to the customer portfolio margining pilot program recently approved by the Commission,³ the theoretical prices used for computing profits and losses of eligible instruments in a participating customer's account must be generated by a theoretical pricing model that meets the requirements set forth in Appendix A⁴ to the Commission's net capital rule, Rule 15c3-1.⁵ The requirements of Appendix A include, among other things, that the model be nonproprietary, be approved by a Designated Examining Authority, and be available on the same terms to all broker-dealers. Currently, OCC's model is the only model that has been approved.

OCC initially developed the theoretical profit/loss model in connection with an amendment to the Commission's net capital rule permitting broker-dealers to employ theoretical option pricing models in determining net capital requirements for listed options and related positions.⁶ Subsequently, the Commission approved a proposed rule change filed by OCC allowing OCC to establish a subscription service providing clearing members and other non-clearing member broker-dealers with theoretical profit and loss values for the purpose of calculating net capital requirements under the revised net capital rule.⁷ In the same filing, OCC proposed and the Commission approved the schedule of fees that OCC would charge for the

³ Securities Exchange Act Release Nos. 52031 (July 14, 2005), 70 FR 42130 (July 21, 2005) [File No. SR-NYSE-2002-19] and 52032 (July 14, 2005), 70 FR 42118 (July 21, 2005) [File No. SR-CBOE-2002-03].

⁴ 17 CFR 240.15c3-1.

⁵ 17 CFR 240.15c3-1a.

⁶ Securities Exchange Act Release No. 38248 (February 5, 1997), 62 FR 6474 (February 12, 1997).

⁷ Securities Exchange Act Release No. 39503 (December 31, 1997), 63 FR 1521 (January 9, 1998) [File No. SR-OCC-97-19].

service. The present rule change applies the existing schedule of fees to clearing members and non-clearing member broker-dealers that subscribe to the theoretical profit/loss file for the purpose of calculating customer margin using the portfolio margining methodology.⁸

OCC believes that the proposed change is consistent with Section 17A of the Act because the proposed rule change allocates reasonable fees in a fair and equitable manner by applying the current fees charged to all subscribing broker-dealers, whether or not they are OCC clearing members, for the theoretical profit/loss file equally to all subscribing broker-dealers, whether or not they are an OCC clearing member, that use the file for customer portfolio margining or risk-based haircut purposes. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(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

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ and Rule 19b-4(f)(2)¹⁰ thereunder because it establishes or changes a

⁸ OCC also intends to make the theoretical profit/loss file available to interested customers but without charge in order to encourage participation by eligible customers in the portfolio margining pilot program and because OCC would already be charging the carrying broker-dealer for the file.

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 Number SR-OCC-2005-12 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-OCC-2005-12. 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 the principal office of OCC and on OCC's Web site at www.optionsclearing.com. 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 submissions should refer to File Number SR-OCC-2005-12 and should be submitted on or before October 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Jonathan G. Katz
Secretary

¹¹ 17 CFR 200.30-3(a)(12).