

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52790; File No. SR-OCC-2005-13)

November 17, 2005

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Clearing Fees for Certain Transactions Executed on OneChicago, LLC

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 29, 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. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,² and Rule 19b-4(f)(2) thereunder,³ which renders the proposal effective upon filing with the Commission. 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 purpose of the proposed rule change is to charge clearing fees to OneChicago, LLC ("ONE") for cleared trades where an OCC clearing member is on one or both sides of the trade based on OCC's standard rebate-eligible fee schedule ("Standard Fee Schedule"), rather than under the alternate rebate-ineligible fee schedule ("Alternate Fee Schedule") adopted when OCC and ONE entered into the Security Futures Agreement for Clearing and Settlement Services ("ONE Clearing Agreement").

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A)(ii).

³ 17 CFR 240.19b-4(f)(2).

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.⁴

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

Under the Standard Fee Schedule, OCC clearing members pay OCC's standard clearing fees and are eligible to receive rebates of excess clearing fees when and as determined by OCC's Board of Directors. When negotiating its clearing agreement with OCC, ONE preferred to pay OCC's clearing fees itself rather than have OCC charge those fees to clearing members.⁵ Because ONE wanted to plan on set fees and avoid the uncertainty of a rebate that might be less than expected, OCC agreed to an Alternate Fee Schedule which provides for the following fees:

- 7¢ per side for trades of 1 to 500 contracts

⁴ The Commission has modified parts of these statements.

⁵ At that time, clearing fees under OCC's Standard Fee Schedule were:

- 9¢ per side for trades of 1 to 500 contracts
- 7¢ per side for trades of 501 to 1,000 contracts
- 6¢ per side for trades of 1,001 to 2,000 contracts, and
- \$110 for trades larger than 2,000 contracts

- 6¢ per side for trades of 501 to 1,000 contracts
- 5¢ per side for trades of 1,001 to 2,000 contracts, and
- \$85 for trades larger than 2,000 contracts.⁶

The Alternate Fee Schedule also includes certain new product discounts.⁷ Under the terms of the ONE Clearing Agreement, the Alternate Fee Schedule expired on November 8, 2005.

Since the adoption of the Alternate Fee Schedule, OCC has both reduced and discounted its Standard Fee Schedule.⁸ The current discounted Standard Fee Schedule is:

- 5¢ per contract for trades of 1 to 500 contracts
- 4¢ per contract for trades of 501 to 1,000 contracts
- 3¢ per contract for trades of 1,001 to 2,000 contracts, and
- \$55 for trades larger than 2,000 contracts.

This discounted fee structure remains in effect until further action by OCC's Board of Directors.

In response to a request by ONE, OCC has agreed to charge fees to ONE under the

⁶ Securities Exchange Act Release No. 47196 (January 15, 2003), 68 FR 3922 (January 27, 2003) [File No. SR-OCC-2002-20]. Pursuant to the ONE Clearing Agreement, the CME has been designated as an associated clearinghouse ("ACH") for ONE. Under the Alternate Fee Schedule, different fees are charged where the ACH is on one or both sides of a trade. Those fees are not being changed by this filing.

⁷ Securities Exchange Act Release No. 47196. The "new securities future product" discounts are as follows:

- First month traded: No fee
- Second month traded: 2.5¢ regardless of size
- Third month traded: The lesser of the total at 5¢ or \$85
- Fourth month traded: Reverts to Alternate Fee Schedule

⁸ See Securities Exchange Act Release Nos. 49436 (March 17, 2004), 69 FR 13932 (March 24, 2004) [File No. SR-OCC-2004-01], 50080 (July 26, 2004), 69 FR 45873 (July 30, 2004) [File No. SR-OCC-2004-12], 50951 (December 30, 2004), 70 FR 1489 (January 7, 2005) [File No. SR-OCC-2004-22], and 52034 (July 14, 2005), 70 FR 42134 (July 21, 2005) [File No. SR-OCC-2005-08].

Standard Fee Schedule including standard new product fee discounts⁹ for trades where at least one side is cleared by an OCC clearing member. OCC is willing to provide ONE with the benefit of the Standard Fee Schedule for such trades before the date the Alternate Fee Structure for ONE is set to expire. Accordingly, effective October 1, 2005, OCC charged ONE clearing fees based on the Standard Fee Schedule. Any refund of clearing fees charged under the Standard Schedule will be paid to ONE.

OCC believes that the proposed change is consistent with Section 17A of the Act because it provides the benefit of a discounted, rebate-eligible clearing fee schedule for certain trades to a market for which OCC provides clearance and settlement services. 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.

⁹ The “new products” discounts under the Standard Schedule are as follows:

- First month traded: No fee
- Second month traded: For trades with contracts of:
 - 1 – 4,400 1 cent/side
 - > 4,400 \$40
- Third month traded: For trades with contracts of:
 - 1 – 2,200 2 cents/side
 - > 2,200 \$40
- Fourth month traded: Reverts to Standard Fee Schedule

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 Act¹⁰ and Rule 19b-4(f)(2)¹¹ thereunder because it establishes or changes a 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-2005-13 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-2005-13. 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

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

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-2005-13 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.¹²

Jonathan G. Katz
Secretary

¹² 17 CFR 200.30-3(a)(12).