

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-93195; File No. SR-OCC-2021-009)

September 29, 2021

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Revise The Options Clearing Corporation's Schedule of Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 28, 2021, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("SEC" or "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)<sup>3</sup> of the Act and Rule 19b-4(f)(2)<sup>4</sup> thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change by OCC would revise OCC's schedule of fees to implement a fee holiday for the period beginning November 1, 2021, and ending December 31, 2021. OCC's schedule of fees is included as Exhibit 5 to File No. SR-OCC-2021-009. Material proposed to be added to OCC's schedule of fees as currently in

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

effect is underlined and material proposed to be deleted is marked in strikethrough text. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.<sup>5</sup>

II. Clearing Agency'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 these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of this proposed rule change is to revise OCC's schedule of fees to implement a fee holiday for the period beginning November 1, 2021, and ending December 31, 2021. OCC's Capital Management Policy ("Policy") provides that OCC reviews its fee schedule on a periodic basis in consideration of factors including, but not limited to, projected operating expenses, projected volumes, anticipated cash flows, and capital needs.<sup>6</sup> Provided that OCC's shareholders' equity ("Equity"), less the minimum

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<sup>5</sup> OCC's By-Laws and Rules can be found on OCC's public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

<sup>6</sup> See Exchange Act Release No. 88029 (Jan. 24, 2020), 85 FR 5500, 5502 (Jan. 30, 2020) (File No. SR-OCC-2019-007) ("Order Approving Policy"); Exchange Act Release No. 87257 (Oct. 8, 2019), 84 FR 55194, 55196 (Oct. 15, 2019) (File No. SR-OCC-2019-805) ("Notice of No-Objection to Policy").

persistent amount of capital that OCC maintains exclusively to address losses or liquidity shortfalls arising from member defaults (the “Minimum Corporate Contribution”),<sup>7</sup> exceeds 110% of the Target Capital Requirement<sup>8</sup> (“Early Warning”)<sup>9</sup> plus any amount approved for capital expenditures, OCC’s Board, or a Committee the Board has delegated, may use tools as it considers appropriate to lower costs for Clearing Members. Such tools for reducing the cost of clearing include lowering fees, declaring a fee holiday, or issuing refunds.<sup>10</sup>

OCC has experienced record volumes in 2021 while maintaining expenses at or around the budgeted amount. These strong financial results put OCC in a position to continue to invest resources in OCC’s initiative to update and upgrade its technology infrastructure for critical clearing and settlement services, risk systems and data

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<sup>7</sup> See Exchange Act Release No. 92038 (May 27, 2021), 86 FR 29861 (Jun. 3, 2021) (File No. SR-OCC-2021-003) (order approving proposed rule change to establish OCC’s persistent minimum skin-in-the-game); Exchange Act Release No. 91491 (Apr. 7, 2021), 86 FR 19061 (Apr. 12, 2021) (File No. SR-OCC-2021-801) (notice of no objection to advance notice relating to OCC’s establishment of persistent minimum skin-in-the-game).

<sup>8</sup> The Target Capital Requirement is the amount of Equity recommended by Management and approved by the Board to ensure compliance with regulatory capital requirements and to keep such additional amount the Board may approve for capital expenditures. See OCC Rule 101.

<sup>9</sup> The Early Warning is one of the thresholds under OCC’s plan for replenishing capital in the event OCC’s Equity falls close to or below OCC’s regulatory capital requirements, as required by SEC Rule 17Ad-22(e)(15)(iii). See 17 CFR 17Ad-22(e)(15)(iii).

<sup>10</sup> See Order Approving Policy, 85 FR at 5502; Notice of No-Objection to Policy, 84 FR at 55196.

management,<sup>11</sup> while at the same time lowering the cost of clearing for the users of the markets OCC serves. Accordingly, effective June 1, 2021, OCC lowered its clearing fee from \$0.045 per contract to \$0.02 per contract.<sup>12</sup>

As of June 30, 2021, OCC maintained Equity of approximately \$693 million, or approximately \$418 million more than the Early Warning.<sup>13</sup> Based on projections of contract volume and expenses, OCC believes that it can implement a two-month fee holiday while maintaining sufficient revenue to support OCC’s operations and capital needs, including 2021 cash needs related to OCC’s technology infrastructure transformation.<sup>14</sup> Accordingly, OCC proposes to modify its fee schedule to decrease both its per contract and per trade clearing fees to \$0 for the last two months of 2021.<sup>15</sup>

Fee Schedule		Proposed Fee Holiday from November 1, 2021 to December 31, 2021	
<b>Clearing Fees</b>		<b>Clearing Fees</b>	
Trades with contracts of 0-2750	\$0.02/contract	Trades with contracts of 0-2750	\$0/contract
Trades with contracts of more than 2750	\$55/trade	Trades with contracts of more than 2750	\$0/trade

<sup>11</sup> See OCC Technology Changes + Enhancements Reference Guide, available at <https://www.theocc.com/Participant-Resources> (last updated July 21, 2021).

<sup>12</sup> Exchange Act Release No. 91920 (May 18, 2021), 86 FR 27916 (May 24, 2021) (File No. SR-OCC-2021-006).

<sup>13</sup> See OCC Schedule of Fees, available at <https://www.theocc.com/Company-Information/Schedule-of-Fees> (under OCC Capital Management Reporting, unaudited as of June 30, 2021).

<sup>14</sup> OCC has provided confidential data and analysis to the Commission in Exhibit 3 to File No. SR-OCC-2021-009.

<sup>15</sup> These changes are also reflected in Exhibit 5 to File No. SR-OCC-2021-009.

OCC proposes to make the fee change effective November 1, 2021, because OCC believes that this date is the first date that the industry could be prepared to process the new fee without disruption based on consultations with market participants.<sup>16</sup> Effective the first trading day of 2022, clearing fees will revert to the fee schedule in effect before November 1, 2021 and OCC will remove the fee holiday from its schedule of fees.

(2) Statutory Basis

Section 17A(b)(3)(D) of the Act<sup>17</sup> requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. OCC believes that the proposed fee holiday is reasonable because it is designed to decrease the cost of clearing while maintaining sufficient reserves in the form of liquid net assets to cover OCC's operating expenses and address potential business or operational losses so that OCC can continue to meet its obligations as a systemically important financial market utility to Clearing Members and the general public if such losses were to materialize (including through a recovery or orderly wind-down of critical operations and services) and thereby facilitating compliance with certain requirements of Rule 17Ad-22(e)(15)(ii).<sup>18</sup>

In determining the appropriateness of a fee holiday, the CPC considered a variety of factors, including the projected revenue loss that would result from a two-month fee holiday, projected expenses, projected average daily volume, and a scenario analysis

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<sup>16</sup> OCC notes that a mid-month change to clearing fees could introduce operational disruption to Clearing Members due to the impact on their billing processes.

<sup>17</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>18</sup> 17 CFR 240.17Ad-22(e)(15)(ii).

modeling the sensitivity of operating income, adjusting for different clearing fee levels.<sup>19</sup> The CPC also considered OCC's cash needs through 2021 to support its technology transformation initiative. OCC believes that the proposed fee holiday is reasonable and consistent with its existing By-Laws and Rules. OCC also believes that the proposed fee holiday would result in an equitable allocation of fees among its participants because it would be equally applicable to all market participants. As a result, OCC believes that the proposed fee holiday provides for the equitable allocation of reasonable fees in accordance with Section 17A(b)(3)(D) of the Act.<sup>20</sup>

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act<sup>21</sup> requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule change would have any impact or impose a burden on competition. Although this proposed rule change affects clearing members, their customers, and the markets that OCC serves, OCC believes that the proposed rule change would not disadvantage or favor any particular user of OCC's services in relationship to another user because the proposed fee holiday applies equally

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<sup>19</sup> A summary of the analyses is included in confidential Exhibit 3 to File No. SR-OCC-2021-009.

<sup>20</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>21</sup> 15 U.S.C. 78q-1(b)(3)(I).

to all users of OCC. Accordingly, OCC does not believe that the proposed rule change would have any impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change 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

Pursuant to Section 19(b)(3)(A)(ii)<sup>22</sup> of the Act, and Rule 19b-4(f)(2) thereunder,<sup>23</sup> the proposed rule change is filed for immediate effectiveness as it constitutes a change in fees charged to OCC's members. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.<sup>24</sup>

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:

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<sup>22</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>23</sup> 17 CFR 240.19b-4(f)(2).

<sup>24</sup> Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

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](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2021-009 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2021-009. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information

from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2021-009 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>25</sup> 17 CFR 200.30-3(a)(12).