

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54448; File No. SR-OCC-2006-07)

September 14, 2006

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to a Surcharge for Non-Clearing Member Subscribers That Have Not Met a Mandated Conversion Date for Its Data Distribution Service

I. Introduction

On May 15, 2006, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-OCC-2006-07 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).<sup>1</sup> Notice of the proposal was published in the Federal Register on July 10, 2006.<sup>2</sup> On July 21, 2006, OCC amended the proposed rule change.<sup>3</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The purpose of the rule change is to implement a surcharge to the monthly service fee charged to non-clearing member subscribers of OCC’s Data Distribution Service (“DDS”) that have not converted to the new DDS format by the revised mandated conversion date of September 29, 2006.

Both clearing members and non-clearing members may subscribe to DDS. A clearing member may subscribe to DDS in order to receive in a machine readable format data processed by OCC that is proprietary to such clearing member (e.g., position and post-trade entries) as well as non-proprietary data (i.e., data not specific to the clearing member) produced by OCC (e.g.,

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

<sup>2</sup> Securities Exchange Act Release No. 54060 (June 28, 2006), 71 FR 38961.

<sup>3</sup> The amendment, as noted below, is not substantive and did not require republication of the notice. Infra, note 4 and accompanying text.

information relating to series and prices). Non-clearing members may subscribe to DDS in order to receive certain non-proprietary data.

In December, 2004, OCC informed all DDS subscribers that OCC was requiring them to convert to the new ENCORE DDS format by February 28, 2006. Although OCC diligently worked with subscribers to facilitate their implementation of the new DDS format, it became apparent that some subscribers needed additional time in order to complete their systems work. Accordingly, in December, 2005, OCC announced an extension of the mandated conversion date to September 29, 2006.

After the mandated conversion date, OCC will continue to support the old legacy data service distribution system. However, for subscribers that do not meet the revised conversion date of September 29, 2006, OCC will charge a monthly surcharge of \$1,000 per month in order to reasonably allocate the costs of continuing to support the old legacy data distribution system.<sup>4</sup> The surcharge will be imposed starting with the October 2006 billing cycle and will continue until the subscriber converts to the new DDS format and ceases to receive any legacy data service distribution transmissions. OCC will terminate all legacy data service transmissions after March 30, 2007.<sup>5</sup>

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<sup>4</sup> Pursuant to a separate rule change, OCC will impose the \$1,000 per month surcharge on clearing member subscribers to DDS that likewise fail to convert to the new format. Implementation of the surcharge on clearing members is pending approval of this rule filing by the Commission. Securities Exchange Act Release No. 54059 (June 28, 2006), 71 FR 38962 (July 10, 2006) [File No. SR-OCC-2006-06].

<sup>5</sup> The March 30, 2007, termination date was the subject of the amendment to the proposed rule change filed on July 21, 2006.

### III. Discussion

Section 17A(b)(3)(D) of the Act requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges.<sup>6</sup> The Commission finds that OCC's proposed rule change is consistent with this requirement because by establishing a surcharge for continued use of its old legacy data distribution system, OCC will be able to more equitably allocate its cost of providing continued service to those DDS subscribers that have failed to convert to OCC's ENCORE DDS format.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

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<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(D).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (File No. SR-OCC-2006-07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Nancy M. Morris  
Secretary

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<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).