

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54880; File No. SR-OCC-2006-12)

December 6, 2006

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

On July 12, 2006, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).¹ Notice of the proposal was published in the Federal Register on October 13, 2006.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change will amend OCC’s Schedule of Fees by adding 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 the customer’s clearing member in order to satisfy the customer’s obligation to deposit customer level margin at the clearing member and are pledged to OCC in order to satisfy the clearing member’s obligation to deposit clearing level margin at OCC with respect to a specified short

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 54572 (Oct. 4, 2006), 71 FR 50599.

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

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 currently charged a \$200 monthly fee of which \$150 is an equipment leasing fee and \$50 is an access fee.⁵ Banks that (i) elected the purchase alternative or (ii) became escrow banks after the systems integration are currently 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

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.

⁵ OCC has continued to charge current escrow banks with leased equipment the \$200 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.

the \$50 per month access fee. Accordingly, OCC has determined to charge all escrow banks a \$200 per month escrow program fee, which will be reflected in OCC's Schedule of Fees. The escrow program fee will allow OCC to partially offset its escrow program administration costs but will not affect the overwhelming majority of escrow banks because the majority of escrow banks already pay \$200 per month in aggregate escrow deposit program fees.

II. Discussion

Section 17A(b)(3)(D) of the Act⁶ requires the rules of a registered clearing agency to provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. The Commission finds that OCC's proposed amendment to its Schedule of Fees is consistent with this requirement because the \$200 per month program fee reflects OCC's cost to administer the escrow program with respect to escrow banks accessing the program.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act⁷ and the rules and regulations thereunder.

⁶ 15 U.S.C. 78q-1(b)(3)(D).

⁷ 15 U.S.C. 78q-1.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-2006-12) be, and hereby is, approved.⁸

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

Florence E. Harmon
Deputy Secretary

⁸ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁹ 17 CFR 200.30-3(a)(12).