

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59046; File No. SR-OCC-2007-16)

December 3, 2008

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Late Exercises

I. Introduction

On December 7, 2007, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> to amend OCC’s rules relating to the submission of late items and the fees associated with filing exercise notices after the start of critical processing. The proposed rule change was published for comment in the Federal Register on April 7, 2008.<sup>3</sup> No comment letters were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The rule filing will amend OCC’s (1) Rule 801 to modify the fee applied to exercise notices that are accepted by OCC after the start of critical processing, (2) Rule 805 to make conforming changes to the filing fees applied to the submission of supplementary exercise notices tendered after critical processing, and (3) Rule 205 to clarify the unusual or unforeseen circumstances when OCC may extend the cut-off time for submitting instructions to OCC.

Rule 801 addresses the exercise of options other than at expiration. Subject to specified

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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> Securities Exchange Act Release No. 57584 (Mar. 31, 2008), 73 FR 18844.

exceptions and conditions, Rule 801(d) grants certain individuals<sup>4</sup> the discretion to permit a clearing member to file, revoke, or modify any exercise notice after the prescribed deadline for the purpose of correcting a bona fide error. However, the requesting clearing member is liable to OCC for a late filing fee in escalating increments and time segments. Prior to this rule change, these fees were:

- (i) a fee of \$5,000 for any request accepted between the prescribed deadline and the start of critical processing (provided that the request did not materially affect such start time)<sup>5</sup> and
- (ii) a filing fee of \$20,000 per line item listed on any exercise notice accepted for filing after the start of critical processing, with 50% of the fee to be distributed to the assigned clearing member or on a pro rata basis if more than one clearing member is assigned.<sup>6</sup>

Clearing members with short positions that had been assigned a late exercise were to receive notification thereof by 8:00 a.m. CT.

Under this rule change, OCC will eliminate the \$5,000 filing fee for late exercise requests filed prior to the start of critical processing but will raise the filing fee for late exercise requests submitted after the start of critical processing from \$20,000 to \$75,000 per line item. For consistency, OCC also will modify the fees applicable to the submission of supplementary

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<sup>4</sup> Those individuals are OCC's Chairman, Management Vice Chairman, President, or a designee of such officer.

<sup>5</sup> The current deadline for submitting exercise notices is 7:00 p.m. CT.

<sup>6</sup> OCC will accept exercises until as late as 6:30 a.m. However, OCC will not accept a request to revoke or modify an exercise after the start of critical processing.

exercise notices at expiration as set forth in Rule 805.<sup>7</sup> Accordingly, OCC will amend Rule 805's filing fees to conform them to the changes being made in Rule 801.

By increasing the cost of filing late exercise requests after the start of critical processing, OCC intends to provide an incentive for firms to improve back office processing as well as to provide greater compensation to clearing members receiving "late assignments" while at the same time preserving the ability of firms to correct bona fide errors.

As explained in the Commission's notice of OCC's proposed rule change,<sup>8</sup> the primary reason for this rule change is that there were only a few late exercise requests that OCC received during the period January 2006 through March 2007.<sup>9</sup> Specifically, there were five requests for late exercises from five different firms relating to 14 line items with values ranging from \$124,000 to \$270,000. All requests were received after the start of critical processing, requiring OCC to run supplemental exercise procedures after nightly processing had been completed. Such processing was initiated following the 6:30 a.m. (CT) cut-off time for late exercise requests,<sup>10</sup> and all assigned firms were notified before the 8:00 a.m. (CT) deadline. Although no late exercise requests were received between the deadline for submitting exercises and the start of critical processing during the above-referenced review period, OCC determined that, upon request, its operations staff would extend the deadline by a reasonable period in the event an

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<sup>7</sup> It has been at least five years since a supplementary exercise notice has been submitted for processing.

<sup>8</sup> Supra note 3.

<sup>9</sup> From April 2007 to October 2007 there were no requests to submit a late exercise although in each of June and September 2007, OCC received an inquiry regarding a possible submission. However, the clearing members involved elected not to formally file such a request.

<sup>10</sup> Systemic and operational constraints preclude OCC from processing late exercise requests at an earlier time.

exchange, clearing member, or OCC experienced system or operational problems that prevented one or more clearing members from submitting exercises on a timely basis.<sup>11</sup> The payment of the applicable filing fee in such instances was neither required nor has it typically been required for requests received before the start of critical processing.

### III. Discussion

Section 17A(b)(3)(F) of the Act<sup>12</sup> requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission finds that OCC's proposed rule change is consistent with this requirement because the new fee structure should provide an incentive for clearing members to improve their back office processing with respect to determining positions for which an exercise notice is to be submitted in order to reduce the frequency that they file late exercise requests while preserving their ability to correct bona fide operational errors.

### 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<sup>13</sup> and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the

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<sup>11</sup> Subject to OCC's need to start critical processing, the deadline for submitting exercise notices may be extended if "unforeseen conditions" prevent their submission by a clearing member (OCC Rule 205). OCC has concluded that its authority to extend such deadlines should more explicitly reference systemic or operational problems or other unforeseen conditions experienced by additional industry participants that may impact the timely submission of exercise notices.

<sup>12</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>13</sup> 15 U.S.C. 78q-1.

proposed rule change (File No. SR-OCC-2007-16), as amended, be and hereby is approved. In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation.<sup>14</sup>

For the Commission by the Division of Trading and Markets pursuant to delegated authority.<sup>15</sup>

Florence E. Harmon  
Acting Secretary

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<sup>14</sup> 15 U.S.C. 78c(f).

<sup>15</sup> 17 CFR 200.30-3(a)(12).