

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77336; File No. SR-OCC-2016-005)

March 10, 2016

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

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> notice is hereby given that on May 2, 2016, 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)<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 rule change from interested persons.

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

The purpose of this proposed rule change by ("OCC") is to amend OCC's Schedule of Fees in order to simplify OCC's fee structure.

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

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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).

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 amend OCC's Schedule of Fees in order to simplify OCC's fee structure. The proposed changes to OCC's Schedule of Fees would be effective as of May 2, 2016.

OCC is proposing to simply [sic] its fee structure through: (i) the adoption of a flat clearing fee per contract with a fixed dollar cap and (ii) the elimination of the "scratch" fee.<sup>5</sup>

*Flat Fee Schedule*

Currently, OCC utilizes a tiered pricing model whereby the clearing fee per contract is reduced as the number of contracts in a given trade increases (subject to a \$46 cap for trades equal to or greater than 2,001 contracts). OCC recently compared its clearing fee structure to those of its peer institutions (i.e., other clearinghouses) and found that OCC's current fee structure is more complex than those of its peers. OCC's Capital Plan,<sup>6</sup> and specifically the Fee Policy (which governs the process by which OCC

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<sup>5</sup> The "scratch" fee is charged, per side, when a market maker buys and sells the same symbol, series and strike on the same day.

<sup>6</sup> In 2015, the Commission approved ("Approval Order") OCC's plan for raising additional capital ("Capital Plan"), which was put in place in light of proposed regulatory capital requirements applicable to systemically important financial market utilities, such as OCC. See Securities Exchange Act Release No. 74452 (March 6, 2015) 80 FR 13058 (March 12, 2015) (SR-OCC-2015-02). OCC also filed proposals in the Capital Plan filing as an advance notice under Section

determines its fee structure and was filed as part of the Capital Plan), requires OCC to set clearing fees to cover OCC's operating expenses plus a Business Risk Buffer<sup>7</sup> of 25%. OCC believes that it can adopt a clearing fee structure that is less complex while continuing to meet the requirements of the Capital Plan. Therefore, OCC is proposing to adopt a flat, per contract, clearing fee subjected to a fixed dollar cap. OCC believes all users of its services and the public would benefit by the simplicity and transparency that a flat fee structure with a fixed dollar cap would provide. Additionally, OCC believes that a flat fee with a fixed dollar cap would allow users of OCC's services to execute trades without regard to the size of such trades, which would, in turn, promote more open and equal access to clearance and settlement services provided by OCC.

#### *Elimination of Scratch Fee*

Further, and in order to provide additional simplicity, OCC would eliminate the "scratch" fee. The "scratch" fee applies to a limited subset of trades cleared by OCC<sup>8</sup>

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806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010. 12 U.S.C. 5465(e)(1). On February 26, 2015, the Commission issued a notice of no objection to the advance notice filing. *See* Securities Exchange Act Release No. 74387 (February 26, 2015), 80 FR 12215 (March 6, 2015) (SR-OCC-2014-813). Following petitions for review of the approval order of the proposed rule change filed by BATS Global Markets, Inc., BOX Options Exchange LLC, KCG Holdings, Inc., Miami International Securities Exchange, LLC, and Susquehanna International Group, LLP, the Commission set aside the approval order of the proposed rule change, reviewed the record *de novo*, and issued another approval of the Capital Plan on February 11, 2016. *See* Securities Exchange Act Release No. 77112 (February 11, 2016), 81 FR 8294 (February 18, 2016) (SR-OCC-2015-02).

<sup>7</sup> Business Risk Buffer is equal to net income before refunds, dividends and taxes/total revenue. In accordance with its Fee Policy, OCC monitors cleared contract volume and operating expenses to determine if revisions to OCC's Schedule of Fees are required so that monies received from clearing fees cover OCC's operating expenses [sic] this Business Risk Buffer. Any subsequent changes to OCC's Schedule of Fees would be the subject of a subsequent proposed rule change filed with the Commission.

and OCC believes that the operational processing associated with the “scratch” fee is unnecessarily complex for both OCC and its clearing members. Therefore, OCC is proposing to eliminate the “scratch” fee so that OCC and its members’ operations, as they relate to processing of clearing fees, would be more streamlined and efficient.

OCC’s revised Schedule of Fees is set forth below<sup>9</sup>

<b>Trades with contracts of:</b>	<b>Proposed Fee</b>
0-1370	\$0.041/contract
>1370	\$55 per trade

The new fee structure is designed to be revenue neutral when compared to its existing fee structure.<sup>10</sup>

OCC will publish an Information Memo on its public website to inform clearing members, exchanges and the public of the changes to OCC’s Schedule of Fees that would become effective May 2, 2016. OCC is not aware of any clearing member concerns or issues with the proposed changes to OCC’s Schedule of Fees described in this proposed rule change.

## 2. Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(D)<sup>11</sup> of the Act, because it provides for the equitable allocation of reasonable

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<sup>8</sup> Approximately 2.6% of trades cleared by OCC are market maker scratch trades.

<sup>9</sup> These changes are also reflected in Exhibit 5.

<sup>10</sup> In accordance with its Fee Policy, OCC monitors projected revenue (based on anticipated cleared contract volume) and operating expenses to determine if revisions to OCC’s Schedule of Fees are required so that monies received from clearing fees cover OCC’s operating expenses plus the Business Risk Buffer. Assuming the same anticipated cleared contract volume, OCC would accumulate the same amount of revenue under the proposed fee structure when compared to the existing fee structure.

dues, fees and charges among its participants in that all clearing members would be charged the same per contract clearing fee per trade (subject to a fixed dollar cap) notwithstanding the size of such trade. OCC believes that charging clearing members a flat trade fee subject to a fixed dollar cap more equitably allocates the cost of providing clearance and settlement services for a given trade. 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

OCC does not believe that the proposed rule change would have any impact or impose a burden on competition.<sup>12</sup> 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 clearing fees apply equally to all users of OCC. Moreover, the proposed changes to the structure of OCC's Schedule of Fees are revenue neutral and would not affect one set of users of OCC's services in favor of another. For the foregoing reasons, 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.

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<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(D).

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

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing<sup>13</sup> pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>14</sup> and Rule 19b-4(f)(2) thereunder<sup>15</sup> because it constitutes a change in fees imposed by OCC on its clearing members and other market participants using OCC's services. 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.

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](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2016-005 on the subject line.

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<sup>13</sup> Notwithstanding the immediate effectiveness of the proposed rule change and OCC's anticipated implementation date of May 2, 2016, implementation of this rule change is also contingent on it being deemed certified under CFTC Regulation §40.6.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2016-005. 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 and on OCC's website at [http://www.theocc.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_16\\_005.pdf](http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_16_005.pdf).

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-2016-005 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>16</sup>

Robert W. Errett  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).