

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82657; File No. SR-OCC-2018-005)

February 8, 2018

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 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 29, 2018, 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. Items I and II have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2)⁴ 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 introduce a cash management fee that would cover administrative and other operational expenses incurred by OCC in connection with maintaining cash deposits that are held in OCC's Federal Reserve bank account and passing-through to Clearing Members the interest earned on such deposits. The proposed changes to the Schedule of Fees can be

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

found in Exhibit 5 to the proposed rule change. Material proposed to be added to OCC's Fee Schedule as currently in effect is marked by underlining and material proposed to be deleted is marked by strikethrough text; material proposed to be added to OCC's Fee Schedule by proposed rule change SR-OCC-2018-004 is marked by double underlining and material proposed to be deleted by proposed rule change SR-OCC-2018-004 is marked by double strikethrough text. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.⁵

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 introduce a cash management fee that would cover administrative and other operational expenses incurred by OCC in connection with maintaining cash deposits that are held in OCC's Federal Reserve bank account and passing-through to Clearing Members the interest earned on such deposits. The revised fee schedule would become effective on March 1, 2018.

⁵ OCC's By-Laws and Rules can be found on OCC's public website: <http://optionsclearing.com/about/publications/bylaws.jsp>.

By way of background, on January 12, 2018, Commission approved changes to OCC's By-Laws and Rules that establish a new minimum cash contribution requirement for OCC's Clearing Fund and provide for the pass-through to OCC's Clearing Members of interest income earned on cash Clearing Fund deposits held in OCC's Federal Reserve bank account.⁶ As approved, the minimum cash contribution requirement will require OCC's Clearing Members to collectively contribute \$3 billion in cash to OCC's Clearing Fund, with each Clearing Member's proportionate share of the minimum cash requirement being equal in percentage to its proportionate share of the Clearing Fund.⁷ In addition, OCC's Executive Chairman, Chief Administrative Officer, or Chief Operating Officer, upon providing notice to the Risk Committee of OCC's Board of Directors, will have the ability, under certain limited circumstances, to temporarily increase the amount of cash required to be maintained in the Clearing Fund up to an amount that includes the size of the Clearing Fund.⁸

In connection with the minimum cash Clearing Fund requirement, substantially all of OCC's Clearing Fund deposits consisting of cash will be held in OCC's Federal Reserve bank account.⁹ OCC will pass the interest income earned in such account through to its Clearing Members, provided that each such Clearing Member has provided OCC with all tax documentation as OCC may from time to time require in order to

⁶ See Securities Exchange Act Release No. 34-82502 (January 12, 2018), 82 FR 2825 (January 19, 2018) (SR-OCC-2017-019).

⁷ Id. Each Clearing Member's proportionate share of the Clearing Fund is determined by the Clearing Fund allocation methodology in current Rule 1001.

⁸ See supra note 6.

⁹ See supra note 6. OCC retains discretion to maintain a small portion of Clearing Fund cash deposits in other accounts (e.g., accounts with commercial banks) for various reasons, including facilitating normal substitution activity by its Clearing Members.

effectuate such payment.¹⁰ Interest earned will be calculated daily based on each Clearing Member's pro rata share of Clearing Fund cash deposits.¹¹ In maintaining these minimum cash balances in OCC's Federal Reserve bank account and facilitating the pass-through of interest earned on such balances, OCC will incur certain administrative and other operational expenses. These expenses will include the operation of the Federal Reserve bank account, certain systems enhancements needed to maintain minimum cash deposits and facilitate pass-through of interest earned, and staffing costs to operate the cash management and funding desk. In order to defray these expenses, OCC is proposing to implement a cash management fee.

The proposed cash management fee would be an annual rate equal to 5 basis points (0.05%), calculated on a 365-day calendar, and billed monthly on each Clearing Member's daily proportionate share of cash on deposit in OCC's Federal Reserve bank account.¹² This proposed change is designed to provide OCC with a level of revenue sufficient to cover OCC's administrative and operating expenses, as described above.

(2) Statutory Basis

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 among its

¹⁰ See supra note 6. Interest earned will be calculated daily based on each Clearing Member's pro rata share of Clearing Fund cash deposits.

¹¹ See supra note 6.

¹² Accordingly, a Clearing Member can determine the monthly amount of its cash management fee by (1) dividing the annual interest rate by 365; (2) then multiplying the product by the Clearing Member's proportionate share of cash on deposit in OCC's Federal Reserve bank account for each calendar day in a given month; and (3) taking the sum all of the products in step (2) for the given month.

participants.¹³ The proposed cash management fee would cover administrative and other operational expenses incurred by OCC in connection with passing through to Clearing Members the interest earned on Clearing Fund cash deposits that are held in an account established by OCC at a Federal Reserve bank. OCC believes the proposed fee change is reasonable because the new cash management fee would be set at a level intended to cover OCC's expenses associated with maintaining a minimum amount of Clearing Fund cash (which requirement is designed to satisfy certain liquidity requirements under Rule 17Ad-22(e)(7)) and with passing-through to Clearing Members the interest earned on such deposits held in OCC's Federal Reserve bank account. Moreover, OCC believes that the proposed fee change would result in an equitable allocation of fees among its participants because it is a fee that would be equally applicable to all similarly situated participants (*i.e.*, Clearing Members). As a result, OCC believes that the proposed fee schedule provides for the equitable allocation of reasonable fees in accordance with Section 17A(b)(3)(D) of the Act.¹⁴ 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 Act¹⁵ 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

¹³ 17 U.S.C. 78q-1(b)(3)(D).

¹⁴ 17 U.S.C. 78q-1(b)(3)(D).

¹⁵ 15 U.S.C. 78q-1(b)(3)(I).

the proposed rule change would not disadvantage or favor any particular user of OCC's services in relationship to another user because the proposed cash management fee would apply equally to all Clearing Members. 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁶ and Rule 19b-4(f)(2)¹⁷ thereunder. 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.¹⁸

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:

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁷ 17 CFR 240.19b-4(f)(2).

¹⁸ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Rule 40.6.

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2018-005 on the subject line.

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-2018-005. 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 <https://www.theocc.com/about/publications/bylaws.jsp>.

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-2018-005 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.¹⁹

Eduardo A. Aleman
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).