

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93612; File No. SR-OCC-2021-012)

November 18, 2021

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Correct an Inadvertent Omission in a Prior Proposed Rule Change Concerning OCC's Schedule of Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 8, 2021, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("SEC" or "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)³ of the Act 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 correct an inadvertent omission in OCC's schedule of fees that was the subject of a prior rule filing. OCC's schedule of fees is included as Exhibit 5 to File No. SR-OCC-2021-012. Material proposed to be added to OCC's schedule of fees as currently in effect is underlined and material proposed to 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).

deleted is marked in 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 correct an inadvertent omission in the prior rule filing that established a fee holiday for the period from November 1, 2021, and ending December 31, 2021.⁶ Based on OCC's financial position as a result of historic contract volume, and consistent with OCC's Capital Management Policy, that prior filing reduced its per contract and per trade clearing fees to \$0 for the last two months of 2021. However, through an inadvertent oversight, two line items in the schedule of fees related to clearing fees were not reduced accordingly: (1) the minimum monthly clearing fee of \$200 and (2) a fee of \$0.02 per

⁵ OCC's By-Laws and Rules can be found on OCC's public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

⁶ See Exchange Act Release No. 93195 (Sept. 29, 2021), 86 FR 55039 (Oct. 5, 2021) (File No. SR-OCC-2021-009).

side for linkage transactions, capped at \$55 per trade per side.⁷ OCC is now proposing to correct the schedule of fees set forth in Exhibit 5 to File No. SR-OCC-2021-012 to reflect that OCC will not collect these fees during the fee holiday.

Clearing Fees effective June 1, 2021		Proposed Fee Holiday from November 1, 2021 to December 31, 2021	
Linkage per side	\$0.02 <i>*A Linkage transaction that includes more than 2,750 contracts will be charged a flat fee of \$55.00 per trade per side.</i>	Linkage per side	\$0.00
Minimum Monthly Clearing Fee	\$200.00	Minimum Monthly Clearing Fee	\$0.00

The listing of the fees in the schedule of fees would be reordered to group these two fees with the other clearing fees that are subject to the fee holiday. Like the changes to OCC's clearing fees set forth in File No. SR-OCC-2021-009, the linkage per side fee and the minimum monthly clearing fee will revert to the fee schedule in effect before November 1, 2021 and OCC will remove the fee holiday from its schedule of fees effective the first trading day of 2022.

⁷ The linkage fee was added to OCC's schedule of fees in 2012 so that OCC could, for the purposes of charging a clearing fee, treat routing trades executed in accordance with the Options Order Protection and Locked/Crossed Market Plan the same as market maker/specialist scratch trades, which were subject to a reduced "scratch fee." See Exchange Act Release No. 68025 (Oct. 10, 2012), 77 FR 63398 (Oct. 16, 2012) (File No. SR-OCC-2012-18). In 2016, OCC simplified its schedule of fees by, among other things, eliminating the scratch fee but retained the linkage per side fee. See Exchange Act Release No. 77336 (Mar. 10, 2016), 81 FR 14153 (Mar. 16, 2016) (File No. SR-OCC-2016-005).

No fees for transactions occurring within the fee holiday period have been collected because clearing fees are due to OCC the month after the fees are incurred. OCC will not collect fees for transactions that occurred between November 1, 2021 through the first date it may implement the corrected fee schedule after completing all regulatory actions necessary to make the proposed corrections.

(2) Statutory Basis

Section 17A(b)(3)(D) of the Act⁸ requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. OCC believes that the proposed correction of inadvertent omissions to OCC's schedule of fees would facilitate the equitable allocation of fees among its participants because it would eliminate inadvertent discrepancies in the application of the fee holiday that might otherwise impact certain market participants differently depending on the business they conduct through OCC. The corrected fees would be equally applicable to all market participants. As a result, OCC believes that the proposed corrections would provide for the equitable allocation of reasonable fees in accordance with Section 17A(b)(3)(D) of the Act.⁹

In addition, SEC Rule 17Ad-22(e)(23)(ii)¹⁰ provides that a covered clearing agency must establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the

⁸ 15 U.S.C. 78q-1(b)(3)(D).

⁹ 15 U.S.C. 78q-1(b)(3)(D).

¹⁰ 17 CFR. 240.17AD-22(e)(23)(ii).

covered clearing agency. By correcting OCC's schedule of fees consistent with the intent of the fee holiday, OCC would eliminate ambiguity that might otherwise persist about whether OCC intends to charge the minimum monthly clearing fee and the fee for linkage transactions while the fee holiday is in effect, which it does not. Accordingly, OCC believes that the proposed corrections are reasonably designed to provide participants sufficient information to evaluate OCC's fees, in accordance with SEC Rule 17Ad-22(e)(23)(ii).¹¹

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 Act¹² 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 the proposed rule change would not disadvantage or favor any particular user of OCC's services in relationship to another user because the proposed fee holiday with respect to these fees applies equally to all users of OCC. Accordingly, OCC does not believe that the proposed rule change would have any impact or impose a burden on competition.

¹¹ 17 CFR. 240.17AD-22(e)(23)(ii).

¹² 15 U.S.C. 78q-1(b)(3)(I).

(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

Pursuant to Section 19(b)(3)(A)(ii)¹³ of the Act, and Rule 19b-4(f)(2) thereunder,¹⁴ the proposed rule change is filed for immediate effectiveness as it constitutes a change in fees charged to OCC's members. 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. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.¹⁵

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:

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

¹⁵ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

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. Please include File Number SR-OCC-2021-012 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2021-012. 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.

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-2021-012 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.¹⁶

J. Matthew DeLesDernier
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).