

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56800; File No. SR-OCC-2007-10)

November 16, 2007

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Fees Charged to Clearing Members and Non-Clearing Members For Theoretical Profit and Loss Values

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 18, 2007, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the rule change is to effect changes to the fees charged to clearing members and non-clearing members for Theoretical Profit and Loss Values.

II. Self-Regulatory Organization'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 such statements.²

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified parts of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to: (i) eliminate the fee charged to clearing members for Theoretical Profit and Loss Values and provide this information at no additional cost as part of the ancillary services offered to Tier I clearing members, and (ii) reduce the maximum fee charged to non-clearing members for such information. As a result of these changes in fees and service offerings, conforming changes are required in OCC's Schedule of Fees as well as in the Supplement to the Agreement for OCC Services: Ancillary Services. In addition, a new Supplement to the Agreement for OCC Services is being adopted to reflect that Theoretical Profit and Loss Values are now being provided to clearing members as part of OCC's ancillary service offerings.

A. Background

OCC currently provides a theoretical profit/loss value file ("data") to OCC clearing members and non-clearing member broker-dealers for use in calculating (i) risk-based haircuts in order to determine SEC net capital requirements and (ii) margin for customer positions on a portfolio basis. Currently, the data is made available for download to OCC clearing members and non-clearing members by either (i) mainframe to mainframe transmission, (ii) File Transfer Protocol ("FTP"),³ or (iii) OCC's Theoretical Information Online ("TIO") system.⁴ Both the mainframe to mainframe transmission and the FTP processes provide for receipt of the full theoretical file while TIO also allows partial file downloads.

³ OCC charges \$2,000.00 per month for clearing members and non-clearing members to access the Data via mainframe to mainframe transmission or FTP.

⁴ OCC currently charges a monthly fee of \$0.10 per class group with a minimum monthly charge of \$200.00 and a maximum monthly charge of \$2,000.00 for clearing members and non-clearing members accessing the data via TIO.

B. Discussion

TIO once served as a practical and economical tool that allowed users to avoid downloading the entire theoretical file to access the desired information. The TIO “per class group” charge enabled clearing members and non-clearing members that needed data for a relatively small subset of all equity classes to save money by using TIO as compared to the other two means of downloading the data. However, the widespread availability of affordable broadband network services has practically eliminated the download time and other bandwidth-related concerns associated with downloading an entire file of theoretical values. Meanwhile, as more subscribers begin to use the customer margin risk arrays for customer positions margined on a portfolio basis, OCC believes the number of clearing members and non-clearing members that would benefit from having the option to download a partial file will continue to decline.

(1) Elimination or Reduction of Fees

In May 2007, OCC’s Board of Directors authorized a plan to decommission the TIO system due to its limited value and high maintenance cost. The data will remain available to clearing members and non-clearing members as a full file through either a mainframe to mainframe transmission or FTP.⁵ Effective October 1, 2007, OCC will eliminate the fee for Theoretical Profit and Loss Values charged to clearing members that receive the data via mainframe to mainframe or via FTP and will provide this information as part of the ancillary services offered to Tier I clearing members.⁶ Also effective October 1, 2007, OCC will reduce

⁵ OCC staff will work with affected TIO subscribers to assist them in their transition to FTP or mainframe to mainframe downloads by December 31, 2007.

⁶ There are a total of five clearing members that subscribe to OCC’s theoretical data that are not Tier I subscribers. Based upon July 2007 billing for June activity, the increased monthly cost of subscribing to Tier I (\$450.00) would be more than offset for one of these clearing members by elimination of the separate charge for theoretical data (\$2,000.00 per month). The other four clearing members will have a monthly billing increase of approximately \$250. These

the fee for non-clearing members to receive the data via mainframe to mainframe transmission or FTP to a flat rate of \$1,000.00 per month.⁷ OCC attached as Exhibit 5A to SR-OCC-2007-10 a Schedule of Fees as of October 1, 2007, which reflects the foregoing changes.⁸

(2) Conforming Changes

As part of the proposed rule change, OCC is also making certain additional conforming changes to both its Schedule of Fees and its Ancillary Services Supplement, a copy of which is attached to SR-OCC-2007-10 as Exhibit 5B, to reflect recent modifications to its ancillary service descriptions. Specifically, as of April 2007, OCC no longer provides monthly core reports to clearing members via cd-rom as currently referenced in Tiers I, II, III, and IV of the Schedule of Fees and the Ancillary Services Supplement. Instead, clearing members now have access to historical core reports on-line through ENCORE Core Reports. In addition, OCC's special settlement file and adjusted position file as currently referenced in Tier 1 of the Schedule of Fees and the Ancillary Services Supplement are no longer separately produced for clearing members as this information is now made available as part of OCC's data distribution service ("DDS"). Finally, OCC has now completed its conversion of DDS subscribers to its new format

four clearing members currently use TIO and on average download a minimal number of class groups per month.

⁷ OCC will continue to support and make the data available through TIO until December 31, 2007. Clearing members and non-clearing members that continue to receive data via TIO after October 1, 2007, will be charged the current TIO fees for the data. However, effective January 1, 2008, TIO will be decommissioned, and the data will no longer be available via TIO. As a result, the TIO fee will then be eliminated from the Schedule of Fees.

⁸ Exhibit 5A also contains references highlighting the phase-out approach that OCC is adopting with respect to the decommissioning of TIO and the impact to fees charged to clearing members and non-clearing members during this time period. Such notations will no longer be applicable after TIO is retired, and they will be eliminated in connection with the republication of the January, 2008 schedule of fees.

as previously described in File No. SR-OCC-2006-06.⁹ Therefore, the surcharge currently referenced in OCC's Schedule of Fees in connection with the DDS conversion is no longer applicable and will be removed along with each of the other above-described items.

(3) Supplement to Agreement for OCC Services: Theoretical Profit and Loss Values

Exhibit 5C to SR-OCC-2007-10 is the Supplement to the Agreement for OCC Services: Theoretical Profit and Loss Values to be entered into between OCC and clearing members subscribing to Theoretical Profit and Loss Values ("Supplement").¹⁰ The Supplement is structured to fit within OCC's existing framework for the Agreement for OCC Services and will replace the current form agreement between clearing members and OCC. The provisions are generally self-explanatory, and they are intended to describe the respective responsibilities of OCC and the subscribing clearing member. Section 1 describes the Theoretical Profit and Loss Values and identifies the available means of downloading the data. Sections 2 and 3 set forth the authorized scope of use of the data and related documentation. Section 4 describes the clearing member's obligations with respect to security and access codes. Section 5 describes the fees associated with the data. Section 6 sets forth the confidential nature of the data and documentation. Sections 7 through 11 set forth further responsibilities of the parties including warranties, liability, and indemnification. Section 12 describes the termination rights of the parties. Section 13 contains general terms regarding survival of certain provisions. Exhibit A to the Supplement is the form of acknowledgment to be signed by a managed clearing member.

⁹ Securities and Exchange Act No. 54059 (June 28, 2006), 71 FR 38962 (July 10, 2006).

¹⁰ Non-clearing members will also be required to execute a corresponding subscription agreement for the data.

The proposed rule change is consistent with Section 17A of the Act because it involves a fee, due, or charge applicable to subscribers of information that provides for a reasonable allocation of costs. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments 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

Because the foregoing rule change changes fees charged by OCC, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹¹ and Rule 19b-4(f)(2)¹² thereunder. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate 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

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

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. Please include File Number SR-OCC-2007-10 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-OCC-2007-10. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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; 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-2007-10 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.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).