

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77041; File No. SR-OCC-2016-001)

February 3, 2016

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 20, 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)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 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 The Options Clearing Corporation ("OCC") is to revise OCC's Schedule of Fees effective March 1, 2016, to implement a reduction of clearing fees in accordance with OCC's Fee Policy, which was recently

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).

adopted as part of OCC's Capital Plan.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 in accordance with its new Fee Policy. The revised fee schedule would become effective on March 1, 2016.

⁵ 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 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* Exchange Act Release No. 74387 (February 26, 2015), 80 FR 12215 (March 6, 2015) (SR-OCC-2014-813). BATS Global Markets, Inc., BOX Options Exchange LLC, KCG Holdings, Inc., Miami International Securities Exchange, LLC, and Susquehanna International Group, LLP (collectively "Petitioners") each filed petitions for review of the Approval Order, challenging the action taken by delegated authority. The filing of the petitions automatically stayed the Approval Order. OCC filed a Motion to Lift the Stay on April 2, 2015, and the Petitioners responded. The Commission subsequently determined that the automatic stay of delegated action should be discontinued, and the Commission granted OCC's Motion to Lift Stay of the staff's action in approving by delegated authority File No. SR-OCC-2015-02.

By way of background, in 2015, the Commission approved OCC's Capital Plan,⁶ which was put in place in light of proposed regulatory capital requirements applicable to systemically important financial market utilities, such as OCC. As part of OCC's Capital Plan, OCC adopted a Fee Policy whereby OCC would set clearing fees at a level that covers OCC's operating expenses plus a Business Risk Buffer⁷ of 25%.⁸ The purpose of the Business Risk Buffer is to ensure that OCC accumulates sufficient capital to cover unexpected fluctuations in operating expenses, business capital needs, and regulatory capital requirements.

OCC analyzed its current Schedule of Fees⁹ against projected revenues and projected expenses for 2016 in accordance with its Fee Policy. The primary goal of this analysis was to determine a fee setting approach for 2016 that covers OCC's anticipated operating expenses, seeks to minimize the number of fee resets under normal market conditions, and seeks to achieve a Business Risk Buffer of 25%. To project revenue

⁶ See *supra* note 5.

⁷ The Business Risk Buffer is equal to net income before refunds, dividends, and taxes divided by total revenue.

⁸ OCC's Schedule of Fees must also meet the requirements set forth in Article IX, Section 9 of OCC's By-Laws. In general, Article IX, Section 9 of OCC's By-Laws requires that OCC's fee structure be designed to: 1) cover OCC's operating expenses plus a business risk buffer, 2) maintain reserves deemed reasonably necessary by OCC's Board of Directors, and 3) accumulate an additional surplus deemed advisable by the Board of Directors to permit OCC to meet its obligations to its clearing members and the public. Clauses 2 and 3 above will only be invoked at the discretion of OCC's Board of Directors and in extraordinary circumstances.

⁹ OCC previously revised its Schedule of Fees effective April 1, 2014, to reinstate permanent reduced fee rates for securities options and securities futures that were originally adopted effective May 1, 2007. See Securities Exchange Act Release No. 71769 (March 21, 2014), 79 FR 17214 (March 27, 2014) (SR-OCC-2014-05).

(which is a product of cleared contract volume and clearing fees per contract), OCC estimated cleared contract volume per month for 2016 by computing the average of the previous 12 months of actual cleared contract volume data, excluding the high and low volume months, and used such average as the anticipated cleared contract volume per month for 2016.¹⁰ For expenses, OCC used projected 2016 expenses, computed at the end of 2015 as part of OCC's 2016 budgeting process. OCC arrived at the fee schedule presented herein by determining the figures that would result in a coverage OCC's anticipated operating expenses plus a Business Risk Buffer of 25%.

As a result of the aforementioned analysis, OCC proposes to revise its Schedule of Fees as set forth below.¹¹

Trades with contracts of:	Current Fee	Proposed Fee
1-500	\$0.050/contract	\$0.041/contract
501-1000	\$0.040/contract	\$0.032/contract
1001-2000	\$0.030/contract	\$0.024/contract
>2000	\$55.00/trade	\$46.00/trade

OCC anticipates that the proposed changes to OCC's Schedule of Fees would result in an average decrease in clearing fees of 19%. Moreover, and in accordance with its Fee Policy, OCC will continue to monitor cleared contract volume and operating expenses in order to determine if further revisions to OCC's Schedule of Fees are

¹⁰ In order to validate this approach, OCC back tested its volume projecting methodology against data from the previous five years and determined that such methodology yields reasonable estimate of future contract volume.

¹¹ These changes are also reflected in Exhibit 5. Market maker/specialist scratch and linkage fees per side will remain unchanged at \$0.020.

required so that monies received from clearing fees cover OCC's operating expenses plus a Business Risk Buffer of 25%.¹²

2. Statutory Basis

OCC believes that the proposed rule change concerning a reduction to OCC's clearing fees is consistent with Section 17A(b)(3)(D)¹³ of the Act, because the proposed fee schedule provides for the equitable allocation of reasonable fees among its clearing members and other market participants pursuant to criteria set forth in OCC's Capital Plan, which has been approved by the Commission.¹⁴ The revised fee schedule would result in lower clearing fees for OCC's clearing members and other market participants and would be equally applicable to all market participants. 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 an impact or impose a burden on competition.¹⁵ 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 clearing fees apply equally

¹² Any subsequent changes to OCC's Schedule of Fees would be the subject of a subsequent proposed rule change filed with the Commission.

¹³ 17 U.S.C. 78q-1(b)(3)(D).

¹⁴ *See supra* note 5.

¹⁵ 15 U.S.C. 78q-1(b)(3)(I).

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.

(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 upon filing¹⁶ pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁷ and Rule 19b-4(f)(2) thereunder¹⁸ 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:

¹⁶ Notwithstanding the immediate effectiveness of the proposed rule change and OCC's anticipated implementation date of March 1, 2016, implementation of this rule change is also contingent on it being deemed certified under CFTC Regulation §40.6.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁸ 17 CFR 240.19b-4(f)(2).

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-2016-001 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-2016-001. 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_001.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-2016-001 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

Robert W. Errett
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).