

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78526; File No. SR-OCC-2016-008)

August 10, 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 29, 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 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 revise OCC's Schedule of Fees effective October 1, 2016, or such later date as OCC may determine and announce to its Clearing Members via Information Memo,<sup>5</sup> to implement a change of fees in

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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).

<sup>5</sup> On August 8, 2016, pursuant to a telephone conversation with Commission staff, OCC agreed that if OCC determines that an effective date later than October 1, 2016 is required for the fee change that is the subject of this filing, OCC will re-file a revised

conjunction with enhancements to OCC's Stock Loan Program ("Program").

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 more adequately cover the expenses incurred by OCC to operate the Program, including costs associated with ongoing and anticipated operational and risk management enhancements to the Program. The revised fee schedule would become effective on October 1, 2016, or such later date as OCC may determine and announce via Information Memo.<sup>6</sup>

The Program began in 1993 as a tool for participants to use borrowed and loaned securities to reduce OCC margin requirements by reflecting the actual risks of their inter-market hedged positions. When the Program began, OCC implemented a risk management infrastructure based on the Program's scale and complexity. Over time,

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Schedule of Fees specifying the new effective date. In addition, OCC agreed to the insertion of clarifying language concerning its determination of any later effective date in its description of the proposed rule change.

<sup>6</sup> See supra note 5.

OCC's Clearing Members have discovered that the Program can provide valuable risk management and capital efficiency solutions. Specifically, the credit risk of a given stock loan transaction in the Program is significantly lower than a bilaterally executed stock loan as a result of OCC's novation and guarantee of stock loans in the Program, and Clearing Members' stock loans in the Program are netted against their other positions held at OCC. These factors have caused significant increases in both the scale of the Program and the resulting risk management demands. As a result of the increased operational and risk management demands of the Program, and in light of OCC's heightened responsibilities as a designated Systemically Important Financial Market Utility, OCC is considering a number of enhancements to its operational and risk management systems and processes, which require both process redesign and increased operating expenses. These enhanced systems and processes would include:

- The capture and validation of trades prior to facilitating settlement;
- A new position accounting system to support expanded guarantee of contract terms such as rebate rate and term;
- An automated trade correction mechanism;
- Automated systems to support re-matching upon the default of a participant lending and borrowing the same security; and,
- Automation of the default management process for any unmatched positions and limitation of the close-out period.

Taking these enhancements into account, OCC analyzed its pricing for the Program, which has not been updated since 2009, against the Program's annual revenue as well as the Program's expenses assessed against OCC by the Depository Trust

Company (“DTC”) and determined that current pricing would not reflect the expenses incurred by OCC to make the Program more robust and sustainable given its increased scope and risk managements demands.

OCC arrived at the fee schedule presented herein by determining pricing for the Program that: (1) covers OCC’s costs in running the Program, including the transaction fees charged to OCC by DTC; (2) account for costs incurred by OCC to make the operational and risk management enhancements required to make the Program more robust and sustainable; and, (3) better reflects the value the Program provides participants, particularly to borrowers, by providing for a centrally cleared and risk managed stock loan clearing solution. As a result of the aforementioned analysis, OCC proposes to revise its Schedule of Fees<sup>7</sup> by adding a monthly 0.4 basis point annualized charge for borrowers on average daily notional outstanding balances in addition to the current \$1 clearing fee for both lenders and borrowers, which would be retained under the proposed fee change.<sup>8</sup>

OCC does not believe that its current pricing schedule reflects the value that the Program provides to its participants, particularly to borrowers using the Program. Securities lending transactions are typically driven by the need for borrowers to obtain specific securities. Lenders, in comparison, do not have a specific need to lend their

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<sup>7</sup> These changes are also reflected in Exhibit 5.

<sup>8</sup> OCC notes that the proposed fee increase is designed to help defray increased expenses to OCC from the development and implementation of the ongoing and anticipated operational and risk management enhancements discussed above. Moreover, OCC would continue to monitor Program revenue and expenses in order to determine if further revisions to OCC’s Schedule of Fees are required so that revenue is commensurate with expenses and the services provided. Any subsequent changes to OCC’s Schedule of Fees would be the subject of a subsequent proposed rule change filed with the Commission.

securities and the price of a given stock loan transaction in part compensates the lender for the borrower's credit risk. As a result, it is common for the borrower to pay all ancillary fees related to a given stock loan transaction. Moreover, while borrowers and lenders both benefit from the risk management and capital efficiencies gained by clearing stock loan transactions through the Program, on balance, the capital efficiencies for borrowers are greater. Furthermore, the implementation of the aforementioned operational and risk management enhancements would provide for a more robust and sustainable Program, and as a result, OCC hopes to be able to build on this foundation in the future to attract a broader market of securities borrowers and lenders to the Program, particularly securities lenders, which would potentially lead to borrowers in the Program receiving better loan rates because there would a greater amount of willing lenders.

## 2. Statutory Basis

OCC believes that the proposed rule change concerning a change to OCC's clearing fees is consistent with Section 17A(b)(3)(D)<sup>9</sup> of the Act, because the proposed fee schedule provides for the equitable allocation of reasonable fees among its Clearing Members. OCC believes the proposed fee change is reasonable because it is designed to cover the costs incurred by OCC to implement operational and risk management enhancements designed to make the Program more robust and sustainable, particularly given the increased scale and risk management demands of the Program, and the increased revenue from the fee change is anticipated to help offset the increased expenses incurred by OCC to make such enhancements. These enhancements would strengthen the Program's operational resiliency and risk management capabilities, potentially

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<sup>9</sup> 17 U.S.C. 78q-1(b)(3)(D).

enabling the introduction of further enhancements that would allow the Program to service a broader market of participants, which in turn would provide economic benefits and lower risk for both borrowers and lenders. Moreover, OCC believes that the proposed fee schedule would provide for an equitable allocation of clearing fees to users of the Program. Specifically, OCC would retain the \$1 new loan transaction clearing fee for both lenders and borrowers, and the proposed fee change would impose an additional monthly 0.4 basis point annualized charge for borrowers based on average daily notional outstanding balances to more appropriately allocate costs of the Program to those users benefiting most from the Program. The proposed fee change would therefore better align Program fees with the industry, in which is it common practice for borrowers to bear additional costs associated with stock loan transactions. 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 not necessary or appropriate in furtherance of the purposes of the Act.<sup>10</sup> Although this proposed rule change would assess an additional fee against borrowers utilizing the Program that is not assessed against lenders, as explained above, OCC believes that the proposed rule change appropriately aligns how fees are assessed with the economic and risk management benefits of the Program, and enables OCC to provide a more robust Program that will expand its user base and benefit borrowers. Also, the proposed fee changes would not disadvantage or favor any

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<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(I).

particular borrower or lender utilizing the Program in relationship to another borrower or lender, respectively, because the proposed clearing fees apply equally to all users of the Program. Accordingly, OCC does not believe that the proposed rule change would have any impact or impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency'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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and Rule 19b-4(f)(2) thereunder.<sup>12</sup> 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:

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2016-008 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-2016-008. 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\\_008.pdf](http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_16_008.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-2016-008 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>13</sup>

Robert W. Errett  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).