

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79028; File No. SR-OCC-2016-012)

October 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 September 30, 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 proposal pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder⁴ 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 effective December 1, 2016, to implement an increase in clearing fees in accordance with OCC's Fee Policy.⁵ The proposed changes to the Schedule of Fees can be found in

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).

⁵ OCC's Fee Policy was adopted as part of 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

Exhibit 5 to the proposed rule change. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.⁶

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.

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. On February 11, 2016, the Commission issued an order setting aside the approval order issued under delegated authority and approved the proposed rule change to implement the Capital Plan. *See* Securities Exchange Act Release No. 77112 (February 11, 2016) 81 FR 8294 (February 18, 2016) (SR-OCC-2015-02).

⁶ OCC's By-Laws and Rules can be found on OCC's public website: <http://optionsclearing.com/about/publications/bylaws.jsp>.

(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 Fee Policy to set OCC's fees at a level designed to cover OCC's operating expenses and maintain a Business Risk Buffer of 25%.⁷ The revised fee schedule would become effective on December 1, 2016.

By way of background, OCC implemented its Capital Plan in 2015,⁸ 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 Buffer of 25%.⁹ 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.

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

⁸ *See supra* note 5.

⁹ 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.

OCC recently reviewed its current Schedule of Fees¹⁰ against actual and projected revenues and expenses for 2016 in accordance with its Fee Policy to determine whether the Schedule of Fees was sufficient to cover OCC's anticipated operating expenses and achieve a Business Risk Buffer of 25%. In reviewing the Schedule of Fees, OCC analyzed: (i) clearing fee revenues charged on a year-to-date basis, (ii) projected volume for the remainder of the year, (iii) the anticipated "mix" of volume among the various fee levels set forth in the Schedule of Fees, (iv) operating expenses incurred to date, and (v) operating expenses projected for the remainder of the year. Based on the foregoing analysis, OCC determined that the current fee schedule is set at a level that would be insufficient to ensure that OCC achieves its Business Risk Buffer of 25% as required under the Fee Policy. OCC arrived at the proposed fee schedule presented herein by determining the figures that provide the best opportunity for OCC to achieve coverage of its anticipated operating expenses plus a Business Risk Buffer of 25%.

¹⁰ OCC previously revised its Schedule of Fees effective March 1, 2016, to implement a reduction of clearing fees in accordance with the Fee Policy. *See* Securities Exchange Act Release No. 77041 (February 3, 2016), 81 FR 6917 (February 9, 2016), (SR-OCC-2016-001). OCC subsequently amended its Schedule of Fees to simplify its fee structure through: (i) the adoption of a flat clearing fee per contract with a fixed dollar cap and (ii) the elimination of the "scratch" fee. The revised fee structure, which became effective May 2, 2016, was designed to be revenue neutral when compared to the previous fee structure. *See* Securities Exchange Act Release No. 77336 (March 10, 2016), 81 FR 14153 (March 16, 2016), (SR-OCC-2016-005).

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

Current Fee Schedule		Proposed Fee Schedule	
Trades with contracts of:	Current Fee	Trades with contracts of:	Proposed Fee
1-1370	\$0.041	1-1100	\$0.050/contract
>1370	\$55/trade	>1100	\$55/trade

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

(2) Statutory Basis

Section 17A(b)(3)(D) of the Securities Exchange Act of 1934, as amended (“Act”), requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.¹³ The proposed fee schedule was set in accordance with the criteria set forth in OCC’s Capital Plan, which was approved by the Commission¹⁴ and requires that OCC’s fees be set at a level designed to cover OCC’s operating expenses and maintain a Business Risk Buffer of 25%. OCC believes the proposed fee change is reasonable because the fee increase would be set at a level intended only to facilitate the maintenance of OCC’s Business Risk Buffer of 25%, which is designed to ensure that OCC accumulates sufficient capital

¹¹ These changes are also reflected in Exhibit 5.

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.

to cover unexpected fluctuations in operating expenses, business capital needs, and regulatory capital requirements. Moreover, OCC believes that the proposed fee change would result in an equitable allocation of fees among its participants because it would be equally applicable to all market participants. 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.¹⁵ 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 Act¹⁶ 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 clearing fees apply 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.

(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.

¹⁵ 17 U.S.C. 78q-1(b)(3)(D).

¹⁶ 15 U.S.C. 78q-1(b)(3)(I).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii)¹⁷ of the Act, and Rule 19b-4(f)(2) thereunder,¹⁸ the proposed rule change is filed for immediate effectiveness as it constitutes a change in fees charged to OCC clearing 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.¹⁹

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:

- 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-2016-012 on the subject line.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁸ 17 CFR 240.19b-4(f)(2).

¹⁹ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation §40.6.

Paper Comments:

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

All submissions should refer to File Number SR-OCC-2016-012. 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 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's website

(http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_16_012.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-2016-012 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.²⁰

Robert W. Errett
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).