8011-01
SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-82856; File No. SR-OCC-2018-001]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Related to The Options Clearing Corporation's Fee Policy
March 12, 2018.

On January 18, 2018, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] proposed rule change SR-OCC-2018-001. The proposed rule change was published for comment in the Federal Register on January 30, 2018,[3] and the Commission did not receive any comments. This order approves the proposed rule change.

I. Description of the Proposed Rule Change

A. Background

As stated in the Notice, OCC filed the proposed Fee Policy to reduce the permitted implementation time for proposed changes to its Schedule of Fees.[4] Under the current Fee Policy, any change to the Schedule of Fees resulting from a review by OCC's Board of Directors

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 Securities Exchange Act Release No. 82576 (January 24, 2018), 83 FR 4324 (January 30, 2018) (SR-OOC-2018-001) ("Notice").

4 See Notice at 4324.

("Board")[5] will be implemented no sooner than 60 days after filing the revised Schedule of Fees with the Commission as a proposed rule change.

B. The Proposed Rule Change to OCC's Fee Policy

OCC's By-Laws require OCC to set its fee structure so that it is sufficient to: (1) cover OCC's operating expenses plus a Business Risk Buffer ("Buffer");[6] (2) maintain reserves deemed reasonably necessary by OCC's Board; and (3) accumulate an additional surplus deemed advisable by the Board to permit OCC to meet its obligations to its Clearing Members and the public.[7] As part of the Fee Policy, OCC sets fees at a level that will cover its estimated operating expenses plus the additional 25% Buffer, with OCC conducting quarterly reviews to manage revenues as close to the Buffer as possible. OCC stated that the Board may rely on recommendations of OCC staff based on analyses of year-to-date revenue and operating expenses, as well as projected clearing volume and operating expenses to determine the proper level of fees to achieve the Buffer.[8]

As stated in the Notice, OCC believes that the current 60-day implementation period under the Fee Policy: (i) increases the difficulty of projecting appropriate fee levels needed to

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5 See Notice at 4325 (stating that the authority to review and approve changes to OCC's fees pursuant to the Capital Plan has been delegated to the Compensation and Performance Committee of the Board). See also OCC Compensation and Performance Committee Charter, available at: http://www.optionsclearing.com/components/docs/about/corporate-information/performance_committee_charter.pdf.

6 The Buffer is an amount of fee revenue that OCC targets above its anticipated operating expenses to allow for unexpected fluctuations in operating expenses, business capital needs, and regulatory capital requirements.

7 See OCC's By-Laws, Art. IX, Sec. 9. In the Notice at 4325, OCC noted that clauses two and three above would be invoked only at the discretion of OCC's Board and in extraordinary circumstances.

8 See Notice at 4325.

cover its operating expenses and the Buffer because of the amount of time that passes between OCC's analysis of the data supporting the fee change and the subsequent implementation of the fee change; (ii) increases the risk that by the time the fee change is implemented, the extended delay in implementation may result in revenues that diverge (either higher or lower) further from the target Buffer; and (iii) increases the impact of fee changes on participants due to the delayed implementation timing.[9] OCC states that the effects of delayed implementation described above may result in OCC needing to make more frequent and/or more dramatic changes to its Schedule of Fees in order to maintain its target Buffer, resulting in less stability in fees for OCC's participants.[10] OCC states that reducing the 60-day implementation period to thirty days would allow for fee adjustments that are based on revenue and expense data that is more current, and therefore projections that are more accurate.[11] OCC further states that it believes the proposed Fee Policy would improve its ability to set fees at the level required by the Fee Policy while still providing adequate notice to its participants of any proposed fee changes.[12]

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[13] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such

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9 See id. OCC further stated that, because it generally implements fee changes on the first of the month, the actual delay in implementing a proposed fee change may be significantly longer than 60 days depending on the timing of Board approval of any fee change and subsequent filing of the associated proposed rule change.

10 See id.

11 See id.

12 See id.

13 15 U.S.C. 78s(b)(2)(C).

organization. The Commission finds that the proposed Fee Policy is consistent with Section 17A(b)(3)(F) of the Act[14] and Rule 17Ad-22(e)(21)[15] thereunder, as described in detail below.

A. Consistency with Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and the protection of investors and the public interest.[16] As described above, the Fee Policy requires OCC to set fees at a level sufficient to cover its operating expenses plus a Buffer. Conducting quarterly reviews allows OCC to monitor the fees collected and make any necessary adjustments to maintain the Buffer. However, delayed implementation of fee changes due to the 60-day waiting period and OCC's preference to introduce such changes at the beginning of the month increase the risk of an inaccurate fee calculation, which could in turn result in OCC collecting inadequate resources to cover its operating expenses and maintain the Buffer.

The Commission believes that setting clearing fees based on more current information would allow OCC to more accurately set and collect fees necessary to support its operations, and promote the prompt and accurate clearance and settlement of securities transactions. The Commission further believes that accurate fee calculations supports the protection of investors and the public by protecting participants from large and unexpected swings in fee levels resulting from fee schedules based upon stale and outdated information. While the proposed Fee Policy would shorten the notice period for implementation, the Commission believes that thirty days still provides sufficient notice for Clearing Members to make adjustments to their activity as a result of any impending fee change. Accordingly, the Commission finds that the proposed Fee

14 15 U.S.C. 78q-1(b)(3)(F).

15 17 CFR 240.17Ad-22(e)(21).

16 15 U.S.C. 78q-1(b)(3)(F).

Policy promotes the prompt and accurate settlement of securities transactions and protection of investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act.[17]

B. Consistency with Rule 17Ad-22(e)(21)

Rule 17Ad-22(e)(21) requires, in part, that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves.[18]

The Fee Policy requires OCC to set fees at levels designed to cover its operating expenses and to maintain the Buffer. As discussed above, the proposed Fee Policy would reduce the implementation period for fee changes from sixty to thirty days. The Commission believes the proposed change would enhance the efficiency and effectiveness of OCC's fee calculations by using more current expense and revenue information, thereby leading to more accurate fee projections. Improving the efficiency and effectiveness of OCC's fee calculation process ensures that OCC is able to cover its operating expenses and maintain the Buffer, while also reducing the possibility of large and unexpected swings in fees that could result from using stale and outdated information. Accordingly, the Commission finds that the proposed Fee Policy would enhance OCC's efficiency and effectiveness in setting accurate fees necessary to cover its operating expenses and the Buffer, thereby enhancing its efficiency and effectiveness to meet the requirements of its participants and the markets it serves, consistent with Rule 17Ad-22(e)(21).[19]

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17 15 U.S.C. 78q-1(b)(3)(F).

18 17 CFR 240.17Ad-22(e)(21).

19 Id.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed Fee Policy is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A of the Act[20] and Rule 17Ad-22(e)(21)[21] thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR-OCC-2018-001) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated Authority.[23]

Eduardo A. Aleman,
Assistant Secretary.

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20 In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

21 17 CFR 240.17Ad-22(e)(21).

22 15 U.S.C. 78s(b)(2).

23 17 CFR 200.30-3(a)(12).

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