

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47196; File No. SR-OCC-2002-20]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Alternative Schedule of Fees for Clearing Transactions in Security Futures

January 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 28, 2002, 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 parties.

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

The proposed rule change would provide for an alternative schedule of fees for clearing transactions in security futures. Markets for which OCC provides clearance and settlement services for security futures are permitted to elect either OCC's standard or alternative schedule of fees.

#### 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 these statements.<sup>2</sup>

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

The purpose of this proposed rule change is to amend OCC's schedule of fees to provide for an alternative, discounted fee schedule for clearing transactions in security futures. This proposed alternative fee schedule is based on the fees for clearing services contained in the Security Futures Agreement for Clearing and Settlement Services between OCC and OneChicago, LLC.<sup>3</sup> The alternative fee schedule is as follows:

(1) Trades with contracts of: (i) 1 to 500 contracts: \$0.07; (ii) 501 to 1,000 contracts: \$0.06; (iii) 1,001 to 2,000 contracts: \$0.05; and (iv) \$85.00 for transactions larger than 2,000 contracts.

(2) Associate clearinghouse cleared trades with contracts of: (i) 1 to 500 contracts: \$0.05; (ii) 501 to 1,000 contracts: \$0.0425; and (iii) 1,001 to 2,000 contracts: \$0.035; and (iv) \$61.00 for transactions larger than 2,000 contracts.

(3) Trades in new security futures product fee schedule:<sup>4</sup> (i) First calendar month traded: \$0.00; (ii) second calendar month traded: \$0.025, regardless of size; (iii) third calendar month traded: the lesser of the total at \$0.05/contract or \$85.00; and (iv) fourth calendar month reverts to applicable fee schedule as set forth above.

(4) Associate clearinghouse cleared trades in new security futures product fee schedule: (i) First calendar month traded: \$0.00; (ii) second calendar month traded: \$0.02, regardless of size; (iii) third calendar month traded: the lesser of the total at \$0.035/contract or \$61.00; and (iv) fourth calendar month reverts to applicable fee schedule as set forth above.

(5) Minimum monthly fee: \$200.

Markets trading security futures products can elect OCC's standard or alternative fee schedule. Fees are charged on a per-side basis. The minimum monthly clearing fee is \$200. Because clearing fees are discounted under the alternative schedule, fees collected under it are excluded from any other rebates or discounts offered by

<sup>3</sup> Securities Exchange Act Release No. 46653 (October 11, 2002), 67 FR 64689 (October 21, 2002) [File No. SR-OCC-2002-07].

<sup>4</sup> For purposes of this alternative security futures fee schedule, "new security futures product" does not include security futures products overlying additional underlying interests of the same general description as interests on which security futures products are then traded (e.g., additional stocks or additional narrow-based indexes) unless there are material differences, other than as to variable terms such as expiration months, in the terms of the security futures product itself.

OCC and from any year-end refund of clearing fees.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>5</sup> and the rules and regulations thereunder applicable to OCC because it establishes a reasonable alternative fee schedule to be charged for clearing transactions in security futures.

#### (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. OCC will notify the Commission of any written comments received by OCC.

#### 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)<sup>6</sup> of the Act and Rule 19b-4(f)(2)<sup>7</sup> promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by OCC. At any time within sixty days of the filing of such 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-OCC-2002-20. This file number should be included on the subject line if e-mail is used. To help us process and

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).