

Number SR-BATS-2012-040 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-BATS-2012-040. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 the Exchange. 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-BATS-2012-040 and should be submitted on or before November 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68025; File No. SR-OCC-2012-18]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reduce the Per Contract Clearing Fee for Routing Trades Executed in Accordance With the Options Order Protection and Locked/Crossed Market Plan to \$.01 Per Contract

October 10, 2012.

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 September 28, 2012, 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 substantially by OCC. OCC filed the proposal 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 proposed rule change from interested persons.

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

OCC proposes to reduce the per contract clearing fee for routing trades executed in accordance with the Options Order Protection and Locked/Crossed Market Plan ("Plan") to \$.01 per contract.

#### 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 such statements.<sup>5</sup>

<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> The Commission has modified the text of the summaries provided by OCC.

#### (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 set the per contract clearing fee for routing trades executed in accordance with the Plan at \$.01 per contract. (Such fee is identified as a "Linkage Fee" on OCC's Schedule of Fees).

OCC calculates clearing fees for valid trades using its fee schedule, which takes into consideration the type of trade, size of the trade, and any new product discounts that may be applicable. In 2009, OCC's participant exchanges created the Plan, which was designed to promote fair markets by ensuring that public customer orders receive the best price available across participating exchanges. If an exchange receiving a customer option order is not at the National Best Bid/Offer ("NBBO"), the exchange will use a private routing broker to send the order to an exchange at the NBBO. Once the order is filled at the away exchange, the routing broker assumes the other side of the trade at the NBBO and fills the original customer order at the originating exchange. The routing broker in this situation essentially has executed a "scratch trade"<sup>6</sup> across exchanges ("Routed Broker Scratch Trade"). Such trades are currently subject to OCC's standard fee schedule even though they may be considered scratch trades that serve to facilitate fair and orderly markets.

Conversely, trades originated by market makers or specialists are eligible for a reduction in fees if they deemed "scratch trades" ("Market Maker/Specialist Scratch Trades"). OCC considers Market Maker/Specialist Scratch Trades to be the same day purchase and sale of identical option contracts in the same quantity and price by a market maker on the same exchange or across exchanges. Such trades are subject to a reduced clearing fee of \$.01 per contract in recognition of a market maker's obligation to continuously maintain a fair and orderly market.

In response to a request from its participant exchanges, OCC determined that the same \$.01 per contract Market Maker/Specialist Scratch Trade fee should apply to Routed Broker Scratch Trades since the two trades are both "scratch trades" that facilitate fair and orderly markets. OCC proposes to

<sup>6</sup> A purchase and sale of the same securities, at the same quantity and price, and at or around the same time (e.g., one day).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

amend its Schedule of Fees so that it may charge the same, \$.01 per contract for fee, for both Routed Broker Scratch Trades and Market Maker/Specialist Scratch Trades.

The changes to OCC's billing system that are necessary to implement the proposed revision to the Schedule of Fees would be installed in 2013. Prior to such installation date, OCC would manually calculate the difference between the clearing fees determined by its billing system for clearly identifiable routing trades versus those provided for in the Schedule of Fees and credit the excess of such fees on a quarterly basis to the clearing member that acts as or otherwise represents the routing broker.

\* \* \* \* \*

The proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934, as amended (the "Act"), because it reduces the clearing fee applied to Routed Broker Scratch Trades so that it is equivalent to the rate applied to Market Maker/Specialist Scratch Trades. As a result, the proposed change charges the same fee rate for analogous trades, thereby providing for the equitable application of fees. The proposed rule change is not inconsistent with any rules of OCC, including any other rules proposed to be amended.

*(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 not necessary or appropriate in furtherance of the purposes of the Act.

*(C) Self-Regulatory Organization'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 filing pursuant to Section 19(b)(3)(A)(ii)<sup>7</sup> of the Act and Rule 19b-4(f)(2)<sup>8</sup> thereunder because it establishes or changes a due, fee, or other charge applicable only to a member. OCC will delay the implementation of the rule change until it is deemed certified under CFTC Regulation § 40.6. At any time within 60

days of the filing of such 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:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2012-18 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-OCC-2012-18. This file number should be included on the subject line if email 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Section, 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 filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site (<http://www.theocc.com/about/publications/bylaws.jsp>).

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-2012-18 and should be submitted on or before November 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68010; File No. SR-CBOE-2012-096]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Order Routing Rules**

October 9, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 4, 2012, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its order routing rules. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

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

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).