

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File Number SR-NYSEArca-2019-12 on the subject line.

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-NYSEArca-2019-12. 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 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2019-12 and should be submitted on or before April 10, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Eduardo A. Aleman,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85322; File No. SR-OCC-2019-001]

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

March 14, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 8, 2019, The Options Clearing Corporation ("OCC" or "Corporation") filed with the Securities and Exchange Commission ("SEC" or "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)³ of the Act and Rule 19b-4(f)(2)⁴ 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. 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 April 1, 2019, to implement an increase in clearing fees. OCC's Schedule of Fees is included in Exhibit 5 of the filing. Material proposed to be added to OCC's Schedule of Fees as currently in effect is underlined and material proposed to be deleted is marked in strikethrough text. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.⁵

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 effective April 1, 2019, to implement an increase in clearing fees. The proposed fee change is designed to enable OCC to accumulate capital to comply with Rule 17Ad-22(e)(15) under the Exchange Act, which requires OCC, in pertinent part, to "hold[] liquid net assets funded by equity to the greater of either (x) six months . . . current operating expenses, or (y) the amount determined by the Board of Directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and service . . ." and "[maintain[] a viable plan, approved by the Board of Directors and updated at least annually, for raising additional equity should its equity fall close to or below the amount required [to be held]."⁶

On February 13, 2019, the Commission issued an order disapproving OCC's rules concerning its

³⁴ 17 CFR 200.30-3(a)(12).

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

⁶ See 17 CFR 240.17Ad-22(e)(15).

plan to significantly increase OCC's capitalization ("Capital Plan").⁷ The Capital Plan provided for a capital contribution of \$150 million from OCC's five shareholder exchanges and an agreement for the shareholder exchanges to replenish OCC's capital up to another \$200 million if OCC's capital fell close to or below the amount OCC determined to be required by Rule 17Ad-22(e)(15).⁸ The Capital Plan also provided for fees to be set at a level sufficient to cover OCC's estimated operating expenses and any unexpected fluctuations in business capital needs or projected volume.

As a result of the Commission's disapproval order, OCC's By-Laws and Rules reverted back to their pre-Capital Plan state. Article IX, Section 9 of OCC's By-Laws, in its reverted and currently effective form, permits OCC to establish a fee structure to: (i) Cover operating expenses; (ii) maintain reserves as are deemed reasonably necessary by the Board of Directors ("Board") to provide facilities for the conduct of OCC's business; and (iii) accumulate such additional surplus as the Board may deem advisable to permit OCC to meet its obligations to Clearing Members and the general public.

Following the disapproval of the Capital Plan, OCC's shareholder exchanges unanimously agreed to allow OCC to retain \$40 million of the initial capital contribution on a temporary basis to ensure that OCC continues to maintain sufficient liquid net assets until such time as OCC is able to accumulate retained earnings sufficient to meet its anticipated cashflow needs

and the liquid net assets funded by equity requirement of Rule 17Ad-22(e)(15).⁹ OCC notes that the timing of the return of the remaining \$40 million to shareholder exchanges is dependent on a number of variable factors, such as the implementation of the proposed fee change describe herein, cleared product volume for the year 2019, and the potential for unanticipated expenses or cash outflows not currently known to OCC.

In light of the disapproval of the Capital Plan, and pursuant to the Board's authority under Article IX, Section 9 of OCC's By-Laws, OCC's Board has determined that it is necessary and advisable to increase OCC's clearing fees to generate sufficient revenue and maintain sufficient reserves to cover OCC's anticipated operating expenses and other expected cash outlays, including any unanticipated fluctuations in operating expenses, and accumulate sufficient liquid net assets in reserve to facilitate compliance with Rule 17Ad-22(e)(15)(ii)¹⁰ and ensure that OCC's liquid net assets do not fall close to or below the amount needed to comply therewith. Specifically, the Board believes that the proposed fee change is necessary and advisable to ensure that OCC maintains sufficient liquid net assets to maintain its target capital level above \$247 million throughout 2019. This target capital requirement was determined based on a number of considerations including: (i) A baseline amount that is the greater of six months of projected operating expenses or the amount determined to ensure a recovery

or orderly wind-down of critical operations and services; (ii) a value linked to OCC's risk of potential business or operational losses; and (iii) the level of annual expenses from OCC's budget (excluding one-time expenses). In determining the appropriate level of the proposed fee increase, OCC's Board considered quantitative analyses based on a number of assumptions and projections, including: (i) Projected average daily contract volumes consistent with the assumptions used in OCC's 2019 annual budget; (ii) projected expenses and known cash flows based on OCC's 2019 budget; (iii) an operating margin based on an analysis of five-year historical volumes; (iv) the retention of refund and dividend payments for 2018; (v) the retention of \$40 million of the initial capital contribution from the shareholder exchanges; and (vi) known capital needs to replace and modernize OCC's technology infrastructure.¹¹ OCC believes that these assumptions are both appropriate and reasonable for assessing its liquid net assets against its target capital requirement and determining the level of fees necessary to ensure that OCC continues to maintain liquid net assets in excess of that amount. Moreover, OCC and its Board believe that an increase in clearing fees is necessary and appropriate because there are no alternative means for OCC to increase its capital in a manner that is consistent with its existing By-Laws and Rules on a timely basis.¹²

OCC proposes to revise its Schedule of Fees as set forth below.¹³

Current fee schedule		Proposed fee schedule	
Trades with contracts of:	Current fee	Trades with contracts of:	Proposed fee
1-1100	\$0.050/contract	1-999	\$0.055/contract.
>1100	\$55/trade	>999	\$55/trade.

OCC proposes to modify its fee schedule to: (i) Increase its per contract clearing fee from \$0.050 to \$0.055 per contract and (ii) adjust the quantity of contracts at which the fixed, per trade clearing fee begins from greater than 1100 contracts per trade to greater than

999 contracts per trade. OCC proposes to make the fee change effective April 1, 2019, because OCC believes that this date is the first date that the industry could be prepared to process the new fee without disruption based on

consultations with market participants.¹⁴

Clearing Member Outreach

On February 25, 2019, OCC provided a written notification to its Clearing Members summarizing actions approved

⁷ See Securities Exchange Act Release No. 85121 (February 13, 2019), 84 FR 5157 (February 20, 2019) (SR-OCC-2015-02).

⁸ See Securities Exchange Act Release No. 74452 (March 6, 2015), 80 FR 13058 (March 12, 2015) (SR-OCC-2015-02) and Securities Exchange Act Release No. 77112 (February 11, 2016), 81 FR 8294 (February 18, 2016) (SR-OCC-2015-02).

⁹ 17 CFR 240.17Ad-22(e)(15).

¹⁰ 17 CFR 240.17Ad-22(e)(15)(ii).

¹¹ OCC has provided a summary of its analysis, including projected volumes, revenues, and capital reserves under the proposed fee change, in confidential Exhibit 3 of the filing.

¹² OCC notes that it is also in the process of developing a new plan for replenishing its capital as required under Rule 17Ad-22(e)(15)(iii). See 17 CFR 240.17Ad-22(e)(15)(iii). This replenishment plan would likely be subject to proposed rule change and advance notice filings with the Commission prior to implementation. Any revenue generated from the proposed fee increase in excess

of the amount required to meet OCC's operating expenses and target capital requirement may also be factored into OCC's proposed replenishment plan and help facilitate OCC's compliance with the requirements of Rule 17Ad-22(e)(15). See 17 CFR 240.17Ad-22(e)(15).

¹³ These changes are also reflected in Exhibit 5.

¹⁴ OCC notes that a mid-month change to clearing fees could introduce operational disruption to Clearing Members due to the impact on their billing processes.

by OCC's Board in response to the disapproval of the Capital Plan, which included, among other things, OCC's plan for returning the initial capital contribution of the shareholder exchanges, the temporary retention of \$40 million of the initial contribution, and the proposed fee increase described herein. On February 27, 2019, OCC published an Information Memo to all of its Clearing Members and exchanges notifying them of the proposed changes to the Schedule of Fees that would become effective as of April 1, 2019, subject to OCC completing its regulatory filing requirements.¹⁵ OCC also held a conference call with industry participants on March 1, 2019, to discuss these issues, including the proposed fee change. The feedback from this call regarding the fee change primarily consisted of questions concerning the length of time that the fee increase would need to be in place before OCC could reduce fees, but there were no specific objections to the fee increase raised during the call. Finally, OCC notes that the increase in clearing fees was unanimously approved by its Board of Directors, which is comprised of Member Directors representing over 50% of OCC's cleared volume and Exchange Directors representing over 80% of OCC's cleared volume.

(2) Statutory Basis

Section 17A(b)(3)(D) of the Act¹⁶ requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. OCC believes that the proposed fee change is reasonable because it is designed to generate sufficient revenue and accumulate sufficient reserves in the form of liquid net assets to cover OCC's operating expenses and address potential business or operational losses so that OCC can continue to meet its obligations as a systemically important financial market utility to Clearing Members and the general public if such losses were to materialize (including through a recovery or orderly wind-down of critical operations and services) and thereby facilitate compliance with certain requirements of Rule 17Ad-22(e)(15)(ii).¹⁷ As described above, OCC believes that the proposed fee change is necessary and advisable to ensure that OCC maintains sufficient liquid net assets to cover its \$247 million target capital requirement throughout 2019. In

determining the appropriate level of the proposed fee increase, OCC's Board considered quantitative analyses based on a number of assumptions and projections, including: (i) Projected average daily contract volumes consistent with the assumptions used in OCC's 2019 annual budget; (ii) projected expenses and known cash flows based on OCC's 2019 budget; (iii) an operating margin based on an analysis of five-year historical volumes; (iv) the retention of refund and dividend payments for 2018; (v) the retention of \$40 million of the initial capital contribution from the shareholder exchanges; and (vi) known capital needs to replace and modernize OCC's technology infrastructure. OCC believes that these assumptions are both appropriate and reasonable for assessing its liquid net assets against its target capital requirement and determining the level of fees necessary to ensure that OCC continues to maintain liquid net assets in excess of that amount. Moreover, OCC believes that the proposed increase in clearing fees is reasonable because it is the only way in which OCC can increase its capital as quickly as reasonably possible and in a manner that is consistent with its existing By-Laws and Rules. OCC also 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 transacting at a given level of contract volume. 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.¹⁸

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 Act¹⁹ 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.

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

Pursuant to Section 19(b)(3)(A)(ii)²⁰ of the Act, and Rule 19b-4(f)(2) thereunder,²¹ 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.²²

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. Please include File Number SR-OCC-2019-001 on the subject line.

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-2019-001. 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

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²¹ 17 CFR 240.19b-4(f)(2).

²² Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

¹⁵ See OCC Information Memo #44631 published on February 27, 2019, available on OCC's public website: <https://www.theocc.com/webapps/infomemos>.

¹⁶ 15 U.S.C. 78q-1(b)(3)(D).

¹⁷ 17 CFR 240.17Ad-22(e)(15)(ii).

¹⁸ 15 U.S.C. 78q-1(b)(3)(D).

¹⁹ 15 U.S.C. 78q-1(b)(3)(I).

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 <https://www.theocc.com/about/publications/bylaws.jsp>. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2019-001 and should be submitted on or before April 10, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Eduardo A. Aleman,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85317; File No. SR-PEARL-2019-08]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule

March 14, 2019.

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 March 1, 2019, MIAX PEARL, LLC ("MIAX PEARL" or "Exchange") filed with the Securities and Exchange Commission

("Commission") a 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 is filing a proposal to amend the MIAX PEARL Fee Schedule (the "Fee Schedule") to modify certain of the Exchange's system connectivity fees.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/pearl> at MIAX PEARL's principal office, 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 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding connectivity to the Exchange. Specifically, the Exchange proposes to amend Sections 5a) and b) of the Fee Schedule to increase the network connectivity fees for the 1 Gigabit ("Gb") fiber connection, the 10Gb fiber connection, and the 10Gb ultra-low latency ("ULL") fiber connection, which are charged to both Members³ and non-Members of the Exchange for connectivity to the Exchange's primary/secondary facility. The Exchange also proposes to increase the network connectivity fees for the 1Gb and 10Gb fiber connections for connectivity to the Exchange's disaster

³ The term "Member" means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange's Rules for purposes of trading on the Exchange as an "Electronic Exchange Member" or "Market Maker." Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

recovery facility. Each of these connections are shared connections, and thus can be utilized to access both the Exchange and the Exchange's affiliate, Miami International Securities Exchange, LLC ("MIAX Options"). These proposed fee increases are collectively referred to herein as the "Proposed Fee Increases."

The Exchange initially filed the Proposed Fee Increases on July 31, 2018, designating the Proposed Fee Increases effective August 1, 2018.⁴ The First Proposed Rule Change was published for comment in the **Federal Register** on August 13, 2018.⁵ The Commission received one comment letter on the proposal.⁶ The Proposed Fee Increases remained in effect until they were temporarily suspended pursuant to a suspension order (the "Suspension Order") issued by the Commission on September 17, 2018.⁷ The Suspension Order also instituted proceedings to determine whether to approve or disapprove the proposed rule change.⁸

The Healthy Markets Letter argued that the Exchange did not provide sufficient information in its filing to support a finding that the proposal is consistent with the Act. Specifically, the Healthy Markets Letter objected to the Exchange's reliance on the fees of other exchanges to demonstrate that its fee increases are consistent with the Act. In addition, the Healthy Markets Letter argued that the Exchange did not offer any details to support its basis for asserting that the Proposed Fee Increases are consistent with the Act.

On October 5, 2018, the Exchange withdrew the First Proposed Rule Change.⁹ The Exchange refiled the Proposed Fee Increases on September 18, 2018, designating the Proposed Fee Increases immediately effective.¹⁰ The Second Proposed Rule Change was published for comment in the **Federal Register** on October 10, 2018.¹¹ The Commission received one comment

⁴ See Securities Exchange Act Release No. 83785 (August 7, 2018), 83 FR 40101 (August 13, 2018) (SR-PEARL-2018-16). (The "First Proposed Rule Change").

⁵ *Id.*

⁶ See Letter from Tyler Gellasch, Executive Director, The Healthy Markets Association, to Brent J. Fields, Secretary, Commission, dated September 4, 2018 ("Healthy Markets Letter").

⁷ See Securities Exchange Act Release No. 34-84177 (September 17, 2018).

⁸ *Id.*

⁹ See Securities Exchange Act Release No. 84397 (October 10, 2018), 83 FR 52272 (October 16, 2018) (SR-PEARL-2018-16).

¹⁰ See Securities Exchange Act Release No. 84358 (October 3, 2018), 83 FR 51022 (October 10, 2018) (SR-PEARL-2018-19). (The "Second Proposed Rule Change").

¹¹ *Id.*

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.