

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-CboeEDGX-2020-010. 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-CboeEDGX-2020-010, and should be submitted on or before March 27, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88310; File No. SR-OCC-2020-001]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Modify the Fees for Exercise Notices Submitted After the Deadlines and To Change the Deadline for Submitting a Late Exercise Notice on Non-Expiration Dates

March 2, 2020.

I. Introduction

On January 14, 2020, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2020-001 ("Proposed Rule Change") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4² thereunder to modify the fee imposed for submitting a late exercise notice and change the deadline by which such a notice must be submitted on non-expiration dates.³ The Proposed Rule Change was published for public comment in the **Federal Register** on January 30, 2020.⁴ The Commission has received no comments regarding the Proposed Rule Change. This order approves the Proposed Rule Change.

II. Background

OCC's rules require Clearing Members to submit option exercise notices within the timeframes prescribed by OCC. OCC's rules provide for an exception process to accommodate exercise notices submitted outside of such timeframes solely for the purpose of correcting a bona fide error on the part of a Clearing Member or customer.⁵ OCC's process for accommodating late exercise notices includes, among other things, a late filing fee and a final deadline by which any such notice must be received by OCC. OCC proposes to amend its Rules 801 and 805 to modify the fees for exercise notices submitted after the deadlines by which all option exercise notices must be submitted and to change the deadline for submitting a

late exercise notice on non-expiration dates.⁶

OCC's Rule 801 governs the exercise of an options on days other than the option's expiration date. OCC's Rule 805 governs the exercise of an option on the option's expiration date. Under OCC's Rule 801(d), the filing of a late exercise notice by a Clearing Member may be deemed a violation of OCC's procedures and may subject the Clearing Member to disciplinary action. Additionally, under OCC's Rule 801(d) and Rule 805(g), a Clearing Member submitting a late exercise notice is liable to OCC for a \$75,000 fee per line item listed on a late exercise notice.⁷

OCC observed that the Clearing Members submitting late exercise notices in 2017 and 2019 captured dividends on the securities underlying the late exercised options, thereby securing the financial gains associated with such captured dividends.⁸ Further, OCC observed that the amount of dividends captured ranged from \$93,600 to \$436,800.⁹ OCC has previously stated that the late exercise fee is intended as an incentive for Clearing Members to be especially diligent in processing exercise notices and to improve back office procedures while at the same time preserving their ability to correct bona fide operational errors.¹⁰

On November 9, 2017, OCC discussed late exercise notices submitted in 2017 at its OCC Roundtable, an OCC-sponsored advisory group comprised of representatives from OCC's participant exchanges, a cross-section of OCC Clearing Members, and OCC staff.¹¹ The OCC Roundtable participants noted the dollar amount at issue in connection with late exercises received in 2017, which reflected the amount of dividends received by the person submitting the late exercise as a result of receiving the underlying shares. As a result of these discussions, Roundtable participants agreed that an increase in the late exercise fee from the current \$75,000 fee per line item to \$250,000 fee per line item would be appropriate and in a range to incentivize Clearing

⁶ OCC did not propose to change deadlines related to the late exercise of options on an option's expiration date.

⁷ A line item is an exercise instruction which includes the account, series, and quantity to be exercised.

⁸ See Notice of Filing, 85 FR at 5492.

⁹ See Notice of Filing, 85 FR at 5492, n. 10. OCC also stated that the amount of late exercises notices received since 2017 was significantly more than the preceding seven years. See Notice of Filing, 85 FR at 5492.

¹⁰ See Securities Exchange Act Release No. 57584 (Mar. 31, 2008), 73 FR 18844 (Apr. 7, 2008) (SR-OCC-2007-016); Notice of Filing, 85 FR at 5492.

¹¹ See Notice of Filing, 85 FR at 5492.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing *infra* note 4, at 85 FR 5491.

⁴ Securities Exchange Act Release No. 88030 (Jan. 24, 2020), 85 FR 5491 (Jan. 30, 2020) (SR-OCC-2020-001) ("Notice of Filing").

⁵ See OCC Rules 801 and 805, available at https://www.theocc.com/components/docs/legal/rules_and_bylaws/occ_rules.pdf.

¹⁹ 17 CFR 200.30-3(a)(12).

Members to be especially diligent in processing exercise notices while at the same time still allowing firms to correct bona fide errors.¹²

OCC's Rule 801(d) defines the deadline for submitting late exercise notices for exercises other than at expiration. Under its current rules, OCC will not accept a late exercise notice received after 6:30 a.m. CT, and Clearing Members assigned late exercises must be notified by 8:00 a.m. CT.¹³ OCC's rules, therefore, may provide OCC with as little as 90 minutes to accommodate an exception to OCC's standard option exercise processes. OCC's exception process requires the (1) review of Clearing Member positions, (2) escalation of the request to submit a late exercise notice to senior management, (3) random assignment of late exercised positions to Clearing Members, and (4) communication to assigned Clearing Members.¹⁴ OCC represented that the 90-minute period from 6:30 a.m. to 8:00 a.m. CT was a narrow window for OCC staff to complete these steps, which are necessary to properly process late exercises and assignments, without delays.¹⁵ As a result, in addition to increasing the late exercise fee as discussed above, OCC proposes to change the deadline for submission of late exercises to 6:00 a.m. CT to provide an additional 30 minutes of processing time. The OCC Roundtable discussed the proposal described above and agreed that it would be appropriate and in a range to incentivize Clearing Members to be especially diligent in processing exercise notices while at the same time still allowing firms to correct bona fide errors.¹⁶

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act 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 Exchange Act and the rules and regulations thereunder applicable to such organization.¹⁷ After carefully considering the Proposed Rule Change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission

finds that the proposal is consistent with Sections 17A(b)(3)(D) and 17A(b)(3)(F) of the Exchange Act.¹⁸

A. Consistency With Section 17A(b)(3)(D) of the Exchange Act

Section 17A(b)(3)(D) of the Exchange Act requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.¹⁹ Based on its review of the record, the Commission believes that the proposed increase in the late exercise notice fee is reasonable for the reasons described below.

As described above, under Rules 801(d) and 805(g), the filing of a late exercise notice may be deemed by OCC to be a violation of OCC's procedures and could subject the Clearing Member who submits such a filing to disciplinary action, as well as a \$75,000 late exercise fee. At the same time, OCC's Rules provide for a late exercise process designed to allow OCC to accommodate exceptions to its rules governing the option exercise process for bona fide errors. As noted above, OCC observed that, despite subjecting Clearing Members to the late exercise fee and potentially subjecting them to disciplinary action for violating OCC's procedures, Clearing Members were nevertheless filing late exercise notices, thereby securing the financial gains associated with the captured dividends on the securities underlying the late exercised options.

OCC proposes to increase the late exercise fee from \$75,000 to \$250,000 per line item. As noted above, OCC's determination to increase the late exercise fee by this amount was based on discussions at the 2017 OCC Roundtable among representatives from OCC's participant exchanges, a cross-section of OCC Clearing Members, and OCC staff regarding a potential increase in the amount of the late exercise fee that would be appropriate and in a range to incentivize Clearing Members to be especially diligent in processing exercise notices while at the same time still allowing firms to correct bona fide errors.²⁰ As part of those discussions, Roundtable participants reviewed the dollar amounts at issue in connection with late exercises received in 2017, which reflected the amount of dividends received by the person submitting the late exercise as a result of receiving the underlying shares. Based on these discussions, the

Roundtable participants agreed that an increase in the late exercise fee from the current \$75,000 fee per line item to \$250,000 fee per line item would be appropriate and in a range to accomplish the goals noted above.

The Commission understands that, as part of OCC's exception process, one of the purposes of the late exercise fee is to incent Clearing Members to be especially diligent in complying with OCC's Rules regarding processing exercise notices, while at the same time preserving the ability of Clearing Members to correct bona fide operational errors in those relatively rare instances when such a need arises.²¹ To that end, as noted above, OCC coordinated with relevant stakeholders to discuss the relevant information and determine the level of fees related to late exercise notices that would strike an appropriate balance between these goals. The Commission views OCC's efforts in this regard as reasonable. Likewise, given that dividends captured through the late exercise process in 2017 and 2019 ranged from \$93,600 to \$436,800, the Commission believes that OCC's proposal to adopt the consensus recommendation from the 2017 OCC Roundtable to raise the late exercise fee to \$250,000 is equally reasonable.

Taken together, and given the purpose of the late exercise fee and the financial incentives represented by such dividends, the Commission believes that the proposed increase to \$250,000 per line item for late exercise notices is reasonable and, therefore, is consistent with the requirements of Section 17A(b)(3)(D) of the Exchange Act.²²

B. Consistency With Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.²³ Based on its review of the record, the Commission believes that the proposed change to the deadline for submitting late exercise notices is consistent with the promotion of prompt and accurate clearance and settlement of securities transactions for the reasons described below.

As described above, the late exercise notice process is designed to accommodate exceptions for bona fide errors to the routine options exercise

¹² See Notice of Filing, 85 FR at 5492.

¹³ See OCC Rule 801(d)(2), available at https://www.theocc.com/components/docs/legal/rules_and_bylaws/occ_rules.pdf.

¹⁴ See Notice of Filing, 85 FR at 5492.

¹⁵ See Notice of Filing, 85 FR at 5492.

¹⁶ See Notice of Filing, 85 FR at 5492.

¹⁷ 15 U.S.C. 78s(b)(2)(C).

¹⁸ 15 U.S.C. 78q-1(b)(3)(D) and 15 U.S.C. 78q-1(b)(3)(F).

¹⁹ 15 U.S.C. 78q-1(b)(3)(D).

²⁰ See Notice of Filing, 85 FR at 5492.

²¹ See Securities Exchange Act Release No. 57584 (Mar. 31, 2008), 73 FR 18844 (Apr. 7, 2008) (SR-OCC-2007-016); Notice of Filing, 85 FR at 5492.

²² 15 U.S.C. 78q-1(b)(3)(D).

²³ 15 U.S.C. 78q-1(b)(3)(F).

process. OCC's current rules may provide as little as 90 minutes to process late exercise notices. Processing such notices requires a number of procedural steps, including the notification of Clearing Members affected by the random assignment of late exercises. The Commission believes that successful and timely completion of exercise and assignment processes is important to the prompt and accurate settlement of securities transactions. The Commission further believes that providing an additional 30 minutes to facilitate the processing of late exercises and assignments without delay would promote the prompt and accurate clearance and settlement of securities transactions and is, therefore, consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.²⁴

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act²⁵ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,²⁶ that the Proposed Rule Change (SR–OCC–2020–001) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04576 Filed 3–5–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88308; File No. SR–ICEEU–2020–003]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission or Advance Notice Relating to the ICE Clear Europe Rules and Procedures

March 2, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,²

²⁴ 15 U.S.C. 78q–1(b)(3)(F).

²⁵ In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

notice is hereby given that on February 18, 2020, ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II and III below, which Items have been prepared by ICE Clear Europe. 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, Security-Based Swap Submission, or Advance Notice

ICE Clear Europe Limited proposes to revise its Clearing Rules (the “Rules”),³ the Standard Terms contained in the annexes to the Rules, the Clearing Procedures, Finance Procedures, Delivery Procedures, CDS Procedures, FX Procedures, Complaint Resolution Procedures, Business Continuity Procedures, Membership Procedures, and General Contract Terms (collectively, the “Amended Documents”) to make various updates and enhancements.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

(a) Purpose

ICE Clear Europe is submitting proposed amendments to the Amended Documents that are intended to make a variety of improvements and changes, including (1) to enhance the customer documentation framework for Non-FCM/BD Clearing Members to facilitate default management by the Clearing House, (2) to adopt an “externalised payments mechanism” to facilitate making certain payments to and from Clearing Members outside of the standard net settlement process, (3) to

³ Capitalized terms used but not defined herein have the meanings specified in the Rules.

make certain amendments to the variation and mark-to-market margin settlement process (and related calculations) in order to facilitate treatment of such margin as a settlement payment rather than collateral for purposes of Clearing Member capital calculations, (4) to revise certain provisions relating to option settlement to enhance clarity and reflect operational procedures, (5) to revise certain disciplinary and complaints procedures, (6) to add certain provisions relating to compliance with applicable U.S. tax requirements, (7) to make certain other default management enhancement and clarifications, (8) to update and clarify various aspects of the Delivery Procedures and (9) to make certain other drafting improvements and clarifications, in each case as described in further detail herein.

Specifically, ICE Clear Europe proposes to make amendments to Parts 1, 2, 3, 4, 5, 7, 8, 9, 10 and 12 of the Rules, the Customer-Clearing Member Standard Terms contained in the annexes to the Rules, and the Clearing Procedures, Finance Procedures, Delivery Procedures, CDS Procedures, Complaint Resolution Procedures, Business Continuity Procedures, Membership Procedures and General Contract Terms. The text of the proposed Rule and Procedure amendments is attached [sic] in Exhibits 5A–5J, with additions underlined and deletions in strikethrough text. The proposed Rule and Procedure amendments are described in detail as follows.

(i) Customer Documentation Framework

Changes have been proposed to strengthen the legal foundations for the Standard Terms, which form part of the ICE Clear Europe customer documentation framework for Non-FCM/BD Clearing Members.⁴ The existing Standard Terms promote post-default porting in the case of a Non-FCM/BD Clearing Member default through contractual provisions that bind Customers and Clearing Members. These provisions are designed to limit interference with the porting process and give additional comfort that margin is transferred by Customers to Clearing Members on terms that allow usage and porting of margin and positions. Purported close-out actions by the Customer against a defaulting Clearing Member prior to porting are also restricted, so that all terminations and re-establishments of cleared contracts occur at the same time and at the same

⁴ The Standard Terms do not apply to FCM/BD Clearing Members and their customers.