



February 11, 2020

VIA ELECTRONIC MAIL

Christopher J. Kirkpatrick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Rule Filing SR-OCC-2020-001 Rule Certification

Dear Secretary Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and Commodity Futures Trading Commission (“CFTC”) Regulation 40.6, enclosed is a copy of the above-referenced rule filing submitted by The Options Clearing Corporation (“OCC”). The rule filing would amend Rules 801 and 805 to modify the fees for exercise notices submitted after the deadlines and amend Rule 801 to change the deadline for submitting a late exercise notice on non-expiration dates. OCC intends to implement this rule change no sooner than 10 business days following receipt of the rule filing by the CFTC or the date the proposed rule is approved by the Securities and Exchange Commission (“SEC”) or otherwise becomes effective under the Securities Exchange Act of 1934 (“Exchange Act”). This rule filing has been, or is concurrently being, submitted to the SEC under the Exchange Act.

In conformity with the requirements of Regulation 40.6(a)(7), OCC states the following:

Explanation and Analysis

The purpose of this rule filing is to: (1) amend Rule 801 for exercises on non-expiration dates and Rule 805 for exercises on expiration dates to modify the fee applied to exercise notices that are submitted to OCC after the start of critical processing (“late exercise notices”), and (2) amend Rule 801 to change the deadline by which late exercise notices are to be submitted to OCC for exercises on non-expiration dates from 6:30 a.m. CT (7:30 a.m. ET) to 6:00a.m. CT (7:00 a.m. ET).

Background

Rule 801 addresses the exercise of options other than at expiration. Subject to certain conditions, Rule 801(d) grants the Chief Executive Officer, Chief Operating Officer, or any delegate of such officer the discretion to permit a Clearing Member to file an exercise notice after the

prescribed deadline solely for the purpose of correcting a bona fide error on the part of the Clearing Member or a customer.¹ However, the requesting Clearing Member must pay OCC a \$75,000 fee per line item for a late exercise notice.² Similarly, Rule 805, which addresses exercises on expiration, imposes a \$75,000 fee per line item on a Clearing Member that submits an exercise notice after the prescribed deadline.³

Rule 801(d) further provides that the deadline for submitting late exercise notices for exercises other than at expiration is 6:30 a.m. CT, and that OCC will notify Clearing Members with short positions that they have been assigned a late exercise notice by 8:00 a.m. CT.⁴

Discussion

In 2008, OCC raised the late exercise fee from \$20,000 to \$75,000 per line item in Rules 801 and 805 in response to the increased amount of late exercise notices it had received in the prior two years.⁵ As noted in connection with that change, the late exercise fee is intended as an incentive for OCC Clearing Members to be especially diligent in processing exercise notices and to improve back office procedures, while at the same time while preserving their ability to correct bona fide operational errors. OCC believes that the increase achieved its intended purpose at the time of improving Clearing Members' processing proficiency and significantly reduced the amount of late exercise notices.

¹ The current deadline for submitting exercise notices other than at expiration is 6:00 p.m. CT.

² A line item is an exercise instruction which includes the account, series, and quantity to be exercised.

³ The current deadline for submitting exercise notices at expiration is 8:00 p.m. CT on monthly standard Friday expirations, 7:00 p.m. CT on weekly Friday expirations, and 6:30 p.m. CT on Monday and Wednesday expirations. Any exercise notice submitted after these expiration deadlines until the "expiration time" of the option, which is currently 10:59 p.m. CT as set forth in Article 1, Section 1(E)(23) of the By-Laws, would be treated as a late exercise notice. Rule 805(d)(2) also provides for the ability to submit a notice to not exercise an in-the-money option (i.e., a contrary exercise). OCC does not allow for the submission of contrary exercise notices after these expiration deadlines.

⁴ As discussed below, OCC is proposing to change the deadline for submitting late exercises under Rule 801(d). OCC is not, however, proposing to make any changes to the deadline for submitting late exercises under Rule 805 (i.e., the expiration time for an option).

⁵ See Exchange Act Release No. 59046 (December 3, 2008), 73 FR 75486 (December 11, 2008) (SR-OCC-2007-16).

In 2017, OCC received four late exercise notices.⁶ This amount was significantly more than the four late exercise notices OCC had received in the seven years preceding 2017, and it prompted OCC to review the late exercise fee again. OCC discussed the issue on November 9, 2017 with the OCC Roundtable, which is an OCC-sponsored advisory group comprised of representatives from OCC's participant exchanges, a cross-section of OCC clearing members, and OCC staff. These discussions noted the dollar amount at issue in connection with each of the four late exercises in 2017, which reflected the amount of dividends received by the person submitting the late exercise as a result of receiving the underlying shares. These dividend amounts ranged from \$188,000 to \$375,810.⁷ As a result of these discussions, OCC's Roundtable agreed that it was appropriate to increase the late exercise fee to \$250,000 per line item for late exercise notices submitted under Rules 801 and 805. Consistent with the purposes of the late exercise fee noted above, the Roundtable believed this amount would be in a range to incent OCC Clearing Members to be especially diligent in processing exercise notices while at the same time still allowing firms to correct bona fide errors.

In connection with the four late exercise notices received in 2017, OCC also reviewed its procedures for processing a late exercise. OCC Rule 801(d) provides that the current deadline for a Clearing Member to formally request a late exercise for an exercise on a non-expiration date is 6:30 a.m. CT and that OCC must notify the assigned Clearing Members by 8:00 a.m. CT of the late exercise. Given the compressed timeframe in which to process a late exercise (i.e., 6:30 a.m. CT to 8:00 a.m. CT) and that they are an exception to the normal processing routine, OCC's procedures for processing a late exercise involve significant resources. They include a review of the positions of the Clearing Member, escalation of the request to senior management, random assignment of the exercise to Clearing Members holding the short position, and a detailed communication to those assigned Clearing Members. The late exercises in 2017 have shown the 6:30 to 8:00 a.m. CT window is a narrow window for OCC staff to properly process the exercise and assignments without delays, and OCC therefore believes it needs another 30 minutes to process the late exercises. Accordingly, OCC is proposing to change the deadline for the submission of late exercises to 6:00 a.m. CT from the current 6:30 a.m. CT deadline. OCC also discussed this proposal with the OCC Roundtable in connection with discussions noted above and they agreed with it.

OCC reviewed the derivatives clearing organization ("DCO") core principles ("Core Principles") as set forth in the Act. During this review, OCC identified the following Core Principle as potentially being impacted:

⁶ Until recently, OCC had not received a late exercise notice from a Clearing Member since these ones in 2017. On December 14, 2019, OCC received three late exercise notices from a Clearing Member.

⁷ The dividend amounts for the recent December 14, 2019 late exercise notices ranged from \$93,600 to \$436,800.

Participant and product eligibility. OCC believes that implementing the proposed rule change will be consistent with Core Principle C governing participant and product eligibility in DCOs. CFTC Regulation 39.12(a)(3) provides that, “[t]he participation requirements shall require clearing members to have adequate operational capacity to meet obligations arising from participation in the derivatives clearing organization,” and that “[t]he requirements shall include, but are not limited to: the ability to process expected volumes and values of transactions cleared by a clearing member within required time frames, including at peak times and on peak days.” OCC believes that the proposed rule change is consistent with this provision because it would provide an incentive for Clearing Members to improve back office processing with respect to identifying and handling positions for which an exercise notice is to be submitted, while preserving their ability to correct bona fide operational errors. Similarly, providing OCC an additional 30 minutes in which to process a late exercise notice is consistent with promoting the prompt and accurate clearance and settlement of securities transactions by being designed to help OCC process such notices without delays.

In this regard, the proposed changes would further OCC’s compliance with Core Principle C.

Opposing Views

No opposing views were expressed related to the rule amendments.

Notice of Pending Rule Certification

OCC hereby certifies that notice of this rule filing has been be given to Clearing Members of OCC in compliance with Regulation 40.6(a)(2) by posting a copy of the submission on OCC’s website concurrently with the filing of this submission.

Christopher J. Kirkpatrick
February 11, 2020
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Certification

OCC hereby certifies that the rule set forth at Item 1 of the enclosed filing complies with the Act and the CFTC's regulations thereunder.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Joseph P. Corcoran". The signature is written in a cursive, flowing style.

Joseph P. Corcoran
Vice President, Legal

Enclosure

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 23	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2020 - * 001 Amendment No. (req. for Amendments *)
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Filing by Options Clearing Corporation
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)		

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed rule change to modify The Options Clearing Corporation's fees for exercise notices submitted after the deadlines and to change the deadline for submitting a late exercise notice on non-expiration dates

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Joseph Last Name * Corcoran
 Title * Vice President, Legal, Government Relations
 E-mail * JCorcoran@theocc.com
 Telephone * (202) 971-7231 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)
 Date 01/14/2020 Director, Senior Counsel
 By Mark C. Brown
 (Name *)
 Mark Brown, mcbrown@theocc.com

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 19b-4

Proposed Rule Change
by

THE OPTIONS CLEARING CORPORATION

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

Item 1. Text of the Proposed Rule Change

This proposed rule change by The Options Clearing Corporation (“OCC”) would amend Rules 801 and 805 to modify the fees for exercise notices submitted after the deadlines and to amend Rule 801 to change the deadline for submitting a late exercise notice on non-expiration dates. The proposed changes to OCC’s Rules are attached hereto as Exhibit 5. Material proposed to be added to OCC’s Rules as currently in effect is marked by underlining and material proposed to be deleted is marked with strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the By-Laws and Rules.¹

Item 2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved for filing with the Commission by OCC’s Board of Directors (“Board”) at a meeting held on December 13, 2017.

Questions should be addressed to Joseph Corcoran, Vice President, Legal, Government Relations, at (202) 971-7231.

Item 3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**A. Purpose**

The purpose of this rule filing is to: (1) amend Rule 801 for exercises on non-expiration dates and Rule 805 for exercises on expiration dates to modify the fee applied to exercise notices that are submitted to OCC after the start of critical processing (“late exercise notices”), and (2) amend Rule 801 to change the deadline by which late exercise notices are to be submitted to

¹ OCC’s By-Laws and Rules can be found on OCC’s public website: <http://optionsclearing.com/about/publications/bylaws.jsp>.

OCC for exercises on non-expiration dates from 6:30a.m. CT (7:30a.m. ET) to 6:00a.m. CT (7:00a.m. ET).

Background

Rule 801 addresses the exercise of options other than at expiration. Subject to certain conditions, Rule 801(d) grants the Chief Executive Officer, Chief Operating Officer, or any delegate of such officer the discretion to permit a Clearing Member to file an exercise notice after the prescribed deadline solely for the purpose of correcting a bona fide error on the part of the Clearing Member or a customer.² However, the requesting Clearing Member must pay OCC a \$75,000 fee per line item for a late exercise notice.³ Similarly, Rule 805, which addresses exercises on expiration, imposes a \$75,000 fee per line item on a Clearing Member that submits an exercise notice after the prescribed deadline.⁴

Rule 801(d) further provides that the deadline for submitting late exercise notices for exercises other than at expiration is 6:30 a.m. CT, and that OCC will notify Clearing Members with short positions that they have been assigned a late exercise notice by 8:00 a.m. CT.⁵

² The current deadline for submitting exercise notices other than at expiration is 6:00 p.m. CT.

³ A line item is an exercise instruction which includes the account, series, and quantity to be exercised.

⁴ The current deadline for submitting exercise notices at expiration is 8:00 p.m. CT on monthly standard Friday expirations, 7:00 p.m. CT on weekly Friday expirations, and 6:30 p.m. CT on Monday and Wednesday expirations. Any exercise notice submitted after these expiration deadlines until the “expiration time” of the option, which is currently 10:59 P.M. CT as set forth in Article 1, Section 1(E)(23) of the By-Laws, would be treated as a late exercise notice. Rule 805(d)(2) also provides for the ability to submit a notice to not exercise an in-the-money option (i.e., a contrary exercise). OCC does not allow for the submission of contrary exercise notices after these expiration deadlines.

⁵ As discussed below, OCC is proposing to change the deadline for submitting late exercises under Rule 801(d). OCC is not, however, proposing to make any changes to the deadline for submitting late exercises under Rule 805 (i.e., the expiration time for an option).

Discussion

In 2008, OCC raised the late exercise fee from \$20,000 to \$75,000 per line item in Rules 801 and 805 in response to the increased amount of late exercise notices it had received in the prior two years.⁶ As noted in connection with that change, the late exercise fee is intended as an incentive for OCC Clearing Members to be especially diligent in processing exercise notices and to improve back office procedures, while at the same time while preserving their ability to correct bona fide operational errors. OCC believes that the increase achieved its intended purpose at the time of improving Clearing Members' processing proficiency and significantly reduced the amount of late exercise notices.

In 2017, OCC received four late exercise notices.⁷ This amount was significantly more than the four late exercise notices OCC had received in the seven years preceding 2017, and it prompted OCC to review the late exercise fee again. OCC discussed the issue on November 9, 2017 with the OCC Roundtable, which is an OCC-sponsored advisory group comprised of representatives from OCC's participant exchanges, a cross-section of OCC clearing members, and OCC staff. These discussions noted the dollar amount at issue in connection with each of the four late exercises in 2017, which reflected the amount of dividends received by the person submitting the late exercise as a result of receiving the underlying shares. These dividend amounts ranged from \$188,000 to \$375,810.⁸ As a result of these discussions, OCC's

⁶ See Exchange Act Release No. 59046 (December 3, 2008), 73 FR 75486 (December 11, 2008) (SR-OCC-2007-16).

⁷ Until recently, OCC had not received a late exercise notice from a Clearing Member since these ones in 2017. On December 14, 2019, OCC received three late exercise notices from a Clearing Member.

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Roundtable agreed that it was appropriate to increase the late exercise fee to \$250,000 per line item for late exercise notices submitted under Rules 801 and 805. Consistent with the purposes of the late exercise fee noted above, the Roundtable believed this amount would be in a range to incent OCC Clearing Members to be especially diligent in processing exercise notices while at the same time still allowing firms to correct bona fide errors.

In connection with the four late exercise notices received in 2017, OCC also reviewed its procedures for processing a late exercise. OCC Rule 801(d) provides that the current deadline for a Clearing Member to formally request a late exercise for an exercise on a non-expiration date is 6:30 a.m. CT and that OCC must notify the assigned Clearing Members by 8:00 a.m. CT of the late exercise. Given the compressed timeframe in which to process a late exercise (i.e., 6:30 a.m. CT to 8:00 a.m. CT) and that they are an exception to the normal processing routine, OCC's procedures for processing a late exercise involve significant resources. They include a review of the positions of the Clearing Member, escalation of the request to senior management, random assignment of the exercise to Clearing Members holding the short position, and a detailed communication to those assigned Clearing Members. The late exercises in 2017 have shown the 6:30 to 8:00 AM CT window is a narrow window for OCC staff to properly process the exercise and assignments without delays, and OCC therefore believes it needs another 30 minutes to process the late exercises. Accordingly, OCC is proposing to change the deadline for the submission of late exercises to 6:00 a.m. CT from the current 6:30 a.m. CT deadline. OCC also discussed this proposal with the OCC Roundtable in connection with discussions noted above and they agreed with it.

B. Statutory Basis

Section 17A(b)(3)(F) of the Act⁹ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions. OCC believes that the proposed rule change is consistent with this provision because it would promote the prompt and accurate clearance and settlement of securities transactions by providing an incentive for Clearing Members to improve back office processing with respect to identifying and handling positions for which an exercise notice is to be submitted, while preserving their ability to correct bona fide operational errors. Similarly, providing OCC an additional 30 minutes in which to process a late exercise notice is consistent with this provision because it is designed to help OCC process such notices without delays. As noted, OCC discussed both of these changes with the OCC Roundtable and they agreed with them.

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act¹⁰ requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the Act. OCC does not believe that the proposed rule change would impact or impose any burden on competition.¹¹ The proposed rule change would not affect the competitive dynamics between Clearing Members in that it would apply to all Clearing Members equally. The proposed rule change also would not

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 15 U.S.C. 78q-1(b)(3)(I).

¹¹ 15 U.S.C. 78q-1(b)(3)(I).

inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another. In this regard, as described above, the proposed rule change is designed to further facilitate the prompt and accurate clearance and settlement of securities transactions. It is designed to incent 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.

Item 5. 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.

Item 6. Extension of Time Period for Commission Action

Not applicable.

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Not applicable.

Item 8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission

Not applicable.

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

Item 11. Exhibits

Exhibit 1A. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 5. OCC Rules.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, The Options Clearing Corporation has caused this filing to be signed on its behalf by the undersigned hereunto duly authorized.

THE OPTIONS CLEARING CORPORATION

By: _____
Joseph Corcoran
Vice President, Legal, Government Relations

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-[_____]; File No. SR-OCC-2020-001)

January __, 2020

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of 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

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 January 14, 2020, 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 persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change by OCC would amend Rules 801 and 805 to modify the fees for exercise notices submitted after the deadlines and to amend Rule 801 to change the deadline for submitting a late exercise notice on non-expiration dates. The proposed changes to OCC’s Rules are included in Exhibit 5 of the filing. Material proposed to be added to OCC’s Rules as currently in effect is marked by underlining and material proposed to be deleted is marked with strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the By-Laws and Rules.³

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 rule filing is to: (1) amend Rule 801 for exercises on non-expiration dates and Rule 805 for exercises on expiration dates to modify the fee applied to exercise notices that are submitted to OCC after the start of critical processing ("late exercise notices"), and (2) amend Rule 801 to change the deadline by which late exercise notices are to be submitted to OCC for exercises on non-expiration dates from 6:30a.m. CT (7:30a.m. ET) to 6:00a.m. CT (7:00a.m. ET).

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vide error on the part of the Clearing Member or a customer.⁴ However, the requesting Clearing Member must pay OCC a \$75,000 fee per line item for a late exercise notice.⁵ Similarly, Rule 805, which addresses exercises on expiration, imposes a \$75,000 fee per line item on a Clearing Member that submits an exercise notice after the prescribed deadline.⁶

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In 2017, OCC received four late exercise notices.⁹ This amount was significantly more than the four late exercise notices OCC had received in the seven years preceding 2017, and it prompted OCC to review the late exercise fee again. OCC discussed the issue on November 9, 2017 with the OCC Roundtable, which is an OCC-sponsored advisory group comprised of representatives from OCC's participant exchanges, a cross-section of OCC clearing members, and OCC staff. These discussions noted the dollar amount at issue in connection with each of the four late exercises in 2017, which reflected the amount of dividends received by the person submitting the late exercise as a result of receiving the underlying shares. These dividend amounts ranged from \$188,000 to \$375,810.¹⁰ As a result of these discussions, OCC's Roundtable agreed that it was appropriate to increase the late exercise fee to \$250,000 per line item for late exercise notices submitted under Rules 801 and 805. Consistent with the purposes of the late

⁸ See Exchange Act Release No. 59046 (December 3, 2008), 73 FR 75486 (December 11, 2008) (SR-OCC-2007-16).

⁹ Until recently, OCC had not received a late exercise notice from a Clearing Member since these ones in 2017. On December 14, 2019, OCC received three late exercise notices from a Clearing Member.

¹⁰ The dividend amounts for the recent December 14, 2019 late exercise notices ranged from \$93,600 to \$436,800.

exercise fee noted above, the Roundtable believed this amount would be in a range to incent OCC Clearing Members to be especially diligent in processing exercise notices while at the same time still allowing firms to correct bona fide errors.

In connection with the four late exercise notices received in 2017, OCC also reviewed its procedures for processing a late exercise. OCC Rule 801(d) provides that the current deadline for a Clearing Member to formally request a late exercise for an exercise on a non-expiration date is 6:30 a.m. CT and that OCC must notify the assigned Clearing Members by 8:00 a.m. CT of the late exercise. Given the compressed timeframe in which to process a late exercise (i.e., 6:30 a.m. CT to 8:00 a.m. CT) and that they are an exception to the normal processing routine, OCC's procedures for processing a late exercise involve significant resources. They include a review of the positions of the Clearing Member, escalation of the request to senior management, random assignment of the exercise to Clearing Members holding the short position, and a detailed communication to those assigned Clearing Members. The late exercises in 2017 have shown the 6:30 to 8:00 AM CT window is a narrow window for OCC staff to properly process the exercise and assignments without delays, and OCC therefore believes it needs another 30 minutes to process the late exercises. Accordingly, OCC is proposing to change the deadline for the submission of late exercises to 6:00 a.m. CT from the current 6:30 a.m. CT deadline. OCC also discussed this proposal with the OCC Roundtable in connection with discussions noted above and they agreed with it.

(2) Statutory Basis

Section 17A(b)(3)(F) of the Act¹¹ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions. OCC believes that the proposed rule change is consistent with this provision because it would promote the prompt and accurate clearance and settlement of securities transactions by providing an incentive for Clearing Members to improve back office processing with respect to identifying and handling positions for which an exercise notice is to be submitted, while preserving their ability to correct bona fide operational errors. Similarly, providing OCC an additional 30 minutes in which to process a late exercise notice is consistent with this provision because it is designed to help OCC process such notices without delays. As noted, OCC discussed both of these changes with the OCC Roundtable and they agreed with them.

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 Act¹² requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the Act. OCC does not believe that the proposed rule change would impact or impose any burden on competition.¹³ The proposed rule change would not affect the competitive dynamics between Clearing Members in that it would apply to all Clearing Members equally. The proposed rule change also would not inhibit access to OCC's services or disadvantage or

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

¹² 15 U.S.C. 78q-1(b)(3)(I).

¹³ 15 U.S.C. 78q-1(b)(3)(I).

favor any particular user in relationship to another. In this regard, as described above, the proposed rule change is designed to further facilitate the prompt and accurate clearance and settlement of securities transactions. It is designed to incent 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.

(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

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 e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2020-001 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-2020-001. This file number should be included on the subject line if e-mail 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 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-2020-001 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Secretary

¹⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 5



OCC Rules

Underlined text indicates new text

~~Strikethrough~~ text indicates deleted text

Chapter VIII - Exercise and Assignment

RULE 801 – Exercise of Options

Issued and unexpired option contracts may, subject to Exchange Rules and the By-Laws, be exercised as follows:

(a) – (c) No change.

(d) Notwithstanding the foregoing provisions of this Rule, and except as otherwise provided in this paragraph (d), the Chief Executive Officer, Chief Operating Officer, or any delegate of such officer, may in the sole discretion of such person permit a Clearing Member to file any exercise notice after an applicable deadline prescribed pursuant to paragraph (a) of this Rule, solely for the purpose of correcting a bona fide error on the part of the Clearing Member or a customer, subject to the following conditions:

(1) No change.

(2) The Clearing Member shall be liable to the Corporation for a late filing fee of ~~\$75,000~~250,000 per line item listed on any exercise notice accepted for filing after the start of critical processing, and shall be informed of such fee at the time a request to file any exercise notice subject to such fee is submitted to the Corporation. Fifty percent of any late filing fee shall be distributed to the assigned Clearing Member or pro-rata to the assigned Clearing Members. The Corporation will not accept any late exercise request received after ~~6:30~~6:00 A.M. Central Time (~~7:30~~7:00 A.M. Eastern Time). Clearing Members that have been assigned a late exercise notice shall be notified of the assignment by 8:00 A.M. Central Time (9:00 A.M. Eastern Time). Notwithstanding any other provision of the Rules or By-Laws, the Corporation will not accept any request to revoke or modify a previously submitted exercise notice.

(3) - (6) No Change.

Filing of exercise notices after the applicable deadline specified by the Corporation shall not be permitted under any circumstances in respect of (i) futures options of such classes, or traded on such futures market(s), as may be designated by the Corporation and specified in its procedures or (ii) any exercise notice that the Corporation has determined not to be eligible for late processing.

Interpretations and Policies:

.01 - .04 No change.

RULE 805 - Expiration Exercise Procedure

(a) – (f) No change.

(g) In the event that a Clearing Member tenders an exercise notice pursuant to subparagraph (c) (a “supplementary exercise notice”) after the deadline prescribed pursuant to subparagraph (b) for the submission of exercise instructions in response to Expiration Exercise Reports, such Clearing Member shall be liable to the Corporation for a late filing fee of ~~\$75,000~~250,000 per line item for any supplementary exercise notice tendered after the commencement of critical expiration processing and shall be informed of such fee at the time the supplementary exercise notice is tendered.

The tender of a supplementary exercise notice may also be deemed to be a violation of the procedures of the Corporation, and may be subject to disciplinary action pursuant to Chapter XII of the Rules.

(h) - (m) No change.

...Interpretations and Policies:

.01 - .04 No change.