

believes that it is critical that a Preferred Market Maker must not be permitted to step up and match the NBBO after it receives a directed order in order to receive the Preferred Allocation. In this regard, BOX's proposal prohibits notifying a DMM of an intention to submit a Directed Order so that such DMM could change its quotation to match the NBBO immediately prior to submission of the Directed Order, and then fade its quote. BOX submitted a letter to the Commission representing that it will provide the necessary protections against that type of conduct, and will proactively conduct surveillance for, and enforce against, such violations.<sup>25</sup>

BOX's proposed rules will require Preferred Market Makers to quote at a higher level than other market makers who are not Preferred Market Makers. Currently, market makers on BOX are required to quote 60% of the trading day.<sup>26</sup> In order to receive the participation entitlement, Preferred Market Makers will be required to quote 99% of the trading day. The Commission believes that requiring heightened quoting by a market maker in order to be eligible to receive a Preferred Allocation is consistent with what other exchanges have required as part of their directed order programs.<sup>27</sup>

The Commission emphasizes that approval of this proposal does not affect a broker-dealer's duty of best execution. A broker-dealer has a legal duty to seek to obtain best execution of customer orders, and any decision to preference a particular Preferred Market Maker must be consistent with this duty.<sup>28</sup> A broker-dealer's duty of best execution derives from common law agency principles and fiduciary obligations, and is incorporated in SRO rules and, through judicial and Commission decisions, the antifraud provisions of the federal securities laws.<sup>29</sup> The duty of best

execution requires broker-dealers to execute customers' trades at the most favorable terms reasonably available under the circumstances, *i.e.*, at the best reasonably available price.<sup>30</sup> The duty of best execution requires broker-dealers to periodically assess the quality of competing markets to assure that order flow is directed to the markets providing the most beneficial terms for their customer orders.<sup>31</sup> Broker-dealers must examine their procedures for seeking to obtain best execution in light of market and technology changes and modify those practices if necessary to enable their customers to obtain the best reasonably available prices.<sup>32</sup> In doing so, broker-dealers must take into account price improvement opportunities, and whether different markets may be more suitable for different types of orders or particular securities.<sup>33</sup>

execute a customer's order, makes an implied representation that it will execute it in a manner that maximizes the customer's economic gain in the transaction. *See Newton*, 135 F.3d at 273 ("[T]he basis for the duty of best execution is the mutual understanding that the client is engaging in the trade—and retaining the services of the broker as his agent—solely for the purpose of maximizing his own economic benefit, and that the broker receives her compensation because she assists the client in reaching that goal."); *Marc N. Geman*, Securities Exchange Act Release No. 43963 (Feb. 14, 2001) (citing *Newton*, but concluding that respondent fulfilled his duty of best execution). *See also* Payment for Order Flow, Securities Exchange Act Release No. 34902 (Oct. 27, 1994), 59 FR 55006, 55009 (Nov. 2, 1994) ("Payment for Order Flow Final Rules"). If the broker-dealer intends not to act in a manner that maximizes the customer's benefit when he accepts the order and does not disclose this to the customer, the broker-dealer's implied representation is false. *See Newton*, 135 F.3d at 273–274.

<sup>30</sup> *Newton*, 135 F.3d at 270. *Newton* also noted certain factors relevant to best execution—order size, trading characteristics of the security, speed of execution, clearing costs, and the cost and difficulty of executing an order in a particular market. *Id.* at 270 n. 2 (citing Payment for Order Flow, Securities Exchange Act Release No. 33026 (Oct. 6, 1993), 58 FR 52934, 52937–38 (Oct. 13, 1993) (Proposed Rules)). *See In re E.F. Hutton & Co.*, Securities Exchange Act Release No. 25887 (July 6, 1988). *See also* Payment for Order Flow Final Rules, 59 FR at 55008–55009.

<sup>31</sup> Order Handling Rules Release, *supra* note 28 at 48322–48333 ("In conducting the requisite evaluation of its internal order handling procedures, a broker-dealer must regularly and rigorously examine execution quality likely to be obtained from different markets or market makers trading a security."). *See also Newton*, 135 F.3d at 271; Market 2000: An Examination of Current Equity Market Developments V–4 (SEC Division of Market Regulation January 1994) ("Without specific instructions from a customer, however, a broker-dealer should periodically assess the quality of competing markets to ensure that its order flow is directed to markets providing the most advantageous terms for the customer's order."); Payment for Order Flow Final Rules, 59 FR at 55009.

<sup>32</sup> Order Handling Rules, *supra* note 28 at 48323.

<sup>33</sup> Order Handling Rules, *supra* note 28 at 48323. For example, in connection with orders that are to

be executed at a market opening price, "[b]roker-dealers are subject to a best execution duty in executing customer orders at the opening, and should take into account the alternative methods in determining how to obtain best execution for their customer orders." Disclosure of Order Execution and Routing Practices, Securities Exchange Act Release No. 43590 (Nov. 17, 2000), 65 FR 75414, 75422 (Dec. 1, 2000) (adopting new Exchange Act Rules 11Ac1–5 and 11Ac1–6 and noting that alternative methods offered by some Nasdaq market centers for pre-open orders included the mid-point of the spread or at the bid or offer).

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>35</sup> that the proposed rule change (SR–BOX–2014–28) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2015–02748 Filed 2–10–15; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–74214; File No. SR–BATS–2015–08]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt an Options Regulatory Fee

February 5, 2015.

Pursuant to Section 19(b)(1) under 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 January 30, 2015, BATS Exchange, Inc. (the "Exchange" or "BATS") 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 Exchange has designated the proposed rule change as one establishing or changing a member due, fee or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b–4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to

be executed at a market opening price, "[b]roker-dealers are subject to a best execution duty in executing customer orders at the opening, and should take into account the alternative methods in determining how to obtain best execution for their customer orders." Disclosure of Order Execution and Routing Practices, Securities Exchange Act Release No. 43590 (Nov. 17, 2000), 65 FR 75414, 75422 (Dec. 1, 2000) (adopting new Exchange Act Rules 11Ac1–5 and 11Ac1–6 and noting that alternative methods offered by some Nasdaq market centers for pre-open orders included the mid-point of the spread or at the bid or offer).

<sup>34</sup> 15 U.S.C. 78f(b)(5).

<sup>35</sup> 15 U.S.C. 78s(b)(2).

<sup>36</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>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b–4(f)(2).

<sup>25</sup> See Letter from Bruce Goodhue, Chief Regulatory Officer, BOX, to David Hsu, Assistant Director, Commission, dated February 4, 2015.

<sup>26</sup> BOX Rule 8050(e).

<sup>27</sup> See *supra* note 22.

<sup>28</sup> See, e.g., *Newton v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 135 F.3d 266, 269–70, 274 (3d Cir.), cert. denied, 525 U.S. 811 (1998); *Certain Market Making Activities on Nasdaq*, Securities Exchange Act Release No. 40900 (Jan. 11, 1999) (settled case) (citing *Sinclair v. SEC*, 444 F.2d 399 (2d Cir. 1971); *Arleen Hughes*, 27 SEC 629, 636 (1948), *aff'd sub nom. Hughes v. SEC*, 174 F.2d 969 (D.C. Cir. 1949)). *See also* Order Execution Obligations, Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (Sept. 12, 1996) ("Order Handling Rules Release"); 51808 (June 9, 2005), 70 FR 37496, 37537–8 (June 29, 2005).

<sup>29</sup> Order Handling Rules Release, *supra* note 28 at 48322. *See also Newton*, 135 F.3d at 270. Failure to satisfy the duty of best execution can constitute fraud because a broker-dealer, in agreeing to

solicit comments on the proposed rule change from interested persons.

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

The Exchange filed a proposal to amend the fee schedule applicable to Members<sup>5</sup> and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c) to adopt an Options Regulatory Fee ("ORF") in the amount of \$0.0010 per contract side.

The text of the proposed rule change is available at the Exchange's Web site at [www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, 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 parts 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 modify the "Options Pricing" section of its fee schedule to adopt an ORF in the amount of \$0.0010 per contract side. The per-contract ORF will be assessed by the Exchange to each Member for all options transactions executed and cleared, or simply cleared, by the Member, that are cleared by OCC in the "customer" range, regardless of the exchange on which the transaction occurs. The ORF will be collected indirectly from Members through their clearing firms by OCC on behalf of the Exchange.

The ORF also will be charged for transactions that are not executed by a Member but are ultimately cleared by a Member. In the case where a non-Member executes a transaction and a

Member clears the transaction, the ORF will be assessed to the Member who clears the transaction. In the case where a Member executes a transaction and another Member clears the transaction, the ORF will be assessed to the Member who clears the transaction. As a practical matter, it is not feasible or reasonable for the Exchange (or any SRO) to identify each executing member that submits an order on a trade-by-trade basis. There are countless executing market participants, and each day such participants can and often do drop their connection to one market center and establish themselves as participants on another. It is virtually impossible for any exchange to identify, and thus assess fees such as an ORF on, each executing participant on a given trading day.

Clearing members, however, are distinguished from executing participants because they remain identified to the Exchange regardless of the identity of the initiating executing participant, their location, and the market center on which they execute transactions. Therefore, the Exchange believes it is more efficient for the operation of the Exchange and for the marketplace as a whole to assess the ORF to clearing members.

The Exchange believes it is appropriate to charge the ORF only to transactions that clear as customer at the OCC. The Exchange believes that its broad regulatory responsibilities with respect to a Member's activities supports applying the ORF to transactions cleared but not executed by a Member. The Exchange's regulatory responsibilities are the same regardless of whether a Member executes a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activities, including performing surveillance for position limit violations, manipulation, front-running, contrary exercise advice violations and insider trading. These activities span across multiple exchanges.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Members' customer options business, including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange notes that its regulatory responsibilities with respect to Member

compliance with options sales practice rules have been allocated to the Financial Industry Regulatory Authority, Inc. ("FINRA") under a 17d-2 Agreement. The ORF is not designed to cover the cost of options sales practice regulation.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange expects to monitor its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange will notify Members of adjustments to the ORF at least 30 calendar days prior to the effective date of the change.<sup>6</sup>

The Exchange believes it is reasonable and appropriate for the Exchange to charge the ORF for options transactions regardless of the exchange on which the transactions occur. The Exchange has a statutory obligation to enforce compliance by Members and their associated persons under the Act and the rules of the Exchange and to surveil for other manipulative conduct by market participants (including non-Members) trading on the Exchange. The Exchange cannot effectively surveil for such conduct without looking at and evaluating activity across all options markets. Many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running and contrary exercise advice violations/expiring exercise declarations. Also, the Exchange and the other options exchanges are required to populate a consolidated options audit trail ("COATS")<sup>7</sup> system in order to surveil a Member's activities across markets.

In addition to its own surveillance programs, the Exchange works with

<sup>6</sup> The Exchange announced its intent to charge an ORF on October 7, 2014. See *BATS Global Markets Access Services Fee Changes for 2015* available at [http://cdn.batstrading.com/resources/fee\\_schedule/2015/BATS-Global-Markets-Access-Services-Fee-Changes-for-2015.pdf](http://cdn.batstrading.com/resources/fee_schedule/2015/BATS-Global-Markets-Access-Services-Fee-Changes-for-2015.pdf). The semi-annual review and notice provisions are similar to those adopted by NYSE Arca, Inc. ("NYSE Arca"). See Securities Exchange Act Release No. 70500 (September 25, 2013), 78 FR 60361 (October 1, 2013) (SR-NYSEArca-2013-91).

<sup>7</sup> COATS effectively enhances intermarket options surveillance by enabling the options exchanges to reconstruct the market promptly to effectively surveil certain rules.

<sup>5</sup> The term "Member" is defined as "any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act." See Exchange Rule 1.5(n).

other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (“ISG”),<sup>8</sup> the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. The Exchange’s participation in ISG helps it to satisfy the requirement that it has coordinated surveillance with markets on which security futures are traded and markets on which any security underlying security futures are traded to detect manipulation and insider trading.<sup>9</sup>

The Exchange believes that charging the ORF across markets will avoid having Members direct their trades to other markets in order to avoid the fee and to thereby avoid paying for their fair share for regulation. If the ORF did not apply to activity across markets then a Member would send their orders to the least cost, least regulated exchange. Other exchanges do impose a similar fee on their member’s activity, including the activity of those members on BATS.<sup>10</sup>

The Exchange notes that there is established precedent for an SRO charging a fee across markets, namely, FINRA’s Trading Activity Fee<sup>11</sup> and the MIAx, NYSE Amex, NYSE Arca, CBOE, PHLX, ISE and BOX ORFs. While the Exchange does not have all of the same regulatory responsibilities as FINRA, the Exchange believes that, like other exchanges that have adopted an ORF, its broad regulatory responsibilities with respect to a Member’s activities, irrespective of where their transactions take place, support a regulatory fee applicable to transactions on other markets. Unlike FINRA’s Trading Activity Fee, the ORF would apply only to a Member’s customer options transactions.

<sup>8</sup> ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by co-operatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG’s information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

<sup>9</sup> See Section 6(h)(3)(I) of the Act.

<sup>10</sup> Similar regulatory fees have been instituted by PHLX, ISE, and MIAx. See Securities Exchange Act Release Nos. 61133 (December 9, 2009), 74 FR 66715 (December 16, 2009) (SR–Phlx–2009–100); 61154 (December 11, 2009), 74 FR 67278 (December 18, 2009) (SR–ISE–2009–105); and 68711 (January 23, 2013), 78 FR 6155 (January 29, 2013) (SR–MIAx–2013–01).

<sup>11</sup> See Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 3402 (June 6, 2003).

## Implementation Date

The Exchange proposes to implement the ORF on February 2, 2015.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.<sup>12</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>13</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

The Exchange believes the ORF is equitable and not unfairly discriminatory because it would be objectively allocated to Members in that it would be charged to all Members on all their transactions that clear as customer transactions at the OCC. Moreover, the Exchange believes the ORF ensures fairness by assessing fees to those Members that are directly based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange’s overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., Member proprietary transactions) of its regulatory program. In addition, the Exchange believes the amount of the ORF is reasonable as it is lower than ORFs charged by other exchanges. By way of comparison, MIAx charges an ORF of \$0.0045 per contract side,<sup>14</sup> and both NYSE Arca and NYSE Amex charge an ORF of \$0.0055 per contract side.<sup>15</sup>

<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> See MIAx fee schedule available at [http://www.miaxoptions.com/sites/default/files/MIAx\\_Options\\_Fee\\_Schedule\\_02012015.pdf](http://www.miaxoptions.com/sites/default/files/MIAx_Options_Fee_Schedule_02012015.pdf) (last visited January 30, 2015).

<sup>15</sup> See NYSE Arca Options fee schedule available at [https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE\\_Arca\\_Options\\_Fee\\_](https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_)

The ORF is designed to recover a material portion of the costs of supervising and regulating Members’ customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange will monitor, on at least a semi-annual basis the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange’s total regulatory costs. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange will notify Members of adjustments to the ORF via regulatory circular.

The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange’s other regulatory fees, will be less than or equal to the Exchange’s regulatory costs, which is consistent with the Commission’s view that regulatory fees be used for regulatory purposes and not to support the Exchange’s business side. In this regard, the Exchange believes that the initial level of the fee is reasonable.

## B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The ORF is not intended to have any impact on competition. Rather, it is designed to enable the Exchange to recover a material portion of the Exchange’s cost related to its regulatory activities. The proposed ORF is also comparable to fees charged by other options exchanges for the same or similar service. As stated above, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if the deem fee structures to be unreasonable or excessive.

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

The Exchange has not solicited, and does not intend to solicit, comments on

[Schedule.pdf](#) (last visited January 30, 2015); and NYSE Amex fee schedule available at [https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE\\_Amex\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf) (last visited January 30, 2015).

this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>17</sup> 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.

### 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-BATS-2015-08 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-BATS-2015-08. 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-2015-08, and should be submitted on or before March 4, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Brent J. Fields**

Secretary.

[FR Doc. 2015-02752 Filed 2-10-15; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74212; File No. SR-OCC-2015-04]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change, and Amendment 1 Thereto, To Expand the Officers Who May Declare That a Clearing Member Is Summarily Suspended

February 5, 2015.

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 January 23, 2015, 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 by OCC. On February 3, 2015, OCC filed Amendment No. 1 to the proposed rule change, which corrects an inadvertent grammatical error. 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

OCC proposes to amend its Rules to permit OCC to expand the officers who may declare that a clearing member is summarily suspended from OCC.

#### 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 such 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 expand the number of OCC officers with the authority to summarily suspend a clearing member. Currently, OCC Rule 1102 provides that only OCC's Board of Directors ("Board") and its Executive Chairman may summarily suspend a clearing member. OCC believes that, given the time sensitive nature of managing a clearing member default, it is prudent risk management to expand the number of officers with the authority to summarily suspend a clearing member so that OCC may begin its default management process and, in turn, take protective action as soon as possible.

Pursuant to OCC Rule 1102, OCC's Board and Executive Chairman have the authority to summarily suspend a clearing member. As set forth in Interpretation and Policy .01 of Rule 1102, such action constitutes a "default" with respect to the clearing member. OCC's ability to timely and effectively begin its clearing member default management process serves a key role in protecting OCC, non-defaulting clearing members and the public from potential consequential damage(s) that may be caused by the default of a clearing member. In order to provide OCC with the necessary tools to manage a clearing member default, Chapter XI of OCC's Rules provides OCC with the authority to take certain protective action(s) once a clearing member has been summarily suspended (and declared to be in default).<sup>3</sup> While OCC believes that the authority provided to it in Chapter XI of its Rules is sufficiently robust to manage a clearing member default, OCC may not exercise such authority unless and until a clearing member has been summarily

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>18</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>3</sup> For example, OCC Rule 1106(a) provides OCC with significant flexibility with respect to actions it may take in order to close out a defaulting clearing member's open long positions.