

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2008-30 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEArca-2008-30. 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 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NYSE Arca. 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-NYSEArca-2008-30 and should be submitted on or before April 15, 2008.

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

**Florence E. Harmon,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57520; File No. SR-OCC-2008-02]

### **Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Definition and Use of the Terms "Settlement Price" and "Final Settlement Price"**

March 18, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 24, 2008, 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. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act<sup>2</sup> and Rule 19b-4(f)(1)<sup>3</sup> thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change amends the definition and use of the terms "settlement price" and "final settlement price" as applied to futures contracts cleared by OCC for the purpose of improving the definitions and establishing consistent usage.

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

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>4</sup>

#### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The primary purpose of the proposed rule change is to revise OCC's By-Laws and Rules to eliminate any inconsistencies in the use of the terms "settlement price" and "final settlement price" and to clarify the roles of OCC and of the exchanges on which futures are traded in determining the daily and if applicable intraday settlement price and the final settlement price of a series of futures contracts. OCC is also making one change in its rules to reflect a change in the services available to clearing members.

The two key components of the proposed rule change involve the definition of "settlement price" and "final settlement price" as used in OCC's By-Laws and Rules and the location of the language governing the manner in which settlement prices are determined. Currently, the prices used to calculate daily or intraday variation payments are referred to simply as "settlement prices" rather than "interim settlement prices." The term "settlement price" does not encompass the term "final settlement price," which is separately defined to refer only to the price used to determine the value of a contract at maturity. There are provisions of OCC's By-Laws and Rules that apply equally to daily or intraday settlement prices and final settlement prices. Accordingly, OCC is revising the definition of "settlement price" to encompass both types of prices. The term "interim settlement price" will be used to refer to prices used to determine daily and intraday variation payments. In addition, the definition of "final settlement price" is being revised in recognition of the possibility that prices determined in the futures markets themselves, as opposed to prices determined in the cash markets for the underlying interests, may sometimes be used to determine the final settlement price. OCC is also moving the language regarding the establishment of the interim settlement price for futures from Rule 1301(d) to Article XII, Section 6 of OCC's By-Laws. OCC believes that this language more logically belongs in Article XII, which currently governs only the establishment of final settlement prices.

#### **Proposed Changes to By-Laws**

OCC is introducing the new term "interim settlement price" in Article I, Section 1 of its By-Laws with respect to futures to refer to what is currently defined simply as "settlement price"

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

<sup>2</sup> 15 U.S.C. 78s-1(b)(3)(A)(i).

<sup>3</sup> 17 CFR 240.19b-4(f)(1).

<sup>4</sup> The Commission has modified parts of these statements.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

and will use the term “settlement price” to encompass both interim settlement prices and final settlement prices for futures.

OCC is redefining and simplifying the term “final settlement price” in Article I, Section 1 of the By-Laws and eliminating the reference to “Exchange Rules,” which are relevant to some but not all determinations of the final settlement price and are referenced elsewhere in the By-Laws and Rules where relevant. The definition addresses what is meant by “final settlement price” with respect to a series of futures (*i.e.*, the marking price, rate, level, value, or measure of the designated interest on the maturity date of such series). It further addresses the uses of the final settlement price (*i.e.*, to calculate the final variation payment with respect to cash-settled futures and the purchase price of the underlying interest in respect of physically settled futures). The definition does not address the manner in which the final settlement price is determined, which is covered in Article XII, Section 6(b), as amended.

While the final settlement price of a series of stock futures is normally determined on the basis of the value of the underlying stock at maturity, at least one futures exchange clearing through OCC consistently uses the value of the futures contract itself (*i.e.*, the settlement price, on the maturity date as the basis for determining the final settlement price). Accordingly, in addition to the above changes, OCC is revising the term “final settlement price” to account for the use in some instances of the value of the futures contract rather than the value of the underlying interest in determining this price.

OCC is making certain technical corrections to the definition of the term “maturity date.”

OCC is modifying Article VI, Section 10(d) of OCC’s By-Laws, which currently refers to the adjustment of the unit of trading and settlement price for a series of stock futures, to reflect OCC’s current procedures under which one or the other of the unit of trading or settlement price but not both is subject to adjustment. OCC is also correcting certain erroneous references in this subsection.

The term “settlement price” is used in various locations within Article VI, Section 19; Article XV, Section 3; and Article XX, Section 3 of OCC’s By-Laws in a manner that is wholly unrelated to the settlement price for security futures. The word “cash” has been placed before the term “settlement price” in each

these sections wherever the term appears.

OCC is making a correction to Article XII, Section 1 by replacing the term “security future” with “future,” which includes both commodity and security futures. Article XII, Section 3 is revised to reflect OCC’s current procedures under which the unit of trading or settlement price but not both may be adjusted in connection with stock splits, stock dividends, and similar corporate events. OCC is modifying Article XII, Sections 4, 4A, and 5 under which the terms “interim settlement price,” “final settlement price,” and “settlement price” are used in a manner consistent with their new or revised definitions. OCC is moving the language governing the manner in which interim settlement prices are determined from Rule 1301(d) to Article XII, Section 6(a) to precede the provision governing the determination of final settlement prices covered in Section 6(b). As a result of the transfer of the content of Rule 1301(d) to Article XII, Section 6, this section now governs the manner in which both interim settlement prices and final settlement prices are determined while Rule 1301 addresses only variation payments.

In addition to moving the language of former Rule 1301(d) to Article XII, Section 6(a) of the By-Laws, OCC is modifying the language. The modifications make it clear that OCC determines the interim settlement price used to establish the amount of the required variation payment, but does so on the basis of an interim settlement price reported to OCC by the relevant exchange. A similar change is being made in Article XII, Section 6(b) and in Interpretation and Policy .01 to the section. Generally, OCC would simply adopt the price it receives from the exchange, but OCC has broad authority to disregard that price if it appears erroneous or otherwise defective. The changes also clarify OCC’s responsibility in connection with settlement prices of series of security futures that are traded on more than one exchange.

#### Proposed Changes to Rules

OCC is deleting Rule 404, relating to its use of a give-up service provider, because OCC no longer has a relationship with a give-up service provider. OCC is redesignating Rule 1301(e) as Rule 1301(d) as a result of the transfer of former Rule 1301(d) to Article XII, Section 6 of the By-Laws. The portion of Rule 1301(e) governing the determination of final settlement prices is deleted as this subject is covered by Article XII, Section 6(b) of

the By-Laws. Rule 1301 is also revised to make the use of the terms “interim settlement price,” “final settlement price,” and “settlement price” consistent with their new or revised definitions.

The proposed rule change is consistent with the purposes and requirements of Section 17A of Act because it is designed to promote the prompt and accurate clearance and settlement of transactions in futures, to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and in general to protect investors and the public interest. The proposed rule change accomplishes this purpose by establishing consistent usage for the terms “settlement price” and “final settlement price” and by revising the definition of “final settlement price” to account for the use in some instances of the prices determined in the futures markets themselves rather than the prices determined in the cash markets to determine the final settlement price for futures. The proposed rule change is not inconsistent with the By-laws and Rules of OCC, including those proposed to be amended.

#### *(B) Self-Regulatory Organization’s Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.

#### *(C) 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.

### **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)(i) of the Act<sup>5</sup> and Rule 19b-4(f)(1)<sup>6</sup> promulgated thereunder because the proposal constitutes an interpretation with respect to the meaning, administration, or enforcement of an existing rule of OCC. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>6</sup> 17 CFR 240.19b-4(f)(1).

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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2008-02 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-OCC-2008-02. 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 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2008-02 and should be submitted on or before April 15, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-5911 Filed 3-24-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57528; File No. SR-Phlx-2008-18]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Imposition of Fines for Minor Rule Plan Violations

March 19, 2008.

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 March 12, 2008, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

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

The Exchange proposes to adopt Phlx Options Floor Procedure Advice ("OFFPA") F-35, Violations of Exercise and Exercise Advice Rules for Noncash-Settled Equity Option Contracts, to add a summary fine schedule for Expiring Exercise Declaration or Contrary Exercise Advice violations regarding noncash settled equity options.<sup>3</sup> The Exchange also proposes to modify Phlx Rule 970, Floor Practice Advices: Violations, Penalties, and Procedures,<sup>4</sup>

<sup>7</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> These declarations or advices indicate, among other things, whether at expiration the holder of an in-the-money noncash settled equity option intends to waive The Options Clearing Corporation's ("OCC") Exercise-by-Exception procedure or exercise the option. See Phlx Rule 1042.

<sup>4</sup> Phlx Rule 970 sets forth the criteria for the imposition of fines (currently not to exceed \$2,500) on any member, member organization, or any partner, officer, director, or person employed by or associated with any member or member organization, for any violation of a Floor Procedure Advice, which violation the Exchange shall have determined is minor in nature (known as "Minor

to increase the maximum permissible fine to \$5,000 for a violation of a Floor Procedure Advice. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.Phlx.com/exchange/phlx-rule-fil.htm>.

#### 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 Phlx 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 III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The Exchange proposes to (a) implement new OFPA F-35 to establish a fine schedule for contrary exercise advice violations, and (b) expand Phlx Rule 970 to allow fines not to exceed \$5,000, for the purpose of increasing and strengthening the sanctions imposed by the Exchange's Minor Rule Plan ("MRP"). The Exchange believes that establishing the specified fines with respect to individual members and member organizations with a 24-month rolling surveillance period should serve as an effective deterrent to such violative conduct. The Exchange also believes that failure to submit exercise instructions is the type of objective requirement that is easy and appropriate to administer.

In addition, the Exchange, as a member of the Intermarket Surveillance Group ("ISG"),<sup>5</sup> as well as certain other self-regulatory organizations ("SROs") executed and filed on October 29, 2007, with the Commission, a final version of an Agreement pursuant to Section 17(d)

Rule Plan Fines"). The fines are imposed in lieu of commencing a "disciplinary proceeding" as that term is used in Phlx Rules 960.1-960.12. Such Minor Rule Plan Fines are subject to Rule 19d-1 under the Act. See Securities Exchange Act Release No. 45421 (February 7, 2002), 67 FR 6961 (February 14, 2002) (SR-Phlx-2001-114).

<sup>5</sup> ISG is a regulatory information-sharing organization comprised of all U.S. national securities exchanges and national securities associations, most U.S. futures exchanges, and certain non-U.S. exchanges and associations trading securities and related products.