

the same as its confidentiality obligations under its clearing agreements with NqLX and IFX.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and will remove impediments to and perfect the mechanism of a national system for the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any material 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)(iii) of the Act⁶ and Rule 19b-4(f)(4)⁷ promulgated thereunder because the proposal effects a change in an existing service of OCC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of OCC or persons using the service. 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 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW,

Washington, DC 20549-0609.

Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-OCC-2003-02. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC and OCC's Web site at <http://www.theocc.com>. All submissions should refer to the File No. SR-OCC-2003-02 and should be submitted by February 5, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

J. Lynn Taylor,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49045; File No. SR-OCC-2003-01]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exercise-by-Exception Policies

January 8, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on May 23, 2003, 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. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

OCC is proposing to modify certain of its practices and policies with respect to exercise by exception processing of expiring equity options. Specifically, OCC is (1) modifying its methodology for extracting closing prices for underlying securities and (2) making explicit certain circumstances under which OCC will remove options on an underlying security from exercise by exception processing.

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.²

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

The proposed rule change would modify OCC's practices and policies with respect to exercise by exception processing of expiring equity options.

Exercise by Exception Processing

Rule 805 sets forth OCC's procedures for processing expiring equity and index options. It provides for the use of "exercise by exception" processing³ to expedite the exercise of such expiring options by clearing members. Under that procedure, expiring options that are in-the-money by a specified amount are exercised unless a clearing member instructs otherwise. Equity options are determined to be in-the-money based on the difference between the exercise price and the closing price of the underlying security on the last trading

² The Commission has modified parts of these statements.

³ "Exercise by exception" processing is a procedural convenience extended to clearing members to relieve them of the operational burden of entering individual exercise instructions for every option contract to be exercised. It is not intended to obviate the need for customers to communicate exercise instructions to their brokers. OCC Rule 805, Interpretation & Policy .02.

⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

⁷ 17 CFR 240.19b-4(f)(4).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

day before expiration.⁴ To be exercised under the exercise by exception procedure, equity options must be in the money by at least $\frac{3}{4}$ of a point per share if carried in a customers' account and at least $\frac{1}{4}$ of a point per share if carried in a firm or market maker account.

Closing Price Selection Methodology

Until recently, OCC obtained closing prices for underlying securities in the following sequence: first from the New York Stock Exchange, then from the American Stock Exchange, and finally from the Nasdaq Stock Market. This method presumed that underlying equity securities were traded on only one of these markets. However, underlying equity securities are now being cross-listed on certain of these markets.

This caused OCC to reassess its methodology for selecting closing prices. OCC's Board of Directors considered the matter at its November 2002 meeting and approved an interim modification to OCC's selection methodology pending further study. Under the modified methodology, OCC selects a closing price for a multiply traded underlying security from the exchange that originally listed that security. (OCC determines a security's original listing market based on the trading symbol.) This interim approach was announced via an information memorandum.⁵

To determine a long-term solution, OCC consulted with a broad cross-section of its membership. The consensus of the membership was that OCC should use a composite closing price, which is a price readily available to all market participants.⁶ An OCC staff analysis also concluded that a composite closing price addressed almost all known expiration pricing issues. At its March 2003 regular meeting, the Board of Directors approved the use of composite closing prices for exercise by exception processing. After completing a clearing member awareness program, composite closing prices will be used in exercise

by exception processing beginning with the June 2003 expiration.

Determination Not To Apply Exercise by Exception Processing

Rule 805 currently provides that if an underlying security is not traded on the last trading day before expiration, OCC may either:

(i) Fix a closing price on such basis as it deems appropriate in the circumstances (including using the last sales price from the most recent trading day for which a last sales price is available); or

(ii) Determine not to fix a closing price for that security, in which case clearing members may exercise only by giving OCC affirmative instructions.

Clearing members have strongly preferred that OCC set a closing price for an underlying security so that it would be subject to exercise by exception processing. (Many clearing members have provisions in their agreements with options customers providing that unless the customer instructs otherwise, the clearing member is authorized to exercise options that are in the money by OCC's threshold amount and not to exercise options that are not.) OCC's practice has been to honor clearing members' preferences and to fix a closing price based on the last reported trade even if a stock has not traded for an extended period. In those cases, OCC publishes an information memorandum shortly before each expiration informing market participants of the price it intends to use for exercise by exception processing, including the date on which the price was obtained. Such memoranda remind readers that OCC's exercise thresholds are an operational convenience, do not dictate which options should or should not be exercised, and strongly urge firms to contact customers with expiring long positions.

Despite these precautions, there is a risk that using stale closing prices for exercise by exception processing can contribute to unintended exercises or non-exercises. OCC has therefore reassessed its policy on fixing closing prices for underlying securities in which trading has been halted. After consulting with its clearing members, OCC has determined to establish the following policy:

- If OCC becomes aware at any time on or before the Monday before expiration that trading in an underlying security has been halted and if trading does not resume before expiration, OCC will suspend the exercise by exception

procedure with respect to options on that security.⁷

- If OCC does not become aware until the Tuesday before expiration or thereafter that trading in an underlying security has been halted and if trading does not resume before expiration, the exercise by exception procedure will apply, and OCC will fix a closing price on such basis as it deems appropriate in the circumstances (including, without limitation, using the last sale price during regular trading hours on the most recent trading day for which a last sale price is available).

- If OCC becomes aware before the close of trading on expiration Friday that trading in a previously halted underlying security has resumed, the exercise by exception procedure will apply, and OCC will fix a closing price for that security in the normal manner.

If trading in an underlying stock is halted on or before Monday of expiration week, firms should have sufficient time to contact most customers for exercise instructions. If trading is not halted until after expiration Monday, firms may not have enough time to obtain such instructions. Continuing to apply the exercise by exception procedure in this limited situation will preserve for firms that have no specific exercise instructions from a customer the option of relying on the provisions in their customer agreements authorizing them to base exercise decisions on OCC's exercise thresholds. Firms would, of course, remain free to solicit specific exercise instructions as they deem necessary or appropriate. This policy change also is scheduled to go in effect with the June 2003 expiration.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it removes impediments to and perfects the mechanism of a national system for the clearance and settlement of securities transactions and protects investors and the public interest.

(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.

⁷ Under OCC's previous clearing system, exercise by exception was suspended with respect to an underlying security by not fixing a closing price for that security. Rule 805(j) reflects that procedure. OCC's current system uses a different process to suspend exercise by exception and generates closing prices for all underlying securities, including those for which exercise by exception has been suspended. A technical modification is being made to Rule 805(j) to reflect this change.

⁴ Rule 805(i) defines the term closing price to mean the last reported sale price for the underlying security during regular trading hours as determined by OCC on the trading day immediately preceding the expiration date on a national securities exchange or other domestic securities market as determined by OCC.

⁵ That information memorandum is available on OCC's Web site at http://www.optionsclearing.com/market/infomemos/nov_02/18537.htm.

⁶ A composite closing price for an underlying security is defined by OCC's price vendors to mean the last reported sale price from any eligible trade source (i.e., primary listing market or participating regional market). It is not an average price.

(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)(iii) of the Act⁸ and Rule 19b-4(f)(4)⁹ promulgated thereunder because the proposal effects a change in an existing service of OCC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of OCC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of OCC or persons using the service. 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 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-OCC-2003-01. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC and OCC's Web site at <http://www.theocc.com>. All submissions should refer to the File No. SR-OCC-2003-01 and should be submitted by January 30, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁰

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04-855 Filed 1-14-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49040; File No. SR-Phlx-2003-87]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Equity Charges for Specialists Utilizing PACE on the Equity Floor of the Exchange

January 8, 2004.

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 December 30, 2003, 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, II, and III below, which Items have been prepared by the Phlx. Phlx filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2)⁴ thereunder, in that the proposed rule change establishes or changes a due, fee, or other charge, which renders the proposal 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

Phlx proposes to amend its schedule of dues, fees and charges to eliminate the \$.20 charge for Phlx equity

specialists' trades against Phlx Automated Communication and Execution System ("PACE") executions,⁵ for trades settling on or after January 2, 2004.⁶

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

In its filing with the Commission, 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 IV below. Phlx 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 purpose of the proposed rule change is to eliminate the PACE specialist charge which was reevaluated by Phlx and deemed to be unnecessary at this time. In addition, the proposed rule change will simplify the equity specialists' billing structure.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act⁸ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members, because specialists' trades against PACE executions will no longer be charged a transaction fee, like PACE trades generally.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

⁵ PACE is the Exchange's automated order entry, routing and execution system. See Phlx Rules 229 and 229A.

⁶ Phlx previously implemented the \$.20 PACE specialist charge on June 1, 2000. See Securities Exchange Act Release No. 42802 (May 19, 2000), 65 FR 34244 (May 26, 2000).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(4).