

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39738; File No. SR-OCC-97-11]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to the Stock Loan/Hedge System

March 10, 1998.

On July 11, 1997, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-OCC-97-11) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on December 9, 1997.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

OCC's stock loan/hedge system ("HEDGE system") is a clearing system for stock loans between OCC clearing members.³ The rule change amends OCC's by-laws governing the HEDGE system to eliminate the requirements with respect to the accounts in which stock loan positions must be maintained.

OCC's by-laws that govern the HEDGE system⁴ currently treat stock loans as if they were pledges of loaned securities subject to the Commission's hypothecation rules.⁵ The hypothecation rules limit the circumstances under which a broker-dealer may pledge securities carried for the account of any customer⁶ and specifically prohibit broker-dealers from pledging securities carried for the account of any customer under circumstances that will permit such securities to be commingled with securities carried for the account of any person other than a bona fide customer

of such broker or dealer under a lien for a loan made to such broker or dealer.⁷ Accordingly, under the HEDGE system's account segregation rules, a clearing member that desires to lend stock must (1) first determine whether the stock is a customer or proprietary security and (2) carry out the loan through its OCC customers' account (or where permitted through its OCC marketmaker's account) if the stock is a customer security.

OCC has determined that there is no legal reason for OCC's by-laws to treat stock loans under the HEDGE system as hypothecations. Therefore, OCC has concluded that it may eliminate the HEDGE system's account segregation requirements for stock loans without violating or causing its clearing members to violate the Commission's hypothecation rules.

II. Discussion

Section 17A(b)(3)(F) of the Act⁸ requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of the national system for the prompt and accurate clearance and settlement of securities transactions. For the reasons discussed below, the Commission believes that OCC's rule change relating to the HEDGE system is consistent with OCC's obligations under Section 17A(b)(3)(F).

The Commission is satisfied with OCC's determination that it is not obligated to treat stock loans carried out through the HEDGE system as if they were pledges of loaned securities subject to the Commission's hypothecation rules. The Commission believes that the rule change should increase the use of OCC's HEDGE system which should in turn help to improve the efficiency and safety of stock lending transactions. Accordingly, the Commission believes that the rule change should enable OCC to remove impediments to and to help perfect the mechanism of the national system for the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with Section 17A of the Act⁹

and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-97-11) be and hereby is approved.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39742; File No. SR-Phlx-97-62]

Self-Regulatory Organizations: Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend Its By-Law Article X, Sections 10-16, 10-17 and 10-19 To Require That Each of Its Trading Floor Committees Consult With Its Corresponding Quality of Markets Committee on All Matters of Policy and All Matters That Are To Be Presented to the Board

March 11, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 29, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.² 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 Phlx hereby proposes to amend its By-Law Article X, Sections 10-16, 10-17 and 10-19 so that each of its respective trading floor standing

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² A technical amendment, Amendment No. 1, was filed with the Commission on March 10, 1998. It amended By-Law Article X, Sections 10-17 to require that the Foreign Currency Options Committee ("Committee") consult with the Foreign Currency Options Trading Floor's Quality of Markets Committee on "all" matters which are to be presented to the Phlx Board of Governors by the Committee, consistent with proposed amendments to Section 10-16 and 10-19. The qualifying term "all" was unintentionally left out of the initial filing provisions relating to Section 10-17.

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 39386 (December 2, 1997), 62 FR 64902 (December 9, 1997).

³ For a complete description of the HEDGE system, refer to Securities Exchange Act Release No. 32638 (July 15, 1993), 58 FR 39254 (July 22, 1993) [File No. SR-OCC-92-34] (order approving proposed rule change establishing HEDGE system).

⁴ OCC By-Laws, Article XXI, Section 5.

⁵ 17 CFR 240.8c-1 and 240.15c2-1.

⁶ For purposes of the hypothecation rules, the term "customer" includes registered broker-dealers so long as they are not affiliated in specified ways with the broker-dealer effecting the pledge. 17 CFR 240.8c-1(b)(1), 240.15c2-1(b)(1). References to customers" and "non-customers" herein are based on the definition in the hypothecation rules.

⁷ 17 CFR 240.15c2-1(a)(2). See also 17 CFR 240.8c-1(a)(2) (providing the same requirements as Rules 15c2-1(a)(2) except that its scope is limited to exchange members and brokers and dealers that transact business through exchange members).

⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁹ 15 U.S.C. 78q-1.

committees shall consult with its corresponding quality of markets committee on all matters which are to be presented to the Board of Governors.

The text of the proposed rule change is set forth in full in Exhibit B to the filing.

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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

Phlx By-Law Article X, Sections 10-16, 10-17 and 10-19 set forth the charters of the Exchange's various trading floor standing committees. The proposed amendments specify that each of the trading floor standing committees shall consult with its respective quality of markets on all matters of policy and all matters which are to be presented to the Board of Governors. The proposed amendments are intended to foster sharing of views on policy and other matters between the various trading floor standing committees (Floor Procedure, Foreign Currency Options and Options) and corresponding quality of markets committees. The intended sharing of views on all policy matters is designed to bring the perspectives of the non-industry representatives of the various quality of markets committees to matters that may be referred to the Board of Governors by the various trading floor standing committees.

The proposed rule change is consistent with Section 6 of the Act³ in general, and in particular, with Section 6(b)(5)⁴ in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and national market

system, as well as to protect investors and the public interest.

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

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

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

No written comments were either solicited or received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such 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 submission is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. 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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of Phlx. All submissions should refer to File No. SR-Phlx-97-62 and should be submitted by April 7, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39740; File No. SR-Phlx-98-10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Automatic Price Improvement for Certain PACE Orders

March 10, 1998.

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, February 10, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 Phlx, pursuant to Rule 19b-4 of the Act, proposes to amend Rule 229, Philadelphia Stock Exchange Automatic Communication and Execution ("PACE") System,³ Supplementary Material .07(c), Double-up/Double-down Situations, to adopt a new automatic price improvement initiative for PACE orders. Specifically, specialists could voluntarily choose to provide automatic price improvement of $\frac{1}{16}$ to eligible orders where the PACE Quote⁴ is $\frac{1}{8}$ or greater, or $\frac{3}{16}$ or greater. Eligible orders would be automatically executable market and marketable limit orders⁵ in New York Stock Exchange or American

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ PACE is the Exchange's automatic order routing and execution system for securities on the equity trading floor.

⁴ The PACE Quote consists of the best bid/offer among the American, Boston, Cincinnati, Chicago, New York, Pacific and Philadelphia Stock Exchanges as well as the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES"). See Phlx Rule 229.

⁵ A market order is an order to buy or sell a stated amount of a security at the best price obtainable when the order is received. A marketable limit order is an order to buy or sell a stated amount of a security at a specified price, which is received at a time when the market is trading at or better than the specified price.

³ 15 U.S.C. 78f.

⁴ 15 U.S.C. 78f(b)(5).

⁵ 17 CFR 200.30-3(a)(12).