

of options market-makers. If the equity in a market-maker's account calculates to a deficit in this situation, adjusting the closing option prices to reflect the underlying stock's true last sale price and recalculating the equity can alleviate a deficit situation in many instances. This can allow the market-maker to continue trading whereas in the deficit situation, further market-making activity is prohibited.

Market-makers on the Chicago Board Options Exchange are generally not self-clearing. They maintain market-maker accounts with other broker-dealer firms that specialize in clearing and carrying such accounts. If the equity in the account of an options market-maker calculates to a deficit, Rule 15c3-1(c)(2)(x)(D) of the Securities and Exchange Act of 1934 prohibits the clearing broker-dealer from extending any further credit to the market-maker account. The clearing broker-dealer must promptly liquidate existing positions in the account. Although, the clearing broker-dealer may, upon approval of its Designated Examining Authority, itself effect or allow the market-maker to effect, opening hedging transactions in the options market-maker's account. The clearing broker-dealer is also required to send telegraphic or facsimile notice of a deficit and its amount to its Designated Examining Authority and the market-maker's Designated Examining Authority, if different, by the close of business of the following business day.

Equity in an options market-maker's account is calculated pursuant to a formula found in Rule 15c3-1(c)(2)(x)(B)(2) of the Securities and Exchange Act of 1934. In calculating equity in an options market-maker's account, all securities positions are marked to their current market value. Equity is equal to the market value of all long positions, less the market value of all short positions, plus the credit (or minus the debit) balance in the account.

The Exchange requests that the Division of Market Regulation not recommend enforcement action to the Securities and Exchange Commission if broker-dealers clearing and carrying the accounts of options market-makers adjust the equity value of the market-maker's option positions to reflect a substantial move in the price of the underlying stock when the closing price of the stock is reported after closing quotations for the options are established and a liquidating deficit results. Any broker-dealer adjusting equity in a market-maker's account under these circumstances would be required to provide documentation to the Exchange's Department of Financial and Sales Practice Compliance for such adjustments before the opening of trading the next business day or before extending further credit to the market-maker for opening transactions. If the Exchange approves the adjustments and the adjustments eliminate the deficit, the market-maker will be permitted to continue trading.

The Exchange greatly appreciates the attention you and your staff have given to this matter. Please feel free to contact me should you have any questions or require further information.

Sincerely,

Richard Lewandowski.

cc:

Mary Bender—CBOE
Douglas Beck—CBOE
Timothy Thompson—CBOE

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40975; File No. SR-NSCC-98-16]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees

January 25, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 28, 1998, National Securities Clearing Corporation ("NSCC") 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 NSCC. 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 modifies NSCC's fee schedule with regard to its Annuities Processing Service ("APS").

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

In its filing with the Commission, NSCC 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. NSCC 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

On December 16, 1998, the Commission approved a proposed rule change that allowed NSCC to implement phase two of APS.³ Phase two enables

multiple insurance product distribution channels such as insurance agencies, broker-dealers, and other trading partners (collectively, "distributors") to transmit to insurance carriers information with respect to an initial annuity application and premium transfers on the sale of an annuity and subsequent annuity activity, as well as the related money settlement between the distributors and insurance carriers. In addition, insurance carriers can transmit to distributors a financial activity report ("FAR") that provides information relating to events and transactions occurring with respect to existing annuity contracts that have been issued by the insurance carriers.

Currently, no fees are being charged to users of these new APS services. With respect to use of these services on or after January 1, 1999, NSCC will charge its members as follows. NSCC will charge members that submit or receive information relating to the initial application or premium transfer a fee of \$7.50 for each submission or receipt. NSCC will charge members that submit or receive information on subsequent annuity activity a fee of \$0.50 for each such transaction. NSCC will charge members that submit or receive a FAR a fee of \$0.50 for each FAR transmitted or received.⁴

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among NSCC's participants.

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

NSCC does not believe that the proposed rule change will impact or impose a 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 have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

NSCC-98-07]. See also Securities Exchange Act Release No. 39096 (September 19, 1997), 62 FR 50416 [File No. SR-NSCC-96-21] (order approving the establishment of APS and the implementation of phase one of APS). For a more detailed description of APS, refer to the foregoing releases.

⁴ The text of the proposed amendments to NSCC's fee schedule is attached as an exhibit to NSCC's filing, which is available for inspection and copying in the Commission's Public Reference Room and through NSCC.

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by NSCC.

³ Securities Exchange Act Release No. 40799 (December 16, 1998), 63 FR 71175 [File No. SR-

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)(ii) of the Act⁵ and pursuant to Rule 19b-4 (e)(2)⁶ thereunder because the proposal establishes or changes a due, fee, or other charge imposed by NSCC. 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. 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 also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR-NSCC-98-16 and should be submitted by February 22, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40963; File No. SR-Phlx-98-42]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Increasing Maximum OTX AUTO-X Order Size Eligibility

January 22, 1999.

I. Introduction

On October 6, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Phlx Rule 1080 increasing to 100 contracts the maximum order size for eligibility for public customer market and marketable limit orders for OTC Prime Index ("OTX") options contracts to be executed on AUTO-X, the automatic execution feature of the Phlx's Automated Options Market ("AUTOM") system. Notice of the proposed rule change appeared in the **Federal Register** on December 23, 1998.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposed to amend Phlx Rule 1080 to increase the maximum order size for eligibility for public customer market and marketable limit orders for OTC⁴ options contracts to be executed on AUTO-X. AUTO-X is the automatic execution feature of AUTOM, the Phlx's electronic order routing, delivery, and reporting system for options. Orders are routed from member firms directly to the appropriate specialist on the Phlx's trading floor. Certain orders are eligible for AUTOM's automatic execution feature, AUTO-X. These AUTO-X orders are automatically executed at the disseminated quotation price on the Exchange and reported to the originating firm. Those orders not eligible for AUTO-X are manually

handled by the specialist. The Phlx proposed to increase the maximum order size eligible for AUTO-X from 50 to 100 contracts.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ The Commission believes the proposal is consistent with the requirements of Sections 6 and 11A of the Act⁶ in general, and in particular, with Sections 6(b)(5) and 11A(a)(1)(C)(i) of the Act.⁷ The Commission notes that the development and implementation to date of the AUTOM system has provided for more efficient handling and reporting of orders in PHLX equity and index options through the use of new data processing and communications techniques, thereby improving order processing and turnaround time. At this time, the Commission consents to extending the benefits available through the use of an automated system to larger-size customer OTX options orders of up to 100 contracts.

Public customers may benefit from the proposal because public customer orders for up to 100 OTX option contracts may be executed automatically and guaranteed by the specialist at the displayed market quote. Additionally, public customers will have the benefit of receiving immediate executions and nearly instantaneous confirmations for orders of up to 100 contracts. The Commission also believes, based on representations by the Exchange, that expanding the order eligibility size of OTX AUTO-X options to 100 contracts will not expose the Phlx's AUTOM system to risk of failure or operational break-down. The Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade and to facilitate transactions in securities, as well as to protect investors and the public interest, by extending the benefits of AUTO-X to a larger number of customer orders. Further, the proposal is consistent with Section 11A(a)(1)(C)(i) of the Act because increasing the maximum OTX option order size eligible for automatic execution should provide for more efficient handling and reporting of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 40802 (December 17, 1998), 63 FR 71183 (December 23, 1998).

⁴ The OTC Prime Index is composed of the fifteen stocks which had the largest trading volume on the Nasdaq during the preceding year. See Securities Exchange Act Release No. 40058 (June 2, 1998), 63 FR 31543 (June 9, 1998).

⁵ In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f and 78k-1.

⁷ 15 U.S.C. 78f(b)(5) and 78k-1(a)(1)(C)(i).

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(e)(2).

⁷ 17 CFR 200.30-3(a)(12).