securities and funds in the clearing agency's custody or control or for which it is responsible and fosters cooperation and coordination with other entities engaged in the clearance and settlement of securities transactions.

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

NSCC does not believe that the proposed rule change will have an impact on 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 relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments it receives.

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

Section 17A(b)(3)(F)[6] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes that the proposal is consistent with NSCC's obligations to assure the safeguarding of securities and funds in its custody or control or for which it is responsible because the agreement should reduce NSCC's risk of loss due to a member's default.[7] The agreement should also mitigate the systemic risks posed to the national clearance and settlement system as a result of a defaulting common member and thus should foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because it will permit NSCC to put a risk reduction mechanism into place in an expedient fashion.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 the filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–97–11 and should be submitted by October 2, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–NSCC–97–11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–24136 Filed 9–10–97; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] This order also approves future limited cross-guarantee agreements into which NSCC or OCC may enter which other clearing agencies provided that the form of such agreements are substantially similar to the form of agreement approved in this filing.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39022; File Nos. SR–OCC–97–17 and SR–NSCC–97–12]

Self-Regulatory Organizations; The Options Clearing Corporation and National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to a Limited Cross-Guaranty Agreement

September 4, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 2, 1997, The Options Clearing Corporation (''OCC'') and on September 3, 1997, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange commission (''Commission'') the proposed rule changes as described in Items I and II below, which items have been prepared primarily by OCC and NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule changes.

I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

The purpose of the proposed rule changes is to obtain Commission approval of the form of limited cross-guaranty agreement into which OCC and NSCC propose to enter.

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, OCC and NSCC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. OCC and NSCC have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of the proposed rule changes is to obtain Commission approval of the form of limited cross-guaranty agreement into which OCC and NSCC propose to enter. OCC amended its by-laws and rules in File No. SR–OCC–96–18[3] to accommodate limited cross-guaranty agreements and accordingly is not proposing to amend the language of its by-laws and rules

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries submitted by OCC and NSCC.

[3] Securities Exchange Act Release No. 38410 (March 17, 1997), 62 FR 13931 (order approving proposed rule change). In general, the proposed rule change added a provision to OCC Rule 1104 to permit OCC to pay any amount owed by OCC to another cross-guaranty party pursuant to a limited cross-guaranty agreement; added a provision to Article VIII, Section 5 of OCC's by-laws to authorize OCC to have recourse to a suspended clearing member's clearing fund contribution for the amount of any payment which it is required to make pursuant to a limited cross-guaranty agreement; and added additional provisions to Article VIII, Section 5 of OCC's by-laws to address the treatment in various circumstances of amounts which OCC might receive under a limited cross-guaranty agreement.

further at this time. NSCC amended its rules in File No. Sr–NSCC–93–07 [4] to accommodate limited cross-guaranty agreements and is not proposing to amend the language of its rules further at this time.

Essentially, a limited cross-guaranty agreement is an agreement between two or more securities clearing corporations and/or commodities clearing organizations (collectively, ''clearing agencies'' and each, a ''clearing agency'') that provides a guarantee that can be invoked in the event that the parties to the agreement must liquidate the assets of an entity that is a member of two or more of the clearing agencies (''common member''). Pursuant to such guarantee, if at least one clearing agency's liquidation of the assets of the common member in its control results in a loss and at least one clearing agency's liquidation of the assets of the common member results in a gain, each clearing agency liquidating to a gain will make the excess assets of the common member in its control available to each clearing agency liquidating to a loss, up to the amount of the loss. If all of the liquidations results in a gain or if all of the liquidations results in a loss, the agreement provides that no assets will be made available by any party to the agreement to any other party.

The effect of a limited cross-guaranty agreement is to enable each party to the agreement to have recourse to the assets of a defaulting common member in the control of the other parties to the agreement. Therefore, a limited cross-guaranty agreement should reduce the risk of each of the clearing agencies which is a party to the agreement because a defaulting common member may well have the positions which were spread across markets in such a manner as to cause its net asset position at one clearing agency to be positive even though its net asset position at another clearing agency is negative.

NSCC and OCC believe that the form of limited cross-guaranty agreement which they propose to sign is substantially similar to the limited cross-guaranty agreement previously entered into by NSCC with the International Securities Clearing Corporation (''ISCC''), the Government Securities Clearing Corporation (''GSCC''), and the MBS Clearing Corporation (''MBSCC'') except as described below.[5] Like NSCC's agreements with MBSCC, GSCC, and ISCC, the agreement provides that demand for payment must be made within six months of the suspension of the common member.

The NSCC–OCC agreement differs from NSCC's agreements with MBSCC, GSCC, and ISCC principally in three ways. The agreement contains statements to make explicit that the net resources which either clearing agency might have to pay over to the other are to be calculated taking into account the obligations to each to the other pursuant to the options exercise settlement agreement [6] between them and the obligations which either might have pursuant to any cross-margining agreement to which it is a party.[7] The agreement also contains a statement to make explicit that the net resources which either clearing agency might have to pay over to the other are to be calculated taking into account any amount deemed by the clearing agency to be necessary to cover any deficiency in the bankruptcy estate of the common member with respect to customers of the common member or to constitute customer funds or securities which the clearing agency has an obligation to return to the common member or its bankruptcy trustee or other representative.[8] The agreement also contains a section providing for the indemnification of the clearing agency paying funds under the agreement by the clearing agency receiving funds under the agreement.

OCC and NSCC believe that the proposed rule changes are consistent with the requirements of Section 17A of the Act because they will establish an additional linkage of clearance and settlement facilities which reduces the risk exposure of the clearing agencies and their members to the liquidation of any defaulting common members and thus reduces systemic risk.

B. Self-Regulatory Organizations' Statements on Burden on Competition

OCC and NSCC do not believe a burden will be placed on competition as a result of the proposed rule changes.

C. Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

No written comments relating to the proposed rule changes have been solicited or received. OCC and NSCC will notify the Commission of any written comments they receive.

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

Section 17A(b)(3)(F) [9] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes that the proposals are consistent with the NSCC's and OCC's obligations to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which they are responsible because the agreement should reduce their risk of loss due to a common member's default.[10] The agreement should also mitigate the systemic risks posed to the national clearance and settlement system as a result of a defaulting common member and thus should foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

NSCC and OCC have requested that the Commission find good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after publication of notice because it will permit NSCC and OCC to put a risk reduction mechanism into place in a timely fashion.

V. Solicitation of Comments

Interested person are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions

[4] Securities Exchange Act Release No. 33548 (January 31, 1994), 59 FR 5638 (order approving proposed rule change). The proposed rule change incorporated the limited guaranty provisions into NSCC's rules and approved NSCC's limited cross-guaranty agreement with The Depository Trust Company.

[5] See Securities Exchange Act Release No. 37616 (August 28, 1996), 61 FR 46887 (order approving proposed rule changes seeking authority to enter into limited cross-guaranty agreements filed by MBSCC, GSCC, and ISCC).

[6] See Securities Exchange Act Release No. 37731 (September 26, 1996), 61 FR 51731 (order approving proposed rule change).

[7] OCC has several cross-margining agreements in place with various community clearing agencies.

[8] OCC believes this statement to be important to reflect its Rule 1104(d) which in turn reflects that its account structure provides for maintaining customer positions in separate customers' accounts and marketmaker positions in separate market-makers' accounts. (A market-maker that is not affiliated with its clearing firm is a ''customer'' of that firm for purposes of the hypothecation rules even though it is regulated as a broker-dealer.)

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] This order also approves future limited cross-guarantee agreements into which NSCC or OCC may enter with other clearing agencies provided that the form of such agreements are substantially similar to the form of agreement approved in this filing.

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 the respective filing swill also be available for inspection and copying at the respective principal offices of OCC and NSCC. All submissions should refer to File Nos. SR–OCC–97–17 and SR–NSCC–97–12 and should be submitted by October 2, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule changes (File Nos. SR–OCC–97–17 and SR–NSCC–97–12) be and hereby are approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39000; File No. SR–Phlx–97–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Treatment of PACE Orders in Double-up/Double-Down Tick Situations

September 2, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(c)(1), notice is hereby given that on May 2, 1997, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, and on August 4, 1997 filed with the Commission Amendment No. 1 thereto,[1] 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 adopt paragraph (c) to Supplementary Material .07 of Rule 229, Philadelphia Stock Exchange Automatic Communication and Execution (''PACE'') System, relating to automatic double-up/double-down price improvement and manual double-up/double-down price protection. The operation of the PACE System, which is the Exchange's automatic order routing and execution system for equity securities, is governed by Phlx Rule 229 (''PACE Rule'').

Proposed paragraph (c)(i), Automatic Double-up/Double-down Price Improvement, would state that where the specialist voluntarily agrees to provide automatic double-up/double-down price improvement to all customers and all eligible orders in a security, in any instance where the bid/ask spread of the PACE Quote[2] is a ¼ point or greater, market and marketable limit orders[3] in NYSE-listed or Amex-listed securities for 599 shares or less that are received through PACE in double-up/double-down situations shall be provided with automatic price improvement of ⅛ of a point, beginning at 9:45 a.m. Moreover, a specialist voluntarily may agree to provide automatic double-up/double-down price improvement to larger orders in a particular security to all customers under this provision. Automatic double-up/double-down price improvement will not occur where the execution price would be outside the primary market high/low range for the day, if out-of-range protection was elected by the member organization entering the order pursuant to Supplementary Material .07(a) of the PACE Rule. In addition, the Exchange proposes to adopt a corollary provision in Supplementary Material .10(a) to the PACE Rule respecting automatic double-up/double-down price improvement for marketable limit orders.

The Exchange also proposes to adopt an alternative to automatic double up/double-down price improvement. Specifically, proposed Supplementary Material .07(c)(ii), Manual Double-up/Double-down Price Protection would state that where the specialist does not agree to provide automatic double-up/double-down price improvement in a security, in any instance where the bid/ask spread of the PACE Quote is ⅛ of a point or greater, beginning at 9:45 a.m., the specialist must provide manual double-up/double-down price protection to all customers and all eligible orders in a security. The manual double-up/double-down price protection feature causes eligible market and marketable limited orders of 599 shares or less in NYSE-listed and Amex-listed securities that are received through PACE in double-up/double-down situations to be stopped at the PACE Quote at the time of their entry into PACE. Moreover, a specialist may voluntarily agree to provide manual double-up/double-down price protection to larger orders in a particular security to all customers under this provision. However, if the execution price of an order would be outside the primary market high/low range for the day, where out-of-range protection is elected by the member organization entering the order, the order would be stopped for manual handling by the specialist, regardless of the existence of a double-up/double-down situation. Manual double-up/double-down price protection does not provide an automatic execution or automatic price improvement. Instead, this feature stops orders to provide an opportunity for manual price improvement in double-up/double-down situations.

Finally, proposed paragraph (c)(iii) would provide that both automatic double-up/double-down price improvement and manual double-up/double-down price protection may be disengaged in a security or floorwide in extraordinary circumstances with the approval of two Floor Officials of the Exchange.

[1] *See* Letter from Philip H. Becker, Senior Vice President and Chief Regulatory Officer, Phlx, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, dated August 1, 1997 (''Amendment No. 1''). The substance of amendment No. 1 has been incorporated into this notice.

[2] The PACE Quote consists of the best bid/offer among the American Stock Exchange (''Amex''), New York Stock Exchange (''NYSE''), Pacific Exchange, Phlx, Boston, Cincinnati, and Chicago Stock Exchanges, as well as the Intermarket Trading System/Computer Assisted Execution System (''ITS/CAES''). *See* PACE Rule.

[3] 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 such specified price.