SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43755; File No. SR–OCC–00–12]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to The Creation of a Program to Relieve Strains on Clearing Members' Liquidity in Connection With Settlements

December 20, 2000.

Pursuant to 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] notice is hereby given that on November 27, 2000, 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 parties.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change proposes a program to relieve strains on clearing members' liquidity in heavy expiration months by reducing inefficiencies in the exercise settlement process.[2]

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 these statements.[3]

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

1. Background

Under the Third Amended and Restated Options Exercise Settlement Agreement (the ''Accord'') dated February 16, 1995, between OCC and National Securities Clearing Corporation (''NSCC''), OCC and NSCC each guarantee that if the other sustains a loss on liquidity of a common member[4] with pending settlement activity at NSCC resulting option exercises and assignments, it will make a payment to the other in an amount (which may be zero) determined by a formula set forth in the Accord.[5]

Under the Accord, NSCC has until 6:00 a.m. Central Time on the day after an option exercise settlement date (E+4) to notify OCC that is has ceased to act or may cease to act for a common member. If NSCC fails to give such notice by that time, OCC is released from its guarantee obligation with respect to transactions for which E+3 was the settlement date. Because OCC is not released from its guarantee obligation until the morning of E+4, it must continue to hold margin on assignments settling on E+3 until E+4. This means that assets that a clearing member has deposited with OCC as margin for pending assignments cannot be used to settle or to finance settlement of those assignments. Instead, the clearing member must find other sources of financing and that can strain some clearing members' liquidity in months with heavy exercise and assignment activity.

2. The Proposed Rule Change

In an effort to reduce the strains on liquidity resulting from the after-the-fact release of margin on pending assignments, OCC, in conjunction with NSCC and The Depository Trust Company (''DTC''), has worked out a program to allow OCC clearing member to withdraw equity securities[6] deposited with OCC as margin and pledge them to DTC participant banks as collateral for loans. The proceeds of such loans would be disbursed by the bank directly to OCC and used to discharge settlement obligations of the clearing member at NSCC that were guaranteed by OCC. OCC's liability exposure to NSCC under the Accord would be correspondingly reduced as would OCC's need to continue to hold margin until E+4.

The program would work as follows:

- On the morning of E+3, a clearing member would determine from OCC the amount of the loan that it could collateralize with securities held by OCC as a margin. That amount would be no less than the value assigned by OCC to such securities for margin purposes[7] and would be no more than the lesser of (i) the margin requirement for the account from which the securities were to be withdrawn[8] and (ii) the amount of OCC's guarantee exposure to NSCC (assuming that the clearing member's NSCC positions liquidated to a deficit).[9]
- The clearing member would then contact its bank and arrange for the loan. When the terms of the loan were agreed upon, the clearing member would use a new Participant Terminal System screen developed by DTC to confirm both to the bank and to OCC the amount of the loan and the quantity and description of the securities to be withdrawn from OCC and pledged to the bank as collateral. The bank and OCC would use that information to validate the loan request.
- When both the bank and OCC approved the loan, DTC would transfer the securities from a ''pledged to OCC'' field in the clearing member's DTC account to a special OCC account at DTC. From that account, the securities would be pledged to the bank against receipt of the loan proceeds. The proceeds would thus be paid directly to OCC without passing through the hands of the clearing member.
- Upon receipt in the special OCC account, the loan proceeds would automatically be paid over to NSCC for the benefit of the clearing member resulting in a corresponding reduction in OCC's guarantee exposure to NSCC under the Accord.

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

[2] A copy of the text of OCC's proposed rule change and the attached exhibits are available at the Commission's Public Reference Section or through OCC.

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] The Accord also covers situations where an OCC clearing member that is not a NSCC member settles option exercises and assignments through an NSCC member.

[5] For a description of the Accord's formula, refer to Securities Exchange Act Release No. 37731 (September 26, 1996), 61 FR 51731.

[6] OCC plans to allow the use of Government securities as well once the necessary systems are developed. At December 31, 19999, OCC's margin deposits included over $36 billion in equities compared to $9 billion Governments.

[7] For example, if the clearing member had equity securities with a market value of $10 million on deposit in an account with OCC as margin (which OCC would value at $7 million for margin purposes), the amount of the bank loan collateralized by those securities would have to be no less than $7 million. If the loan amount were, for example, $6 million, OCC would be exchanging $7 million worth of margin for a reduction of only $6 million in its guarantee exposure to NSCC,

[8] If, in the preceding example, the margin requirement in the relevant account were only $6 million, the loan would be limited to that amount and OCC would only release equity securities with a market value of $8.57 million ($6 million in margin value). The remaining $1.43 million of securities would be excess margin, which the clearing member would be free to withdraw and pledge separately.

[9] If, in the preceding examples, OCC's guarantee exposure to NSCC were only $5 million, the loan would be limited to that amount and OCC would only release equity securities with a value of $7.14 million ($5 million in margin value). If the loan amount were in excess of $5 million, OCC would be releasing margin worth more than $5 million for a reduction of only $5 million in its guarantee exposure.

• At the end of the day, DTC would automatically transfer the securities from a ''pledged to bank'' field in the special OCC account to a ''pledged to bank'' field in the clearing member's DTC account, leaving the clearing member in the same position as if it had been able to pledge the securities to the bank without OCC's intermediation.

Upon allowing securities to be withdrawn and pledged under the program, OCC would reduce its margin requirement in the account from which the securities were withdrawn by an amount equal to the value assigned to the securities for margin purposes. The account would, however, be required to be fully margined the next morning.

Initially, clearing members will be permitted to withdraw and pledge securities held by OCC as margin only on settlement dates for exercises of expiring equity options. OCC may at a future date decide to make it available on other exercise settlement dates as well.

3. Timing

Historically, the heaviest volume of option expirations, and hence exercises, occurs in January. In January 2000, 26,099,346 option contracts expired, accounting for 41.9% of total open interest. Open interest as of November 21, 2000, included 26,378,070 contracts expiring in January 2001 (43.2% of total open interest). OCC believes that it is important to have the new program in place in time for the January 2001 expiration to help relieve potential strains on liquidity resulting from the large volume of exercise activity expected to occur at that time.

The proposed rule change is consistent with the requirements of section 17A of the Act [10] and the rules and regulations thereunder applicable to OCC because it would reduce inefficiencies in the exercise settlement process and relieve strains on clearing members' liquidity in heavy expiration months thereby promoting the safeguarding of securities and funds.

(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

Within thirty-five 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 ninety 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 self-regulatory organization 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 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. 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 OCC. All submissions should refer to File No. SR–OCC–00–12 and should be submitted by January 18, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[10] 15 U.S.C. 78q–1.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43757; File No. SR–Phlx–00–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, as Amended, by the Philadelphia Stock Exchange, Inc. Relating to Timing Guidelines for Application in Disciplinary Hearings

December 20, 2000.

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 July 13, 2000, 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 Exchange. On August 23, 2000, the Phlx filed Amendment No. 1 to the proposed rule change.[3] On November 9, 2000, the Phlx filed Amendment No. 2 to the proposed rule change.[4] On November 22, 2000, the Phlx filed Amendment No. 3 to the proposed rule change.[5] On December 13, 2000, the Phlx filed Amendment No. 4 to the proposed rule change.[6] The Commission is publishing this notice to solicit comments on the proposed rule

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

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Charles Falgie, Director of Enforcement/Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission (Aug. 22, 2000)(''Amendment No. 1''). In Amendment No. 1, the Phlx corrected its rule language and clarified which language of the rule text was to be added and deleted. The Phlx also added a paragraph describing that the proposed would allow the Chairperson of the Business Conduct Committee (''Committee'') to designate another person to oversee the Chairperson's duties pursuant to Phlx rules.

The Phlx indicated that the designee would be a Business Conduct Committee member. Telephone conversation between Charles Falgie, Director of Enforcement/Counsel, Phlx, and Melinda Diller, Attorney, Division, Commission (Sept. 1, 2000).

[4] *See* Letter from Charles Falgie, Director or Enforcement/Counsel, Phlx, to Nancy Sanow, Assistant Director, Commission (Nov. 8, 2000) (''Amendment No. 2''). In Amendment No. 2, the Phlx changed the text of the rule language and revised time limits and the manner in which a Respondent's request for a hearing is handled.

[5] *See* Letter from Charles Falgie, Director of Enforcement/Counsel, Phlx, to Nancy Sanow, Assistant Director, Division, Commission (Nov. 20, 2000) (''Amendment No. 3''). In rule change.[6]The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[6] *See* Letter from Charles Falgie, Director of Enforcement/Counsel, Phlx, to Nancy Sanow, Assistant Director Division, Commission (Dec. 13, 2000) (''Amendment No. 4''). In Amendment No. 4, the Phlx made a few technical corrections to the text of the proposed rule.