

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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to Amendment No. 4 of File No. SR-NYSE-99-51 and should be submitted by April 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45534; File No. SR-OCC-2001-18]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending the By-Laws

March 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, notice is hereby given that on December 19, 2001, 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 Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend certain sections of Article IV and Article VI of OCC's By-Laws to correct minor errors.

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.²

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

The primary purpose of this rule change is to correct technical errors in Article IV of OCC's By-Laws that deals with officers. There are two principal errors that OCC desires to correct. First, in 1980, when Chapter XII of OCC's Rules was amended to eliminate the authority of the Chairman and the President to prescribe penalties for rule violations, Article IV of the By-Laws should have also been amended to eliminate references to that authority in Section 6 ("Chairman of the Board") and Section 8 ("President").

Second, in 1997, when Article IV was amended to create the office of Management Vice Chairman, OCC's stated intent was to remove the Member Vice Chairman from the line of succession.³ However, language that should have been deleted in order to implement that intent was inadvertently left in. As a result, there are now mutually inconsistent By-Laws providing that in the absence or disability of the Chairman, the Management Vice Chairman and the Member Vice Chairman each succeed to the powers of the Chairman.

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

³ Prior to that time, the By-Laws provided that Member Vice Chairman would succeed to the power of the Chairman in the absence or disability of the President and all the Vice Presidents. Securities Exchange Act Release No. 39420 (December 10, 1997), 62 FR 66167 (December 17, 1997) [File No. SR-OCC-97-08].

A secondary purpose of this rule change is to make minor corrections to Section 15 and 16 of Article VI of the By-Laws. Those corrections are to delete material that should have been deleted when references to market baskets were removed from the By-Laws and Rules.⁴

The proposed rule change is consistent with Section 17A of the Act because it provides consistency within OCC's by-laws.

(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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act⁵ and Rule 19b-4(f)(1)⁶ thereunder for it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of this 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. 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

⁴ Securities Exchange Act Release No. 41222 (March 29, 1999), 64 FR 16772 (April 6, 1999) [File No. SR-OCC-99-03].

⁵ 5 U.S.C. 78s(b)(3)(A)(i).

⁶ 17 CFR 240.19b-4(f)(1).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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-2001-18 and should be submitted by April 5, 2002.

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. 34-45523; File No. SR-Phlx-2002-12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Proposing To Adopt an Application Fee for Equity Trading Permits

March 8, 2002.

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 11, 2002, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 on March 1, 2002.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to apply a \$200 Application Fee to applicants for Equity Trading Permits ("ETPs") who, at the time application is made, are not Exchange members or foreign currency

options ("FCO") participants. The Exchange states that it would not charge the \$200 ETP Application Fee to ETP applicants who, at the time the application is made, are Exchange members or FCO participants. The text of the proposed rule change is available at the Phlx's Office of the Secretary and at the Commission.

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 Exchange 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 III below. The Exchange 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

On January 9, 2002, the Commission approved a proposed rule change to adopt Exchange Rule 23 which provides for ETPs.⁴ The Exchange anticipates commencing an ETP program in the near future. Accordingly, the purpose of the proposed rule change is to amend the Exchange's Schedule of Dues, Fees and Charges, to establish that a \$200 ETP Application Fee will be charged to applicants for ETPs who, at the time application is made, are not Exchange members or FCO participants.⁵ The Exchange proposes this new ETP application fee to defray the Exchange's administrative costs of review and processing such applications.

Exchange Rule 23(b) provides that ETP holders must meet all qualifications that are required for membership in the Exchange. It provides that applications must be approved by the Exchange, and that applicants who are not Exchange

members must be admitted by the Exchange. Exchange Rule 23(b) also states that the admissions process for applicants who are not members of the Exchange will be the same as that required for membership applicants for admission, and that the decision to grant or deny an application for admission will be made by the Admissions Committee. The Exchange noted in its filing proposing Exchange Rule 23, that ETP applicants who are members of the Exchange when they apply for an ETP will have already received a favorable admissions determination by the Exchange's Admissions Committee when they became a member. Consequently, they will not be charged the ETP Application Fee. The Exchange now proposes that a \$200 ETP Application Fee apply to ETP applicants who are not members or FCO participants at the time of application in order to defray the administrative costs associated with processing applications made by individuals who have not previously been evaluated by the Exchange as applicants for membership or FCO participation.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,⁶ in general, and furthers the objectives of section 6(b)(4) of the Act,⁷ in particular, by providing for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange believes that the \$200 ETP Application Fee is reasonable and equitable, because it is charged to all ETP applicants who are not members or FCO participants.

In addition, the Exchange believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,⁸ in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Exchange believes that application of the \$200 ETP Application Fee to ETP applicants who are not members or FCO participants when they apply will defray administrative costs involved in the review and processing of an ETP application when made by an individual with respect to whom this has not previously been done in the

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f(b)(5).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On March 1, 2002, the Exchange filed a new Form 19b-4, which replaces and supercedes the original filing in its entirety ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 45254 (January 9, 2002), 67 FR 2720 (January 18, 2002) (approving SR-Phlx-00-02 and SR-Phlx-00-03).

⁵ The Exchange has separately filed pursuant to section 19(b)(3)(A) of the Act, SR-Phlx-2002-10, a proposed rule change amending Appendix A to its Schedule of Dues, Fees and Charges to establish fees applicable to ETP holders and ETP organizations. See Securities Exchange Act Release No. 44213 (April 23, 2001), 66 FR 22058 (May 2, 2001) (SR-Phlx-2001-01). That filing does not address the \$200 ETP Application Fee that is proposed here. The Exchange now files this proposed rule change pursuant to section 19(b)(2) of the Act.