

instances in which it is not appropriate or useful to report yield. Instead, the Association has clarified that in those instances where the reported yield would provide inaccurate or misleading information concerning the price of, or trading in the security, yield is not required to be reported.

There were several other minor amendments to Rule 6230. In paragraph (d)(3) of Rule 6230, the Association proposes to eliminate the reporting of certain transactions as "crosses." A corresponding change is proposed to Rule 6230(c)(4). In addition, in paragraph (d)(2) of Rule 6230, the Association has clarified the term "baby bond" and how to report a fractional par value of a debt instrument.

## 2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change, if approved, will amend rules for the reporting of information on eligible debt securities transactions that will provide the NASD, as the self-regulatory organization designated to regulate the over-the-counter markets, with heightened capabilities to regulate the debt securities markets in order to prevent fraudulent and manipulative acts and practices. The proposed rule change, by requiring reporting of such transaction information, will protect investors and the public interest by, among other things, increasing transparency in the fixed income markets.

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

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

While comments were neither solicited nor received concerning this rule proposal, several commenters on SR-NASD-99-65 indicated that the NASD should consider proposing reporting rules that would allow the members of the fixed income markets to use, with modifications, some of the

reporting arrangements and linkages in place for the reporting of municipal securities transactions. In light of these comments, the Association is proposing that the one hour reporting period set forth in Rule 6230(a) be amended to one hour and 15 minutes and an alternative method for reporting "price" be provided in Rule 6230(c)(3) and (d)(1). The proposed extension of the reporting period and the alternative for reporting "price" will allow certain firms that have communication links to a registered clearing agency to report to TRACE using the reporting processes that are in place through the registered clearing agency. Otherwise, written comments were neither solicited nor 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 self-regulatory organization consents, the Commission will:

- A. By order approve such proposed rule change, as amended, or
- B. Institute proceedings to determine whether the proposed rule change, as amended, 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, as amended, 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 NASD. All submissions should refer to file number SR-NASD-2002-46 and should be submitted by June 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45946; File No. SR-OCC-2001-16]

### **Self-Regulatory Organizations; the Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Clearing Certain Commodity Futures and Options Thereon**

May 16, 2002.

#### I. Introduction

On October 24, 2001, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2001-16 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on December 20, 2001.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

1. Introduction  
Pursuant to the proposed rule change being approved, OCC will provide clearance and settlement services for futures on broad-based stock indexes and options on such futures under the same basic rules and procedures currently applicable to the clearance and settlement of other OCC-cleared contracts, including options and security futures.<sup>3</sup> There is no significant difference between the mechanics for

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 45152 (December 12, 2001), 66 FR 65770.

<sup>3</sup> Because such contracts are within the exclusive jurisdiction of the Commodity Futures Trading Commission ("CFTC"), on October 9, 2001, OCC submitted to the CFTC an application for registration as a derivatives clearing organization ("DCO") under Section 5b(c) of the Commodity Exchange Act ("CEA") and under 17 CFR Part 39 of the CFTC's regulations. The CFTC granted OCC's application for registration on December 10, 2001. The Commission notes that although futures on broad-based stock indexes and options on these futures fall within the exclusive jurisdiction of the CFTC, the Commission retains its authority to inspect and examine OCC with respect to OCC's clearance and settlement of these products by virtue of its status as a registered clearing agency under Section 17A of the Act.

the clearance and settlement of a future on a narrow-based stock index (a security future) and the mechanics for the clearance and settlement of a future on a broad-based stock index.<sup>4</sup>

Accordingly, many of the changes being made merely expand the provisions applicable to security futures to include commodity futures. Likewise, futures options are substantially similar in most respects to other options cleared and settled by OCC, and accordingly, futures options will be governed by many of the same by-laws and rules applicable to other options. Where special provisions for futures options are needed, they are contained primarily in Article XII of the By-Laws and Chapter XIII of the Rules which, as discussed below, are being amended so that they apply to commodity futures and futures options as well as to security futures.

## 2. New and Amended Definitions

OCC is adding new definitions for several terms applicable to commodity futures and futures options and is including those terms in Article I of the By-Laws. New futures terms have been adopted and defined to correspond as closely as possible to the terminology used in the existing futures markets while also being consistent with terminology in OCC's rules. Various existing security futures definitions have been amended so that they are applicable to commodity futures as well as to security futures. The new definitions are mostly self-explanatory, but a few terms that are of particular significance are described below.

The term "commodity future" is added to distinguish these products from security futures and is defined as a futures contract within the exclusive jurisdiction of the CFTC that is traded on or through the facilities of a futures market or is subject to the rules of a futures market. The term "future" is defined so that it encompasses both security futures and commodity futures where, as is most often the case, no distinction is needed. A "futures market" is defined to mean a contract market registered with the CFTC as such. OCC does not currently propose to clear commodity futures products traded on markets other than registered contract markets. The definition of "option contract" has been amended to include a "futures option" which is defined as an option to buy or sell any commodity future traded on or through the facilities of a futures market or is

subject to the rules of a futures market. The term "cleared contract" is defined as a security, commodity future, or futures option that is cleared by OCC.<sup>5</sup> Changes to the definitions of "commencement time" and "series marker" are discussed below.

3. Clearing Member Qualifications  
Section 1 of Article V of OCC's By-Laws is amended to permit futures commission merchants ("FCMs") that are not notice-registered as broker-dealers under Section 15(b)(11)(A) of the Act to become clearing members. Interpretation .06 under Section 1 was added in SR-OCC-2001-07 to provide that OCC may give expedited review and may waive certain non-financial criteria where appropriate in order to admit affiliates of existing clearing members for the purpose of clearing security futures.<sup>6</sup> OCC will extend the same consideration to such affiliates that become clearing members for the purpose of clearing commodity futures and futures options. As stated in SR-OCC-2001-07, OCC believes that it is appropriate to give special consideration to such affiliates to the extent that their affiliation with an existing clearing member provides access to competent and experienced personnel able to assist the affiliate in meeting OCC's operational requirements.

OCC's financial requirements will remain substantially the same for all clearing members whether regulated primarily or exclusively as broker-dealers or as FCMs. In the case of a clearing member regulated primarily or exclusively as an FCM, OCC will permit such FCM to compute its net capital in accordance with the CFTC's regulations. OCC Rules 301(c), 303(c), and 307 have been modified to provide appropriate references to CFTC regulations governing FCM financial requirements in order to provide as nearly as practicable requirements that are parallel to those applicable to clearing members regulated primarily as broker-dealers.

## 4. Accounts

OCC By-Law Article VI, Section 3, is amended to clarify that commodity

<sup>5</sup> While many of the changes made by this ruling have been broadly made to facilitate the clearance and settlement by OCC of transactions in commodity futures and futures options no matter what the underlying interests, this rule filing approves only OCC's proposal to clear and settle futures on broad-based indexes and options thereon. In the event that OCC undertakes a clear additional CFTC-regulated products in the future, OCC will file a proposed rule change under Section 19(b) of the Act regardless of whether OCC needs to amend or add specific language to its By-Laws or Rules.

<sup>6</sup> *Supra* note 4.

futures and futures options positions of futures customers may not be carried in the firm account. Additionally, Interpretation and Policy .01 has been added to require a clearing member carrying a customer account pursuant to Article VI, Section 3(e) (*i.e.*, an account holding positions of securities customers) to be fully registered as a broker-dealer and to require a clearing member carrying a segregated futures account under Article VI, Section 3(f) (*i.e.*, an account holding positions of futures customers) to be fully registered as an FCM. Whether a person is a futures customer or a securities customer is determined by (i) the agreement between the intermediary carrying the customer's account, subject to the provisions of the Act, the CEA, and regulations under either or both of those statutes as applicable to the particular intermediary (*i.e.*, broker-dealer, FCM, or dual registrant), (ii) the types of cleared contracts involved (*i.e.*, securities, security futures, or commodity futures products), and (iii) the identity of the person whose account is carried (including the nature of any affiliation such person has with the intermediary). Article VI, Section 3(a) has been modified to provide that positions in commodity futures and futures options of persons who are not futures customers (and whose accounts are therefore proprietary within the meaning of CFTC Regulation 1.3(y)) may be carried in the firm account regardless of that person's status under the Commission's hypothecation rules or Rule 15c3-3.

## 5. Amendments to Article XII of the By-Laws

Article XII sets out the basic provisions for security futures, including both physically-settled and cash-settled stock futures. Article XII is amended to apply to commodity futures and futures options as well. The major change is the addition of subparagraph (b) to Section 2, which governs the rights and obligations of buyers and sellers of futures options. When a futures option is exercised, OCC will: (a) in the case of a call, open in the account from which the call was exercised the number of long futures contracts and open in the account to which the exercise was assigned the number of short futures contracts equal to the unit of trading for the option and (b) in the case of a put, open in the account from which the put was exercised the number of short futures contracts and open in the account to which the exercise was assigned the number of long futures contracts equal to the unit of trading for the contract. Futures contracts that are

<sup>4</sup> The Commission recently approved OCC's rules and procedures for the clearance and settlement of security futures. Securities Exchange Act Release Nos. 44434 (June 15, 2001), 66 FR 33283 [File No. SR-OCC-2001-05] and 44727 (August 20, 2001), 66 FR 45351 [File No. SR-OCC-2001-07].

opened in settlement of the exercise of a futures option contract will be deemed to have been opened on the day of exercise, and the exercise price for the futures option will be the contract price for the futures contract. After the futures contract is opened, the buyer and seller will have the same rights and obligations as the holders of other futures contracts.

#### 6. *Adjustments*

As with security futures, adjustments to commodity futures and futures options that are necessary to reflect certain events affecting the underlying index will be determined by OCC. Futures on broad-based stock indexes and futures options thereon will be subject to the same adjustment provisions in Article XII, Sections 3 and 4 of the By-Laws that are applicable to narrow-based stock index futures. These adjustment provisions were patterned after similar provisions in Section 3 of Article XVII which are applicable to index options. Paragraph (b) of Article XII, Section 4 has been modified and new paragraph (c) has been added to update and to conform to changes in the adjustment provisions applicable to index options that were approved by the Commission last year.<sup>7</sup> New paragraph (d) of Article XII, Section 4 has been added in order to provide for appropriate adjustments to outstanding futures options when the underlying index future is adjusted. In that case, the futures option will be adjusted to provide for delivery of the adjusted future. Where appropriate, the exercise prices and the number of outstanding options may be adjusted. Section 6 of Article XII, which provides that the final settlement price for any futures contract at maturity is determined by a method approved by the market listing the future, is made applicable to both security futures and commodity futures. Interpretation .01 is being added to make clear that any such method of determining final settlement prices must be consistent with applicable regulations. This interpretation is added in light of the rules proposed by the Commission and the CFTC that would require that final settlement prices for security futures ordinarily be based on opening prices.<sup>8</sup>

#### 7. *Trade Reporting and Matching*

Trade reporting and matching will occur for commodity futures in the same manner as for security futures and for

futures options in generally the same manner as for other options. OCC however, will not require transactions in commodity futures and futures options to be identified as opening or closing as it requires for security futures and for other options. If a futures market elects to submit trade information without identification as to whether the transaction is opening or closing, OCC will treat all transactions as opening transactions. Each clearing member then will have to submit gross position adjustment information at the end of the day to reduce its positions to reflect the actual open interest in accounts carried by the clearing member. These procedures are consistent with current practice on many futures exchanges. As with security futures, commodity futures and futures options may include, if a futures market so elects, a series marker that prevents contracts traded on that market from being treated as fungible with otherwise identical futures contracts traded on other markets cleared by OCC. The definition of a "series marker" in Article I of the By-Laws has been amended to make clear that a series marker can be shared by mutual consent among more than one exchange or market. As a result, contracts may be fungible when traded on any market within a group but not fungible with contracts traded on markets outside the group. This is intended as a clarification of, rather than a change in, the existing rule.

Rule 401 is also being amended to provide that non-competitively executed transactions, such as block trades and exchange-for-physicals, must be identified as such in the matched trade report.<sup>9</sup> These provisions would apply to futures options as well as commodity futures and security futures. As defined in Article I, Section 1, the "commencement time" for trades designated as non-competitively executed does not occur until OCC has received the premium or initial variation payment on the transaction. This provision would allow OCC to reject the trade if the clearing member fails to make such payment. These trades are treated differently from other trades because when a transaction is effected at a price other than the current market price, OCC's loss may be greater in the event of a clearing member default.

#### 8. *Margins*

OCC Rule 602, which contains the calculation used to determine the margin required for each account of a

clearing member for narrow-based index futures, index options, and other non-equity options, is amended to include commodity futures and futures options. Margin will be calculated for these new products in exactly the same way as for other futures and options subject to OCC Rule 602.

#### 9. *Clearing Fund Contributions*

Commodity futures and futures options will be covered by the same clearing fund that stands behind all options and security futures cleared by OCC. Clearing activity in commodity futures and futures options will be taken into consideration in calculating the amount of a clearing member's contribution in the same way that activity in other contracts is considered. OCC Rule 1001 provides that affiliates of existing clearing members that become clearing members of OCC solely for the purpose of clearing transactions in broad-based index futures or futures options need not put up an additional \$150,000 minimum clearing fund contribution. This merely expands the existing provision applicable to clearing member affiliates that become clearing members solely for the purpose of clearing security futures.

#### 10. *Discipline*

OCC Rule 1202, dealing with disciplinary proceedings, is amended to provide that if an OCC disciplinary proceeding relates solely to the clearing member's activities as an FCM, OCC must notify the clearing member in writing that it may have a right to appeal under Section 8c of the CEA. As a result of this change, clearing member disciplinary proceedings that relate to violations of customer segregated funds rules and other violations of the CEA or regulations thereunder will be subject to CFTC review.

#### 11. *Amendments to Chapter XIII*

OCC proposed and the Commission approved a new Chapter XIII of its Rules to govern security futures.<sup>10</sup> With the current filing, OCC is simply amending that Chapter so that it applies to commodity futures and futures options as well.

### III. Discussion

In Section 17A of the Act, Congress stated its finding that the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on

<sup>7</sup> Securities Exchange Act Release 44184 (April 16, 2001), 66 FR 20342 [File No. SR-OCC-99-12].

<sup>8</sup> Securities Exchange Act Release 44743 (August 24, 2001), 66 FR 45904 [File No. S7-15-01].

<sup>9</sup> CFTC regulations require the identification of non-competitive trades. 17 CFR 1.38(b).

<sup>10</sup> Securities Exchange Act Release No. 44727 (August 20, 2001), 66 FR 45351 [File No. SR-OCC-2001-07].

behalf of investors.<sup>11</sup> Congress then directed the Commission to facilitate the establishment of coordinated facilities for the clearance and settlement of transactions in securities, securities options, futures, and options on futures.<sup>12</sup> By providing clearance and settlement services for futures on broad-based stock indexes and options on such futures under the same basic rules and procedures applicable to the clearance and settlement of other OCC-cleared contracts such as options and security futures, OCC is establishing itself as a facility capable of providing coordinated clearance and settlement services for transactions in both securities and futures. Therefore, the Commission finds that the approval of OCC's rule change is consistent with the directive of Congress.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act 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-2001-16) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45928; File No. SR-Phlx-2001-27]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto Relating to Disengagement of Auto-Ex Due to Extraordinary Circumstances

May 15, 2002.

#### I. Introduction

On March 7, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to the disengagement of AUTO-X, the automatic execution feature of the Exchange's Automated Options Market ("AUTOM").<sup>3</sup> On March 28, 2001, December 20, 2001, March 1, 2002 and March 8, 2002, Phlx submitted Amendment Nos. 1,<sup>4</sup> 2,<sup>5</sup> 3,<sup>6</sup> and 4,<sup>7</sup> respectively. The proposed rule change, as amended by Amendment Nos. 1, 2, 3, and 4, was published for comment in the **Federal Register** on April 12, 2002.<sup>8</sup> The Commission received no comments on the amended proposed rule change. This order approves the proposed rule change, as amended.

#### II. Description of the Proposal

The Exchange proposes to amend Options Floor Procedure Advice ("OFPA") A-13, Auto Execution Engagement/Disengagement Responsibility, and Phlx Rule 1080(e), Extraordinary Circumstances, to provide for a re-evaluation of the disengagement of AUTO-X<sup>9</sup> during extraordinary circumstances. Specifically, when

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Exchange filed this proposed rule change pursuant to the requirements of Section IV.B.h.(i)(bb) of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Phlx (as well as the other floor-based options exchanges) to adopt new, or amend existing rules concerning automatic quotation and execution systems which specify the circumstances, if any, by which automated execution systems would be disengaged or operated in any manner other than the normal manner set forth in the exchange's rules; and, requires the documentation of the reasons for each decision to disengage an automatic execution system or operate it in any manner other than the normal manner. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3-10282.

<sup>4</sup> See letter from Diana Tenenbaum, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 27, 2001 ("Amendment No. 1").

<sup>5</sup> See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated December 19, 2001 ("Amendment No. 2"). Amendment No. 2 superseded and replaced Amendment No. 1 in its entirety.

<sup>6</sup> See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated February 28, 2002 ("Amendment No. 3").

<sup>7</sup> See letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 7, 2002 ("Amendment No. 4").

<sup>8</sup> See Securities Exchange Act Release No. 45710 (April 9, 2002), 67 FR 18295 (April 12, 2002).

<sup>9</sup> AUTO-X is a feature of AUTOM, the Exchange's electronic order delivery and reporting system that automatically executes public customer market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options.

AUTO-X is disengaged due to extraordinary circumstances, the Exchange would be required to review and confirm that such circumstances still exist five minutes after the initial declaration of extraordinary circumstances, and every fifteen minutes thereafter. Additionally, the Exchange proposes to amend Phlx Rule 1080(e) to specify the definition of extraordinary circumstances under which AUTO-X may be disengaged, or operated in a manner other than the normal manner set forth in the Exchange's rules.<sup>10</sup> The Exchange also proposes record keeping requirements to be kept when AUTO-X is disengaged and reengaged.

Currently, in order to obtain AUTO-X disengagement relief for a specific class of option due to extraordinary circumstances, the specialist must promptly notify the Phlx Market Surveillance Department that relief is requested.<sup>11</sup> The specialist must also obtain authorization from two Floor Officials. Currently, OFPA A-13 and Phlx Rule 1080(e) do not provide a specified time frame to re-evaluate the conditions under which a continuation of extraordinary circumstances may continue. Nor do they provide for substantial participation of Market Surveillance staff.

Under the proposed rules, the specialist would be required to notify the Phlx Market Surveillance Department that relief is requested to ensure proper notification to AUTOM users in accordance with Phlx Rule 1080(f)(v). The specialist also would be required to obtain authorization from two Floor Officials for relief. Two Floor Officials would continue to determine if relief is warranted.<sup>12</sup> Under the proposal, five minutes after the initial determination, and every fifteen minutes thereafter, as long as the extraordinary circumstances are in effect, the requesting specialist and two Floor Officials, with the concurrence of a designated Market Surveillance staff person, must re-evaluate whether extraordinary circumstances still exist.

The proposed rule changes, among other things, would codify the Exchange's current practice as described in this paragraph. If at any time the

<sup>10</sup> See Exchange Rule 1080(c) generally. See also SR-Phlx-2001-24, a proposed rule change to set forth the circumstances in which AUTO-X will be operated in a manner other than the normal manner. Securities Exchange Act Release No. 45436 (February 12, 2002), 67 FR 7728 (February 20, 2002).

<sup>11</sup> See Exchange Rule 1080(f)(v).

<sup>12</sup> If such relief is granted, surveillance staff would announce to the Options Floor, and the AUTOM desk, that the particular option is in extraordinary circumstances.

<sup>11</sup> 15 U.S.C. 78q-1(a)(1)(D).

<sup>12</sup> 15 U.S.C. 78q-1(a)(2)(A)(ii).

<sup>13</sup> 17 CFR 200.30-3(a)(12).