

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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 11, 2002, the Commission approved, as a 12-month pilot, the creation of Nasdaq PostData, a voluntary trading data distribution facility, accessible to NASD members, buy-side institutions, and market data vendors through the NasdaqTrader.com Web site.<sup>5</sup> On January 17, 2003, Nasdaq extended that pilot through February 28, 2003.<sup>6</sup> On March 14, 2003, Nasdaq reestablished the pilot, and extended its operation through March 31, 2003.<sup>7</sup> Nasdaq now proposes to extend the pilot through September 30, 2003. Nasdaq proposes no other changes to the pilot at this time.

#### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)<sup>8</sup> and 15A(b)(6)<sup>9</sup> of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that this program involves a reasonable fee assessed only

to users and other persons utilizing the system and will provide useful information to all direct and indirect subscribers on a non-discriminatory basis.

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

Nasdaq 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.

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

Written comments were neither solicited nor received with respect to the proposed rule change.

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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and rule 19b-4(f)(6) thereunder.<sup>11</sup> At any time within 60 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.

Nasdaq has asked the Commission to waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver will allow the pilot to operate without interruption through September 30, 2003. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>12</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

including whether the proposal 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 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-2003-60 and should be submitted by May 1, 2003.

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. 34-47629; File No. SR-OCC-2002-21]

### Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Delivery Dates

April 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 28, 2002, The Options Clearing Corporation ("OCC") 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 primarily by OCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

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

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

<sup>5</sup> See Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002) (SR-NASD-99-12).

<sup>6</sup> See Securities Exchange Act Release No. 47210 (January 17, 2003), 68 FR 3912 (January 27, 2003) (SR-NASD-2003-02).

<sup>7</sup> See Securities Exchange Act Release No. 47503 (March 14, 2003), 68 FR 13745 (March 20, 2003) (SR-NASD-2003-35) (Proposal to reestablish pilot retroactive to March 1, 2003, and extend its operation through March 31, 2003).

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

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

The proposed rule change amends OCC's rule 902, which obligates a delivering clearing member to deliver the underlying security or securities against payment of the aggregate purchase price on the designated delivery date.

### **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 III below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

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

The proposed rule change modifies rule 902, which obligates a delivering clearing member to deliver the underlying security or securities against payment of the aggregate purchase price on the "delivery date."<sup>3</sup> The delivery date is the third business day following (1) the day on which an exercise notice is accepted by OCC (in the case of options) or (2) the maturity date (in the case of security futures). A different delivery date, however, may be designated by OCC for property that is deliverable following a contract adjustment or by the Board of Directors if such action is required in the public interest or to meet unusual conditions. The proposed rule change allows OCC's Board to delegate its authority to set a different delivery date to OCC's Chairman, Management Vice Chairman, or President or delegate of such officer.

The need to set a different delivery date will generally result from unexpected events such as trading suspensions or delistings that cause NSCC to temporarily remove the underlying security from its CNS System.<sup>4</sup> Delivery and payment

obligations that cannot be settled through NSCC must be settled on a broker-to-broker basis under OCC's rules. Delaying settlement in these instances allows for more time to gather and validate necessary relevant information (e.g., if and when NSCC will again make the underlying security CNS-eligible). Convening an emergency meeting of the Board on the same day that OCC learns of a suspension or delisting is very difficult if not impossible. Granting the designated individuals the authority to delay settlement would provide OCC with greater flexibility in responding to these and other unexpected or unusual events.

OCC believes that the proposed rule change is consistent with section 17A of the Act because it would provide OCC with greater flexibility to respond to unusual conditions in order to ensure the prompt and accurate clearance and settlement of securities transactions.

#### *(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. 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-OCC-2002-21. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 will also be available for inspection and copying at the principal office of FICC. All submissions should refer to the File No. SR-OCC-2002-21 and should be submitted by May 1, 2003.

### **IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(F).<sup>5</sup> Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with this requirement because it will improve OCC's ability to deal with unexpected events which effects the delivery and payment obligations of the underlying securities resulting from the exercise and assignment of option contracts. As a result, the proposed rule change should assist OCC in meeting its obligations to provide for the prompt and accurate clearance and settlement of securities transactions.

OCC has requested that the Commission approve this 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 30th day after publication of notice because such approval would immediately give OCC the flexibility it needs to delay the delivery date to address unusual conditions.

### **V. Conclusion**

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-

<sup>2</sup> The Commission has modified parts of these statements.

<sup>3</sup> The delivery date is also referred to in OCC's rules as the "exercise settlement date." OCC rule 101E.(4).

<sup>4</sup> Settlement of exercised and assigned or matured contracts requiring the physical delivery of the underlying security generally occurs at NSCC

pursuant to arrangements between NSCC and OCC. OCC rule 913.

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(I).

OCC-2002-21) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47630; File No. SR-Phlx-2003-14]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Net Capital Calculation for Broker-Dealer Accounts

April 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),<sup>1</sup> and rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on March 19, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Phlx. 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 Exchange proposes to amend Phlx rule 722(c)(5) ("Broker-Dealer Accounts") to clarify that the haircut requirements of Exchange Act rule 15c3-1<sup>3</sup> must be considered in computing the net capital of a broker-dealer that is extending margin to another broker-dealer and to harmonize it with other exchanges' rules.<sup>4</sup>

Below is the text of the proposed rule change. Proposed new language is

*italicized*. Proposed deletions are in [brackets].

#### Rule 722. Margin Accounts<sup>5</sup>

\* \* \* \* \*

5. Broker-Dealer Accounts. A member organization may carry the proprietary account of another broker-dealer, which is registered with the Securities and Exchange Commission, upon a margin basis which is satisfactory to both parties, provided the requirements of Regulation T of the Board of Governors of the Federal Reserve System are adhered to and the account is not carried in a deficit equity condition. The amount of any deficiency between the equity maintained in the account and the [margin required by the other provisions of this rule] *haircut requirements calculated pursuant to rule 15c3-1 of the Exchange Act*, shall be deducted in computing the Net Capital of the member organization under *rule 15c3-1 of the Exchange Act* and rule 703.

\* \* \* \* \*

#### 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 Phlx 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. The Phlx 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

The Exchange proposes to amend Phlx rule 722(c)(5) ("Broker-Dealer Accounts"), to clarify that the haircut requirements of Exchange Act rule 15c3-1<sup>6</sup> must be considered in computing the net capital of a broker-dealer extending margin to another broker-dealer. As amended, Phlx rule 722(c)(5) would be substantially similar to CBOE rule 12.3(g).

Currently, Phlx rule 722 sets forth the rules governing the margin that must be

maintained in margin accounts of customers of Phlx members, whether such customers are members themselves, partners of members, member firms, member corporations or stockholders therein, or non-members. Phlx rule 722(c) sets forth certain exceptions to the general margin requirements. Phlx rule 722(c)(5) provides that an Exchange member may carry the proprietary account of another broker-dealer registered with the Commission, on a margin basis that is satisfactory to both parties ("broker-to-broker margin"); provided however, that the parties adhere to Regulation T of the Board of Governors of the Federal Reserve System,<sup>7</sup> and the account is not carried in a deficit condition.

Phlx rule 722(c)(5) further provides that the amount of any deficiency between the equity maintained in the account and the "margin required by the other provisions of" Phlx rule 722 shall be deducted in computing the net capital of the Phlx member carrying the account of another registered broker-dealer. The Phlx believes that this language does not accurately reflect that the haircut requirements specified in Exchange Act rule 15c3-1<sup>8</sup> must also be considered in computing such Phlx member's net capital.

Accordingly, the Phlx proposes to delete the phrase "margin required by the other provisions of," and clarify in its rule that the haircut requirements calculated pursuant to Exchange Act rule 15c3-1 will be used to calculate the net capital of a Phlx member carrying the margin account of a registered broker-dealer customer. The Phlx notes that the CBOE and NYSE each has adopted a similar change to its margin rules.

###### 2. Statutory Basis

The Phlx believes that the proposed rule change harmonizes the margin treatment between Phlx's rule and analogous CBOE and NYSE rules. As such, the Phlx believes that its proposal is consistent with section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>10</sup> in particular, in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest.

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

This proposed rule change does not impose any burden on competition that

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 17 CFR 240.15c3-1.

<sup>4</sup> See Securities Exchange Act Release No. 46716 (October 24, 2002), 67 FR 66434 (October 31, 2002) (SR-CBOE-2002-59) (relating to margin requirements for broker-dealer accounts). The Phlx notes that Chicago Board Options Exchange ("CBOE") rule 12.3(g) is substantially similar to New York Stock Exchange, Inc. ("NYSE") rule 431(e)(6)(A). See Securities Exchange Act Release No. 42453 (February 24, 2000), 65 FR 11620 (March 3, 2000) (SR-NYSE-1997-27) (order approving a proposed rule change affecting the margin calculation for broker-dealer accounts).

<sup>5</sup> The phrase, "Rule 722. Margin Accounts", reflects the correction of a typographical error from the rule text that Phlx submitted with the proposed rule change. Telephone conversation between Mark I. Salvacion, Director and Counsel, Phlx, and Tim Fox, Attorney, Division of Market Regulation, Commission on April 3, 2003.

<sup>6</sup> 17 CFR 240.15c3-1.

<sup>7</sup> 12 CFR 220.1 *et seq.*

<sup>8</sup> 17 CFR 240.15c3-1.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).