

Trading Trust Issued Receipts Pursuant to Rule 19b-4(e)

The Commission further believes that adopting generic listing standards for these securities pursuant to Rule 19b-4(e) under the Act should fulfill the intended objective of the rule by giving Nasdaq the ability to potentially reduce the time frame for bringing these securities to the market, or for permitting the trading of these securities over-the-counter, and thus enhances investors' opportunities. The Commission notes that it maintains regulatory oversight over any products listed under the generic standards through regular inspection oversight.

The Commission finds that Nasdaq's proposal contains adequate rules and procedures to govern the listing and trading of Trust Issued Receipts pursuant to Rule 19b-4(e) on Nasdaq, or over-the-counter. All Trust Issued Receipt products listed under the generic standards will be subject to the full panoply of NASD and Nasdaq rules and procedures that now govern both the trading of Trust Issued Receipts and the trading of equity securities.

As described above, the Commission has previously approved similar Amex, NYSE, and other exchange rules that permit the generic listing and trading of individual Trust Issued Receipts. In approving these securities for trading, the Commission considered their structure, their usefulness to investors and the markets, and the SROs' rules and surveillance programs that govern their trading. The Commission concluded then, as it does now, that securities approved for listing under those rules would allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single security representing a portfolio of securities that the investor owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; (4) reduce transactions costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities underlying the Trust Issued Receipts.

The Commission notes that Nasdaq's proposed generic listing standards are substantially similar to the Amex, NYSE, and other SROs. The Commission therefore believes that Trust Issued Receipts that satisfy Nasdaq's proposed generic listing standards should produce the same benefits to Nasdaq and to investors.

Nasdaq has requested that the Commission find good cause for

approving the proposed rule change and Amendment No. 1 prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission believes that the Nasdaq's proposal to trade Trust Issued Receipts, over-the-counter, will provide investors with a convenient and less expensive way of participating in the securities markets. The Commission believes that the proposed rule change, as amended, could produce added benefits to investors through the increased competition between other market centers trading the product. Specifically, the Commission believes that by increasing the availability of Trust Issued Receipts as an investment tool, Nasdaq's proposal should help provide investors with increased flexibility in satisfying their investment needs, by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day.

As noted above, the Commission has approved the listing and trading of Trust Issued Receipts at the Amex, under rules that are substantially similar to the Amex, NYSE, and other exchange rules.<sup>25</sup> The Commission published the Amex rules in the **Federal Register** for the full notice and comment period. No comments were received on the proposed rules, and the Commission found them consistent with the Act.<sup>26</sup> Accordingly, the Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>27</sup> that the proposed rule change (File No. SR-NASD-2003-32), as amended, be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>28</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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<sup>25</sup> See note 6, *supra*.

<sup>26</sup> *Id.*

<sup>27</sup> 15 U.S.C. 78s(b)(2).

<sup>28</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47718; File No. SR-OCC-2002-27]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Relating to Non-Equity Options Exchanges

April 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 16, 2002, 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 persons.

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

The proposed rule change incorporates two undertakings made by OCC as party of Filing No. SR-OCC-2002-02 as stated policies under section 1 of Article VII B, Non-Equity Exchanges, of OCC's By-Laws.

#### 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 such statements.<sup>2</sup>

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

Filing No. OCC-2002-02<sup>3</sup> set forth changes to OCC's by-laws to permit OCC to provide clearing services to new options exchanges without issuing new equity to such exchanges. In connection with the Commission's approval of SR-

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

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

<sup>3</sup> Securities Exchange Act Release No. 34-46469 (September 6, 2002), 67 FR 58093 (September 13, 2002).

OCC-2002-02, OCC agreed to include as stated policies in its by-laws two undertakings previously furnished to the Commission.<sup>4</sup> This proposed rule change incorporates those undertakings as Interpretations and Policies under section 1 of Article VIIB of OCC's By-Laws. The two policies provide that:

1. Non-Equity Exchanges will be promptly provided with information that the Chairman considers to be of competitive significance to such Non-Equity Exchanges that was disclosed to Exchange Directors at or in connection with any meeting or action of the Board of Directors or any Committee of the Board of Directors.

2. A requesting Non-Equity Exchange shall be afforded the opportunity to make presentations to the Board of Directors or an appropriate Committee of the Board of Directors.

OCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder because it should ensure the fair representation of participants and stockholders of OCC.

*(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 Act<sup>5</sup> and rule 19b-4(f)(1)<sup>6</sup> thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, enforcement, or administration of an existing rule. 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.

<sup>4</sup> *Id.* at note 6.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>6</sup> 17 CFR 240.19b-4(f)(1).

**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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-OCC-2002-27. 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 OCC. All submissions should refer to the File No. SR-OCC-2002-27 and should be submitted by May 19, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

J. Lynn Taylor,

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47715; File No. SR-Phlx-2003-26]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend Its Broker-Dealer Transaction Fee for Equity Option Transactions**

April 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

<sup>7</sup> 17 CFR 200.30-3(a)(12).

("Act"),<sup>1</sup> and rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 11, 2003, 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, II, and III below, which items have been prepared by the Exchange. 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 its schedule of dues, fees and charges to decrease the broker-dealer transaction fee for "block" equity option transactions as follows: Broker/Dealer<sup>3</sup> (non-AUTO-X)

Up to 2,000 contracts—\$.35 per contract  
Between 2001 and 3,000 contracts—\$.25 per contract (for all contracts)

Residual above 3,000 contracts—\$.20 per contract above 3,000 contracts (with the first 3,000 contracts charged \$.25 per contract)

This fee will be applied per transaction (not per month).<sup>4</sup> The Exchange proposes to implement this fee on transactions settling on or after April 11, 2003.<sup>5</sup> Footnote 10 of the Exchange's fee schedule is also being amended to change the term "orders" to "transactions." All other equity option transaction charges will remain unchanged.

The text of the proposed rule change is available upon request from the Office of the Secretary, the Commission, and the Exchange.

**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

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

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

<sup>3</sup> This charge applies to members for transactions, received from other than the floor of the Exchange, for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes transactions for the account of a Register Options Trader ("ROT") entered from off-floor.

<sup>4</sup> Member organizations may need to file a form with the Exchange to identify eligible block trades.

<sup>5</sup> This fee will continue to be eligible for the monthly credit of up to \$1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 28, 2001)(SR-Phlx-2002-32).