

the ITS commitment away will continue to collect a fee from the broker-dealer that placed the sell order. Then, with respect to each ITS participant exchange, the exchange will determine whether it is a net sender or net receiver of ITS trades and send fees to or accept fees from each other exchange accordingly. The Commission believes this is an equitable manner for the exchanges to obtain funds to pay their Section 31 fees on covered sales resulting from ITS trades.

Under Section 19(b)(2) of the Act,¹⁸ the Commission may not approve any proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof, unless the Commission finds good cause for so doing. The Commission hereby finds good cause for approving the proposed rule change prior to the thirtieth day after publishing notice of filing thereof in the **Federal Register**. In this case, the Commission does not believe a comment period is necessary because all of the parties affected by the proposed fee—the other ITS participant exchanges—have already consented to and will adopt the same fee arrangement.¹⁹

For the reasons set forth above, the Commission finds good cause to accelerate approval of the proposed rule change pursuant to Section 19(b)(2) of the Act.²⁰

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-NSX-2005-10) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53090; File No. SR-OCC-2005-19]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Submission of Exercise Notices for American Option Contracts Other Than at Expiration

January 10, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on December 12, 2005, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change 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 OCC Rule 801, which applies to the submission of exercise notices for American-style option contracts other than at expiration, to delete specific references as to times when such exercise notices may be submitted and to instead provide OCC with the authority to prescribe the time frames for their submission.

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 purpose of the proposed rule change is to modify OCC Rule 801, which applies to the submission of exercise notices for American-style

option contracts other than at expiration, to delete specific references to the times when such exercise notices may be submitted, and to instead provide OCC with the authority to prescribe the timeframes for their submission. Implementing this change would require additional conforming changes to Rule 801 as described herein.

Rule 801

Rule 801(a) permits a clearing member desiring to exercise an American-style equity or non-equity option on a business day other than the business day prior to its expiration to submit an exercise notice to OCC between 9 a.m. and 7 p.m., provided that an exercise notice for an American-style currency option must be submitted by 2:30 p.m.³ (All times are at Central Time.) Exercise instructions submitted with respect to equity and non-equity options become irrevocable at 7 p.m. and 2:30 p.m. in the case of currency options unless modified or revoked by a clearing member because of a bona fide error by the clearing member or its customer in accordance with the procedures prescribed by OCC.

Rule 801(b) allows the OCC Board of Directors to designate with not less than seven days’ prior written notice to non-equity securities clearing members a cut-off time earlier than that specified in Rule 801(a) as the deadline for submitting exercise notices with respect to American-style non-equity option contracts and the time when such exercise notices become irrevocable.

Subject to specified exceptions and conditions, Rule 801(e) grants certain OCC employees⁴ the discretion to permit a clearing member to file, revoke, or modify any exercise notice submitted in accordance with Rule 801(a) after the 7 p.m. deadline for the purpose of correcting a bona fide error. One condition is that the requesting clearing member is liable to OCC for a late filing fee in escalating increments and time segments. The late filing fee is as follows:

- \$2,000 for any request accepted between 7 p.m. and 8 p.m.;
- \$5,000 for any request accepted between 8:01 p.m. and the start of critical processing provided that the request does not materially affect the start of critical processing; and
- \$20,000 per line item listed on any exercise notice accepted for filing after the start of critical processing with 50%

³ Except for short dated options, an American-style option may not be exercised on the business day prior to its expiration date.

⁴ Those employees are OCC’s Chairman, Management Vice Chairman, President, or a designee of such officer.

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ See *supra* note 17.

²⁰ *Id.*

²¹ *Id.*

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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

of the fee to be distributed to the assigned clearing member or clearing members on a pro rata basis if more than one clearing member is assigned.

Changes to Rule 801

The operational and processing efficiencies gained from real-time trade submission have prompted the OCC Roundtable⁵ to propose that OCC advance the 7 p.m. cut-off time for submission of post-trade instructions, including exercise notices, by clearing members on regular business days. The Roundtable believes that an earlier deadline for filing such instructions would further straight-through processing goals by permitting OCC to move forward the times when it initiates nightly processing and distributes data to members.

Although current discussions have centered on a post-trade submission cut-off time of 6:30 p.m., the Roundtable has not yet reached a consensus on a recommended time.⁶ Notwithstanding that additional discussions are required to determine a new deadline, the Roundtable has asked OCC to amend Rule 801 to eliminate the requirement that exercise notices with respect to most American-style options be submitted between 9 a.m. and 7 p.m. on a business day. In response to the Roundtable's request and consistent with other OCC rules, OCC proposes that Rule 801 be amended to permit OCC to specify the times when such exercise notices may be submitted.⁷ (Such times would be specified in OCC's operations manual.) Such an amendment would allow OCC to implement the new deadline for post-trade instructions promptly, once it is determined, and would give OCC greater flexibility in responding to future operational and technology developments. OCC also proposes to make the following conforming changes to Rule 801:

- Amend Rule 801(a) to eliminate the mandated 2:30 p.m. deadline for filing exercise notices with respect to currency options. The deadline would instead be a time specified by OCC (in

its operations manual). While there are no current plans to advance this deadline, the language of the rule would be changed for consistency and future flexibility.

- Amend Rule 801(a) to provide that the prescribed deadlines for submitting exercise notices may be changed with not less than 30 days' prior written notice to affected clearing members. This would ensure that clearing members have sufficient time to adjust their procedures for submitting exercise notices.

- Delete Rule 801(b) which authorizes the Board to advance the deadline for submitting exercise notices for American-style non-equity options. The subject matter of Rule 801(b) would be covered by the changes to Rule 801(a) described above.

- Amend Rule 801(e) to restructure portions of the fee schedule for submitting late requests to file, revoke, or modify exercise notices. The \$2,000 filing fee would be eliminated. The \$5,000 filing fee would be applied to all requests accepted after the deadline specified pursuant to Rule 801(a) but before the start of critical processing. No change would be made to the filing fee for requests accepted after the start of critical processing. These proposed changes would align the filing fee schedule under Rule 801 with the filing fee schedule for supplementary exercise notices filed under Rule 805 (which applies to expiration date processing).

* * * * *

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁸ and the rules and regulations thereunder applicable to OCC because it enhances the efficiency and effectiveness of OCC's procedures for accepting submissions of exercise notices otherwise than at expiration by giving OCC the flexibility to designate the applicable time frames and revise them in response to future operational and technological developments. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2005-19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-OCC-2005-19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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

⁵ The OCC Roundtable is an OCC-sponsored advisory group comprised of representatives from OCC, a cross-section of clearing members, participant exchanges, and industry service bureaus. The Roundtable considers operational improvements that may be made to increase efficiencies and to lower costs in the options industry.

⁶ A preliminary analysis by OCC staff suggests that fewer than five clearing members submit exercise notices after 6:30 p.m.

⁷ Under Rule 805, OCC already has the authority to prescribe deadlines for the submission of exercise instructions for purposes of expiration date processing.

⁸ 15 U.S.C. 78q-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, 100 F Street, NE., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of OCC and on OCC's Web site, <http://www.optionsclearing.com>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2005-19 and should be submitted on or before February 8, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53068; File No. SR-Phlx-2005-87]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change, and Amendment No. 1 Thereto Relating to the Exchange's Covered Sale Fee and Exchange Rule 607

January 11, 2006.

Correction

The release number for File No. SR-Phlx-2005-87 issued on January 6, 2006 was incorrectly stated as Release No. 34-53088. The correct release number appears above.

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53094; File No. SR-Phlx-2005-75]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to Dividend Spread and Merger Spread Strategy Rebate Request Forms

January 10, 2006.

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 November 30, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or the "Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by Phlx. On December 21, 2005, the Exchange filed Amendment No. 1 to the proposal.³ On January 10, 2006, the Exchange filed Amendment No. 2 to the proposal.⁴ Phlx has designated the proposed rule change as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, pursuant to Section 19(b)(3)(A)(i) of the Act⁵ and Rule 19b-4(f)(1) thereunder,⁶ which renders the proposal effective upon filing with the Commission. 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

Phlx proposes to amend the timeframe in which dividend spread and merger spread strategy rebate

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, Phlx modified the statutory basis for the immediate effectiveness of the proposal from Section 19(b)(3)(A)(ii) of the Act and Rule 19b-4(f)(2) thereunder to Section 19(b)(3)(A)(iii) of the Act and Rule 19b-4(f)(3) thereunder, and also changed the implementation date for the proposal from the third business day of December 2005 to the third business day of January 2006.

⁴ In Amendment No. 2, Phlx changed the statutory basis for the immediate effectiveness of the proposal from Section 19(b)(3)(A)(iii) of the Act and Rule 19b-4(f)(3) thereunder to Section 19(b)(3)(A)(i) of the Act and Rule 19b-4(f)(1) thereunder. Amendment No. 2 also provided a revised statutory basis for the proposal.

⁵ 15 U.S.C. 78s(b)(3)(A)(i).

⁶ 17 CFR 240.19b-4(f)(1).

request forms must be submitted to the Exchange. Rebate request forms will now be due three business days after the end of each month.

The text of the proposed rule change is available on the Phlx's Web site at <http://www.phlx.com>, at the Office of the Secretary at Phlx, and at the Commission's Public Reference Room.

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, as amended, and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV 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

Currently, the Exchange provides a rebate for certain contracts executed in connection with transactions occurring as part of a dividend spread strategy⁷ or merger spread strategy.⁸ Specifically, for those options contracts executed pursuant to a dividend spread strategy or merger spread strategy, the Exchange rebates \$0.08 per contract side for Registered Options Trader ("ROT") executions and \$0.07 per contract side for specialist executions on the business day before the underlying stock's ex-date. The ex-date is the date on or after which a security is traded without a previously declared dividend or distribution.⁹

⁷ For purposes of this proposal, the Exchange defines a "dividend spread" transaction as any trade done within a defined time frame pursuant to a strategy in which a dividend arbitrage can be achieved between any two deep-in-the-money options.

⁸ For purposes of this proposal, the Exchange defines a "merger spread" transaction as a transaction executed pursuant to a merger spread strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but different strike prices, followed by the exercise of the resulting long options position, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.*, cash or stock. See Securities Exchange Act Release No. 51596 (April 21, 2005), 70 FR 22381 (April 29, 2005).

⁹ The Exchange also imposes a fee cap on equity option transaction and comparison charges on merger spread transactions and dividend spread

⁹ 17 CFR 200.30-3(a)(12).