

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39738; File No. SR-OCC-97-11]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to the Stock Loan/Hedge System

March 10, 1998.

On July 11, 1997, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-OCC-97-11) 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 9, 1997.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### I. Description

OCC's stock loan/hedge system ("HEDGE system") is a clearing system for stock loans between OCC clearing members.<sup>3</sup> The rule change amends OCC's by-laws governing the HEDGE system to eliminate the requirements with respect to the accounts in which stock loan positions must be maintained.

OCC's by-laws that govern the HEDGE system<sup>4</sup> currently treat stock loans as if they were pledges of loaned securities subject to the Commission's hypothecation rules.<sup>5</sup> The hypothecation rules limit the circumstances under which a broker-dealer may pledge securities carried for the account of any customer<sup>6</sup> and specifically prohibit broker-dealers from pledging securities carried for the account of any customer under circumstances that will permit such securities to be commingled with securities carried for the account of any person other than a bona fide customer

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

<sup>2</sup> Securities Exchange Act Release No. 39386 (December 2, 1997), 62 FR 64902 (December 9, 1997).

<sup>3</sup> For a complete description of the HEDGE system, refer to Securities Exchange Act Release No. 32638 (July 15, 1993), 58 FR 39254 (July 22, 1993) [File No. SR-OCC-92-34] (order approving proposed rule change establishing HEDGE system).

<sup>4</sup> OCC By-Laws, Article XXI, Section 5.

<sup>5</sup> 17 CFR 240.8c-1 and 240.15c2-1.

<sup>6</sup> For purposes of the hypothecation rules, the term "customer" includes registered broker-dealers so long as they are not affiliated in specified ways with the broker-dealer effecting the pledge. 17 CFR 240.8c-1(b)(1), 240.15c2-1(b)(1). References to customers<sup>7</sup> and "non-customers" herein are based on the definition in the hypothecation rules.

of such broker or dealer under a lien for a loan made to such broker or dealer.<sup>7</sup> Accordingly, under the HEDGE system's account segregation rules, a clearing member that desires to lend stock must (1) first determine whether the stock is a customer or proprietary security and (2) carry out the loan through its OCC customers' account (or where permitted through its OCC marketmaker's account) if the stock is a customer security.

OCC has determined that there is no legal reason for OCC's by-laws to treat stock loans under the HEDGE system as hypothecations. Therefore, OCC has concluded that it may eliminate the HEDGE system's account segregation requirements for stock loans without violating or causing its clearing members to violate the Commission's hypothecation rules.

#### II. Discussion

Section 17A(b)(3)(F) of the Act<sup>8</sup> requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of the national system for the prompt and accurate clearance and settlement of securities transactions. For the reasons discussed below, the Commission believes that OCC's rule change relating to the HEDGE system is consistent with OCC's obligations under Section 17A(b)(3)(F).

The Commission is satisfied with OCC's determination that it is not obligated to treat stock loans carried out through the HEDGE system as if they were pledges of loaned securities subject to the Commission's hypothecation rules. The Commission believes that the rule change should increase the use of OCC's HEDGE system which should in turn help to improve the efficiency and safety of stock lending transactions. Accordingly, the Commission believes that the rule change should enable OCC to remove impediments to and to help perfect the mechanism of the national system for the prompt and accurate clearance and settlement of securities transactions.

#### III. 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 Section 17A of the Act<sup>9</sup>

<sup>7</sup> 17 CFR 240.15c2-1(a)(2). See also 17 CFR 240.8c-1(a)(2) (providing the same requirements as Rules 15c2-1(a)(2) except that its scope is limited to exchange members and brokers and dealers that transact business through exchange members).

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>9</sup> 15 U.S.C. 78q-1.

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-97-11) be and hereby is approved.

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. 34-39742; File No. SR-Phlx-97-62]

### Self-Regulatory Organizations: Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend Its By-Law Article X, Sections 10-16, 10-17 and 10-19 To Require That Each of Its Trading Floor Committees Consult With Its Corresponding Quality of Markets Committee on All Matters of Policy and All Matters That Are To Be Presented to the Board

March 11, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 29, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.<sup>2</sup> 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 Phlx hereby proposes to amend its By-Law Article X, Sections 10-16, 10-17 and 10-19 so that each of its respective trading floor standing

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

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

<sup>2</sup> A technical amendment, Amendment No. 1, was filed with the Commission on March 10, 1998. It amended By-Law Article X, Sections 10-17 to require that the Foreign Currency Options Committee ("Committee") consult with the Foreign Currency Options Trading Floor's Quality of Markets Committee on "all" matters which are to be presented to the Phlx Board of Governors by the Committee, consistent with proposed amendments to Section 10-16 and 10-19. The qualifying term "all" was unintentionally left out of the initial filing provisions relating to Section 10-17.