

### 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 Exchange consents, the Commission will:

- (A) By order approve the 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 and e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2004-61 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NYSE-2004-61. 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 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing also will be available for inspection and copying at the principal

office of the NYSE. 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-NYSE-2004-61 and should be submitted on or before January 19, 2005.

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. 34-50895; File No. SR-OCC-2004-11]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Yield-Based Treasury Options

December 20, 2004.

#### I. Introduction

On June 8, 2004, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2004-11 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 October 5, 2004.<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

The proposed rule change updates two sections of OCC's By-Laws pertaining to yield-based Treasury options in order to conform those sections to the corresponding provisions of OCC's By-Laws governing index options.

Article XVI, Section 3(c) of OCC's By-Laws currently provides OCC with the authority to adjust outstanding options in a class of yield-based Treasury options in the event that an exchange decreases the multiplier. Section 3(c) will now provide for the possibility that an exchange might increase rather than decrease the multiplier and grants OCC

the flexibility to adjust any outstanding options accordingly. This rule change is similar to a previously approved OCC rule change pertaining to the adjustment of index option contracts.<sup>3</sup>

Article XVI, Section 4 of OCC's By-Laws currently provides OCC with the authority to fix the exercise settlement amount for exercised yield-based Treasury option contracts "in accordance with the best information available as to the correct settlement value of the underlying yield" if OCC determines that the settlement value of the underlying yield is unreported or otherwise unavailable for purposes of calculating the settlement amount for exercised contracts. Until recently, the Chicago Board Options Exchange ("CBOE"), on which yield-based Treasury options are traded, had a rule setting forth a specific method for determining the settlement value of the yield in the event the reporting authority failed to supply a settlement value. The CBOE rule setting forth that method, a random poll of a minimum of ten primary government bond dealers, was eliminated on December 2, 2003, when the Commission accepted for immediate effectiveness a CBOE rule filing deleting it. In that filing, CBOE adopted a provision stating that the settlement value would be determined in accordance with OCC's By-Laws and Rules.<sup>4</sup>

The repeal of the CBOE rule prompted OCC to review its own rules governing the setting of exercise settlement values for yield-based Treasury options. OCC is now amending Article XVI, Section 4 to give OCC substantially the same discretion in fixing exercise settlement values for yield-based Treasury options as it has under Article XVII, Section 4 governing index options.<sup>5</sup> As noted in the order approving OCC's rule change for index options, OCC's authority to fix exercise settlement values in unusual market conditions should be sufficiently broad to ensure that such values are consistent with the settlement values established for related products in other markets whenever that result is deemed

<sup>3</sup> Securities Exchange Act Release No. 44184 (April 16, 2001), 66 FR 20342 (April 20, 2001) [File No. SR-OCC-99-12].

<sup>4</sup> Securities Exchange Act Release No. 48865 (December 2, 2003), 68 FR 68676 (December 9, 2003) [File No. SR-CBOE-2003-48].

<sup>5</sup> A draft supplement to the Options Disclosure Document ("ODD") that describes the substance of the By-Laws changes proposed herein will be filed with the Commission pursuant to Rule 9b-1 under the Act. Implementation of this rule change will be coordinated with the distribution of the related ODD supplement.

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

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

<sup>2</sup> Securities Exchange Act Release No. 50466, (September 29, 2004), 69 FR 59634.

to be in the best interest of investors.<sup>6</sup> While Article VI, Section 4(a)(2) as currently drafted is also broad, OCC believes that its authority should be expressed in language parallel to other By-Laws provisions that expressly acknowledge that a settlement price may be fixed based either on the last reported price before a market disruption or the next reported price following the disruption or by some other method.

As with index options, under revised Article XVI, Section 4(a)(2) the settlement value of yield-based Treasury options will be fixed by an adjustment panel consisting of representatives of the exchange or exchanges on which the affected series of options is traded. Also, under revised Section 4(a)(3), in the event the adjustment panel delays fixing a settlement value beyond the expiration date of the affected series, the normal exercise by exception procedures will not apply. Instead, options that are in the money by one dollar or more would be deemed to have been irrevocably exercised prior to the expiration time.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act, as amended, because it is designed to promote the prompt and accurate clearance and settlement of securities transactions, foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, remove impediments to the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest. The proposed changes promote these objectives by providing OCC with flexibility in responding to unanticipated events.

### III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote prompt and accurate clearance and settlement of securities transactions.<sup>7</sup> The proposed rule change will allow OCC to make an adjustment to the multiplier of yield-based Treasury options in coordination with such an adjustment by an exchange and more clearly defines the method OCC will use to make a settlement adjustment for yield-based Treasury options in the event the settlement value is not

available. By aligning OCC's rules for yield-based Treasury option rules with OCC's rules for index options, which have been previously approved by the Commission, the proposed rule change is designed to add uniformity and certainty to OCC's rules and therefore should help to promote prompt and accurate clearance and settlement of securities transactions.

### 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 in particular Section 17A 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-2004-11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50911; File No. SR-Phlx-2004-89]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Changes to Its Automated Options Market (AUTOM) System

December 22, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on December 14, 2004, 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 Phlx. On December 17, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange filed the proposal, as amended, as a "non-controversial" proposed rule change

<sup>8</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> See Form 19b-4 dated December 17, 2004 ("Amendment No. 1"). Amendment No. 1 replaces the original filing in its entirety.

pursuant to section 19(b)(3)(A)(iii) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder.<sup>5</sup> 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

The Phlx proposes to amend Exchange Rule 1080(c)(iii), to reflect changes to the Exchange's Book Sweep function, and Exchange Rule 1080(c)(iv), which sets forth various situations in which orders received over the Philadelphia Stock Exchange Automated Options Market ("AUTOM") System<sup>6</sup> that would otherwise be eligible for automatic execution are instead handled manually by the specialist, to reflect that All-or-None ("AON") Orders would now be eligible for automatic execution.

Below is the text of the proposed rule change. Proposed additions are *italicized*; proposed deletions are [bracketed].

\* \* \* \* \*

*Rule 1080. Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO-X)*

(a)-(b) No change.

(c) AUTO-X. \* \* \*

(i)-(ii) No change.

(iii) *Quotations Interacting With Limit Orders on the Book.* [Book Sweep. Book Sweep is a feature of AUTOM which, when engaged, does the following:]

(A) Respecting non-Streaming Quote Options, when [the] a bid or offer *that is: (1) Generated by the Exchange's Auto-Quote system (or by a proprietary quoting system provided for in Commentary .0[2]1(b) of this Rule called "Specialized Quote Feed" or "SQF"); and (2) priced at the National Best Bid or Offer ("NBBO"), and therefore would result in an execution at the NBBO (a "Book Sweep Quote"), matches or crosses the Exchange's best bid or offer in a particular series as established by*

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange's trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution features, AUTO-X, Book Sweep and Book Match. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist limit order book on the Exchange trading floor. See Exchange Rule 1080.

<sup>6</sup> Securities Exchange Act Release No. 46561 (September 26, 2002), 67 FR 61943 (October 2, 2002) [File No. SR-OCC-2002-09].

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).