

NASD operates or controls. Nasdaq believes that the proposed increase in the annual listing fees and the administrative fee is a fair means of recovering the costs associated with the maintenance and operation of MFQS and the development costs associated with the planned enhancements to the MFQS system. Nasdaq also believes that the proposal is consistent with Section 15A(b)(5) because the fee changes will be imposed only on those funds that benefit from the operation of the MFQS system.

#### *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, as amended.

#### *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.

### 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 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, as amended, 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-059 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary,

Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-059. 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. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. 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-NASD-2005-059 and should be submitted on or before July 12, 2005.

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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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51826; File No. SR-OCC-2004-17]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Calculating Net Capital Under OCC Rule 307

June 13, 2005.

#### I. Introduction

On September 27, 2004, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed

rule change SR-OCC-2004-17 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 April 18, 2005.<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 amends OCC Rule 307 by adopting Interpretation and Policy .01 ("IP .01") thereunder that would require clearing members that could otherwise take advantage of Commission Rule 15c3-1(a)(6) under the Act to include the risk-based haircuts associated with proprietary securities positions in determining their compliance with OCC's minimum net capital requirements.

OCC Rule 307 requires a clearing member to compute its "net capital," "aggregate indebtedness," and "debt-equity total" in accordance with Commission Rule 15c3-1 under the Act for purposes of OCC Rules.<sup>3</sup> New IP .01 under OCC Rule 307 will require clearing members that could otherwise take advantage of Commission Rule 15c3-1(a)(6) to deduct the risk-based haircuts associated with proprietary securities positions in determining their compliance with OCC's minimum net capital requirements.<sup>4</sup> Although the exemption in Rule 15c3-1(a)(6) from the securities haircuts in Rule 15c3-1(c)(2)(vi) and Appendix A under Rule 15c3-1 ensures from a systemic standpoint that capital exists to support open positions, it does not ensure that capital is maintained in the entity to which OCC has credit exposure. As a result, OCC is exposed to the volatility of the positions relative to the clearing

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

<sup>2</sup> Securities Exchange Act Release No. 51521, (April 11, 2005), 70 FR 20198.

<sup>3</sup> OCC Rule 307 provides that a clearing member that is registered as a futures commission merchant and is not otherwise required to calculate net capital in accordance with Rule 15c3-1 may instead calculate net capital as required under the rules of the Commodity Futures Trading Commission.

<sup>4</sup> Rule 15c3-1 requires that every broker or dealer maintain net capital no less than the minimum net capital as set forth by the rule. Paragraph (c) of the rule defines net capital as the net worth of a broker or dealer, adjusted by among other things, securities haircuts that are set forth in paragraph (c)(vi) and appendix A of the rule. Paragraph (a)(6) allows market makers, specialists, and certain other dealers to elect to apply paragraph (a)(6)(iii) in lieu of paragraph (c)(vi) or Appendix A under Rule 15c3-1. In general, paragraph (a)(6)(iii) requires that a dealer maintain a liquidating equity with respect to securities positions in his market maker or specialist account at least equal to 25 percent of the market value of the long positions and 30 percent of the market value of the short positions.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

member's net income without any reserve against net capital. OCC believes that the exemption in Rule 15c3-1(a)(6) gives those clearing members added leverage enabling them to expand positions to several times their net capital.

In order to provide an adjustment period for those clearing members that may be affected by IP .01, IP .01 will not take effect until July 27, 2005, for firms that are clearing members at the time when it becomes effective.

### III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.<sup>5</sup> The proposed rule change imposes a more stringent net capital requirement than is currently in OCC's rules for the purpose of assuring that OCC has collected sufficient capital from its members in relation to such members' clearance and settlement activity. The Commission is satisfied with OCC's explanation that for purposes of OCC's minimum net capital requirement those members that qualify for the exemption in Rule 15c3-1(a)(6) should be required to deduct the risk based haircuts in Rule 15c3-1(c)(2)(vi) and Appendix A under Rule 15c3-1. This more conservative approach to minimum net capital requirements should better enable OCC to protect itself and its members from the potential losses associated with insolvency situations. Accordingly, the Commission finds that the proposed rule change is designed to assure the safeguarding of securities and funds which are in OCC's custody or control or for which OCC is responsible.

### 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-2004-17) 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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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51816; File No. SR-Phlx-2005-23]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Retroactive Amendment of Exchange Rule 640(a) Pertaining to the Continuing Education Regulatory Element Requirement

June 9, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 15, 2005 the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by Phlx. On May 10, 2005, the Exchange filed Amendment No. 1 to the proposed rule change to make the effective date of the proposed rule change April 4, 2005. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended from interested persons, and is approving the proposed rule change, as amended, on an accelerated basis.

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

The Phlx proposes to amend Phlx Rule 640(a) to eliminate all exemptions from the requirement to complete the Regulatory Element of the Continuing Education Program. Below is the text of the proposed rule change. Proposed new language is in *italics*. Proposed deletions are in [brackets].

#### Continuing Education for Registered Persons

Rule 640. (a) Regulatory Element [—]

(1) *Requirements*—No member or participant organization shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of paragraph (a) of this Rule.

Each registered person shall complete the Regulatory Element of the continuing education program on the occurrence of their second registration

anniversary date(s), and every three years thereafter or as otherwise prescribed by the Exchange. On each occasion[s], the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, *also known as the "base date,"* shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element of the program shall be determined by the Exchange for each registration category of persons subject to the rule.

[(1) Persons who have been continuously registered for more than ten years as of the effective date of this Rule are exempt from the requirements of this rule relative to participation in the Regulatory Element of the continuing education program, provided such persons have not been subject to any disciplinary action within the last ten years as enumerated in subparagraph (a)(3)(i) and (ii) of this Rule. However, persons delegated supervisory responsibility or authority pursuant to PHLX Rule 748 and registered in such supervisory capacity are exempt from participation in the Regulatory Element under this provision only if they have been continuously registered in a supervisory capacity for more than ten years as of the effective date of this rule and provided such supervisory person has not been subject to any disciplinary action under paragraphs (a)(3)(i) and (ii) of this Rule.]

[In the event that a registered person who is exempt from participation in the Regulatory Element subsequently becomes the subject of a disciplinary action as enumerated in subsection (a)(3)(i) and (ii), such person shall be required to satisfy the requirements of the Regulatory Element as if the date the disciplinary action becomes final is the person's initial registration anniversary date.]

(2) No change.

(3) *Disciplinary Actions* [Re-entry into program]—Unless otherwise determined by the Exchange, a registered person will be required to *re-take* [re-enter] the Regulatory Element of the program and satisfy the program's requirements in their entirety in the event such person:

(i) Becomes subject to any statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934;

(ii) Becomes subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory

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

<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.