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 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. 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–2001–21 in the caption above and should be submitted by May 21, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10641 Filed 4–27–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44212; File No. SR–OCC–2001–05]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Clearing Security Futures

April 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 21, 2001, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') and on April 16, 2001, amended 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 parties.

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

The proposed rule change would amend OCC's By-Laws to provide that OCC may clear transactions in security futures effected on any national securities exchange or association registered under section 6(a) or 15A(a) of the Act, as amended, or any ''designated contract market'' (as that term is used in the Commodity Exchange Act (''CEA'') that is registered as a national securities exchange under section 6(g) of the Act.

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 Commodity Futures Modernization Act (''CFMA''), which became law on December 21, 2000, eliminated the preexisting ban on trading in future contracts on individual securities and narrow-based stock indices. Such ''security futures'' will be permitted to be traded on a principal to principal basis between ''eligible contract participants'' on August 21, 2001, and by other classes of customers on December 21, 2001. The purpose of this proposed rule change is to identify the kinds of markets from which OCC will accept transactions in security futures for clearance.

OCC anticipates that some or all of OCC's five participant exchanges will trade security futures, either on the participant exchange itself or on an affiliated futures exchange. OCC expects that it will therefore enter into the business of clearing security futures. However, the types of entities that can provide a marketplace for security futures include markets in addition to the options exchanges that are OCC's participant exchanges. These include other national securities exchanges and national securities associations as well as any ''board of trade'' that has been designated as a ''contract market'' under the CEA. An SEC-regulated market that wishes to trade security futures is required to obtain a limited-purpose registration as a marketplace under the CEA through a notice filing with the Commodity Futures Trading Commission (''CFTC''). A CFTC-regulated market trading security futures is required to obtain a limited-purpose registration with the Commission as a national securities exchange under a similar procedure. Each market will be regulated primarily by the agency (*i.e.,* the Commission or the CFTC) with which it is fully registered.

OCC believes that it is in a uniquely favorable position to clear security futures for any of these types of markets. OCC's role as the common clearinghouse for equity options offers opportunities for margin offsets and other efficiencies that would not be available if positions in security futures were carried with other clearinghouses. OCC's settlement interface with the National Securities Clearing Corporation gives OCC the ready ability to effect delivery of underlying stocks with respect to physically settled security futures. Because of OCC's experience and expertise in adjusting equity option contracts to compensate for various corporate actions, OCC is uniquely prepared to perform the same necessary function for security futures. Finally, OCC is legally able to clear security futures transactions originating on any type of market whereas a futures clearinghouse cannot clear security futures transactions originating on national securities exchanges that are registered with the Commission pursuant to section 6(a) of the Act without registering as a securities clearing agency.

Clearing members have conveyed to OCC their desire to consolidate clearance, settlement, and collateralization of similar or hedgeable products. This need grows in urgency with the sale of the collateral necessary to support the growing security derivatives markets.

[7] 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.

OCC believes that the interests of minimizing the scale and cost of collateral, maximizing the efficiency of clearance and settlement, reducing systemic risk, providing the best possible service to clearing members at the lowest possible price, and ultimately reducing costs to investors all argue that OCC's policy should be to clear stock futures transactions for any national securities exchange or association registered under section 6(a) or 15(A)(a) of the Act or any ''designated contract market'' (as that term is used in the CEA) that is registered as a national securities exchange under section 6(g) of the Act.

OCC will, of course, need to adopt additional rules governing security futures. Additionally, as described below, OCC proposed to cover security futures under separate clearing agreements between it and the markets desiring to clear security futures transactions through OCC rather than to incorporate security futures in the Restated Participant Exchange Agreement (''RPEA''). Because these products and the systems and other infrastructure needed to clear them are still being designed and developed, it is too early for OCC to be able to file a complete set of rules for clearing security futures. These rules, including a proposed form of clearing agreement for security futures, will be the subject of one or more future filings under Rule 19b-4. However, it is important to resolve now the question of which markets OCC will clear for in order that both those markets and OCC can prepare for the start of security futures trading, which can begin in less than six months.

Considerations of fairness dictate that markets other than participant exchanges and their affiliates be required to market some form of ''investment'' in OCC analogous to the redeemable equity investments required of participant exchange, However, such markets should not be offered OCC common stock. Increasing the number of OCC's common stockholders would dilute the interest of OCC's existing stockholders and unnecessarily complicate issues of corporate governance.

Accordingly, the proposed amendment to Article I of OCC's By-Laws would define a separate category of market—a ''security futures market—''—from which OCC would accept transactions in security futures for clearance. The definition of ''security futures market'' would include certain entities, other than participant exchanges, that can be marketplaces for security futures under the provisions of the CFMA.[3] A security futures market would not be defined as an ''exchange,'' and OCC would be simply a provider of clearing services to such markets. For convenience, however, the terms ''exchange transaction,'' ''exchange rules,'' and ''exchange member'' would be redefined to include transactions on the rules and members of, as the case may be, a security futures market.

OCC anticipates that it would clear security futures transactions on security futures markets on the same terms and subject to the same clearing fees that will apply to security futures transactions originating on the exchanges. OCC proposes to create a new Article XII of its By-Laws that will be applicable to security futures. For the reasons stated, the present filing contains only the first section of Article XII, which establishes the conditions on which OCC will clear transactions in security futures for an exchange or a security futures market. Section 1 distinguishes between participant exchanges and security futures markets that are affiliated with an exchange, on the one hand, and non-affiliated security futures markets on the other hand.

For the sake of fairness to its participant exchanges, which are required to purchase and hold shares of OCC stock and to provide additional capital to OCC to support the preparation for clearing transactions for new security futures markets, OCC proposes that non-affiliated security futures markets be required to make a ''good faith'' deposit with OCC of $250,000. That deposit will be refunded to the security futures market in whole or in part if it ceases clearing security futures through OCC. OCC is considering a formula that would fix the amount of the refund at the lesser of the full amount of the original deposit or 50% of the amount of clearing fees received by OCC from clearing members as a result of transactions on that market (*i.e.*, a kind of ''earn out'' provision).

OCC would not be obligated to undertake security futures clearing for any non-affiliated security futures market if it determined that to do so would tax OCC's resources in a way that would jeopardize OCC's ability to fully perform its other responsibilities.

The proposed By-Law provision would also require an exchange or security futures market that wishes OCC to clear its transactions in security futures to enter into a clearing agreement with OCC that would define the business relationship between OCC and such market with respect to security futures. OCC anticipates that there will be separate but uniform (except for provisions relating to the good faith deposit required of non-affiliated security futures market) clearing agreements with each exchange and security futures market that clears security futures through OCC. These agreements would cover some of the same matters covered in the RPEA but would omit inapplicable provisions relating to the registration statement on which OCC registers options, registration under state securities laws, and the options disclosure document. The clearing agreement would also contain appropriate indemnification of OCC and its officers and directors. The clearing agreement would terminate if the exchange or security futures market is no longer eligible to list security futures, no longer lists security futures despite being eligible to do so, or is in material breach of the clearing agreement.

The proposed rule change is consistent with the purposes and requirements of section 17A of the Act[4] and the rules and regulations thereunder applicable to OCC because it fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and in general protects investors and the public interest.

(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

[3] The term ''security futures market'' does not include an ''alternative trading system'' or a ''derivatives transaction execution facility'' even though such markets may also trade security futures under provisions of the CEMA. Under section 6(h) of the Act, alternative trading systems would be permitted to trade only those security futures that are listed on a national securities exchange or national securities association and even then not until certain additional action is taken by such an exchange or association as provided in section 6(h)(5) of the Act. ''Derivatives transaction facility'' is a newly created regulatory category under the CEA. OCC believes that clearance of transactions for either of these types of entities could involve additional considerations not raised by its current proposal.

[4] 15 U.S.C. 78q–1.

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–2001–05 and should be submitted by May 21, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10607 Filed 4–27–01; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44203; File No. SR–Phlx–2001–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. To Amend Phlx Rule 237 To Expand the Securities Eligible for eVWAP Trading

April 19, 2001.

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 April 5, 2001, 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, II, and III below, which Items have been prepared by the Exchange. On April 13, 2001, the Exchange amended the proposal.[3] The Exchange has designated this proposal as one affecting a change in an existing order entry or trading system of the Phlx that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system under Section 19(b)(3)(A) of the Act,[4] 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

The Exchange proposes to amend Phlx Rule 237, eVWAP Morning Session,[5] to expand the securities eligible for eVWAP trading to include additional exchange traded component issues of the Standard and Poor's (''S&P'') 500 index. Specifically, the Exchange proposes to adopt paragraph (b), which states the following:

(b) Eligible Securities. The following securities will be eligible for execution in the System:

(i) Exchange listed component issues of the Standard & Poor's 500 index and any exchange listed issue that has been designated by the compiler of such index for inclusion in such index.

(ii) Any of 300 New York Stock Exchange (NYSE) issues selected as follows: the 400 NYSE issues with the highest market capitalization excluding the 100 issues that have the lowest average daily dollar trading volume over 20 days preceding the eligibility determination, with eligibility determined at least semiannually.

The Exchange also proposes technical amendments to Phlx Rule 237 relating to decimal reporting and a minor change to the calculation methodology, as described further below. The complete text of the proposal is available at the Phlx and at the Commission.

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 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. 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

The purpose of the proposed rule change is to expand the number of highly capitalized and actively traded securities eligible to participate in eVWAP pursuant to Phlx Rule 237. The eVWAP is a pre-opening order matching session for the electronic execution of large-sized stock orders at a standardized volume weighted average price (''eVWAP Price'').

The proposed expansion of eligible securities would include those exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* April 12, 2001 letter and attachments from Murray L. Ross, Phlx to Nancy Sanow, Division of Market Regulation, SEC (''Amendment No. 1''). In Amendment No. 1, the Phlx limited the new securities eligible for eVWAP to exchange traded component issues of the Standard & Poor's 500 index, and made other technical, non-substantive changes to the original proposal. For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on April 13, 2001, the date the Phlx filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] eVWAP was developed by Universal Trading Technologies Corporation, and was approved by the Commission to operate as a facility of the Exchange. *See* Securities Exchange Act Release No. 41210 (March 24, 1999), 64 FR 15857 (April 1, 1999)(SR–Phlx–96–14). The original pilot program was extended until November 30, 2001. *See* Securities Exchange Act Release No. 43477 (October 23, 2000), 65 FR 64734 (October 30, 2000)(SR–Phlx–00–84).