under BDS. Under the proposed rule change, DTC will not be obligated to enter into any such contracts with participants or to offer the same terms under any such contracts to all participants. DTC has advised the Commission that it will base all fees charged for customization of BDS based on a consistently applied methodology.

II. Discussion

Section 17A(b)(3)(F) of the Act[4] requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(F) because it should increase the use of BDS by DTC's participants. This increase in use should improve efficiency in the processing of securities certificates by eliminating most of the certificate processing responsibilities of those participants electing to use BDS and by reducing the movement of physical securities certificates. This reduction in the processing and movement of physical securities certificates also should improve efficiency by reducing the instances of erroneous processing and loss that sometimes occur with physical certificates.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of 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–DTC–97–13) be, and hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32172 Filed 12–8–97; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39386; File No. SR–OCC–97–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Regarding the Stock Loan/Hedge System

December 2, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 11, 1997, The Options Clearing Corp. (''OCC'') 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 primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

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

The purpose of the proposed rule change is to amend OCC's by-laws governing OCC's stock loan/hedge system (''HEDGE system'') to eliminate the requirements with respect to the accounts in which stock loan positions must be maintained.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Base 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 such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The HEDGE system is a clearing system for stock loans between OCC clearing members.[3] To date, OCC has approved only a few clearing members as stock lenders under the HEDGE system. OCC believes that the HEDGE system will have positive effects on OCC's risk profile and on the stock loan marketplace generally and would like to open the HEDGE system to a broader group of clearing members. However, OCC has determined that the HEDGE system's requirements with respect to the accounts in which stock loan positions must be maintained seriously limit clearing members' ability to use the HEDGE system.

OCC's by-laws governing the HEDGE system[4] currently treat stock loans as if they were pledges of loaned securities subject to the Commission's hypothecation rules.[5] The hypothecation rules limit the circumstances under which a broker-dealer may pledge securities carried for the account of any customer[6] 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 of such broker or dealer under a lien for a loan made to such broker or dealer.[7] 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) if the stock is a customer security, effect the loan through its OCC customers' account (or where permitted through its OCC market-maker's account).

According to OCC, stock loans historically have not been subject to the hypothecation rules and clearing members do not identify the stock in their ''loan boxes'' as to origin (*i.e.*, as customer or proprietary). OCC also has advised the Commission that ordinary over-the-counter stock loan transactions are not subject to the hypothecation rules. Therefore, according to OCC, clearing members that desire to loan stock through the HEDGE system find it difficult, if not impossible, to comply with the HEDGE system's account segregation requirements. OCC believes

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

[2] The Commission has modified the test of the summaries prepared by OCC.

[3] For a complete description of the HEDGE system, refer to Securities Exchange Act Release No. 32638 (July 15, 1993), 58 FR 39264 [File No. SR–OCC–92–34] (order approving proposed rule change establishing HEDGE system).

[4] OCC By-Laws, Article XXI, Section 5.

[5] 17 CFR 240.8c–1 and 240.15c2–1.

[6] 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 CAR 240.8c–1(b)(1), 240.15c2–1(b)(1). References to ''customers'' and ''non-customers'' herein are based on the definition in the hypothecation rules.

[7] 17 CAR 240.15c2–1(a)(2). *See also* 17 CFR 240.8c–1(a)(2) (providing the same requirements as Rule 15c2–1(a)(2) except that its scope is limited to exchange members and brokers and dealers that transact business through exchange members.

that clearing members are unlikely to change their systems just to be able to use the HEDGE system. As a result, OCC does not expect to be able to achieve broad-based participation in the HEDGE system with its current account segregation requirements.

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 clearing members to violate the Commission's hypothecation rules.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act[8] and the rules and regulations thereunder because it promotes efficiencies in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have any material impact 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 by OCC 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 OCC 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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, N.W., Washington, D.C. 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–97–11 and should be submitted by December 30, 1997.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32171 Filed 12–8–97; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78q–1(b)(3)(A).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39382; File No. SR–Phlx–97–50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating To Adopting a Definition of ''Foreign Broker-Dealer'' Into Its Options Rules

December 2, 1997.

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 3, 1997,[3] 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 Exchange. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (e)(6) of Rule 19b–4 under the Act which renders the proposal effective upon receipt of this filing by the Commission.[4] 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 is proposing to adopt a definition of ''foreign broker-dealer,'' which will treat such broker-dealers like their U.S. broker-dealer counterparts, thus precluding foreign broker-dealers from receiving treatment as customers under the various option rules.

In accordance with the foregoing, the Phlx is proposing to adopt Rule 1000(b)(41) to define the term ''foreign broker-dealer'' as follows:

The term ''foreign broker-dealer'' means any person or entity that is registered, authorized or licensed, or required to be, by a foreign governmental agency or foreign regulatory organization to perform the function of a broker or a dealer in securities, or both. The terms ''broker'' or ''dealer'' mean the same as set out in Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, as amended, provided that a broker or dealer may be a bank.[5] For purposes of Rules 1014, 1015, 1033 and 1080, the term broker-dealer includes foreign broker-dealers, which are not public customers.

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

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

[2] 17 CFR 240.19b–4.

[3] On November 28, 1997, the Philadelphia Stock Exchange, Inc. amended the filing to clarify its intent that the rule filing be deemed effective upon filing pursuant to Rule 19b–4(e)(6)(iii). *See* letter from J. Keith Kessel, Counsel, Philadelphia Stock Exchange, Inc., to Mignon McLemore, Esquire, Division of Market Regulation, SEC, dated November 24, 1997.

[4] The Exchange has represented that this proposed rule change: (i) Will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of this filing. The Exchange did not provide the required five business day advance notice to the Commission of its intent to file this proposed rule change, as required by Rule 19b–4(e)(6) under the Act. However, the Commission has determined to waive the pre-filing requirement. *See supra* note 3.

[5] Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934 provide:

''(4) The term ''broker'' means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank.''

''(5) The term ''dealer'' means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.''