

to causes of action created solely by judicial precedents.²⁸ Similarly, it does not apply to other causes of action under state or federal law, which remain subject to mandatory arbitration under paragraph (a).

Paragraph (c) of the proposed rule is former paragraph (b), which is unchanged except for the renumbering.

Effective Date and Related Issues

The NASD has requested that the proposed rule become effective one year from the date of Commission approval for several reasons. The NASD believes that a one year period from the date of Commission approval would permit employees and firms to determine what agreements they might wish to reach with regard to dispute resolution. During this period, the NASD will make related enhancements to the forum so that employees will have confidence that there are adequate procedures and safeguards of their rights in NASD arbitration. The NASD has formed an advisory working group to explore various options for the employment arbitration area, including additional due process standards, standard discovery lists, arbitrator list selection, and other related issues. It is expected that the working group will be able to provide advice to NASD management and the Boards during 1998. Such enhancements to the NASD's arbitration forum are expected to be the subject of future rule proposals.

In this connection, the NASD also plans to provide improved disclosure to employees of the effect of signing the Form U-4, their rights under the proposed rule, and the features of arbitration, so that they can make informed decisions.

Finally, the NASD intends to work with other regulators to consider expanded disclosure on the Form U-4 itself. Amendment to the Form U-4, an industry-wide form, requires the agreement of the SROs, the state regulatory authorities, and NASAA, as well as approval by the Commission. This process could take several months or longer.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act²⁹ in that the amendment will protect the public interest by allowing associated persons to choose whether to

pursue their statutory claims of employment discrimination in court or in arbitration, and by improving parties' confidence in the arbitration process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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 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. 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 at 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 File No. SR-NASD-97-77 and should be submitted by January 7, 1998.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39420; File No. SR-OCC-97-08]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change to Create a New Office of Management Vice Chairman and to Change the Title of Vice Chairman to Member Vice Chairman

December 10, 1997.

On May 9, 1997, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on May 12, 1997, amended¹ a proposed rule change (File No. SR-OCC-97-08) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").² Notice of the proposal was published in the **FEDERAL REGISTER** on August 29, 1997.³ On September 29, 1997, OCC filed a second amendment to the proposed rule change. No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

The proposal amends OCC's by-laws to create a new office of Management Vice Chairman and to change the title of Vice Chairman to Member Vice Chairman. The proposal amends Article IV, Section 1 to clarify that the existing Vice Chairman is elected by the Board of Directors from among OCC's Member Directors⁴ and will be renamed the Member Vice Chairman. Article IV, Section 1 is also amended to create the position of Management Vice Chairman which will be elected at the discretion of the Board of Directors. The board will not be required to fill this position. Only OCC staff members will be eligible to serve as the Management Vice Chairman, and any person serving in

¹ The amendment was technical in nature and therefore did not require republication of notice of filing.

² 15 U.S.C. 78s(b)(1)(1988).

³ Securities Exchange Act Release No. 38954 (August 23, 1997) 62 FR 45901.

⁴ To distinguish the title of the current Vice Chairman from the staff position of Management Vice Chairman, the modifier "Member" has been added to the office's title. Conforming changes have also been made to several other sections of OCC's by-laws to reflect addition of the modifier "Member" to the office's title.

²⁸ Such judicially created causes of action might include, for example, claims alleging "wrongful discharge" without any accompanying claim of discrimination on account of age, sex, race, or other status protected by a specific law.

²⁹ 15 U.S.C. 78o-3.

this office shall not be eligible to serve concurrently in any other OCC office.

Article IV, Section 7, paragraphs (a) and (b) are amended to provide for the duties and responsibilities of the Management Vice Chairman and to clarify the duties and responsibilities of the Member Vice Chairman. The duties of the Management Vice Chairman include assuming all of the Chairman's responsibilities in the absence or disability of the Chairman, including presiding over meetings of the Board of Directors and the shareholders.⁵ The Member Vice Chairman presides at such meetings and assumes all of the Chairman's responsibilities only in the absence of the Chairman and Management Vice Chairman. The Member Vice Chairman remains the chair of any committee responsible for evaluating the performance of OCC or the compensation of OCC's officers.⁶

The proposal also amends Article III, Section 15 paragraphs (a), (b), and (e) to add the office of Management Vice Chairman to the list of officers who may be granted emergency powers to declare the existence of an emergency, call special meetings during such emergency, and who may be empowered to act on behalf of any other officer who is unable to fulfill any emergency powers granted to such officer. Accordingly, the Management Vice Chairman position adds another person to OCC's line of succession, which reduces the risk that OCC would be without qualified leadership. The proposals establish a clear line of succession. Article II, Section 4 is amended to add the office of the Management Vice Chairman to the list of officers who may direct the notice of meetings of shareholders. The purpose of this change is to ensure the managerial readiness of OCC in the event the Chairman is unavailable.

A technical correction to Article IV, Section 1 deletes the requirement that the Board of Directors elect a senior management officer of OCC to be in charge of each OCC office that is (i) responsible for 20% or more of the volume of exchange transactions cleared

through OCC or (ii) located in the same city as an exchange on which 20% or more of the volume of the exchange's transactions are cleared through OCC. This requirement is no longer necessary due to advances in systems design.

Article IX, Section 1(a) is amended to add the office of the Management Vice Chairman to the list of officers who may, in conjunction with at least one director, access or withdraw securities owned by OCC from the appropriate safekeeping vault or account. Article IX, Section 11 is similarly amended to give the Management Vice Chairman the authority to sign OCC's share certificates.

Interpretations and Policies .03 to Article V, Section 1 is amended to add the office of the management vice Chairman to the list of officers authorized to approve or disapprove applications for clearing membership on a temporary basis. Interpretations and Policies .01 to Article V, Section 3 is similarly amended with respect to approvals and disapprovals of deadline extensions for satisfaction of the preconditions for qualification as a clearing member.

Interpretations and Policies .01 to Article VI, Section 17 is amended to include the Management Vice Chairman as one who may act on behalf of OCC in imposing exercise restrictions pursuant to Section 17(b).

In addition to the changes to OCC's by-laws, the proposal also makes several conforming changes to OCC rules. Specifically, Rule 305 paragraphs (a), (b), and (c) are amended to authorize the management vice chairman to impose restrictions on clearing members' transactions, positions, and activities. Interpretations and Policies .07 and .10 to Rule 305 are amended to include the Management Vice Chairman. Rule 309(d) is amended to enable the Management Vice Chairman to act pursuant to Rule 305(a) in the event a managing clearing member's net capital shall fall below a prescribed minimum level.

Certain Interpretations and Policies to Rules 601 and 602, and Rules 608, 609, and 609A, are amended to add the office of the Management Vice Chairman to the list of officers authorized to act pursuant to such rules in connection with members' margin positions, the withdrawal of margin, intra-day margin, and the waiver of margin.

Rules 801(e), 804, and 1905 are amended to authorize the Management Vice Chairman to permit clearing members to file, revoke, or modify eligible exercise notices and to require clearing members to file certain reports with respect to the allocation of

exercises, including allocations of IP exercises.

Rule 913(d) is amended to permit the Management Vice Chairman to extend or postpone the deadline for the delivery of securities in the event that certain settlement arrangements are revoked. Rule 1312 is amended to authorize the Management Vice Chairman to determine whether good cause exists for any delay in delivery or payment for transactions in GNMA options by its clearing members. Rules 1411, 1512, 1610, 2110, and 2408 are similarly amended for such determinations regarding the settlement of transactions in treasury security options, certificate of deposit options, foreign currency options, cross-rate foreign currency options, and flexibly structured index options denominated in a foreign currency, respectively.

Rule 1104(b) and Rule 1106 paragraphs (d) and (e) are amended to authorize the Management Vice Chairman to take certain actions with respect to the suspension of a clearing member and the creation of a liquidating settlement account. These changes permit the Management Vice Chairman to determine whether it is in the best interest of OCC, its clearing members, or the general public to convert to cash a suspended clearing member's margin deposits and whether to close out such member's unsegregated long or short positions. If such margin is not converted to cash, or such long or short position is not closed out, the change to Rule 1106(e) permits the Management Vice Chairman to engage in hedging transactions to reduce the risk to OCC resulting from such decisions.

II. Discussion

Section 17A(b)(3)(A) requires that a clearing agency have the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible.⁷ The Commission believes that the proposal is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the addition of the position of Management Vice Chairman should strengthen the line of succession in the absence or disability of the Chairman of the Board and should ease any transition from an existing Chairman of the Board to his or her successor. As a result, these changes should promote the efficiency of OCC's operations and therefore should support the goals of Section 17A of the Act.

⁵ A conforming change is being made to Article IV, Section 9 to clarify that the office of the Management Vice Chairman shall be in the line of succession in the absence of the Chairman.

⁶ As proposed, the rule change would have also included a conforming amendment to Article IV, Section 8 that would have added the Member Vice Chairman to the line of succession in the event of the absence or disability of the Chairman. This proposed change would have additionally clarified that the President's duty to act in the place of the Chairman would arise only in the absence of the Chairman, the Management Vice Chairman, and the Member Vice Chairman. In accordance with OCC's second amendment, Article IV, Section 8 will not be amended.

⁷ 15 U.S.C. 78q-1(b)(3)(A).

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with 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-OCC-97-08) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-32827 Filed 12-16-97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39419; File No. SR-Phlx 97-56]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Margin and Net Capital Requirements for Joint Back Office Arrangements

December 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 7, 1997, 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 Exchange. On November 24, 1997, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.² 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 Exchange seeks to amend Exchange Rules 703 and 722 to establish margin and net capital requirements for

Joint Back Office ("JBO") participants and clearing firms.

The text of the proposed rule change is available at the office of the Secretary, the Exchange, 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 Exchange seeks to revise Exchange Rules 703 and 722 to establish margin and net capital requirements for JBO participants and clearing firms. JBO arrangements permit a participating broker-dealer to be deemed self-clearing for margin purposes and entitle the participating broker-dealer to good faith credit.³

In recent amendments to Regulation T,⁴ the Board of Governors of the Federal Reserve System ("FRB") placed its reliance on the authority of self-regulatory organizations ("SROs") to ensure the reasonableness of JBO arrangements.⁵ When the provision permitting JBO arrangements was first adopted, the FRB assumed there would be a reasonable relationship between the good faith credit extended to a JBO participant and its ownership interest in the clearing firm. Consequently, the FRB did not establish any explicit requirement for the amount of ownership each participant should have in the JBO. Because Regulation T does not provide an ownership standards,⁶

however, good faith credit has been extended to "owners" holding merely a nominal interest in a clearing firm.

In conjunction with other SROs and representatives from the securities industry, the Exchange has established standards for JBO participants and clearing firms. These standards will permit the extension of good faith credit to clearing firm "owners" only when the owners maintain meaningful assets on deposit with the JBO clearing firm, and the clearing firm maintains sufficient net capital and risk control procedures to carry such accounts. The Exchange's proposed rule change would establish the following requirements:

Net Capital Requirements. As proposed, Exchange Rule 703 will require each JBO participant⁷ to be a registered broker-dealer subject to the net capital requirements prescribed by Commission Rule 15c3-1 ("Rule 15c3-1").⁸ JBO participants may not claim the net capital exemption available to option market makers under Commission Rule 15c3-1(b)(1).⁹ JBO participants will be required to deposit and maintain minimum account equity of \$1,000,000, and also will be subject to Financial and Operational Combined Uniform Single Report ("FOCUS") filings and certified audits. In addition, each JBO participant must meet and maintain the ownership standards established by the JBO clearing member. To ensure that adequate procedures exist for complying with these requirements, JBO participants will be required to employ or have access to a qualified Series 27 principal.

In addition, the proposed rule change will require a clearing member carrying JBO accounts to notify its Designated Examining Authority in writing of its intention to clear such accounts and will require the clearing member to comply with additional net capital requirements prescribed by the Exchange. Such a clearing member must maintain either: (i) tentative net capital of \$25 million;¹⁰ or (ii) net capital of \$10 million, if the clearing member's primary business is the clearance of option market maker accounts. A clearing member will be deemed to conduct a primary options market maker business if at least 60% of the

servicing broker or dealer owned jointly or individually by other [broker-dealers].¹² 12 CFR 220.11(a)(2).

⁷ The proposed rule change allows member organizations and foreign currency option participant organizations to establish JBO arrangements with JBO clearing members.

⁸ 17 CFR 240.15c3-1.

⁹ 17 CFR 240.15c3-1(b)(1).

¹⁰ The term "tentative net capital" refers to a clearing member's net capital before the application of haircuts and undue concentration deductions.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Amendment No. 1 modified the proposed rule change to require Joint Back Office clearing members to develop risk analysis standards which are acceptable to the Exchange. See Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Exchange, to Michael L. Loftus, Attorney, Division of Market Regulation, Commission, dated November 21, 1997.

³ Under the proposed rule change, JBO participants would not be considered self-clearing for any purpose other than the extension of credit under Exchange Rule 722, as revised, or under the comparable rules of another self-regulatory organization.

⁴ 12 CFR 220 *et seq.* Regulation T is entitled "Credit by Brokers, and Dealers." The Board of Governors of the Federal Reserve System issued Regulation T pursuant to the Act.

⁵ See Board of Governors of the Federal Reserve System Docket No. R-0772 (Apr. 26, 1996), 61 FR 20386 (May 6, 1996).

⁶ Section 220.11(a)(2) of Regulation T only requires that a JBO clearing firm be "a clearing and