

outstanding option (e.g., where a stock ceases to be an option stock but options on that stock remain outstanding or where a non-option stock is distributed to holders of an option stock and options on the latter are adjusted to require delivery of both stocks). The restriction applies only to non-option stocks because OCC does not want to limit clearing members' ability to include option hedging transactions in their accounts.

Finally, no lender or borrower would be allowed to maintain a stock loan or borrow position in a single issue in a margin-ineligible account if the notional value of the position exceeded the clearing member's excess net capital. This restriction is intended to address concentration risk. Where the positions are carried in a margin-eligible account, the restriction is deemed unnecessary because OCC will hold collateral sufficient to cover the risk.

OCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act<sup>9</sup> and the rules and regulations thereunder applicable to OCC because it will promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in the custody and control of OCC by providing for enhanced risk management while maintaining the flexibility of the current Hedge Program.

*(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 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. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-OCC-2002-11. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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-2002-11 and should be submitted by March 25, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-4951 Filed 3-3-03; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47396; File No. SR-OCC-2002-14]

**Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Procedures for Processing Late and Supplementary Exercise Instructions**

February 24, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on June 28, 2002, The Options Clearing Corporation ("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 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 proposed rule change would amend OCC Rules 801 and 805 to modify the existing fees for processing late instructions and supplementary exercise notices and would amend Rule 801 to establish a specific cut-off time for accepting late exercise notices after the start of critical processing and to eliminate OCC's ability to accept instructions to modify a previously submitted exercise after the start of critical processing.

**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 such statements.<sup>2</sup>

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

The purpose of this rule change is to amend Rules 801(e) and 805(g) to

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

<sup>2</sup> The Commission has modified parts of these statements.

<sup>9</sup> 15 U.S.C. 78q-1.

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

modify OCC's fees for processing late exercise instructions and supplementary exercise notices and to amend Rule 801(e) to establish a specific cut-off time for accepting late exercise notices after the start of critical processing and to eliminate OCC's ability to accept instructions to modify a previously submitted exercise notice after the start of critical processing.

#### Background

Rule 801 sets forth the procedures for submitting exercise notices on a business day which is not an expiration date, including the requirement that such submissions be completed by 7 P.M. (All times are Central Time.) Rule 801(e) provides OCC with the authority to permit clearing members to file, revoke, or modify exercise notices after 7 P.M. for the purpose of correcting bona fide errors. Authority to accept or reject such late instructions is vested with the Chairman, Management Vice Chairman, President, or such officer's delegate.

If a late instruction is accepted, Rule 801(e) requires the clearing member submitting the instruction to pay a late filing fee.<sup>3</sup> The fees for late instructions increase the later the notice is received. Late instructions accepted for filing after

the start of critical processing are processed on a best efforts basis and only if the assigned clearing member(s) can be notified before 8 a.m. Previously submitted exercises may not be revoked after the start of critical processing.

These late exercise procedures help provide a monetary incentive for clearing members to take precautions to avoid exercise errors and to identify those errors that do occur earlier in OCC's processing cycle. The earlier late exercise notices are submitted, the easier and less costly it is for OCC to process these exercises. Late exercise notices submitted before the start of OCC's critical processing cycle can be readily accommodated through standard procedures. Late exercise notices submitted after the start of critical processing require supplemental assignment procedures.

Rule 805 sets forth the procedures for submitting exercise notices on expiration dates. Rule 805 permits clearing members to submit exercise notices with respect to expiring options ("supplementary exercise notices") after the normal deadline but before their expiration time (*i.e.*, 10:59 P.M.), by following prescribed procedures. A clearing member submitting such a

supplementary exercise notice is required to pay a late filing fee.<sup>4</sup> As under Rule 801, the filing fees increase the later the notice is received. Supplementary exercise notices submitted in accordance with the prescribed procedures are irrevocable.

#### Discussion

OCC recently completed a review of these rules as a result of an increase in the number of late instructions received from clearing members. Based on that review, OCC is proposing to change the applicable fee schedules and cut-off times for processing late instructions and supplementary exercise notices.

#### Fees

One of the principal purposes for charging a filing fee for late instructions under both Rule 801 and Rule 805 is to provide an incentive for clearing members to discover exercise errors earlier in the processing cycle. The recent increase in the number of late instructions has led OCC to conclude that the current fee schedules do not provide a sufficient incentive. The current and proposed fee schedules are as follows:

#### Rule 801(e)

Submission time	Current fee	Proposed fee
7 p.m.—8 p.m. ....	\$500/any accepted request .....	\$2,000/any accepted request.
8:01 p.m.—start of critical processing .....	\$2,000/any accepted request .....	\$5,000/any accepted request.
After start of critical processing up until 8 a.m. <sup>5</sup>	\$10,000/line item on any exercise notice or modification notice accepted.	\$20,000/ line item on any exercise accepted. <sup>6</sup>

<sup>5</sup> On approval of this filing, this time will be 6:30 a.m.

<sup>6</sup> On approval of this filing, only exercise notices (*i.e.*, not modifications) will be accepted after the start of critical processing.

#### Rule 805(g)

Submission time	Current fee	Proposed fee
After the prescribed deadline for the submission of exercise instructions—start of critical processing.	\$2,000/any exercise notice accepted .....	\$5,000/any notice exercise accepted.
After start of critical processing—expiration time	\$10,000/line item on any exercise notice accepted.	\$20,000/line item on any notice accepted.

#### Late Exercise Cut-Off Time; Instructions To Modify

Rule 801(e) does not specify a cut-off time for the acceptance of late exercise notices. To provide for greater consistency in processing late exercise notices, OCC has concluded that it is desirable to establish a uniform cut-off time (*i.e.*, 6:30 a.m.) for their acceptance. A 6:30 A.M. cut-off allows adequate time for OCC to process a late

exercise notice and to inform all assigned clearing members before 8 a.m.

Finally, OCC is proposing to stop accepting modifications to previously submitted exercise instructions after the start of critical processing. Rule 801(e) currently provides that modifications will be accepted after the start of critical processing on a best efforts basis, but revocation instructions will not be accepted after the start of critical

processing. This prohibition is in place because the procedures involved in processing revocations are riskier than those associated with accepting a late exercise due to the need to back out data. A modification that reduces the number of exercised contracts requires use of the same revocation procedures. OCC therefore believes that modifications and revocations should be treated alike. A request by a clearing

<sup>3</sup> Late filings, revocations, and modifications of exercise may also be the subject of disciplinary action. Rule 801(e)(4) and 805(g).

<sup>4</sup> Late filings of supplementary exercise notices may also be the subject of disciplinary action. See note 3 above.

member to exercise additional contracts will be considered as a request to file a late exercise (and not a request to modify a previously submitted exercise notice) and will be handled pursuant to the rules applicable to late exercise instructions.

OCC believes that the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because it improves the efficiency of OCC's procedures for the acceptance of late exercise notices and supplementary exercise notices and therefore promotes the improvement of the national system for the prompt and accurate 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 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 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 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-OCC-2002-14. This file number

should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR-OCC-2002-14 and should be submitted by March 25, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-4955 Filed 3-3-03; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47385; File No. SR-Phlx-2003-06]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Changes to Its Nasdaq-100 Index Tracking Stock <sup>sm</sup> Fee Schedule**

February 20, 2003.

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 January 31, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx") 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>7</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.

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

The Phlx proposes to change its Nasdaq-100 Index Tracking Stock ("QQQ") <sup>sm</sup> Fee Schedule<sup>3</sup> in two ways: (1) amending the Customer, Non-PACE<sup>4</sup> per-trade fee and (2) eliminating the Specialist \$0.002 per-share fee.

First, in connection with the Phlx's QQQ Fee Schedule, the Phlx proposes to replace the current Customer, Non-PACE per-trade fee of \$1.00 per-trade with the equity transaction charge currently in effect on the Phlx's Summary of Equity Charges. Therefore, the Customer, Non-PACE per-trade fee of \$1.00 per-trade will be replaced with the following:

Transaction charge	Rate per-share
First 500 shares .....	\$0.00
Next 2,000 shares .....	0.0075
Remaining shares .....	0.005

\$50 maximum fee per-trade side.<sup>5</sup>

Second, the Phlx proposes to eliminate the specialist \$0.002 per-share (\$50.00 cap per-trade) fee.

The Phlx intends to implement the changes beginning with transactions settling on or after February 3, 2003.

The text of the proposed rule change 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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any

<sup>3</sup> The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq® The Nasdaq Stock Market®, Nasdaq 100 Shares<sup>sm</sup>, Nasdaq-100 Trust<sup>sm</sup>, Nasdaq-100 Index Tracking Stock<sup>sm</sup> and QQQ<sup>sm</sup> are trademarks or service marks of The Nasdaq Stock Market, Inc. (Nasdaq) and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-200 Index® (the Index) is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust<sup>sm</sup>, or the beneficial owners of Nasdaq-100 Shares<sup>sm</sup>. Nasdaq has complete control and sole discretion in determining, composing or calculating the Index or in modifying in any way its method for determining, composing or calculating the Index in the future.

<sup>4</sup> "PACE" is the acronym for the Phlx's Automated Communication and Execution System. It is the Phlx's order routing, delivery, execution and reporting system for its equity trading floor. See Phlx Rules 229 and 229A.

<sup>5</sup> This fee will be eligible for the monthly credit of up to \$1,000 to be applied against certain fees, dues and charges and other amounts owed to the Phlx by certain members. See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR-Phlx-2001-49).