

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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-NYSEArca-2008-37 and should be submitted on or before April 28, 2008.

#### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>9</sup> and, in particular, with the requirements of Section 6(b) of the Act.<sup>10</sup> In particular, the Commission finds that the Exchange's proposal is consistent with Section 6(b)(4) of the Act,<sup>11</sup> which requires that the rules of the Exchange provide for the equitable allocation or reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission notes that proposal conforms Linkage Fees with those fees charged on other Broker Dealer executions.

The Commission finds good cause, pursuant to Section 19(b)(2)(B) of the Act,<sup>12</sup> for approving the proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof in the **Federal Register**. An accelerated approval will not only permit the Exchange to comply with the terms of the Linkage Fee pilot program<sup>13</sup> but will also allow the Exchange to immediately implement a lower fee for market participants executing Linkage Orders on NYSE Arca.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>14</sup> that the

<sup>9</sup>In approving this rule, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>13</sup> See note 3 *supra*.

<sup>14</sup> 15 U.S.C. 78s(b)(2).

proposed rule change (SR-NYSEArca-2008-37), as modified by Amendment No. 1, is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-7113 Filed 4-4-08; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57584; File No. SR-OCC-2007-16]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Late Exercises

March 31, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 7, 2007, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange 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 the Substance of the Proposed Rule Change

The proposed rule change would amend OCC's rules relating to the submission of late items and the fees associated with filing exercise notices 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>15</sup> 17 CFR 200.30-3(a)(12).

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

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

The purpose of this rule filing is to amend OCC's (1) Rule 801 to modify the fee applied to exercise notices that are accepted by OCC after the start of critical processing, (2) Rule 805 to make conforming changes to the filing fees applied to the submission of supplementary exercise notices tendered after critical processing, and (3) Rule 205 to clarify the unusual or unforeseen circumstances when OCC may extend the cut-off time for submitting instructions to OCC.

##### 1. Background

Rule 801 addresses the exercise of options other than at expiration. Subject to specified exceptions and conditions, Rule 801(d) grants certain individuals<sup>2</sup> the discretion to permit a clearing member to file, revoke, or modify any exercise notice after the prescribed deadline for the purpose of correcting a bona fide error. However, the requesting clearing member is liable to OCC for a late filing fee in escalating increments and time segments. Currently, these fees are:

- (i) A fee of \$5,000 for any request accepted between the prescribed deadline and the start of critical processing (provided that the request does not materially affect such start time)<sup>3</sup> and
- (ii) a filing fee of \$20,000 per line item listed on any exercise notice accepted for filing after the start of critical processing, with 50% of the fee to be distributed to the assigned clearing member or on a pro rata basis if more than one clearing member is assigned.<sup>4</sup>

Clearing members with short positions that have been assigned a late exercise are to receive notification thereof by 8 a.m. CT.

##### 2. Discussion

At the March 2007 OCC Roundtable meeting,<sup>5</sup> a clearing member raised the issue of processing late exercises other

<sup>2</sup> Those individuals are OCC's Chairman, Management Vice Chairman, President, or a designee of such officer.

<sup>3</sup> The current deadline for submitting exercise notices is 7:00 p.m. CT.

<sup>4</sup> OCC will accept exercises until as late as 6:30 a.m. However, OCC will not accept a request to revoke or modify an exercise after the start of critical processing.

<sup>5</sup> OCC's Roundtable is an OCC-sponsored advisory group comprised of representatives from OCC's participant exchanges, OCC, a cross-section of OCC clearing members, and industry service bureaus. The Roundtable considers operational improvements that may be made to increase efficiencies and lower costs in the options industry.

than at expiration. The firm questioned the fairness of this process to option writers, noting that unexpectedly receiving additional assignments in the morning financially impacted the firm because its practice is to promptly review assignments from nightly processing and to hedge those obligations before the U.S. markets open. Expressing the view that late exercises permit a clearing member to shift liability for its own operational errors to another, the firm proposed that late exercises be eliminated to remedy this inequity and to cause clearing members to improve back office operations. After discussion, the Roundtable participants agreed to review the matter within their respective organizations and to revisit the topic at their next meeting.

In connection with its consideration of the matter, OCC reviewed the purpose served by permitting such exercises and recent processing of late exercise requests. Late exercises have long been allowed under OCC's rules to prevent clearing members from suffering severe economic losses due to bona fide operational errors. OCC determined that only a few late exercise requests were received during the period January 2006, through March 2007.<sup>6</sup> Specifically, there were five requests for late exercises from five different firms relating to 14 line items with values ranging from \$124,000 to \$270,000. All requests were received after the start of critical processing, requiring OCC to run supplemental exercise procedures after nightly processing had been completed. Such processing was initiated following the 6:30 a.m. (CT) cut-off time for late exercise requests,<sup>7</sup> and all assigned firms were notified before the 8 a.m. (CT) deadline. As specified in Rule 801(d), fifty percent of the \$20,000 per line item filing fee was distributed to assigned clearing members.

Although no late exercise requests were received between the deadline for submitting exercises and the start of critical processing during the above-referenced review period, OCC also determined that, upon request, its operations staff would extend the deadline by a reasonable period in the event an exchange, clearing member, or OCC experienced system or operational problems that prevented one or more

clearing members from submitting exercises on a timely basis.<sup>8</sup> The payment of the applicable filing fee in such instances was not required nor has it typically been required for requests received before the start of critical processing.

After carefully weighing the purpose and recent uses of the late exercise rule versus the fairness issue, OCC determined that it would be appropriate to retain the late exercise rule with certain modifications. Accordingly, OCC proposes to raise the filing fee for late exercise requests submitted post-critical processing from \$20,000 to \$75,000 per line item.<sup>9</sup> This change is intended to provide an incentive for firms to improve back office processing by increasing the cost of filing late exercise requests after the start of critical processing as well as to provide greater compensation to clearing members receiving "late assignments" while at the same time preserving the ability of firms to correct bona fide operational errors. To reflect current operating procedures, OCC proposes to eliminate the \$5,000 filing fee for late exercise requests filed prior to the start of critical processing. For consistency, OCC also proposes to modify the fees applicable to the submission of supplementary exercise notices at expiration as set forth in Rule 805.<sup>10</sup> Accordingly, OCC will amend Rule 805's filing fees to conform them to the changes being made in Rule 801.

OCC states that the proposed change is consistent with Section 17A of the Act<sup>11</sup> because it promotes the prompt and accurate clearance and settlement of securities transactions by providing an incentive for clearing members to improve back office processing with respect to determining positions for which an exercise notice is to be submitted, while preserving their ability to correct bona fide operational errors. In addition, the proposed rule change is not inconsistent with the existing rules

<sup>8</sup> Subject to OCC's need to start critical processing, the deadline for submitting exercise notices may be extended if "unforeseen conditions" prevent their submission by a clearing member (OCC Rule 205). OCC has concluded that its authority to extend such deadlines should more explicitly reference systemic or operational problems or other unforeseen conditions experienced by additional industry participants that may impact the timely submission of exercise notices.

<sup>9</sup> OCC's management's proposal was presented at the June 2007 Roundtable meeting. The Roundtable determined that OCC's management should decide whether to recommend the proposal to OCC's Board of Directors.

<sup>10</sup> It has been at least five years since a supplementary exercise notice has been submitted for processing.

<sup>11</sup> 15 U.S.C. 78q-1.

of OCC, including any other rules proposed to be amended.

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

OCC does not believe that the proposed rule change will impose any burden on competition.

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

OCC has not solicited or received written comments with respect to the proposed rule change.

### **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. 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-OCC-2007-16 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-OCC-2007-16. 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/>

<sup>6</sup> From April 2007 to October 2007 there were no requests to submit a late exercise although in each of June and September 2007, OCC received [0] an inquiry regarding a possible submission. However, the clearing members involved elected not to formally file such a request.

<sup>7</sup> Systemic and operational constraints preclude OCC from processing late exercise requests at an earlier time.

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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at OCC's principal office and on OCC's web site ([http://www.theocc.com/publications/rules/proposed\\_changes/proposed\\_changes.jsp](http://www.theocc.com/publications/rules/proposed_changes/proposed_changes.jsp)). 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 No. SR-OCC-2007-16 and should be submitted on or before April 28, 2008.

For the Commission by the Division of Trading and Markets pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57597; File No. SR-Phlx-2008-24]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Position and Exercise Limits on IWM Options

April 1, 2008.

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 March 28, 2008, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the

Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. 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 proposes to amend Phlx Rule 1001, Position Limits, to establish increased position limits of 500,000 for options ("IMW Options") on the exchange-traded fund ("ETF") overlying the iShares Russell 2000 Index ("IWM"). The text of the rule proposal is available on the Exchange's Web site (<http://www.phlx.com>), at the offices of the Exchange, and at the Commission's Public Reference Room.

#### 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 establish in Phlx Rule 1001 increased position limits of 500,000 contracts for IWM Options, which should encourage a more liquid and competitive market environment to the benefit of customers interested in the product.

About a year ago, the IWM Options position limit was increased to 500,000 contracts pursuant to a CBOE and ISE pilot program (the "IWM Pilot").<sup>5</sup> The

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> The proposal that established the IWM Pilot was designated to be effective and operative upon filing. See, e.g., Securities Exchange Act Release Nos. 55176 (January 25, 2007), 72 FR 4741 (February 1, 2007) (SR-CBOE-2007-08) and 55175 (January 25, 2007), 72 FR 4753 (February 1, 2007) (SR-ISE-2007-07). The IWM Pilot was extended through

Commission recently permanently approved this position limit pilot.<sup>6</sup> The Exchange now seeks to similarly increase its position limit on IWM Options to 500,000 contracts.<sup>7</sup>

Although position limits have lately enjoyed permanent expansion, there has been a steadfast and significant increase over the last decade in the overall volume of exchange-traded options. Part of this volume is attributable to a corresponding increase in the number of overall market participants. This growth in market participation has in turn brought about additional depth and increased liquidity in exchange-traded options.

As the anniversary of listed options trading approaches its 35th year, the Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange, at other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. These procedures include daily monitoring of market movements via automated surveillance techniques to identify unusual activities in both options and underlying stocks and ETFs.

The current financial requirements imposed by the Exchange and by the Commission should address any concerns that a member or its customer

March 1, 2008. See Securities Exchange Act Release Nos. 57141 (January 14, 2008), 73 FR 3496 (January 18, 2008) (SR-CBOE-2007-147) and 57144 (January 14, 2008), 73 FR 3785 (January 22, 2008) (SR-ISE-2008-03). The Exchange did not participate in the pilot program.

<sup>6</sup> See Securities Exchange Act Release No. 57352 (February 19, 2008), 73 FR 10076 (February 25, 2008) (SR-CBOE-2008-07). Other options exchanges similarly have a 500,000 contract IWM Options position limit. See Securities Exchange Act Release Nos. 57415 (March 3, 2008), 73 FR 12479 (March 7, 2008) (SR-Amex-2008-16); 57414 (March 3, 2008), 73 FR 12481 (March 7, 2008) (SR-BSE-2008-12); 57416 (March 3, 2008), 73 FR 12489 (March 7, 2008) (SR-ISE-2008-20); and 57417 (March 3, 2008), 73 FR 12788 (March 10, 2008) (SR-NYSEArca-2008-26). Position limit increases for other option products have also been approved recently. See Securities Exchange Release No. 57418 (March 3, 2008), 73 FR 12493 (March 7, 2008) (SR-Phlx-2008-14) (QQQs position limit).

<sup>7</sup> Phlx Rule 1002, which the Exchange does not propose to amend, establishes exercise limits for equity options at the same levels as the applicable position limits. Phlx Rule 1002 states in part that "no member or member organization shall exercise, for any account in which such member or member organization has an interest or for the account of any partner, officer, director or employee thereof or for the account of any customer, a long position in any option contract of a class of options dealt in on the Exchange \* \* \* if as a result thereof such member or member organization, or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five (5) consecutive business days aggregate long positions in that class (put or call) as set forth as the position limit in Rule 1001 \* \* \*"

<sup>12</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.