

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38963, File No. SR-NYSE-97-24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Permanent Adoption of a Program to Display Price Improvement on the Execution Report Sent to the Entering Firm

August 22, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 23, 1997, the New York Stock Exchange, Inc. ("NYSE" 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 self-regulatory organization. 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 makes permanent the program initially filed as a pilot in Securities Exchange Act Release Nos. 36421 (October 26, 1995), 60 FR 55625 (November 1, 1995) (File No. SR-NYSE-95-35) and 36489 (November 16, 1995), 60 FR 58123 (November 24, 1995) (File No. SR-NYSE-95-37).¹ This is a program to calculate and display, on the execution reports sent to member firms, the dollar amounts realized as savings to their customers as a result of price improvement in the execution of their orders on the Exchange.²

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 self-regulatory organization 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 self-regulatory organization 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 this proposed rule change is to make permanent a pilot program for calculating and displaying, on execution reports sent to member firms entering orders, the dollar value saved by their customers as a result of price improvement of orders executed on the Exchange. This program does not in any way affect the actual execution of orders. The Exchange refers to this calculated dollar savings as the "NYSE PRIME" SM.³

Data from the operation of the pilot for the first six months of 1997 show price improvement on 23.4% of the execution reports for eligible post-opening market orders entered on the Exchange.⁴

The Exchange is revising NYSE PRIME to calculate whether there has been price improvement by comparing the execution price to the quotation at the time the order entered the system and at the time the order is reported following the execution. The Exchange will indicate that there is price improvement only if the execution is superior to the quotation in both calculations. The amount of any price improvement reported will be the lesser of the two calculations. The Exchange has committed to having this "double check" on line by the fourth quarter of 1997.

NYSE PRIME currently utilizes the Best Pricing Quote ("BPQ"), which has been used in the calculation of odd lot pricing, to determine price improvement.⁵ The Exchange is

developing a capacity to utilize the national best bid or offer ("NBBO") for calculating NYSE PRIME. The Exchange has committed to begin using the NBBO in the first half of 1998.

NYSE PRIME is available to all member organizations⁶ for intra-day market orders entered via the Exchange's SuperDOT system that are not tick sensitive and are entered from off the Floor.⁷

The Exchange believes that the NYSE PRIME enhances the information made available to investors and improves their understanding of the auction market.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹ that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. This proposed rule change is designed to perfect the mechanism of a free and open market in that it enhances the information provided to investors by displaying to them the dollar value of the price improvement their orders may have received when executed on the NYSE.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

includes quotations in a stock from other markets only if: (1) The stock is included in ITS in that other market; (2) the quotation size is for more than 100 shares; (3) the bid or offer is not more than one-quarter point away from the NYSE's bid or offer; (4) the quotation conforms to NYSE Rule 62 governing minimum variations; (5) the quotation does not create a locked or crossed market; (6) the market disseminating the quotation is not experiencing operational or system problems with respect to the dissemination of quotation information; and, (7) the quotation is "firm" pursuant to Rule 11Ac1-1 under the Act, 17 CFR 240.11Ac1-1, and the market's rules.

⁶ The Commission notes that member organizations electing to receive NYSE PRIME information are required to enter into an agreement with the Exchange regarding the use of NYSE PRIME information and the NYSE PRIME service mark. Among other things, the agreement provides that in any publication or use of NYSE PRIME information (unless the Exchange otherwise agrees), the member organization must employ the NYSE PRIME service mark.

⁷ Also excluded from the NYSE PRIME feature are booth entered or booth routed orders, booked orders, combination orders (e.g., switch orders) and orders diverted to sidacar.

¹ 15 U.S.C. 78f(b)(5).

¹ The pilot program subsequently was extended in Securities Exchange Act Release Nos. 37151 (April 29, 1996), 61 FR 20302 (May 6, 1996) (File No. SR-NYSE-96-10) (extension of pilot until October 24, 1996); 37812 (October 12, 1996), 61 FR 54477 (October 18, 1996) (File No. SR-NYSE-96-28) (extension of pilot until April 24, 1997); and 38551 (April 28, 1997), 62 FR 25011 (May 7, 1997) (File No. SR-NYSE-97-13) (extension of pilot until July 24, 1997).

² The Commission notes that the NYSE's use of the term "price improvement" in this notice differs from the Commission's recent use of the term. See *infra* Section V.

³ NYSE PRIME is a service mark of the New York Stock Exchange, Inc.

⁴ The Commission notes that this figure has not been netted to reflect price disimprovement, and should not be used for best execution evaluations. See *infra* Section V.

⁵ See Securities Exchange Act Release No. 27981 (May 2, 1990), 55 FR 19407 (May 9, 1990) (File No. SR-NYSE-90-06). The BPQ is the highest bid and lowest offer, respectively, disseminated by the Exchange or another market center participating in the Intermarket Trading System ("ITS") at the time the order is received by the Exchange. In order to protect against the inclusion of incorrect or stale quotations in the BPQ, however, the Exchange

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not have the effect of limiting access to or availability of any Exchange order entry or trading system, the NYSE PRIME program has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(e)(5) thereunder.¹⁰ At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-97-24 and should be submitted by September 19, 1997.

V. Commission Statement

As a general matter, price improvement occurs when a customer

order is executed at a price that is superior to the best contra-side bid or ask quote prevailing among the markets and market centers trading the security at the time the order was received and executed. Moreover, the Commission has noted that it also is possible for a customer order to receive negative price "improvement," or price disimprovement, instead of price improvement.¹¹ Price disimprovement occurs when an order is executed at a price that is inferior to the best contra-side bid or ask quote prevailing among the markets and market makers trading the security at the time the order was received and executed.

The Commission previously has noted the importance of the opportunity for price improvement as a factor in best execution, particularly with regard to broker-dealers routing orders for automatic execution. In the Order Handling Rules Adopting Release, the Commission stated that where material differences exist between the price improvement opportunities offered by markets or market makers, these differences must be taken into account by the broker-dealer. The Commission made clear that in evaluating price improvement opportunities, a broker-dealer must consider, among other things, both the amount of price improvement and price disimprovement present in each market.¹² More recently, the Commission's Preferencing Study analyzed the amount of price improvement and disimprovement on the NYSE and the regional exchanges. The Preferencing Study found that a significant amount of price disimprovement occurred on each exchange.¹³

Therefore, a program such as NYSE Prime, which only provides price improvement numbers, should not be used as the basis for best execution evaluations. NYSE Prime provides some information to firms on a transaction by transaction basis. To be useful for best execution evaluations, however, any price improvement information disseminated also should reflect the amount of price disimprovement that

occurs on that market. Accordingly, a market providing price improvement statistics on an aggregate basis should indicate the amount of price disimprovement as well as the amount of price improvement.

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. 34-38954; File No. SR-OCC-97-08]

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

August 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on May 9, 1997, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on May 12, 1997, 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 from interested persons.

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 to create a new office of Management Vice Chairman and to change the title of Vice Chairman to Member Vice Chairman.

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),

¹¹ See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (File No. S7-30-95) ("Order Handling Rules Adopting Release"); SEC, Report on the Practice of Preferencing ("Preferencing Study") (April 11, 1997) at Part V.D.

¹² Order Handling Rules Adopting Release at n.357.

¹³ Compare Preferencing Study Tables V-8A to C with Tables V-9A to C. Of course, the Preferencing Study analyzed price improvement and disimprovement in the aggregate. In evaluating execution quality across markets, it is important that broker-dealers consider that execution quality may vary for different types of orders and securities. See Preferencing Study at nn. 313 and 314.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4.

¹ 15 U.S.C. 78s(b)(1) (1988).