

regarding the scope of that provision. The proposed rule change would clarify that the managing underwriter is required to request an Underwriting Activity Report with respect to a distribution of a security that is considered an "actively-traded" security under SEC Rule 101.⁴ Currently, the language of Subparagraph (b)(11) is misleading in that it only imposes this requirement with respect to subject or reference securities that are "subject to SEC Rule 101." Because "actively-traded" securities are exempt from SEC Rule 101, they are not considered "subject to" SEC Rule 101. In Notice to Members 97-10 (March 1997), announcing adoption of the amendments of the NASD to implement Regulation M, the NASD stated that the Underwriting Activity Report will indicate whether the security qualifies under SEC Rule 101 as an actively-traded security or for the one-day or five-day restricted periods." Thus, the proposed change to Subparagraph (b)(11) will make the rule language consistent with the Association's requirement that the managing underwriter request an Underwriting Activity Report for securities that are considered "actively-traded" under SEC Rule 101.

Moreover, NASD Regulation is proposing to amend Subparagraph (b)(11) to exclude exchange-listed securities from the requirement that the managing underwriter obtain an Underwriting Activity Report. Originally, it had been anticipated that the managing underwriter would be provided information on the value of average daily trading volume and market value of public float with respect to exchange-listed securities, in addition to securities included in The Nasdaq Stock Market, Inc. or quoted on the OTC Bulletin Board Service. However, since this information has not been available, the proposed rule change would eliminate the obligation of managing underwriters to request the Underwriting Activity Report with respect to exchange-listed securities. The managing underwriter of an offering of exchange-listed securities would, nonetheless, continue to be responsible under Subparagraph (b)(12) to advise the Market Regulation Department of information regarding the pricing and termination of the offering. Conforming amendments are made to Subparagraph (b)(12) in light of this proposed change

to Subparagraph (b)(11). Finally, Subparagraph (b)(12) is also proposed to be revised to clarify that the managing underwriter of any offering of securities considered "actively-traded" under SEC Rule 101 must also advise the Market Regulation Department of information on pricing and termination.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(2)⁵ of the Act in that the proposed rule change will enforce and facilitate compliance by NASD members with the requirements of SEC Regulation M.

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

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

III. 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 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 the file number in the caption above and should be submitted by November 4, 1997.

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

The Commission finds that the NASD's proposal is consistent with the Act and the rules and regulations thereunder applicable to a registered

national securities association. Specifically, the provisions of Section 15A(b)(2) of the Act which requires that an association enforce compliance with Securities Exchange Act Rules in addition to the rules of the association. The Commission believes that the proposal will enforce and facilitate compliance by NASD members with the requirements of Regulation M, SEC Rules 100 through 105.

In addition, the Commission finds that the NASD's proposal is consistent with the provisions of Section 15A(b)(6) of the Act which requires, in part, that an association have rules that are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principals of trade, and in general, to protect investors. In approving this proposed rule change, the Commission notes that it has also considered the proposal's impact on efficiency, competition, and capital formation.⁶

The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change, SR-NASD-97-68, be, and hereby is, approved.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39200; File No. SR-NYSE-97-25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., To Amend Its Rule 382 Relating to Carrying Agreements

October 3, 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 September 16, 1997, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or

⁴ An "actively-traded" security is a subject or reference security with a value of average daily trading volume of at least \$1 million, which is issued by an issuer whose common equity securities have a public float of at least \$150 million.

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78c(f).

⁷ 17 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(2).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

“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 Exchange proposes to amend Exchange Rule 382, Carrying Agreements to better monitor the activities of introducing firms that are parties to carrying agreements. The text of the proposed rule change is available at the Office of the Secretary, the NYSE, 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 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 the proposed rule change is to revise Exchange Rule 382 to enhance the ability of the Exchange and other securities self-regulatory organizations (“SROs”) to monitor the activities of introducing firms that are parties to carrying agreements. Exchange Rule 382 governs the contractual agreements, known as “carrying agreements,” between a “carrying” and an “introducing” firm, that allocate certain functions and responsibilities associated with the carrying of, and transactions in, customer accounts. In “carrying” the accounts of others, carrying firms provide an introducing firm with a variety of services for the accounts that are “introduced” to them on behalf of customers, pursuant to the carrying agreement.

Under Rule 382, all carrying agreements must be filed with and approved by the Exchange if either party to the agreement is a member of the Exchange. Rule 382 also requires, with

respect to all “fully disclosed” arrangements, that the carrying agreement specifically identify and allocate between the carrying and introducing organization certain key enumerated functions and responsibilities. To address recent concerns regarding the ability of self-regulatory organizations to monitor the activities of introducing firms, the Exchange believes the proposed amendments will increase SROs' ability to monitor the activities of introducing firms that are party to carrying arrangements. Generally, the proposed amendments will provide for increased monitoring of customer complaints regarding introducing organizations, require specific procedures for introducing organizations requesting reports offered by carrying organizations, and address procedures and responsibility for introducing organizations that are permitted to issue negotiable instruments of the carrying organizations.

Specifically, the rule amendments will require carrying organizations to furnish promptly any written customer complaint it receives regarding the introducing firm to the introducing organization and such firm's Designated Examining Authority (“DEA”). In addition, the proposal would require that the customer who submitted the written complaint be notified in writing by the carrying organization that the complaint was received, that it was furnished to the introducing firm and the DEA, and that the customer has the right, at the customer's discretion, to transfer the account to another broker-dealer.

The proposed amendment also requires the carrying organization to furnish, at the commencement of the agreement and annually thereafter, to each of its introducing organizations, a list of all reports (e.g., exception type reports) that it offers to the introducing firm in order to assist the introducer in supervising and monitoring customer accounts. The proposal requires introducing firms to notify the carrying firm of those specific reports on the list that should be furnished to it to supervise and monitor customer accounts.

In addition, the carrying organization will be required to retain and preserve copies of the specific reports requested by and/or supplied to the introducing firm pursuant to Exchange Rule 440 or have the capability to: (1) Recreate copies of reports furnished, or (2) provide the report format and data elements provided in the original reports. The proposal further requires the carrying firm to provide written

notice, on an annual basis within 30 days of July 1 of each year, to the Chief Executive Officer and Compliance Officer of the introducing firm, of the list of reports offered to the introducer and specify those reports actually requested or supplied as of the report date. A copy of this written notice must also be provided to the introducer's DEA.

The amended rule also addresses those agreements that allow introducing organizations to issue negotiable instruments (e.g., checks) to their customers, for which the carrying organization is the maker or drawer. The proposed rule provides that the introducing organization must represent to the carrying organization that it has supervisory procedures in place, which it enforces and which are satisfactory to the carrying organization, with respect to the issuance of such instruments.

The Exchange believes that the proposed amendments to Rule 382 will clarify the relationship and responsibilities between organizations involved in carrying arrangements while also recognizing the nature of the contractual relationship between carrying firms and introducing firms. The Exchange further believes that provisions requiring furnishing of customer complaints and lists of reports submitted by and furnished to introducing organizations will enhance the ability of the Exchange and other SROs to monitor the activities of such entities. In addition, the Exchange believes that the requirement that carrying organizations maintain and be prepared to furnish copies of exception reports or to recreate the report or provide report format/data fields will ensure that appropriate records are available that detail the information actually provided to the introducing organization to monitor its customer accounts.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act which³ requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, in that it establishes standards to which members and member organizations that are parties to carrying agreements must adhere while providing customer protection through appropriate

³ 15 U.S.C. 78f(b)(5).

disclosures and implementation of specific procedures and controls.

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

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Comments were neither solicited nor 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 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, NW., 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 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 above-mentioned self-regulatory organization. All submissions should refer to File Number SR-NYSE-

97-25 and should be submitted by November 3, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-27046 Filed 10-10-97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39203; File No. SR-OCC-97-14]

Self-Regulatory Organizations; The Option Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to a Cross-Margining Agreement With the Board of Trade Clearing Corporation

October 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on August 18, 1997, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

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

The proposed rule change will allow OCC to amend the cross-margining agreement between OCC and the Board of Trade Clearing Corporation ("BOTCC") and to amend the agreements that are required to be executed by participating clearing members and market professionals participating in the cross-margining programs established by the cross-margining agreement.

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.²

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

The purpose of the proposed rule filing is to revise the amended and restated cross-margining agreement between OCC and BOTCC ("Agreement").³ OCC and BOTCC have executed an amendment to the Agreement to revise the Agreement.⁴ Specifically, OCC proposed to amend Exhibit A to the Agreement to update the list of contracts eligible of OCC/BOTCC cross-margining. OCC also proposes to amend the agreements governing the cross-margin accounts of clearing members and market professionals that participate in OCC/BOTCC cross-margining. The changes to those agreements essentially will conform them to the comparable form of the agreements used in the cross-margining program among OCC, the Chicago Mercantile Exchange ("CME") and the Commodity Clearing Corporation ("CCC").⁵

The following forms of agreements are required to be executed by clearing members and market professionals participating in the cross-margining program established by the Agreement: (1) Proprietary cross-margin account agreement and security agreement for a joint clearing member; (2) proprietary cross-margin account agreement and security agreement for affiliated clearing members; (3) non-proprietary cross-margin account agreement and security agreement for a joint clearing member; (4) non-proprietary cross-margin account agreement and security agreement for affiliated clearing members; (5) subordination agreement for cross-margining for a joint clearing member; and (6) subordination agreement for cross-margining for

² The Commission has modified the text of the summaries prepared by OCC.

³ For a description of the existing agreement, refer to Securities Exchange Act Release No. 29888 (October 31, 1991), 56 FR 56680 [File No. SR-OCC-91-07] (order approving establishment of cross-margining program between OCC and BOTCC) and Securities Exchange Act Release No. 32681 (July 27, 1993), 58 FR 41302 [File No. SR-OCC-92-24] (order approving expansion of cross-margining program between OCC and BOTCC to include non-proprietary positions).

⁴ A copy of the amendment has been submitted with the proposed rule change and is available for inspection and copying at the Commission's Public Reference Room or at the principal office of OCC.

⁵ For a description of the cross-margining agreement among OCC, CME, and CCC, refer to Securities Exchange Act Release No. 38584 (May 8, 1997), 62 FR 26602 [File No. SR-OCC-97-04] (order granting accelerated approval to proposed rule change).

¹ 15 U.S.C. 78s(b)(1).