

of ten contracts for most equity options traded on the floor.

The Committee has discovered through experience in overseeing the operation of RAES in equity options, however, that it is often beneficial to temporarily raise the eligible order size to the allowable limit of twenty contracts in situations where a particular class of equity options is experiencing a large influx of orders. By increasing the eligible order size, a larger percentage of the order flow can be filled immediately at the Exchange's quotes or at the National Best Bid or Offer ("NBBO").⁴ This, in turn, will allow the trading crowd to concentrate on filling the non-RAES eligible orders in a more expeditious manner.

The decision to increase the RAES eligible order size to address these high volume situations must be made quickly to be effective. In addition, the Committee believes the increase should only be made for that period of time in which the class is in a high volume situation; and so, the situation requires monitoring. Because the EFPC commonly consists of twenty or more members who conduct business in all parts of the floor, it is not practicable to provide notice to all the members of the Committee and convene a meeting to make these decisions. It is also not practicable to expect these members to monitor the situation when they are trying to conduct business on the floor that requires their attention. Intra-day meetings are not only impracticable to convene but would distract these members from the conduct of their business on the floor.

Consequently, the EFPC has determined to delegate its authority under Exchange Rule 6.8 to the Chairman of the EFPC, or to the Chairman's designee, to increase the eligible order size for RAES provided that the Chairman or his designee believes the action is in the interest of alleviating a potential backlog of unexecuted orders in situations where a particular class of options is experiencing a large influx of orders and provided the decision is made for no more than one trading day. To the extent the conditions exist on the following trading day, the Chairman or his designee must review the situation and make an independent decision to increase the RAES eligible order size for that subsequent day. Any decisions

made by the Chairman or his designee to increase the RAES eligible order size for a particular option class for consecutive days will be reviewed by the EFPC at its next regularly scheduled meeting. After reviewing these decisions the EFPC can provide guidance to the Chairman or his designee about the use of this authority if they feel it is appropriate.

2. Statutory Basis

By allowing the Chairman of the EFPC or his designee to make decisions to increase the eligible order size for RAES, the Exchange can help to prevent the backlog of executable orders in an efficient manner. The Exchange believes, therefore, the filing is consistent with and furthers the objectives of Section 6(b)(5) of the Act⁵ in that it is 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 to protect investors and the public interest.

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

The CBOE 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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 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 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 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, 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, in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR-CBOE-98-37 and should be submitted by November 20, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40597; International Series Release No. 1163; File No. SR-NYSE-98-37]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Trading of the Ordinary Shares of DaimlerChrysler AG

October 23, 1998.

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 October 22, 1998, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") 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 by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested

⁴ The Exchange recently received approval of a rule change that provides that in classes designated by the EFPC, RAES orders will be executed at the NBBO to the extent the NBBO is no more than one tick better than the CBOE quote. Exchange Act Release No. 40096 (June 16, 1998), 63 FR 34209 (June 23, 1998) (approving SR-CBOE-98-13).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

persons and to approve the proposal on an accelerated basis.

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

The Exchange is proposing to adopt two interpretations under its rules to accommodate the trading of DaimlerChrysler AG ("DaimlerChrysler"). Daimler-Benz AG ("Daimler-Benz") is combining with Chrysler Corporation ("Chrysler") in a series of transactions pursuant to which Daimler-Benz will ultimately be merged into DaimlerChrysler and Chrysler will become a wholly owned subsidiary of DaimlerChrysler.

DaimlerChrysler is a stock corporation incorporated under the laws of the Federal Republic of Germany with a single class of common stock—ordinary shares, no par value ("Ordinary Shares")—that will trade on both the NYSE and the Frankfurt Stock Exchange, as well as on other exchanges around the world. The register for the Ordinary Shares will be administered by Deutsche Bank AG, DaimlerChrysler's transfer agent and registrar in Germany, and The Bank of New York, DaimlerChrysler's transfer agent and registrar in the United States. Transactions in the Ordinary Shares will be cleared through the central clearing systems of both countries. The Depository Trust Company ("DTC") in the United States and Deutsche Börse Clearing in Germany.

Although the Ordinary Shares are issued by a Germany company, they have many characteristics that are similar to shares of common stock issued by U.S. companies. For example, while most German stocks are in bearer form, DaimlerChrysler shares will be in registered form, the same as U.S. shares. However, the form of the stock certificate will have certain characteristics more similar to certificated shares of common stock of a German company than of a U.S. company. In addition, DaimlerChrysler will pay dividends and call stockholder meetings and conduct voting at such meetings generally in accordance with German practices. This requires the Exchange to adopt two interpretations of its rules to accommodate the listing and trading of DaimlerChrysler:

Certificates: The Frankfurt Stock Exchange rules governing stock certificates are somewhat different than the Exchange's rules. To accommodate those differences, the NYSE is proposing to adopt an interpretation of Paragraphs 501.03 and 502 of the Exchange's Listed Company Manual (the "Manual") so the DaimlerChrysler

certificates will meet the NYSE's requirements for certificates.

Proxies: DaimlerChrysler will solicit proxies in a manner that combines characteristics of both the German and U.S. markets. This rule change interprets Paragraphs 401.03 and 402 of the Manual to accept DaimlerChrysler's proposed proxy procedures.

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 III 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 provide two interpretations under the Exchange's rules to accommodate the listing and trading of DaimlerChrysler. These interpretations pertain to DaimlerChrysler's share certificates and voting procedures.

Certificates

The DaimlerChrysler share certificates will conform in most respects to the requirements in Paragraphs 501.03 and 502 of the Manual. The only exceptions are that the vignettes (pictures) will not be fully steel engraved and the form of endorsement will provide for German registry. The Exchange believes that these are relatively minor inconsistencies with current requirements, and one purpose of the rule change is to accept the DaimlerChrysler share certificates as proposed.

Voting

Under German law, only stockholders who hold shares on the date of the stockholders meeting are entitled to vote. Accordingly, the record date for voting at a stockholder meeting is the meeting date. In contrast, Exchange rules require 10 days' notice of a record date and 30 days between record and meeting date. DaimlerChrysler will modify its current practice to accommodate the notice period in the United States. In Germany, there already

are procedures to distribute preliminary agendas and other information to shareholders approximately one month before the meeting. DaimlerChrysler has agreed to prepare and mail stockholder meeting materials approximately 45 days prior to its meeting, permitting the solicitation of proxies in the United States in the currently accepted time frame. The company also has agreed to give the Exchange 10 days' notice of the record date.

The coincidence of the record and meeting date also raises the possibility that a selling shareholder could give a proxy and then sell the shares, with the buyer also getting a proxy. This could lead to double voting. To address this issue, both The Bank of New York as transfer agent (the "Transfer Agent") and Automatic Data Processing ("ADP"), the proxy agent for most member organizations, will institute procedures to monitor changes in the shareholder list between the date the proxy material is mailed out and the date of the meeting. These procedures will be designed (i) to cancel the votes of persons who submit proxies but sell their shares prior to the meeting date, and (ii) to facilitate voting by persons who purchase shares after the time the proxy material is mailed out, but before the meeting date. The second purpose of the proposed rule change is to accept these procedures as being in compliance with NYSE procedures.

Both the Transfer and ADP will produce shareholder lists on the day designated for mailing the proxy material (approximately 30–45 days prior to the meeting). The Transfer Agent's list will reflect the names of registered holders and ADP's list will reflect the names of beneficial owners. Prior to the meeting date, the Transfer Agent and ADP will each produce a current shareholder list. If holders no longer appear on the list, then votes attributed to proxies submitted by them will be canceled. If new holders appear, proxy materials will be mailed to them by the Transfer Agent, in the case of registered owners, and by ADP, in the case of beneficial owners.

The shareholders lists can be updated periodically up until the date of the meeting. If practicable, proxy materials will be mailed to any new holders on a best efforts basis. Such best efforts may include electronic notification and expedited delivery service. The proxy materials will describe voting procedures in detail. Notices will be included advising of the automatic revocation of the proxy if the holder sells stocks prior to the meeting. Finally, as a check and balance, the total vote cast in nominee name will not be

permitted to exceed the total position so held.

In addition, DaimlerChrysler shareholders can vote in person at a shareholders' meeting. Under German law, a shareholder must give the company notice of his or her intent to vote in person no later than three business days prior to the meeting, and the person must be a record holder on the meeting date.³

(2) Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act⁴ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

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

The proposed rule change 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

The Exchange has not solicited comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

³ With respect to dividends, DaimlerChrysler's record date also will be the date of the company's annual meeting (like most German companies, DaimlerChrysler pays dividends annually). This will make it impossible to trade the stock "ex-dividend" on the Exchange in the normal course. Accordingly, the Exchange will use its existing flexibility under Exchange Rule 235 and Paragraph 703.02 of the Manual to trade DaimlerChrysler stock with "due bills" for the period that the stock normally would trade ex-dividend. This is a process pursuant to which the seller will receive the dividend, but is obligated to pay the dividend to the buyer of the shares. This process will be transparent to investors since due bills net out in the clearing process. To avoid any potential confusion as to the "ex-dividend date," the Exchange will endeavor to transmit notices to member organizations well in advance of the dividend declaration date.

The ex-dividend date for DaimlerChrysler shares will be the day following the record date. That is in contrast to the Exchange's typical practice, in which the ex-dividend date is two business days prior to the record date.

⁴ 15 U.S.C. 78f(b)(5).

III. 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. 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 the NYSE. All submissions should refer to File No. SR-NYSE-98-37 and should be submitted by November 20, 1998.

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

The Commission finds that the NYSE's proposal to interpret the Manual to accommodate the listing and trading of DaimlerChrysler shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act⁶ in that it will remove impediments to and perfect the mechanism of a free and open market, and will protect investors and the public interest, by enabling the NYSE to serve as a market for shares of DaimlerChrysler (rather than American depositary receipts) while maintaining trading standards that are substantially equivalent to the NYSE's existing standards.

The Commission believes that it is reasonable for the NYSE to interpret the Manual to permit it to list DaimlerChrysler shares despite the share certificates' differences from the Manual's standards for engraving and endorsements. The interpretation is

⁵ In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

necessary to accommodate the unique aspects to DaimlerChrysler's share certificates. Moreover, the change is minor, and will not impinge on investor protection and the public interest.

The Commission also believes that it is reasonable for the NYSE to interpret the Manual to accept DaimlerChrysler's proxy procedures. By mailing stockholder meeting materials approximately 45 days prior to its annual meeting, DaimlerChrysler will give shareholders the same type of advance notification provided for in the Manual. Moreover, DaimlerChrysler's proxy procedures will cancel proxies for shares sold prior to the meeting, and will facilitate voting by persons who purchase shares during the month leading up to the meeting. In that way, the Exchange's proxy procedures regarding DaimlerChrysler appear to be substantially equivalent to the NYSE's existing standards, by permitting the votes cast at the annual meeting to accurately reflect the company's shareholders at the time of the meeting.

The Exchange has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the proposal in the **Federal Register**. According to the Exchange, the trading of DaimlerChrysler shares on a "when issued" basis is scheduled to commence as early as October 26, 1998. The Exchange states that approval of the rule change by the date will facilitate the maintenance of an orderly market in the shares of DaimlerChrysler. The Exchange further states that without accelerated approval of this proposed rule change, there will be uncertainty in the market regarding the form of DaimlerChrysler certificates and the procedures governing DaimlerChrysler proxies.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. The Commission believes that it is necessary to approve the NYSE's proposal on an accelerated basis to permit the public to begin to trade the newly issued DaimlerChrysler shares on the NYSE without doubts about whether the share certificates are acceptable under NYSE rules, and without questions about how DaimlerChrysler will conduct proxy voting.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act⁷ that the proposed rule change (SR-NYSE-98-

⁷ 15 U.S.C. 78s(b)(2).

37) is hereby approved on an accelerated basis.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-29120 Filed 10-29-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40595; File No. SR-OCC-98-08]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Stock Fund Options

October 23, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 22, 1998, The Options Clearing Corp. ("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 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

Under the proposed rule change, OCC will amend its rules and by-laws which govern options on publicly traded interests in unit investment trusts, investment companies, or similar entities holding portfolios or baskets of common stocks.

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 change is to modify OCC's rules and by-laws governing the issuance, clearance, and settlement of options on publicly traded interests in unit investment trusts, investment companies, or similar entities holding portfolios or baskets of common stocks.³ Specifically, the proposed rule change will introduce a defined term "stock fund shares" to cover such publicly traded interests and a defined term "stock fund option" to cover the options thereon and will substitute these defined terms where appropriate in the by-laws and rules. For example, the proposed rule change will abbreviate Interpretation and Policy .01 under Section 9 of Article VI of the by-laws through the use of the newly defined term stock fund option.

In addition, the proposed rule change will provide for adjustments to the terms of stock fund options for distributions of capital gains with respect to the underlying stock fund shares. The proposed rule change will add Interpretation and Policy .08 to Section 11 of Article VI of the by-laws to reflect that the terms of stock fund options will be adjusted for all capital gains distributions, regardless of size, by the issuer of the underlying stock fund shares.

OCC believes that the proposed rule change is consistent with Section 17A of the Act⁴ because the proposed changes will promote the prompt and accurate clearance and settlement of transactions in stock fund options.

(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

Section 17A(b)(3)(F) of the Act⁵ requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with this obligation because the amendments should make it clear that stock fund options are stock option contracts for all purposes under OCC's rules and by-laws. Furthermore, the rule change should promote the prompt and accurate clearance and settlement of stock fund options by providing for adjustments to the terms of stock fund options for capital gains distributions with respect to the underlying stock fund shares.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Pursuant to File No. OCC-97-02, OCC amended its rules to provide for the clearance and settlement of stock fund options as proposed for trading by the American Stock Exchange ("AMEX").⁶ The changes proposed in this rule filing will make technical changes that will facilitate the clearance and settlement of AMEX's product which is scheduled to begin trading in November, 1998.

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, 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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

³ The Commission approved OCC's issuance, clearance, and settlement of such options in Securities Exchange Act Release No. 40132 (June 25, 1998), 63 FR 36467 [File No. SR-OCC-97-02].

⁴ 15 U.S.C. 78q-1.

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ *Supra*, note 3.