

the market operated by Nasdaq, the price and volume of transactions in a Nasdaq-listed security may be affected by the misuse or malfunction of electronic systems, including systems that are linked to, but not operated by, Nasdaq. In circumstances where misuse or malfunction results in extraordinary market activity, Nasdaq believes that it may be appropriate to halt trading in an affected security until the system problem can be rectified. In the period during which the rule change has been in effect, Nasdaq has not had occasion to initiate a trading halt under the rule. Nevertheless, Nasdaq believes that the rule is an important component of its authority to maintain the fairness and orderly structure of the Nasdaq market. Accordingly, Nasdaq believes that the rule should remain in effect on an uninterrupted basis.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>12</sup> including Section 15A(b)(6) of the Act,<sup>13</sup> which requires, among other things, that a registered national securities association's rules must 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. Nasdaq believes that the proposed rule change provides Nasdaq with clearer authority to respond to and alleviate market disruptions and thereby protect investors and the public interest.

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

Nasdaq 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.

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

In a letter dated July 27, 2001, Instinet Corporation ("Instinet") commented on the proposed rule change as originally proposed and currently in effect.<sup>14</sup> Nasdaq has filed a proposed rule change—SR-NASD-2001-75—to modify the rule in certain respects and to make the rule permanent, and has received no comments on that

proposal.<sup>15</sup> Nasdaq believes that the amendments to the rule proposed in SR-NASD-2001-75 respond to the concerns expressed by Instinet without impairing the flexibility that the rule must retain in order for the rule to assist Nasdaq in meeting its overarching responsibility to maintain the fairness and orderly structure of the Nasdaq market. Pending Commission action on SR-NASD-2001-75, Nasdaq believes that the pilot period of the current rule should be extended to allow the rule to remain in effect on an uninterrupted basis.

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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and
- (iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) <sup>16</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>17</sup> At any time within 60 days of the filing of the proposed 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.

Nasdaq has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the 5-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to operate continuously through November 15, 2002, while the Commission considers Nasdaq's request for permanent approval. For these reasons, the Commission waives both the 5-day pre-filing requirement and the 30-day operative waiting period.<sup>18</sup>

<sup>15</sup> See Securities Exchange Act Release No. 45355 (Jan. 29, 2002), 67 FR 5351 (Feb. 5, 2002) (File No. SR-NASD-2001-75).

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>18</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

## 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. 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 File No. SR-NASD-2002-125 should be submitted by October 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46579; File No. SR-NYSE-2002-31]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Codification of New York Stock Exchange Policies Previously Approved by the Commission and the Reordering of Other Rules

October 1, 2002.

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 August 12, 2002, 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

<sup>19</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.

<sup>12</sup> 15 U.S.C. 78o-3.

<sup>13</sup> 15 U.S.C. 78o-3(b)(6).

<sup>14</sup> See Letter from Jon Kroeper, First Vice President—Regulatory Policy/Strategy, Instinet to Jonathan G. Katz, Secretary, Commission dated July 27, 2001.

have been prepared by the Exchange. The proposed rule change has been filed by the NYSE as a "non-controversial" rule change under Rule 19b-4(f)(6) of the Securities Exchange Act of 1934 ("Act").<sup>3</sup> 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 consists of the formal codification of several Exchange policies previously approved by the Commission and the reordering of several other Exchange rules. The text of the proposed rule change is available at the Office of the Secretary, 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 NYSE 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**

According to the NYSE, the purpose of this filing is to formally codify in the NYSE Rule Book several policies which have been previously filed with, and approved by, the Commission pursuant to Rule 19b-4 and to rearrange the placement of several other rules. The NYSE represents that the material filed herein does not constitute a substantive change to any NYSE rule or policy, and is responsive to recommendations made by an Independent Consultant retained by the Exchange. *See In the Matter of New York Stock Exchange*, 70 S.E.C. Docket 106, Release No. 34-41574, 1999 WL 430863 (June 29, 1999).

#### *Rule 90*

Exchange Rule 90 prohibits member proprietary transactions on the Exchange in accordance with the principles of Section 11(a) of the Act and the Commission's rules thereunder.

The Exchange is proposing to add, as Supplementary Material to Rule 90, the text of Section 11(a) and the text of the Commission's rules thereunder.

#### *Rules 110, 111 and 112*

Exchange Rules 110, 111 and 112 are primarily addressed to Competitive Traders, although several provisions of these Rules relate to other matters. The Exchange is proposing to reorganize these rules so that all material directly relating to activities of Competitive Traders will be codified in Rule 110. This involves placing certain material currently codified in Rule 111 and Rule 112 into Rule 110. After the reorganization, Rule 111 would contain material currently codified in Supplementary Material to Rule 112 concerning reporting requirements for Competitive Traders and certain other traders. In addition, Rule 112 would consist of material currently codified in paragraphs .10 and .20 of Supplementary Material to Rule 112 dealing with orders initiated off the Floor, and what constitutes "on Floor" and "off Floor" for purposes of Exchange rules.

No new material is being added. The Exchange is simply reorganizing the existing material for ease of reference.

The specific reorganization is as follows. Paragraphs (a), (b), and (c) of current Rule 111 would become paragraphs (a), (b), and (c) of new Rule 110. Paragraphs (a), (b), (c), and (d) of current Rule 112 would become paragraphs (d), (e), (f), and (g) of new Rule 110. Paragraphs (d), (e), (f), (g) and Supplementary Material .10 of current Rule 111 would become paragraphs (h), (i), (j), (k), and (l) of new Rule 110. The text of current Rule 110 would become paragraph (m) of new Rule 110. Supplementary Material paragraphs .21 and .22 of current Rule 112 would become new paragraphs (n), (o), and (p) of new Rule 110.

Supplementary Material paragraph .30 of current Rule 112 would become paragraph (a) of new Rule 111. Supplementary Material paragraphs .40, .50, and .50A of current Rule 112 would become paragraphs (b), (c) and (d) of new Rule 111.

Supplementary Material paragraph .10(a) of Rule 112 would become paragraph (a) of new Rule 112. Supplementary Material paragraphs .20(a), (b), (c), and (d) would become paragraphs (b), (c), (d), and (e) of new Rule 112.

Three paragraphs are proposed to be deleted. Current Rule 112(e) contains exemptions from restrictions on Competitive Traders for specialists in securities in which they are registered.

Current Rule 111(c), however, contains similar exemptions. Accordingly, the Exchange is proposing to rescind Rule 112(e) as redundant and unnecessary, and this paragraph would not appear in proposed new Rule 110.

Rule 112.23 refers to the ability of the specialist to establish priority, but not parity or precedence based on size, in certain market situations. This paragraph is similar to restrictions contained in Rule 108, and the Exchange is proposing to delete it as redundant.

Rule 112.24 provides that specialists should state the full size of the offer except in instances in which they believe the proper exercise of the brokerage function makes it inadvisable to do so. This Rule has been superseded by the Commission's limit order display rule, Rule 11Ac1-4, and NYSE Rule 79A.15, and is therefore proposed to be rescinded.

#### *Codification of Exchange Policies*

The Exchange is proposing to add its specialist stock allocation policy to Rule 103B.<sup>4</sup> This Rule currently provides that securities listing on the Exchange will be allocated to specialist units according to such policies as the Exchange shall establish. The Exchange's Allocation Policy has been previously filed with the Commission but has not been codified in the Rule Book. The Exchange is simply proposing to add the text of the current Allocation Policy to the text of Rule 103B.

The Exchange is also proposing to codify three other policies which have been previously approved by the Commission. The Exchange's policies and interpretations regarding market-on-close and limit-on-close orders would be codified in new Exchange Rule 123C.<sup>5</sup> Included in this Rule would be interpretive material, previously disseminated to the Exchange's membership, which is reasonably and fairly implied by these policies. The Exchange is not proposing to adopt any new substantive requirements.

The Exchange is proposing to codify its policies and interpretations regarding trading halts and delayed openings in

<sup>4</sup> This policy was last amended in SR-NYSE-2001-10 (Allocation Policy for Exchange-Traded Funds), approved by Securities Exchange Act Release No. 44306 (May 15, 2001), 66 FR 28008 (May 21, 2001), and in SR-NYSE-2001-17 (Interview Pool for Exchange's Allocation Policy and Procedures), approved by Securities Exchange Act Release No. 44975 (October 24, 2001), 66 FR 55037 (October 31, 2001).

<sup>5</sup> This policy was last amended in SR-NYSE-99-26, approved by Securities Exchange Act Release No. 41726 (August 11, 1999), 64 FR 44985 (August 18, 1999).

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

new Rule 123D.<sup>6</sup> No new substantive requirements are proposed to be adopted.

The Exchange is also proposing to codify its Specialist Combination Review Policy in new Rule 123E.<sup>7</sup> No new substantive requirements are proposed to be adopted.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>9</sup> in particular. Section 6(b)(5) of the Act requires, among other things, that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms 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 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.

### *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

The proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> 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) by its terms does not become

operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, and the Exchange has provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6)(iii)<sup>13</sup> thereunder. At any time within 60 days of the filing of the proposed 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.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE has requested that the Commission waive the 30-day pre-operative waiting period, which will allow the proposed administrative rule changes and codification of Exchange policies to take effect immediately. According to the NYSE, the proposed filing consists of formal codification of several Exchange policies previously approved by the Commission and the reordering of several other Exchange rules. Therefore, the Exchange believes that the proposed rule change is non-controversial, addresses the administration of Exchange rules, and should take effect immediately. In light of these considerations, the Commission, consistent with the protection of investors and the public interest, has determined to designate the proposed rule change as operative immediately.<sup>14</sup>

## 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. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR-NYSE-2002-31 and should be submitted by October 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46593; File No. SR-OCC-2002-23]

### **Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Physically-Settled Futures on Narrow-Based Stock Indexes**

October 2, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 30, 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's by-laws and rules to provide for the clearance and settlement of transactions in physically-settled futures on narrow-based stock indexes.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

<sup>6</sup> This policy was last amended in SR-NYSE-93-19, approved by Securities Exchange Act Release No. 32890 (September 14, 1993), 58 FR 48916 (September 20, 1993).

<sup>7</sup> This policy was last approved in SR-NYSE-94-46, Securities Exchange Act Release No. 35343 (Feb. 8, 1995), 60 FR 8437 (Feb. 14, 1995). The last proposed amendment to this policy was in SR-NYSE-2000-11 (March 2, 2000) (not yet approved).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).