principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest. The Commission believes that the proposed fee structure, which is similar to the fee structures in place for Nasdaq's SuperSOES and SuperMontage systems,[8] may encourage members to provide additional liquidity to support executions through Nasdaq's InterMarket and thereby enhance its competitiveness.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASD–2002–109) is approved.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26026 Filed 10–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46620; File No. SR–NYSE–2002–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Shareholder Approval of Equity Compensation Plans and the Voting of Proxies

October 8, 2002.

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 7, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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

On August 16, 2002, the NYSE filed with the Commission amendments to its Listed Company Manual to implement significant changes to its listing standards aimed at helping to restore investor confidence by empowering and ensuring the independence of directors and strengthening corporate governance practices (''SR–NYSE–2002–33'' or the ''Corporate Governance Proposals'').[3] The Exchange represents that this filing excerpts certain proposed rule changes from the Corporate Governance Proposals relating to shareholder approval of equity-compensation plans and the voting of proxies, in compliance with a request from the Commission staff to address these issues separately from the remainder of the Corporate Governance Proposals.

The text of the proposed rule change is available at the Office of the Secretary, NYSE, at the Commission, and is also incorporated into the language of Item II, Section A below.

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 NYSE states that it has long pioneered advances in corporate governance. The NYSE represents that it has required companies to comply with listing standards for nearly 150 years, and has periodically amended and supplemented those standards when the evolution of our capital markets has demanded enhanced governance standards or disclosure. On February 13, 2002, SEC Chairman Harvey Pitt asked the Exchange to review its corporate governance listing standards. In conjunction with that request, the NYSE appointed a Corporate Accountability and Listing Standards Committee (the ''Committee'') to review the NYSE's current listing standards, along with recent proposals for reform, with the goal of enhancing the accountability, integrity and transparency of the Exchange's listed companies. On August 16, 2002, the NYSE filed the Corporate Governance Proposals with the Commission, proposing rule changes to its corporate governance standards which reflect the findings of the Committee and which are designed to further the ability of honest and well-intentioned directors, officers and employees to perform their functions effectively. The proposals for new corporate governance listing standards for companies listed on the Exchange are proposed to be codified in a new Section 303A of the Exchange's Listed Company Manual.[4]

Subsequent to the filing of the Corporate Governance Proposals, the Commission staff requested that the NYSE file proposed Section 303A(8) (relating to shareholder approval of equity-compensation plans) and proposed NYSE Rule 452 (which prohibits member organizations from giving a proxy to vote on equity-compensation plans absent specific instructions from a beneficial holder) separately from its remaining proposals to expedite review and processing of these portions of the Corporate Governance Proposals. The proposed rule change filed herewith amends proposed Section 303A(8) as originally filed to clarify its meaning in several respects,[5] and also proposes to make conforming changes to current Sections 303.00 and 312.03 of the Listed Company Manual and NYSE Rule 452.

As amended, rule language of proposed Section 303A(8) of the Exchange's Listed Company Manual is as follows:

---

[8] *See* Securities Exchange Act Release Nos. 44910 (October 5, 2001), 66 FR 52167 (October 12, 2001) (SR–NASD–2001–67); and 45906 (May 10, 2002), 67 FR 34965 (May 16, 2002) (SR–NASD–2002–44).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* File No. SR–NYSE–2002–33 (August 16, 2002).

[4] In its Report to the NYSE Board, the Committee set forth basic principles followed in many cases by explanation and clarification. The NYSE is adopting the recommendations as standards in substantially the form they were made by the Committee and adopted by the NYSE Board. Accordingly, the format used will state a basic principle, with the additional explanation and clarifications included as ''commentary.''

While many of the requirements set forth in this new rule are relatively specific, the Exchange is articulating a philosophy and approach to corporate governance that companies are expected to carry out as they apply the requirements to the specific facts and circumstances that they confront from time to time. Companies and their boards are expected to apply the requirements carefully and in good faith, making reasonable interpretations as necessary, and disclosing the interpretations that they make.

[5] Section 303A(11) of the Corporate Governance Proposals clarifies that the NYSE will continue its practice of accommodating the home country practices of our listed foreign private issuers with respect to the proposed corporate governance standards. In light thereof, the NYSE will not require foreign private issuers to comply with Section 303A(8) as proposed herein, assuming that they have provided to the Exchange the home country practice certification referred to in Section 303.00 of the Listed Company Manual.

8. To increase shareholder control over equity-compensation plans, shareholders must be given the opportunity to vote on all equity-compensation plans, except inducement awards, plans relating to mergers or acquisitions, and tax qualified and parallel nonqualified plans.

Commentary: Equity-compensation plans [6] can help align shareholder and management interests, and equity-based awards have become very important components of employee compensation. In order to provide checks and balances on the process of earmarking shares to be used for equity-based awards, and to provide shareholders a voice regarding the resulting dilution, the Exchange requires that all equity-compensation plans, and any material revisions to the terms of such plans, be subject to stockholder approval.[7]

For these purposes, a ''material revision'' would include, but not be limited to, a revision that: materially increases the number of shares available under the plan (other than an increase solely to reflect a reorganization, stock split, merger, spinoff or similar transaction); [8] changes the types of awards available under the plan; materially expands the class of persons eligible to receive awards under or otherwise participate in the plan; materially extends the term of the plan; or materially changes the method of determining the strike price of options under the plan.[9] In addition, if a plan contains a provision that prohibits repricing of options, any revision that deletes or limits the scope of such a provision will be considered a material revision for purposes of this rule. If a plan does not contain a provision that specifically permits repricing of options, the plan will be considered for this purpose as prohibiting repricing, and any actual repricing of options will be considered a material revision of the plan, even if the plan itself is not revised.[10]

There are certain types of plans and awards, however, which are appropriately exempt from this shareholder approval requirement. Employment inducement awards—that is, grants of options or shares as a material inducement to such person's first becoming an employee of the issuer or any of its subsidiaries—will not be subject to shareholder approval under this rule. The Exchange recognizes the urgency that may attach to the granting of options and other equity-based compensation in the context of inducing a candidate to accept employment and the resulting impracticality of obtaining a shareholder vote in these situations.

In the case of corporate acquisitions and mergers, two exceptions are appropriate. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in corporate acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that were previously approved by shareholders. These shares may be used for post-transaction grants of options and other equity awards by the listed company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or another plan, without further shareholder approval, so long as (1) the time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company at the time the merger or acquisition was consummated. The Exchange would view a plan adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. The NYSE believes that this exception is appropriate because it believes that it will not result in any increase in the aggregate potential dilution of the combined enterprise.[11]

Because inducement awards and mergers or acquisitions are not routine occurrences, and are not likely to be abused, the Exchange considers these exceptions to be consistent with the fundamental policy involved in this standard.

Similarly, any plan intended to meet the requirements of Section 401(a) [12] of the Internal Revenue Code (*e.g.*, ESOPs), any parallel nonqualified plan, [13] and any plan intended to meet the requirements of Section 423[14] of the Internal Revenue Code is exempt from the shareholder approval requirement. Plans such as Section 401(a) plans and Section 423 plans are already regulated under the Internal Revenue Code and Treasury regulations. Section 423 plans, which are stock purchase plans under

[6] For these purposes, and ''equity compensation plan'' would not include any plan that is made available to shareholders generally (such as typical dividend reinvestment plan). In addition, an ''equity compensation plan'' would not include a plan that merely provides a convenient way (for example, through payroll deductions) for employees, directors or other service providers to buy shares on the open market or from the issuer, even if the brokerage and other costs of the plan are subsidized. However, if employees, directors or service providers pay less than fair market value for shares under the plan, and the plan is not made available to shareholders generally, the plan would be considered to be an ''equity compensation plan'' for these purposes.

[7] For the sake of clarity, the Exchange notes that its traditional ''treasury stock exception'' will no longer be available with respect to this requirement.

[8] For these purposes, an automatic increase in the shares available under a plan pursuant to a formula set forth in the plan (sometimes referred to as an ''evergreen'' formula) will not be considered a revision if the term of the plan is limited to a specified period of time not in excess of ten years. *See also* footnote 15 below with respect to plans with evergreen formulas that were adopted before the effective date of this rule.

[9] A change in the method of determining ''fair market value'' from the closing price on the date of grant to the average of the high and low price on the date of grant is an example of a formula change that the Exchange would not view as material.

[10] For these purposes, a ''repricing'' means any of the following (or any other action that has the same effect as any of the following): (1) Amending the terms of an option after it is granted to lower its strike price; (2) any other action that is treated as a repricing under generally accepted accounting principles; and (3) canceling an option at a time when its strike price is equal to or less than the fair market value of the underlying stock, in exchange for another option, restricted stock, or other equity, unless the cancellation and exchange occurs in connection with a merger, acquisition, spin-off or other similar corporate transaction. A cancellation and exchange described in clause (3) of the preceding sentence will be considered a repricing regardless of whether the option, restricted stock or other equity is delivered simultaneously with the cancellation, regardless of whether it is treated as a repricing under generally accepted accounting principles, and regardless of whether it is voluntary on the part of the option holder.

[11] Note that any such shares reserved for listing in connection with the transaction would be counted by the Exchange in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock and thus required stockholder approval under Listed Company Manual Section 312.03(c).

[12] 26 U.S.C. 401(a) (1988).

[13] The term ''parallel nonqualified plan'' means a plan that is a ''pension plan'' within the meaning of the Employee Retirement Income Security Act (''ERISA''), 29 U.S.C. 1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may hereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless (1) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitations that may hereafter be enacted) and (2) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence.

[14] 26 U.S.C. 423(1988).

which an employee can purchase no more than $25,000 worth of stock per year at a plan-specified discount capped at 15%, are also required under the Internal Revenue Code to receive shareholder approval. While Section 401(a) plans and their parallel nonqualified plans are not required to be approved by shareholders, the shares issued under these plans must be ''expensed'' (*i.e.*, treated as a compensation expense on the income statement) by the company issuing the shares. Equity compensation plans that would qualify for the exception described in this paragraph but for features necessary to comply with foreign tax law in the non-U.S. jurisdiction in which the employees covered by the plan reside, are also exempt from shareholder approval under this section.

In circumstances in which equity compensation plans and amendments thereto are not subject to shareholder approval, the plans and amendments still must be subject to the approval of the company's compensation committee or a majority of the company's independent directors.

This rule will be applicable to a plan adopted before the effective date of this rule only upon any subsequent material revision of the plan.[15]

In addition, the Exchange will preclude its member organizations from giving a proxy to vote on equity compensation plans unless the beneficial owner of the shares has given voting instructions. This will be codified in proposed changes to NYSE Rule 452.[16]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in the 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

Shareholder Vote on Equity Compensation Plans

The Exchange represents that this recommendation received particular support from the institutional investor community. They urged the NYSE Board not to dilute either the shareholder vote requirement or the broker vote prohibition. However, numerous constituents expressed concerns about both recommendations.

A. Shareholder Approval

The Exchange represents that more than half of the larger companies, financial institutions and associations that commented on this issue maintained that only plans that offer options to officers and/or directors should be subject to shareholder approval. Many companies argued that subjecting broad-based equity compensation plans to the shareholder approval requirement would lessen their ability to compensate rank-and-file employees with stock options, putting NYSE-listed companies at a competitive disadvantage in the labor market. They urged that the board should be able to adopt stock option plans for non-executive employees without shareholder approval; some suggested instead a requirement that all plans be approved by an independent compensation committee.

Some commentators advocated exceptions for inducement awards or new hire grants (citing competitive employment markets) and tax-qualified plan awards (citing the alternative regulatory framework provided by the tax code), subject perhaps to approval by the independent compensation committee. One company suggested that there should be an exemption for situations where full-value stock is used to deliver an award that would otherwise be paid in cash. Another company noted that some plans are part of collective bargaining arrangements and urged that these be excluded from the shareholder approval requirement. Another comment advocated excepting ''inducement awards'' made to *any* employee of a merger or acquisition target.

In addition, there were a number of detailed questions regarding plans approved prior to effectiveness of the new rules, amendments to plans, and plans run by an acquired company.

The Exchange responds that it has clarified that inducement awards acquired in certain mergers or acquisitions, tax qualified plans and parallel nonqualified plans would be exempt, but all other plans would require shareholder approval.

B. Elimination of Broker Voting

The Exchange represents that the institutional investor community gave strong support to this proposal. Many large companies, however, strongly urged the NYSE to maintain its existing rules, fearing primarily the increased proxy costs and increased uncertainty that the proposed change would entail. Large and small companies alike cited quorum difficulties and solicitation expenses that result when brokers are not allowed to vote uninstructed shares after a 10-day period. One such commentator warned that because of retail investor confusion about voting mechanics, there is a risk that the elimination of the discretionary broker vote will disenfranchise investors if not accompanied by an aggressive and vigorous program to educate them about how to vote their shares. Many commentators also expressed concern that institutional shareholders may simply vote their shares in accordance with strict internal or third-party guidelines or policies, rather than giving each plan individual consideration. One organization suggested proportional or mirror voting by brokers of uninstructed shares.

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 Exchange 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.

[15] A plan adopted before the effective date of this rule that contains an evergreen formula rather than setting forth a specific number of shares available under the plan must be submitted to shareholders for approval before the next increase in shares pursuant to the evergreen formula that occurs on or after the effective date of this rule, unless the plan (including the evergreen formula) was approved by shareholders before the effective date of this rule. *See also* footnote 8 above.

[16] The NYSE will establish a working group to advise with respect to the need for, and design of, mechanisms to facilitate implementation of the proposal that brokers may not vote on equity compensation plans presented to shareholders without instructions from the beneficial owners. This will not delay the immediate effectiveness of the broker-may-not-vote proposal.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

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 NYSE. All submissions should refer to File No. SR–NYSE–2002–46 and should be submitted by November 1, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26037 Filed 10–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46606; File No. SR–OCC–2002–12]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Accelerating the Maturity Date for Certain Adjusted Security Futures Contracts

October 4, 2002.

I. Introduction

On June 25, 2002, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change OCC–2002–12 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on August 13, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The purpose of the proposed rule change is to permit OCC to accelerate the maturity date of stock futures contracts that have been adjusted to call only for delivery of a fixed amount of cash. If the issuer of an underlying security were party to a cash merger in which its stock was converted into a right to receive cash only, futures on that stock would ordinarily be adjusted to call for delivery of the cash. Under the proposed rule change, OCC would have authority to accelerate the maturity dates of the adjusted futures to fall on or shortly after the effective date of the merger. The final settlement price for all accelerated futures, regardless of maturity date, will be fixed at the amount of cash into which the underlying security has been converted.

The proposed rule change parallels OCC Rule 807, which governs the acceleration of European-style FLEX equity options. Acceleration of the expiration date for European-style options that have been adjusted to call for delivery of cash results in the acceleration of the options' ability to be exercised and therefore in the acceleration of payment of the exercise settlement amount to the holder if the option is in the money. Futures contracts, by contrast, are marked to market daily and settlement of an accelerated contract will occur through a final mark-to-market payment based on the amount of cash into which the underlying security has been converted.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to protect investors and the public interest.[3] By enabling OCC to advance the maturity dates of stock futures contracts when those contracts have been adjusted to call for a fixed amount of cash, the proposed rule change allows OCC to relieve market participants of the burden of continuing to maintain and account for open interest in contracts that no longer are subject to increases or decreases in value. Accordingly, the Commission finds that the rule change is consistent with OCC's obligation under Section 17A of the Act to protect investors and the public interest.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2002–12) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26021 Filed 10–10–02; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; as Amended; New System of Records and New Routine Use Disclosures

AGENCY: Social Security Administration (SSA).

ACTION: New System of Records and Proposed Routine Uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to establish a new system of records entitled the *Visitor Intake Process/Customer Service Record (VIP/CSR) System,* 60–0350, together with routine uses applicable to this system of records. The proposed system of records will consist of information collected from and about visitors to SSA field offices (FOs). This proposed system would assist SSA in improving the services it provides to visitors to our FOs.

DATES: We filed a report of the proposed system of records and routine uses with the Chairman of the Senate Governmental Affairs Committee, the Chairman of the House Government Reform Committee, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on October 2, 2002. The proposed system of records will become effective on November 11, 2002, unless we receive comments on or before that date that would warrant our not implementing the system of records.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 46319 (August 6, 2002), 67 FR 52766.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 17 CFR 200.30–3(a)(12).