

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45531; File No. SR-NASD-2002-05]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Relating to Revisions to Form U-4 and Form U-5

March 11, 2002.

On January 9, 2002, the National Association of Securities Dealers, Inc. ("NASD" or the "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change revising the Uniform Application for Securities Industry Registration or Transfer ("Form U-4") and Uniform Termination Notice for Securities Industry Registration ("Form U-5") (collectively, the "Forms"). On January 23, 2002, NASD Regulation submitted Amendment No. 1 to the proposed rule change.³ On January 31, 2002, NASD Regulation submitted Amendment No. 2 to the proposed rule change.⁴ On February 28, 2002, NASD Regulation submitted Amendment No. 3 to the proposed rule change.⁵

The proposed rule change, as amended, was published for comment in the **Federal Register** on February 7,

2002.⁶ The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder,⁷ and, in particular, the requirements of Section 15A of the Act⁸ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 15A(b)(6) of the Act.⁹ Section 15A(b)(6)¹⁰ requires, among other things, that the NASD's rules 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.

The Commission believes that the proposed rule change promotes the objectives of this section of the Act. Specifically, the proposed rule change will accomplish these ends by making technical changes to the Forms to accommodate the electronic submission of investment adviser filings on the Investment Adviser Registration Depository ("IARD") system; establishing procedures that will enable broker/dealer firms and investment adviser firms employing dually registered persons to concur with information contained in the Forms; making certain formatting and technical changes to the Forms that would complete the transition from a paper-based filing model to an electronic-filing model; providing separate paper filing instructions for those filers that do not use the CRD or IARD systems; clarifying certain items that have been a source of confusion for Web CRD users; and updating the Form U-4 to add examination and registration categories that were not previously included. The proposed rule change also amends NASD IM-8310-2, Release of Disciplinary Information, to refer to the newly numbered Item 14 of the Form U-4.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹¹ that the proposed rule change (File No. SR-NASD-2002-05) be, and it hereby is, approved.

⁶ See Securities Exchange Act Release No. 45385 (February 1, 2002), 67 FR 5862.

⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ *Id.*

¹¹ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45521; File No. SR-NYSE-99-51]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 4 to a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Requirements for Order Tracking by Exchange Members and Member Organizations

March 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 February 27, 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 have been prepared by the NYSE. On May 24, 2000, the Exchange filed Amendment No. 1 to the proposal.³ On August 14, 2001, the Exchange filed Amendment No. 2 to the proposal.⁴ On January 17, 2002, the Exchange filed Amendment No. 3 to the proposal.⁵ The

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jennifer Colihan, Attorney, Division of Market Regulation ("Division"), Commission, dated May 22, 2000 ("Amendment No. 1"). In Amendment No. 1, the Exchange deleted the phrase "or execution" from proposed Rule 132B(a)(1)(C) as unnecessary for application of the Rule.

⁴ See Letter from Darla C. Stuckey, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 14, 2001 ("Amendment No. 2"). In Amendment No. 2, the Exchange proposed to: (1) amend Rule 123 by adding proposed paragraph (f) which would set forth the details required to be recorded of each execution report, including a unique order identifier, and (2) amend Rule 132.30 by deleting 132.30(10), which would have required a unique order identifier be added to the data elements in post trade processing. The Exchange represents that this change will ensure that a unique order identifier will be attached throughout the life of an order, thus simplifying the tracking process.

⁵ See Letter from Darla Stuckey, Corporate Secretary, NYSE, to Belinda Blaine, Associate Director, Division, Commission, dated January 17, 2002 ("Amendment No. 3"). In Amendment No. 3, the Exchange explained that it did not believe that it was cost-effective to store all order tracking data collected from members on a daily basis, and

Continued

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Patrice M. Gliniecki, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC, dated January 22, 2002 ("Amendment No. 1").

⁴ See letter from Patrice M. Gliniecki, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, SEC, dated January 31, 2002 ("Amendment No. 2").

⁵ See letter from Patrice M. Gliniecki, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, SEC, dated February 27, 2002 ("Amendment No. 3"). In Amendment No. 3, NASD Regulation made various technical corrections to the proposed language changes to Form U-4 and Form U-5.

proposed rule change was published, as amended, on January 30, 2002.⁶ The Commission is publishing this notice to solicit comments on Amendment No. 4 to File No. SR-NYSE-99-51 from interested persons.

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

As originally filed in SR-NYSE-99-51, the proposed rule change consisted of amendments to NYSE Rule 132, and the proposed adoption of NYSE Rules 132A, B and C on order tracking. In Amendment No. 4 to the proposed rule change, the Exchange proposes that the requirement that copies of execution reports be entered into an Exchange database be implemented within 6 months, instead of 15 months (as originally proposed), after Commission approval of the filing.

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 NYSE 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 and is set forth in sections A, B, and C below.

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

1. Purpose

The Exchange has adopted requirements for the electronic capture of orders at the point of sale (front end systemic capture, or "FESC")⁷ and proposed requirements for the electronic capture of orders at the point of receipt (order tracking system, or "OTS").⁸ The purpose of the requirements is to create a complete systemic record of orders handled by

clarified that therefore members would be required to submit data to the NYSE on an "as requested" basis rather than daily as a matter of routine. The Exchange also represented that the data collected would be used solely for regulatory purposes, and that it would not use data received from its members pursuant to the proposed rules to gain a competitive advantage over another self-regulatory organization or broker-dealer. Lastly, the Exchange explained what it considered order origination and time of receipt of an order.

⁶ See Securities Exchange Act Release No. 45326 (January 23, 2002), 67 FR 4479.

⁷ See Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000).

⁸ See note 6, *supra*.

members and member organizations. These requirements will provide benefits both to the Exchange and members in terms of recordkeeping, surveillance and order processing. As originally filed in SR-NYSE-99-51, the proposed rule change consisted of amendment of Exchange Rule 132, and adoption of new Rules 132A, B and C on order tracking. These new rules require the recording of details of orders in Exchange listed securities by members and member organizations.

Amendment No. 1 effected a minor change to proposed NYSE Rule 132(B).⁹ Amendment No. 2 proposed amendments to NYSE Rules 123 and 132 to require that members and member organizations provide a drop copy of the report of execution to FESC, with the unique order identifier linking the execution report to the original order, rather than requiring that the order identifier be submitted as part of audit trail post-trade processing.¹⁰ Amendment No. 3 discussed the Exchange's position that data be submitted to the Exchange on an "as requested" basis rather than daily as a matter of routine under NYSE Rule 132C.¹¹

As originally proposed in File No. SR-NYSE-99-51, the implementation date for the entire rule change and amendments would occur fifteen (15) months after Commission approval, if such approval is granted. The Exchange now proposes to amend this time frame with respect to the drop copy of execution reports requirement *only* (as described in Amendment No. 2 to the proposed rule change) to a shorter time frame, namely six (6) months after Commission approval of the filing. The Exchange believes that this is feasible since the system architecture for the Exchange database (FESC) is already in place. This six-month time frame should allow sufficient time for members and member organizations to do programming and training so that execution reports can be captured and drop-copied into the Exchange database. In addition, the Exchange believes that the phasing-in of the requirements will give members and member organizations time to better plan for full implementation of the rule changes proposed in File No. SR-NYSE-99-51.

2. Statutory Basis

The Exchange believes that the basis under the Act for Amendment No. 4 to this proposed rule change is the

requirement under section 6(b)(5)¹² that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The NYSE believes that this amendment to the proposed rule change will enhance the Exchange's tools to effectively surveil its market. The Exchange notes that the proposed rule change fulfills an undertaking contained in an order issued by the Commission relating to the Exchange's regulatory responsibilities.¹³ Specifically, the Order directed the Exchange to "design and implement * * * an audit trail sufficient to enable the NYSE to reconstruct its market promptly. * * *" The Order called for "an accurate, time-sequenced record of orders * * *" throughout an order's life, from receipt through execution or cancellation and for synchronization of clocks used in connection with the audit trail of orders.

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

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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

¹² 15 U.S.C. 78f(b)(5).

¹³ See In the Matter of New York Stock Exchange, Inc., Securities Exchange Act Release No. 41574 (June 29, 1999); Administrative Proceeding File No. 3-9925 ("the Order").

⁹ See note 3, *supra*.

¹⁰ See note 4, *supra*.

¹¹ See note 5, *supra*.

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. 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 Amendment No. 4 of File No. SR-NYSE-99-51 and should be submitted by April 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45534; File No. SR-OCC-2001-18]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending the By-Laws

March 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, notice is hereby given that on December 19, 2001, 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 parties.

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

The proposed rule change would amend certain sections of Article IV and Article VI of OCC's By-Laws to correct minor errors.

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 these statements.²

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

The primary purpose of this rule change is to correct technical errors in Article IV of OCC's By-Laws that deals with officers. There are two principal errors that OCC desires to correct. First, in 1980, when Chapter XII of OCC's Rules was amended to eliminate the authority of the Chairman and the President to prescribe penalties for rule violations, Article IV of the By-Laws should have also been amended to eliminate references to that authority in Section 6 ("Chairman of the Board") and Section 8 ("President").

Second, in 1997, when Article IV was amended to create the office of Management Vice Chairman, OCC's stated intent was to remove the Member Vice Chairman from the line of succession.³ However, language that should have been deleted in order to implement that intent was inadvertently left in. As a result, there are now mutually inconsistent By-Laws providing that in the absence or disability of the Chairman, the Management Vice Chairman and the Member Vice Chairman each succeed to the powers of the Chairman.

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

³ Prior to that time, the By-Laws provided that Member Vice Chairman would succeed to the power of the Chairman in the absence or disability of the President and all the Vice Presidents. Securities Exchange Act Release No. 39420 (December 10, 1997), 62 FR 66167 (December 17, 1997) [File No. SR-OCC-97-08].

A secondary purpose of this rule change is to make minor corrections to Section 15 and 16 of Article VI of the By-Laws. Those corrections are to delete material that should have been deleted when references to market baskets were removed from the By-Laws and Rules.⁴

The proposed rule change is consistent with Section 17A of the Act because it provides consistency within OCC's by-laws.

(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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act⁵ and Rule 19b-4(f)(1)⁶ thereunder for it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of this 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.

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

⁴ Securities Exchange Act Release No. 41222 (March 29, 1999), 64 FR 16772 (April 6, 1999) [File No. SR-OCC-99-03].

⁵ 5 U.S.C. 78s(b)(3)(A)(i).

⁶ 17 CFR 240.19b-4(f)(1).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).