

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46906; File No. SR-NYSE-2002-47]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Extending the NYSE Direct+ Pilot Program Through December 23, 2003

November 25, 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 October 8, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to 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 Exchange. On November 1, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposed rule change effective upon filing with the Commission.<sup>6</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to extend through December 23, 2003<sup>7</sup> the effectiveness of a pilot program for NYSE Direct+ ("Pilot"). A current

extension of the Pilot ends December 23, 2002.<sup>8</sup>

#### 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. No changes to previously approved rule language are being proposed.

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

###### 1. Purpose

NYSE Direct+ was originally filed as a one-year pilot, ending on December 21, 2001.<sup>9</sup> The Exchange then extended the Pilot for an additional one-year period, ending December 23, 2002.<sup>10</sup>

The Pilot provides for the automatic execution of orders of 1099 shares or less ("auto ex" orders) against trading interest reflected in the Exchange's published quotation. It is not mandatory that all limit orders of 1099 shares be entered as auto ex orders; rather, the member organization entering the order, or its customer if enabled by the member organization, can choose to enter an auto ex order when such member organization (or customer)

believes that the speed and certainty of an execution at the Exchange's published bid or offer price is in its customer's best interest.

The Exchange proposes to extend the Pilot for an additional year (from December 24, 2002 until December 23, 2003). The Exchange notes, however, that there are two other proposed rule changes concerning NYSE Direct+ which have also been filed with the Commission during the current Pilot. These include (a) a proposal to amend NYSE Rule 1000 to provide that NYSE Direct+ executions will not be available if the resulting trade would be more than five cents away from the last sale;<sup>11</sup> and (b) a proposal to (i) amend NYSE Rule 13 to establish a one-year pilot program that would expand Direct+ order size eligibility for Exchange-Traded Funds ("ETFs") and Holding Company Depository Receipts ("HOLDRs"); (ii) amend NYSE Rule 1002 to include ETFs and HOLDRs and provide that ETFs trade until 4:15 p.m.; and (iii) amend NYSE Rule 1005 to reflect that the rule applies to ETFs and HOLDRs.<sup>12</sup>

The Exchange proposes that the above-mentioned proposed filings amending NYSE Direct+ will become incorporated into the Pilot upon their respective approvals by the Commission.<sup>13</sup>

###### 2. Statutory Basis

The Exchange represents that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act<sup>14</sup> 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, in general, to protect investors and the public interest. The Exchange further represents that the proposed rule change, as amended, is designed to support the principles of Section 11A(a)(1) of the Act<sup>15</sup> in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market, and provide an opportunity for investors' orders to be executed without the participation of a dealer.

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 31, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange requested a waiver of the 5-day pre-filing requirement under Rule 19b-4(f)(6)(iii), withdrew its request for a waiver of the 30-day operative period under the same rule, and clarified that it would implement proposed changes to NYSE Direct+ that the NYSE has submitted in other proposed rule changes as they are approved by the Commission.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> For purposes of calculating the 30-day delayed operative date and the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on November 1, 2002, when Amendment No. 1 was filed.

<sup>7</sup> Telephone conversation among Jeffrey Rosenstock, Senior Special Counsel, Market Surveillance, NYSE and Terri Evans, Assistant Director and Steven Johnston, Special Counsel, Division, Commission, on November 5, 2002 (clarifying date of proposed extension of the pilot).

<sup>8</sup> See Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002) (File No. SR-NYSE-2001-50) (notice of filing and immediate effectiveness of proposal to extend NYSE Direct+ until December 23, 2002). The Pilot is implemented through a series of rules, NYSE Rules 1000 through 1005, and NYSE Rule 13. In addition, the Exchange previously submitted for Commission approval interpretations of certain rules, as well as a no action or interpretive position which the Exchange requested the Commission adopt under its short sale rule, Rule 10a-1 under the Act. See Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002). The Exchange proposes that these exemptions and interpretations be extended for an additional year concurrent with the extension of the NYSE Direct+ Pilot through December 23, 2003. Telephone conversation between Jeffrey Rosenstock, Senior Special Counsel, Market Surveillance, NYSE and Terri Evans, Assistant Director, Division, Commission on November 25, 2002.

<sup>9</sup> See Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001) (File No. SR-NYSE-00-18) (order approving amended proposed rule change establishing NYSE Direct+ pilot program).

<sup>10</sup> See *supra*, note 7.

<sup>11</sup> See File No. SR-NYSE-2002-44.

<sup>12</sup> See Securities Exchange Act Release No. 46527 (September 20, 2002), 67 FR 61368 (September 30, 2002) (noticing SR-NYSE-2002-37).

<sup>13</sup> See Amendment No. 1, *supra* note 3.

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> 15 U.S.C. 78k-1(a)(1).

### 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 foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act<sup>16</sup> and Rule 19b-4(f)(6)<sup>17</sup> thereunder because the 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 the proposed rule change was filed, or such shorter time as the Commission may designate. 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.<sup>18</sup>

The Exchange has requested that the Commission waive the pre-filing notice requirement. The Commission has determined to waive the five-day pre-filing notice requirement, given that the Exchange filed the original proposed rule change on October 8, 2002.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2002-47 and should be submitted by December 26, 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. 34-46858A; File No. SR-NYSE-2002-36]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. to Adopt Amendments to Exchange Rule 342 ("Offices—Approval, Supervision and Control") and its Interpretation, Rule 401 ("Business Conduct"), Rule 408 ("Discretionary Power in Customers' Accounts"), and Rule 410 ("Records of Orders")

November 27, 2002.

#### Correction

In Release No. 34-46858, issued on November 20, 2002, a portion of the rule text for New York Stock Exchange rule 401 was noticed incorrectly. The corrected text appears below. Additions are in italics; deletions are in brackets.

\* \* \* \* \*

#### Business Conduct

Rule 401.(a)-(b) no change.

*The policies and procedures required under (b)(1), (b)(2), and (b)(3) above must include a means/method of customer confirmation, notification, or follow-up that can be documented.*

\* \* \* \* \*

<sup>19</sup> 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>1</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-30677 Filed 12-3-02; 8:45 am]

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46914; File No. SR-OCC-2002-22]

#### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Clear and Settle Options on Nonequity Fund Shares

November 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), as amended,<sup>1</sup> notice is hereby given that on September 27, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on October 18, 2002, amended the proposed rule change as described in items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

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

The proposed rule change will amend OCC's by-laws and rules to accommodate the clearance and settlement of options on nonequity fund shares (*i.e.*, shares representing interests in entities holding portfolios or baskets of nonequity securities).

#### 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)

<sup>1</sup> 17 CFR 200.30-3(a)(12).

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

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

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

<sup>18</sup> For purposes of calculating the 30-day delayed operative date and the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on November 1, 2002, when Amendment No. 1 was filed.