

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁹ in general, and Section 15A(b)(5)¹⁰ of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq also believes that the proposed rule change will result in subscribers being eligible to receive the new Nasdaq Workstation at a price that, when added to the price for the TotalView and UQDF/UTDF data feeds, is identical to the current price for the NWII. Because the new Workstation will allow the elimination of SDPs supporting the NWII, however, Nasdaq believes the proposed rule change would result in substantial cost savings for subscribers that opt to receive the new Workstation service.

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

Written comments were neither solicited nor 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) of the Act¹¹ and subparagraphs (f)(1), (2), and (5) of Rule 19b-4 thereunder, because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, establishes or changes a due, fee, or other charge, and effects a change in an existing order-entry or trading system.¹² 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.

⁹ 15 U.S.C. 78o-3.

¹⁰ 15 U.S.C. 78o-3(5).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(1), (2), and (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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2005-041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2005-041. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2005-041 and should be submitted on or before May 17, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51573; File No. SR-NYSE-2004-71]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Amend NYSE Rule 104 Regarding the Requirement That Specialists Obtain Floor Official Approval for Destabilizing Dealer Account Transactions in ETFs

April 19, 2005.

On December 15, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("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 to amend NYSE Rule 104 regarding the requirement that specialists obtain floor official approval for destabilizing dealer account transactions in ETFs. On February 28, 2005, the NYSE submitted Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on March 15, 2005.⁴ The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,⁶ which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative practices, to promote just and equitable principles

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 superseded the originally filed proposed rule change in its entirety.

⁴ See Securities Exchange Act Release No. 51329 (March 8, 2005), 70 FR 12769.

⁵ In approving this proposed rule change, the Commission notes that it 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).

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 has proposed to remove the current restriction on the ability of specialists to buy on plus ticks or sell on minus ticks without Floor Official approval, as set forth in NYSE Rules 104.10(5) and (6), for transactions in investment company units and Trust Issued Receipts (collectively referred to as "Exchange Traded Funds," or "ETFs"). The Commission believes that, because ETFs are priced derivatively, based on the value of an underlying basket of securities, the removal of this restriction is warranted, and notes that it has previously approved a similar rule change adopted by the American Stock Exchange LLC ("Amex").⁷ In approving the proposed rule change, the Commission notes that an Exchange specialist must continue to engage in dealings for his or her own account to assist in the maintenance of a fair and orderly market.⁸

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (File No. SR-NYSE-2004-71), as amended, be, and hereby is, approved.

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. 34-51586; File No. SR-OCC-2005-05]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Technical Changes That Add or Correct Cross-References in Article VIII, Section 5 of the By-Laws and in Rule 910

April 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 13, 2005, 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 adds or corrects cross-references by making technical changes to Article VIII, Section 5 of OCC's By-Laws and to OCC Rule 910, respectively.

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 correct technical errors in Article VIII, Section 5(e) of OCC's By-Laws and in Rules 910(c) and (d).

In October 2004, the Commission approved a proposed rule change that revised Section 5(e) of Article VIII of

OCC's By-Laws.³ Article VIII of OCC's By-Laws pertains to the application of OCC's clearing fund. In its filing, OCC mistakenly deleted the designation of clause (i) of Section 5(e). The proposed rule change reinserts it.

In March 2004, the Commission approved a proposed rule change that significantly restructured and revised Chapter IX of OCC's Rules.⁴ Chapter IX of OCC's Rules pertains to delivery settlement of exercised equity options and matured stock futures. In its filing, OCC neglected to change cross-references in Rules 910 (c) and (d) to paragraph (b). (Paragraph (d) was redesignated as paragraph (b) in that filing). The proposed rule change corrects those cross-references.

(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)(iii) of the Act⁵ and Rule 19b-4(f)(4)⁶ thereunder because it effects a change that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.

³ Securities Exchange Act Release No. 50526 (October 13, 2004), 69 FR 61701 (October 20, 2004) [File No. SR-OCC-2004-13].

⁴ Securities Exchange Act Release No. 49420 (March 16, 2004), 69 FR 13345 (March 22, 2004) [File No. SR-OCC-2003-08].

⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

⁶ 17 CFR 240.19b-4(f)(4).

⁷ See Securities Exchange Act Release No. 49087 (January 15, 2004), 69 FR 3622 (January 26, 2004) (order approving, among other things, the removal of the restriction on Amex specialists from buying on plus ticks and selling on minus ticks without Floor Official approval for transactions in Exchange Traded Funds).

⁸ See NYSE Rule 104 and Rule 11b-1 under the Act, 17 CFR 240.11b-1.

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 The Commission has modified parts of these statements.