

remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest. In particular, the CBOE states that the proposed Interpretation is intended to benefit customers by providing them with improved information about spread prices. The CBOE states that the proposed Interpretation is also intended to help customers get their spread orders executed at a better price than executing each leg of the spread order separately.

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

The CBOE does not believe that the proposed rule change, as amended, will impose a burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change, as amended: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6)⁸ thereunder.

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)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The CBOE seeks to have the proposed rule

change, as amended, become operative immediately.⁹

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, as amended, operative as of July 19, 2001.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6) normally requires that a self-regulatory organization give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time. The CBOE seeks to have the five-business-day pre-filing requirement waived with respect to the proposed rule change, as amended.¹¹

The Commission has determined to waive the five-business-day pre-filing requirement.

At any time within 60 days of the filing of the proposed rule change, as amended, 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.¹²

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 CBOE.

All submissions should refer to File No. SR-CBOE-2001-41 and should be submitted by September 7, 2001.

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. 34-44673; File No. SR-NYSE-2001-16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. to Amend Rule 46

August 9, 2001.

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 June 28, 2001, 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. On August 8, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.³ 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 amendments of NYSE Rule 46 to create Executive Floor Official and Senior Floor Official positions. It also makes housekeeping changes to other rules and policies to enable Executive Floor Officials and Senior Floor Officials to perform Floor Governor functions.

¹³ 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 Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC, dated August 8, 2001 ("Amendment No. 1"). In Amendment No. 1, the Exchange corrected rule text for NYSE Rules 79A and 123A to reflect current rule text.

⁹ See *supra* note 3.

¹⁰ 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).

¹¹ See *supra* note 3.

¹² See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78b(3)(C).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

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 Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose.

Floor Officials and Floor Governors have the authority to supervise and regulate activities, which arise with respect to trading on the Floor of the Exchange. Recently, a number of changes in the marketplace on the Floor have created a need for additional individuals to be able to perform the duties delegated to Floor Governors under Exchange rules. For example, the historical trend of consolidation of NYSE specialist units has continued with the acquisition of one or more units by other units, which has significantly reduced the number of specialist units. This has the effect of reducing the effectiveness of the ten specialist Floor Governors, since they may not make rulings involving their firm's specialty stocks. In addition, there has been an increase in trading volume, which has resulted in higher demand for the services of Floor Officials and Floor Governors who are responsible for overseeing unusual market situations on the trading Floor. Finally, an expansion of the trading Floor has contributed to spreading the coverage of Floor Officials and Floor Governors.

To address these problems, the Exchange proposes to amend NYSE Rule 46 (Floor Officials—Appointment) to create Executive Floor Official and Senior Floor Official positions to perform many of the functions performed by Floor Governors.⁴ Executive Floor Officials will be former Floor Governors and will be empowered to perform any duty, make any decision

⁴ Floor Governors are Floor Officials who are empowered to perform any duty, make any decision, or take any action assigned to, or required of, a Floor Director as are prescribed by the Rules of the Board of Directors, or as may be designated by the Board.

or take any action assigned to or required of a Floor Governor. Floor Officials entering their fifth or sixth year of service as a Floor Official⁵ will be eligible for appointment as Senior Floor Officials. They will also be empowered with the authority of a Floor Governor.

In addition, rules and policies that use the term "Floor Governor" will be amended to also include, where appropriate, the term "Executive Floor Official" and "Senior Floor Official." These include NYSE Rules 37, 60, 79A, 86, 123A.30, 282, the Exchange's Allocation Policy and Procedures, and the Floor Conduct and Safety Guidelines.

The Exchange believes the proposed rule changes will permit the Exchange, through the addition of two new classes of Floor Officials with Floor Governor authority, to perform more effectively those duties prescribed in Exchange rules relating to supervision and regulation of Floor matters.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(1)⁶ of the Act because it will permit the Exchange, through its Floor Governors, Executive Floor Officials, and Senior Floor Officials to perform more effectively those duties prescribed in the rules relating to supervision and regulation of Floor matters.

B. Self-Regulatory Organizations' 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

This Exchange has designated this proposed rule change as concerned solely with the administration of the Exchange and, as such, it may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.⁷ The Exchange's designation is

⁵ Floor Officials are appointed by the Board of Directors annually and typically serve six consecutive one-year terms.

⁶ 15 U.S.C. 78s(b)(1).

⁷ 15 U.S.C. 78s(b)(3)(A).

based on the fact that the rule change relates solely to the addition of two new classes of Floor Officials with Floor Governor authority, to perform more effectively those duties prescribed in Exchange Rules relating to supervision and regulation of Floor matters.

At any time within 60 days of the filing of such 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 proposal, 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 Exchange. All submissions should refer to the File No. SR-NYSE-2001-16 and should be submitted by September 7, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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⁸ 17 CFR 200.30.3(a)(27).