

which option classes would be subject to the rule. Furthermore, the proposed rule would allow two Floor Officials, the FPC Chairman, or the Chairman's designee to exempt an option class or classes from the proposed rule's requirements if warranted by unusual market conditions.<sup>8</sup>

### III. Summary of Comments

The one commenter who expressed views on the proposed rule change generally supported the proposal. However, the commenter expressed concern that the proposal would not be implemented in all classes of CBOE-listed options, but only as determined by the appropriate FPC. The commenter submitted that ABP should be engaged for all classes of options, rather than implemented on a selective basis.<sup>9</sup>

### IV. Discussion

The proposal would extend CBOE's ABP system to marketable public customer orders entered into the Exchange's ORS, on a class-by-class basis. The Commission believes that this expansion of the ABP system should benefit customers using the ORS system, as well as customer whose orders are residing in the Exchange's book, because these orders would be subject to quicker executions. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

### V. Amendment No. 1

The Commission further finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the

<sup>8</sup> According to the Exchange, unusual market conditions may include drastic movement in the security underlying an option or new pending about the issuer of the underlying security. Telephone conversation between Angelo Evangelou, Counsel, CBOE, and Andrew Shipe, Attorney, Division, Commission, on September 5, 2001. See also Securities Exchange Act Release No. 43829 (January 10, 2001), 66 FR 4877, 4878, n.8 (January 18, 2001).

<sup>9</sup> See Ianni Comments.

<sup>10</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

**Federal Register.** In Amendment No. 1, the Exchange clarified that the Chairman of the appropriate FPC may designate his authority to exempt an option class from the provisions of paragraph (a) of the proposed rule during unusual market condition only to another member of the FPC. The Commission notes that Amendment No. 1 merely clarified who is eligible to be the "Chairman's designee" for purposes of the proposed rule. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,<sup>12</sup> to approve Amendment No. 1 on an accelerated basis.

### VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 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 at 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 File No. SR-CBOE-00-56 and should be submitted by February 1, 2002.

### VII. Conclusion

For the foregoing reasons, the Commission finds that CBOE's proposal to amend its rules to allow for certain orders entered through the Exchange's Order Routing System to automatically trade against orders in the Exchange's customer limit order book, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-CBOE-00-56), as amended, is approved.

<sup>12</sup> 15 U.S.C. 78f(b)(5) and 78s(b).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-761 Filed 1-10-02; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45246; File No. SR-NYSE-2001-52]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Rule 123

January 7, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 21, 2001, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. 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 to NYSE Rule 123. The proposed rule text follows: Additions are *italicized*, deletions are [bracketed].

#### Rule 123—Records of Orders

Paragraphs headed "Given Out", "Receipt of Orders", "Cancelled or Executed", and "By Accounts", to be numbered (a), (b), (c) and (d), respectively.

#### (e) System Entry Required

Except as provided in paragraphs .21 and .22 below, no Floor member may represent or execute an order on the Floor of the Exchange unless the details of the order have been first recorded in an electronic system on the Floor. Any member organization proprietary system used to record the details of the order must be capable of transmitting these details to a designated Exchange data base within such time frame as the Exchange may prescribe. The details of each order required to be recorded shall include the following data elements,

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

any changes in the terms of the order and cancellations, in such form as the Exchange may from time to time prescribe:

1. Symbol;
2. Clearing member organization;
3. Order identifier that uniquely identifies the order;
4. Identification of member or member organization recording order details;
5. Number of shares or quantity of security;
6. Side of market;
7. Designation as market, limit, stop, stop limit;
8. Any limit price and/or stop price;
9. Time in force;
10. Designation as held or not held;
11. Any special conditions;
12. System-generated time of recording order details, modification of terms of order or cancellation of order;
13. Such other information as the Exchange may from time to time require.

\* \* \* \* \*

.20 Orders—For purposes of paragraph (e), an order shall be any written, oral or electronic instruction to effect a transaction.

.21 Orders not subject to paragraph (e) recording requirements—Any order executed by a specialist, Competitive Trader or Registered Competitive Market Maker for his or her own account and any orders which by their terms are incompatible for entry in an Exchange system relied on by a Floor member to record the details of the order in compliance with this Rule shall be exempt from the order entry requirements of paragraph (e) above.

.22 With respect to a bona fide arbitrage order, a member may execute such order before entering the order into an electronic system as required by paragraph (e) above, but such member must enter such order into such electronic system no later than 60 seconds after the execution of such order. With respect to an order to offset a transaction made in error, a member may, upon discovering such error within the same trading session, effect an offsetting transaction without first entering such order into an electronic system, but such member must enter such order into such electronic system no later than 60 seconds after the execution of such order.

.23 With respect to any order in an Investment Company Unit (including a bona fide arbitrage order or an order to offset a transaction made in error), a member may execute such order before entering the order into an electronic system as required by paragraph (e)

above, but such member must enter such order into such electronic system no later than 90 seconds after the execution of such order.

.24[3] Time standards—Any member organization proprietary system used to record the details of an order for purposes of this rule must be synchronized to a commonly used time standard and format acceptable to the Exchange.

## 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. The NYSE 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 proposed rule change is being filed as a one-year pilot.

The Exchange has adopted requirements for the electronic capture of orders at the point of sale (front end systemic capture, or "FESC")<sup>3</sup> and at the point of receipt (order tracking system, or "OTS"). The purpose of the requirements is to create a complete systemic record of orders handled by members and member organizations. These requirements will provide benefits both to the Exchange and members in terms of recordkeeping, surveillance and order processing.

The Exchange's FESC rule (Rule 123) requires that all orders in any security traded on the Exchange be entered into an electronic database before they can be represented in the Exchange's auction market. These are certain exceptions, such as orders to offset an error, or for bona fide arbitrage, that may be entered within the 60 seconds after a trade is executed.<sup>4</sup>

In December 2000, the Exchange began trading an Exchange-Traded Fund

<sup>3</sup> See Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000).

<sup>4</sup> See SR-NYSE-2001-36 (a one-month pilot), Securities Exchange Act Release No. 44783 (September 10, 2001), 66 FR 48304 (September 19, 2001), permanently approved (SR-NYSE-2001-39) by Securities Exchange Act Release No. 44943 (October 16, 2001), 66 FR 53820 (October 24, 2001).

("ETF") on the S&P Global 100 (symbol IOO). In addition, in July 2001, the Exchange began trading on an unlisted trading privileges basis ("UTP"), certain ETFs currently listed and trading on other markets. These ETF's include the NASDAQ 100 Trust (symbol QQQ), Standard and Poor's Depository Receipts (symbol SPY) and the Dow Industrials DIAMONDS (symbol DIA).

ETF products have unique trading characteristics. They are derivatively priced, and trade very rapidly in response to changes in the underlying value of fund components, and changes in prices of options and futures contracts on the funds. The Exchange is not the primary market for the most active ETF's which its trades, and must compete for order flow with other markets that do not have a FESC requirement.

Some market participants believe that the FESC requirement may be a disincentive to sending order flow to the Exchange as it may unduly slow down the trading process and interfere with trading strategies dependent upon speed of execution. Accordingly, the Exchange is proposing to amend its FESC rule to provide that orders in ETFs may be entered within 90 seconds of execution. The Exchange believes that this proposal will facilitate trading in ETFs on the Exchange, while still ensuring that the Exchange maintains its electronic order database with orders being entered in reasonable proximity to order executions. The Exchange notes that requirements that members record the time of receipt of an order on the Floor remain in full effect and not affected by this proposal.

#### 2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) 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 proposed rule change is designed to accomplish these ends by strengthening the Exchange's ability to surveil the Floor activities of members.

### 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.

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

Because the foregoing proposed rule: (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 or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>5</sup> and subparagraph (f)(6) of thereunder.<sup>6</sup> 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>7</sup>

The Commission notes that under Rule 19-4(f)(6)(iii),<sup>8</sup> the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and designate that the proposed rule change become operative immediately to permit the implementation of this exception to NYSE Rule 123(e) without inconvenience or delay to the public, which the NYSE believe is consistent with investor protection and the public interest. In particular, the Exchange believes the proposed rule change will enable members to execute ETF-related orders quickly without having to immediately enter the order into an electronic system (FESC). The proposed rule change will still require that such orders be entered into an electronic system (FESC) within 90 seconds after the execution of the respective order.

The Commission believes that it is consistent with the protection of

investors and the public interest to waive the five-day pre-filing required and designate the proposal immediately operative.<sup>9</sup> Accelerating the operative date and waiving the pre-filing requirement will permit the Exchange to implement the exception to NYSE Rule 123(e) without undue delay. For this reason, the Commission finds good cause to designate that the proposal become operative immediately.

**IV. Solicitation of Comments**

Interest persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 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-2001-52 and should be submitted by February 1, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-807 Filed 1-10-02; 8:45 am]

**BILLING CODE 8010-01-M**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-45249; File No. SR-NYSE-2001-55]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend NYSE Rule 51 Relating to Suspension of Trading**

January 7, 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 December 31, 2001, 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 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**

The Exchange proposes to amend NYSE Rule 51, Hours for Business, to make emergency procedures more flexible and more responsive to the Exchange's current organizational structure and to the kinds of challenges that the Exchange may face. The text of the proposed rule change is below. Proposed new language is in italics; deletions are in brackets.

**Rule 51. Hours for Business**

Except as may be otherwise determined by the Board of Directors as to particular days, the Exchange shall be open for the transaction of business on every business day, excluding Saturdays,

(a) for a 9:30 a.m. to 4:00 p.m. trading session, and

(b) for the purposes of "Off-Hours Trading" (as Rule 900 (Off-Hours Trading: Applicability and Definitions) defines that term), during such hours as the Exchange may from time to time specify.

[The Chairman, Vice-Chairman and the Senior Floor Director or in the absence from the Floor of any of them, the next senior Floor Director present on the Floor acting by a majority shall have the power to suspend trading in all securities whenever in their opinion such suspension would be in the public interest. A special meeting of the Board

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

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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>7</sup> The Commission notes, however, this proposed rule change has been filed as a one-year pilot. During the pilot, the NYSE will surveil the application of the exception to NYSE Rule 123(e) and submit data to the Commission for the purpose of evaluating the Rule's efficacy.

<sup>8</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>9</sup> 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).

<sup>10</sup> 17 CFR 200.30-3(a)(12).