

the proposal with the Commission on August 5, 2002.³ Nasdaq filed Amendment No. 2 to the proposal with the Commission on August 15, 2002.⁴ The proposed rule change, as amended, was published for comment in the **Federal Register** on August 22, 2002.⁵ The Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended.

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 association⁶ and, in particular, the requirements of section 15A of the Act⁷ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 15A(b)(5) of the Act,⁸ which requires that the rules of the NASD provide 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 has represented that the fee changes are necessary to ensure that the fees for MFQS continue to cover the costs of its operation and that the fees will be imposed directly on funds that benefit from the operation of the System. Specifically, Nasdaq stated that the proposed fee increase for a logon identification to MFQS is necessary to reflect the costs of recent upgrades to its security software and hardware to keep pace with Internet security threats. Secondly, Nasdaq represented that the increase in the application processing fee reflects costs associated with upgrading the system's application processing methods, as well as general increases in personnel costs. Lastly, Nasdaq represented that the fee for processing requests to change the name and/or symbol of a fund that is currently listed on MFQS is to compensate for the personnel and system costs associated with making these changes.

³ See letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 5, 2002 ("Amendment No. 1").

⁴ See letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated August 14, 2002 ("Amendment No. 2").

⁵ See Securities Exchange Act Release No. 46373 (August 16, 2002), 67 FR 54519.

⁶ In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(b)(5).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change and Amendment Nos. 1 and 2 thereto (File No. SR-NASD-2002-101)¹⁰ are approved.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46547; File No. SR-NYSE-2002-38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Expand the Hours of Operation of Its Off-Hours Trading Facility Known as Crossing Session II

September 25, 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 August 29, 2002, the New York Stock Exchange ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The NYSE has designated this proposed rule change as one that has become effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(5)⁴ thereunder because it effects a change in an existing order-entry or trading system of a self-regulatory organization that does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) have the effect of limiting the access to or availability of the system.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(5).

⁵ *Id.*

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

The New York Stock Exchange proposes to expand the operating hours of one of its Off-Hours Trading Facilities, known as Crossing Session II.

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

1. Purpose

The purpose of the proposed rule change is to expand the time of operation of the Exchange's Off-Hours Trading Facility ("OHTF") known as Crossing Session II. Currently, the OHTF consists of "Crossing Session I," which permits the execution, at the Exchange's closing price, of single stock, single sided closing price orders and crosses of single-stock, closing price buy and sell orders. The OHTF also consists of "Crossing Session II," which provides an opportunity for members and member organizations to cross program trading orders in NYSE listed securities on the Exchange between 4 p.m. and 5:15 p.m. based on the aggregate price of the program. Matched buy and sell orders for a minimum of 15 NYSE listed stocks having a minimum dollar value of \$1 million may be transmitted to the Exchange for execution in Crossing Session II. These orders are transmitted via facsimile detailing the total number of stocks, total number of shares and total dollar value. Average daily volume reported in Crossing Session II is 23.4 million shares for 2002.

The Exchange proposes to expand the hours of operation of Crossing Session II until 6:15 p.m. each day that the Exchange is open for its regular 9:30 a.m. to 4 p.m. trading session. Expanding the time of operation of Crossing Session II is simply intended to enhance the usefulness and practicality of Crossing Session II by

making it available to member organizations for a greater time period.

In approving Crossing Session II, the Commission granted exemptive relief from its Rule 10a-1⁶ under the Act (short sale rule) for transactions effected therein, finding that such transactions did not raise all of the same regulatory concerns that are raised by similar transactions during the 9:30 a.m. to 4 p.m. trading session. The Exchange is requesting that the Commission extend the exemptive relief from Rule 10a-1⁷ currently available for transactions effected in Crossing Session II to transactions effected in Crossing Session II as modified by this proposed rule change.

Exchange Rule 51 provides for the operation of Off-Hours Trading "during such times as the Exchange may from time to time specify." Upon approval of the proposed rule change, the Exchange will alert its membership and other market participants of the new operating hours for Crossing Session II.

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)⁸ 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.

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

The Exchange 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, as amended.

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 proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(5)¹⁰ thereunder because it effects a change in an existing order-entry or trading system of a self-regulatory organization that

does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) have the effect of limiting the access to or availability of the system.¹¹ At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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 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 file number SR-NYSE-2002-38 and should be submitted by October 22, 2002.

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. 34-46555; File No. SR-OC-2002-01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by OneChicago, LLC Relating to Customer Margin Requirements for Security Futures

September 26, 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 August 30, 2002, OneChicago, LLC, ("OneChicago") 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 OneChicago. On September 25, 2002, OneChicago submitted Amendment No. 1 to the proposed rule change.³ On September 25, 2002, OneChicago submitted Amendment No. 2 to the proposed rule change.⁴ 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

OneChicago is proposing to adopt new Rule 515, including Schedule A thereto (the "Proposed Rule"), to (i) establish general requirements and procedures relating to customer margining by security futures intermediaries (the "General Margin Rules"), (ii) set initial or maintenance margin levels for offsetting positions involving security futures and related positions at levels lower than the levels that would be required if those positions were margined separately (the "Margin Offset Rule") and (iii) exclude proprietary trades of qualifying security futures dealers from the margin requirements set forth in the Proposed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Kieran P. Hennigan, Sullivan & Cromwell, to Assistant Director for Security Futures Products, Division of Market Regulation ("Division"), Commission, dated September 24, 2002, ("Amendment No. 1"). In Amendment No. 1, OneChicago replaced the Form 19b-4 originally filed on August 30, 2002 in its entirety. The changes made by Amendment No. 1 have been incorporated into this notice.

⁴ See letter from Frank Ochsenfeld, Sullivan & Cromwell, attention to T.R. Lazo, Senior Special Counsel, Division, Commission, dated September 24, 2002, ("Amendment No. 2"). In Amendment No. 2, OneChicago made a technical correction to the rule text. The changes made by Amendment No. 2 have been incorporated into this notice.

⁶ 17 CFR 240.10a-1.

⁷ *Id.*

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(5).

¹¹ *Id.*

¹² 17 CFR 200.30-3(a)(12).