

initiation fee, the application processing fee, the renewal registration fee and the electronic access fee for 2003 applicable to Associate Members, or (3) terminate their Associate Membership. New Associate Members that terminate their Associate Membership on or prior to December 31, 2002, will not have to pay 2002 dues, the Associate Member initiation fee, the application processing fee, the initial registration fee and the electronic access fee for 2002.

At the end of the waiver period, firms that already were Associate Members prior to the waiver and upgraded to electronic access privileges during the waiver and traded only Nasdaq stocks through the AOF would have to: (1) Acquire a regular membership and pay the fees and dues associated with becoming a regular member, or (2) pay the 2003 dues and electronic access fee for 2003 applicable to Associate Members.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>3</sup> in general and furthers the objectives of section 6(b)(4)<sup>4</sup> of the Act in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members, issuers and other persons using its facilities.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, and therefore, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>5</sup> and subparagraph (f)(2) of Rule 19b-4 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.

## 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. 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 also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2002-78 and should be submitted by November 25, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-28001 Filed 11-1-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46737; File No. SR-NYSE-2002-29]

### **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. Proposing to Increase the Maintenance Charge for Cellular Phones Used on the Floor of the Exchange**

October 29, 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 16, 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. The Exchange filed Amendment No. 1 to the proposed rule change with the Commission on October 28, 2002.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.<sup>4</sup>

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

The Exchange proposes to increase the maintenance charge for cellular phones used on the floor of the Exchange.

The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

\* \* \* \* \*

#### **NYSE 2002 Price List**

\* \* \* \* \*

#### **Facility and Equipment Fees**

\* \* \* \* \*

#### **Schedule of Annual Charges, unless otherwise noted**

\* \* \* \* \*

<b>Cellular Phones</b>	
Phone and Headset ..	No Charge.
Ongoing Maintenance—per phone.	[\$2,100.00] 2,400.00(3).

#### **Notes:**

(1) ITPN "User" is a member or person associated with a member, who has been entitled to receive one or more third party market data vendor service offerings via the Exchange's Integrated Technology Program Network.

(2) Plus appropriate sales tax where applicable.

<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 Sapna Patel, Attorney, Division of Market Regulation, Commission, dated October 21, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange clarified that the proposed rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act and Rule 19b-4(f)(2) thereunder. In its filing, the NYSE had incorrectly referred to Rule 19b-4(e)(2) under the Act.

<sup>4</sup> For purposes of determining the effective date and calculating the 60-day abrogation date, the Commission considers October 28, 2002, the date NYSE filed Amendment No. 1, to be the effective date of the proposed rule change.

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(4).

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

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

(3) Plus sales tax.

\* \* \* \* \*

## 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 Exchange has a charge for cellular phones as part of its facilities and equipment fees.<sup>5</sup> The charge has been the same since 1994. The Exchange proposes to increase the charge from \$2,100.00 to \$2,400.00 per year to help cover the costs of the recent upgrade to industry standards by Verizon Wireless to the NYSE Broker Mobile Phone System. The Exchange represents that this upgrade provides improved voice quality, longer battery life, smaller and lighter handsets, and improves technical support, which will in turn improve the Exchange's service level. The charge by its nature will continue to apply only to membership organizations that operate on the floor of the Exchange and utilize the NYSE Broker Mobile Phone System.

#### 2. Statutory Basis

The NYSE believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of section 6(b)(4) of the Act,<sup>7</sup> in particular, which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities.

### 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 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 establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2) thereunder.<sup>9</sup> 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 purpose of the Act.<sup>10</sup>

## 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 Exchange. All submissions should refer to File No. SR-NYSE-2002-29 and should be submitted by November 25, 2002.

<sup>8</sup> 15 U.S.C. 78(s)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> For purposes of determining the effective date and calculating the 60-day abrogation date, the Commission considers October 28, 2002, the date NYSE filed Amendment No. 1, to be the effective date of the proposed rule change.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 02-28002 Filed 11-1-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46733; File No. SR-OCC-2002-15]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Dating Assignments

October 28, 2002.

#### I. Introduction

On July 3, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR-OCC-2002-15 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>. Notice of the proposal was published in the **Federal Register** on August 23, 2002.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description

This rule change modifies OCC Rule 803 to provide that assignments will be dated and effective on the same date that the related exercise notice is accepted by OCC. Rule 803(b) currently provides that assignments are dated and effective as of the business day following the exercise date. This reflects the mechanics of OCC's processing. OCC assigns exercises on an overnight basis, but assigned clearing members do not receive notice of assignment until the morning of the day after exercise. OCC's practice has been to date assignments as of the day the assigned clearing members receive the notice of assignment. However, the "trade" resulting from the exercise is treated as having occurred on the exercise date not the assignment date. Thus, settlement takes place on the third business day following the exercise date.<sup>3</sup>

This has the potential to cause confusion for call writers. OCC has learned that some, if not all, clearing

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 46377 (August 19, 2002), 67 FR 54689.

<sup>3</sup> OCC Rule 902.

<sup>5</sup> See Securities Exchange Act Release No. 34395 (July 18, 1994) 59 FR 38007 (July 26, 1994).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).