

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 the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the file number SR-NYSE-2002-59 and should be submitted by January 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47024; File No. SR-NYSE-2002-37]

### Self-Regulatory Organizations; New York Stock Exchange; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto by New York Stock Exchange To Amend the Exchange's Automatic Execution Facility (NYSE Direct+)

December 18, 2002.

#### I. Introduction

On August 29, 2002, the New York Stock Exchange ("NYSE") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to: (i) Amend NYSE rule 13 to provide for a one-year pilot program to expand Direct+ order size eligibility for Investment Company Units, including Exchange-Traded Funds ("ETFs"), and Trust Issued Receipts, such as Holding Company Depositary Receipts ("HOLDRs"); (ii) amend NYSE rule 1002 to include Investment Company Units and Trust Issued Receipts and to provide that Investment Company Units trade until 4:15p.m.; and (iii) amend NYSE rule 1005 to reflect that the rule applies to Investment Company Units and Trust Issued Receipts. On

September 20, 2002, the rule proposal was published for comment in the **Federal Register**.<sup>3</sup> On December 16, 2002, the NYSE filed Amendment No. 1 to the proposed rule change.<sup>4</sup> No comments were received on the proposed rule change. This order approves the proposed rule change and issues notice of, and grants accelerated approval to, Amendment No. 1.

#### II. Description of the Proposed Rule Change

NYSE Direct+ provides for the automatic execution of limit orders in a stock ("auto ex" orders) against trading interest reflected in the Exchange's published quotation.<sup>5</sup> An auto ex order priced at or above the Exchange's published offer price (in the case of an auto ex order to buy), or an auto ex order priced at or below the Exchange's published bid price (in the case of an auto ex order to sell) would receive an automatic execution without being exposed to the auction market, provided the bid or offer is still available.

Currently, order size eligibility for all auto ex orders for stocks is 1099 shares or less. The Exchange is proposing to expand the size of orders eligible for automatic execution under NYSE Direct+ to a maximum of 10,000 shares for two Exchange products. These are Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual), including ETFs, and Trust Issued Receipts (such as HOLDRs), which are defined in NYSE rule 1200. The Exchange believes that the increase in the number of shares eligible for automatic execution for Investment Company Units and Trust Issued Receipts will serve to attract additional order flow to NYSE Direct+. The expanded order size would be phased in as a pilot program, with order

<sup>3</sup> See Securities Exchange Act Release No. 45816 (April 24, 2002), 67 FR 30406.

<sup>4</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 12, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange: (1) provided detailed information about the standards that would be employed to determine whether to increase Direct+ order size and (2) amended rule 13 to specify that the pilot program for increased order size eligibility for Direct+ orders in Investment Company Units and Trust Issued Receipts will run until December 23, 2003.

<sup>5</sup> NYSE Direct+ was originally filed as a one-year pilot. It was approved in Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001). The pilot was subsequently extended for an additional year by SR-NYSE-2001-50 and approved by Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002). The pilot was recently extended until December 23, 2003. See Securities Exchange Act Release No. 34-46906 (November 25, 2002), 67 FR 72260 (December 4, 2002).

size raised on a gradual, "stair step" basis to a maximum of 10,000 shares as experience is gained. The proposed pilot program time period would expire on December 23, 2003.<sup>6</sup>

The NYSE believes that that the appropriate level to start accepting Direct + orders under this proposed rule change will be between 2,500 and 5,000 shares. Subsequent increases in the order eligibility levels will be made after experience is gained with trading at the initial level and at each subsequent level.<sup>7</sup>

To implement the proposed pilot program, the Exchange is modifying NYSE rule 13 to codify the pilot program; amending NYSE rule 1002 to permit orders in Investment Company Units and Trust Issued Receipts to be executed via NYSE Direct + and to provide that orders in Investment Company Units trade until 4:15 p.m.; and modifying NYSE rule 1005 to apply the requirement in the rule of auto ex order entry for the same customer in the same stock at time intervals of no less than 30 seconds between entry of each order, to Investment Company Units and Trust Issued Receipts.

#### III. 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 in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-

<sup>6</sup> See Amendment No. 1, *supra* note 4.

<sup>7</sup> The NYSE will consider the ability of the specialist to maintain a fair and orderly market in Investment Company Units or Trust Issued Receipts with the increased Direct+ order size and the operational impact, if any resulting from the increased order size eligibility. The NYSE has also provided that an increase in order size eligibility will be preceded by at least a one-week notice to the membership before implementation. See Amendment No. 1, *supra* note 4.

<sup>9</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.

NYSE-2002-37 and should be submitted by January 17, 2003.

#### IV. Discussion

After careful review, 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.<sup>8</sup> Specifically, the Commission believes the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>9</sup> which requires among other things, that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and national market system, and in general to protect investors and the public interest. The Commission believes that including Investment Company Units and Trust Issued Receipts in the Direct + pilot is a reasonable expansion of the Direct + pilot. The Commission believes that this allows customers who value speed and certainty of automatic executions to participate in Direct +. The Commission also believes that the expansion of the maximum order size for these products is reasonably designed to permit the exchange to attract additional order flow and potentially increase the depth and liquidity of the exchange's market to the benefit of investors.

The Commission finds good cause for accelerating approval of Amendment No. 1 because it merely clarifies the standard the NYSE would use in determining whether to increase the Direct + order size, coordinates the pilot termination date with the date of the NYSE Direct + pilot, and makes no substantive changes to the proposal. Accordingly, pursuant to section 19(b)(2) of the Act,<sup>10</sup> the Commission finds good cause to approve Amendment No. 1 prior to the thirtieth day after notice of the Amendment is published in the **Federal Register**.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-NYSE-2002-

37) is approved, and Amendment No. 1 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47018; File No. SR-OC-2002-03]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by OneChicago, LLC Relating to Block Trades

December 18, 2002.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-7 under the Act,<sup>2</sup> notice is hereby given that on November 7, 2002, OneChicago, LLC ("OneChicago") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I and II below, which Items have been prepared by OneChicago. On December 12, 2002, OneChicago filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. OneChicago also filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC"). OneChicago filed written certifications with the CFTC under Section 5c(c) of the Commodity Exchange Act<sup>4</sup> on November 6, 2002 and December 12, 2002.

#### I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago is proposing to amend OneChicago Rule 417, relating to block trades, in the following respects: (i) Paragraph (c) is amended to provide that the parties to a block trade must report specified information regarding such trade to OneChicago "without delay," rather than "promptly"; (ii) paragraph (d) is amended to add that clearing members and, if applicable, exchange

members and access persons (as such terms are defined in the OneChicago rulebook) may execute orders for a non-discretionary customer account by means of a block trade only if the relevant customer has previously consented thereto; and (iii) paragraphs (e) and (f) are amended to clarify that a natural person who is associated with a clearing member, exchange member or access person is restricted from engaging in transactions for any account that he or she controls when he or she has knowledge of a pending block trade of the clearing member, exchange member or access person with which he or she is associated.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OneChicago has prepared statements concerning the purpose of, and statutory basis for, the proposed rule, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

##### 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 designed to: (i) Clarify the timeframe within which information related to a block trade must be reported; (ii) make it clear that clearing members, exchange members and access persons must obtain a customer's consent prior to executing orders for a non-discretionary account by means of a block trade; and (iii) apply the restrictions on engaging in certain transactions related to a block trade to natural persons associated with a clearing member, exchange member or access person, and to clarify that the restriction on trading extends to any account that such natural person controls.

The proposed change to paragraph (c) of OneChicago Rule 417 is meant to remove any ambiguity with respect to the timeframe within which market participants are required to report information related to block trades. OneChicago believes that obligating market participants to report block trades "without delay" is warranted by the important price discovery function that it expects its markets for security futures products will serve. Given that all trading on OneChicago will be conducted electronically, OneChicago

<sup>8</sup> The Commission has considered the proposed rules' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> *Id.*

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

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.

<sup>3</sup> See letter dated December 12, 2002 from C. Robert Paul, General Counsel, OneChicago, to Division of Market Regulation, Commission.

<sup>4</sup> 7 U.S.C. 7a-2(c).