

member that directly or indirectly controls an exchange might be tempted to exercise that controlling influence by directing the exchange to refrain from diligently monitoring and surveiling the member's conduct or diligently enforcing its rules and the federal securities laws with respect to conduct by the member that violates such provisions.

The Commission believes that the proposal would not give rise to concerns about the Exchange's ability to effectively carry out its regulatory responsibilities under the Act because the proposed rule change preserves existing ownership and voting limitations.

In light of the foregoing, the Commission believes that the Exchange's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (File No. SR-ISE-2005-46) is approved.

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

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53275; File No. SR-NYSE-2006-02]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Extension of Two Crossing Sessions in the Exchange's Off-Hours Trading Facility

February 13, 2006.

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 January 25, 2006, the New York Stock Exchange,

2006); 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (SR-CHX-2004-26); 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (SR-PCX-2004-08); 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR-Phlx-2003-73); and 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (SR-BSE-2003-19).

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

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

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

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

Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder, which renders it effective upon filing with the Commission.<sup>4</sup> 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 NYSE proposes to extend until February 1, 2007 the following pilot programs ("Pilots"): Crossing Session III, for the execution of guaranteed price coupled orders by member organizations to fill the balance of customer orders at a price that was guaranteed to a customer prior to the close of the Exchange's 9:30 a.m. to 4 p.m. trading session ("Crossing Session III"); and Crossing Session IV, whereby an unfilled balance of an order may be filled at a price such that the entire order is filled at no worse price than the Volume Weighted Average Price ("VWAP") for the subject security ("Crossing Session IV"). The text of the proposed rule change is available on the NYSE's Web site (<http://www.nyse.com>), at the NYSE's Office of Secretary, and at the Commission's Public Reference Room.

#### 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 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

In SR-NYSE-2002-40,<sup>5</sup> the Commission approved an order establishing two new crossing sessions

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

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

<sup>5</sup> See Securities Exchange Act Release No. 48857 (December 1, 2003), 68 FR 68440 (December 8, 2003).

(Crossing Sessions III and IV) in the Exchange's Off-Hours Trading Facility ("OHTF") as pilot programs that expired on December 1, 2004. Subsequently, the Commission published a notice of filing and immediate effectiveness of a proposed rule change extending the Pilots until February 1, 2006.<sup>6</sup> This proposal extends the Pilots until February 1, 2007.<sup>7</sup> Crossing Sessions III and IV are described below.

#### Background

The purpose of SR-NYSE-2002-40 was to add two additional "Crossing Sessions" (Crossing Sessions III and IV) to the Exchange's OHTF. Before SR-NYSE-2002-40, the OHTF consisted of Crossing Sessions I and II. Crossing Session I 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. Crossing Session II permits the execution of crosses of multiple-stock ("basket") aggregate priced buy and sell orders. For Crossing Session II, trade reporting is accomplished by reporting to the Consolidated Tape the total number of shares and the total market value of the aggregate-price trades. There is no indication of the individual component stocks involved in the aggregate-price transactions.

#### Crossing Session III

In the instant proposed rule change, the Exchange is proposing to extend until February 1, 2007, the Pilot in Crossing Session III. Crossing Session III is described in NYSE Rule 907. This Pilot would continue to allow for the execution on the NYSE of "guaranteed price coupled orders" whereby member organizations could fill the unfilled balance of a customer order at a price which was guaranteed to the customer prior to the close of the Exchange's 9:30 a.m. to 4 p.m. trading session.

#### The Granting of "Upstairs Stops"

In serving their institutional customers, member firms may offer them a guarantee that a large size order will receive no worse than a particular price. Such a practice is usually referred to as an "upstairs stop," meaning that

<sup>6</sup> See Securities Exchange Act Release No. 51091 (January 28, 2005), 70 FR 6484 (February 7, 2005) (SR-NYSE-2005-01).

<sup>7</sup> The NYSE confirmed that the Pilots will continue to function in the same manner that they operated prior to the one-year extension. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE, Joseph P. Morra, Special Counsel, Division of Market Regulation ("Division"), Commission and Johnna B. Dumler, Attorney, Division, Commission on February 10, 2006.

the firm guarantees that its customer's order will be executed at no worse price than the agreed-upon, guaranteed price, with the member firm trading for its own account, if necessary, to effectuate the guarantee.

Typically, a member firm will seek to execute as much of the order as possible during the trading day at or below the "stop" price (in the case of a buy order) or at or above the "stop" price (in the case of a sell order). Any portion of the order not filled during the trading day will be completed after hours, with the firm either buying from, or selling to, its customer at a price which ensures that the entire order is executed at a price which is no worse than the "stop" price.

Member firms typically execute the unfilled balance of the order, after the U.S. Consolidated Tape is closed, in the London over-the-counter market, where trades are not reported in real time. The purpose of this is simply to minimize the possibility that other market participants may ascertain the firm's, or the customer's inventory position, and possibly trade in the subject security to the detriment of the firm that granted the "upstairs stop." According to the Exchange, it is more transparent to print the trade in the NYSE primary market during U.S. Consolidated Tape hours.

#### *Crossing Session IV*

The Exchange is also proposing to extend the Pilot in Crossing Session IV (which is also described in NYSE Rule 907), until February 1, 2007. Crossing Session IV is a facility whereby member organizations may fill the unfilled balance of a customer's order at a price such that the overall order is filled at a price that is no worse than the VWAP for the subject security on that trading day. The member organization would be required to document its VWAP agreement with the customer and the basis upon which the VWAP price would be determined.

#### *Operation of Crossing Sessions*

As described in NYSE Information-Memos 04-30 and 05-57 and NYSE Rule 907, Crossing Session III and Crossing Session IV would continue to operate as follows:

- (i) The original order as to which an "upstairs stop" or "VWAP" has been granted may be of any size;
- (ii) The customer must have received a "stop" (guaranteed price) or VWAP for the entire order;
- (iii) The member firm must record all details of the order, including the price it has guaranteed its customer or that the entire order will be filled at no worse than the VWAP;

(iv) An order or the unfilled balance of an order that would be executed in Crossing Session III or Crossing Session IV may be of any size;

(v) The customer's order must be executed in Crossing Session III or Crossing Session IV at a price that ensures that the entire order is executed at a price that is no worse than the guaranteed price or the VWAP;

(vi) Orders may be entered in Crossing Session III or Crossing Session IV between 4 p.m. and 6:30 p.m., and must be identified as either a Crossing Session III or Crossing Session IV order;

(vii) Member firms will receive an immediate report of execution upon entering an order into Crossing Session III or Crossing Session IV;

(viii) Orders may be entered into Crossing Session III for execution at prices outside the trading range in the subject security during the 9:30 a.m. to 4 p.m. trading session;

(ix) Orders may not be entered into Crossing Session III or Crossing Session IV in a security that is subject to a trading halt at the close of the regular 9:30 a.m. to 4 p.m. trading session; and

(x) At 6:30 p.m., the Exchange will print trades reported through Crossing Session III as guaranteed price coupled orders or in Crossing Session IV as VWAP executions.

#### *2. Statutory Basis*

NYSE believes that the proposed rule change is consistent with Section 6 of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, in that it is 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 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.

<sup>8</sup> 15 U.S.C. 78f(b).

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

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</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.

NYSE has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes such waiver is consistent with the protection of investors and the public interest because it would allow the Pilots to operate without interruption.<sup>12</sup> For this reason, the Commission designates the proposal to be operative upon filing with the Commission.

#### **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. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2006-02 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2006-02. This file number should be included on the subject line if e-mail is used. To help the

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro/shtml>). 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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR-NYSE-2006-02 and should be submitted by March 10, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Nancy M. Morris,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53267; File No. SR-OCC-2005-25]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Adjustment Panels

February 9, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 23, 2005, The Options Clearing Corporation ("OCC") 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 primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>2</sup> whereby the proposal was effective

upon filing with the Commission. 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 amends certain By-Law provisions in order to consolidate common policies and procedures relevant to adjustment panels that act from time to time on behalf of OCC to adjust the terms of outstanding cleared contracts to reflect events affecting the issuer of the instrument underlying the relevant contract.

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

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>3</sup>

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As currently in effect, Article VI (Clearance of Exchange Transactions) Section 11 (Adjustments Panel Policies and Procedures) paragraph (b) of OCC's By-Laws provides that adjustments are to be made by OCC's Securities Committee and describes factors to be taken into account by the Securities Committee in making adjustments. Under Article VI, Section 11(k), also as currently in effect, the authority of the Securities Committee to make adjustment determinations in particular cases is delegated to adjustment panels whose actions are deemed to constitute actions by the Securities Committee. Article VI, Section 11(k) sets forth procedures governing matters such as adjustment panel composition and voting. Several other articles of the By-Laws that are applicable to specific products other than stock options also provide for adjustment panels and incorporate certain provisions of the current Article VI, Section 11(k) by reference. Specifically, these other articles and the relevant sections are:

Article XV (Foreign Currency Options), Section 4; Article XVII (Index Options), Section 3; Article XX (Cross-Rate Foreign Currency Options), Section 4; Article XXII (Cash-Settled Foreign Currency Options), Section 3; Article XXIII (Flexibly Structured Index Options), Section 4; and Article XXIV (BOUNDS), Section 6. These adjustment provisions, which are generally duplicative of those in Article VI, Section 11(k), inadvertently omit the conflict of interest provision of Article VI, Section 11(k) that prohibits persons with a financial interest in the adjustment from serving on an adjustment panel. Although the adjustment provisions governing products other than stock options incorporate by reference some policies and procedures from Article VI, Section 11, they repeat other provisions.

In order to correct the inadvertent exclusion of the conflict of interest provision and to eliminate repetitive language, thereby decreasing the potential for inadvertent inconsistencies between the adjustment provisions of the various articles of the By-Laws if one or more of such provisions were amended in the future, OCC proposes to revise Section 11 of Article VI to be generally applicable to all adjustment panels regardless of the product type and to insert cross-references to Section 11 in the other articles where appropriate. In addition, OCC is proposing to add Section 11A to Article VI that will preserve those paragraphs of the existing Section 11 that apply specifically to stock options.

Proposed Section 11(a)-(c) of Article VI is largely a restatement of policies and procedures currently applicable to the Securities Committee and adjustment panels acting on its behalf as found in existing Sections 11(b) and (k) of Article VI. In proposed Article VI, Section 11(a), the list of factors which the Securities Committee may consider in making an adjustment determination is a comprehensive list of such factors, some of which may not be applicable to a particular cleared contract. In proposed Article VI, Section 11(c), the term "cleared contracts" replaces references to "option contracts and BOUNDS" in the corresponding sentences of existing Section 11(k).

Proposed Section 11A of Article VI is a restatement of existing Section 11(a) and (c)-(j) of Article VI except for revisions to reflect proper references to Section 11A or Section 11, as applicable.

To preserve stockholder prerogatives, Article XI (Amendment of the By-Laws and Rules), Section 1, which requires stockholder approval for amendments to

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> The Commission has modified parts of these statements.