

begin on April 2, 2007 and end on July 31, 2007, unless the SEC approves an extension of the pilot or adoption of the program on a permanent basis.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>8</sup> which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that this technical change is consistent with the protection of investors and the public interest in that it will avoid any confusion when reading the provisions of Rule 2520(g)(6)(B)(i).

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

NASD 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.

### 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 foregoing proposed rule change is subject to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder<sup>10</sup> because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate. 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 purposes of the Act.

NASD has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes such waivers are consistent with the

protection of investors and the public interest because they would allow the technical corrections in the proposed rule change to be implemented on April 2, 2007, when the NASD portfolio margin pilot program begins, pursuant to SR-NASD-2007-013.<sup>11</sup> For this reason, the Commission designates the proposal to be operative upon filing with the Commission.<sup>12</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 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 an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2007-024 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-NASD-2007-024. This file number should be included on the subject line if e-mail is used. To help the 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 also will be available for inspection and copying at the principal office of NASD. 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-NASD-2007-024 and should be submitted on or before April 19, 2007.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55517; File No. SR-NYSE-2007-06]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to NYSE Rule 440A ("Telephone Solicitations")

March 23, 2007.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act"),<sup>2</sup> and Rule 19b-4 thereunder, notice is hereby given that on January 25, 2007, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed amendments to its Rule 440A, 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 New York Stock Exchange LLC is filing with the Securities and Exchange Commission proposed Rule 440A ("Telephone Solicitations") which addresses member organizations' telephone solicitations of customers.

#### 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 the proposed rule change is available on the

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</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).

<sup>12</sup> See *supra* note 7.

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

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

<sup>2</sup> 15 U.S.C. 78a.

NYSE's Web site (<http://www.NYSE.com>), at the NYSE's principal office, and at the Commission's Public Reference Room. 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

NYSE Rule 440A (the "Rule") addresses member organizations' telephone solicitations of customers. Rule 440A(g) provides "No member or member organization may use a telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine, computer or other device."

Subsection 440A(g)(1) provides that a facsimile advertisement is not "unsolicited" where the recipient has granted the member organization prior express invitation or permission to deliver the advertisement, as further defined in the Rule. This proposed amendment to NYSE Rule 440A would provide that such an advertisement also will not be considered "unsolicited" where there is an "established business relationship" as defined in the present Rule 440A(j).

In addition, changes are proposed to delete the term "member" as used in the Rule to reflect the recent reorganization of the Exchange,<sup>3</sup> and the term "allied member" as redundant within the context of the present regulation.

##### Background

The amendments to Rule 440A(g) were adopted by the Exchange on December 2, 2004<sup>4</sup> to incorporate regulations issued by the Federal Communications Commission ("FCC") and the Federal Trade Commission ("FTC") relating to the implementation of the National Do Not Call registry and the amendments to the Telephone Consumer Protection Act of 1991.<sup>5</sup> The FCC and FTC regulations contained no exception for facsimiles sent to customers with which a broker-dealer had an "established business relationship" as such term was defined. Subsequently, Congress passed

legislation<sup>6</sup> which restored an exemption for unsolicited faxes sent to a recipient with whom the sender had an established business relationship. Accordingly, the proposed amendments to NYSE Rule 440A(g)(1) will add an exception for established business relationships to the definition of "unsolicited" and will also set forth the measures necessary for a customer to opt out of the receipt of further communications. These standards, which are taken from applicable FCC regulations,<sup>7</sup> generally require that the member organization and the person not only have an established business relationship,<sup>8</sup> but also that the member organization obtain the fax number from the recipient (or the recipient's web site, directory, or advertisement). Further, the recipient must not have stated on those materials that they do not accept unsolicited advertisements at the listed number. The member organization must also take reasonable steps to verify that the recipient consented to have the number listed.<sup>9</sup>

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5)<sup>10</sup> of the Act which requires NYSE to have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed amendments will move the Rule into conformity with revised federal regulatory standards and ensure that customers are able to opt out of the receipt of undesired communications.

<sup>6</sup> Junk Fax Prevention Act of 2005, Pub. L. 109-21, 119 Stat. 359 (2005).

<sup>7</sup> FCC 06-42 (Apr. 5, 2006), 71 FR 56893 (Sept. 28, 2006).

<sup>8</sup> An established business relationship is defined as a prior existing relationship formed by voluntary two-way communication between a member organization and a person where the person has, generally speaking, done business with the member organization within the 18 months preceding the telephone call, the member organization is the broker-dealer of record for the person's account within those 18 months, or the person has contacted the member organization to inquire about a product or service within the three months preceding the telephone call.

<sup>9</sup> The Exchange expanded this description of the standards and added the definition of "established business relationship" to this notice during a telephone conversation between William Jannace, Managing Director, Rule and Interpretive Standards, NYSE Regulation, and Elizabeth MacDonald, Special Counsel, Division of Market Regulation, Commission, March 20, 2007.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

#### 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.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

a. By order approve the proposed rule change, or

b. Institute proceedings to determine whether the proposed rule change should be disapproved.

### 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 an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2007-06 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-2007-06. This file number should be included on the subject line if e-mail is used. To help the 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

<sup>3</sup> See Exchange Act Release No. 53382 (Feb. 27, 2006), 71 FR 11251 (Mar. 6, 2006) (SR-NYSE-2005-77).

<sup>4</sup> See Exchange Act Release No. 34-52579 (Oct. 7, 2005), 70 FR 60119 (Oct. 14, 2005) (SR-NYSE-2004-73).

<sup>5</sup> Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, FCC 03-153 (Jun. 26, 2003), 68 FR 44144 (Jul. 25, 2003).

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 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-2007-06 and should be submitted on or before April 19, 2007.

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

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55504; File No. SR-OCC-2006-15]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Approval of Fund Shares Deposited as Margin

March 21, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 31, 2006, 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. 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 would eliminate the requirement that the

Membership/Risk Committee approve classes of fund shares (e.g., ETFs) for deposit as margin.

#### 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>2</sup>

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

The proposed rule change would delete Interpretation and Policy .11 to Rule 604, Forms of Margin, which requires that OCC's Membership/Risk Committee approve classes of fund shares for deposit as margin. Committee approval was deemed to be a prudent safeguard when OCC began accepting fund shares for deposit in 1996 because fund shares had only been trading since 1993, and OCC was not as familiar with them as it is today. In 1997, OCC began clearing options on fund shares. Since then, fund shares have become a widely used investment tool, and OCC has developed a broad understanding of the fund share marketplace. In light of these developments, OCC believes that fund shares should be accepted as margin under the same conditions that apply to the deposit of other equity securities without the need for Committee approval.

The proposed change is consistent with Section 17A of the Act because it eliminates an unwarranted approval process for the acceptance of fund shares as a form of margin asset while employing the same safeguards that apply to the deposit of other equity securities as margin in order to assure the safeguarding of securities which are in OCC's custody or control. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

##### (B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

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

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve the proposed rule change or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### 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 an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2006-15 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-OCC-2006-15. This file number should be included on the subject line if e-mail is used. To help the 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

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

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

<sup>2</sup> The Commission has modified parts of these statements.