

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 NASD. All submissions should refer to file number SR-NASD-2003-102 and should be submitted by August 28, 2003.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48279; File No. SR-NASD-2003-52]

### Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish a Fee for Receipt of Mutual Fund Quotation Service Data by Distributors

August 1, 2003.

On March 24, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 establish a \$1,000 per month distributor fee for receipt of mutual fund information through Nasdaq's Mutual Fund Quotation Service ("MFQS"). The fee would be assessed on all distributors, as defined in proposed NASD Rule 7090(e)—*i.e.*, firms that receive the data and distribute it to third parties.

The proposed rule change was published for comment in the **Federal Register** on April 24, 2003.<sup>3</sup> By letters dated, respectively, May 30, 2003 and July 18, 2003, Nasdaq clarified the scope

and purpose of the fee.<sup>4</sup> The Commission received no comments on the proposed rule change.<sup>5</sup>

The Commission has carefully reviewed the NASD's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, the requirements of Section 15A of the Act<sup>6</sup> and the rules and regulations thereunder.<sup>7</sup> The Commission finds specifically that the proposed rule change is consistent with Section 15A(b)(5) of the Act<sup>8</sup> because the fee will be assessed against all firms that receive the Nasdaq MFQS data and distribute it to third parties. In addition, Nasdaq represents that the amount of the fee is sufficient to compensate Nasdaq for services it provides to distributors and their subscribers by collecting and processing the mutual fund data feed, producing the data feed, and providing data quality services. At the same time, Nasdaq believes the amount of the fee will not discourage wide distribution of the data.<sup>9</sup>

Finally, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act<sup>10</sup> because vendors are free to choose whether to receive the data, and the fee is uniformly charged

<sup>4</sup> See: letter from Eleni Constantine, Office of the General Counsel, Nasdaq to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), dated May 30, 2003 ("first clarifying letter"); and letter from Eleni Constantine, Office of the General Counsel, Nasdaq to Katherine A. England, Assistant Director, Division, dated July 18, 2003 ("second clarifying letter").

<sup>5</sup> Nasdaq has consented to an extension of time for Commission action on the proposal until August 1, 2003, under Section 19(b)(2)(B) of the Act.

<sup>6</sup> 15 U.S.C. 78o-3.

<sup>7</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> Section 15A(b)(5) of the Act requires that the rules of national securities association 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 association operates or controls. 15 U.S.C. 78o-3(b)(5).

<sup>9</sup> In its first clarifying letter, Nasdaq represented that mutual fund data is delivered through the legacy data feeds. Nasdaq stated that these products provide MFQS data, OTC Bulletin Board data and index data. Nasdaq represented that the legacy data feed products operate at a very substantial deficit without this new fee. In determining how to reflect these costs in the fee Nasdaq estimated the likely population of users. Its best estimate was that the population of users was probably similar to the firms that pay Nasdaq's index distribution fee. Nasdaq believed that it could most fairly spread the costs over the estimated population if the fee were set at \$1,000.

<sup>10</sup> Section 15A(b)(6) of the Act requires that the rules of an association not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. 15 U.S.C. 78o-3(b)(6).

to all firms that receive the data and distribute it to third parties; to the extent that Nasdaq.com chooses to so receive and distribute the data, it too will be assessed the fee.<sup>11</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-NASD-2003-52) be, and hereby is, approved.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48280; File No. SR-NASD-2003-119]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Listing and Trading of Index Leveraged Stock Market Return Securities Based Upon the Nasdaq-100 Index

August 1, 2003.

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 August 1, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq.

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>11</sup> In this regard, in its second clarifying letter, Nasdaq represents that, before creation of the internal securities information processor ("SIP") about a year ago, the Nasdaq proprietary data that comprises the mutual fund data was built into the feed that dealers were required to take. Nasdaq also represents that, with the creation of the internal SIP, the mutual fund data at issue has been separated out from the core SIP data and is provided over a feed that only contains Nasdaq proprietary data. Nasdaq states that this proposal enables vendors to choose whether to take the mutual fund data, without affecting their ability to take the required consolidated data through the SIP. Finally, Nasdaq states that, to the extent that vendors (including Nasdaq.com) choose to take this data and to gain value by redistributing it, Nasdaq will charge a fee for this data, which it incurs costs in compiling.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</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.

<sup>12</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.

<sup>3</sup> See Securities Exchange Act Release No. 47688 (April 17, 2003), 68 FR 20199.

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

Nasdaq proposes to list and trade Index LeverAged StockMarkEt Return Securities<sup>SM</sup> linked to the Nasdaq-100<sup>®</sup> Index ("Notes") issued by Citigroup Global Markets Holdings Inc. ("CGMHI").

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq proposes to list and trade Index LeverAged StockmarkEt Return Securities, the return on which is based upon the Nasdaq-100 Index.<sup>3</sup>

<sup>3</sup> The Nasdaq-100 Index is a modified capitalization-weighted index of 100 of the largest non-financial companies listed on The Nasdaq National Market tier of The Nasdaq Stock Market. The Index constitutes a broadly diversified segment of the largest securities listed on The Nasdaq Stock Market and includes companies across a variety of major industry groups. The securities in the Index must, among other things, have an average daily trading volume on Nasdaq of at least 200,000 shares.

In order to limit domination of the Index by a few large stocks, the Index is calculated under a "modified capitalization-weighted" methodology, which is a hybrid between equal weighting and conventional capitalization weighting. Under the methodology employed, on a quarterly basis coinciding with Nasdaq's quarterly scheduled weight adjustment procedures, the Index Securities are categorized as either "Large Stocks" or "Small Stocks" depending on whether their current percentage weights (after taking into account such scheduled weight adjustments due to stock repurchases, secondary offerings, or other corporate actions) are greater than, or less than or equal to, the average percentage weight in the Index (*i.e.*, as a 100-stock index, the average percentage weight in the Index is 1.0%). Such quarterly examination will result in an Index rebalancing if either one or both of the following two weight distribution requirements are not met: (1) The current weight of the single largest market capitalization Index component security must be less than or equal to 24.0%, and (2) the "collective weight" of those Index component securities whose individual current weights are in excess of 4.5%, when added together, must be less than or equal to 48.0%. Index securities are ranked by market value and are evaluated annually to determine which securities will be included in the Index. Moreover, if at any

Under NASD Rule 4420(f), Nasdaq may approve for listing and trading securities which cannot be readily categorized under traditional listing guidelines.<sup>4</sup> Nasdaq proposes to list for trading notes based on the Nasdaq-100 Index under NASD Rule 4420(f).

The Notes, which will be registered under Section 12 of the Act, will initially be subject to Nasdaq's listing criteria for other securities under NASD Rule 4420(f). Specifically, under NASD Rule 4420(f)(1):

(A) The issuer shall have assets in excess of \$100 million and stockholders' equity of at least \$10 million. In the case of an issuer which is unable to satisfy the income criteria set forth in paragraph (a)(1), Nasdaq generally will require the issuer to have the following: (i) assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (ii) assets in excess of \$100 million and stockholders' equity of at least \$20 million;

(B) There must be a minimum of 400 holders of the security, provided, however, that if the instrument is traded in \$1,000 denominations, there must be a minimum of 100 holders;

(C) For equity securities designated pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units;

(D) The aggregate market value/principal amount of the security will be at least \$4 million.

CGMHI and the Notes will satisfy the criteria set forth above. In addition, CGMHI satisfies the listed marketplace requirement set forth in NASD Rule 4420(f)(2).<sup>5</sup> Lastly, pursuant to NASD Rule 4420(f)(3), prior to the commencement of trading of the Notes, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlighting the

time during the year an Index security is no longer trading on the Nasdaq Stock Market, or is otherwise determined by Nasdaq to become ineligible for continued inclusion in the Index, the security will be replaced with the largest market capitalization security not currently in the Index that meets the Index eligibility criteria.

For a detailed description of the Nasdaq-100 Index, see the prospectus supplement that will be filed by CGMHI with the Commission prior to the issuance of the Notes.

<sup>4</sup> See Securities Exchange Act Release No. 32988 (September 29, 1993); 58 FR 52124 (October 6, 1993).

<sup>5</sup> NASD Rule 4420(f)(2) requires issuers of securities designated pursuant to this paragraph to be listed on The Nasdaq National Market or the New York Stock Exchange ("NYSE") or be an affiliate of a company listed on The Nasdaq National Market or the NYSE; provided, however, that the provisions of NASD Rule 4450 will be applied to sovereign issuers of "other" securities on a case-by-case basis.

special risks and characteristics of the Notes. In particular, Nasdaq will advise members recommending a transaction in the Notes to: (1) Determine that such transaction is suitable for the customer; and (2) have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

The Notes will be subject to Nasdaq's continued listing criterion for other securities pursuant to NASD Rule 4450(c). Under this criterion, the aggregate market value or principal amount of publicly-held units must be at least \$1 million. The Notes also must have at least two registered and active market makers as required by NASD Rule 4310(c)(1). Nasdaq will also consider prohibiting the continued listing of the Notes if CGMHI is not able to meet its obligations on the Notes.

The Notes are a series of senior unsecured debt securities that will be issued by CGMHI. Each Index LASERS represents a principal amount of \$10. Index LASERS may be transferred only in units of \$10 and integral multiples of \$10. The Notes will not pay interest and are not subject to redemption by CGMHI or at the option of any beneficial owner before maturity, which is expected on or about one year after the issue date.<sup>6</sup>

At maturity, a beneficial owner will receive an amount in cash equal to \$10 plus an index return amount, which may be positive, zero or negative. Because the index return amount may be negative, the maturity payment could be less than the \$10 principal amount per Index LASERS and could be zero.

The index return amount will be based on the index return of the Nasdaq-100 Index. The index return will equal a fraction, the numerator of which is the Ending Value<sup>7</sup> minus the Starting Value<sup>8</sup> and the denominator of which is the Starting Value, provided that the index return will not in any circumstances be greater than a cap which is expected to be approximately 5% to 6%.<sup>9</sup> How the index return is calculated will depend on whether the index return is positive, zero or negative.

If the index return is positive, the index return amount will equal the

<sup>6</sup> The actual maturity date will be determined on the day the Notes are priced for initial sale to the public.

<sup>7</sup> The Ending Value will be the closing value of the Nasdaq-100 Index on approximately the third index business day before the maturity date of the Notes.

<sup>8</sup> The Starting Value will equal the closing value of the Nasdaq-100 Index on the date the Notes are priced for initial sale to the public.

<sup>9</sup> The actual cap will be determined on the date the Notes are priced for initial sale to the public.

product of: (i) \$10, (ii) the upside participation rate, and (iii) the index return. The upside participation rate is expected to be approximately 500% to 600%.<sup>10</sup> Thus, if the ending value of the Nasdaq-100 Index exceeds its starting value by approximately 5% to 6% or less, the appreciation on an investment in the Notes will be approximately 5 to 6 times the return on an instrument directly linked to the Nasdaq-100 Index because of the upside participation rate. However, because the appreciation cap, together with the upside participation rate, limits the maximum index return amount at maturity to approximately 25% to 36% of the principal amount of the Notes, in no circumstances will the payment received by a beneficial owner at maturity be more than approximately \$2.50 to \$3.60 per Index LASERS.

If the index return is negative and the value of the Nasdaq-100 Index on any index business day after the date the Notes are priced for initial sale to the public up to and including approximately the third index business day before maturity (whether intra-day or at the close of trading on any index business day) is less than or equal to approximately 75% to 80% of the starting value of the Nasdaq-100 Index, then the index return amount will equal the product of (i) \$10, (ii) the downside participation rate, and (iii) the index return. The downside participation rate is expected to be approximately 200%.<sup>11</sup> Thus, the return on the Notes will be less than the return from an investment in an instrument directly linked to the Nasdaq-100 Index because the downside participation rate increases the participation in the index's depreciation by approximately 200%. Because of the downside participation rate, the payment at maturity will be zero if the ending value of the Nasdaq-100 Index is less than or equal to approximately 50% of its starting value. Consequently, investors could lose all or a significant portion of their investment if the Nasdaq-100 Index decreases as described above.

If the index return is negative and the value of the index on any index business day after the date the Notes are priced for initial sale to the public up to and including approximately the third index business day before maturity is not less than or equal to approximately 75% to 80% of the starting value of the Nasdaq-100 Index, then the index return amount will be

zero and the maturity payment will be \$10 per Index LASERS.

If the index return is zero, then the index return amount will be zero and the maturity payment will be \$10 per Index LASERS.

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments or any other ownership right or interest in the portfolio or index of securities comprising the Nasdaq-100 Index. The Commission has previously approved the listing of options on, and other securities the performance of which have been linked to or based on, the Nasdaq-100 Index.<sup>12</sup> These options and other securities, however, do not have a downside participation rate as described above.

As of May 31, 2003, the adjusted market capitalization of the securities included in the Nasdaq-100 Index ranged from a high of \$170.3 billion to a low of \$2.2 billion. The average daily trading volume for these same securities for the last five months, as of the same date, ranged from a high of 68.1 million shares to a low of 527,400 shares.

Since the Notes will be deemed equity securities for the purpose of NASD Rule 4420(f), the NASD and Nasdaq's existing equity trading rules will apply to the Notes. Specifically, the Notes will be subject to the equity margin rules. In addition, the regular equity trading hours of 9:30 am to 4:00 pm will apply to transactions in the Notes.

Due to the leveraged nature of the Notes, Nasdaq proposes requiring that the Notes only be sold to investors whose accounts have been approved for options trading pursuant to NASD Rule 2860(b)(16). In addition, the NASD's options suitability standards will apply to recommendations regarding the Notes.<sup>13</sup> Furthermore, discretionary

<sup>12</sup> See Securities Exchange Act Release No. 45429 (February 11, 2002), 67 FR 7438 (February 19, 2002) (approving the listing and trading of Enhanced Return Notes Linked to the Nasdaq-100 Index); Securities Exchange Act Release No. 45024 (November 5, 2001), 66 FR 56872 (November 13, 2001) (approving the listing and trading of Enhanced Return Notes Linked to the Nasdaq-100 Index); Securities Exchange Act Release No. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (approving the listing and trading of Performance Leveraged Upside Securities based upon the performance of the Nasdaq-100 Index); Securities Exchange Act Release No. 43000 (June 30, 2000), 65 FR 42409 (July 10, 2000) (approving the listing and trading of options based upon one-tenth of the value of the Nasdaq-100 Index); Securities Exchange Act Release No. 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999) (approving the listing and trading of Portfolio Depository Receipts based on the Nasdaq-100 Index); Securities Exchange Act Release No. 33428 (January 5, 1994), 59 FR 1576 (January 11, 1994) (approving the listing and trading of options on the Nasdaq-100 Index).

<sup>13</sup> See NASD Rule 2860(b)(19).

orders in the Notes must be approved and initialed on the day entered by the branch office manager or other Registered Options Principal, provided that if the branch office manager is not a Registered Options Principal, such approval shall be confirmed within a reasonable time by a Registered Options Principal.<sup>14</sup> Lastly, as previously described, Nasdaq will distribute a circular to members providing guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlighting the special risks and characteristics of the Notes.

Nasdaq represents that NASD's surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, NASD will rely on its current surveillance procedures governing equity securities, and will include additional monitoring on key pricing dates.

CGMHI will deliver a prospectus in connection with the initial purchase of the Notes. The procedure for the delivery of a prospectus will be the same as CGMHI's current procedure involving primary offerings.

## 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6(b)(5),<sup>15</sup> in particular, in that it is designed 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 transaction in securities, and, in general, to protect investors and the public interest. Specifically, the proposed rule change will provide investors with another investment vehicle based on the Nasdaq-100 Index.

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

Nasdaq 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*

Written comments on the proposed rule change were neither solicited nor received.

<sup>14</sup> See NASD Rule 2860(b)(18).

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

<sup>10</sup> The upside participation rate will be determined on the date the Notes are priced for initial sale to the public.

<sup>11</sup> The downside participation rate will be determined on the date the Notes are priced for initial sale to the public.

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

Nasdaq has requested that the Commission shorten the comment period and approve the filing on an accelerated basis in order to allow the listing and trading of the Notes to begin the week of August 25th, 2003. Accordingly, Nasdaq requests that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register**.

### 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, by August 22, 2003. 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 NASD. All submissions should refer to file number SR-NASD-2003-119 and should be submitted by August 22, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-20183 Filed 8-6-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48264; File No. SR-PCX-2002-57]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc., Relating to the Implementation of a New Order Audit Trail System

July 31, 2003.

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 August 9, 2002, the Pacific Exchange, Inc. ("PCX" 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 self-regulatory organization. On July 28, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On July 30, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing the proposed rule change, as amended, to solicit comment 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 Exchange is proposing to adopt new rules relating to the creation of an order audit trail system called Electronic Order Capture System ("EOC"). The proposal will require that every member or member organization that receives an order for execution on the Exchange must immediately record the details of the order (including any modification of the terms of the order or cancellation of the order) into EOC, unless such order has been entered into the Exchange's other electronic order processing facilities.

The text of the proposed rule change is below. Additions are in italics; deletions are in brackets.

\* \* \* \* \*

#### Rule 6—Options Trading Applicability, Definitions and References

Rule 6.1(a)—No change.

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

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

<sup>3</sup> Amendment No. 1 replaces and supersedes the original filing in its entirety.

<sup>4</sup> See letter from Tania J. Cho, Staff Attorney, PCX, to Jennifer Colihan, Special Counsel, Division of Market Regulation, ("Division"), Commission, dated July 30, 2003 ("Amendment No. 2"). In Amendment No. 2, the Exchange clarified that it will not conduct an issue-by-issue roll out of the Electronic Order Capture System as originally proposed.

(b) Definitions. The following terms as used in Rule 6 shall, unless the context otherwise indicates, have meanings herein specified:

(1)–(38)—No change.

(39) *The term "Electronic Order Capture System" ("EOC") means the Exchange's electronic audit trail and order tracking system that provides a time-sequenced record of all orders and transactions on the Exchange. EOC records the receipt of an order and documents the life of the order through the process of execution, partial execution, or cancellation. This system includes the electronic communications interface between EOC booth terminals and the Floor Broker Hand Held applications. Each member's EOC booth terminal and each Floor Broker Hand Held Terminal contains an electronic order entry screen that displays the terms and conditions of each order received by that member.*

(c)–(e)—No change.

\* \* \* \* \*

#### Admission to and Conduct on the Options Trading Floor

Rule 6.2(a)–(g)—No change.

(h)(1)–(2)—No change.

(3) Requirements and Conditions.

(A)—No change.

(B) Orders transmitted by registered Exchange Market Makers may be entered directly to the trading posts. All other orders may be entered directly to the trading posts only during outgoing telephone calls that are initiated at the option posts. *Pursuant to Rule 6.67(c), all such orders must be immediately recorded into the EOC unless there is a disruption or malfunction to the EOC, in which case the EOC Contingency Procedures will be in effect in accordance with Rule 6.67(d)(1).*

(C)—No change.

(4)—No change.

(5) Floor Brokers.

(A)–(B)—No change.

(C) Ticket to Follow. *In the event of a disruption or malfunction of EOC, pursuant to Rule 6.67(d), a [A] Floor Broker in a trading crowd may represent immediately in the trading crowd a telephonic order received from a Member or Member Firm representative located in a firm member booth [who receives a telephonic order from a Member or Member Firm representative located on the Trading Floor may represent that order immediately in the trading crowd], provided (a) that an order ticket for the order must be prepared and time stamped in the member firm booth before the order is transmitted telephonically to the Floor Broker in the trading crowd; and (b) that the written, time-stamped order ticket*

<sup>16</sup> 17 CFR 200.30-3(a)(12).