

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44676; File No. SR-NYSE-2001-17]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend the Exchange's Allocation Policy and Procedures

August 9, 2001.

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 July 3, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 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 Exchange proposed to amend the Exchange's Allocation Policy and Procedures to allow a listing company to send a separate letter to the Allocation Committee indicating the role that one specialist unit has played in helping the company to reach its listing decision. The text of the proposed rule change is available at the Office of the Secretary, the NYSE and the Commission.

#### 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.

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

###### 1. Purpose

The intent of the Exchange's Allocation Policy and Procedures ("Policy") is (1) to ensure that the

allocation process is based on fairness and consistency, and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) to provide an incentive for ongoing enhancement of performance by specialist units; (3) to provide the best possible match between a specialist unit and security; and (4) to contribute to the strength of the specialist system.

The Policy currently permits a listing company to send a letter to the Exchange's Allocation Committee indicating the general characteristics it believes would be appropriate as to the specialist unit ultimately selected to trade its stock. Such letter may not name any particular specialist unit, and the characteristics so indicated may not be so specific as to apply to a readily identifiable specialist unit. The listing company's letter is distributed with a memorandum prepared by the Exchange staff describing the listing company, underwriters, recent market activity, and other details soliciting specialist units to apply for the allocation of the listing company's stock.

In certain situations, specialist units have met with companies prior to the company making a listing decision and have played a significant role in a company's decision to list on the Exchange. The listing company may then have an expectation that a particular specialist unit should be included in the group of units to be interviewed by the listing company, but the Exchange does not require such a result under the current Policy. Under the Policy, the Allocation Committee cannot directly know from the listing company a specialist unit's role, if any, in its listing decision.

The Exchange believes it is appropriate to amend the Policy to allow the listing company to send a separate letter to the Allocation Committee indicating the role that one specific specialist unit has played in helping the listing company to reach its listing decision. This letter would be separate and distinct from the general characteristics letter that the company would send to the Allocation Committee, which is then distributed to all specialist units, as noted above.

The Allocation Committee would then assemble a pool of specialist units to meet with the listing company in accordance with the performance-based criteria of the Policy, and would include the specialist unit named in the separate letter in the pool, unless the unit is prohibited under the Policy from applying for allocation of a stock. The separate letter would not have any influence on a decision by other

specialist units to apply for allocation of the company's stock because these units would not know its existence. The listing company would then interview all units, and make the final decision as to its specialist unit.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>3</sup> which provides that an exchange have rules that are 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. The Exchange believes the proposed rule change is consistent with these objectives because it will enable the Exchange to further enhance the process by which stocks are allocated to ensure fairness and equal opportunity in the process.

##### 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 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 Exchange consents, the Commission will:

(A) By order approve such 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. Persons making written submissions

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

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

<sup>3</sup> 15 U.S.C. 78f(b)(5).

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-2001-17 and should be submitted by September 7, 2001.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.<sup>4</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44689; File No. SR-OCC-2001-08]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by The Options Clearing Corporation Relating to the Price Used in Calculating Premium Marking

August 13, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 25, 2001, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been primarily prepared by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant approval of the proposed rule change.

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

The proposed rule change would set an option's marking price for purposes of calculating premium margin at the

arithmetic average of the best bid and best offer across all exchanges listing the option.

#### II. Self-Regulatory Organization's Statement of 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. The self-regulatory organization 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

###### 1. Background

In November 1999, OCC proposed to change how it determines an option's marking price for purposes of calculating premium margin.<sup>3</sup> Specifically, OCC proposed to use the last sale price, adjusted to the bid/offer if the last sale is below/above the bid/offer. Although this rule change was recently approved, it has not been implemented.<sup>4</sup> While this rule change was pending, the number of options listed on more than one exchange dramatically increase and caused OCC to calculate premium margin for an options series by using the highest asked price from the option exchange with the highest transaction volume in such series. At times, this has led to noticeable jumps in marking prices when a change in the volume-leading exchange occurred. As a result, OCC reassessed the proposed last sale methodology and concluded that it might also lead to inconsistent marking as the exchange with the highest volume in an option series may not be the one on which the last sale is made. Accordingly, after consulting with the Commission's staff, OCC has determined not to use the last sale price for marking options. Rather, OCC will use an alternative methodology that it believes will yield more consistent results.

<sup>2</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>3</sup> File No. SR-OCC-99-14.

<sup>4</sup> Securities Exchange Act Release Nos. 43023 (July 11, 2000), 65 FR 44088 (July 17, 2000) (notice of proposed rule change); 44183 (Apr. 16, 2001), 66 FR 20343 (Apr. 20, 2001) (order approving proposed rule change).

###### 2. New Marking Methodology

To increase option pricing consistency and to improve the calculation of reasonable implied volatility curves, OCC proposes to use the arithmetic average of the best bid and the best offer across all exchanges on which the option trades as the marking price of each option series. OCC believes that this approach will improve the construction of implied volatility curves, especially for deep in-the-money and out-of-the-money options that often are quoted without a progressive variance in prices. OCC also believes that the proposed approach will reduce the likelihood of inconsistent price jumps, which are often caused by changes in the volume leading exchange. OCC understands that this proposed marking methodology is consistent with industry practices.

Specifically, OCC proposes to amend OCC Rules 601 and 602. First, OCC would nullify the recently approved changes made to Rules 601(b)(4)(A) and 602(b)(4)(A). This nullification would restore the cited rule provisions to what they were before the approval of SR-OCC-99-14. Thus, OCC will use the highest asked price for an option series from the exchange with the highest transaction volume in that series. Second, OCC would amend the cited rule provisions to reflect the new methodology for determining an option's marking price for purposes of calculating premium margin. OCC will begin using the new arithmetic average promptly when the programming changes are ready for installation. OCC will provide advance notice of implementation to the Commission and to its clearing members.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because the proposed rule change will foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

##### 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

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).