

concerning Regulatory Circular RG03-66 since it has been issued, nor is the Exchange aware of any negative consequences resulting from the application of the margin requirements permitted by Regulatory Circular RG03-66.

## 2. Statutory Basis

The CBOE represented that the proposed Regulatory Circular clarifies that the Exchange's current margin rules extend to complex option spreads, thereby allowing investors to more efficiently implement these strategies. As such, the CBOE believes that the proposed Regulatory Circular interpretation of Exchange Rule 12.3 is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

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

CBOE 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*

CBOE neither solicited nor received written comments with respect to the proposed rule change.

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

The foregoing proposed rule change has become effective upon filing on August 6, 2004, pursuant to Section 19(b)(3)(A) <sup>7</sup> of the Act and Rule 19b-4(f)(6) <sup>8</sup> thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) Does not impose any significant burden on competition; and (3) Does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.<sup>9</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>10</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. CBOE has requested that the Commission waive the 30-day operative waiting period to permit CBOE to continue the Pilot without interruption while the Commission determines whether to approve permanent implementation of the subject margin requirements.

The Commission, consistent with the protection of investors and the public interest, has waived the 30-day requirement that the proposed rule change not become operative for 30 days after the date it was filed.<sup>11</sup> The Commission believes that granting immediate effectiveness to the proposed rule change is appropriate because it will allow the Pilot to continue without interruption after it would otherwise have expired on August 7, 2004. 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 the furtherance of the purposes of the Act.<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. Please include File Number SR-CBOE-2004-56 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission,

of its intent to file the proposed rule change at least five business days prior to the filing date.

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

<sup>11</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(C).

450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-CBOE-2004-56. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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-CBOE-2004-56 and should be submitted on or before September 7, 2004.

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. 34-50162; File No. SR-NASD-2004-078]

### **Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish Certain Qualification Requirements for Supervisors of Research Analysts**

August 6, 2004.

On May 10, 2004, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), a proposed rule change

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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> As required under Rule 19b-4(f)(6)(iii), the CBOE provided the Commission with written notice

to establish certain qualification requirements for supervisors of research analysts pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> The proposed rule change was published for comment in the **Federal Register** on June 23, 2004.<sup>3</sup> The Commission received no comments on the proposal.

The proposed rule change amends NASD Rule 1022 to require supervisors of research analysts to pass the regulatory part (Series 87) of the Research Analyst Qualification Examination or the Series 16 Supervisory Analyst Examination administered by the New York Stock Exchange ("NYSE").

NASD Rule 1050, which became effective on March 30, 2004, requires all persons associated with a member who are to function as research analysts to be registered as such with NASD and pass a qualification examination.<sup>4</sup> Those individuals required to be registered as research analysts must pass the Research Analyst Qualification Examination (Series 86/87) or qualify for an exemption. The Series 86/87 consists of two parts: an analysis part (Series 86) that tests fundamental analysis and valuation of equity securities, and a regulatory part (Series 87) that tests knowledge of applicable rules.

In light of these new research analyst registration requirements and the scope and importance of the comprehensive analyst conflict rules that have been implemented recently, the proposal requires supervisors of research analysts to pass the regulatory part (Series 87) of the Research Analyst Qualification Examination or, for dual NASD-NYSE members, the NYSE Supervisory Analyst Examination (Series 16).

Under the proposed rule change, dual members would be required to have a principal who has passed either the Series 24 and the Series 87 or the Series 16 to supervise the content of research. If the member elects to have a Series 16 be responsible for supervising the content of research, then a Series 24 principal who has also passed either the Series 87 or the Series 16 would be responsible for supervising the conduct of both the Series 16 supervisory analyst and the research analyst.

The Commission believes that the proposed rule change should provide

NASD members that are also members of the NYSE some flexibility in their supervisory structure for research analysts by allowing dual members to permit a principal who has passed either the Series 24 and the Series 87 or the Series 16 to supervise the content of research.

The Commission also believes that the proposal should promote investor protection by ensuring that persons responsible for reviewing and approving research reports and for providing general supervision of the conduct of research analysts have demonstrable knowledge of NASD Rule 2711 and other analyst conflict of interest laws, rules, and regulations.

For the above reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association<sup>5</sup> and, in particular, the requirements of Section 15A of the Act<sup>6</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Sections 15A(b)(6) and 15A(b)(9) of the Exchange Act.<sup>7</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-NASD-2004-078) be, and hereby is, approved.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50173; SR-NYSE-2004-05]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to Enhancements to the Exchange's Existing Automatic Execution Facility (NYSE Direct+)

August 10, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

<sup>5</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>6</sup> 15 U.S.C. 78o-3.

<sup>7</sup> 15 U.S.C. 78o-3(b)(6) and (9).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 9, 2004, 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 NYSE. On August 2, 2004, the NYSE 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, as amended, from interested persons.

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

The Exchange proposes to create a hybrid market, where investors would be able to choose how their orders are executed. Investors seeking the speed and certainty of an automatic execution, as well as investors who prefer the opportunity for price improvement provided by an auction market, would both be able to obtain executions in accordance with their preferences on the NYSE. This would be accomplished by, among other things, enhancements to the Exchange's existing automatic execution facility, NYSE Direct+<sup>®</sup> ("Direct+"), making its speed 1 and execution certainty available to a wider variety of orders. The Exchange also proposes to create a new order type—an Auction Limit ("AL") order—and to modify the way market orders would be handled in the auction market, providing an opportunity for price improvement for those who desire it. The proposed amendments also address "sweeps," "locked" and "crossed" markets, and "trade-throughs" and seek to make Direct+, currently a pilot program, permanent.<sup>4</sup>

Below is the text of the proposed rule change, as amended. Proposed new

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

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

<sup>3</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 30, 2004, and accompanying Form 19b-4, which replaces the original filing in its entirety ("Amendment No. 1").

<sup>4</sup> The Exchange states that the proposed amendments reflect significant changes to the structure of the Exchange's market. As such, there have been numerous valuable discussions between the Exchange with Exchange customers, members, and member organizations concerning the concepts underlying these proposals. As the Exchange continues to evaluate and refine these proposals, the Exchange represents that it will continue to reach out to its constituents for their input and analysis and will make appropriate amendments as necessary.

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

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

<sup>3</sup> Securities Exchange Act Release No. 49857 (June 15, 2004), 69 FR 35106 (June 23, 2004).

<sup>4</sup> See Securities Exchange Act Release No. 48252 (July 29, 2003), 68 FR 4575 (August 4, 2003).