

("Commission" or "SEC") the proposed rule change as described in items I, II, and III below, which Items have been prepared by CBOE. 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

CBOE proposes to amend CBOE Rule 6.8(b) to allow either the Exchange's Vice Chairman or the Chairman of the appropriate Market Performance Committee ("MPC") to allow transactions on the Exchange's Retail Automated Execution System ("RAES") to be executed at the price of the best bid or offer in the Exchange book. Currently, CBOE Rule 6.8(b) requires both these individuals to make this decision. The text of the proposed rule change is available at the Office of the Secretary, CBOE 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, CBOE included statements concerning the purpose of, and statutory 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, 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

The purpose of the proposed rule change is to permit either the Exchange's Vice Chairman or the Chairman of the appropriate MPC to individually allow RAES to execute orders at the price of the best bid or offer in the Exchange's Book. Under current CBOE Rules, such a decision must be made jointly. Absent such a joint determination, Exchange Rules do not permit a trade to be executed on RAES when the prevailing market bid or offer equals the best bid or offer on the Exchange's customer limit order book ("Book"), and instead requires that related RAES orders be rejected and re-routed by the Order Routing System to the broker for manual representation.

For practical reasons, CBOE believes that it is necessary to have only one

person make this decision instead of two. On the infrequent occasion when the prevailing market bid or offer equals the best bid or offer on the Exchange's customer limit order book, immediate action is required. In these situations, it is often extremely difficult to contact both people. For instance, either Vice Chairman or Chairman may not be in the vicinity of the Exchange or reachable; however, in this situation usually the other individual is reachable.

2. Statutory Basis

The Exchange believes that the proposed rule change enhances its ability to make competitive, fair and orderly markets in options. The Exchange believes that the proposed rule change is consistent with Section 11A(a)(1)(C)(ii)³ of the Act in that it assures fair competition among markets. In addition, CBOE believes that the proposed rule change is in furtherance of Section 6(b)(5) of the Act⁴ 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 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 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.

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 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.

³ 15 U.S.C. 78k-1(a)(1)(C)(ii).

⁴ 15 U.S.C. 78f(b)(5).

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 should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and 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 at 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-CBOE-98-44 and should be submitted by November 24, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40605; File No. SR-NYSE-98-26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc., Relating to Delisting of Securities

October 26, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 9, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.³

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The proposal was originally submitted on August 24, 1998. However, the proposed rule

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 is proposing to conform NYSE Rule 499, governing the suspension and delisting of securities,

to the standards in Paragraph 802 of the Exchange's Listed Company Manual ("Manual"). The text of the proposed rule change is as follows: new text is italicized and deleted text is bracketed:

Suspension From Dealings or Removal From List by Action of the Exchange

* * * * *

Rule 499. Securities admitted to the list may be suspended from dealings or removed from the list at any time.

*** * * Supplementary Material**

.10 No change.
* * * * *

.20 NUMERICAL AND OTHER CRITERIA.—

* * * * *

The Exchange would normally give consideration to suspending or removing from the list a security of a company when:

- 1. [Number of shareholders is less than:] *Number of total stockholders is less than* 400; or
Number of total stockholders is less than [Holders of 100 shares or more (or of a unit of trading if less than 100 shares)]. 1,200 and
- Average monthly trading volume (for most recent 12 months) is less than* 100,000 shares.

The number of beneficial holders of stock held in the name of NYSE member organizations will be considered in addition to holders of record.

- 2. Number of publicly-held shares* is less than 600,000**
*Shares held by directors, officers, or their immediate families and other concentrated holdings of 10% or more are excluded in calculating the number of publicly-held shares.

**If the unit of trading is less than 100 shares, the requirement relating to the number of shares publicly held shall be reduced proportionately.

- 3. Aggregate market value of publicly-held shares,* subject to adjustment** depending on market conditions is less than. \$8,000,000
- [, within the following limits

 - Maximum \$5,000,000
 - Minimum \$2,500,000]

* * * * *

- 4. Aggregate market value of shares outstanding (excluding treasury stock) is less than \$12,000,000 [\$8,000,000] and
- Average net income after taxes for past 3 years is less than \$600,000
- 5. Net tangible assets available to common stock are less than \$12,000,000 [\$8,000,000] and
- Average net income after taxes for past 3 years is less than \$600,000
- 6. For companies that, on listing, demonstrated earning power by meeting the listing standards requiring minimum levels of adjusted net income, and for companies that are currently valued on a "cash flow" basis, as described in Para. 102.01 of the Listed Company Manual: Aggregate market value of shares outstanding (excluding treasury stock) is less than. \$25,000,000
- And average adjusted net income for past 3 years is less than \$6,500,000

{Renumber existing paragraphs 6 through 19 as 7 through 20, respectively.}

.30-.50 No change.

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, 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 File No. SR-NYSE-96-07 (the "1996 Filing") the NYSE proposed, and the Commission approved, changes to Paragraph 802 of the Manual to add a new continued listing standard for companies that list pursuant to the Exchange's adjusted net income standard in Paragraph 102.01 of the Manual, or that are currently valued on a cash flow basis.⁴ The 1996 Filing also raised certain other NYSE continued listing standards. Specifically, the 1996 Filing added new delisting criteria for "cash flow" companies, requiring that such companies have average adjusted net income for the most recent three

years of at least \$6.5 million and an aggregate market value of the company's shares of at least \$25 million. That filing also: raised the continued listing criteria to \$8 million in aggregate market value of publicly-held stock (from \$5 million); raised the market value and net tangible asset tests, when coupled with an earnings test, to \$12 million (from \$8 million); and replaced the test that a company have at least 1,200 holders of at least 100 shares with a new continued listing test that a company have at least 1,200 total holders coupled with an average monthly trading volume of at least 100,000 shares for the most recent 12 months. In addition, the 1996 Filing added a stand-alone continued listing test that a company have a minimum of 400 total stockholders regardless of its trading volume.

change was amended to make changes to the proposed rule language and provide a greater basis for the proposed rule change. See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Michael Walinkas, Deputy Associate Director, Division of Market Regulation ("Division"), Commission, dated October 7, 1998

("Amendment No. 1"). Subsequently, the Exchange agreed to make an additional technical change to its rule language by replacing the phrase "this Listed Company Manual" with "the Listed Company Manual" in Rule 499.20(6). Telephone conversation between N. Amy Bilbija, Counsel, NYSE, and Terri L. Evans, Attorney, Division, Commission on

October 22, 1998. Because the Exchange requested immediate effectiveness under Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A), the proposed rule change is deemed filed as of the date of filing of Amendment No. 1.
⁴ See Exchange Act Release No. 37307 (June 12, 1996); Amendment No. 1, *supra* note 3.

Those standards currently are in effect.⁵ The purpose of this proposed rule change, as amended, is merely to conform Rule 499 to the standards in effect as set forth in the Manual.⁶

2. Statutory Basis

The Proposed rule change is consistent with Section 6(b)(5) of the Act,⁷ because it is 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 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 proposed rule change does not 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 not solicited comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The proposed rule change is concerned solely with the administration of the Exchange and therefore, has become effective pursuant to Section 19(b)(3) of the Act⁸ and Rule 19b-4(e)(3) thereunder.⁹ 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.

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 should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE.

All submissions should refer to File No. SR-NYSE-98-26 and should be submitted by November 24, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40609; File No. SR-OCC-98-12]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees

October 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 30, 1998, 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.

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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

The proposed rule change amends OCC's first level clearing fees.

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. 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.²

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

OCC proposes to reduce the first level clearing fee it charges for established products for the fourth quarter of 1998. During the first three quarters of 1998, OCC has experienced a record volume of options cleared. As a result, OCC proposes to reduce the first level clearing fee for the remainder of 1998 from nine cents (\$.09) to eight cents (\$.08) per contract per side for all contracts cleared between October 1, 1998, through and including December 31, 1998. OCC similarly reduced its clearing fees during the fourth quarter of 1997. OCC believes that the foregoing fee change will assure each clearing member a discount on clearing fees and will enable clearing members to realize immediately the benefits of reduced fees without having to wait for a rebate by OCC of such fees and without adversely affecting OCC's ability to maintain an acceptable level of retained earnings.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act³ and the rules and regulations thereunder because it allocates fees among clearing members in an equitable manner.

(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.

² The Commission has modified the text of the summaries prepared by OCC.

³ 15 U.S.C. 78q-1.

⁵ See Amendment No. 1, *supra* note 3.

⁶ Currently pending before the Commission is a rule filing proposing additional changes to, among other things, the Exchange's continued listing standards, including Rule 499. See File No. SR-NYSE-98-21. If approved by the Commission, those standards would supersede the standards contained in this filing.

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78s(b)(3).

⁹ 17 CFR 240.19b-4(e)(3).