

the Exchange's Minor Rule Violation Plan ("MRVP" or "Plan").⁵ Currently, the Minor Rule Violation Panel ("Panel") imposes late filing charges according to the following fine schedule.⁶

Days late	Amount
1-30	\$100
31-60	200
61-90	400

The Exchange is now proposing to subject the late filing violations to the standard recommended fine schedule applicable to most other violations governed by the Plan. The standard recommended fine schedule imposes a \$100 fine for the first violation within a rolling twelve month period and a \$500 fine and \$1000 fine for the second and third such violations.

Unlike the current fine schedule, the proposed fine schedule would not expressly increase fines based on the number of days a particular report was filed late. However, the Exchange expects the Panel to exercise its discretion to enhance sanctions proportionally for reports that are more or less significantly overdue.⁷

III. Discussion

1After careful review, 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 exchange.⁸ In particular, the Commission believes that the proposal is consistent with Sections 6(b)(6)⁹ and 6(b)(7)¹⁰ of the Act. The proposal is consistent with the requirements of Sections 6(b)(6) and 6(b)(7) in that it provides fair procedures and guidelines that enable

⁵ On May 30, 1996 the Commission approved a proposed rule change that established the Exchange's MRVP. See Securities Exchange Act Release No. 37255 (May 30, 1996), 61 FR 28918 (June 6, 1996) ("Approval Order").

⁶ This fine schedule is also set forth under Exchange Article XI, Rule 4, Interpretation and Policy .02, which will be similarly amended to eliminate the fine schedule.

⁷ See Amendment No. 1, *supra* note 3.

⁸ In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ Section 6(b)(6) requires the Commission to determine that the rules of the exchange provide that its members and persons associated with members shall be appropriately disciplined for violating the federal securities laws or the rules of the exchange by fine or other fitting sanction. 15 U.S.C. 78f(b)(6).

¹⁰ Section 6(b)(7) requires the Commission to determine that the rules of the exchange provide a fair procedure for disciplining its members and persons associated with members. 15 U.S.C. 78f(b)(7).

the Exchange to appropriately discipline its members and persons associated with members for violations of the rules of the exchange.

The Commission notes particularly that the fine schedule under the Plan is merely a recommended fine schedule, and that fines of more or less than the recommended fines, up to a maximum of \$2500, may be imposed in appropriate circumstances.¹¹ The Commission expects the Panel to exercise its discretion to deviate from the Plan's recommended fine schedule in determining fine amounts, as appropriate. Further, the Commission expects the Exchange to continue to resolve more serious violations of the rules through use of its formal disciplinary procedures, such as in the case of an egregious violation or a habitual offender.

IV Conclusion

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Sections 6(b)(6) and 6(b)(7) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-CHX-99-12) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42184; File No. SR-NYSE-99-40]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Amending Exchange Rule 123B To Prohibit Specialists From Charging Commissions on SuperDot Orders

November 30, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,²

¹¹ See Approval Order, *supra* note 5.

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

notice is hereby given that on October 4, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change. The Exchange filed Amendment No. 1 on November 17, 1999³ and Amendment No. 2 on November 29, 1999.⁴ The proposed rule change, as amended, is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change for a 90-day pilot to expire on February 26, 2000.

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

The Exchange proposes three amendments to Exchange Rule 123B. The first relates to commission-free execution of orders received by specialists through the SuperDOT System pursuant to Rule 123B(b)(1); the second sets forth the Exchange's policy under Rule 123B(b)(3) with respect to the timeframe in which specialists must issue an execution report for stopped orders; and the third clarifies the treatment of canceled and replaced orders. The text of the proposed rule change is available at the Exchange and at 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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

³ In Amendment No. 1 the Exchange increased the timeframe for commission-free orders executed through the Exchange's SuperDOT System from two minutes to five minutes. See letter from James E. Buck, Senior Vice President and Secretary, Exchange, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated November 16, 1999.

⁴ In Amendment No. 2, the Exchange requested that the Commission approve the proposal on a pilot basis for 90 days. See letter from James E. Buck, Senior Vice President and Secretary, Exchange, to Richard Strasser, Assistant Director, Division, Commission, dated November 29, 1999.

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

1. Purpose

The Exchange proposes the following three amendments to Rule 123B.

Commission-Free Execution. Under Exchange Rule 123B(b)(1), specialists may not charge floor brokerage (*i.e.*, a commission imposed on exchange floor brokers) for executing market and marketable limit orders⁵ received by means of the Exchange's automated order routing system known as SuperDOT. The Exchange proposes to amend Rule 123B and add .10 in the Supplementary Material to the Rule to extend the no commission policy to all orders received by specialists via SuperDOT that are executed within five minutes of receipt. This proposal would extend the commission-free execution to include limit orders that are not marketable at the time of receipt by the specialist but that are executed within the five-minute timeframe. The Rule will be amended to eliminate reference to "market" and "marketable limit orders" since all orders received through SuperDOT will be eligible for commission-free execution. The provision allowing the specialist to charge a commission on orders to sell short is also being eliminated.

Execution of Guaranteed Orders. Orders received by specialists via SuperDOT must be executed in accordance with Exchange auction market procedures. Specialists must expose system orders to the trading crowd, and system orders are deemed to be "held" orders. A specialist may be deemed to have "missed the market" if any such order is not executed against prevailing contra side interest in the market at the time the order is received.⁶

Exchange specialists may "stop" and order in an attempt to better the price that order would receive in the current market. Under Exchange Rule 116, a stop by the specialist at a specific price guarantees that the order will receive that price if the specialist is unable to improve it.⁷

⁵ A marketable limit order is defined as an order with a limit price which is at or better than the prevailing quotation at the time the order is received by the specialist. See Exchange Rule 123B(b)(1).

⁶ If a specialist has "missed the market" and the order is executed outside of the five-minute timeframe, the specialist will not be allowed to charge floor brokerage. Telephone conversation between Don Siemer, Director, Market Surveillance, Exchange, and Marc McKayle, Attorney, Division, Commission, on October 20, 1999.

⁷ For orders that are stopped within the five-minute timeframe from receipt but executed outside

Exchange Rule 123B(b)(3) provides that the Exchange's SuperDOT system will issue a report of execution at the stop price if the specialist has not done so "within such time period as the Exchange may specify from the time the stop was granted." The Exchange proposes to amend Rule 123B to specify in .10 in the Supplementary Material to the Rule that the time period after which a system-generated execution report will be issued at the stop price will be two minutes. This proposed provision should help to ensure the timely execution of orders that are stopped.

Canceled and Replaced Orders. The Exchange proposes to add .20 in the Supplementary Material to Rule 123B to clarify that if an order with the specialist is canceled and replaced, the replacement order is considered a new order for purposes of the Rule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5)⁸ in that it is designed 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.

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

The Exchange reviewed the proposed rule change with members and organizations representing various constituencies of the Exchange. No written comments were solicited or received with respect to the proposed rule change.

III. 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.,

of the five-minute timeframe from receipt, specialists will not be allowed to charge floor brokerage. As with all stopped orders, if the order is executed at a price less favorable than the stopped price, the specialist will be liable for the differences in the two prices. *Id.*

⁸ 15 U.S.C. 78f(b)(5).

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-99-40, and should be submitted by December 29, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed pilot is consistent with the requirements of the Act.⁹ In particular, the Commission finds the proposal is consistent with Section 6(b)(5)¹⁰ of the Act. Section 6(b)(5) requires, among other things, that the rules of the exchange be designed to facilitate transactions in securities and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public.

The Commission believes that the proposed rule change, by reducing transaction costs associated with SuperDot orders, should facilitate such transactions. Also, clearly identifying the time within which an execution report must be issued for stopped orders should help to ensure that timely execution of stopped orders takes place, thereby providing for the efficient execution of orders received through the SuperDOT system. Finally, because new orders are granted specific execution rights, it is important to clearly identify what will be considered a new order for purposes of rule 123B.

In light of the cost-saving benefits that will flow to market participants entering SuperDot orders, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

It is therefore ordered, pursuant to 19(b)(2) of the Act,¹¹ that the proposed

⁹In addition, pursuant to Section 3(f) of the Act, the Commission has considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(2).

rule change (SR-NYSE-99-40) is approved through February 26, 2000.¹²

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42195; File No. SR-OCC-99-09]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend OCC's By-Laws and Rules To Merge the Currently Separated Equity and Non-Equity Elements of the OCC's Clearing Fund

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on September 24, 1999, 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 have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

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

The proposed rule change revises OCC's By-Laws and Rules to merge the equity and non-equity elements of the OCC's clearing fund into one clearing fund with contributions based on total margin requirements. The minimum contribution of the combined clearing fund will be \$150,000.

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.²

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

The purpose of the proposed rule change is to merge the currently separated equity and non-equity elements of the OCC's clearing fund, referred to in OCC's By-Laws and Rules as the "stock clearing fund" and the "non-equity securities clearing fund," into one combined clearing fund with contributions based on total margin requirements. The minimum contribution of the combined clearing fund will be \$150,000. The rule change also changes the language of Article VIII of the By-Laws and Chapter 10 of the Rules and attempts to conform the language of Article VIII, Section 5(a) more closely to that of Article VIII, Section 1, without changing the substance of those provisions.

OCC believes that for some time the division of the clearing fund into two elements has served no useful purpose. In 1982, when OCC first began clearing non-equity products, including treasury, currency, and stock index options, OCC instituted a separate non-equity element to the clearing fund to limit the impact of a member default in one product base, either equity or non-equity, on members trading only the other product base. The element of the clearing fund applicable to the product(s) involved in the default would be utilized first; only after that element was exhausted would the other element be used. Beginning in 1986, with the introduction of the Theoretical Intermarket Margin System ("TIMS") for non-equity products, some margin offsets were allowed between equity and non-equity products. Such offsets further expanded following the implementation of TIMS for equity products in 1991. The blurring of the distinction between equity and non-equity margin requirements and the integration of OCC's equity and non-equity systems in general, has reached a level such that clearing members only have a single margin requirement, which is used to determine the size of each element of the clearing fund each month.

According to OCC, almost all clearing members already contribute to both the equity and non-equity elements of the clearing fund and thus are subject to the \$75,000 minimum contribution for each element. For those members, a merger of the two elements into one combined

clearing fund would cause no aggregate change in the size of their clearing fund contribution. Five clearing members clear either only equity or only non-equity products and therefore contribute to only one element of the clearing fund. Three of these members, however, would not have their contributions affected by the proposed merger because their current activity puts their contributions well above the proposed \$150,000 minimum. Thus, the merger of the two elements into one clearing fund would not materially change the overall size of the clearing fund and would only have a minor impact on a small number of members.

Consistent with Article VIII, Section 2 of OCC's By-Laws, OCC will issue a memorandum to its clearing members at least five business days prior to the effective date of the rule change advising them of the change in the minimum contribution and advising them of their ability to withdraw from membership should they choose not to make the required clearing fund contribution.

OCC believes that the proposed rule change is consistent with Section 17A of the Act of promoting the prompt and accurate clearance and settlement of securities transactions because the rule change eliminates the unnecessary subdivision of the clearing fund.

(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 Act

Within thirty-five 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 ninety 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 OCC 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.

¹² The approval of the pilot should not be interpreted as suggesting that the Commission is predisposed to approving the proposal permanently.

¹³ 17 CFR 200.30-3(9)(12).

¹ 15 U.S.C. 78s(b)(1).

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