

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 No. SR-NASD-2003-164 and be submitted by May 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49536; File No. SR-NYSE-2003-37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. To Amend Exchange Rule 124 To Change the Way Odd-Lot Orders Are Priced and Executed Systemically

April 7, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on November 18, 2003, 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. On March 31, 2004, the Exchange amended the proposed rule change.³ 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 proposed rule change seeks to amend NYSE Rule 124 to change the way odd-lot orders are priced and executed systemically. Below is the text

of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Rule 124. (a) Except as provided below, all orders for less than the unit of trading ("odd-lot orders") shall be received, processed, and executed by means of the Exchange system designated for such purpose ("the System"). The specialist for the subject security shall be the contra party to all such executions. No differential or commission may be charged with respect to any odd-lot order received by the System. All odd-lot orders entered for execution to the System shall contain the appropriate account type identification code according to specified account type categories in accordance with the reporting requirements of Rule 132.

(b) Market Orders. Odd-lot market orders received by the System shall be executed in time priority of receipt by the System at the price of the next round-lot transaction on the Exchange in the subject security following receipt of the orders by the System, subject to the following:

(i) Odd-lot buy orders and odd-lot sell orders will be executed at the price of such round-lot transaction with the specialist as the contra side to the extent that such odd-lot orders total an equal number of shares bought and sold.

(ii) The total number of additional shares of odd-lot orders executed at the price of such round lot transaction shall not exceed the number of shares of such round-lot transaction, except that an odd-lot order which would otherwise receive a partial execution shall be executed in full.

(iii) Odd-lot market orders not executed pursuant to paragraph (i) or (ii) above shall be executed, in time priority order, at the price of the subsequent round-lot transactions, subject to the same procedures stated in paragraph (i) and (ii) as to volume of round-lot transactions.

(iv) Any odd-lot market order not executed within 30 seconds of receipt by the System pursuant to paragraphs (i), (ii) or (iii) above shall be executed, in the case of an order to buy, at the price of the adjusted ITS offer after 30 seconds, and in the case of an order to sell, at the price of the adjusted ITS bid after 30 seconds.

(v) Odd-lot market orders entered before the opening of the subject security shall be executed at the price of the opening transaction.

(vi) If odd-lot market orders are entered within 30 seconds of the close of trading and have not been executed

prior to the closing transaction, an odd-lot market order to buy shall be executed at the price of the adjusted ITS offer at 4:00 p.m. (or such other closing time), and an order to sell shall be executed at the price of the adjusted ITS bid at 4:00 p.m. (or such other closing time).

(vii) An odd-lot market order to sell short shall be executed at the price of the next sale in the round-lot market on the Exchange following entry of the order which is higher than the last different round-lot price.

(c) Limit Orders. Odd-lot limit orders received by the System shall be executed in time priority of receipt by the System at prices of round-lot transactions effected subsequent to receipt of the orders by the System, that are at or better than the limit prices on the odd-lot orders, subject to the principles of paragraphs (b) (i), (ii) and (iii) above.

(d) Limit Orders to Sell Short. An odd-lot limit order to sell short shall be executed at the price of the first round-lot transaction on the Exchange which is at or above the specified limit of the order, and which is also higher than the last different round-lot transaction (a "plus" or "zero plus" tick).

(e) Market Stop Orders. Odd-lot market stop orders shall be executed as follows:

(i) Buy Stop Orders. A buy stop order shall become a market order when a round-lot transaction takes place at or above the stop price. The order shall then be filled at the price of the next round-lot transaction, as provided in (b) above.

(ii) Sell Stop Orders, Marked "Long". A sell stop order marked "long" shall become a market order when a round-lot transaction takes place at or below the stop price. The order shall then be filled at the price of the next round-lot transaction, as provided in (b) above.

(iii) Sell Stop Orders, Marked "Short". A sell stop order marked "short" shall become a market order when a round-lot transaction takes place at or below the stop price. The order shall then be filled at the price of the next round-lot transaction, which is higher than the last different round-lot transaction (a "plus" or "zero plus" tick) as provided in (b) above.

(f) Limit Stop Orders. Odd-lot stop limit orders shall be executed as follows:

(i) Buy Stop Limited Orders. A buy stop limited order shall become a limited order when a round-lot transaction takes place at or above the stop price. The order shall then be filled in the manner prescribed in (c) above for handling a limited order to buy.

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

(ii) *Sell Stop Limited Orders, Marked "Long". A sell stop limited order marked "long" shall become a limited order when a round-lot transaction takes place at or below the stop price. The order shall then be filled in the manner prescribed in (c) above for handling a limited order to sell.*

(iii) *Sell Stop Limited Orders, Marked "Short". A sell stop limited order marked "short" shall become a limited order when a round-lot transaction takes place at or below the stop price. The order shall then be filled in the manner prescribed in (d) above for handling a limited order to sell.*

[(A) Any market order to purchase or sell a security in an amount less than the unit of trading (an odd-lot order) which is transmitted for execution to a member organization engaged in the odd-lot business or its agent shall be executed, unless otherwise provided herein, at the price of the adjusted ITS bid (in the case of an order to sell) or adjusted ITS offer (in the case of an order to purchase) in the security at the time the order is received by the Exchange system designated to process odd-lot orders ("the odd-lot system"). In instances in which quotation information is not available, e.g., the quotation collection or dissemination facilities are inoperable, or the market in a security has been determined to be in a "non-firm mode" (as defined in Rule 60(c)(2)), standard, regular way odd-lot market orders will be executed by means of the "odd-lot system" at the price of the next Exchange round lot sale or will be executed by the member organization designated by the Exchange to act as market maker for odd-lot orders in the subject security at a price deemed appropriate under prevailing market conditions. In instances where the quote in a security does not meet odd-lot system guidelines, standard, regular way odd-lot market orders will be executed by means of the next Exchange round lot sale or the next Exchange quote that is within the odd-lot system guidelines, whichever occurs first, or will be executed by the member organization designated by the Exchange to act as market maker for odd-lot orders in the subject security at a price deemed appropriate under prevailing market conditions. Guidelines for quotes to be utilized in the odd-lot system will be as from time to time determined by the Exchange and announced to the membership. A market order to sell marked "short exempt" shall be executed at the price of the adjusted ITS bid at the time the order is received by the "odd-lot system". All standard odd-lot market orders entered prior to the

opening of trading will automatically receive the opening price. No differential shall be charged on such transactions enumerated in this paragraph. These procedures shall apply to orders to buy on the offer and orders to sell on the bid marked "long".

A market order to sell marked "short" shall be filled at the price of the next sale in the round-lot market on the Floor of the Exchange following entry of the order which is higher than the last different round-lot price.

Other odd-lot orders, unless otherwise provided under Section B, shall be executed in the manner described below. The term "first transaction," unless otherwise provided herein, shall be regarded as the first round-lot transaction to occur in the security following the receipt of the order by the appropriate system. The term effective transaction used herein refers to the round-lot transaction on which the execution of an odd-lot order shall be based.

No differential may be charged on any odd-lot order transactions, for either market or limit orders, unless otherwise provided in this rule.

All odd-lot orders entered for execution to the "odd-lot system" shall contain the appropriate account type identification code according to specified account type categories in accordance with the reporting requirements of Rule 132.

Limited Orders

(1) Buy Limited Orders. The effective transaction for a limited order to buy shall be the first round-lot transaction which is at or below the specified limit. The order shall be filled at the price of the effective transaction.

(2) Sell Limited Orders, Marked "Long." The effective transaction for a limited order to sell marked "long" shall be the first round-lot transaction which is at or above the specified limit. The order shall be filled at the price of the effective transaction.

(3) Sell Limited Orders, Marked "Short." The effective transaction for a limited order to sell marked "short" shall be the first round-lot transaction which is at or above the specified limit of the order, and which is also higher than the last different round-lot transaction (a "plus" or "zero-plus" tick). The order shall be filled at the price of the effective transaction.

(4) Marketable limit orders shall be effected in accordance with the above procedures applicable to standard limit orders.]

[(5)] (g) Limited Order, "With or Without Sale." A limited order "With or Without Sale" shall be filled on an

effective round-lot transaction, or an effective bid or offer, whichever occurs first after the odd-lot broker receives the order. The order shall be filled as follows:

(i) If an effective round-lot transaction occurs first, a buy order shall be filled at the price of the effective transaction and a sell order shall be filled at the price of the effective transaction.

(ii) If an effective bid or an effective offer occurs before an effective round-lot transaction takes place, a buy order shall be filled at the effective offer price and a sell order shall be filled at the effective bid price.

Stop Orders

(1) Buy Stop Orders. A buy stop order shall become a market order when a round-lot transaction takes place at or above the stop price. The order shall then be filled at the price of the next transaction.

(2) Sell Stop Orders, Marked "Long." A sell stop order marked "long" shall become a market order when a round-lot transaction takes place at or below the stop price. The order shall then be filled at the price of the next transaction.

(3) Sell Stop Orders, Marked "Short." A sell stop order marked "short" shall become a market order when a round-lot transaction takes place at or below the stop price. The order shall then be filled at the price of the next transaction, which is higher than the last different round-lot price.

Stop Limited Orders

(1) Buy Stop Limited Orders. A buy stop limited order shall become a limited order when a round-lot transaction takes place at or above the stop price. The order shall then be filled in the manner prescribed for handling a limited order to buy.

(2) Sell Stop Limited Orders, Marked "Long." A sell stop limited order marked "long" shall become a limited order when a round-lot transaction takes place at or below the stop price. The order shall then be filled in the manner prescribed for handling a limited order to sell, marked "long."

(3) Sell Stop Limited Orders, Marked "Short." A sell stop limited order marked "short" shall become a limited order when a round-lot transaction takes place at or below the stop price. The order shall then be filled in the manner prescribed for handling a limited order to sell, marked "short."]

[(B)] (h) Other Types of Orders

Buying on Closing Offer-Selling on Closing Bids

(1) Buy "On Close." An order to buy "On Close" shall be filled at the price of the closing round-lot sale.

(2) Sell "On Close." An order to sell "On Close" marked "long" shall be filled at the price of the closing round-lot sell. An order to sell "On Close" marked "short" shall not be accepted.

Discretionary Orders

A discretionary order must not be accepted by an odd-lot dealer.

Orders for Manual Handling

A "seller's option" trade for delivery within not less than six business days nor more than sixty days following the day of the contract, an odd-lot order for cash, any orders for additional settlement terms as may be provided under Rule 64, and basis price orders as discussed below, shall be represented by the specialist and executed at a price deemed appropriate in accordance with the terms of the orders. A differential may be charged on such orders.

Basis Price Order

An order may be filled at the "Basis Price" provided a Basis Price has been established and the order was received at least a half hour before the close of the market, and marked "On Basis". "On Basis" market orders and "On Basis" limited price orders for which the Basis Price is effective shall be filled as follows.

(1) Buy Order. A buy order marked "Basis Price" shall be filled at the Basis Price plus any differential.

(2) Sell Order. A sell order marked "long" and marked "Basis Price" shall be filled at the Basis Price minus any differential. A sell order marked "short" may not be filled at the Basis Price.

(See Rule 124.10 for establishment of Basis Prices).

Supplementary Material

.10 Basis Prices.—Basis Prices shall be established by joint agreement of odd-lot dealers in 100-share unit stocks where there has been no round-lot sale during the trading session, the spread between the closing bid and offer prices is two points or more and an odd-lot dealer has been given an "On Basis" order. The Basis Price must be reviewed and approved by a Floor Official.

.20 "Delayed Sale," "Sold Sale."—When a "delayed sale" or "sold sale" occurs (printed on the ticker tape followed by the symbol "sold"), the odd-lot dealers shall make every effort to ascertain the approximate time the

transaction took place. If there is some doubt as to whether or not this transaction in any way affects the execution of an odd-lot order, the firm that entered the order should be notified, informed of the circumstances, and given the opportunity to accept or reject a report based on the transaction.

.30 Sales Not Printed on the Tape.—The customer of the odd-lot dealer must accept a report based on a sale which took place on the Floor, but which, through error, was not printed on the tape, if the odd-lot dealer filled and reported the customer's order at the time the sale occurred.

If the odd-lot dealer failed to fill the order at the time the sale occurred the customer should be offered the choice of accepting or refusing a report based on that sale.

.40 Orders to Be Reduced on Ex-Date.—Open buy limited orders and open stop orders to sell held by an odd-lot dealer prior to the day a stock sells ex-dividend, ex-distribution or ex-rights shall be handled in accordance with the procedures set forth in Rule 118 and the provisions in Rule 118.10, .20 and .21 in the Supplementary Material thereto.

.50 The odd-lot portion of PRL (part of round lot) orders will be executed at the same price as the round lot portion and will be processed through the round lot system.

.60 For the purposes of paragraph [(A)](b) of this Rule, the term "adjusted ITS bid" and "adjusted ITS offer" for a stock shall mean the highest bid and lowest offer, respectively, disseminated (i) by the Exchange or (ii) by another market center participating in the "Intermarket Trading System," as that term is defined in Rule 15 ("ITS and Pre-Opening Applications"); provided, however, that the bid and offer in another ITS market center will be considered in determining the adjusted ITS bid and adjusted ITS offer in a stock only if (A) the stock is included in ITS in that market center, (B) the size of the quotation is greater than 100 shares, (C) the bid or offer is no more than one-quarter dollar away from the bid or offer, respectively, disseminated by the Exchange, (D) the quotation conforms to the requirements of Rule 62 ("Variations"), (E) the quotation does not result in a locked market, as the term is defined in Rule 15A ("ITS Trade-Throughs and Locked Markets"), (F) the market center is not experiencing operational or system problems with respect to the dissemination of quotation information, and (G) the bid or offer is "firm," that is, members of the market center disseminating the bid or offer are not relieved of their obligations with respect to such bid or offer under

paragraph (c)(2) of Rule 11Ac1-1 pursuant to the "usual market" exception of paragraph (b)(3) of Rule 11Ac1-1.

.70 In instances in which quotation information is not available, e.g., the quotation collection or dissemination facilities are inoperable, or the market in a security has been determined to be in a "non-firm mode" (as defined in Rule 60(c)(2)), standard, regular way odd-lot market orders will be executed by means of the odd-lot System at the price of the next Exchange round lot sale or will be executed by the specialist in the subject security at a price deemed appropriate under prevailing market conditions. In instances where the quote in a security does not meet odd-lot system guidelines, standard, regular way odd-lot market orders will be executed by means of the next Exchange round lot sale or the next Exchange quote that is within the odd-lot system guidelines, whichever occurs first, or will be executed by the specialist in the subject security at a price deemed appropriate under prevailing market conditions. Guidelines for quotes to be utilized in the odd-lot system will be as from time to time determined by the Exchange and announced to the membership.

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

Odd-lot orders are orders for a size less than the standard unit (round-lot) of trading, which is 100 shares for most stocks, although some stocks trade in 10 share units. Currently, odd-lot orders do not enter the Exchange's auction market, but are executed systemically, with the specialist being assigned as the contra-party in all cases. Odd-lot market orders to buy (sell) are generally executed at the price of the adjusted ITS round-lot

offer (bid)⁴ at the time the Exchange's system receives the order. Odd-lot limit orders are generally executed at the price of the first round-lot transaction, subsequent to the receipt of the order by the system, that is at or better than the limit price on the order.

Specialists are not informed as to the amount of odd-lot shares that they are acquiring or selling at the time of execution in the odd-lot system. In some instances, a significant number of shares can be acquired by or sold before the specialist is alerted to the position change. When the odd-lot orders consist primarily of limit orders, the triggering round-lot trade could be for as little as 100 shares, yet it could have a significant impact on the specialist's market-making position.

Recently, new odd-lot trading strategies⁵ have emerged which have resulted in specialists having to assume large positions of aggregated odd-lot orders at prices that are not necessarily reflective of the prices such orders would have received had they been executed pursuant to the supply/demand dynamics of the round-lot auction market. For example, a round-lot trade as small as 100 shares may result in the specialist having to assume a position of thousands of shares in odd-lot orders entered in furtherance of professional trading strategies. According to the Exchange, this results in increased, significant financial risk to specialists, as the odd-lot system was established as a service for very small retail investor orders.

The Exchange believes that the most appropriate way to execute odd-lot orders, ultimately, is to represent them in the round-lot auction market, where they will interact with all other market interest, and be priced in accordance with supply/demand dynamics. In addition, odd-lot volume would be reported to the Consolidated Tape, resulting in "sunlight" with respect to this market activity, which is not currently reported anywhere.

However, representing odd-lot orders in the round-lot market will require technical changes to a number of

Exchange systems, and cannot be implemented in the near term. As an interim measure, the Exchange is proposing to change the way odd-lot orders are priced and executed systemically. Under the proposal, odd-lot orders would be priced and executed at the price of subsequent round-lot transactions, and in proportion to round-lot volume, as follows:

a. *Market Orders.* Odd-lot market orders would be executed in time priority at the price of the next round-lot transaction. Buy and sell orders would, in essence, be netted against one another and executed (the specialist is technically the contra party to the buy orders and to the sell orders, but since the specialist is buying the same amount that he or she is selling, there is no economic consequence to the specialist in this type of pairing-off of orders). Any imbalance of buy or sell orders would be executed against the specialist, but only up to the size of the round-lot transaction. Any market orders that do not receive an execution because of the volume limitation would be executed, in time priority order, at the price of the next round-lot transaction, again subject to the volume limitation. There would be a "timer" provision in the rule to provide that an order not executed within 30 seconds would be executed at the price of the adjusted ITS best round-lot bid (in the case of a sell order) or offer (in the case of a buy order).

Example: Assume that there are 6,000 shares of odd-lot market orders to buy and 4,000 shares of odd-lot market orders to sell. A round-lot transaction takes place at a price of \$20 for 1,000 shares. Buy orders up to 4,000 shares, in time priority will be netted against the 4,000 shares of sell orders, and these orders will be executed at a price of \$20. The next 1,000 shares of buy orders, in time priority, will be executed against the specialist at a price of \$20. The remaining 1,000 shares of buy market orders will be executed at the price of the next round-lot transaction, subject to the volume limitation of such next transaction. However, any market orders that are not executed within 30 seconds after they are entered will be systemically executed against the specialist at the adjusted ITS best bid or offer price in existence at that time.

b. *Limit Orders.* Odd-lot limit orders will be executed at the price of the first round-lot transaction that is at or better than the limit price of the order, subject to the volume limitation of the round-lot transaction. Odd-lot limit orders will be aggregated with odd-lot market orders for purposes of the volume limitation. Limit orders eligible for execution would be intermingled with

market orders for purposes of determining time priority, and buy and sell orders could be netted in the same fashion as market orders. As with odd-lot market orders, odd-lot limit orders which would otherwise receive a partial execution will be executed in full. There is no "timer" for odd-lot limit orders.

Example: Assume that a customer enters an odd-lot limit order to buy 50 shares at a price of \$20. A round-lot transaction takes place at a price of \$20 for 1,000 shares, but 1,000 shares of odd-lot market orders had time priority and are executed at a price of \$20 against the specialist. The odd-lot limit order will continue to reside in the odd-lot system and retain its time priority for execution after a subsequent round-lot transaction that is at or better than the limit price of the odd-lot order.

The Exchange believes that the method of pricing for odd-lot orders being proposed in the interim program, *i.e.*, using the next sale price, offers these orders the possibility of price improvement, whereas using the quotation does not. In addition, the proposed method of pricing is consistent with the Exchange's ultimate approach of integrating odd-lots in the round-lot auction market, in which orders are executed in, and at the prices of, transactions effected subsequent to the entry of the orders.⁶

Odd-lot sell orders which are short sales will be executed as follows. A short sale market odd-lot order will be eligible for execution at the price of the next sale in the round-lot market on the Exchange which is higher than the last different round-lot transaction. Short sale limit odd-lot orders will be eligible for execution at the price of the first round-lot transaction on the Exchange which is at or above the specified limit of the order, and which is also higher than the last different round-lot transaction.

Stop orders in odd-lots will be handled as they are today. The odd-lot portion of part round-lot orders will continue to be executed at the same price as the price of the first round-lot portion of the order. Procedures in use today regarding execution of odd-lot orders when Exchange quotes are not available, are non-firm, or do not meet system validations, are also being retained in the amended rule.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is

⁴ "Adjusted ITS bid" and "adjusted ITS offer" are defined in NYSE Rule 124.60.

⁵ The Exchange has identified and advised its membership that certain types of trading strategies are not valid for use with odd-lot orders. These include unbundling round-lot orders, failure to aggregate odd-lot orders into round-lots, entry of both buy and sell odd-lot limit orders for purposes of capturing the spread in a stock, index arbitrage and other patterns of activity that suggest day-trading. See NYSE Information Memos Nos. 91-29 (July 25, 1991), 94-14 (April 18, 1994), and 04-14 (March 19, 2004). The Exchange takes regulatory action where appropriate with respect to such trading practices.

⁶ The Commission notes that such an approach would be subject to a rule change filing under section 19(b) of the Act.

consistent with section 6(b) of the Act,⁷ in general, and further the objectives of section 6(b)(5),⁸ in particular, because 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, in general, 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 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 date of 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 the 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 change, as amended, 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 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NYSE-2003-37. 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, comments should be sent in hard copy or by e-mail

but not by both methods. 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. 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-2003-37 and should be submitted by May 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49533; File No. SR-ODD-2004-02]

Self-Regulatory Organizations; the Options Clearing Corporation; Order Granting Approval of Proposed Amendment to the Front Inside Cover Page of the Options Disclosure Document

April 7, 2004.

On March 9, 2004, the Options Clearing Corporation ("OCC") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Rule 9b-1 under the Securities Exchange Act of 1934 ("Exchange Act"),¹ five definitive copies of an amendment to its options disclosure document ("ODD") to amend the ODD's front inside cover page to add the Boston Stock Exchange, Inc. ("BSE").²

The ODD currently contains general disclosures on the characteristics and risks of trading standardized options. The front inside cover page contains a listing of the U.S. national securities exchanges that trade options issued by OCC. BSE currently trades options

issued by OCC.³ The proposed amendment would add BSE and its corporate address to the front inside cover page of the ODD so that it contains a current list of the U.S. exchanges that trade options issued by the OCC.

The Commission has reviewed the proposed amendment and finds that it complies with Rule 9b-1 under the Exchange Act.⁴ Rule 9b-1(b)(2)(i) under the Exchange Act⁵ provides that an options market must file five copies of an amendment or supplement to the ODD with the Commission at least 30 days prior to the date definitive copies are furnished to customers, unless the Commission determines otherwise, having due regard to the adequacy of information disclosed and the public interest and protection of investors.⁶ In addition, five definitive copies shall be filed with the Commission not later than the date the amendment or supplement, or the amended options disclosure document, is furnished to customers. The Commission has reviewed the proposed amendment, and finds it consistent with the protection of investors and in the public interest to allow the distribution of this document as of the date of this order.

It is therefore ordered, pursuant to Rule 9b-1 under the Exchange Act,⁷ that the proposed amendment (SR-ODD-2004-02), which would add BSE and its corporate address to the front inside cover page of the ODD, is approved. The Commission has also determined that definitive copies can be furnished to customers as of the date of this order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 04-8413 Filed 4-13-04; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Roundtable; Region II Regulatory Fairness Board

The Small Business Administration Region II Regulatory Fairness Board and

³ See Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (approving File No. SR-BSE-2002-15).

⁴ 17 CFR 240.9b-1.

⁵ 17 CFR 240.9b-1(b)(2)(i).

⁶ This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

⁷ 17 CFR 240.9b-1.

⁸ 17 CFR 200.30-3(a)(39).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 17 CFR 200.30-3(a)(12).

¹ 17 CFR 240.9b-1.

² See letter from Jean M. Cawley, First Vice President and Deputy General Counsel, OCC, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated March 9, 2004 ("OCC letter").