

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49804; File No. SR-NYSE-2004-25]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Listed Company Fee Exclusion for NYSEnet<sup>SM</sup> Data

June 3, 2004.

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 May 12, 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 and II below, which Items have been prepared by NYSE. On June 1, 2004, the NYSE amended the proposed rule change.<sup>3</sup> The NYSE has designated the proposed rule change as "non-controversial" under Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposed rule change effective upon filing with the Commission. 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 seeks to improve an information service that it provides to its listed companies ("NYSEnet") by adding certain Broker Volume<sup>SM</sup>, Liquidity Quote<sup>SM</sup> and OpenBook<sup>SM</sup> information to the service.

#### 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 NYSE 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 NYSE 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

NYSEnet is a web-based information service that the Exchange makes available to NYSE-listed companies. It delivers to a listed company information regarding the performance of the company's stock, including market data and real-time quotes relating to that stock, characteristics of the order flow for the stock, global share ownership information, and the like.

The Exchange believes that NYSEnet provides a valuable service to its listed companies. According to the Exchange, NYSEnet provides NYSE-listed companies with insight into market behavior that enables the companies to make decisions related to equity and capital, up-to-the-minute information regarding stock trading and market conditions, the ability to analyze reports on the performance of the stock of the company relative to its peers, information and analysis that facilitate the companies' ability to build a targeted investor relations strategy, and tools that enable the companies to manage strategically their investor relations and corporate events.

To make the service even more attractive to listed companies, the Exchange does not charge its listed companies for receipt of NYSEnet. Insofar as NYSEnet includes fee-liable market data, such as consolidated prices and quotes in the company's stock that the markets make available jointly pursuant to the CTA Plan and the CQ Plan, NYSE pays the applicable fees to the Consolidated Tape Association, an association comprised of all the registered securities exchanges and the NASD ("CTA"), on behalf of its listed companies.

The Exchange has now determined to enhance the NYSEnet service by adding to the information that NYSEnet makes available to a NYSE-listed company Broker Volume, Liquidity Quote and OpenBook information relating to the company's stock.

The Exchange's Broker Volume service provides subscribers with Exchange-prepared reports of broker share volume information. The Exchange is proposing to have the NYSEnet service provide a listed company with reports of broker share volume only in the listed company's stock.

The Exchange's Liquidity Quote service provides subscribers with depth-of-market information, including aggregated Exchange trading interest at a specific price interval below the best bid or above the best offer. The Exchange is proposing to have the NYSEnet service provide a listed company with Liquidity Quote information relating only to the company's stock.

The Exchange's OpenBook service provides subscribers with information regarding limit orders that Exchange specialists have received at prices at or below the best bid or at or above the best offer. The Exchange is proposing to have the NYSEnet service provide a listed company with OpenBook information relating only to limit orders for the company's stock.

After it has added Broker Volume, Liquidity Quote and OpenBook information to NYSEnet, the Exchange wishes to continue to provide the NYSEnet service to its listed companies without charge. The Commission has approved fees that the Exchange charges for the receipt of Broker Volume, Liquidity Quote and OpenBook services ("Exchange Fees").<sup>6</sup> As it does for other fee-liable information that the Exchange provides to listed companies through NYSEnet, the Exchange wishes to pay the applicable Exchange Fees on behalf of its listed companies.

Because the Exchange Fees for these services are imposed by and paid to the Exchange itself,<sup>7</sup> the Exchange's actual payment of those fees would mean that one department at the Exchange (Corporate Listings and Compliance) would merely be paying another department at the Exchange (Market Data) for a listed company's receipt of information through NYSEnet. As a consequence, the Exchange would deem that the fees have been paid on behalf of the listed companies for their receipt of listed company-related Broker Volume, Liquidity Quote and OpenBook information through the NYSEnet service.

By relieving its listed companies from the obligation to pay those fees for the

<sup>6</sup> For Broker Volume, see Securities Exchange Act Release Nos. 46847 (November 19, 2002); 67 FR 70799 (November 26, 2002) (SR-NYSE-2002-61) and 48060 (June 19, 2003); 68 FR 37889 (June 25, 2003) (SR-NYSE-2003-11); for Liquidity Quote, see Securities Exchange Act Release No. 47614 (April 2, 2003); 68 FR 17140 (April 8, 2003) (SR-NYSE-2002-55); for OpenBook, see Securities Exchange Act Release No. 44318 (December 7, 2001); 66 FR 64895 (December 14, 2001) (SR-NYSE-2001-42).

<sup>7</sup> This contrasts with the circumstances under which NYSE pays the fees for the provision to listed companies of real-time quote and last sale information, where the fees are ultimately paid not to the Exchange itself but to the CTA.

<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, Commission, dated May 28, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange restated the proposed rule change in its entirety.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

company-related information that they receive through NYSEnet, the Exchange believes that it would be enhancing the value of the service that it provides to its listed companies. In light of the listing fees that those companies pay to the Exchange, the Exchange believes that it would be reasonable for the Exchange to bear the fees involved, as it does in the case of the CTA fees described above.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>9</sup> in particular, in that Section 6(b)(4) requires that the exchange's rules provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

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

The Exchange believes that the proposed fee change would not impose any burden on competition that is not necessary or appropriate in the 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, and does not intend to solicit, comments regarding the 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

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> 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 furtherance of the purposes of the Act.<sup>12</sup>

The Exchange has requested that the Commission waive the 30-day operative delay to allow the Exchange to distribute the expanded NYSEnet information to listed companies as soon as possible. The Exchange represents that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. The Exchange notes that the proposed rule change merely notes that specified services are being provided to listed companies for no additional fee beyond those that they already pay in annual listing fees to the Exchange.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to provide NYSE-listed companies with the expanded NYSEnet information and thereby enhance the value of services that the NYSE provides to its listed companies.<sup>13</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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2004-25 on the subject line.

### *Paper comments:*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

<sup>12</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 1, 2004, the date on which the NYSE filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>13</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).

All submissions should refer to File Number SR-NYSE-2004-25. 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 NYSE. 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-NYSE-2004-25 and should be submitted on or before June 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49834; File No. SR-OCC-2004-06]

### Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Index Option Expiration Date Exercise Procedures

June 8, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 19, 2004, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>8</sup> 15 U.S.C. 78(f).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). The Commission notes that the Exchange provided written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.