

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 the filing also will be available for inspection and copying at the principal offices of Nasdaq. 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-NASD-2005-028 and should be submitted on or before April 4, 2005.

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. 34-51319; File No. SR-NYSE-2004-61]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Rescind a Type of Order Known as an Institutional XPress® Order Through Amendments to Exchange Rules 13, 60 and 72

March 4, 2005.

On October 28, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to rescind a type of order known as an Institutional XPress® Order ("XPress Order") by amending NYSE Rules 13 (Definitions of Orders), 60 (Dissemination of Quotation) and 72 (Priority and Precedence of Bids and Offers). On December 3, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed

rule change, as amended by Amendment No. 1, was published for notice and comment in the **Federal Register** on December 29, 2004.<sup>4</sup> The Commission received no comment letters on the proposal, as amended. On January 25, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>5</sup> This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>6</sup> and, in particular, the requirements of section 6 of the Act<sup>7</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act<sup>8</sup> 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, in general, to protect investors and the public interest.

According to the Exchange, the XPress Order has not been widely used<sup>9</sup> and if the Hybrid Market initiative<sup>10</sup> is approved and implemented, the need for XPress Orders will be further diminished. Therefore, the Commission believes that it is consistent with the Act to eliminate this type of order.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-NYSE-2004-61), as amended, be, and hereby is, approved.

proposed rule change was filed from Section 19(b)(3)(A) of the Act to Section 19(b)(2) of the Act.

<sup>4</sup> See Securities Exchange Act Release No. 50912 (December 22, 2004), 69 FR 78084.

<sup>5</sup> See Partial Amendment dated January 25, 2005 ("Amendment No. 2"). In Amendment No. 2, the Exchange made minor, technical corrections to the proposed rule text. Accordingly, this Amendment is not subject to notice and comment.

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> Telephone conversation between Cyndi N. Rodriguez, Special Counsel, Division of Market Regulation, Commission, and Jeffrey S. Rosenstock, Special Counsel, Market Surveillance, NYSE, on March 1, 2005. The NYSE also represented that the proposed rule change would be implemented on or about April 1, 2005. *Id.*

<sup>10</sup> See Securities Exchange Act Release Nos. 50173 (August 10, 2004), 69 FR 50407 (August 16, 2004) and 50667 (November 15, 2004), 69 FR 67980 (November 22, 2004) (SR-NYSE-2004-05).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51331; File No. SR-OCC-2002-16]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Unsegregation of Long Option Positions

March 8, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 9, 2002, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on December 12, 2002, and January 11, 2005, amended, 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.

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

OCC Rule 611 permits a clearing member to issue instructions to OCC to release from segregation a long option position carried in a customers' account or firm non-lien account provided that the clearing member is simultaneously carrying in such account for such customer a short position in option contracts and the margin requirement of the customer has been reduced as a result of carrying the long option position. The proposed rule change would amend Rule 611 to permit a clearing member to issue such spread instructions where one leg of the spread is a long option position and the other is a position in a security futures contract.

#### 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

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

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

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

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

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

<sup>3</sup> See Partial Amendment dated December 3, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange changed the basis under which the