

Trading Trust Issued Receipts Pursuant to Rule 19b-4(e)

The Commission further believes that adopting generic listing standards for these securities pursuant to Rule 19b-4(e) under the Act should fulfill the intended objective of the rule by giving Nasdaq the ability to potentially reduce the time frame for bringing these securities to the market, or for permitting the trading of these securities over-the-counter, and thus enhances investors' opportunities. The Commission notes that it maintains regulatory oversight over any products listed under the generic standards through regular inspection oversight.

The Commission finds that Nasdaq's proposal contains adequate rules and procedures to govern the listing and trading of Trust Issued Receipts pursuant to Rule 19b-4(e) on Nasdaq, or over-the-counter. All Trust Issued Receipt products listed under the generic standards will be subject to the full panoply of NASD and Nasdaq rules and procedures that now govern both the trading of Trust Issued Receipts and the trading of equity securities.

As described above, the Commission has previously approved similar Amex, NYSE, and other exchange rules that permit the generic listing and trading of individual Trust Issued Receipts. In approving these securities for trading, the Commission considered their structure, their usefulness to investors and the markets, and the SROs' rules and surveillance programs that govern their trading. The Commission concluded then, as it does now, that securities approved for listing under those rules would allow investors to: (1) Respond quickly to changes in the overall securities markets generally and for the industry represented by a particular trust; (2) trade, at a price disseminated on a continuous basis, a single security representing a portfolio of securities that the investor owns beneficially; (3) engage in hedging strategies similar to those used by institutional investors; (4) reduce transactions costs for trading a portfolio of securities; and (5) retain beneficial ownership of the securities underlying the Trust Issued Receipts.

The Commission notes that Nasdaq's proposed generic listing standards are substantially similar to the Amex, NYSE, and other SROs. The Commission therefore believes that Trust Issued Receipts that satisfy Nasdaq's proposed generic listing standards should produce the same benefits to Nasdaq and to investors.

Nasdaq has requested that the Commission find good cause for

approving the proposed rule change and Amendment No. 1 prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission believes that the Nasdaq's proposal to trade Trust Issued Receipts, over-the-counter, will provide investors with a convenient and less expensive way of participating in the securities markets. The Commission believes that the proposed rule change, as amended, could produce added benefits to investors through the increased competition between other market centers trading the product. Specifically, the Commission believes that by increasing the availability of Trust Issued Receipts as an investment tool, Nasdaq's proposal should help provide investors with increased flexibility in satisfying their investment needs, by allowing them to purchase and sell a single security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day.

As noted above, the Commission has approved the listing and trading of Trust Issued Receipts at the Amex, under rules that are substantially similar to the Amex, NYSE, and other exchange rules.²⁵ The Commission published the Amex rules in the **Federal Register** for the full notice and comment period. No comments were received on the proposed rules, and the Commission found them consistent with the Act.²⁶ Accordingly, the Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²⁷ that the proposed rule change (File No. SR-NASD-2003-32), as amended, be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁸

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47718; File No. SR-OCC-2002-27]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Relating to Non-Equity Options Exchanges

April 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 16, 2002, 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.

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

The proposed rule change incorporates two undertakings made by OCC as party of Filing No. SR-OCC-2002-02 as stated policies under section 1 of Article VII B, Non-Equity Exchanges, of OCC's By-Laws.

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

Filing No. OCC-2002-02³ set forth changes to OCC's by-laws to permit OCC to provide clearing services to new options exchanges without issuing new equity to such exchanges. In connection with the Commission's approval of SR-

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified parts of these statements.

³ Securities Exchange Act Release No. 34-46469 (September 6, 2002), 67 FR 58093 (September 13, 2002).

²⁵ See note 6, *supra*.

²⁶ *Id.*

²⁷ 15 U.S.C. 78s(b)(2).

²⁸ 17 CFR 200.30-3(a)(12).