

lettered as (m) and provides the same prohibition with respect to market makers in single stock futures contracts.

Paragraph (n) is proposed to be added to explain the use of both options and single stock futures to hedge specialty stock positions. If a specialist chooses to hedge a specialty stock position with positions in both options and futures contracts, the resulting total market position, when established, may not exceed the size of the existing specialty stock position being hedged. Any excess or same side of the market equivalent position must be liquidated in accordance with the provisions of Rule 105.

#### *Other Rule Amendments*

Rules 98, 104A.50, and 900(d)(v) are proposed to be amended to incorporate references to single stock futures, where they currently refer to options.

Rule 98 would be amended to add single stock futures to the Rule's reference to Rule 105.

Rule 104A.50 would be amended to add a reference to single stock futures as an aspect of specialists' reporting requirements. Thus, every specialist must keep a record of all single stock futures purchases and sales (as they do with options currently) to hedge his specialty stock positions as permitted by Rule 105. Such transactions would be reported in such format and with such frequency as prescribed by the Exchange.

Rule 900(d)(v) currently prohibits a specialist against entering an order in the Exchange's Off-Hours Trading Facility if a resulting execution would result in the specialist having to take liquidating action pursuant to Rule 105. The rule would be amended to add a reference to single stock futures to the above prohibition against taking liquidating action.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)<sup>6</sup> of the Act, in general, and furthers the objectives of section 6(b)(5),<sup>7</sup> in particular, 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.

#### *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 purpose 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 self-regulatory organization 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 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., 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 NYSE. All submissions should refer to the file number SR-NYSE-2002-63 and should be submitted by February 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47174; File No. SR-NYSE-2002-66]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Fee Increases and New Fees Applicable to Members and Member Organizations**

January 13, 2003.

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 December 23, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). On January 10, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change is described in items I, II and III below, which items have been prepared by the Exchange. The NYSE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act,<sup>4</sup> which renders the proposal 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 proposes changes to certain fees applicable to members and member organizations. The Exchange will (1) increase the existing cap on transaction charges; (2) increase existing fees for branch offices; (3) impose a new transaction charge for principal transactions; (4) impose new fees for Exchange technology services provided to brokers and specialists; and (5) change the fees charged to subscribers to

<sup>8</sup> 17 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> Amendment No. 1 replaces in its entirety Form 19b-4 and Exhibit 1 of the original filing.

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

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).