

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 Nasdaq. All submissions should refer to File No. SR-NASD-2003-116 and should be submitted by September 5, 2003.

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

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

[FR Doc. 03-20907 Filed 8-14-03; 8:45 am]

BILLING CODE 8010-01-U

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48307; File No. SR-NYSE-2002-63]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Relating to Amendments to Rules 98, 104A.50, 105, and 900 To Permit Single Stock Futures Hedging by Specialists

August 8, 2003.

#### I. Introduction

On November 21, 2002, the New York Stock Exchange ("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 amend certain Exchange rules to permit single stock futures hedging by specialists. On January 10, 2003, the rule proposal was published for comment in the **Federal Register**.<sup>3</sup> On July 23, 2003 the NYSE filed Amendment No. 1 to the proposed rule

change.<sup>4</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended, grants accelerated approval of Amendment No. 1 and solicits comments from interested persons on Amendment No. 1.

#### II. Description of the Rule Change

Under the rule change, the Exchange will permit specialists to use security futures overlying single securities (hereinafter referred to as "single stock futures") to hedge specialty stock positions. Rule 105 currently permits specialists to use options to hedge their specialty stock positions. Specifically, the Exchange is amending Rules 105, 98, 104A.50, and 900(d)(v).

##### *Amendments to Rule 105*

The Exchange is amending paragraph (d) of the Guidelines to Rule 105 (the "Guidelines") to explain the conditions under which single stock futures may be used to hedge an existing specialty stock. Under the rule change, anticipatory hedging is not permitted. As is the case under Rule 105 with options, only existing specialty stock positions may be hedged.

As amended, Rule 105 will provide three conditions (similar to those applicable to options) that single stock futures transactions must meet:

- (i) The transaction must result in a net futures position on the opposite side of the market from the underlying specialty stock position;
- (ii) The transaction must be effected solely to offset the risk of making a market in the underlying specialty stock; and
- (iii) The resulting net futures position must not exceed the number of shares of the specialty stock position that the specialist is offsetting.

Any single stock futures transaction that does not meet all three of the above conditions would be deemed to be in violation of Rule 105.

Under the rule change, a specialist would be able to use one single stock futures contract to hedge each 100

shares of the existing specialty stock position. A hedge that subsequently exceeds the specialty stock position being hedged as a result of 25% or more in the specialist's stock position or which becomes on the same side of the market as the specialty stock position must be liquidated, unless the equivalent share position is 5000 shares or less.

Similarly, Rule 105 will be amended to specify that, as with options, specialists may also not front-run blocks and must record futures positions in a separate "memo" account. Additionally, specialists must report to the Exchange: (i) accounts in which single stock futures positions are held and (ii) their positions in single stock futures.

Rule 105 permits an approved person of a specialist to act as a primary market maker or specialist with respect to an option on a specialty stock, provided all the requirements of the Rule 98 exemptive program are met. This provision will be amended to incorporate references to market makers in single stock futures so that an approved person of an equity specialist may act as a primary market maker or specialist with respect to a stock futures contract, provided all the requirements of the Rule 98 exemptive program are met.

In addition, Rule 105 prohibits an approved person of an equity specialist from acting as a market maker in any equity security in which the associated specialist is registered as such and which underlies an option as to which the approved person acts as an options market maker. Under the rule change, the same prohibition will apply with respect to market makers in single stock futures contracts.

The Exchange is adding a provision to Rule 105 to explain the combined use of both options and single stock futures to hedge specialty stock positions. Under the rule change, if a specialist chooses to hedge a specialty stock position with positions in both options and single stock futures, 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 Proposed Amendments*

In addition to the amendments to Rule 105, the Exchange is amending Rules 98, 104A.50, and 900(d)(v) to incorporate appropriate references to single stock futures.

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

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

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

<sup>3</sup> See Securities Exchange Act Release No. 47160 (January 10, 2003), 68 FR 02064 (January 17, 2003).

<sup>4</sup> In Amendment No. 1, the Exchange amended the definition of "security future" in Rule 105(b) to conform it to the definition of that term in section 3(a)(55) of the Act for uniformity. The Exchange also made certain technical changes to the proposed rule text and added an example that describes the way a combination of options and single stock futures contracts may be used to hedge a specialty stock position. In addition, the Exchange acknowledged that the prohibition in section 6(h)(1) of the Act on effecting transactions in security futures products that are not listed on a national securities exchange would apply to the transactions permitted under the proposed rule change. The Exchange stated further that it will remind its members of this prohibition when it announces the approval of the proposed rule change.