

facilitating transactions in, securities, and in general to protect investors and the public interest, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

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 such 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should

refer to File No. SR-Amex-96-03 and should be submitted by March 5, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36813; File No. SR-NYSE-96-02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Voting of Proxies by Its Member Firms for Holders of Auction Rate Preferred Securities

February 6, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 1, 1996, 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, II, and III below, which Items have been prepared by the self-regulatory organization. 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 New York Stock Exchange, Inc. ("NYSE" or "Exchange") is proposing amendments to its rules governing the voting by its member firms for holders of auction rate preferred securities.¹ These requirements are contained in Exchange Rule 452 and Section 402.08 of its Listed Company Manual. The amendments would allow the Exchange's member firms to vote the shares of auction rate preferred securities in the absence of instructions provided by beneficial holders as long as certain conditions are met.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Change

In its filing with the Commission, the self-regulatory organization 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 self-regulatory organization 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

The Exchange's proxy rules prohibit member firms from voting, without customer instructions, on non-routine items submitted to a vote of shareholders. Auction rate preferred securities are substantially short term instruments sold primarily to institutional investors. At the auction date, which typically runs every seven days but in some instances can be one to five years, the investor receives their entire investment along with accrued dividends, and may, if they so chose, participate in the repurchase of shares at the new dividend rate for the ensuing rate period. Because of the turnover and the little interest that auction rate preferred shareholders have in the performance of the issuer and its governance structure, corporate issuers find it extraordinarily difficult to obtain requisite approval.

In addition, some state laws require the approval of at least a majority of preferred holders in any matter taken to a vote of preferred holders. The failure to obtain a quorum in such cases effectively blocks the approval of the matters which are overwhelmingly voted in favor of by common shareholders, when a vote of all classes is required, and those preferred voters who do vote.

The proposed rule change will allow member firms to vote the shares of auction rate preferred securities with auction reset periods of less than one year, on non-routine items, in proportion to those votes cast by beneficial holders, as long as: (i) The issuer has transmitted proxy soliciting material to the beneficial owner or its designee; (ii) it has not received voting instructions from the beneficial owner or its designee within the time period specified in the proxy material; (iii) at least 30% of the issue has been voted by beneficial holders or their designee; (iv) less than 10% of the issue has voted against the proposal; (v) for any proposal taken to preferred and common shareholders, proportional voting would not be allowed unless

⁶ 17 CFR 200.30-3(a)(12) (1994).

¹ The proposed change defines an auction rate preferred security as a preferred security pursuant to which the dividend rate is established periodically by auction or remarketing at specified "reset periods."

common shareholders have also approved the item: (vi) a majority of the independent directors of the issuer's board of directors have approved the item; and (vii) adequate disclosure of proportional voting has been provided.

The proposed rule change will insert a new Rule 452.12 into the Exchange's Rules of Board of Governors as well as an identical Paragraph 402.08(C) into the Exchange's Listed Company Manual.² These provisions will allow member firms to vote on non-routine items for auction rate preferred securities only, enabling corporate issuers, as well as shareholders, to obtain approval of matters overwhelmingly supported by those investors who do vote.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act³ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 proposed rule change does not impose any burden on competition that is not necessary or appropriate in 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 on this 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

Within 35 days of the publication of this notice in the Federal Register or within such other 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-96-02 and should be submitted by March 5, 1996.

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

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36818; File No. SR-OCC-95-14]

Self-Regulatory Organization; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to the Processing of Late Exercise Requests for Eligible Option Contracts

February 7, 1996.

On September 15, 1995, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-OCC-95-14) pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 ("Act").¹ On December 19, 1995, OCC filed an amendment to the proposed rule change to clarify certain language in the proposal.² Notice of the proposal was published in the Federal Register on December 27, 1995.³ No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description of the Proposal

The proposed rule change amends OCC Rule 801(e) regarding late exercises by changing the cut-off times for filing a late exercise notice and by eliminating any references to trading volume. The proposed rule change also modifies OCC Rule 801(a) to provide expressly for the submission of exercise notices through electronic means.

OCC Rule 801(e) currently permits OCC clearing members to file, revoke, or modify exercise notices after the 7:00 p.m. (all time references are Central Time unless stated otherwise) deadline for the purpose of correcting bona fide errors. Once a late instruction is accepted, Rule 801(e) requires the clearing member submitting an instruction to pay a late filing fee and explain in writing the error that caused the late submission of the instruction. The filing fees for late instructions are imposed using a graduated fee schedule with variable cut-off times to reflect the fact that the earlier that a late exercise notice is submitted the easier and less costly it is for OCC to process the request.⁴

OCC clearing members have requested that OCC provide them with data from nightly processing earlier on the night of processing. Presently, Rule 801(e) requires OCC to wait until 10:00 p.m. to begin critical processing even if it has received all necessary data from exchanges⁵ and clearing members

¹ 15 U.S.C. § 78s(b)(1) (1988).

² Letter from Michael G. Vitek, OCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (December 19, 1995).

³ Securities Exchange Act Release No. 36607 (December 20, 1995), 60 FR 67007.

⁴ For a detailed description of OCC's procedures for processing late option exercise notices on non-expiring option contracts, and earlier amendments to the late exercise fee schedule cut-off times, refer to Securities Exchange Act Release Nos. 29390 (July 1, 1991), 56 FR 31454 [File No. SR-OCC-90-3] (order approving procedures for processing late exercise notices) and 33247 (November 24, 1993), 58 FR 63419 [SR-OCC-93-2] (order approving changes to OCC's late exercise fee schedule cut-off times).

⁵ The term "exchange" is defined in Article I, Section E(4) of OCC's by-laws as a national securities exchange or a national securities association that has qualified for participation in OCC pursuant to the provision of Article VII of OCC's by-laws.

² The proposed rule change also renumbers existing Exchange Rules 452.12 through 452.16 without change to Rules 452.13 through 452.17 and Listed Company Manual Paragraphs 402.08(C) through (G) without change to 402.08(D) through (H).

³ 15 U.S.C. 78f(b)(5).