

previously submitted transaction on a business day as long as the cancel instruction is initiated prior to 2:00 pm Eastern time.

If a distributor submits an instruction to NSCC to withdraw application information and an initial premium payment had been submitted with that application information, then NSCC will not settle the initial premium payment. A distributor does not have the ability to cancel a subsequent premium payment that has been included with previously submitted subsequent premium information.

Phase two will also enable insurance carriers to transmit to distributors information and details about transactions and events that have occurred with respect to existing annuity contracts. An example of a transaction that may occur with respect to an existing annuity contract is a contract owner initiated transfer of underlying annuity contract assets from one subaccount to another subaccount. An example of an event is a dividend declared by an underlying fund. Distributors often use such financial information for the monthly account statements they send to their customers.

The proposed rule change provides that if the application information submitted by a distributor to NSCC appears to contain the information required by NSCC but does not appear to contain the information required by the designated insurance carrier, NSCC will nevertheless transmit the application information to the designated insurance carrier but will not settle any initial premium payments submitted with such information. However, if the information contains four or more errors, NSCC will reject all of the submitted information and will not settle any initial premium payments submitted with such information.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).⁵ Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.

The Commission believes that NSCC's rule change meets this standard because the implementation of the second phase of APS should provide more centralized communications and settlement between insurance carriers and distributors and should provide for

more efficient processing. Thus, the proposal promotes prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the forgoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-98-07) be and hereby is approved.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40797; File No. SR-NYSE-98-45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Rule 80A

December 15, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), notice is hereby given that on December 8, 1998, 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 Exchange proposes to amend the NYSE's Rule 80A. Below is the current text of Rule 80A which would be deleted under the proposed rule change and the proposed text of Rule 80A as it would read under the proposed rule change. Deletions are in brackets and additions are in italics.

[(a)(i) If, during any trading day, the price of the primary Standard and Poor's 500 Stock Price Index futures

contract traded on the Chicago Mercantile Exchange ("S&P 500 futures")* reaches a value 12 points below the S&P 500 future's closing value on the previous trading day (the "trigger value"), for the next five minutes market orders involving program trading in each of the stocks underlying the S&P 500 futures entered into the Exchange's automated order-routing facilities shall be routed to a separate file for each such stock. Buy and sell orders for each stock will be paired in the file to determine the extent of the order imbalance, if any.

(ii) Five minutes after the price of the S&P 500 futures reaches the trigger value, the orders in the program trading file for each stock, and the order imbalance, if any, shall be reported to the specialist in the stock and the orders shall be eligible for execution; *provided, however*, that trading in a stock on the Exchange shall halt if there is not sufficient trading interest on the Exchange to allow for an orderly execution of a transaction in the stock.

(b) Whenever the price of the S&P 500 futures reaches the trigger value, no member or member organization shall enter any stop order or stop limit order for the remainder of the trading day except that a member or member organization may enter a stop order or a stop limit order of 2,099 shares or less for the account of an individual investor pursuant to instructions received directly from the individual investor.

(c) On any day when the Dow Jones Industrial Average** has advanced by 50 points or more from its closing value on the previous trading day, all index arbitrage orders to buy any component stock of the S&P 500 Stock Price Index must be entered with the instruction "buy minus." If, on that day, the Dow Jones Industrial Average subsequently reaches a value that is 25 points or less above the closing value on the previous trading day, this requirement shall not apply. This principle shall govern the imposition and removal of the buy minus requirement as to all subsequent movements in the Dow Jones Industrial Average on that day. On any day when the Dow Jones Industrial Average has declined by 50 points or more from its closing value on the previous day, all index arbitrage orders to sell must be entered with the instruction "sell plus." If, on that day, the Dow Jones Industrial Average subsequently reaches a value that is 25 points or less below the closing value on the previous trading day, this requirement shall not apply. This principle shall govern the imposition and removal of the sell plus requirement as to all subsequent movements in the Dow Jones Industrial

⁵ 15 U.S.C. 78q-1(b)(3)(F)(1988).

⁶ 17 CFR 200.30-3(a)(12).

Average on that day. All orders containing the instruction buy minus or sell plus shall be executed as provided in Rule 13.

(d) On any day when the Dow Jones Industrial Average has advanced by 50 points or more from its closing value on the previous trading day, no transaction to buy a basket of stocks may be effected at a price which is equal to or greater than the aggregate Tier 1 offer (as defined in Rule 803(e)) or the cash equivalent. If, on that day, the Dow Jones Industrial Average subsequently reaches a value that is 25 points or less above the closing value on the previous trading day, this restriction regarding the purchase of a basket of stocks shall not apply. This principle shall govern the imposition and removal of the restriction regarding the purchase of a basket of stocks as to all subsequent movements in the Dow Jones Industrial Average on that day. On any day when the Dow Jones Industrial Average has declined by 50 points or more from its closing value on the previous trading day, no transaction to sell a basket of stocks may be affected at a price which is equal to or less than the aggregate Tier 1 bid (as defined in Rule 803(e)) or the cash equivalent. If, on that day, the Dow Jones Industrial Average subsequently reaches a value that is 25 points or less below the closing value on the previous trading day, this restriction regarding the sale of a basket of stocks shall not apply. This principle shall govern the imposition and removal of the restriction regarding the sale of a basket of stocks as to all subsequent movements in the Dow Jones Industrial Average on that day. For purposes of this paragraph (d), the term "basket" shall have the definition contained in Rule 800(b)(iii).

(e) For the purposes of this Rule 80A, (i) "program trading" means either (A) index arbitrage or (B) any trading strategy involving the related purchase or sale of a "basket" or group of 15 or more stocks having a total market value of \$1 million or more. Program trading includes the purchases or sales of stocks that are part of a coordinated trading strategy, even if the purchases or sales are neither entered or executed contemporaneously, nor part of a trading strategy involving options or futures contracts on an index stock group, or options on any such futures contracts, or otherwise relating to a stock market index;

(ii) "index arbitrage" means an arbitrage trading strategy involving the purchase or sale of a "basket" or group of stocks in conjunction with the purchase or sale, or intended purchase or sale, of one or more cash-settled

options or futures contracts on index stock groups, or options on any such futures contracts (collectively, "derivative index products") in an attempt to profit by the price difference between the "basket" or group of stocks and the derivative index products.

While the purchase or sale of the stocks must be in conjunction with the purchase or sale of derivative index products, the transactions need not be executed contemporaneously to be considered index arbitrage; and

(iii) "account of an individual investor" means an account covered by Section 11(a)(1)(E) of the Securities Exchange Act of 1934.

(f) The provisions of paragraphs (a) and (b) of Rule 80A shall not apply during the last 35 minutes of a trading day.

(g) The provisions of paragraphs (c) and (d) of Rule 80A shall not apply to index arbitrage "market-at-the-close" orders in liquidation of previously established stock positions against derivative index products entered on the last business day prior to the expiration or settlement of such derivative index products. Such orders shall be entered pursuant to such procedures as the Exchange may from time to time prescribe.

Supplementary Material

.10 When determining the priority of bids and offers pursuant to Rule 72, the orders in the program trading file reported to the specialist pursuant to paragraph (c) shall be considered as entered on the Exchange at the time the orders are reported to the specialist.

.20 The reopening of trading following a trading halt shall be conducted pursuant to procedures adopted by the Exchange and communicated by notice to its members and member organizations.

.30 Nothing in this Rule 80A shall be construed to limit the ability of the Exchange to otherwise halt or suspend the trading in any stock or stocks pursuant to any other Exchange rule or policy.

* "Standard & Poor's 500 Stock Price Index" and "S&P 500" are service marks of Standard & Poor's Corporation.

** "Dow Jones Industrial Average" is a service mark of Dow Jones & Company, Inc.]

(a) All index arbitrage orders to sell any component stock of the S&P 500 Stock Price Index^{SM*} must be entered with the instruction "sell plus" on any trading day when the Dow Jones Industrial Average^{SM**} ("DJIA") declines below its closing value on the previous trading day by at least the "two-percent value" as calculated

below. This index arbitrage order entry requirement shall remain in effect for the remainder of the trading day. However, the index arbitrage order entry requirement pursuant to this paragraph (a) shall be removed if the DJIA subsequently reaches a value below its closing value on the previous trading day that is a decline equal to the "one-percent value" or less as calculated below.

(b) All index arbitrage orders to buy any component stock of the S&P 500 Stock Price Index must be entered with the instruction "buy minus" on any trading day when the DJIA advances above its closing value on the previous trading day by at least the "two-percent value" as calculated below. This index arbitrage order entry requirement shall remain in effect for the remainder of the trading day. However, the index arbitrage order entry requirement pursuant to this paragraph (b) shall be removed if the DJIA subsequently reaches a value above its closing value on the previous trading day that is an advance equal to the "one-percent value" or less as calculated below.

(c) The principles in paragraphs (a) and (b) shall govern the imposition and removal of the index arbitrage order entry requirements as to all subsequent movements in the DJIA on that day. Supplementary Material:

.10 The "two-percent value" shall be calculated at the beginning of each calendar quarter and shall be two-percent (2.0%), rounded down to the nearest ten points, of the average closing value of the DJIA for the last month of the previous quarter. The "one-percent value" shall be one-half, rounded down to the nearest ten points, of the "two-percent value".

.20 The index arbitrage order entry restrictions shall not apply to index arbitrage market-at-the-close orders in liquidation of previously established stock positions against derivative index products entered on the last business day prior to the expiration or settlement of such derivative index products. Such orders shall be entered pursuant to each procedure as the Exchange may from time to time prescribe.

.30 All orders containing the instruction "buy minus" or "sell plus" shall be executed as provided in Rule 13.

.40 Definitions. (a) For purposes of this Rule 80A, "index arbitrage" means a trading strategy in which pricing is based on discrepancies between a "basket" or group of stocks and the derivative index product (i.e., a basis trade) involving the purchase or sale of a "basket" or group of stocks in conjunction with the purchase or sale,

or intended purchase or sale, of one or more derivative index products in an attempt to profit by the price difference between the "basket" or group of stocks and the derivative index products. While the purchase or sale of the stocks must be in conjunction with the purchase or sale of derivative index products, the transactions need not be executed contemporaneously to be considered index arbitrage. The term "derivative index products" refers to cash-settled options or futures contracts on index stock groups, and options on any such futures contracts.

(b) "Program trading" means either (A) index arbitrage or (B) any trading strategy involving the related purchase or sale of a "basket" or group of 15 or more stocks having a total market value of \$1 million or more. Program trading includes the purchases or sales of stocks that are part of a coordinated trading strategy, even if the purchases or sales are neither entered or executed contemporaneously, nor part of a trading strategy involving options or futures contracts on an index stock group, or options on any such futures contracts, or otherwise relating to a stock market index.

(c) "Account of an individual investor" means an account covered by Section 11(a)(1)(E) of the Securities Exchange Act of 1934.

*"Standard & Poor's 500 Stock Price Index" is a service mark of Standard & Poor's Corporation

**"Dow Jones Industrial Average" is a service mark of Dow Jones & Company, Inc.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule 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 and is set forth in Sections A, B, and C below.

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

1. Purpose

Current Rule. Rule 80A provides, among other things, for limitations on index arbitrage trading in any component stock of the S&P 500 Stock Price Index whenever the Dow Jones

Industrial Average¹ ("DJIA") is up or down 50 points from its previous close. If the market advances by 50 points or more, all index arbitrage orders to buy must be stabilizing (buy minus); similarly, if the market declines, all index arbitrage orders to sell must be stabilizing (sell plus). The stabilizing requirements are removed if the DJIA moves back to or within 25 points of the previous day's close. In addition, "sidecar" provisions, as discussed below, which temporarily divert program trading orders and impose limitations on the entry of stop orders, go into effect when the primary S&P 500 futures contract declines by 12 points from its previous close.

Proposed Amendments. The stock market has risen dramatically over the years since the 50-point "collar," as discussed below, of Rule 80A was adopted in 1990.² The Exchange is proposing to amend the Rule to base the collars on a percentage of the average closing value of the DJIA. In addition, the Exchange is proposing to eliminate the "sidecar" provisions of Rule 80A in their entirety. The Exchange is also proposing to delete the provisions, contained in paragraph (d), relating to purchases and sales of a "basket" (as that term is defined in Rule 800(b)(iii)), as the "basket" product is no longer traded on the Exchange. The definition of index arbitrage contained in the rule is also proposed to be modified, as discussed below.

Collars. The proposed collars are to be calculated quarterly based on the average closing value of the DJIA for the last month of the previous calendar quarter. This methodology is similar to that used for the calculation of the circuit breakers in the recent amendments to Rule 80B. The collars would be imposed when the DJIA declines or advances from the prior day's close by an amount equal to two percent, rounded down to the nearest ten points, of the average closing value. The collars would be removed when the DJIA comes back or retreats to a value which represents a decline or advance from the prior day's close by an amount equal to one half of the "two-percent value," rounded down to the nearest ten points.

Under the proposed rule change, when the collar is imposed based upon a *decline* in the DJIA, all index arbitrage orders to sell any component stock of the S&P 500 must be marked "sell plus"

for the remainder of the day. If the DJIA *advances* by the "collar value", all index arbitrage orders to buy any component stock of the S&P 500 must be marked "buy minus" for the remainder of the trading day.

For example, if the average closing value of the DJIA for the last month of the previous quarter is 8915, the "two-percent value" will be 170, and one half the "two-percent value" will be 80 (85 rounded down to the nearest ten points). Thus, the stabilizing requirement would be imposed when the DJIA is down or up 170 points or more and removed when the DJIA is down or up 80 points or less from the previous close. The index arbitrage order entry restrictions would be re-imposed each time the DJIA advances or declines from the prior day's close by the amount calculated pursuant to the rule.

Sidecar. The sidecar provisions, contained in paragraphs (a) and (b) of the current rule, are triggered by a 12-point decline from the previous close in the primary S&P 500 futures contract. The sidecar diverts program trading orders to a separate file for five minutes and also bans the entry of stop orders or stop limit orders for the rest of the day (except when such orders are 2099 shares or less and are for the account of an individual investor). The Exchange is proposing to delete the sidecar provisions in their entirety.

The Exchange represents that experience has shown that program trading orders have not been entered in significant numbers while sidecar is in effect and thus this additional restriction is not necessary. The Exchange believes that the collars contained in Rule 80A, along with the Exchange's trading halt policy and the circuit breakers contained in Rule 80B, obviate the need for a sidecar.

Definitions. The revised version of Rule 80A would retain the definitions of program trading and individual investor contained in the current rule, but would move them into the supplementary material. The definition of index arbitrage is being amended to codify the Exchange's 1992 interpretation³ that includes "basis trading"⁴ as index arbitrage. The Exchange represents that the Rule language is being made explicit

³ See NYSE Information Memo No. 92-23, dated August 28, 1992.

⁴ The NYSE considers basis trading to be a trading strategy of making orders to purchase or sell a basket of stocks in conjunction with the purchase or sale, or intended purchase or sale, of derivative index products, in order to take advantage of pricing discrepancies between the basket and the derivative index product. See NYSE Information Memo No. 92-23, dated August 28, 1992.

¹ "Dow Jones Industrial Average" is a service mark of Dow Jones & Company, Inc.

² The DJIA was at 2905 when the 50-point collar first went into effect on July 31, 1990. The DJIA closed at 8915 on November 5, 1998, the day the Board adopted this amendment.

because certain traders may not have considered some strategies that are effected to capture differences between the cash and futures market, such as liquidating or establishing exchanges for physicals,⁵ to be index arbitrage.

Conclusion. The Exchange believes that the proposed amendments to Rule 80A will allow the collars to move with the market in a similar fashion to the triggers in Rule 80B. Thus, trading curbs would remain at an appropriate level as the market changes, *i.e.*, closer to the 1.7% move that the 50 point collar represented when implemented in 1990 as opposed to 0.56% currently.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁶ of the Act in general and furthers the objectives of Section 6(b)(5)⁷ in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁵ In the context of program trading, the term "exchange-for-physicals" or "EFP" refers to a practice whereby an entity, such as a broker-dealer or an institution, uses an off-exchange transaction to acquire or liquidate a hedged position in a stock basket and stock index futures or options. For example, an institution wishing to liquidate a large long-stock/short-futures hedged position might negotiate with a broker-dealer to conduct an EFP outside of regular U.S. trading hours in London. In the EFP, the institution would sell the stock basket to the broker-dealer and the broker-dealer would sell the equivalent amount of stock index futures to the institution. The difference in the prices for the stock and futures trades is the negotiated price for the transaction, and is usually denominated in hundredths of a percentage point ("basis points") of the value of the portfolio. Once the EFP is completed, the broker-dealer has acquired the long-stock/short-futures hedged position. The broker-dealer may subsequently "unwind" this position through trades on U.S. exchanges when profitable arbitrage spreads arise. In the example cited above, if futures are trading at a "discount" to underlying stocks, the broker-dealer could use program orders to sell the higher priced stocks on the NYSE while buying the lower priced futures. Such a transaction would be the functional equivalent of index arbitrage for purposes of NYSE Rule 80A(c).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

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 Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 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 Room in 450 Fifth Street, N.W., Washington, D.C. 20549. Also, 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-NYSE-98-45 and should be submitted by January 13, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

⁸ 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40800; File No. SR-OCC-98-11]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Regarding the Calculation of the Short Option Adjustment

December 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 10, 1998, The Options Clearing Corp. ("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 from interested persons on the proposed rule change.

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

Under the proposed rule change, OCC will amend the short option adjustment contained in OCC's Theoretical Intermarket Margin System ("TIMS") to enable OCC to use a "sliding scale" to calculate short option adjustment amounts.

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

Under the proposed rule change, OCC will amend Rules 601 and 602 to

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by OCC.