or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the 5-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. In particular, the proposed rule change provides functionality for the SuperMontage Directed Order process that is equivalent to functionality currently available in SelectNet. In addition, acceleration of the operative date will allow the proposed rule change to become operative with Nasdaq's implementation of the SuperMontage on October 14, 2002. For these reasons, the Commission waives both the 5-day pre-filing requirement and the 30-day operative waiting period.[12]

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 NASD. All submissions should refer to File No. SR–NASD–2002–144 should be submitted by November 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46654; File No. SR–NYSE–2002–01]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Removal of Separate Exchange Requirements Regarding the Use of Consent Solicitations

October 11, 2002.

On January 3, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to remove separate NYSE requirements regarding the use of consent solicitations. The NYSE submitted Amendment No. 1 to the proposed rule change on May 23, 2002.[3] The proposed rule change was published for comment on June 26, 2002.[4] The Commission received no comments on the amended proposal. This order approves the proposed rule change, as amended.

The proposed rule change would amend Section 306 of the NYSE Listed Company Manual (''NYSE Manual'') to remove separate NYSE requirements regarding the use of consent solicitations. Currently, Section 306 of the NYSE Manual requires NYSE listed companies to obtain NYSE's permission to use consents in lieu of special meetings as proper authorization for shareholder approval of corporate action. In addition, Section 306 of the NYSE Manual currently sets forth the following guidelines that NYSE listed companies must follow in order to receive NYSE's permission: (1) A record date must be used; (2) consent material must be sent to all shareholders; (3) corporate action can not be taken until the solicitation period has expired—even if the required vote is received earlier; (4) a 30-day solicitation period is recommended and a minimum of 20 days is required; and (5) consent material must conform to normal proxy statement disclosure standards. In effect, these guidelines require corporations to solicit the consent of all shareholders.

Under the federal securities laws, when a corporation is permitted under state law to take corporate action without a shareholder meeting upon the written consent of a specified percentage of shareholders, such corporation is not required to solicit the consent of all shareholders. Instead, under certain circumstances, under Section 14(c) of the Exchange Act and Regulation 14C thereunder, the corporation is required to furnish to all shareholders an information statement that contains the same disclosure as a proxy or consent solicitation at least 20 days prior to the earliest date the corporate action can be taken.[5] The NYSE believes that under certain circumstances, the current requirements of Section 306 of the NYSE Manual are more onerous than those of the federal securities laws. Accordingly, the Exchange proposes to modify Section 306 of the NYSE Manual to eliminate the separate Exchange requirements with respect to use of consents in lieu of special meetings. Under the proposal, NYSE listed companies will no longer be required to obtain Exchange approval before using consents in lieu of special meetings as proper authorization for shareholder approval of corporate action. NYSE listed companies will be permitted to either: (1) Hold a special meeting of shareholders, or (2) use consents in lieu of special meetings when and as permitted by applicable law.[6]

The Exchange represents that it would, however, retain its traditional policy that listed companies may not use written consents in lieu of the annual meeting of shareholders at which directors are to be elected.[7]

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[8] and, in particular, the requirements of section 6 of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 22, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange: (1) Added the following language to the proposed rule text: ''(including interpretations thereof), including, without limitation,'' and (2) added language to the purpose section clarifying the two options available to listed companies for obtaining shareholder approval.

[4] *See* Securities Exchange Act Release No. 46092 (June 19, 2002), 67 FR 43199.

[5] *See* 15 U.S.C. 78n(c) and 17 CFR 240.14C.

[6] As amended, Section 306 of the NYSE Manual specifically states that listed companies must comply with ''applicable state and federal law and rules (including interpretations thereof), including, without limitation, SEC Regulations 14A and 14C.''

[7] *See* Section 306 of the NYSE Manual.

[8] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Act.[9] The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act[10] because the proposed rule change requires NYSE listed companies to obtain shareholder consent in a manner that is consistent with federal securities laws.

As noted above, listed companies would be permitted to hold a special meeting of shareholders to take corporate action and nothing in NYSE rules require companies to use one method over the other to obtain shareholder approval of corporate action. Rather, the changes being approved to the NYSE rules simply permit listed companies to utilize consent as an alternative to shareholder approval only when and as permitted by applicable federal securities laws and state laws. Shareholder approval at a special meeting and consent under the conditions noted above would be the only two ways for listed companies to take corporate action under NYSE rules when shareholder approval is required. In approving the proposal, we note that the federal security law requirements help to ensure, among other things, that all shareholders receive adequate disclosure prior to such corporate action being taken.

Based on the above, the Commission believes the changes should remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSE–2002–01), as amended by Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46633; File No. SR–OC–2002–02]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by OneChicago, LLC Relating to Block Trades

October 10, 2002.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on September 6, 2002, OneChicago LLC (''OneChicago'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been prepared by OneChicago. On September 30, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. OneChicago also has filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC''). OneChicago filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act[4] on September 5, 2002.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago is proposing to amend its Rule 417, relating to block trades, in the following two respects: First, paragraph (c) of OneChicago Rule 417 is amended to provide that the parties to a block trade must report specified information regarding such trade to OneChicago promptly, rather than within a time period prescribed by OneChicago on a contract-by-contract basis. In addition, the Exchange proposes to add new paragraphs (e) and (f) into OneChicago Rule 417 to restrict the ability of market participants to engage in certain transactions related to a block trade until such trade has been reported. Finally, OneChicago proposes to redesignate existing paragraph (e) of OneChicago Rule 417 as paragraph (g). The text of the proposed rule change follows; additions are italicized; deletions are [bracketed].

Rule 417 Block Trading

* * * * *

(c) Each Block Trade shall be designated as such, and cleared through the Clearing Corporation as if it were a transaction executed through the OneChicago System. Information identifying the relevant Contract, contract month, price, quantity, time of execution, counterparty Clearing Member for each Block Trade and, if applicable, the underlying commodity must be reported to the Exchange [within the time period set forth in the rules governing the relevant Contract] *promptly.* The Exchange will publicize information identifying the trade as a Block Trade and identifying the relevant Contract, contract month, price, quantity for each Block Trade and, if applicable, the underlying commodity immediately after such information has been reported to the Exchange.

(d) No Change.

(e) *No Clearing Member or Exchange Member that is a party to a Block Trade or has knowledge of a pending Block Trade, may enter an Order or execute a transaction, whether for its own account or for the account of a Customer, for or in the Contract to which such Block Trade relates until after (i) such Block Trade has been reported to and published by the Exchange and (ii) any additional time period from time to time prescribed by the Exchange in its block trading procedures or contract specifications has expired.*

(f) *No Clearing Member or Exchange Member that is a party to a block trade, or has knowledge of a pending block trade, on any other exchange or trading system, may enter an Order or execute a transaction on the Exchange for any Contract which has the same underlying security as the contract to which such block trade relates until after (i) such block trade is reported and published in accordance with the rules, procedures or contract specifications of such exchange or trading system and (ii) any additional time period prescribed by the Exchange in its block trading procedures or contract specifications has expired.*

(g) Any Block Trade in violation of these requirements shall constitute conduct which is inconsistent with just and equitable principles of trade.

* * * * *

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] *See* letter dated September 30, 2002, from C. Robert Paul, General Counsel, OneChicago, to Division of Market Regulation, Commission. In Amendment No. 1, the Exchange added language setting forth the statutory basis for the proposed rule change.

[4] 7 U.S.C. 7a–2(c).