number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule that are filed with the Commission, and all written communications relating to the proposed rule 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, 100 F Street, NE., Washington, DC 20549–9303. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–183 and should be submitted on or before August 11, 2005.

V. Conclusion

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–3903 Filed 7–20–05; 8:45 am]

BILLING CODE 8010–01–P

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52031; File No. SR–NYSE–2002–19]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving a Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto Relating to Customer Portfolio and Cross-Margining Requirements

July 14, 2005.

I. Introduction

On May 13, 2002, the New York Stock Exchange, Inc. (''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'')[1] and Rule 19b–4[2] thereunder, a proposed rule change seeking to amend its rules, for certain customer accounts, to allow member organizations to margin listed, broad-based, market index options, index warrants, futures, futures options and related exchange-traded funds according to a portfolio margin methodology. The NYSE seeks to introduce the proposed rule as a two-year pilot program that would be made available to member organizations on a voluntary basis.

On August 21, 2002, the NYSE field Amendment No. 1 to the proposed rule change.[3] The Proposed rule change and Amendment No. 1 were published in the **Federal Register** On October 8, 2002.[4] The Commission received three comment letters in response to the October 8, 2002 **Federal Register** notice.[5] On June 21, 2004, the Exchange field Amendment No. 2 to the proposed rule change.[6] The proposed rule change and Amendment Nos. 1 and 2 were published in the **Federal Register** on December 27, 2004.[7] The Commission received ten comment letters in response to the December 27, 2004 **Federal Register** notice.[8]

On March 18, 2005, the Exchange filed Amendment No. 3[9] to the proposed rule change. The proposed rule change and Amendment Nos. 1, 2 and 3 were published in the **Federal Register** on May 3, 2005.[10] The Commission received two comments in response to the May 3, 2005 **Federal Register** notice.[11]

The comment letters and the Exchange's responses to the comments[12] are summarized below. This Order approves the proposed rule, as amended.[13]

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to T.R. Lazo, Senior Special Counsel, Division of Market Regulation, Commission, dated August 20, 2002 (''Amendment No. 1''). In Amendment No. 1, the NYSE made technical corrections to its proposed rule language to eliminate any inconsistencies between its proposal and the CBOE proposal pursuant to the the Rule 431 Committee's (''Committee'') recommendations. *See* Securities Exchange Act Release No. 45630 (March 22, 2002), 67 FR 15263 (March 29, 2002) File No. SR–CBOE–2002–03).

[4] *See* Securities Exchange Act Release No. 46576 (October 1, 2002) 67 FR 62843 (October 8, 2002).

[5] *See* letter from R. Allan Martin, President, Auric Trading Enterprises, Inc., to Secretary, Commission, dated October 9, 2002 (''Martin Letter''); Phupinder S. Gill, Managing Director and President, Chicago Mercantile Exchange Inc., to Jonathan G. Katz, Secretary, Commission, dated October 21, 2002 (''CME Letter''); and E-mail from Mike Ianni, Private Investor to *rule-comments@sec.gov*, dated November 7, 2002 (''Ianni E-mail'').

[6] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation (''Division''), Commission, dated June 17, 2004 (''Amendment No. 2''). the NYSE filed Amendment No. 2 for the purpose of eliminating inconsistencies between the proposed NYSE and CBOE rules, and to incorporate certain substantive amendments requested by Commission staff.

[7] *See* Securities Exchange Act Release No. 50885 (December 20, 2004) 69 FR 77287 (December 27, 2004); *see also* Securities Exchange Act Release No. 50886 (December 20, 2004) 69 FR 77275 (December 27, 2004).

[8] *See* letter from Barbara Wierzynski, Executive Vice President and General Counsel, Futures Industry Association (''FIA''), and Gerard J. Quinn, Vice President and Associate General Counsel, Securities Industry Association (''SIA''), to Jonathan G. Katz, Secretary, Commission, dated January 14, 2005 (''Wierzynski/Quinn Letter''); letter from Craig S. Donohue, Chief Executive Officer, Chicago Mercantile Exchange, to Jonathan G. Katz, Secretary, Commission, dated January 18, 2005 (''Donohue Letter''); letter from Robert C. Sheehan, Chairman, Electronic Brokerages Systems, LLC, to Jonathan G. Katz, Secretary, Commission, dated January 19, 2005 (''Sheehan Letter'') letter from William O. Melvin, Jr., President, Acorn Derivatives Management, to Jonathan G. Katz, Secretary, Commission, dated January 19, 2005 (''Melvin Letter''); letter from Margaret Wiermanski, Chief Operating & Compliance Officer, Chicago Trading Company, to Jonathan G. Katz, Secretary, Commission, dated January 20, 2005 (''Wiermanski Letter''); e-mail from Jeffrey T. Kaufmann, Lakeshore Securities, L.P., to Jonathan G. Katz, Secretary, Commission, dated January 24, 2005 (''Kaufmann Letter''); letter from J. Todd Weingart, Director of Floor Operations, Mann Securities, to Jonathan G. Katz, Secretary, Commission, dated January 25, 2005 (''Weingart Letter''); letter from Charles Greiner III, LDB Consulting, Inc., to Jonathan G. Katz, Secretary, Commission, dated January 26, 2005 (''Greiner Letter''); letter from Jack L. Hansen, Chief Investment Officer and Principal, The Clifton Group, to Jonathan G. Katz, Secretary, Commission, dated February 1, 2005 (''Hansen Letter''); and letter from Barbara Wierzynski, Executive Vice President and General Counsel, Futures Industry Association, and Ira D. Hammerman, Senior Vice President and General Counsel, Securities Industry Association, to Jonathan G. Katz, Secretary, Commission, dated March 4, 2005 (''Wierzynski/Hammerman Letter'').

[9] *See* Partial Amendment No. 3 (''Amendment No. 3''). The Exchange submitted this partial amendment, pursuant to the request of Commission staff, to remove the paragraph under which any affiliate of a self-clearing member organization could participate in portfolio margining, without being subject to the $5 million equity requirement.

[10] *See* Securities Exchange Act Release No. 51615 (April 26, 2005) 70 FR 22953 (May 3, 2005); *see also* Securities Exchange Act Release No. 51614 (April 26, 2005), 70 FR 22935 (May 3, 2005).

[11] *See* E-mail from Walter Morgenstern, Tradition-Asiel Securities, to *rule-comments@sec.gov*, dated May 16, 2005 (''Morgenstern E-mail''); and letter from William H. Navin, Executive Vice President, General Counsel, and Secretary, The Options Clearing Corporation, to Jonathan G. Katz, Secretary, Commission, dated May 27, 2005 (''Navin Letter'').

[12] *See* letter from Grace B. Vogel, Executive Vice President, Member Firm Regulation, NYSE, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, dated June 27, 2005 (''NYSE Response'').

[13] By separate orders, the Commission also is approving a parallel rule filing by the CBOE (SR–CBOE–2002–03), and a related rule filing by the Options Clearing Corporation (''OCC'') (SR–OCC–2003–04). *See* Securities Exchange Act Release No. 52030 (July 14, 2005) and Securities Exchange Act Release No. 52032 (July 14, 2005). In addition, the staff of the Division of Market Regulation is issuing certain no-action relief related to the OCC's rule

II. Description

a. Summary of Proposed Rule Change

The NYSE has proposed to amend its rules, for certain customer accounts, to allow member organizations to margin listed broad-based securities index options, warrants, futures, futures options and related exchange-traded funds according to a portfolio margin methodology. The NYSE seeks to introduce the proposed rule as a two-year pilot program that would be made available to member organizations on a voluntary basis.

NYSE Rule 431 generally prescribes minimum maintenance margin requirements for customer accounts held at members and member organizations. In April 1996, the Exchange established the Rule 431 Committee to assess the adequacy of NYSE Rule 431 on an ongoing basis, review margin requirements, and make recommendations for change. A number of proposed amendments resulting from the Committee's recommendations have been approved by the Exchange's Board of Directors since the Committee was established, including the proposed rule change.

b. Overview—Portfolio Margin Computation

(1) Portfolio Margin

Portfolio margining is a methodology for calculating a customer's margin requirement by ''shocking'' a portfolio of financial instruments at different equidistant points along a range representing a potential percentage increase and decrease in the value of the instrument or underlying instrument in the case of a derivative product. For example, the calculation points could be spread equidistantly along a range bounded on one end by a 10% increase in market value of the instrument and at the other end by a 10% decrease in market value. Gains and losses for each instrument in the portfolio are netted at each calculation point along the range to derive a potential portfolio-wide gain or loss for the point. The margin requirement is the amount of the greatest portfolio-wide loss among the calculation points.

Under the Exchange's proposed rule, a portfolio would consist of, and be limited to, financial instruments in the customer's account within a given broad-based US securities index class (*e.g.*, the S&P 500 or S&P 100).[14] The gain or loss on each position in the portfolio would be calculated at each of 10 equidistant points (''valuation points'') set at and between the upper and lower market range points. The range for non-high capitalization indices would be between a market increase of 10% and a decrease of 10%. High capitalization indices would have a range of between a market increase of 6% and a decrease of 8%.[15] A theoretical options pricing model would be used to derive position values at each valuation point for the purpose of determining the gain or loss. The amount of margin (initial and maintenance) required with respect to a given portfolio would be the larger of: (1) The greatest loss amount among the valuation point calculations; or (2) the sum of $.375 for each option and future in the portfolio multiplied by the contract's or instrument's multiplier. The latter computation establishes a minimum margin requirement to ensure that a certain level of margin is required from the customer. The margin for all other portfolios of broad based US securities index instruments within an account would be calculated in a similar manner.

Certain portfolios would be allowed offsets such that, at the same valuation point, for example, 90% of a gain in one portfolio may reduce or offset a loss in another portfolio.[16] The amount of offset allowed between portfolios would be the same as permitted under Rule 15c3–1a for computing a broker-dealer's net capital.[17]

Under the Exchange's proposed rule, the theoretical prices used for computing profits and losses must be generated by a theoretical pricing model that meets the requirements in Rule 15c3–1a.[18] These requirements include, among other things, that the model be non-proprietary, approved by a Designated Examining Authority (''DEA'') and available on the same terms to all broker-dealers.[19] Currently, the only model that qualifies under Rule 15c3–1a is the OCC's Theoretical Intermarket Margining System (''TIMS'').

(2) Cross-Margining

The Exchange's proposed rule permits futures and futures options on broad-based US securities indices to be included in the portfolios. Consequently, futures and futures options would be permitted offsets to the securities positions in a given portfolio. Operationally, these offsets would be achieved through cross-margin agreements between the OCC and the futures clearing organizations holding the customer's futures positions. Cross-margining would operate similar to the cross-margin program that the Commission and the Commodity Futures Trading Commission (''CFTC'') approved for listed options market-makers and proprietary accounts of clearing members organizations.[20] For determining theoretical gains and losses, and resultant margin requirements, the same portfolio margin computation program will be applied to portfolio margin accounts that include futures. Under the proposed rule, a separate cross-margin account must be established for a customer.

c. Margin Deficiency

Under the Exchange's proposed rule, account equity would be calculated and maintained separately for each portfolio margin account and a margin call would need to be met by the customer within one business day (T + 1), regardless of whether the deficiency is caused by the addition of new positions, the effect of an unfavorable market movement, or a combination of both. The portfolio margin methodology, therefore, would establish both the customer's initial and maintenance margin requirement.

d. $5.0 Million Equity Requirement

The Exchange's proposed rule would require a customer (other than a broker-dealer or a member of a national futures exchange) to maintain a minimum account equity of not less than $5.0 million. This requirement can be met by combining all securities and futures accounts owned by the customer and carried by the broker-dealer (as broker-dealer and futures commission merchant), provided ownership is identical across all combined accounts.

filing. *See* letter from Bonnie Gauch, Attorney, Division of Market Regulation, Commission, to William H. Navin, General Counsel, OCC, dated July 14, 2005.

[14] A ''portfolio'' is defined in the rule as ''options of the same options class grouped with their underlying instruments and related instruments.''

[15] These are the same ranges applied to options market makers under Appendix A to Rule 15c3–1 (17 CFR 240.15c3–1a), which permits a broker-dealer when computing net capital to calculate securities haircuts on options and related positions using a portfolio margin methodology. *See* 17 CFR 240 15c3–1a(b)(1)(iv)(A); Letter from Michael Macchiaroli, Associate Director, Division of Market Regulation, Commission, to Richard Lewandowski, Vice President, Regulatory Division, The Chicago Board Options Exchange, Inc. (Jan. 13, 2000).

[16] These offsets would be allowed between portfolios within the High Capitalization, Broad Based Index Option product group and the Non-High Capitalization, Board Based Index product group.

[17] 17 CFR 240.15c3–1a.

[18] *See* 17 CFR 250.15c3–1a(b)(1)(i)(B).

[19] *Id.*

[20] *See* Securities Exchange Act Release 26153 (Oct. 3, 1988), 53 FR 39567 (Oct. 7, 1988).

The proposed rule would require that, in the event account equity falls below the $5 million minimum, additional equity must be deposited within three business days (T + 3).

e. Net Capital

The Exchange's proposed rule would provide that the gross customer portfolio margin requirements of a broker-dealer may at no time exceed 1,000 percent of the broker-dealer's net capital (a 10:1 ratio), as computed under Rule 15c3–1.[21] This requirement is intended to place a ceiling on the amount of portfolio margin a broker-dealer can extend to its customers.

f. Internal Risk Monitoring Procedures

The Exchange's proposed rule would require a broker-dealer that carries portfolio margin accounts to establish and maintain written procedures for assessing and monitoring the potential risks to capital arising from portfolio margining.

g. Margin at the Clearing House Level

The OCC will compute clearing house margin for the broker-dealer using the same portfolio margin methodology applied at the customer level. The OCC will continue to require full payment for all customer long option positions. These positions, however, would be subject to the OCC's lien. This would permit the long options positions to offset short positions in the customer's portfolio margin account. In conjunction with the Exchange's rule proposal, the OCC proposed amending OCC Rule 611 and establishing a new type of omnibus account to be carried at the OCC and known as the "customer's lien account." [22] In order to unsegregate the long option positions, the Commission staff would have to grant certain relief from some requirements of Commission Rules 8c–1, 15c2–1, and 15c3–3.[23] The OCC requested such relief on behalf of its members.[24]

h. Risk Disclosure Statement and Acknowledgement

The Exchange's proposed rule would require a broker-dealer to provide a portfolio margin customer with a written risk disclosure statement at or prior to the initial opening of a portfolio margin account. This disclosure statement would highlight the risks and describe the operation of a portfolio margin account. The disclosure statement would be divided into two sections, one dealing with portfolio margining and the other with cross-margining. The disclosure statement would note that additional leverage is possible in an account margined on a portfolio basis in relation to existing margin requirements. The disclosure statement also would describe, among other things, eligibility requirements for opening a portfolio margin account, the instruments that are allowed in the account, and when deposits to meet margin and minimum equity requirements are but. Further, there would be a summary list of the special risks of a portfolio margin account, including the increased leverage, time frame for meeting margin calls, potential for involuntary liquidation if margin is not received, inability to calculate future margin requirements because of the data and calculations required, and the OCC lien on long option positions. The risks and operation of the cross-margin account are outlined in a separate section of the disclosure statement.

Further, at or prior to the time a portfolio margin account is initially opened, the broker-dealer would be required to obtain a signed acknowledgement concerning portfolio margining from the customer. A separate acknowledgement would be required for cross-margining. The acknowledgements would contain statements to the effect that the customer has read the disclosure statement and is aware of the fact that long option positions in a portfolio margin account are not subject to the segregation requirements under the Commission's customer protection rules, and would be subject to a lien by the OCC.

An additional acknowledgement form would be required for a cross-margin account. It would contain similar statements as well as statement to the effect that the customer is aware that futures positions are being carried in a securities account, which would make them subject to the Commission's customer protection rules, and Securities Investor Protection Act of 1970 ("SIPA") [25] in the event the broker-dealer becomes financially insolvent. The Exchange would prescribe the format of the written disclosure statements and acknowledgements, which would allow a broker-dealer to develop its own format, provided the acknowledgement contains substantially similar information and is approved by the Exchange in advance.

i. Rationale for Portfolio Margin

Theoretical options pricing models have become widely utilized since Fischer Black and Myron Scholes first introduced a formula for calculating the value of a European style option in 1973.[26] Other formulas, such as the Cox-Ross-Rubinstein model have since been developed. Option pricing formulas are now used routinely by option market participants to analyze and manage risk. In addition, as noted, a portfolio margin methodology has been used by broker-dealers since 1994 to calculate haircuts on option positions for net capital purposes.[27]

The Board of Governors of the Federal Reserve System (the "Federal Reserve Board" or "FRB") in its amendments to Regulation T in 1998 permitted SROs to implement portfolio margin rules, provided they are approved by the Commission.[28]

Portfolio margining brings a more risk sensitive approach to establishing margin requirements. For example, in a diverse portfolio some positions may appreciate and others depreciate in response to a given change in market prices. The portfolio margin methodology recognizes offsetting potential changes among the full portfolio of related instruments. This links the margin required to the risk of the entire portfolio as opposed to the

[21] 17 CFR 240.15c3–1.

[22] *See* SR–OCC–2033–04, Securities Exchange Act Release No. 51330 (March 8, 2005). As noted above, the Commission is approving the OCC's rule filing. *See* Securities Exchange Act Release No. 52030 (July 14, 2005).

[23] 17 CFR 240.8c–1, 17 CFR 240.15c2–1 and 17 CFR 240.15c3–3, respectively.

[24] *See* Letter from William H. Navin, Executive Vice President, General Counsel, and Secretary, The Options Clearing Corporation, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, dated January 13, 2005. As noted above, the staff of the Division of Market Regulation is issuing a no-aciton letter providing such relief. *See* letter from Bonnie Gauch, Attorney, Division of Market Regulation, Commission, to William H. Navin, General Counsel, OCC, dated July 14, 2005.

[25] 15 U.S.C. 78aaa *et seq.*

[26] *See* Securities Exchange Act Release No. 34–38248 (Feb. 6, 1997), 62 FR 6474 (Feb. 12, 1997) (discussing the development of the options pricing approach to capital); *see also* Securities Exchange Act Release No. 33761 (March 15, 1994), 59 FR 13275 (March 21, 1994).

[27] *See* letter from Brandon Becker, Director, Division, Commission, to Mary Bender, First Vice President, Division of Regulatory Services, CBOE, and Timothy Hinkes, Vice President, OCC, dated March 15, 1994; *see also* "Net Capital Rule," Securities Exchange Act Release No. 38248 (February 6, 1997), 61 FR 6474 (February 12, 1997).

[28] *See* Federal Reserve System, "Securities Credit Transactions; Borrowing by Brokers and Dealers"; Regulations G, T, U and X; Docket Nos. R–0905, R–0923 and R–0944, 63 FR 2806 (January 16, 1998). More recently, the FRB encouraged the development of a portfolio margin approach in a letter to the Commission and the CFTC delegating authority to the agencies to jointly prescribe margin regulations for security futures products. *See* letter from the FRB to James E. Newsome, Acting Chairman, CFTC, and Laura S. Unger, Acting Chairman, Commission, dated March 6, 2001.

individual positions on a position-by-position basis.

Professional investors frequently hedge listed index options with futures positions. Cross-margining would better align their margin requirements with the actual risks of these hedged positions. This could reduce the risk of forced liquidations. Currently, an option (securities) account and futures account of the same customer are viewed as separate and unrelated. Moreover, an option account currently must be liquidated if the risk in the positions has increased dramatically or margin calls cannot be met, even if gains in the customer's futures account offset the losses in the options account. If the accounts are combined (*i.e.* cross-margined), unnecessary liquidation may be avoided. This could lessen the severity of a period of high volatility in the market by reducing the number of liquidations.

III. Summary of Comments Received and NYSE Response

The Commission received a total of 15 comment letters to the proposed rule change.[29] The comments, in general, were supportive. One commenter stated that ''the NYSE's efforts to expand the use of portfolio margining systems—as opposed to strategy-based systems— as an enlightened and decidedly forward looking policy.'' [30] Some commenters, however, recommended changes to specific provisions of the proposed rule change.

Seven of the comment letters received specifically objected to the $5.0 million equity requirement.[31] Three commenters noted that the requirement blocks certain large institutions from participating in portfolio margining because these institutions hold assets as a custodian bank and would generally not hold $5.0 million in an account with a broker-dealer.[32] One commenter recommended reducing the equity requirement to $2.0 million.[33] Four commenters raised the issue that securities index options will be at a disadvantage compared with economically similar CFTC regulated index futures and options, because futures accounts have no minimum equity requirement.[34]

The Exchange believes that the comments directed at the $5.0 million have validity, especially with respect to certain types of accounts that must hold assets at a custodial bank. The Exchange intends to further consider this issue, through the Rule 431 Committee, and seek alternative methods for meeting the minimum equity requirement.[35]

Two commenters stated that other products should be eligible for portfolio margining.[36] Two commenters stated that other risk-based algorithms, such as SPAN, that are recognized by other clearing organizations should be permitted for calculating the portfolio margin requirement, in addition to the OCC's TIMS.[37] The Exchange noted that it is working (through the Rule 431 Committee) with an SIA subcommittee to explore the expansion of portfolio margining to additional products and participants. Finally, the NYSE stated that the comments received should not delay implementation of the proposed rule change.

IV. Discussion and Commission Findings

After careful review, 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.[38] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act [39] in particular, in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest. The Commission notes that the proposed portfolio margin rule change is intend to promote greater reasonableness, accuracy and efficiency with respect to Exchange margin requirements for complex listed securities index option strategies. The Commission further notes that the cross-margining capability with related index futures positions in eligible accounts may alleviate excessive margin calls, improve cash flows and liquidity, and reduce volatility. Moreover, the Commission notes that approving the proposed rule change would be consistent with the FRB's 1998 amendments to Regulation T, which sought to advance the use of portfolio margining.

Under the proposed rule changes, the Commission notes that a broker-dealer choosing to offer portfolio margining to its customers must employ a methodology that has been approved by the Commission for use in calculating haircuts under Rule 15c3–1a. As stated above, currently, TIMS is the only approved methodology. While some commenters recommended expanding the choice of models, the Commission believes that requiring a broker-dealer to use a model that qualifies for calculating haircuts under Commission Rule 15c3–1a maintains a consistency with the Commission's net capital rule and across potential portfolio margin pricing models. As a result, portfolio margin requirements would vary less from firm to firm. The Commission notes, however, that like Rule 15c3–1a, the proposed rule permits the use of another theoretical pricing model, should one be developed in the future.[40]

The Commission notes the objections of certain commenters to the $5 million minimum equity requirement. The Commission believes that the requirement circumscribes the number of accounts able to participate and adds safety in that such accounts are more likely to be of significant financial means and investment sophistication.

Finally, the Commission notes that several commenters recommended expanding the products eligible for portfolio margining. The Exchange's proposed rule limits the instruments eligible for portfolio margining to listed products base on broad-based US securities indices, which tend to be less volatile than narrow-based indices and non-index equities. The Commission believes this limitation is appropriate for the pilot program, which should serve as a first step toward the possible expansion of portfolio margining to other classes of securities.

V. Conclusion

It is therefore ordered, pursuant to seciton 19(b)(2) of the Act,[41] that the proposed rule change (File No. SR–NYSE–2002–19), as amended, is approved on a pilot basis to expire on July 31, 2007.

[29] *See supra* notes 5, 8 and 11.

[30] *See* Gill CME Letter.

[31] *See* Ianni Letter; Weingart Letter; Wiermanski Letter; Hansen Letter; Greiner Letter; Martin Letter; and Melvin Letter.

[32] *See* Weingart Letter; Wiermanski Letter; and Melvin Letter.

[33] *See* Martin Letter.

[34] *See* Weingart Letter; Wiermanski Letter; Hansen Letter; and Sheehan Letter.

[35] *See* NYSE Response.

[36] *See* Wiermanski Letter and Donohue Letter.

[37] *See* Donohue Letter and Gill CME Letter.

[38] 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).

[39] 15 U.S.C. 78f(b)(5).

[40] *See also* Securities Exchange Act Release No. 34–38248 (February 6, 1997), 62 FR 6474 (February 12, 1997) (discussing in Part II.A. the use of TIMS versus other pricing models).

[41] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[42]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 05–14316 Filed 7–20–05; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52034; File No. SR–OCC–2005–08]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Reducing Clearing Fees for Securities Option Contracts

July 14, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), [1] notice is hereby given that on June 14, 2005, The Options Clearing Corporation (''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 on the proposed rule change from interested persons.

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

Effective July 1, 2005, OCC will further reduce its discounted fee schedule for securities option contracts until further action by the Board of Directors.

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

The primary purpose of this rule change is to further reduce OCC's currently discounted clearing fees for securities option contracts until the Board of Directors determines otherwise.[3] Effective July 1, 2005, OCC's clearing fees for securities options will be:

Contracts/trade	Discounted fee effective July 1, 2005
1–500	$0.05/contract.
501–1,000	$0.04/contract.
1,001–2,000	$0.03/contract.
>2,000	$55.00 (capped).

The additional fee reduction recognizes the continued strong volume in securities options in 2005. OCC believes that this fee reduction will financially benefit clearing members and other market participants without adversely affecting OCC's ability to meet its expenses and maintain an acceptable level of retained earnings.

The discounted fees for new securities option products will be:

Month	Contracts/ trade	Discounted fee effective July 1, 2005
1	N/A	No Fee.
2	1–4,400	$0.01
	>4,400	$40.00
3	1–2,200	$0.02
	>2,200	$40.00
4	N/A	Regular Schedule.

OCC believes that the proposed rule change is consistent with Section 17A of the Act because it benefits clearing members by reducing clearing fees and allocates such fees among clearing members in a fair and equitable manner. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

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

OCC does not believe that the proposed rule change would 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 were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [4] and Rule 19b–4(f)(2) [5] thereunder because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OCC–2005–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0609.

All submissions should refer to File Number SR–OCC–2005–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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

[42] 17 CFR 200.30–3(a)(12).

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

[2] The Commission has modified parts of these statements.

[3] In addition, OCC is deleting charges for 56.0kb lines as they are no longer a supported communications protocol. Other changes made to the Schedule of Fees are of a technical or conforming nature.

[4] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).