a conservative calculation that is a function of: (1) Margin factors that are designed to cover one day market movements as least 95 percent of the time but that typically exceed this confidence level and (2) a cautious disallowance scheme providing only limited credits (benefits) for hedging across offset classes (for example, GSCC does not allow offsets of zeros against non-zeros).

Furthermore, by calculating an average POMA (based on a member's twenty highest POMA amounts occurring in the most recent 75 business days), GSCC ensures that it calculates a historically sufficient receive/deliver settlement component for a member even when current activity results in a relatively low requirement.

Finally, periodic studies conducted by GSCC assessing the risks presented to it from the potential default by a member on its obligations to GSCC have concluded that GSCC's methodologies for identifying and computing its risks provide it with a high level of protection on a individual and aggregate basis.

Second, the liquidation amount ignores and negates much of the protection afforded by a hedging strategy. The more a member engages in a hedging strategy with respect to its trading, the more it protects its clearing corporation from the risk of its failure. However, GSCC believes that the current 25 percent minimum margin call effectively disregards the protection afforded to GSCC by a member that engages in trading activity on a fully hedged basis. In addition, it penalizes the member by forcing it to post excessive collateral with GSCC.

In sum, the liquidation amount calculation is necessary because it recognizes the fact that an aberrational yield curve may exist at the time of a liquidation. However, GSCC believes that the use of 25 percent is overly conservative and ties up excessive amounts of collateral of netting members. Thus, GSCC believes that the percentage in liquidation amount calculation should be lowered to 10 percent.

GSCC believes that the proposed rule change will revise GSCC's risk management processes in a prudent manner that is consistent with minimizing collateral and operational burdens on and maximizing the liquidity of GSCC netting members. Thus, GSCC believes that the proposed rule change is consistent with Section 17A of the Act because the proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions and will in general protect investors and the public interest.

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

GSCC does not believe that the proposed rule will have an impact on or impose a burden on competition.

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

Comments on the proposed rule change have not yet been solicited. Members will be notified of the rule filing and comments will be solicited by an Important Notice. GSCC will notify the Commission of an written comments received by GSCC.

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

Within thirty-five 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 ninety 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 GSCC 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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies 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 in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–00–02 and should be submitted by January 30, 2001.

For the Commission by the Divisioin of Market Regulation pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–539 Filed 1–8–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–43785; File No. SR–NYSE–00–39)

Self-Regulatory Organizations; New York Stock Exchange, Incorporated; Order Approving Proposed Rule Change To Amend Arbitration Rules Regarding Pilot Programs for Mediation and Administrative Conferences

December 29, 2000.

I. Introduction

On September 29, 2000, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), 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 amending and extending the pilot programs for mediation and administrative conferences. Notice of the proposal appeared in the **Federal Register** on November 17, 2000.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description

The Exchange proposes to amend and extend the pilot programs under NYSE Rules 638 and 639 for mediation and administrative conferences. The Exchange is amending and extending the pilot programs to continue to offer mediation as a way for parties to settle cases earlier with lower costs.[4] The Exchange believes that the administrative conference allows the

[3] 17 CFR 200.30–3(a)(12).

[1] 17 CFR 240.19b–4.

[2] 15 U.S.C. 78s(b)(1).

[3] Securities Exchange Act Release No. 43538 (November 9, 2000), 65 FR 69596.

[4] The Commission approved the Exchange's mediation program and administrative conference rule on a two-year pilot basis through November 20, 2000. *See* Securities Exchange Act Release No. 40695 (November 19, 1998), 63 FR 65834 (November 30, 1998). On October 31, 2000, the Exchange's current pilot programs for mediation and administrative conferences were extended for an additional six months. *See* Securities Exchange Act Release No. 43496, (October 31, 2000).

arbitrators to intervene early in the case to set deadlines and resolve preliminary procedural issues. The Exchange is also proposing to amend both pilot programs to include a greater number of cases by lowering the threshold amount to $250,000 from $500,000.

Since November of 1998, the Exchange has sponsored a pilot mediation program. Under the pilot program, a single mediation session of up to four hours is conducted in all cases not involving public customers submitted for arbitration where the amount of the claim is $500,000 or more. The Exchange pays the mediator up to $500 for this single mediation session. There are no costs assessed to the parties unless they select a mediator whose rate is higher or if the parties agree to go beyond the single session. The Exchange represents that of the cases mediated under this provision of the pilot, approximately 31 percent (15 of 48) have settled before arbitration. Further, the Exchange believes that early settlements reduce costs and provide a greater measure of party satisfaction.

Under the pilot, mediation is also available in cases involving public customers where the claim is $500,000 or more upon agreement of the parties. These cases also qualify for the Exchange's $500 incentive payment to the mediator. In all other cases, mediation is available at the parties' own expense. The Exchange, however, will provide the parties with a list of mediators, will assist in facilitating the parties' agreement to mediate and will make its conference room facilities available for the mediation.

To evaluate the pilot, the staff of the Exchange met with mediators and lawyers who participated in mediation under the pilot. Based on the evaluators' comments and the settlement rate, the Exchange is proposing to extend the pilot for two years, as amended.

To encourage greater use of mediation, the Exchange proposes to amend the mediation pilot program to include all cases within a lowered threshold of claims of $250,000 or more. The Exchange represents that most commentators supported the pilot's provision that a single mediation session of up to four hours be conducted in all cases with claims of $250,000 or more. The Exchange believes that this process relieves the parties from having to suggest mediation because the Exchange rule provides for it. Further, the Exchange represents that many parties believe that the other side will view their suggestion to mediate as a sign of weakness. The Exchange believes that this process also assists counsel in getting their clients to consider mediation by making it part of the arbitration process—with little or no cost to them.

As amended, all cases with claims of $250,000 or more will be included in the pilot. This includes case involving public customers. The Exchange believes the pilot's inclusion of customer cases may lead to more and earlier settlements. The Exchange represents that under the present pilot, where the parties have elected to mediate, 78.9 percent (15 to 19) of the customer cases with claims over $500,000 have settled before arbitration.

Under the present pilot, a single mediation session of up to four hours is conducted. The process is voluntary process and neither the Exchange nor the mediator can require a party to mediate. The mediation may last less than four hours or the parties may refuse to participate at all. The pilot's only requirement is that the Director of Arbitration arrange for the mediation. The Director will delegate to the Exchange's staff the tasks of sending the parties a list of mediators and selecting a mediator from the list if the parties do not agree to a mediator. If the parties object to all the names on the list, the Director will appoint a mediator from outside the list. Once the parties or the Director selects a mediator, the Director will schedule the mediation and advise the parties. The mediator may contact the parties to preliminarily discuss the case. The pilot does not require the parties to do anything they do not wish to, including exchange information or documents; and there is no required pre-mediation exchange of exhibits. The Exchange's goal of scheduling mediation is to encourage the parties to try to resolve the dispute as quickly and efficiently as possible. Unless the parties otherwise agree, mediation will not delay the arbitration.

The Exchange will continue to pay the mediator's fee for one session, up to $500, in cases where the rule provides that a single mediation session is to be conducted. The Exchange represents that many commentators noted that the Exchange's provision for a single mediation session and incentive payment of the mediator's fee, up to $500, is helpful in encouraging their clients to agree to try mediation. Further, the Exchange represents that the average mediation settles or reaches an impasse after approximately two sessions.

The Exchange is also proposing to allow parties to mediate without first filing for arbitration. The current pilot only applies to cases already filed with the NYSE for arbitration. Allowing the parties to mediate prior to filing an arbitration may save the parties some costs of arbitration. The party requesting mediation will be required for arbitration under Rule 629 for claims of the same amount. If the case does not settle after mediation, the Exchange will apply the fee to the non-refundable filing fee for arbitration. The parties are also required to pay the mediator's fee and agree on how the fee will be shared. The parties' agreement to mediate will not toll the time limitation for submission of a claim to arbitration.

As under the original pilot, cases with claims for less than $250,000 may also be mediated when the parties agree. However, in these cases the parties are responsible for payment of the entire mediator's fee. The Exchange represents that during the pilot program, where the parties have agreed to mediate claims below $500,000, 76 percent (16 of 21) have settled.

Since November of 1998, the pilot program has provided for an administrative conference with the parties and arbitrators in cases over $500,000. The conference allows the arbitrators to set deadlines early in the case and resolve preliminary issues with the aim of expediting the arbitration. The Exchange represents that to date, 124 administrative conferences have been conducted and most commentators supported the administrative conference with certain changes. The Exchange is proposing to amend and extend the pilot for two years.

In order to expedite a greater number of claims, the Exchange is proposing to lower the threshold for administrative conferences from $500,000 to $250,000. The Exchange is also proposing that, be default, the chairperson of the panel conduct the conference by telephone. The Exchange believes that this will allow the staff to schedule the conference earlier because it will involve coordinating the schedules of fewer persons. In cases involving public customers, a public arbitrator will conduct the administrative conference unless the public customer requests, in writing, a securities arbitrator. The Chairperson shall have discretion to conduct the conference in-person and may request that all of the arbitrators attend the conference. Under the amended pilot, the Director of Arbitration will schedule the conference 90 days after service of the Statement of Claim, rather than 30 days after the answer is filed. The additional period of time is intended to permit the parties to frame the issues for the administrative conference. The administrative conference pilot does not affect the parties' right to request a pre-hearing

conference to resolve discovery disputes and other preliminary matters under NYSE Rule 619.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [5] and, in particular, the requirements of Section 6 and the rules and regulations thereunder.[6] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. In particular, the Commission believes that the proposed rule change will continue to help ensure that NYSE members, member organizations, and the public have a fair and impartial forum for the resolution of their disputes.

Mediation is a method of dispute resolution where a mediator attempts to facilitate a settlement of the dispute. The Commission believes that it is reasonable and consistent with the Act to extend mediation to more cases because it may result in savings of time and money for a greater number of parties. The Commission notes that the Exchange is amending and extending this pilot program based on its evaluation of the effectiveness of the current pilot program. The Exchange represents that lowering the threshold to claims of $250,000 or more and including cases involving public customers may lead to more and earlier settlements. In addition, the Exchange represents that early settlements reduce costs and increase party satisfaction.

The Commission believes that it is consistent with the Act to require an administrative conference between the parties and the arbitrators in cases where the amount of the claim is $250,000 or more, to expedite the arbitration process and reduce costs of the arbitration. An administrative conference early in the process will allow the arbitrators to intervene to establish discovery schedules, resolve discovery disputes and other preliminary matters, and to attempt to narrow the issues in dispute and avoid costly contests over procedural matters. The Commission believes that reducing the threshold for administrative conferences from $500,000 to $250,000 should provide these benefits to a greater number of claims. Further, the procedural amendments to the pilot program should expedite the process for conducting administrative conferences.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–00–39) is approved. The mediation program, NYSE Rule 638, and the administrative conference rule, NYSE Rule 639, are each approved on a two-year pilot basis through December 30, 2002.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–541 Filed 1–8–01; 8:45 am]

BILLING CODE 8010–01–M

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

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43782; File No. SR–OCC–00–04]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Definition of Marking Price and Closing Price

December 29, 2000.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') notice is hereby given that on May 2, 2000, 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

The proposed rule change would amend OCC's price determination rules by conforming the definition of ''marking price'' to the definition of ''closing price.'' The rule change would also revise both definitions to clarify that OCC will normally determine underlying stock prices based on the last reported sale price during regular business hours.

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

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 purpose of the proposed rule change is to conform the definition of ''marking price'' in OCC Rule 601 to the definition of ''closing price'' in OCC Rule 805. The rule change would also revise both definitions to clarify that OCC will normally determine underlying stock prices based on the last reported sale price during regular business hours.

Background

OCC Rule 805(j) defines the term ''closing price'' for purposes of OCC's exercise by exception procedure. Under this procedure, unless a clearing member specifically instructs OCC to the contrary, expiring equity options in the clearing member's accounts are exercised without any affirmative action by the clearing member if the ''closing price'' of the underlying stock exceeds (in the case of a call) or is less than (in the case of a put) the strike price of the option by a specified interval. That interval is three-quarters of a point in a customers' account and one-quarter of a point in any other clearing member account.[3]

Before February 1999, Rule 805(j) defined ''closing price'' to mean the closing price of an underlying stock ''on its primary market.'' In recognition of the increasing fragmentation of the equity markets, the rule was amended in February 1999 to refer instead to the last reported sale price ''on such national securities exchange or other domestic securities market as [OCC] shall determine.'' [4] Thus, the rule change gave OCC the discretion to designate the market whose closing price will serve as the benchmark in order to avoid

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

[3] See OCC Rule 805(d)(2).

[4] Securities Exchange Act Release No. 41089 (February 23, 1999), 64 FR 10051 (March 1, 1999).