requirements. Representatives of the NASD and SEC have recently asked the MSRB to revise certain language in Rule G–41 to assist in enforcement of the rule. The basic requirements of the rule remain unchanged.

2. Statutory Basis

The MSRB has adopted the proposed rule change, as amended, pursuant to Section 15B(b)(2)(C) of the Act,[6] which authorizes the MSRB to adopt rules that shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The Board believes that the proposed rule change will facilitate dealer compliance with anti-money laundering compliance program regulation. These programs are designed to help identify and prevent money laundering abuses that can affect the integrity of the U.S. capital markets.

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

The MSRB does not believe that the proposed rule change, as amended, will result in any burden on competition among dealers not necessary or appropriate in furtherance of the purposes of the Act because it applies equally to all dealers in municipal securities.

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

Written comments were neither solicited nor received.

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

The MSRB has designated this proposed rule change as constituting a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing MSRB rule under Section 19(b)(3)(A)(i) of the Act,[7] and Rule 19b–4(f)(1) thereunder,[8] which renders the proposed rule change effective upon filing with the Commission.

[6] 15 U.S.C. 78o–4(b)(2)(C).

[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(f)(1).

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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–MSRB–2005–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–MSRB–2005–03. 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 available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the office of the MSRB. 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–MSRB–2005–03 and should be submitted on or before May 24, 2005.

[9] *See* 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on April 25, 2005, the date that the MSRB filed Amendment No. 1.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2105 Filed 5–2–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51615; File No. SR–NYSE–2002–19]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto by the New York Stock Exchange, Inc. Relating to Customer Portfolio and Cross-Margining Requirements

April 26, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 18, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") Amendment No. 3 [3] to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The NYSE submitted this partial amendment, constituting Amendment No. 3, pursuant to the request of Commission staff. Specifically, the NYSE proposes to amend new Section (g)(4) under Rule 431 to remove current paragraph (g)(4)(B) under which any affiliate of a self-clearing member organization can participate in portfolio margining, without being subject to the $5 million equity requirement.[4]

The NYSE submitted the original proposed rule change to the Commission on May 13, 2002 ("Original Proposal"). On August 21, 2002, the NYSE filed Amendment No. 1 to the proposed rule change.[5] The proposed

[10] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Partial Amendment No. 3 ("Amendment No. 3").

[4] This partial amendment would not exclude these affiliates from participating in portfolio margining; rather, it would subject them to the $5 million equity requirement in proposed paragraph (g)(4)(C) of Rule 431 in Amendment No. 3.

[5] *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

Continued

rule change and Amendment No. 1 were published in the **Federal Register** on October 8, 2002.[6] The Commission received three comment letters in response to the October 8, 2002 **Federal Register** notice.[7] On June 21, 2004, the Exchange filed Amendment No. 2 to the proposed rule change.[8] The proposed rule change and Amendment Nos. 1 and 2 were published in the **Federal Register** on December 27, 2004.[9] The Commission received ten comment letters in response to the December 27, 2004 **Federal Register** notice.[10] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.[11]

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

The Exchange proposes to amend NYSE Rule 431 to permit self-clearing members and member organizations to margin listed, broad-based, market index options, index warrants and related exchange-traded funds according to a prescribed portfolio margin methodology relating to a portfolio margin account of a registered broker-dealer, certain qualified members of a national futures exchange, and any other person or entity that maintains account equity of at least $5 million.

The Exchange further proposes to amend NYSE Rule 726 to require that a disclosure statement and written acknowledgement for use with the proposed portfolio margining and cross-margining changes be furnished to customers. The text of the proposed rule change is below. Additions are in italics.

* * * * *

Margin Requirements

Rule 431. (a) through (f) unchanged.

Portfolio Margin and Cross-Margin for Index Options

(g) As an alternative to the "strategy" based margin requirements set forth in paragraphs (a) through (f) of this Rule, member organizations may elect margin for listed, broad-based U.S. index options, index warrants and underlying instruments (as defined below) in accordance with the portfolio margin requirements set forth in this Rule.

In addition, member organizations, provided they are a Futures Commission Merchant ("FCM") and are either a clearing member of a futures clearing organization or have an affiliate that is a clearing member of a futures clearing organization, are permitted under this section to combine a customer's related instruments (as defined below) and listed, broad-based U.S. index options, index warrants and underlying instruments and compute a margin requirement ("cross margin") on a portfolio margin basis. Member organizations must confine cross-margin positions to a portfolio margin account dedicated exclusively to cross-margining.

The portfolio margin and cross-margining provisions of this Rule shall not apply to Individual Retirement Accounts ("IRAs").

(1) Member organizations will be expected to monitor the risk of portfolio margin accounts and maintain a written risk analysis methodology for assessing the potential risk to the member organization's capital over a specified range of possible market movements of positions maintained in such accounts. The risk analysis methodology shall specify the computations to be made, the frequency of computations, the records to be reviewed and maintained, and the position(s) within the organization responsible for the risk function. This risk analysis methodology shall be made available to the Exchange upon request. In performing the risk analysis of portfolio margin accounts required by this Rule, each member organization shall include the following in the written risk analysis methodology:

(A) Procedures and guidelines for the determination, review and approval of credit limits to each customer, and across all customers, utilizing a portfolio margin account.

(B) Procedures and guidelines for monitoring credit risk exposure to the member organization, including intra-day credit risk, related to portfolio margin accounts.

(C) Procedures and guidelines for the use of stress testing of portfolio margin accounts in order to monitor market risk exposure from individual accounts and in the aggregate.

(D) Procedures providing for the regular review and testing of these risk analysis procedures by an independent unit such as internal audit or other comparable group.

(2) Definitions.—For purposes of this paragraph (g), the following terms shall have the meanings specified below:

(A) The term "listed option" shall mean any option traded on a registered national securities exchange or automated facility of a registered national securities association.

(B) The term "options class" refers to all options contracts covering the same underlying instrument.

(C) The term "portfolio" means options of the same options class grouped with their underlying instruments and related instruments.

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 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).

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

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

[8] *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.

[9] *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).

[10] These written comments (letters and e-mails) responded jointly to the NYSE and CBOE proposed rule changes. *See* letter from Barbara Wierzynski, Executive Vice President and General Counsel, Futures Industry Association, and Gerard J. Quinn, Vice President and Associate General Counsel, Securities Industry Association, 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"); email 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"); *See* 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 2, 2005 ("Wierzynski/Hammerman Letter").

[11] This release (Release No. 34–51615) seeks comment on the proposed rule change, as amended, by Amendment Nos. 1, 2 and 3. Therefore, the language of the proposed rule change, as amended, is set forth in the release in its entirety.

(D) The term ''option series'' relates to listed options and means all option contracts of the same type (either a call or a put) and exercise style, covering the same underlying instrument with the same exercise price, expiration date, and number of underlying units.

(E) The term ''related instrument'' within an option class or product group means futures contracts and options on futures contracts covering the same underlying instrument.

(F) The term ''underlying instrument'' means long and short positions in an exchange traded fund or other fund product registered under the Investment Company Act of 1940, that holds the same securities, and in the same proportion, as contained in a broad-based index on which options are listed. The term underlying instrument shall not be deemed to include, futures contracts, options on futures contracts, underlying stock baskets, or unlisted instruments.

(G) The term ''product group'' means two or more portfolios of the same type (see sub-paragraph (g)(2)(H) below) for which it has been determined by Rule 15c3–1a under the Securities Exchange Act of 1934 that a percentage of offsetting profits may be applied to losses at the same valuation point.

(H) The term ''theoretical gains and losses'' means the gain and loss in the value of individual option series and related instruments at 10 equidistant intervals (valuation points) ranging from an assumed movement (both up and down) in the current market value of the underlying instrument. The magnitude of the valuation point range shall be as follows:

Portfolio type	Up/down market move (high & low valuation points)
Non-High Capitalization, Broad-based U.S. Market Index Option [12]	+/−10%
High Capitalization, Broad-based U.S. Market Index Option [13]	+6%/−8%

(3) Approved Theoretical Pricing Models.—Theoretical pricing models must be approved by a Designated Examining Authority and reviewed by the Securities and Exchange Commission (''The Commission'') in order to qualify. Currently, the theoretical model utilized by The Options Clearing Corporation (''The OCC'') is the only model qualified pursuant to The Commission's Net Capital Rule. All member organizations participating in the pilot program shall obtain their theoretical values from The OCC.

(4) Eligible Participants.—The application of the portfolio margin provisions of this paragraph (g), including cross-margining, is limited to the following:

(A) any broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934;

(B) any member of a national futures exchange to the extent that listed index options hedge the member's index futures; and

(C) any other person or entity not included in (4)(A) through (4)(B) above that has or establishes, and maintains, equity of at least 5 million dollars. For purposes of this equity requirement, all securities and futures accounts carried by the member organization for the same customer may be combined provided ownership across the accounts is identical. A guarantee pursuant to paragraph (f)(4) of this Rule is not permitted for purposes of the minimum equity requirement.

(5) Opening of Accounts.

(A) Only customers that have been approved for options transactions and approved to engage in uncovered short option contracts pursuant to Exchange Rule 721, are permitted to utilize a portfolio margin account.

(B) On or before the date of the initial transaction in a portfolio margin account, a member organization shall:

(i) furnish the customer with a special written disclosure statement describing the nature and risks of portfolio margining and cross-margining which includes an acknowledgement for all portfolio margin account owners to sign, and an additional acknowledgement for owners that also engage in cross-margining to sign, attesting that they have read and understood the disclosure statement, and agree to the terms under which a portfolio margin account and the cross-margin account respectively, are provided (see Exchange Rule 726(d)), and

(ii) obtain the signed acknowledgement(s) noted above from the customer (both of which are required for cross-margining customers) and record the date of receipt.

(6) Establishing Account and Eligible Positions.

(1) Portfolio Margin Account. For purposes of applying the portfolio margin requirements provided in this paragraph (g), member organizations are to establish and utilize a specific securities margin account, or sub-account of a margin account, clearly identified as a portfolio margin account that is separate from any other securities account carried for a customer.

(2) Cross-Margin Account. For purposes of combining related instruments and listed, broad-based U.S. index options, index warrants and underlying instruments and applying the portfolio margin requirements members are to establish and utilize a portfolio margin account, clearly identified as a cross-margin account, that is separate from any other securities account or portfolio margin account carried for a customer.

A margin deficit in either the portfolio margin account or the cross-margin account of a customer may not be considered as satisfied by excess equity in the other account. Funds and/or securities must be transferred to the deficient account and a written record created and maintained.

(A) Portfolio Margin Account—Eligible Positions

(i) A transaction in, or transfer of, a listed, broad-based U.S. index option or index warrant may be effected in the portfolio margin account.

(ii) A transaction in, or transfer of, an underlying instrument may be effected in the portfolio margin account provided a position in an offsetting listed, broad-based U.S. index option or index warrant is in the account or is established in the account on the same day.

(iii) If, in the portfolio margin account, the listed, broad-based U.S. index option or index warrant position offsetting an underlying instrument position ceases to exist and is not replaced within ten business days, the underlying instrument position must be transferred to a regular margin account, subject to initial Regulation T margin and margined according to the other provisions of this Rule. Member organizations will be expected to monitor portfolio margin accounts for possible abuse of this provision.

(iv) In the event that fully paid for long options and /or index warrants are the only positions contained within a portfolio margin account, such long positions must be transferred to a securities account other than a portfolio margin account or cross-margin account within 10 business days, subject to the margin required, unless the status of the account changes such that it is no longer composed solely of fully paid for long options and/or index warrants.

(B) Cross-Margin Account—Eligible Positions

(i) A transaction in, or transfer of, a related instrument may be effected in

[12] *In accordance with sub-paragraph (b)(1)(i)(B) of Rule 15c3–1a (Appendix A to Rule 15c3–1) under the Securities Exchange Act of 1934, 17 CFR 240.15c3–1a(b)(1)(i)(B).*

[13] *See footnote above.*

the cross-margin account provided a position in an offsetting listed, U.S. broad-based index option, index warrant or underlying instrument is in the account or is established in the account on the same day.

(ii) If the listed, U.S. broad-based index option, index warrant or underlying instrument position offsetting a related instrument ceases to exist and is not replaced within ten business days, the related instrument position must be transferred to a futures account and margined accordingly. Member organizations will be expected to monitor cross-margin accounts for possible abuse of this provision.

(iii) In the event that fully paid for long options and/or index warrants (securities) are the only positions contained within a cross-margin account, such long positions must be transferred to a securities account other than a portfolio margin account or cross margin account within 10 business days, subject to the margin required, unless the status of the account changes such that it is no longer composed solely of fully paid for long options and/or index warrants.

(7) Initial and Maintenance Margin Required.—The amount of margin required under this paragraph (g) for each portfolio shall be the greater of:

(A) The amount for any of the 10 equidistant valuation points representing the largest theoretical loss as calculated pursuant to paragraph (g)(8) below, or

(B) $.375 for each listed index option and related instrument multiplied by the contract's or instrument's multiplier, not to exceed the market value in the case of long positions in listed options and options on futures contracts.

(C) Account guarantees pursuant to paragraph (f)(4) of this Rule are not permitted for purposes of meeting initial and maintenance margin requirements.

(8) Method of Calculation.

(A) Long and short positions in listed options, underlying instruments and related instruments are to be grouped by option class; each option class group being a ''portfolio''. Each portfolio is categorized as one of the portfolio types specified in sub-paragraph (g)(2)(H) above.

(B) For each portfolio, theoretical gains and losses are calculated for each position as specified in sub-paragraph (g)(2)(H) above. For purposes of determining the theoretical gains and losses at each valuation point, member organizations shall obtain and utilize the theoretical value of a listed index option, underlying instrument or related instrument rendered by a theoretical pricing model that, in accordance with sub-paragraph (b)(1)(i)(B) of Rule 15c3–1a under the Securities Exchange Act of 1934, qualifies for purposes of determining the amount to be deducted in computing net capital under a portfolio based methodology.

(C) Offsets. Within each portfolio, theoretical gains and losses may be netted fully at each valuation point.

Offsets between portfolios within the High Capitalization, Broad-based Index Option product group and the Non-High Capitalization, Broad-based Index Option product group may then be applied as permitted by Rule 15c3–1a under the Securities Exchange Act of 1934.

(D) After applying the Offsets above, the sum of the greatest loss from each portfolio is computed to arrive at the total margin required for the account (subject to the per contract minimum).

(9) Equity Deficiency.—If, at any time, equity declines below the 5 million dollar minimum required under sub-paragraph (4)(D) of this paragraph (g) and is not restored to at least 5 million dollars within three (3) business days (T+3) by a deposit of funds and/or securities; member organizations are prohibited from accepting opening orders starting on T+4, except that opening orders entered for the purpose of hedging existing positions may be accepted if the result would be to lower margin requirements. This prohibition shall remain in effect until equity of 5 million dollars is established.

(10) Determination of Value for Margin Purposes.—For the purposes of this paragraph (g), all listed index options and related instrument positions shall be valued at current market prices. Account equity for the purposes of this paragraph (g) shall be calculated separately for each portfolio margin account by adding the current market value of all long positions, subtracting the current market value of all short positions, and adding the credit (or subtracting the debit) balance in the account.

(11) Additional Margin.—If at any time, the equity in any portfolio margin account is less than the margin required, the customer may deposit additional margin or establish a hedge to meet the margin requirement within one business day (T+1). In the event a customer fails to hedge existing positions or deposit additional margin within one business day, the member organization must liquidate positions in an amount sufficient to, at a minimum, lower the total margin required to an amount less than or equal to account equity. Paragraph (f)(7) of this Rule—Practice of Meeting Regulation T Margin Calls by Liquidation Prohibited shall not apply to portfolio margin accounts. However, member organizations will be expected to monitor portfolio margin and cross-margin accounts for possible abuse of this provision.

(12) Net Capital Treatment of Portfolio Margin and Cross Margin Accounts.

(A) No member organization that requires margin in any customer account pursuant to paragraph (g) of this Rule shall permit gross customer portfolio margin requirements to exceed 1,000 percent of its net capital for any period exceeding three business days. The member organization shall, beginning on the fourth business day, cease opening new portfolio margin accounts until compliance is achieved.

(B) If, at any time, a member organization's gross customer portfolio margin requirements exceed 1,000 percent of its net capital, the member organization shall immediately transmit telegraphic or facsimile notice of such deficiency to the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549; to the district or regional office of the Securities and Exchange Commission for the district or region in which the member organization maintains its principal place of business; and to its Designated Examining Authority.

(13) Day Trading Requirements.—The requirements of sub-paragraph (f)(8)(B) of this Rule—Day-Trading shall not apply to portfolio margin accounts including cross margin accounts.

(14) Cross Margin Accounts—Requirements to Liquidate

(A) A member is required immediately either to liquidate, or transfer to another broker-dealer eligible to carry cross-margin accounts, all customer cross-margin accounts that contain positions in futures and/or options on futures if the member is:

(i) *insolvent as defined in section 101 of title 11 of the United States Code, or is unable to meet its obligations as they mature;*

(ii) *the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor has been appointed;*

(iii) *not in compliance with applicable requirements under the Securities Exchange Act of 1934 or rules of the Securities and Exchange Commission or any self-regulatory organization with respect to financial responsibility or hypothecation of customer's securities; or*

(iv) *unable to make such computations as may be necessary to establish compliance with such* *financial responsibility or hypothecation rules.*

(B) Nothing in this paragraph (14) shall be construed as limiting or restricting in any way the exercise of any right of a registered clearing agency to liquidate or cause the liquidation of positions in accordance with its by-laws and rules.

* * * * *

Delivery of Options Disclosure Document and Prospectus

Rule 726 (a) through (c) unchanged.

Portfolio Margining and Cross-Margining Disclosure Statement and Acknowledgement

(d) The special written disclosure statement describing the nature and risks of portfolio margining and cross-margining, and acknowledgement for customer signature, required by Rule 431(g)(5)(B) shall be in a format prescribed by the Exchange or in a format developed by the member organization, provided it contains substantially similar information as in the prescribed Exchange format and has received the prior written approval of the Exchange.

Sample Portfolio Margining and Cross-Margining Risk Disclosure Statement to Satisfy Requirements of Exchange Rule 431(g)

OVERVIEW OF PORTFOLIO MARGINING

1. Portfolio margining is a margin methodology that sets margin requirements for an account based on the greatest projected net loss of all positions in a ''product class'' or ''product group'' as determined by an options pricing model using multiple pricing scenarios. These pricing scenarios are designed to measure the theoretical loss of the positions given changes in both the underlying price and implied volatility inputs to the model. Portfolio margining is currently limited to product classes and groups of index products relating to broad-based market indexes.

2. The goal of portfolio margining is to set levels of margin that more precisely reflects actual net risk. The customer benefits from portfolio margining in that margin requirements calculated on net risk are generally lower than alternative ''position'' or ''strategy'' based methodologies for determining margin requirements. Lower margin requirements allow the customer more leverage in an account.

CUSTOMERS ELIGIBLE FOR PORTFOLIO MARGINING

3. To be eligible for portfolio margining, customers (other than broker-dealers) must meet the basic standards for having an options account that is approved for uncovered writing and must have and maintain at all times account net equity of not less than $5 million, aggregated across all accounts under identical ownership at the clearing broker. The identical ownership requirement excludes accounts held by the same customer in different capacities (e.g., as a trustee and as an individual) and accounts where ownership is overlapping but not identical (e.g., individual accounts and joint accounts).

POSITIONS ELIGIBLE FOR A PORTFOLIO MARGIN ACCOUNT

4. All positions in broad-based U.S. market index options and index warrants listed on a national securities exchange, and exchange traded funds and other products registered under the Investment Company Act of 1940 that are managed to track the same index that underlies permitted index options, are eligible for a portfolio margin account.

SPECIAL RULES FOR PORTFOLIO MARGIN ACCOUNTS

5. A portfolio margin account may be either a separate account or a sub-account of a customer's regular margin account. In the case of a sub-account, equity in the regular account will be available to satisfy any margin requirement in the portfolio margin sub-account without transfer to the sub-account.

6. A portfolio margin account or sub-account will be subject to a minimum margin requirement of $.375 multiplied by the index multiplier for every option contract or index warrant carried long or short in the account. No minimum margin is required in the case of eligible exchange traded funds or other eligible fund products.

7. Margin calls in the portfolio margin account or sub-account, regardless of whether due to new commitments or the effect of adverse market moves on existing positions, must be met within one business day. Any shortfall in aggregate net equity across accounts must be met within three business days. Failure to meet a margin call when due will result in immediate liquidation of positions to the extent necessary to reduce the margin requirement. Failure to meet an equity call prior to the end of the third business day will result in a prohibition on entering any opening orders, with the exception of opening orders that hedge existing positions, beginning on the fourth business day and continuing until such time as the minimum equity requirement is satisfied.

8. A position in an exchange traded index fund or other eligible fund product may not be established in a portfolio margin account unless there exists, or there is established on the same day, an offsetting position in securities options, or other eligible securities. Exchange traded index funds and/or other eligible funds will be transferred out of the portfolio margin account and into a regular securities account subject to initial Regulation T and NYSE Rule 431 margin if the offsetting securities options, other eligible securities and/or related instruments no longer remain in the account for ten business days.

9. When a broker-dealer carries a regular cash account or margin account for a customer, the broker-dealer is limited by rules of the Securities and Exchange Commission and of The Options Clearing Corporation (''OCC'') to the extent to which the broker-dealer may permit OCC to have a lien against long option positions in those accounts. In contrast, OCC will have a lien against all long option positions that are carried by a broker-dealer in a portfolio margin account, and this could, under certain circumstances, result in greater losses to a customer having long option positions in such an account in the event of the insolvency of the customer's broker. Accordingly, to the extent that a customer does not borrow against long option positions in a portfolio margin account or have margin requirements in the account against which the long option can be credited, there is no advantage to carrying the long options in a portfolio margin account and the customer should consider carrying them in an account other than a portfolio margin account.

SPECIAL RISKS OF PORTFOLIO MARGIN ACCOUNTS

10. Portfolio margining generally permits greater leverage in an account, and greater leverage creates greater losses in the event of adverse market movements.

11. Because the time limit for meeting margin calls is shorter than in a regular margin account, there is increased risk that a customer's portfolio margin account will be liquidated involuntarily, possibly causing losses to the customer.

12. Because portfolio margin requirements are determined using sophisticated mathematical calculations and theoretical values that must be *calculated from market data, it may be more difficult for customers to predict the size of future margin calls in a portfolio margin account. This is particularly true in the case of customers who do not have access to specialized software necessary to make such calculations or who do not receive theoretical values calculated and distributed periodically by The Options Clearing Corporation.*

13. For the reasons noted above, a customer that carries long options positions in a portfolio margin account could, under certain circumstances, be less likely to recover the full value of those positions in the event of the insolvency of the carrying broker.

14. Trading of securities index products in a portfolio margin account is generally subject to all the risks of trading those same products in a regular securities margin account. Customers should be thoroughly familiar with the risk disclosure materials applicable to those products, including the booklet entitled Characteristics and Risks of Standardized Options.

15. Customers should consult with their tax advisers to be certain that they are familiar with the tax treatment of transactions in securities index products.

16. The descriptions in this disclosure statement relating to eligibility requirements for portfolio margin accounts, and minimum equity and margin requirements for those accounts, are minimums imposed under Exchange rules. Time frames within which margin and equity calls must be met are maximums imposed under Exchange rules. Broker-dealers may impose their own more stringent requirements.

OVERVIEW OF CROSS-MARGINING

17. With cross-margining, index futures and options on index futures are combined with offsetting positions in securities index options and underlying instruments, for the purpose of computing a margin requirement based on the net risk. This generally produces lower margin requirements than if the related instruments[14] *and securities products are viewed separately, thus providing more leverage in the account.*

18. Cross-margining must be done in a portfolio margin account type. A separate portfolio margin account must be established exclusively for cross-margining.

19. When index futures and options on futures are combined with offsetting positions in index options and underlying instruments in a dedicated account, and a portfolio margining methodology is applied to them, cross-margining is achieved.

CUSTOMERS ELIGIBLE FOR CROSS-MARGINING

20. The eligibility requirements for cross-margining are generally the same as for portfolio margining, and any customer eligible for portfolio margining is eligible for cross-margining.

21. Members of futures exchanges on which cross-margining eligible index contracts are traded are also permitted to carry positions in cross-margin accounts without regard to the minimum aggregate account equity.

POSITIONS ELIGIBLE FOR CROSS-MARGINING

22. All securities products eligible for portfolio margining are also eligible for cross-margining.

23. All broad-based U.S. listed market index futures and options on index futures traded on a designated contract market subject to the jurisdiction of the Commodity Futures Trading Commission (''CFTC'') are eligible for cross-margining.

SPECIAL RULES FOR CROSS-MARGINING

24. Cross-margining must be conducted in a portfolio margin account type. A separate portfolio margin account must be established exclusively for cross-margining. A cross margin account is a securities account, and must be maintained separate from all other securities account.

25. Cross-margining is automatically accomplished with the portfolio margining methodology. Cross-margin positions are subject to the same minimum margin requirement for every contract, including futures contracts.

26. Margin calls arising in cross-margin account, and any shortfall in aggregate net equity across accounts, must be satisfied within the same timeframe, and subject to the same consequences, as in a portfolio margin account.

27. A position in a futures product may not be established in a cross-margin account unless there exists, or there is established on the same day, an offsetting position in securities options and/or other eligible securities. Related instruments will be transferred out of the cross margin account and into a futures account if, for more than ten business days and for any reason, the offsetting securities options and/or other eligible securities no longer remain in the account. If the transfer of related instruments to a futures account causes the futures account to be undermargined, a margin call will be issued or positions will be liquidated to the extent necessary to eliminate the deficit.

28. Customers participating in cross-margining will be required to sign an agreement acknowledging that their positions and property in the cross-margin account will be subject to the customer protection provisions of Rule 15c3–3 under the Securities Exchange Act of 1934 and the Securities Investor Protection Act, and will not be subject to the provisions of the Commodity Exchange Act, including segregation of funds.

29. According to the rules of the exchanges, a broker dealer is required to immediately liquidate, or, if feasible, transfer to another broker-dealer eligible to carry cross-margin accounts, all customer cross-margin accounts that contain positions in futures and/or options on futures in the event that the carrying broker-dealer becomes insolvent.

30. In signing the agreement referred to in paragraph 28 above, a customer also acknowledges that a cross-margin account that contains positions in futures and /or options on futures will be immediately liquidated, or, if feasible, transferred to another broker-dealer eligible to carry cross-margin accounts, in the event that the carrying broker-dealer becomes insolvent.

SPECIAL RISKS OF CROSS-MARGINING

31. Cross-margining must be conducted in a portfolio margin account type. Generally, cross-margining and the portfolio margining methodology both contribute to provide greater leverage than a regular margin account, and greater leverage creates greater losses in the event of adverse market movements.

32. Since cross-margining must be conducted in a portfolio margin account type, the time required for meeting margin calls is shorter than in a regular securities margin account and may be shorter than the time ordinarily required by a futures commission merchant for meeting margin calls in a futures account. Consequently, there is increased risk that a customer's cross-margin positions will be liquidated involuntarily, causing possible loss to the customer.

33. As noted above, cross margin accounts are securities accounts and are subject to the customer protections set forth in Rule 15c3–3 under the Securities Exchange Act of 1934 and the Securities Investor Protection Act. Cross-margin positions are not subject

[14] *For purposes of this Rule, the term ''related instruments,'' within an option class or product means futures contracts, and options on futures contracts covering the same underlying instrument.*

to the customer protection rules under the segregation provisions of the Commodity Exchange Act and the rules of the CFTC adopted pursuant to the Commodity Exchange Act.

34. Trading of index options and futures contracts in a cross-margin account is generally subject to all the risks of trading those same products in a futures account or a regular securities margin account. Customers should be thoroughly familiar with the risk disclosure materials applicable to those products, including the booklet entitled Characteristics and Risks of Standardized Options and the risk disclosure document required by the CFTC to be delivered to futures customers. Because this disclosure statement does not disclose the risks and other significant aspects of trading in futures and options, customers should review those materials carefully before trading in a cross-margin account.

35. Customers should bear in mind that the discrepancies in the cash flow characteristics of futures and certain options are still present even when those products are carried together in a cross margin account. Both futures and options contracts are generally marked to the market at least once each business day, but the marks may take place with different frequency and at different times within the day. When a futures contract is marked to the market, the gain or loss is immediately credited to or debited from, respectively, the customer's account in cash. While an increase in the value of a long option contract may increase the equity in the account, the gain is not realized until the option is sold or exercised. Accordingly, a customer may be required to deposit cash in the account in order to meet a variation payment on a futures contract even though the customer is in a hedged position and has experienced a corresponding (but yet unrealized) gain on a long option. Alternatively, a customer who is in a hedged position and would otherwise be entitled to receive a variation payment on a futures contract may find that the cash is required to be held in the account as margin collateral on an offsetting option position.

36. Customers should consult with their tax advisers to be certain that they are familiar with the tax treatment of transactions in index products, including tax consequences of trading strategies involving both futures and option contracts.

37. The descriptions in this disclosure statement relating to eligibility requirements for cross-margining, and minimum equity and margin requirements for cross margin accounts, are minimums imposed under Exchange rules. Time frames within which margin and equity calls must be met are maximums imposed under Exchange rules. The broker-dealer carrying a customer's portfolio margin account, including any cross-margin account, may impose its own more stringent requirements.

* * * * *

Sample Portfolio Margining and Cross-Margining Acknowledgements

ACKNOWLEDGEMENT FOR CUSTOMERS UTILIZING A PORTFOLIO MARGIN ACCOUNT

CROSS-MARGINING AND NON-CROSS-MARGINING—

Rule 15c3–3 under the Securities Exchange Act of 1934 requires that a broker or dealer promptly obtain and maintain physical possession or control of all fully-paid securities and excess margin securities of a customer. Fully-paid securities are securities carried in a cash account and margin equity securities carried in a margin or special account (other than a cash account) that have been fully paid for. Excess margin securities are a customer's margin securities having a market value in excess of 140% of the total of the debit balances in the customer's non-cash accounts. For the purposes of Rule 15c3–3, securities held subject to a lien to secure obligations of the broker-dealer are not within the broker-dealer's physical possession or control. The Commission staff has taken the position that all long option positions in a customer's portfolio-margining account (including any cross-margin account) may be subject to such a lien by OCC and will not be deemed fully-paid or excess margin securities under Rule 15c3–3.

The hypothecation rules under the Securities Exchange Act of 1934 (Rules 8c–1 and 15c2–1), prohibit broker-dealers from permitting the hypothecation of customer securities in a manner that allows those securities to be subject to any lien or liens in an amount that exceeds the customer's aggregate indebtedness. However, all long option positions in a portfolio-margining account (including any cross-margining account) will be subject to OCC's lien, including any positions that exceed the customer's aggregate indebtedness. The Commission staff has taken a position that would to allow customers to carry positions in portfolio-margining accounts, (including any cross-margining account) even when those positions exceed the customer's aggregate indebtedness. Accordingly, within a portfolio margin account or cross-margin account, to the extent that you have long option positions that do not operate to offset your aggregate indebtedness and thereby reduce your margin requirement you receive no benefit from carrying those positions in your portfolio-margin account or cross-margin account and incur the additional risk of OCC's lien on your long option position(s).

BY SIGNING BELOW THE CUSTOMER AFFIRMS THAT THE CUSTOMER HAS READ AND UNDERSTOOD THE FOREGOING DISCLOSURE STATEMENT AND ACKNOWLEDGES AND AGREES THAT LONG OPTION POSITIONS IN PORTFOLIO-MARGINING ACCOUNTS, AND CROSS-MARGINING ACCOUNTS, WILL BE EXEMPTED FROM CERTAIN CUSTOMER PROTECTION RULES OF THE SECURITIES AND EXCHANGE COMMISSION AS DESCRIBED ABOVE AND WILL BE SUBJECT TO A LIEN BY THE OPTIONS CLEARING CORPORATION WITHOUT REGARD TO SUCH RULES.

CUSTOMER NAME: ________________

BY: ______________________________

(*Signature/title*)

DATE: ____________________________

ACKNOWLEDGEMENT FOR CUSTOMERS ENGAGED IN CROSS-MARGINING

As disclosed above, futures contracts and other property carried in customer accounts with Futures Commission Merchants (''FCM'') are normally subject to special protection afforded under the customer segregation provisions of the Commodity Exchange Act (''CEA'') and the rules of the Commodity Futures Trading Commission adopted pursuant to the CEA. These rules require that customer funds be segregated from the accounts of financial intermediaries and be accounted for separately. However, they do not provide for, and regular futures accounts do not enjoy the benefit of, insurance protecting customer accounts against loss in the event of the insolvency of the intermediary carrying the accounts.

As discussed above, cross-margining must be conducted in a portfolio margin account, dedicated exclusively to cross margining and cross margin accounts are not treated as a futures account with an FCM. Instead, cross margin accounts are treated as securities accounts carried with broker-dealers. As such, cross margin accounts are covered by Rule 15c3–3 under the Securities Exchange Act of 1934, which protects customer accounts. Rule 15c3–3, among other things, requires a broker-dealer to *maintain physical possession or control of all fully-paid and excess margin securities and maintain a special reserve account for the benefit of their customers. However, with regard to cross margin accounts, there is an exception to the possession or control requirement of Rule 15c3–3 that permits The Options Clearing Corporation to have a lien on long positions. This exception is outlined in a separate acknowledgement form that must be signed prior to or concurrent with this form. Additionally, the Securities Investor Protection Corporation (''SIPC'') insures customer accounts against the financial insolvency of a broker-dealer in the amount of up to $500,000 to protect against the loss of registered securities and cash maintained in the account for purchasing securities or as proceeds from selling securities (although the limit on cash claims is $100,000). According to the rules of the exchanges, a broker-dealer is required to immediately liquidate, or, if feasible, transfer to another broker-dealer eligible to carry cross-margin accounts, all customer cross margin accounts that contain positions in futures and/or options on futures in the event that the carrying broker-dealer becomes insolvent.*

BY SIGNING BELOW THE CUSTOMER AFFIRMS THAT THE CUSTOMER HAS READ AND UNDERSTOOD THE FOREGOING DISCLOSURE STATEMENT AND ACKNOWLEDGES AND AGREES THAT: (1) POSITIONS AND PROPERTY IN CROSS-MARGINING ACCOUNTS, WILL NOT BE SUBJECT TO THE CUSTOMER PROTECTION RULES UNDER THE CUSTOMER SEGREGATION PROVISIONS OF THE COMMODITY EXCHANGE ACT AND THE RULES OF THE COMMODITY FUTURES TRADING COMMISSION ADOPTED PURSUANT TO THE CEA AND (2) CROSS-MARGINING ACCOUNTS THAT CONTAIN POSITIONS IN FUTURES AND/OR OPTIONS ON FUTURES WILL BE IMMEDIATELY LIQUIDATED, OR IF FEASIBLE, TRANSFERRED TO ANOTHER BROKER-DEALER ELIBIBLE TO CARRY CROSS-MARGIN ACCOUNTS IN THE EVENT THAT THE CARRYING BROKER-DEALER BECOMES INSOLVENT.

CUSTOMER NAME: ____________________

BY: ____________________

(*Signature/title*)

DATE: ____________________

* * * * *

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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

a. Background

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 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. Similarly, the proposed amendments discussed below have been recommended by the Committee and have been adopted by the Exchange in this proposal, as amended.[15] The Exchange represents that the proposed portfolio margin and cross-margin rules have been developed in conjunction with the CBOE, The Options Clearing Corporation, the American Stock Exchange LLC, the Board of Trade of the City of Chicago, Inc., the Chicago Mercantile Exchange Inc., and the National Association of Securities Dealers, Inc.

b. Portfolio Margin

The Exchange proposes to amend NYSE Rule 431 to expand the scope of its margin rule by providing a portfolio margin methodology for listed, broad-based market index options, index warrants and related exchange-traded funds. The Exchange believes that the proposed amendments would allow clearing members and member organizations to extend a portfolio margin methodology to eligible customers as an alternative to the current strategy-based margin requirements. The Exchange further believes that the proposed rule also would allow broad-based market index futures and options on such futures to be included in a portfolio margin account, thus providing a cross-margin capability. The Exchange proposes to introduce the amendments as a two-year pilot program that would be available on a voluntary basis to member organizations.

The NYSE is proposing this partial amendment, constituting Amendment No. 3, for the purpose of removing the proposed language ''any affiliate of a self-clearing organization,'' in proposed new Section (g)(4)(B) under Rule 431, as requested by Commission staff. As previously proposed,[16] Section (g)(4)(B) would have allowed any affiliate of a self-clearing member organization to be an ''Eligible Participant'' permitted to utilize portfolio margining as an alternative to ''strategy-based'' margining, regardless of the member organization's equity. By deleting Section (g)(4)(B) from the proposed amendments to Rule 431, affiliates of self-clearing member organizations who wish to utilize portfolio margining as an alternative to ''strategy-based'' margining will be subject to an equity requirement of at least five million dollars.

The elimination of Section (g)(4)(B) necessitates the renumbering of proposed Sections (g)(4)(C) and (g)(4)(D) of Rule 431 to Sections (g)(4)(B) and (g)(4)(C), respectively. In relation to the change noted above, the NYSE also proposes in Amendment No. 3 to revise paragraph number 3 of the Sample Portfolio Margining and Cross-Margining Risk Disclosure Statement to Satisfy Requirements of Exchange Rule 431(g) to remove the words ''and certain non-broker-dealer affiliates of the carrying broker-dealer'' in the first sentence. This change to the notice would reflect that non-broker-dealer affiliates would be subject to the $5 million equity requirement. With the exception of these changes, the rest of the proposed rule changes, as contained in the Original Proposal, as amended by Amendment Nos. 1 and 2, remain unchanged.

Portfolio margining is a margin methodology that sets margin requirements for an account based on the greatest projected net loss of all positions in a product class or group as determined by the Commission-

[15] Many aspects of the proposed rule change are similar to the CBOE's proposed rule change to permit customer portfolio margining and cross-margining. *See supra* notes 5 and 9.

[16] *See supra* note 9.

approved options pricing model using multiple pricing scenarios. These scenarios are designed to measure the theoretical loss of the positions given changes in both the underlying price and implied volatility inputs to the model. Accordingly, the margin required is based on the greatest loss that would be incurred in a portfolio if the value of its components move up or down by a predetermined amount.

The Exchange represents that the purpose and benefit of portfolio margining is to efficiently set levels of margin that more precisely reflect actual net risk of all positions in the account. A customer benefits from portfolio margining in that margin requirements calculated on net position risk are generally lower than strategy-based margin methodologies currently in place. In permitting margin computation based on actual net risk, members and member organizations will no longer be required to compute a margin requirement for each individual position or strategy in a customer's account.

However, as a pre-condition to permitting portfolio margining, the member or member organization would be required to establish procedures and guidelines to monitor credit risk to the member or member organization's capital, including intra-day credit risk, and stress testing of portfolio margin accounts. Further, members and member organizations would have to establish procedures for regular review and testing of these required risk analysis procedures.

c. Cross-Margining Capability

The proposed rule change requires a clearing member or member organization to establish a separate portfolio margin account (securities margin account) exclusively for cross-margining.[17] In this regard, related index futures and options on such futures would be carried in a separate cross-margin account, thus affording a cross-margin capability. In a portfolio margin account that is used exclusively for cross-margining, separate portfolios may be established containing index options, index warrants and exchange-traded funds structured to replicate the composition of the index underlying a particular portfolio, as well as related index futures and options on such futures.

To determine theoretical gains and losses, and resulting margin requirements, the same portfolio margin computation procedure will be applied to a portfolio margin account that is identified as a cross-margin account.

The liquidation/transfer requirement set forth in the proposed rule necessitates that cross-margin positions be carried in a separate account, whereas the Original Proposal and Amendment No. 1 permitted cross-margin positions to either be combined in the same account with other portfolio margin positions, or carried in a separate cross-margin account.

Amendment No. 2 to the proposed rule also incorporates a provision, as requested by Commission staff, that requires liquidation or transfer of cross-margin accounts in the event that a carrying broker-dealer becomes insolvent. This requirement would provide for Securities Investor Protection Corporation (''SIPC'') coverage of futures and options on futures in a securities account because such instruments would be viewed as converted to cash in the event of a firm insolvency.

d. Disclosure Document and Customer Attestation

Exchange Rule 726 prescribes requirements for the delivery of options disclosure documents concerning the opening of customer accounts. As proposed by the Exchange, members and member organizations would be required to provide every portfolio margin customer with a written risk disclosure statement at or prior to the initial opening of a portfolio margin account. The disclosure statement is divided into two sections, one dealing with portfolio margining, and the other with cross-margining.

The statement would disclose the risk and operation of portfolio margin accounts, including cross-margining, and the differences between portfolio margin and strategy-based margin requirements. The disclosure statement would also address who is eligible to open a portfolio margin account, the instruments that are allowed, and when deposits to meet margin and minimum equity are required.

Included within the portfolio margin section of the disclosure statement would be a list of certain of the risks unique to portfolio margin accounts, such as: Increased leverage; shorter time for meeting margin; involuntary liquidation if margin not received; inability to calculate future margin requirements because of the data and calculations required; and that long positions are subject to a lien. The risks and operation of a cross-margin feature are delineated in the cross-margin section of the disclosure statement, and a list of certain of the risks associated with cross-margining will be included as well.

In addition, at or prior to the time a portfolio margin account is initially opened, members and member organizations would be required to obtain a signed acknowledgement regarding certain implications of portfolio margining (*e.g.*, treatment under SEC Rules 8c–1, 15c2–1 and 15c3–3 under the Act) from the customer. Further, prior to providing cross-margining, members and member organizations would be required to obtain a second signed customer acknowledgement relative to the segregation treatment for futures contracts and SIPC coverage.

Amendment No. 2 reflects changes to the risk disclosure statement and acknowledgement forms to reflect proposed amendments to the rule language concerning separation of cross-margining from all other portfolio margining. The acknowledgement form in Amendment No. 2 will require that by signing the cross-margin agreement, the signer acknowledges that all positions carried in a cross-margin account will be immediately liquidated or transferred to another broker-dealer eligible to carry cross-margin accounts in the event that the carrying broker-dealer becomes insolvent.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act[18] in general, and furthers the objectives of Section 6(b)(5) of the Act[19] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the Exchange believes that Section 6(b)(5) of the Act[20] requires that the rules of an exchange foster cooperation and coordination with persons engaged in regulating transactions in securities.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

[17] The Original Proposal and Amendment No. 1 permitted cross-margin positions to either be combined in the same account with other portfolio margin positions, or carried in a separate cross-margin account.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 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

No written comments were either solicited or received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended, 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, as amended, 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–NYSE–2002–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2002–19. 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 available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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–NYSE–2002–19 and should be submitted on or before May 24, 2005.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–8774 Filed 5–2–05; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Actions on Exemption Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: Notice of actions on exemption applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on exemption applications in October 2003 to December 2004. The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1–Motor vehicle, 2–Rail freight, 3–Cargo vessel, 4–Cargo aircraft only, 5–Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions. It should be noted that some of the sections cited were those in effect at the time certain exemptions were issued.

Issued in Washington, DC, on April 25, 2005.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Safety Exemptions & Approvals.

Exemption No.	Docket No.	Applicant	Regulation(s)	Nature of exemption thereof
MODIFICATION EXEMPTION GRANTED				
13133–M		U.S. Department of Energy, Albuquerque, NM.	49 CFR 172.320; 173.54(a); 173.56(b); 173.57; 173.58; 173.62.	To reissue the exemption originally issued on an emergency basis for the transportation of up to 25 grams of unapproved explosives, classed as Division 1.4E, when shipped in a special shipping container.
11650–M		Autoliv ASP, Inc., Ogden, UT.	49 CFR 178.65–9	To modify the exemption to authorize a newly designed airbag inflator device with a maximum service pressure of 8500 PSIG for use as a component of a automobile vehicle safety system.
8131–M		National Aeronautics and Space Administration (NASA), Houston, TX.	49 CFR 173.302(d); 173.34(d); 173.301(d); 175.3.	To modify the exemption to add additional serial numbers of authorized cylinders.
12104–M	RSPA–98–4039	Mitsubishi Polyester Film, Greer, SC.	49 CFR 174.67(i)	To modify the exemption to upgrade loading procedures and drawings for the DOT Specification tank cars transporting Class 9 materials.

[21] 17 CFR 200.30–3(a)(12).