proposed rule change (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to waive the operative delay if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the operative delay to permit the Pilot Program extension to become effective prior to the 30th day after filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the benefits of the Pilot Program to continue without interruption.[14] Therefore, the Commission designates that the proposal will become operative on July 12, 2006.[15]

[13] Rule 19b–4(f)(6)(iii) requires the Exchange to give written notice to the Commission of its intent to file the proposed rule change five business days prior to filing. The Commission has determined to waive the five-day pre-filing requirement for this proposal.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] As set forth in the Exchange's original filing proposing the Pilot Program, if the Exchange were to propose an extension, expansion, or permanent approval of the Pilot Program, the Exchange would submit, along with any filing proposing such amendments to the program, a report that would provide an analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect. The report would include, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which Short Term Option Series were opened; (2) an assessment of the appropriateness of the options classes selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of Amex, OPRA, and market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the Pilot Program and how Amex addressed such problems; (5) any complaints that Amex received during the operation of the Pilot Program and how Amex addressed them; and (6) any additional information that would assist in assessing the operation of the Pilot Program. The report must be submitted to the Commission at least 60 days prior to the expiration date of the Pilot Program. *See* Form 19b–4 for File No. SR–Amex–2005–035, filed March 23, 2005.

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 No. SR–Amex–2006–66 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2006–66. 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 principal office of the Exchange. 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–Amex–2006–66 and should be submitted on or before August 8, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E6–11326 Filed 7–17–06; 8:45 am]

BILLING CODE 8010–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54134; File No. SR–NASD–2005–079]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Amendments Nos. 1, 2 and 3 to Proposed Rule Change To Revise Rule 10322 of the NASD Code of Arbitration Procedure Which Pertains to Subpoenas and the Power To Direct Appearances

July 12, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 29, 2006, May 12, 2006, and July 7, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') Amendments Nos. 1, 2, and 3, respectively, to the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by NASD. On June 17, 2005, the NASD filed with the Commission the proposed rule change. On July 13, 2005, the Commission published for comment the proposed rule change in the **Federal Register**.[3] NASD filed Amendments Nos. 1, 2, and 3 to respond to the comments received, after the publication of the proposed rule change in the **Federal Register**, and to make revisions to the rule change as described herein.[4] The Commission is

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 51981 (July 6, 2005), 70 FR40411 (July 13, 2005).

[4] Amendment No. 1 addresses comment letters received by the Commission in response to the publication of the proposed rule change in the **Federal Register** (for initial notice of proposed rule change see Securities Exchange Act Release No. 51981 (July 6, 2005), 70 FR 40411 (July 13, 2005)) and proposes certain amendments in response to these comments, including requiring that all subpoenas be issued by an arbitrator. Amendment No. 2 revises the regulation text and certain sections of the rule filing in order to clarify the process for issuing a subpoena to both parties and non-parties. Amendment No. 3 revises Amendment No. 2 to

publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NASD is proposing to revise Rule 10322 of the NASD Code of Arbitration Procedure (''Code''), which pertains to subpoenas and the power to direct appearances. Below is the text of the proposed rule change.[5] Proposed new language is *Italic* and proposed deletions are in brackets.

* * * * *

10322. Subpoenas and Power to Direct Appearances

(a) [**Subpoenas**]

To the fullest extent possible, parties should produce documents and make witnesses available to each other without the use of subpoenas. [The] [a]*A*rbitrators [and any counsel of record to the proceeding] shall have the [power of the subpoena process as provided by law. All parties shall be given a copy of a subpoena upon its issuance. Parties shall produce witnesses and present proofs to the fullest extent possible without resort to the subpoena process.] *authority to issue subpoenas for the production of documents or the appearance of witnesses.*

(b) A party may make a written motion requesting that an arbitrator issue a subpoena to a party or a non-party. The motion must include a draft subpoena and must be filed with the Director, with an additional copy for the arbitrator. The requesting party must serve the motion and draft subpoena on each other party, at the same time and in the same manner as on the Director. The requesting party may not serve the motion or draft subpoena on a non-party.

(c) If a party receiving a motion and draft subpoena objects to the scope or propriety of the subpoena, that party shall, within 10 days of service of the motion, file written objections with the Director, with an additional copy for the arbitrator, and shall serve copies on all other parties at the same time and in the same manner as on the Director. The party that requested the subpoena may respond to the objections. The arbitrator responsible for deciding discovery-related motions shall rule promptly on the issuance and scope of the subpoena regardless of whether any objections are made.

(d) If the arbitrator issues a subpoena, the party that requested the subpoena must serve the subpoena at the same time and in the same manner on all parties and, if applicable, on any non-party receiving the subpoena.

(e) Any party that receives documents in response to a subpoena served on a non-party shall provide notice to all other parties within five days of receipt of the documents. Thereafter, any party may request copies of such documents and, if such a request is made, the documents must be provided within 10 days following receipt of the request. The party requesting the documents shall be responsible for the reasonable costs associated with the production of the copies.

[**(b) Power to Direct Appearances and Production of Documents**]

(f) [The] *An* arbitrator[(s)] shall be empowered without resort to the subpoena process to direct the appearance of any person employed *by* or associated with any member of the Association and/or the production of any records in the possession or control of such persons or members. Unless [the] *an* arbitrator[(s)] directs otherwise, the party requesting the appearance of a person or the production of documents under this Rule shall bear all reasonable costs of such appearance and/or production.

* * * * *

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

In its filing with the Commission, NASD 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 III below. NASD 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

Proposal

As described in the original rule filing, NASD proposed to revise Rule 10322 of the Code to provide for a 10-day notice requirement before a party issues a subpoena to a non-party for pre-hearing discovery. In addition, NASD proposed clarifying the requirements regarding the service of subpoenas by specifying that a party that issues a subpoena must serve a copy of the subpoena to all parties and the entity receiving the subpoena on the same day.

NASD is amending the proposal set forth in the original rule filing to allow only arbitrators to issue subpoenas for both parties and non-parties, whether for discovery or for the appearance at a hearing before the arbitrators. In addition, NASD is proposing to require a party to provide notice to all other parties that it has received documents in response to a non-party subpoena and to provide copies of those documents at the request of another party. NASD is also clarifying that, in most cases, a public arbitrator will rule on all motions requesting a subpoena. Lastly, NASD is proposing some minor changes to the original proposal, including rewriting certain portions of the rule text in plain English.

Comments on the Proposed Rule Change

The Commission received 12 comment letters in response to the publication of the proposed rule in the **Federal Register**.[6] NASD's response to the issues raised in these letters is set forth below.

Several commenters to NASD's proposal stated that only arbitrators should have the authority to issue subpoenas in arbitration.[7] Some of these commenters believed that this limitation should apply only to discovery subpoenas while other commenters suggested that it apply to all subpoenas. In support of their position, a number of these commenters noted that the Federal

clarify current practice for deciding discovery-related motions.

[5] The rules proposed in this filing will be renumbered as appropriatefollowing Commission approval of the pending revisions to the NASD Code of Arbitration Procedure for Customer Disputes; *see* Securities Exchange Act Release No. 51856 (June 15, 2005), 70 FR 36442 (June 23, 2005) (SR–NASD–2003–158); and the NASD Code of Arbitration Procedure for Industry Disputes; *see* Securities Exchange Act Release No. 51857 (June 15, 2005), 70 FR 36430 (June 23, 2005) (SR–NASD–2004–011).

[6] Comment letters (''Comment Letters'') were submittedby Richard Skora, dated July 12, 2005 (''Skora Letter''); Seth E. Lipner, Deutsch & Lipner, dated July 13, 2005 (''Lipner Letter''); Steve Buchwalter, Law Offices of Steve A. Buchwalter, P.C., dated July 13, 2005 (''Buchwalter Letter''); Steven B. Caruso, Maddox Hargett & Caruso, P.C., dated July 19, 2005 (''Caruso Letter''); Dennis M. Pape, dated July 20, 2005 (''Pape Letter''); Al Van Kampen, Rohde & Van Kampen PLLC, dated July 25, 2005 (''Van Kampen Letter''); Phil Cutler, Cutler Nylander & Hayton, dated August 1, 2005 (''Cutler Letter''); Avery B. Goodman, A.B. Goodman Law Firm, Ltd., dated August 1, 2005 and August 2, 2005 (''Goodman Letters''); Jill Gross, Director, Barbara Black, Director, and Richard Downey, Student Intern, Pace Investor Rights Project, dated August 2, 2005 (''Gross Letter''); Tim Canning, dated August 3, 2005 (''Canning Letter''); and Rosemary J. Shockman, President, Public Investors Arbitration Bar Association, dated August 4, 2005 (''Shockman Letter'').

[7] *See* Lipner, Buchwalter, Van Kampen, Canning, and Shockman Letters.

Arbitration Act (''FAA'') provides only arbitrators, and not attorneys, with the authority to issue subpoenas.[8] Furthermore, one commenter noted that only arbitrators have the authority to issue subpoenas under the Uniform Arbitration Act and the Revised Uniform Arbitration Act.[9] Lastly, two commenters noted that, under the laws of several states, attorneys do not have the authority to issue subpoenas.[10]

NASD has determined that the proposed rule should be revised to allow only arbitrators to issue subpoenas to both parties and non-parties, whether for discovery or for the appearance at a hearing before the arbitrators, but for reasons other than those suggested by the commenters. NASD believes that providing arbitrators with greater control over the issuance of subpoenas will help to protect investors, associated persons, and other parties from abuse in the discovery process. In addition, the establishment of a uniform, nationwide rule will reduce potential confusion for parties and their counsel regarding whether they have the ability to issue subpoenas, minimize gamesmanship in the subpoena process, and make the rule easier to administer.

Under current practice, the arbitrator responsible for deciding discovery-related motions typically is the chairperson of the panel. Thus, except in certain intra-industry cases or unless the public customer agrees otherwise, the arbitrator ruling on a motion requesting a subpoena will be a public arbitrator.[11] In those situations where the chairperson is unable to rule promptly on the motion for a subpoena, another public arbitrator on the panel shall decide the motion except when the public customer agrees otherwise.[12] A non-public arbitrator will rule on a motion requesting a subpoena only in those intra-industry cases where the panel is composed exclusively of non-public arbitrators or where the public customer agrees otherwise.[13] Additionally, the arbitrator responsible for deciding discovery-related motions may elect to refer any discovery-related issue to the full panel.[14] NASD has proposed to codify the current practice described above in the pending revisions to the NASD Code of Arbitration Procedure for Customer Disputes [15] and the NASD Code of Arbitration Procedure for Industry Disputes.[16]

One commenter who does not support the proposed rule change stated that arbitrators should be required to give written explanations of all discovery decisions.[17] In addition, this commenter indicated that NASD should enforce current Rule 10322 with respect to the requirement that parties produce witnesses and present documents to the fullest extent possible without resort to the subpoena process.

NASD disagrees that arbitrators should be required to give written explanations of all discovery decisions, because such a requirement would significantly increase the time and costs associated with the discovery process. Furthermore, NASD believes that this issue is outside the scope of this rulemaking.[18] With respect to the commenter's assertion regarding the enforcement of Rule 10322, NASD does expect all parties to cooperate to the fullest extent possible without the use of subpoenas, and arbitrators may sanction parties for discovery abuse or make a disciplinary referral, as appropriate, at the end of the case if such cooperation is not provided.

One commenter suggested several changes to the proposed rule.[19] First, the commenter stated that the term ''fullest'' (which is in current Rule 10322) should be included in paragraph (a) of the proposed rule to ensure that parties do not avoid their discovery responsibilities in arbitration. Second, the commenter asserted that the proposal should specify that service of a subpoena must be made in precisely the same manner on everyone. Third, the commenter indicated that a party that receives documents in response to a non-party subpoena should be required to provide copies of the documents to opposing counsel within five calendar days of receipt of the documents.

NASD agrees with this commenter that the term ''fullest'' should be added in paragraph (a) of the rule to emphasize that, to the fullest extent possible, parties should produce documents and make witnesses available to each other without the use of subpoenas. NASD also agrees that the method of service of a subpoena should be the same on all parties and the non-party receiving the subpoena and proposes to amend paragraph (d) of the rule to reflect this requirement. Lastly, NASD agrees that documents received in response to a non-party subpoena should be made available to other parties. NASD does not believe, however, that a party that receives documents in response to a non-party subpoena should be required automatically to provide copies to another party, which may have no interest in them or may not want to incur potentially significant copying costs. Therefore, NASD proposes to require a party to provide notice to all other parties that it has received documents in response to a non-party subpoena and to provide copies of those documents at the request of another party.[20] Once a party receives a request for copies of documents that were received in response to a non-party subpoena, that party will have ten calendar days to provide the copies to the requesting party. NASD believes that a ten calendar day time frame is more appropriate than the one suggested by the commenter because it will allow enough time to copy a potentially voluminous amount of records, and it is also a time frame that is frequently used in the proposed Code revision.

[8] There is a split of opinion among the federal appellate courts as towhether arbitrators may issue discovery subpoenas or only subpoenas for attendance or production of documents at a hearing. *Compare In re Matter of Arbitration Between Security Life Ins. Co. of America*, 228 F.3d 865, 870–871 (8th Cir. 2000) (''Although the efficient resolution of disputes through arbitration necessarily entails a limited discovery process, we believe this interest in efficiency is furthered by permitting a party to review and digest relevant documentary evidence prior to the arbitration hearing. We thus hold that implicit in an arbitration panel's power to subpoena relevant documents for production at a hearing is the power to order the production of relevant documents for review by a party prior to the hearing.'') *with Hay Group, Inc.* v. *E.B.S. Acquisition Corp.*, 360 F.3d 404, 407 (3rd Cir. 2004) (''The power to require a non-party 'to bring' items 'with him' clearly applies only to situations in which the non-party accompanies the items to the arbitration proceeding, not to situations in which the items are simply sent or brought by a courier. In addition * * * a non-party may be compelled 'to bring' items 'with him' only when the non-party is summoned 'to attend before [the arbitrator] as a witness.' ''). Furthermore, while the Fourth Circuit, like the Third Circuit, found that the FAA does not grant an arbitrator the authority to subpoena a non-party for purposes of pre-hearing discovery, it did establish the possibility that a party might, ''under unusual circumstances,'' petition the district court to compel pre-arbitration discovery upon a showing of ''special need or hardship.'' *Comsat Corp.* v. *Nat'l Science Found.*, 190 F.3d 269 (4th Cir. 1999).

[9] *See* Lipner Letter.

[10] *See* Lipner Letter and Van Kampen Letter.

[11] *See* NASD Rules 10308(c)(5) and 10321(e).

[12] *See* NASD Rule 10321(e).

[13] *See* NASD Rule 10321(e).

[14] *See* NASD Rule 10321(e).

[15] *See* Securities Exchange Act Release No. 51856 (June 15, 2005), 70 FR 36442 (June 23, 2005) (SR–NASD–2003–158).

[16] *See* Securities Exchange Act Release No. 51857 (June 15, 2005), 70 FR 36430 (June 23, 2005) (SR–NASD–2004–011).

[17] *See* Skora Letter.

[18] Telephone conversation between Jean I. Feeney, Vice President and Chief Counsel, Dispute Resolution, NASD, and Lourdes Gonzalez, Assistant Chief Counsel, Division of Market Regulation, Commission, (May 1, 2005).

[19] *See* Caruso Letter.

[20] A party would have five calendar days after the receipt ofsubpoenaed documents from a non-party to provide notice to all other parties.

One commenter who does not support the rule proposal indicated that it would, in effect, only impact member firms since customers rarely need documents from non-parties in arbitration.[21] In addition, this commenter expressed concern that arbitrators will not review subpoenas promptly.

NASD disagrees with this commenter. The proposed rule will apply equally to all parties that use NASD's forum. Even though broker-dealers may use non-party subpoenas more often than do customers or associated persons, the proposed rule will be applied to all parties equally, thereby ensuring that NASD's forum is fair for everyone. NASD does not believe that the proposal will significantly delay the discovery process, as arbitrators will receive training specifically addressing subpoenas in the event that the SEC approves the proposed rule change. Furthermore, parties that volunteer to use NASD's discovery arbitrator pilot program may recognize a further reduction in the time needed for the review of subpoenas, especially in complex cases that involve numerous subpoenas.

One commenter, who supports the proposal, raised an issue that was not addressed in the original rule filing.[22] This commenter stated that NASD should revise Rule 10322 to establish a witness fee for non-parties and to prevent employees of a party from being reimbursed by an opposing party for testifying.

NASD disagrees with this commenter because the reimbursement of witnesses for testifying at a hearing historically has not been a significant issue in NASD's forum. Consequently, NASD is only proposing non-substantive changes to the paragraph of the rule addressing costs involving the appearance of witnesses or the production of documents.

One commenter supports the rule, but indicates that parties should be given at least ten days to oppose the issuance of a subpoena.[23] This commenter also stated that a non-party subpoena should be issued only if the documents relate to the matter in controversy and are not available from the parties.

NASD notes that a provision giving ten days to object to the issuance of a subpoena is contained in the amended rule proposal. Arbitrators will use their discretion to determine whether to issue a subpoena, or whether to limit the scope of a subpoena before it is issued.

Lastly, NASD notes that some issues raised by several commenters, such as the issuance of a subpoena by an attorney before a panel has ruled on an objection to the subpoena, are not addressed herein as they became moot as a result of the revisions to the amended rule proposal discussed above.[24]

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule will make the arbitration subpoena process more orderly and efficient, thereby improving the forum for all parties.

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

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments on the proposed changes in the initial rule filing were solicited by the Commission in response to the publication of SR–NASD–2005–079, which proposed to amend Rule 10322 of the NASD Code of Arbitration Procedure primarily to provide for a 10-day notice requirement before a party issues a subpoena to a non-party for pre-hearing discovery.[25] The Commission received 12 comment letters in response to the **Federal Register** publication of SR–NASD–2005–079.[26] The comments are summarized above.

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 NASD 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, 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–NASD–2005–079 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2005–079. 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing will also 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 the File Number SR–NASD–2005–079 and should be submitted on or before August 8, 2006.

[21] *See* Pape Letter.

[22] *See* Goodman Letter.

[23] *See* Canning Letter.

[24] *See* Lipner, Caruso, Gross, Canning, and Shockman Letters.

[25] *See* Securities Exchange Act Release No. 51981, *supra* note 3.

[26] *See* Comment Letters, *supra* note 6.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Nancy M. Morris,

Secretary.

[FR Doc. E6–11325 Filed 7–17–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54125; File No. SR–NYSE–2005–93]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change to Rule 431 (''Margin Requirements'') and Rule 726 (''Delivery of Options Disclosure Document and Prospectus'') To Expand the Products Eligible for Customer Portfolio Margining and Cross-Margining Pilot Program

July 11, 2006.

I. Introduction

On December 29, 2005, the New York Stock Exchange LLC (''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'' or ''Exchange Act'')[1] and Rule 19b–4[2] thereunder, a proposed rule change seeking to amend NYSE Rules 431 and 726 to expand the scope of products that are eligible for treatment as part of the Commission's approved portfolio margin pilot program (the ''Pilot'').[3] The NYSE seeks to expand the list of eligible products in the Pilot to include security futures contracts[4] and listed single stock options. The proposed rule change was published in the **Federal Register** on Monday, January 23, 2006.[5] The Commission received three comment letters in response to the **Federal Register** notice.[6]

The comment letters and the Exchange's responses to the comments[7] are summarized below. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

a. Summary of Proposed Rule Change

The proposed rule change consists of amendments to NYSE Rule 431 to include listed security futures and listed single stock options as eligible products for customer portfolio margining under the Pilot.[8] The proposed rule change also includes amendments to NYSE Rule 726 to conform the required customer disclosure to the changes made in the proposed rule change, including the expansion of eligible products.

Section 7(a)[9] of the Exchange Act[10] empowers the Board of Governors of the Federal Reserve System (''Federal Reserve Board'') to prescribe rules and regulations regarding credit that broker-dealers can extend to their customers on securities transactions. Pursuant to this authority, the Federal Reserve Board adopted Regulation T.[11] The Federal Reserve Board, in the 1998 amendments, removed from the scope of Regulation T transactions governed by a portfolio margin rule approved by the Commission.[12] The Commodity Futures Modernization Act of 2000 (''CFMA'') authorized the trading of futures on individual stocks and narrow-based stock indexes, *i.e.,* securities futures products.[13] Under the CFMA, the Federal Reserve Board has authority to either issue margin rules for securities futures or delegate joint authority to the Commission and the Commodity Futures Trading Commission (''CFTC'') to issue such rules. The Federal Reserve Board delegated authority to the Commission and CFTC, and in 2002 the Commission and the CFTC jointly issued margin requirements for securities futures products.[14] The jointly issued rules exempted from their scope transactions in securities futures products subject to SRO portfolio margin rules.[15]

NYSE Rule 431 prescribes specific margin requirements for customers based on the type of securities products held in their accounts. In April 1996, the Exchange established the Rule 431 Committee (the ''Committee'') to assess the adequacy of Rule 431 on an ongoing basis, review margin requirements and make recommendations for change. The Exchange's Board of Directors has approved a number of proposed amendments resulting from the Committee's recommendations since the Committee was established.[16] The NYSE noted in its rule proposal that the Committee endorsed the proposed rule change discussed below.

b. Portfolio Margining

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 15% increase in market value of the instrument and at the other end by a 15% decrease in market value. Gains and losses for each instrument in the portfolio are netted at

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[27] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 52031 (July 14, 2005), 70 FR 42130 (July 21, 2005) (SR–NYSE–2002–19). On July 14, 2005, the Commission approved on a Pilot Basis expiring July 31, 2007, amendments to Exchange Rule 431 to permit the use of a prescribed risk-based margin requirement (''portfolio margin'') for certain specified products as an alternative to the strategy based margin requirements currently required in section (a) through (f) of the Rule. Amendments to Rule 726 were also approved to require disclosure to, and written acknowledgment from, customers in connection with the use of portfolio margin. *See also* NYSE Information Memo 05–56, dated August 18, 2005 for additional information.

[4] For purposes of the proposed rule change, term ''security futures'' utilizes the definition at section 3(a)(55) of the Exchange Act, excluding narrow-based security indexes.

[5] *See* Exchange Act Release No. 53126 (Jan. 13, 2006), 71 FR 3586 Jan. 23, 2006).

[6] *See* letter from Gerard J. Quinn, Vice President and Associate General Counsel, Securities Industry Association, to Nancy M. Morris, Secretary, Commission, dated February 13, 2006 (''SIA Letter''); letter from Barbara Wierzynski, Executive Vice President and General Counsel, Futures Industry Association, to Nancy M. Morris, Secretary, Commission, dated February 13, 2006 (''FIA Letter''); and letter from Severino Renna, Director, Citigroup Global Markets, Inc., to Nancy M. Morris, Secretary, dated February 13, 2006 (''Citigroup Letter'').

[7] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, dated June 2, 2006 (''NYSE Response'').

[8] The list of eligible products under the Pilot currently includes listedbroad-based securities index options, warrants, futures, futures options and related exchange-traded funds. The NYSE also has filed an additional rule change to, among other things, further expand the list of eligible products for the Pilot to include equities and unlisted derivatives. *See* Exchange Act Release No. 53577 (March 30, 2006), 71 FR 17536 (April 6, 2006) (SR–NYSE–2006–13); *see also* Exchange Act Release No. 53576 (March 30, 2006), 71 FR 17519 (April 6, 2006) (SR–CBOE–2006–14). The comment period for these proposed rule filings ended on May 11, 2006.

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

[10] 15 U.S.C. 78a *et seq.*

[11] 12 CFR 220.1 *et seq.*

[12] *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).

[13] Public Law 106–554, 114 Stat. 2763 (2000).

[14] Exchange Act Release 46292 (August 1, 2002), 67 FR 53146 (August14, 2002).

[15] 17 CFR 242.400(c)(2).

[16] The Committee is composed of several member organizations,including Goldman, Sachs & Co., Morgan Stanley & Co., Inc., Merrill Lynch, Pierce, Fenner and Smith, Inc., Bear Stearns Corp. and Credit Suisse First Boston Corp. and several self-regulatory organizations, including: the NYSE, the Chicago Board Options Exchange, the Options Clearing Corporation (''OCC''), the American Stock Exchange, the Chicago Board of Trade, the Chicago Mercantile Exchange, and the National Association of Securities Dealers.