proposal to implement fees and charges for MFPS.

NSCC believes the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions.[5]

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

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

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

NSCC solicited comments from its ICI Broker/Dealer Committee and its Mutual Fund Profile Working Committee on July 5, August 18, November 9, and November 21, 1995. NSCC received letters from Colonial Investors Service Center, Inc. (dated July 21, 1995), AIM Fund Services, Inc. (Dated July 24, 1995), Edgewood Services, Inc. (dated July 31, 1995), Merrill Lynch (dated July 31, 1995), Securities Industry Software Corporation (dated July 31, 1995), A.G. Edwards & Sons, Inc. (dated August 4, 1995), DST Systems Inc. (dated September 11, 1995) and Funds Associates Ltd. (''FAL'') (dated September 22, 1995). Each responding firm expressed in its letter its commitment to participate in and devote resources to the development of MFPS. In addition, NSCC received a request from A.G. Edwards & Sons, Inc. (dated August 9, 1995) that additional information be included in MFPS. NSCC is in the process of determining whether to include this information, which does not affect the implementation of the daily price and rate file phase of MFPS.

NSCC also received a memorandum from FAL, dated December 1, 1995, in which FAL requested that S.W.I.F.T. ISO formats be an option for file transmission, that additional lead time be given for projects utilizing S.W.I.F.T. formats, and that NSCC support transmission in ASCII format. With regard to FAL's request, NSCC believes that the standard data transmission procedures currently employed by NSCC meet the concerns expressed therein. In addition, NSCC provided Franklin Templeton Distributors, Inc. with the additional information concerning interactive processing that it requested in its letter (dated November 30, 1995). NSCC will notify the Commission of any additional written comments received.

[5] 15 U.S.C. 78q–1 (1988).

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

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NSCC 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. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, 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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number SR–NSCC–96–04 and should be submitted by April 5, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–6234 Filed 3–14–96; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–36948; File No. SR–NYSE–95–10]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Margin Requirements for Over-the-Counter Options and Interest Rate Composites

March 11, 1996.

I. Introduction

On March 9, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 431, ''Margins,'' to revise the initial and/or maintenance margin requirements for short positions in a variety of over-the-counter (''OTC'') options [3] held in customer accounts and to adopt margin requirements for options on interest rate composites.

Notice of the proposal appeared in the Federal Register on April 7, 1995.[4] No comments were received on the proposed rule change. The proposal was amended on September 15, 1995.[5] This order approves the Exchange's proposal, as amended.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] OTC options are not issued by the Options Clearing Corporation (''OCC'') or listed on any national securities exchange. They are individually negotiated options contracts between a customer and a broker-dealer designed to reflect the customer's specific needs as to the options characteristics. According to the Exchange, these contracts are generally entered into by domestic and foreign institutions, mutual funds and insurance companies and are usually written for periods of less than one year.

[4] See Securities Exchange Act Release No. 35555 (March 31, 1995), 60 FR 17831.

[5] On September 15, 1995, the NYSE amended its proposal to increase the margin requirement for non-mortgage backed U.S. government agency debt securities that qualify for exemption under Rule 3a12–7 under the Act and are held in exempt accounts from 2% to 3% in order to meet the 97.5% confidence level for seven-day price movements. The amendment also indicates that only OTC options on corporate debt securities that qualify as OTC margin bonds under Section 220.2(t)(1) of Regulation T under the Act are accorded 15% margin treatment for OTC options. All other options that qualify as OTC margin bonds as defined in Section 220.2(t) (including foreign sovereign debt and foreign corporate debt) are not eligible for the 15% margin requirement and are subject to the current 45% margin requirement for OTC options. See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Assistant Director, Division of Market Regulation (''Division''), Commission, dated September 13, 1995 (''Amendment No. 1'').

II. Description of the Proposal

A. Margin Requirements for OTC Options

Currently, NYSE Rule 431 requires customer margin for short OTC stock and stock index options to be 100% of the option premium plus 45% of the current market value of the underlying security or the product of the current index group value of the underlying index and the applicable index multiplier.[6] The NYSE proposes to amend Exchange Rule 431 to revise the initial and/or maintenance customer margin requirements for short positions in OTC overlying certain instruments. Specifically, the NYSE proposes to establish customer margin for OTC options equal to a specified percentage of the current value of the underlying component and the applicable multiplier, if any, plus any in-the-money amount. The required OTC option customer margin may be reduced by any out-of-the-money amount, but may not be less than the minimum amount specified for each option category.

The proposed percentages of the current value of the underlying components[7] are as follows: (1) For stock and convertible corporate debt securities, 30%, with minimum margin of 10%; (2) for industry index stock groups, 30%, with minimum margin of 10%; (3) for broad index stock groups, 20%, with minimum margin of 10%; (4) for U.S. government or U.S. government agency debt securities other than those exempted by Rule 3a12–7 under the Act, 5%, with minimum margin of 3%;[8] (5) for corporate debt securities registered on a national securities exchange and OTC margin bonds as defined in Section 220.2(t)(1) of Regulation T under the Act, 15% with minimum margin of 5%;[9] and (6) for all other OTC options (except as discussed below), 45%, with minimum margin of 20%.

Under the proposal, OTC options on U.S. government and U.S. government agency debt securities that qualify for exemption pursuant to Rule 3a12–7 under the Act must be for a principal amount of not less than $500,000. For exempt accounts,[10] the required margin for U.S. government debt securities will be 3% of the current value of the underlying principal amount on 30-year U.S. Treasury bonds and 2% of the current value of the underlying principal amount on all other U.S. government debt securities, plus any in-the-money amount or minus any out-of-the-money amount. For non-mortgage backed U.S. agency debt securities in exempt accounts, the required margin will be 3% plus any in-the-money amount or minus any out-of-the-money amount.[11]

For exempt accounts holding OTC options on U.S. government and U.S. government agency debt securities that qualify for exemption pursuant to Rule 3a12–7 under the Act, the amount of any deficiency between the equity in the account and the margin required[12] will be deducted in computing the net capital of the member organization under the NYSE's capital requirements on the following basis: (a) On any account or group of commonly controlled accounts to the extent the deficiency exceeds 5% of the member organization's tentative net capital (net capital before deductions on securities), 100% of such excess amount; and (b) on all accounts combined to the extent such deficiency exceeds 25% of a member organization's tentative net capital, 100% of such excess amount, reduced by any amount already deducted pursuant to paragraph (a).

For non-exempt accounts, the required margin will be 5% of the current value of the underlying principal amount on 30-year U.S. Treasury bonds and 3% of the current value of the underlying principal amount on all other U.S. government and U.S. government agency debt securities, plus any in-the-money amount or minus any amount.

The Exchange has agreed to a system of periodic reviews to ensure the adequacy of the proposed margin requirements and for increasing the requirements on an expedited basis if necessary. The NYSE's monitoring plan will consist of the following:

- Semi-annual reviews of the seven-day price movements of the underlying instruments will be conducted. These volatility reviews will cover both the last six months and the last three years.[13]
- The semi-annual review must indicate a 97.5% confidence level (*e.g.*, the required margin level is adequate for seven-day price movements 97.5% of the time).
- For each option category, two member organizations using their own data or one member organization using an independent pricing source acceptable to the Exchange must provide semi-annual reports on price movements.
- if one semi-annual review indicates the margin level is inadequate for an option category, the Exchange will increase the margin requirements by filing a proposal pursuant to Section

[6] In contrast, margin for exchange-traded equity options, for example, is premium plus 20% of the value of the equivalent number of shares at current market prices.

[7] Under the proposal, the ''underlying component'' is: for stocks, the equivalent number of shares; for industry and broad index stock groups, the current index group value and the applicable index multiplier; for U.S. Treasury bills, notes and bonds, the underlying principal amount; for foreign currencies, the units per foreign currency contract; and for interest rate contracts, the interest rate measure based on the yield of U.S. Treasury bills, notes, or bonds and the applicable multiplier. The ''interest rate measure'' for short term U.S. Treasury bills represents the annualized discount yield of a specific issue multiplied by 10 or, for long term U.S. Treasury notes and bonds, the average of the yield to maturity of the specific issues multiplied by 10.

[8] Rule 3a12–7 under the Act provides that options that are not traded on a national securities exchange and which relate to securities that are direct obligations of the U.S. or are issued or guaranteed by a corporation in which the U.S. has a direct or indirect interest (and designated for exemption pursuant to Section 3(a)(12) of the Act) are exempt from all provisions of the Act which by their terms do not apply to ''exempted security'' or ''exempted securities,'' provided that the securities underlying the option represent an obligation equal to or exceeding $250,000 in principal amount. Under the proposal, option contracts in this category must be for a principal amount of not less than $500,000.

[9] See Amendment No. 1, *supra* note 5. Section 220.2(t)(1) of Regulation T under the Act defines an OTC margin bond to include certain debt securities not traded on a national securities exchange. Options transactions on private mortgage pass-through securities and mortgage related debt securities qualified under Section 3(a)(41) under the Act are not eligible for the margin requirements contained in this provision. Margin requirements for such securities must be computed pursuant to the proposed requirements for all other OTC options, *i.e.*, 45% of the current market value of the underlying instrument, with minimum margin of 20%.

[10] Under the proposal, an ''exempt account'' is a member organization, non-member broker/dealer, ''designated account,'' as defined in NYSE Rule 431(a)(3), any person having net tangible assets of at least $16 million, or in the case of mortgage-related debt securities transactions, an independently audited mortgage banker with both more than $1.5 million of net current assets (which may include ¾ of 1% maximum allowance on loan servicing portfolios) and with more than $1.5 million of net worth.

[11] See Amendment No. 1, *supra* note 5.

[12] Under the proposal, a member may collect margin from the exempt account, or take a capital charge in lieu of collecting margin.

[13] Under SEC Rule 15c6–1, which became effective on June 1, 1995, the securities transaction settlement period is three days. The Board of Governors of the Federal Reserve System amended Regulation T under the Act to make Regulation T consistent with SEC Rule 15c6–1. Specifically, Regulation T, as amended, states that a margin call must be satisfied within one payment period after the margin deficiency was created or increased. Regulation T defines a ''payment period'' as the number of business days in the standard securities settlement cycle in the U.S. as defined in SEC Rule 15c6–1 under the Act, plus two business days. Accordingly, under Regulation T, as amended, margin calls must be satisfied within five business days. In light of these changes, the NYSE may wish, in the future, to adopt procedures that would review volatility over five-day periods. Any such change would be submitted as a proposed rule change pursuant to Section 19(b) of the Act.

19(b)(3)(A) under the Act for immediate effectiveness.

- In order to lower the margin requirements, two consecutive six-month reviews must demonstrate that the immediate effectiveness.
- In order to lower the margin requirements, two consecutive six-month reviews must demonstrate that the lower requirement meets the 97.5% confidence level. The Exchange will submit proposals to lower the margin requirements by filing a proposed rule change pursuant to Section 19(b)(2) under the Act.
- Before lowering the margin requirements, the Exchange will take into consideration other relevant factors, such as current market conditions, member organization views, and margin levels from other options products (where similar OCC-issued options exist).

B. Margin Requirements for Interest Rate Options

The NYSE proposes to incorporate into NYSE Rule 431 the margin requirements for short positions in exchange-traded interest rate options previously approved by the Commission for the Chicago Board Options Exchange, Inc. (''CBOE'').[14] Specifically, for short positions in interest rate option contracts issued by a registered clearing agency, the initial and/or maintenance margin will be premium plus 10% of the underlying component value (*i.e.*, the product of the current interest rate measure and the applicable multiplier), minus any out-of-the-money amount, and the minimum required margin will be 5% of the underlying component value.

C. Statutory Basis

The NYSE believes that the proposed rule change is consistent with the requirements of the Act and, in particular, furthers the objectives of Section 6(b)(5), which provides that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public. In addition, the NYSE believes that the proposed rule change is also consistent with the rules and regulations of the Board of Governors of the Federal Reserve System for the purpose of preventing the excessive use of credit for the purchase or carrying of securities, pursuant to Section 7(a) under the Act.

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5), in that the proposal is designed to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.[15] Specifically, the Commission believes that the proposed rule change will establish margin levels for OTC options that are adequate to ensure investor protection and maintain fair and orderly markets, as well as address prudential concerns regarding the margin levels for OTC options. In approving the proposal, the Commission and the NYSE have worked closely with NYSE member firms to reduce the current high margin levels for OTC options while ensuring that the proposed margin levels provide adequate coverage of potential future price movements.

Historically, margin in OTC options has been set at levels substantially higher than that for similar exchange-traded products issued and guaranteed by the OCC, a registered clearing corporation. This difference in treatment is due, in part, to the nature of an OTC option where performance is not guaranteed by a registered clearinghouse but rather is dependent on the creditworthiness of the parties to the contract and their ability to perform. In addition to credit risk, higher margin was used due to the lack of a trading market to close out a position, which theoretically increased the risk of assuming a position in the option.

As a result of these factors, the self-regulatory organizations in 1985 set OTC options margins at the premium paid plus 45% of the value of the underlying instrument. Since then, the market for OTC options has grown and changed significantly. Consequently, the NYSE and the Commission staff have been working closely with industry representatives to determine how to reduce current margin levels on certain OTC options and still maintain adequate coverage. In this regard, NYSE member firms have submitted historical price volatility data for the options' underlying instruments indicating the percentage movements that would capture 97.5% of the seven-day price moves within the review period. The NYSE used the data to help it determine the minimum margin levels for options overlying the instruments. Based on a review of the historical price volatility data provided by the firms, the Commission believes that the proposed OTC option margin requirements should provide adequate coverage of contract obligations and address the systemic risks arising from a substantial reduction in margin levels.

The Commission notes that the methodology utilized in the proposal for determining the adequacy of the OTC option margin levels are similar to the methodology used currently by the options exchanges to establish margin levels for exchange-traded options.[16] Specifically, in 1985, the Commission approved proposals that established initial margin sufficient to cover each underlying product's historical volatility over a seven-day period with a 95% confidence level.[17] The current proposal provides for margin levels that cover each underlying product's seven-day price movements with a 97.5% confidence level. The extra 2.5% coverage (97.5% versus 95%) used by the NYSE will help to capture better any episodic, short-term volatility in the underlying instruments. In addition, the use of two review periods by the NYSE (six months and three years) will capture both recent and medium term volatility, which is prudent given the difficulty in closing out a position in OTC options. Moreover, the NYSE has attempted to account for the lack of a clearinghouse guarantee through several additions to the numbers obtained by the confidence level reviews.

In connection with exempt accounts holding OTC options on U.S. government or U.S. government agency debt securities that qualify for exemption pursuant to rule 3a12–7 under the Act, the Commission believes that it is reasonable for the Exchange to allow a deduction from a member's net capital rather than require collection of

[14] See Securities Exchange Act Release No. 26938 (June 15, 1989), 54 FR 26285 (June 22, 1989) (order approving File No. SR–CBOE–87–30).

[15] 15 U.S.C. 78f(b)(5) (1988 & Supp. V 1993).

[16] See Securities Exchange Act Release No. 22469 (September 26, 1985), 50 FR 40633 (order approving File Nos. SR–Amex–84–29, SR–CBOE–84–27, SR–NASD–85–15, SR–NYSE–84–88, SR–PSE–84–20, SR–PHLX–84–32, and SR–PHLX–85–18) (''1985 Approval Order''). In light of the increased market volatility during the last quarter of 1987, the Commission in 1988 approved proposals to increase the margin levels for equity options and broad-based and narrow-based index options. See Securities Exchange Act Release No. 25701 (May 17, 1988), 53 FR 20706 (June 6, 1988) (order approving File Nos. SR–Amex–88–12, SR–CBOE–88–6, SR–CBOE–88–8, SR–NYSE–88–12, SR–PSE–88–4, and SR–PHLX–88–19).

[17] The Commission notes, however, that for exchange-traded options, margin is calculated based on the option premium plus a specified percentage of the value of the underlying instrument. The proposed levels for OTC options will be calculated based on a specified percentage of the current value of the underlying instrument plus any in-the-money amount and less any out-of-the-money amount.

margin. In this regard, the Commission notes that the proposal is similar to the Exchange provisions applicable to exempt Government National Mortgage Association (''GNMA'') transactions, which provide that exempt accounts are not required to post margin or marks-to-market for their exempt GNMA transactions, although members must charge their capital for any mark-to-market deficits that are not collected.[18] The Commission notes, in addition, that the proposal allows members to take a capital charge only in connection with exempt accounts trading options on securities that are exempted under Rule 3a12–7.

The Commission also believes that the NYSE has proposed adequate procedures to review periodically the margin levels for the OTC options included in this rule proposal. Specifically, the NYSE will conduct semi-annual reviews of price volatility over both the previous six months and the previous three years. The semi-annual reviews must indicate that the required margin covers a product's historical price volatility over a seven-day period with a 97.5% confidence level. For each option category, the price volatility reports must be prepared either by two NYSE member organizations or by one member organization using an independent pricing source acceptable to the Exchange. If a semi-annual review indicates that the margin level for an OTC option category is inadequate, the Exchange will increase the margin requirements for that category by filing a proposal pursuant to Section 19(b)(3)(A) under the Act for immediate effectiveness.

In order to lower the margin requirements, two consecutive six-month reviews must demonstrate that the proposed lower requirement meets the 97.5% confidence level and the Exchange must consider other relevant factors, including current market conditions, member organization views, and margin levels for similar OCC-issued options. In addition, a proposal to decrease the margin requirement for an option category must be filed pursuant to Section 19(b)(2) under the Act.

The Commission believes that these procedures should provide the Exchange with the flexibility to lower margin levels when price volatility and other relevant factors indicate that a lower margin level may be warranted and, at the same time, require the Exchange to increase margin promptly when a semi-annual review indicates that the current margin fails to cover a product's historical price volatility with a 97.5% confidence level.

As noted above, the Commission has worked closely with NYSE member firms to establish adequate OTC option margin levels. The NYSE's proposal should enhance the competitiveness of U.S. securities firms by substantially reducing options margin levels while ensuring that OTC options margin levels are adequate to protect investors and avoid the risks associated with excessively low margin levels.

Finally, the Commission believes that it is reasonable for the NYSE to adopt a margin requirement for exchange-traded interest rate option contracts equal to premium plus 10% of the product of the current interest rate measure and the applicable multiplier, with minimum margin equal to 5% of the current interest rate measure and the applicable multiplier. The NYSE's proposed margin for interest rate options is identical to the margin level for interest rate options adopted previously by the CBOE[19] and thus does not raise new regulatory concerns.

The Commission finds good cause for approving Amendment No. 1 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Amendment No. 1 increases the margin requirement for non-mortgage backed agency securities, thereby helping to ensure that the required margin covers seven-day price movements in non-mortgage backed U.S. government agency debt securities with a 97.5% confidence level. The Commission believes that Amendment No. 1 strengthens the Exchange's proposal by establishing adequate margin for non-mortgage backed agency securities and by clarifying the definition of marginable OTC corporate debt securities for purposes of the proposal. Therefore, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 5, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the amended proposed rule change (SR–NYSE–95–10) is approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–6232 Filed 3–14–96; 8:45 am]

BILLING CODE 8010–01–M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendment to sentencing guidelines and commentary. Request for public comment.

SUMMARY: The Commission is considering promulgating an amendment to the sentencing guidelines and commentary. This notice sets forth the proposed amendment and a synopsis of the issues addressed by the amendment as well as an additional issue for comment. The Commission seeks comment on the proposed amendment, alternative proposed amendments, and any other aspect of the sentencing guidelines, policy statements, and commentary. The Commission may submit amendments to the Congress not later than May 1, 1996.

DATES: Written public comment on the amendment and issue for comment set forth in this notice should be received by the Commission not later than March 29, 1996, in order to be considered by the Commission in the promulgation of amendments and in the possible

[18] See NYSE Interpretation Handbook, NYSE Rule 431(c)(2)(C)/033.

[19] See CBOE Rule 23.13, ''Margin Requirements.''

[20] 15 U.S.C. 78s(b)(2) (1988).

[20] 17 CFR 200.30–3(a)(12) (1994).