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

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

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

Written comments were neither solicited nor received.

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

Within 35 days of the 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 NASD consents, the Commission will:

(A) by order approve the 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 proposal is consistent with the Act. In particular, the Commission solicits comments on the following issues:

Proposed Rule 10216 provides procedures for administering disputes that involve both statutory employment discrimination claims that are filed in court and other claims that are filed at the NASD Regulation's arbitration forum. Cases affected by proposed Rule 10216 would generally involve firms that have not entered into agreements with their employees to arbitrate statutory employment discrimination claims.

(1) The proposed rule permits respondents to choose when to bifurcate claims in these disputes. Does this strike a fair balance?

(2) Is this aspect of the proposal (permitting respondents to choose when to bifurcate claims) necessary to encourage firms to give their employees the option of bringing statutory employment discrimination claims in court? Without this provision, would firms be more likely to require employees to sign predispute arbitration clauses governing these claims?

(3) Does the proposal place an unreasonable burden on individual claimants because they are unable to determine the forum in which they will assert claims related to their stautory employment discrimination claims, or does the ability to bring their dominant, statutory employment discrimination claims in court provide for the appropriate balance?

(4) Does the presumption in favor of a stay of proceedings for those parties who remain in arbitration while other claims are being litigated unduly infringe on the parties bargain to arbitrate?

The Commission welcomes suggestions as to how objectionable procedures could be changed without imposing undue litigation costs in either party to a dispute.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–08 and should be submitted by June 25, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14210 Filed 6–3–99; 8:45 am]

BILLING CODE 8010–01–M

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41459; File No. SR–NYSE–99–17]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc., Relating to Original Listing Standards

May 27, 1999.

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 April 22, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change relating to the exchange's original listing standards. The Exchange submitted Amendment No. 1 to its proposal on May 19, 1999.[3] The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by the exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant partial accelerated approval to the portion of the proposal instituting a Pilot relating to the listing eligibility criteria for companies satisfying the Capitalization Standard. The Pilot will expire on September 3, 1999, or at such earlier time as the Commission grants the Exchange's request for permanent approval of the program.

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

[2] 17 CFR 240.19b–4.

[3] In amendment No. 1, the Exchange (i) requested that the Commission approve on an accelerated basis a 90-day pilot program (''Pilot'') for the portion of the proposal adding a new original listing standard applicable to both domestic and non-U.S. companies with a $1 billion market capitalization and $250 million in revenues in the most recent fiscal year (''Capitalization Standard''), (ii) clarified that companies satisfying the Capitalization Standard are subject to the Exchange's other original listing criteria (other than the financial criteria), (iii) revised the text of the proposed rule language to show changes against the current *Listed Company Manual* (''Manual'') rather than the language proposed for adoption in the pending filing, (iv) incorporated procedures for reconciliation with U.S. GAAP in the third year in the Exchange's proposed rule language and (v) removed the cash flow standard from the text of the proposed rule language. *See* Letter from James Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 18, 1999 (''Amendment No. 1'').

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

The Exchange proposes to implement a Pilot amendment sections 102.01 and 103.01 of the Manual to implement an alternative listing eligibility criteria for companies satisfying the Capitalization Standard.[4] The proposed Pilot would expire on September 3, 1999, or such earlier time as the Commission grants the Exchange's request for permanent approval of the program.[5] In addition, the Exchange proposes to modify its pre-tax earnings standard applicable to non-U.S. issuers. The text of the proposed rule change follows. New text is italicized and deleted text is bracketed.

NYSE Listed Company Manual

Section 1

The Listing Process

* * * * *

102.01 Minimum Numerical Standards

—Domestic Companies

—Equity Listing

* * * * *

For companies with not less than $500,000,000 market capitalization and $200,000,000 revenues in the most recent fiscal year:

* * * * *

OR

For companies with not less than $1 billion in total worldwide market capitalization and with not less than $250 million revenues in the most recent fiscal year, there are no additional financial requirements. For such companies listing in connection with an IPO, the market capitalization valuation must be demonstrated by a written representation from the underwriter (or, in the case of a spin-off, by a written representation from the parent company's investment banker or other financial advisor) of the total market capitalization of the company upon completion of the offering (or distribution). For all other such companies, the market capitalization valuation will be determined over a six-month average.

* * * * *

103.01 *Alternative* Minimum Numerical Standards [—] *for* Non-U.S. Companies—Equity Listings

* * * * *

Pre-tax income

$100 million cumulative for latest 3 years[6] with $25 million minimum *in each of the most recent two* [for any one of the 3] years. *Reconciliation to U.S. GAAP of the third year back would only be required if the Exchange determines that reconciliation is necessary to demonstrate that the aggregate $100,000 threshold is satisfied.*

OR

For companies with not less than $1 billion in total worldwide market capitalization and with not less than $250 million revenues in the most recent fiscal year, there are no additional financial requirements. For such companies listing in connection with an IPO, the market capitalization valuation must be demonstrated by a written representation from the underwriter (or, in the case of a spin-off, by a written representation from the parent company's investment banker, other financial advisor, or transfer agent) of the total market capitalization of the company upon completion of the offering (or distribution). For all other such companies, the market capitalization valuation will be determined over a six-month average.

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

The purpose of this proposed rule change is to add a new original listing standard to the Exchange's domestic and non-U.S. numerical listing criteria and to modify its current original listing criteria applicable to non-U.S. issuers.

The Exchange's numerical listing criteria currently include requirements regarding size, earnings and share distribution of a company. The Exchange believes there are numerous companies that would benefit from trading in its auction-agency market, but which are excluded under the NYSE's current evaluative criteria. Therefore, the Exchange is proposing to add a new alternative standard that focuses on global market capitalization and revenues for large, global companies.

In addition, the Exchange believes that both its current numerical original listing criteria and its current continued listing criteria place too much emphasis on a company's earnings to the exclusion of other relevant factors. The Exchange believes that the size and trading price of the company, the depth of its shareholder base and the size of the company's stockholders' equity are also important gauges when evaluating both the original and continued listing status of a company.[7]

The specific proposed amendments to the Exchange's original listing criteria are:

1. The Exchange is proposing, on a 90-day Pilot basis pending Commission approval on a permanent basis, a Capitalization Standard alternative to its other financial listing eligibility criteria.[8] Under the proposed amendment to Paragraphs 102.01 and 103.01 of the NYSE's Manual, a company with a total global market capitalization of $1 billion and revenues of $250 million in its most recent fiscal year would be eligible for listing on the Exchange without satisfying any additional financial eligibility requirements. However, the company would have to meet the Exchange's other original listing criteria.[9] The Exchange believes that companies of this magnitude would be appropriate for listing and trading on the NYSE even if, for example, the company's stage of development, or the transitional nature

[4] *See* Amendment No. 1, *supra* note 3.

[5] Telephone conversation between N. Amy Bilbija, Counsel, NYSE, and Terri Evans, Attorney, Division, Commission, on May 19, 1999.

[6] Prior to the Commission's grant of permanent approval of the Pilot, the NYSE plans to modify its pre-tax income standard to insert the word ''fiscal'' into its reference to three years and two years, respectively. Telephone conversation between N. Amy Bilbija, Counsel, NYSE, and Richard Strasser, Assistant Director, Division, Commission, on May 27, 1999.

[7] The Exchange intends to file in the near future a proposed rule change with the Commission to address its continued listing criteria.

[8] *See* Amendment No. 1, *supra* note 3.

[9] *Id.*

of its home economy, preclude earnings, or if is undergoing short-term variations in profitability. This listing standard is proposed for both domestic and non-U.S. companies.

For companies listing in connection with an initial public offering (''IPO''), the valuation of the company's market capitalization would need to be demonstrated by a written representation from the underwriter (or, in the case of a spin-off, by the parent company's investment banker, other financial advisor, or transfer agent, if applicable) of the size of the offering as it pertains to the total market capitalization of the company upon completion of the offering (or distribution). For all other companies, the average over the preceding six months would be used to determine the market capitalization of the company. In computing the six month average, the Exchange proposes to take the average of the daily figures over the preceding six months.

2. The Exchange currently has alternative numerical listing criteria for non-U.S. companies with limited U.S. distribution.[10] The Exchange proposes to amend its pre-tax earnings standard for these companies by requiring $25 million in pre-tax income in each of the two most recent fiscal years. Currently, the company need only have pre-tax earnings of $25 million in any one of the three most recent years. Thus, to qualify under the proposed criteria, a non-U.S. issuer would need to demonstrate pre-tax income of $100 million in the aggregate for the last three fiscal years together with a minimum of $25 million of pre-tax income in each of the two most recent fiscal years.

The Exchange notes that its past experience indicates that non-U.S. companies tend to follow U.S. GAAP/SEC disclosure guidelines, which only require a U.S. GAAP reconciliation for the most recent two years and any relevant interim period. Thus, the third year back is generally reported only in local GAAP and, therefore, is of little quantitative value to the Exchange without reconciliation to U.S. GAAP. As a result, the proposed rule change would obviate the need to reconcile the third year back to U.S. GAAP except where the Exchange determines that that information is necessary to assure the Exchange that the aggregate $100 million threshold has been satisfied.

2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under section 6(b)(5)[11] that an exchange have rules that are 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 securities, 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.

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 furtherance of the purposes of the Act.

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

The Exchange has neither solicited nor received any written comments form members or other interested parties.

II. 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 self-regulatory organization consents, the Commission will:

(a) by order approved 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. In particular, the Commission is seeking comment on whether the Exchange should be required to list only those companies that can show positive earnings in recent years notwithstanding their market capitalization or revenues.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SRNYSE9917 and should be submitted by June 25, 1999.

V. Commission's Findings and Order Granting Partial Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change relating to the establishment of the Pilot is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with the section 6(b)(5)[12] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general, to protect investors and the public.[13] The Commission believes that the Exchange's alternative financial listing standard for companies with $1 billion in market capitalization and $250 million in revenues in the most recent fiscal year permits the Exchange to list very large companies that the Exchange believes will prove to be successful moving forward although they may not have been profitable in recent years. The Commission further believes that the proposed Pilot is consistent with the Exchange's obligation to remove impediments to and perfect the

[10] The Exchange applies the general financial listing standards in Paragraph 102.01 of its Manual both to domestic companies and to non-U.S. companies that have the required distribution and trading volume in the United States (or North America, for North American companies). However, the section and paragraph headings in the Manual suggest that those standards apply only to U.S. companies. The Exchange is proposing to change the non-U.S. heading to remove the implication by incorporating the word ''alternative.''

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(5).

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

mechanism of a free and open market. The Commission notes that there is no guarantee that a company that satisfies the market capitalization and revenue standard in the Pilot will achieve positive earnings in the future. However, the Commission preliminarily does not believe it is inconsistent with the Act for the NYSE to permit companies to list on the Exchange that have not established positive earnings in recent years.

The Commission finds good cause for approving the Pilot prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that accelerated approval of the Pilot will enable the Commission and the Exchange to gain experience with the application of the Capitalization Standard before the Commission considers permanent approval of the Pilot.[14] Accordingly, the Commission believes that granting accelerated approval of the Pilot is appropriate and consistent with sections 6(b)(5) and 19(b)(2) of the Act.[15]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the portion of the proposed rule change (File No. SR–NYSE–99–17) relating to the Pilot program is approved until September 3, 1999, or until the Commission grants permanent approval to the proposal.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–14116 Filed 6–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41455; File No. SR–OCC–98–10]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Regarding Supplementary Exercise Notices

May 26, 1999.

On September 10, 1998, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–OCC–98–10) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on March 2, 1999.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Rule 805 governs the submission of expiration date exercise instructions. The rule states that if a clearing member tenders an exercise notice in response to an expiration exercise report after OCC's submission deadline (''supplemental exercise notice''), the tender is in violation of OCC's procedures. Rule 805 further provides that the clearing member shall be subject to disciplinary procedures unless the exercise notice was tendered for the account of a customer and the clearing member was prevented from submitting timely exercise instructions due to one of the circumstances specified in the rule.

Supplementary exercise notices require special processing that is manual labor intensive. As a result of OCC's ongoing review of the effectiveness of its rules and procedures relating to expiration date exercise processing, OCC is amending its expiration date exercise procedures to impose filing fees for expiration date exercise notices that are tendered after OCC's prescribed deadlines. The rule change modifies Rule 805 so that OCC's treatment of supplementary exercise notices is more in line with its treatment under Rule 801 of late exercise notices that are submitted on other dates.

Rule 801 imposes a graduated schedule of filing fees for any request to file, revoke, or modify an exercise notice after the applicable deadline. Rule 801 fees increase at specified times depending on when the filing is made in relation to OCC's nightly processing cycle.

The rule change institutes a similar schedule of fees in rule 805 for the submission of supplementary exercise notices. These fees also increase depending n when the request was made in relation to the expiration processing cycle. Under the rule change, OCC will impose a filing fee of $2,000 per clearing member for any supplementary exercise notice tendered after OCC's filing deadline, but before the start of OCC's critical expiration processing. OCC will charge a filing fee of $10,000 per line item per clearing member for any supplementary exercise notice tendered after the start of critical expiration processing. OCC's board of directors is authorized to remit any filing fee, in whole or in part, if it finds that the circumstances that caused the member to submit the supplementary exercise notice were beyond the clearing member's or its customer's control or that remission would be equitable under the circumstances. The rule change further modifies rule 805 so that the unexcused tender of a supplementary exercise notice may be deemed (as opposed to the current language of shall be deemed) a violation of OCC's procedures and so that the required institution of disciplinary action is permissive (as opposed to being mandatory). These changes also conform rule 805 to rule 801.

Finally, the rule change amends rule 805 to add a provision that requires that the tender of supplementary exercise notices be in accordance with the procedures prescribed by OCC from time to time. Under the rule change, failure to follow the procedures prescribed by OCC will result in the supplemental exercise notice being deemed null and void. This requirement is intended to ensure that among other things supplemental exercise notices are received by the appropriate OCC personnel who can act on them in a timely fashion in order to prevent undue delays in providing assignment information to clearing members.

II. Discussion

Section 17A(b)(3)(D) of the Act[3] requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. The Commission believes that the rule change is consistent with OCC's obligations under Section 17A(b)(3)(D) because supplementary exercise notices require special manual labor processing. The Commission believes that the fees imposed by the proposed rule change are reflective of the effort required by OCC to process the supplentary exercise notices and that it is appropriate to allocate the expense of processing supplementary notices to the clearing member that submits such exercise notices.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in

[14] Approval of the 90-day Pilot period should not be interpreted as suggesting that the Commission is predisposed to approving the proposal on a permanent basis.

[15] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

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

[2] Securities Exchange Act Release No. 41088 (February 22, 1999), 64 FR 10172.

[3] 15 U.S.C. 78q–1(b)(3)(D).