proposed rule change (SR–NASD–98–79) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40979; File No. SR–NYSE–99–02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Instituting a Pilot Program Relating to the Listing Eligibility Criteria for Closed-End Management Investment Companies Registered Under The Investment Company Act of 1940

January 26, 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 January 26, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the portion of the proposal instituting a pilot program relating to the listing eligibility criteria for closed-end investment companies registered under the Investment Company Act of 1940.

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

The Exchange proposes to implement a pilot program (''Pilot'') amending Section 1 of its *Listed Company Manual* (''Manual'') to codify the specific eligibility listing criteria as applied to certain investment companies registered under the Investment Company Act of 1940. The proposed three-month Pilot would expire on April 29, 1999, or such earlier time as the Commission approves the Exchange's request for permanent approval of the program.[3] The text of the proposed rule change is available at the Office of the Secretary, NYSE and at the Commission.

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 Exchange proposed to codify a policy regarding the listing of newly organized closed-end management investment companies (''Funds''). The Exchange generally lists Funds either in connection with an initial public offering or shortly thereafter, when the Fund does not have a three-year operating history and is thus considered newly formed.

If the Fund has at least $60 million in net assets, as evidenced by a firm underwriting commitment, the Exchange will generally authorize the listing of the Fund. In this regard, the Exchange notes that this requirement is the minimum net asset requirement for listing. The Exchange retains the discretion to deny listing to a Fund if it determines that, based upon a comprehensive financial analysis, it is unlikely that the particular Fund will be able to maintain its financial status. Any Fund with less than $60 million in net assets will not be considered for listing.

In applying this test, the Exchange recognizes that in most cases the applicant Fund is not a traditional operating entity. Thus, it would not be possible to apply the earnings standards specified in the *Listed Company Manual* at the time of listing. Of course, Funds are subject to continued financial listing criteria, as are all NYSE-listed companies. In this regard, an exception report is generated monthly to identify companies below the Exchange's continued listing standards. If a Fund is so identified by the Exchange's Financial Compliance Department, it will be subject to the same compliance and monitoring procedures imposed upon any other NYSE-listed company so identified.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[4] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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

The Exchange represents that the proposed rule change will not 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 comments on the proposed rule change.

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

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

The Exchange has requested that the Commission find good cause, pursuant to Section 19(b)(2)[5] of the Act, for approving the establishment of the Pilot for a three-month period ending on April 29, 1999 (or until such earlier time as the Commission grants the Exchange's request for permanent approval of the program), prior to the thirtieth day after publication in the **Federal Register**.

[11] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] Telephone conversation between N. Amy Bilbija, Counsel, NYSE, and Richard Strasser, Assistant Director, Division of Market Regulation, SEC, on January 26, 1999.

[4] 15 U.S.C. 78f(b)(5).

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 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 Room. 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. SR–NYSE–99–02 and should be submitted by February 24, 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)[6] 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.[7]

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 the Exchange's listing standard serves as a means for a marketplace to screen Funds and to provide listed status only to bona fide Funds with sufficient net assets. The Commission further believes that the proposed Pilot strikes a reasonable balance between the Exchange's obligation to protect investors and their confidence in the market and the Exchange's obligation to perfect the mechanism of a free and open market by listing Funds on the Exchange. In addition, the Commission believes that accelerated approval of the Pilot will enable the Exchange to minimize the interruption in its listing of these securities while allowing the Commission adequate time to consider the Exchange's proposal seeking permanent approval of the Pilot.[8]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the Pilot program proposed by the Exchange (File No. SR–NYSE–99–02) is approved until April 29, 1999, or until the Commission approves the proposal permanently.

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

Margaret H. McFarland,

Deputy Secretary.

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[6] 15 U.S.C. 78f(b)(5).

[7] 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).

[8] Approval of the three-month Pilot should not be interpreted as suggesting that the Commission is predisposed to approving the proposal on a permanent basis.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40976; File No. SR–OCC–98–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Regarding the Calculation of the Short Option Adjustment

January 27, 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–98–11) pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on December 23, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change amends Rules 601 and 602 to enable OCC to use a ''sliding scale'' to calculate the short option adjustment contained in OCC's Theoretical Intermarket Margin System (''TIMS'').[3] The short option adjustment is a component of the additional margin calculation in TIMS that imposes a minimum margin amount on deep out of the money short options.

A. Additional Margin Calculation

OCC requires its clearing members to adjust their margin deposits with OCC in the morning of every business day based on OCC's overnight calculations. OCC imposes a margin requirement on short positions in each clearing member account and gives margin credit for unsegregated long positions.[4] Under TIMS, margin for positions in a class group is based on premium levels at the close of trading on the preceding day and is increased or decreased by the additional margin amount for that class group.[5]

TIMS calculates additional margin amounts using options price theory. TIMS first calculates the theoretical liquidating value for the positions in each class group by assuming either an increase or decrease in the market value of the underlying asset in an amount equal to the applicable margin interval. The margin interval is the maximum one day price movement that OCC wants to protect against in the price of the underlying asset.[6] Margin intervals are determined separately for each underlying interest to reflect the volatility in the price of the underlying interest.

TIMS then selects the theoretical liquidating value that represents the greatest decrease (where the actual

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

[2] Securities Exchange Act Release No. 40800 (December 16, 1998), 63 FR 71179.

[3] OCC Rule 601 describes TIMS as it applies to equity options (''equity TIMS'') and OCC Rule 602 describes TIMS as it applies to non-equity options (''non-equity TIMS'').

[4] A long position is unsegregated for OCC's purposes if OCC has a lien on the position (*i.e.*, has recourse to the value of the position in the event that the clearing member does not perform an obligation to OCC). Long positions in firm accounts and market-maker accounts are unsegregated. Long positions in the clearing member's customers' account are unsegregated only if the clearing member submits instructions to that effect in accordance with Rule 611.

[5] For purposes of equity TIMS, a class group consists of all put and call options, all BOUNDS, and all stock loan and borrow positions relating to the same underlying security. For purposes of non-equity TIMS, a class group consists of all put and call options, certain market baskets, and commodity options and futures (that are subject to margin at OCC because of a cross-margining program with a commodity clearing organization) that relate to the same underlying asset. A non-equity TIMS class group may also contain stock loan baskets and stock borrow baskets.

[6] Some combinations of positions can present a greater net theoretical liquidating value at an intermediate value that at either of the endpoint values. As a result, TIMS also calculates the theoretical liquidating value for the positions in each class group assuming intermediate market values of the underlying asset.