

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 national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change should allow specialists to disseminate the actual depth of the NYSE auction market, while still ensuring that Direct+ is available when there is sufficient liquidity at prices closely related to the last sale.⁹ The Commission also believes that the proposed rule change should continue to accommodate the crossing of block transactions outside the prevailing quote, at the same time ensuring that limit orders that are received while the block trade is being effected that improve the market represented by the broker-dealer's bid or offer on behalf of the Rule 127 trade will be executed as part of the block transaction.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NYSE-2002-44) is approved as part of the NYSE Direct+ pilot that expires on December 23, 2003.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-6070 Filed 3-12-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47460; File No. SR-NYSE-2003-05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. To Adopt, on a Permanent Basis, Margin Requirements for Security Futures Contracts

March 6, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 5, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or the "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 to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

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

This Exchange proposes to adopt, on a permanent basis, the amendments to NYSE Rule 431 relating to margin requirements for Security Futures Contracts ("SFCs"), which were approved by the SEC on a pilot basis for sixty days (the "Pilot") on November 7, 2002,³ and the Pilot was extended for an additional sixty days, from January 6, 2003 until March 6, 2003.⁴

The Exchange believes that the proposed rule change would make its margin rule consistent with margin rules already adopted by the SEC and the Commodity Futures Trading Commission ("CFTC") and those filed by other self-regulatory organizations ("SROs") regarding security futures.

Specifically, the proposed amendments would: (1) Permit customer margining of SFCs, and establish initial and maintenance margin requirements for SFCs; (2) allow for initial and maintenance margin levels for offsetting positions involving

SFCs and related positions at lower levels than would be required if margined separately; (3) provide for a Market Maker exclusion for proprietary trades of a Security Futures Dealer ("SFD") and allow for "good faith" margin treatment for the accounts of approved options specialists, market makers and other specialists; (4) provide definitions relative to SFCs for application of this rule; (5) provide that SFCs transacted in a futures account shall not be subject to any provisions of Rule 431; (6) provide for money market mutual funds as defined under Rule 2a-7⁵ of the ICA,⁶ to be used to satisfy margin requirements for SFCs provided certain conditions are met; (7) require that SFCs transacted in a securities account be subject to all other provisions of NYSE Rule 431, particularly Rule 431(f)(8)(B) ("Day Trading"); and (8) permit members and member organizations for which the Exchange is the Designated Examining Authority ("DEA") to participate in the trading of SFCs.

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets. In addition, the table of offsets is new rule language.

* * * * *

Rule 431 ("Margin Requirements")

Rule 431. (a) For purposes of this Rule, the following terms shall have the meanings specified below:

(1) The term "current market value" means the total cost or net proceeds of a security on the day it was purchased or sold or at any other time the preceding business day's closing price as shown by any regularly published reporting or quotation service, *except for security futures contracts (see Section (f)(10)(C)(ii))*. If there is no closing price, a member organization may use a reasonable estimate of the market value of the security as of the close of business on the preceding business day.

Rule 431 (a)(2) through (a)(3) unchanged.

(4) The term "equity" means the customer's ownership interest in the account, computed by adding the current market value of all securities "long" and the amount of any credit balance and subtracting the current market value of all securities "short" and the amount of any debit balance. *Any variation settlement received or paid on a security futures contract shall be considered a credit or debit to the account for purposes of equity.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 46782 (November 7, 2002), 67 FR 69052 (November 14, 2002) (SR-NYSE-2002-53).

⁴ See Securities Exchange Act Release No. 47129 (January 3, 2003), 68 FR 2094 (January 15, 2003) (SR-NYSE-2003-01).

⁵ 17 CFR 270.2a-7.

⁶ 15 U.S.C. 80a et seq.

⁹ According to the Exchange, a high percentage of executions in Direct+ occur within five cents of the last sale. See Amendment No. 1, *supra* note 3.

¹⁰ *Id.*

¹¹ 17 CFR 200.30-3(a)(12).