

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 will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-2003-05 and should be submitted by April 3, 2003.

IV. Commission Findings and Order Granting Accelerated Approval of a Proposed Rule Change

The NYSE has asked that the Commission approve the proposed rule change prior to the thirtieth day after publication of notice of the filing in the **Federal Register** to accommodate the continuance of trading of security futures in securities accounts pursuant to NYSE Rule 431 on an uninterrupted basis after the Pilot ends on March 6, 2003. 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.²⁶ In particular, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,²⁷ which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.²⁸ In addition, the Commission believes that the proposed rule change is consistent with section 7(c)(2)(B) of the Act,²⁹ which provides, among other things, that the margin requirements for security futures must preserve the financial integrity of markets trading security futures, prevent systemic risk, be consistent with the margin requirements for comparable exchange-traded options, and provide that the margin levels for security futures may be no lower than the lowest level of margin, exclusive of premium, required for any comparable exchange-traded option.

The Commission believes that the rule change is generally consistent with the customer margin rules for security futures adopted by the Commission and the CFTC. In particular, the Commission notes that, consistent with Rule 403 under the Act, NYSE's proposed rule

provides for a minimum margin level of 20% of current market value for all positions in security futures carried in a securities account. The Commission believes that 20% is the minimum margin level necessary to satisfy the requirements of section 7(c)(2)(B) of the Act. Rule 403 under the Act³⁰ also provides that a national securities exchange may set margin levels lower than 20% of the current market value of the security future for an offsetting position involving security futures and related positions, provided that an exchange's margin levels for offsetting positions meet the criteria set forth in section 7(c)(2)(B) of the Act. The offsets proposed by NYSE are consistent with the strategy-based offsets permitted for comparable offset positions involving exchange-traded options and therefore consistent with section 7(c)(2)(B) of the Act.

In addition, the Commission believes it is consistent with the Act for the NYSE to exclude from its margin requirements positions in SFCs carried in a futures account. The Commission believes that by choosing to exclude such positions from the scope of Rule 431, the NYSE's proposal will make compliance by members with the regulatory requirements of several SROs easier. Moreover, as proposed, NYSE member organizations will accord "good faith" margin treatment to specified offsetting positions involving security futures, carried in a securities account for a SFD, consistent with the customer margin rules for security futures adopted by the Commission and the CFTC.

After careful consideration of the commenter's concern about applying the NYSE's day trading margin requirements to SFCs, the Commission believes that it is reasonable for the NYSE to impose day trading margin requirements on its members with respect to SFCs carried in a securities account. As NYSE noted, an SRO may adopt more stringent requirements than those promulgated by the Commission.

The Commission has also carefully considered the commenter's concern of using the term "bona fide" with respect to market maker or specialist transactions. The Commission notes that NYSE has deleted the term "bona fide" in reference to market maker or specialist transactions, and instead is incorporating the definition of an SFD in Rule 400(c)(2)(v) under the Act. The Commission believes that if it finds, in approving an SRO's rules for SFDs, that such rules are consistent with the definition of SFD in Rule 400(c)(2)(v),

those rules would also be consistent with NYSE Rule 431(f)(10)(D). Therefore, the Commission believes this amendment should address the commenter's concerns that NYSE not impose a higher standard on transactions by market maker and specialist registered pursuant to rules of another SRO to qualify for favorable margin treatment.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposed rule change should enable NYSE members to continue to trade SFCs in securities accounts on an uninterrupted basis. In addition, the Commission believes that granting accelerated approval to the proposed rule change should clarify NYSE members' obligations under NYSE Rule 431 with respect to their trading in SFCs. The Commission notes it approved NYSE's original filing as a temporary pilot to give members of the public an opportunity to comment on the substance of the proposed rule change before it requests permanent approval. The NYSE has responded to the comments received, as described above. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act, to approve the proposed rule change prior to the thirtieth day after publication if the notice of filing.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act³¹, that the proposed rule change (File No. SR-NYSE-2003-05) be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³²

Margaret H. McFarland,
Deputy Secretary.

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²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 15 U.S.C. 78f(b)(5).

²⁸ In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁹ 15 U.S.C. 78g(c)(2)(B).

³⁰ 17 CFR 240.403(b)(2).

³¹ 15 U.S.C. 78s(b)(2).

³² 17 CFR 200.30-3(a)(12).