plan, when in fact it is not. The Commission believes that clarifying the Exchange's rules in this manner is appropriate. The one comment received by the Commission only makes suggestions for further Exchange rulemaking and, as such, does not raise any issue that would preclude approval of the instant proposal.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSE–2005–29) is approved.

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

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3830 Filed 7–18–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52018; File No. SR–NYSE–2005–39]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend NYSE Rule 440H Relating to Activity Assessment Fees

July 12, 2005.

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 June 1, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. On July 6, 2005, the NYSE filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Ronald Rubin, Senior Special Counsel, NYSE, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission dated July 6, 2005. In Amendment No. 1, the NYSE added language to its statement of the purpose of the proposed rule change.

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

The NYSE proposes to amend NYSE Rule 440H to reflect the revised procedures by which the Exchange collects fees from its members and member organizations (''Membership'') to offset its fee obligations under Section 31 of the Act.[4] The text of the proposed rule change is available on the NYSE's Web site (*http://www.nyse.com*), at the NYSE's principal office, and at the Commission. The text of the proposed rule change also appears below. Additions are italicized; deletions are bracketed.

Rule 440H

[Transaction Fees]

Activity Assessment Fees

* * *Supplementary Material:

[Report on Form 120–A]

.10 Statutory background.—Section 31 of the Securities Exchange Act of 1934 (''*Exchange Act*''[¶4721]), as amended, requires [that every] national securities exchanges *and associations* to [each year] pay to the Securities and Exchange Commission (''SEC'') *certain fees and assessments on specified securities transactions*. [such sum as is required by Section 31 based on the aggregate dollar amount of the sales of securities (other than bonds, debentures and other evidences of indebtedness and any sale or any class of sales of securities which the SEC may, by rule, exempt from the imposition of the fee) transacted during the preceding year on such exchange.

The Exchange has issued the following directions:

(1)] *.20 Calculation and payment of Activity Assessment Fees.*—Each member and each member organization *that effects securities* [engaged in clearing or settling] transactions [effected] upon the Exchange *that are defined in Section 31 of the Exchange Act as ''covered sales'' of securities shall pay to the Exchange Activity Assessment Fees based upon all of their covered sales. The Exchange shall calculate Activity Assessment Fees by multiplying the aggregate dollar amount of covered sales effected upon the Exchange by the member or member organization during the appropriate computational period by the Section 31(b) fee rate in effect during that computational period. Activity Assessment Fees shall be due and payable at such times and intervals as prescribed by the Exchange.* [shall maintain a daily record of the aggregate dollar amount of the sales of securities made upon the Exchange and cleared or settled by him or it. The amount of money shall be computed upon the actual sales price, disregarding commissions and taxes. Blotter dates shall be used throughout. All sales of securities on the Exchange shall be included, other than bonds, debentures and other evidences of indebtedness and any sale or any class of securities which the SEC may, by rule, exempt from the imposition of the fee which the SEC imposes upon the Exchange under Section 31 of the Securities Exchange Act of 1934. Odd-lot dealers shall record both the round lots and the odd lots which they sell on the Exchange Floor. If a member or member organization clears and settles a transaction for a member or member organization which in turn clears it for another principal, only the member or the member organization settling the transaction shall include the transaction in its record kept pursuant to this paragraph. Monthly reports (Form 120–A) of the daily totals above referred to shall be submitted to the Exchange in the manner described below.

(2) Each such reporting member or member organization shall pay to the Exchange as a ''Transaction Fee'' a sum equal to the dollar amount as prescribed in Section 31 of the Securities Exchange Act of 1934 based on the total aggregate dollar sales volume reported monthly on Form 120–A. Such transactions as may from time to time be required to be reported on Form 120–A are hereinafter referred to as ''120–A Transactions''. The total amount payable as shown on the Form 120–A report shall be due and payable monthly, on such date each month as the Exchange's Rule 440 shall require the Form 120–A referred to therein to be filed with the Exchange, and payment of such charge, if any, as shall be due with respect to 120–A Transactions in a month shall be and hereby is required to accompany the Form 120–A filed with respect to such month.

At or before 10:30 a.m. on the 10th day of each month each member and each member organization required to report shall submit to the Treasurer's Department a report on Form 120–A showing with respect to 120–A Transactions settled during the preceding month; aggregate dollar sales volume; the Transaction Fee due thereon; number of shares of stock; number of warrants and number of rights to subscribe.] Members[,] and member organizations *that* [which] cease [the] *to effect* [clearing and settling of] securit[y]*ies* transactions *upon the Exchange* [shall promptly

[4] 15 U.S.C. 78ee.

render reports for any interim period resulting from such cessation and] shall promptly pay *to the Exchange* any sum due [under the above directions] *pursuant to this rule*.

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 proposes to amend NYSE Rule 440H to reflect the revised procedures by which the Exchange collects fees from the Membership to offset its fee obligations under Section 31 of the Act.

Background

NYSE Rule 440H currently requires each member or member organization engaged in clearing or settling transactions effected upon the Exchange to pay to the Exchange as a ''Transaction Fee'' [5] a sum equal to the dollar amount as prescribed in Section 31 of the Act based on the total aggregate dollar sales volume the member or member organization has reported monthly on its Form 120–A. Historically, the funds collected by the Exchange from members and member organizations pursuant to NYSE Rule 440H were remitted in their entirety to the Commission.

On June 28, 2004, the Commission adopted new procedures to govern the calculation, payment, and collection of fees and assessments on securities transactions owed by national securities exchanges and national securities associations (collectively, ''self-regulatory organizations'' or ''SROs'') to the Commission pursuant to Section 31 of the Act (''Adopting Release'').[6] Under the new procedures, each SRO uses new Form R31 to provide the Commission with data on its securities transactions. Utilizing a single, uniform methodology for all SROs, the Commission uses this data to calculate the amount of fees and assessments due. The Commission then presents each SRO with a bill equal to the aggregate dollar amount of its covered sales during the computational period multiplied by the fee rate under Section 31(b) or Section 31(c) of the Act applicable to covered sales for that computational period.[7]

Proposed Amendment to NYSE Rule 440H

One effect of the new Commission procedures was to explicitly sever any implied connection between fees the Commission charges SROs and fees the SROs charge their members, as well as any implied connection between those fees and any fees that SRO member organizations charge their customers.[8] In theory, the Exchange could bill the membership for Activity Assessment Fees [9] in amounts unrelated to the Exchange's Section 31 fees. However, the Exchange currently seeks to continue its policy of collecting from the membership Activity Assessment Fees that, as accurately as possible, equal the Exchange's Section 31 fees. In other words, the Exchange intends to pass the exact amount of its Section 31 fees through to the membership via Activity Assessment Fees.[10]

Furthermore, because the new SEC procedures and amended NYSE Rule 440H eliminate any implied connection between Section 31 fees, Activity Assessment Fees, and the membership's fees to their customers,[11] the Exchange will not require member organizations to follow any specific procedure if they choose to pass their Activity Assessment Fees through to their customers. Thus, so long as the names or descriptions of fees charged to customers do not imply a connection to Section 31 fees, the Exchange's Activity Assessment fees, or any other fees those customers are not required to pay (*e.g.*, ''regulatory fees''), the membership has discretion as to the fees it charges its customers.[12]

On June 1, 2005, the Exchange will end the current ''self-reporting'' (*i.e.*, Form 120–A) procedures related to Activity Assessment Fees, and will begin directly billing all members and member organizations engaged in clearing activities. Activity Assessment Fees will be assessed for all covered sales whose settlement dates fall within the applicable computational period, and will be calculated based on securities transaction data reported by the Depository Trust & Clearing Corporation (the same data used by the Exchange to prepare Form R31 for reporting to the Commission), and, as the NYSE noted in Amendment No. 1, on Crossing Sessions 2, 3, and 4 securities transaction data reported by the membership to the Exchange through the Crossing Sessions Reporting System (an application accessed through the Exchange's Electronic Filing Platform).

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[5] Although NYSE Rule 440H was titled ''Transaction Fees'' until the proposed rule change became effective, the Exchange has renamed those fees ''Activity Assessment Fees'' and currently uses that name exclusively.

[6] Section 31 of the Act provides that the Exchange and other national securities exchanges' Commission fees will be based on the aggregate dollar amount of sales of securities transacted on the exchange (Section 31(b)), that national securities associations' fees will be based on the aggregate dollar amount of sales of securities transacted by or through any member of the association otherwise than on a national securities exchange (Section 31(c)), and that national securities exchanges are assessed for each ''round turn transaction'' in a security future (Section 31(d)).

[7] If the Section 31 fee rate changes in the middle of a ''traditional'' computation period (*e.g.*, in the middle of a quarter), the computational period may be broken up to facilitate appropriate application of the old and new fee rates.

[8] In the Adopting Release, the Commission noted that, in practice, ''SROs obtain the funds to pay Section 31 fees and assessments by assessing charges on their members, and the members in turn pass these charges to their customers.'' The Commission stressed that Section 31 of the Act ''does not address the manner or extent to which covered SROs may seek to recover the costs of their Section 31 obligations from their members. Nor does Section 31 of the Act address the manner or extent to which members of covered SROs may seek to pass any such charges on to their customers.'' *See* Adopting Release, 69 FR at 41072.

[9] Section 31 fees are identified as ''SEC Activity Remittances'' in all Exchange financial reports.

[10] The Exchange has incurred, and continues to incur, the costs of developing systems necessary for compliance with the new SEC procedures, and for calculation and billing of the related Activity Assessment Fees. The Exchange reserves the right to bill the Membership some form of assessment to offset these or other Section 31-related costs.

[11] NYSE Information Memo No. 04–42, dated August 5, 2004, notified the membership that the new SEC procedures, and the fact that NYSE Rule 440H does not dictate whether or how members or member organizations should charge customers to recover amounts paid to the Exchange, rendered the instructions in the ''Calculation of Fees—Rounding Up'' section of Information Memo No. 01–51 inapplicable, and that ''the Commission disapproves of the practice of naming fees in customers'' trade confirmations 'Section 31 Fees' or 'SEC Fees.' Also, the Exchange filed SR–NYSE–2004–45, which added Interpretation .01 to NYSE Rule 440H: ''Members and member organizations should disregard the 'Calculation of Fees—Rounding Up' section of Information Memo No. 01–51.'' *See* Securities Exchange Act Release No. 50357 (September 13, 2004), 69 FR 56257 (September 20, 2004) (SR–NYSE–2004–45).

[12] NYSE Information Memo No. 05–36, dated May 13, 2005, emphasized that ''member organizations that choose to pass their Activity Assessment Fees through to their customers are not required to follow any specific procedures, but they must be particularly careful to avoid labeling their fees with any name that suggests that such fees are imposed or mandated by the SEC, the Exchange, or some other regulatory body.''

Under these new procedures, the membership is no longer required to complete Form 120–A. Therefore, the Exchange proposes to delete the provisions in NYSE Rule 440H relating to Form 120–A. What remains in the amended rule is a more concise requirement that the membership pays Activity Assessment Fees at such times and intervals as prescribed by the Exchange, and a description of how the Exchange will calculate those fees. The title and language of the amended rule reflects the change in terminology from ''Transaction Fees'' to ''Activity Assessment Fees.''

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(4) of the Act,[14] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among NYSE members.

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 written comments on the proposed rule change.

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

Because the foregoing proposed rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [15] and subparagraph (f)(2) of Rule 19b-4 thereunder.[16] Accordingly, the proposal, as amended, will take effect upon filing with the Commission. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[17]

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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov*. Please include File No. SR–NYSE–2005–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–39. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–39 and should be submitted by August 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

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[13] 15 U.S.C. 78(f)(b).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b-4(f)(2).

[17] The effective date of the original proposed rule change is June 1, 2005 and the effective date of the amendment is July 6, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on July 6, 2005, the date on which the NYSE submitted Amendment No. 1.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52010; File No. SR–OCC–2005–06]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Amend By-Laws and Rules To Accommodate Short-Term Options Proposed for Trading by the Chicago Board Options Exchange, Inc., the American Stock Exchange, LLC, the International Securities Exchange, Inc., and the Pacific Exchange, Inc.

July 12, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 10, 2005, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') and on June 13, 2005, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested parties and to grant accelerated approval of the proposal.

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

The purpose of this proposed rule change is to amend OCC's By-Laws and Rules to accommodate short-term options proposed for trading by the American Stock Exchange, LLC, (''Amex''), the Chicago Board Options Exchange, Inc. (''CBOE''), the International Securities Exchange, Inc. (''ISE''), and the Pacific Exchange, Inc. (''PCX'') (collectively referred to as ''Exchanges'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the

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