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 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 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 Number SR–NASD–2007–029 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2007–029. 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 Commission's 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 NASD. 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–NASD–2007–029 and should be submitted on or before June 1, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–9069 Filed 5–10–07; 8:45 am]

BILLING CODE 8010–01–P

Morris, Secretary, Commission, dated September 23, 2005.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55710; File No. SR–NFA–2007–03]

Self-Regulatory Organization; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Amendments to Compliance Rule 2–9 (Supervision) and the Interpretive Notice Regarding Compliance Rule 2–9 (Enhanced Supervisory Requirements)

May 4, 2007.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–7 thereunder,[2] notice is hereby given that on February 28, 2007, National Futures Association (''NFA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been substantially prepared by NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. NFA, on February 27, 2007, submitted the proposed rule change to the Commodity Futures Trading Commission (''CFTC'') for approval. The CFTC approved the proposed rule change on March 28, 2007.

I. Self-Regulatory Organization's Description of the Proposed Rules

Section 15A(k) of the Act[3] makes NFA a national securities association for the limited purpose of regulating the activities of NFA members (''Members'') who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Exchange Act.[4] NFA's Interpretive Notice entitled ''Compliance Rule 2–9: Enhanced Supervisory Requirements'' (''Interpretive Notice'') applies to all Members who meet the criteria in the Interpretive Notice and could apply to Members registered under Section 15(b)(11).

The amendments to the Interpretive Notice:

- Expand the definition of a Disciplined Firm to include firms that have been sanctioned by the CFTC or NFA during the preceding five years for using deceptive telemarketing practices or promotional material, even if the firm was not barred from the industry; and
- Impose the enhanced supervisory requirements on firms that charge 50% or more of their customers round-turn commissions, fees, and other charges that total $100 or more per futures, forex, or option contract.

The amendment to Compliance Rule 2–9(b) adds language specifically authorizing NFA's Board to establish criteria related to the employment history of a Member's principals and/or to the amount of commissions, fees, and other charges assessed by a Member when imposing the enhanced supervisory requirements on a Member.

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

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

1. Purpose

NFA's Board of Directors adopted the original Interpretive Notice in January 1993. The Interpretive Notice requires a Member to undertake specific enhanced supervisory requirements if its sales force includes a specified number of individuals who have worked at Disciplined Firms or, in certain situations, when a Member becomes subject to a disciplinary action.[5] The

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 15 U.S.C. 78o–3(k).

[4] 15 U.S.C. 78o(b)(11).

[5] The Interpretive Notice currently provides that Member firms triggering the enhanced supervisory procedures must record all telephone conversations between the Member's APs and both existing and potential customers, submit all promotional

Interpretive Notice and an enabling provision of NFA Compliance Rule 2–9(b) provide that affected Members may petition the Telemarketing Procedures Waiver Committee for relief from these obligations.

NFA's Board has amended the Interpretive Notice on eleven different occasions since it was first issued. The amendments have been based on various changes affecting the membership and on practical lessons learned from administering the Interpretive Notice over the years. The various amendments have at times expanded the scope of the Interpretive Notice and, at other times, have granted relief to the membership in situations when conditions indicated that it was warranted. For example, amendments were made due to the emergence of security futures products; in response to Members that reorganize their business to avoid the enhanced supervisory requirements; and in recognition that some associated persons (''APs'') who worked at Disciplined Firms long ago and/or for a short time who do not appear to pose an extraordinary risk to the public.

a. Expansion of the Definition of Disciplined Firm

Members currently qualify for the enhanced supervisory requirements if they hire a prescribed percentage of APs and principals who previously worked at Disciplined Firms. Disciplined Firms are defined in the Interpretive Notice as firms that have been formally charged by either the CFTC or NFA with using deceptive telemarketing practices or promotional material and have been permanently barred from the industry as a result of those charges. Disciplined Firms also include firms that have been barred by the NASD or the SEC for fraud-related sales practices involving security futures products.

The amendments to the Interpretive Notice expand the definition of a Disciplined Firm beyond firms that have been permanently barred from the industry for sales practice or promotional material violations by adding firms that have been sanctioned in any way for those types of violations during the preceding five years. These amendments are consistent with the considerations cited by NFA's Board when it originally issued the Interpretive Notice in 1993 and are supported by information NFA gleaned in reviewing the firms that would be affected by the change.

When NFA's Board first established the enhanced supervisory requirements, it noted in the Interpretive Notice that when a firm is closed for fraudulent sales tactics, it is reasonable to believe that the training and supervision that it gave its APs was ''wholly inadequate or inappropriate.'' The Board stated further that:

> It is also reasonable to conclude that an AP who received inadequate or inappropriate training and supervision may have learned improper sales tactics, which he will carry with him to his next job. Therefore, the Board believes that a Member firm employing such a sales force must have stringent supervision procedures in place in order to ensure that the improper training its APs have previously received does not taint their sales efforts on behalf of the Member.

More than 140 former NFA Members are currently classified as Disciplined Firms. The amendments to the Interpretive Notice would add approximately 180 firms to the list of Disciplined Firms because they have received sanctions short of a permanent bar from the CFTC or NFA for sales practice and/or promotional material violations during the last five years.

Members that would be added as Disciplined Firms would not themselves become subject to the enhanced supervisory requirements merely because they are now categorized as Disciplined Firms. Rather, the effect of the proposal would be that their APs and principals would have to be counted by present and future sponsors as having worked at a Disciplined Firm for purposes of determining whether the sponsor's employee mix triggered an obligation to adopt the enhanced supervisory requirements. The overall effect of the reclassification of the individuals who worked for the firms that would be added to the Disciplined Firm list under the proposal would be to obligate approximately forty-five additional active Members to adopt the enhanced supervisory requirements. By comparison, ten Members became subject to the enhanced supervisory requirements during 2005 and thirty-nine Members became subject to the requirements in 2006.[6]

NFA's review of the disciplinary histories of the additional Members that would become subject to the enhanced supervisory requirements indicates that they have an incidence of disciplinary actions that far outstrips the industry average for sales practice and promotional material violations. In fact, eleven of these firms have already been subject to NFA or the CFTC actions alleging abusive sales practices and/or misleading promotional material. Based on the disciplinary history of these firms and the employment histories of their principals and APs, it is reasonable to conclude that they would benefit from the enhanced supervisory requirements ''to ensure that the improper training [the firm's] APs have previously received does not taint their sales efforts on behalf of the Member.''

b. Imposition of Enhanced Supervisory Requirements Based on Commissions and Fees

NFA has also recently reviewed whether it is appropriate to impose the enhanced supervisory requirements on the few Members that charge commissions and fees that are substantially in excess of the normal range assessed by the general membership. NFA staff has reviewed the commission and fee structures of a number of Member firms which have been subject to disciplinary action and arbitration claims during recent years and has found that a significant correlation exists between firms that are cited as respondents in actions for misleading sales practices and firms that charge abnormally high commissions and fees.

NFA reviewed the commission rates charged by Member firms that have been cited by the Business Conduct Committee for misleading sales practices over the last three years. All but one of the approximately twenty firms included in the group charged total round-turn commissions, mark-ups, fees, and other charges of between $95 and $250 per futures, forex, or option contract—with the strong majority of the firms skewing toward the high end of that range.

In addition, NFA reviewed arbitration claims to determine if there was any correlation between claims and high commission rates. Five of the twelve firms that have been subject to the highest number of claims are small-to-medium-sized firms that charge commissions that compare to the high rates described above. Many of the claims against those firms included allegations of misleading sales practices.[7]

The correlation between charging abnormally high commissions and fees

material at least ten days prior to first use, adopt written supervisory procedures, and either operate under a guarantee agreement or maintain at least $250,000 in adjusted net capital (''ANC'').

[6] The increase in 2006 is largely attributable to the impact of revisions made to the Interpretive Notice in early 2006 and to adding a number of Members to the list of Disciplined Firms when charges against them were resolved with permanent bars.

[7] Six large firms that charge commissions that are in line with industry norms are among the twelve Members that have been subject to the most arbitration claims made over the past three years. This is not surprising based on their size.

and allegations of sales practice fraud suggests that firms that charge commissions that are significantly in excess of industry norms would benefit from the enhanced supervisory requirements. In particular, recording conversations with the public would give affected Members the opportunity to ensure that misrepresentations and failure to disclose costs would be detected and, hopefully, corrected.

Based on this information, the Board amended the Interpretive Notice to impose the enhanced supervisory requirements on any Member firm that charges 50% or more of its active customers round-turn commissions, fees, and other charges that total $100 or more per futures, forex, or option contract.[8] In setting the amount of commissions at this level, NFA relied upon feedback from NFA's Advisory Committees and Joint Audit Committee representatives, and used data obtained in NFA's examinations of Member firms. This feedback suggests that Members that charge commissions and fees below this level are less likely to engage in fraudulent sales practices.

The amended Interpretive Notice imposes a duty on Members to notify NFA if they charge round-turn commissions, fees, and other charges that reach the triggering levels specified in the Interpretive Notice. In addition, upon inquiry by NFA, Members have the burden of demonstrating that they do not meet the triggering levels. The amendments to the Interpretive Notice add the reasonableness of commissions and the effectiveness of any disclosure to customers regarding them to the list of factors that the Telemarketing Procedures Waiver Committee may consider in evaluating a waiver request.

c. Exemptions for Certain Associated Persons

The Interpretive Notice exempts two groups of APs who have previously worked at Disciplined Firms from being counted for purposes of calculating whether their current employer's sales force triggers the enhanced supervisory requirements. NFA's analysis shows that, in general, the APs covered by the exemptions do not pose a greater threat to the public than the overall population of APs.

The first exempt group was created in 2003 and includes APs who worked for Disciplined Firms for less than 60 days and who have not been employed by any Disciplined Firm during the preceding five years. The second exempt group was created in April of 2006 and includes APs who worked at a single Disciplined Firm more than ten years ago and who have not worked for a Member that has been subject to any sales practice action by NFA or the CFTC since leaving the Disciplined Firm. The Interpretive Notice provides that those APs must not have been personally subject to disciplinary action by NFA or the CFTC. The amendments to the Interpretive Notice require APs who fall into the first exempt group to be treated consistently with those in the second group by also requiring them to be free from personal disciplinary action by NFA or the CFTC.

d. Enhanced Adjusted Net Capital Requirement

The Interpretive Notice currently requires all Members that are subject to the enhanced supervisory requirements to either operate pursuant to a guarantee agreement or to maintain ANC of at least $250,000, which has historically been the benchmark amount for FCMs required under NFA Financial Requirements. Revisions to NFA's Financial Requirements that raised the ANC requirements for Forex Dealer Members (''FDMs'') to $1,000,000 and for other FCMs to $500,000 became effective on July 31, 2006—thus rendering the current Interpretive Notice outdated as it applies to the ANC requirements for those Members. The ANC requirement for IBs was raised from $30,000 to $45,000 at the same time, but the new IB levels are still much less than the $250,000 required under the Interpretive Notice.

The revised Interpretive Notice imposes an ANC requirement of $2,000,000 on FDMs and $1,000,000 on other FCMs that are subject to the enhanced supervisory requirements. The Interpretive Notice also makes it clear that the $250,000 increased ANC requirement applies to CTAs and CPOs as well as IBs.

e. Miscellaneous Amendments

In giving the option to Members that qualify for the enhanced supervisory procedures to either operate under a guarantee agreement or maintain at least $250,000 in ANC, the current language of the Interpretive Notice limits the pool of potential guarantors to FCMs that meet the eligibility requirements for executing a Supplemental Guarantor Certification Statement (''SGCS'') pursuant to NFA Registration Rule 504(a)(2)(B). Changes have been made to NFA's Registration Rules since the inclusion of the reference to NFA Registration Rule 504(a)(2)(B) in the Interpretive Notice and, in fact, the Registration Rule provision cited in the Interpretive Notice no longer exists. A technical amendment to the Interpretive Notice deletes the reference to defunct NFA Registration Rule 504(a)(2)(B) and replaces it with a reference to NFA Registration Rule 509(b)(5), which contains comparable provisions for eligibility to execute an SGCS.

Most Members that are required to record conversations with customers use standard format audio cassette recordings or commonly used digital recording programs. However, there have been several instances in which Members have provided recordings to NFA that are in outdated or exotic media formats. NFA has occasionally had to go to extraordinary lengths in order to hear and understand the contents of some of those recordings. In one case, NFA Compliance staff auditors had to travel to the FBI facility at Quantico, Virginia to listen to tapes because the FBI had one of the few machines capable of playing back recordings produced by a Member and the firm had represented that its outdated machinery was irreparably damaged. The amended Interpretive Notice requires Members subject to enhanced supervisory requirements to promptly provide NFA or the CFTC with the appropriate resources for listening to the recording upon request. Obviously, such a request would be rare but the addition would be of great benefit in certain circumstances and would likely encourage affected Members to use standard media formats in the first place.

NFA Compliance Rule 2–9(b) authorizes NFA's Board to establish criteria for becoming subject to the enhanced supervisory requirements. The existing rule explicitly authorizes the Board to establish those criteria based on the employment history of a firm's APs but does not mention either the employment history of a Member's principals or the amount of commissions, fees and other charges assessed by a Member. The amendments to the rule add this language.

2. Statutory Basis

NFA has filed these proposed regulations pursuant to Section 19(b)(7) of the Act.[9] The rule change is authorized by, and consistent with, Section 15A(k) of the Act.

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

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance

[8] The term ''active customers'' means any customers who are entitled to a monthly statement under the provisions of CFTC Regulations § 1.33(a).

[9] 15 U.S.C. 78s(b)(7).

of the purposes of the Act and the Commodity Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rules Received From Members, Participants, or Others

NFA did not publish the rule change to the membership for comment but did discuss it with NFA's FCM, IB and CPO/CTA Advisory Committees. NFA did not receive comment letters concerning the rule change.

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

On February 27, 2007, NFA submitted the proposed amendments to NFA's Compliance Rule 2–9 and the Interpretive Notice to the CFTC for approval. The proposed rule change has become effective on March 28, 2007, the date of approval of the proposed rule change by the CFTC.

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Exchange Act.[10]

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. 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 Number SR–NFA–2007–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NFA–2007–03. 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 Commission's 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 the filing also will be available for inspection and copying at the principal office of the Exchange. 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–NFA–2007–03 and should be submitted on or before June 1, 2007.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–9071 Filed 5–10–07; 8:45 am]

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[10] 15 U.S.C. 78s(b)(1).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55716; File No. SR–OCC–2006–15]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Approval of Fund Shares Deposited as Margin

May 7, 2007.

I. Introduction

On August 31, 2006, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2006–15 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 29, 2007.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

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

[2] Securities Exchange Act Release No. 55504 (March 21, 2007), 72 FR 14844.

II. Description

The proposed rule change eliminates the requirement that OCC's Membership/Risk Committee approve classes of fund shares (*e.g.*, ETFs) for deposit as margin. It deletes Interpretation and Policy .11 to Rule 604, Forms of Margin, which requires that OCC's Membership/Risk Committee approve classes of fund shares for deposit as margin. Committee approval was deemed to be a prudent safeguard when OCC began accepting fund shares for deposit in 1997 because fund shares had only been trading since 1993, and OCC was not as familiar with them as it is today.[3] In 1998, OCC began clearing options on fund shares.[4] Since then, fund shares have become a widely used investment tool, and OCC has developed a broad understanding of the fund share marketplace. In light of these developments, OCC believes that fund shares should be accepted as margin under the same conditions that apply to the deposit of other equity securities without the need for Committee approval.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[5] OCC's Rule 604 provides that OCC may accept cash, letters of credit, and certain types of liquid securities. In our approval order of the 1997 proposed rule change to allow OCC to accept fund shares as margin, we noted that fund shares are typically traded and cleared like common stock and are typically held in book-entry form at a securities depository in which OCC can readily perfect a security interest.[6] Given the liquid nature of fund shares and OCC's increased experience with evaluating the risks associated with fund shares, we are satisfied with OCC's determination that it is no longer necessary for its Membership/Risk Committee to approve classes of fund shares before the fund shares can be deposited as margin. Accordingly, the proposed rule should not affect OCC's obligation to assure the safeguarding of securities and funds which are in its

[3] Securities Exchange Act Release No. 39104 (September 22, 1997), 62 FR 50647 (September 29, 1997) (File No. SR–OCC–97–01).

[4] Securities Exchange Act Release No. 40132 (June 25, 1998), 63 FR 36467 (July 6, 1998) (File No. SR–OCC–97–02).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] Securities Exchange Act Release No. 39104 (September 22, 1997), 62 FR 50647 (September 29, 1997) (File No. SR–OCC–97–01).